

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
Thursday, July 31, 2003
Volume 4

Reported by:

LORI SCINTA, RPR
CSR No. 4811
JOB No. 43711

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2 CITY AND COUNTY OF SAN FRANCISCO

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14 Defendants.)

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16 STATE OF CALIFORNIA,)

17 Cross-complainant,)

18 vs.)

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

21 Cross-defendants.)
22 _____)

23 Deposition of RUSSELL GERSTEN, Ph.D., Volume 4,
24 taken on behalf of Plaintiffs, at 555 West 5th
25 Street, Suite 3500, Los Angeles, California,
beginning at 9:22 A.M. and ending at 5:30 P.M., on
Thursday, July 31, 2003, before LORI SCINTA, RPR,
Certified Shorthand Reporter No. 4811.

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19 INFORMATION REQUESTED
20 (None)

21 INSTRUCTION NOT TO ANSWER
22 (None)
23
24
25

1 Los Angeles, California, Thursday, July 31, 2003
2 9:22 A.M. - 5:30 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, you had requested yesterday a
9 document that Dr. Gersten mentioned regarding ELA
10 standards that Dr. Gersten estimated was adopted about
11 two years ago.

12 I spoke with Dr. Gersten this morning. He did
13 not rely on that document in writing the report,
14 although he had read it a couple of years ago and has
15 read the document since.

16 Dr. Gersten is going to locate that document,
17 hopefully on Monday when he's back in the office, and we
18 will get that to you.

19 Again, I don't think he relied on it under the
20 guise of the pretrial scheduling order, but we'll get it
21 to you. I think it is probably good background for his
22 report on page 18.

23 MR. AFFELDT: Thanks.

24 I did some checking of the documents that I
25 have and did locate an English Language Arts Standards.

1 MS. DAVIS: Oh, then that might be it.
 2 MR. AFFELDT: I wanted -- but I think his
 3 testimony was it was English Language Acquisition
 4 Standards.
 5 THE WITNESS: Yeah, and I just knew it as the
 6 "ELA Standards."
 7 MS. DAVIS: Do you have the document with you?
 8 MR. AFFELDT: I think I do.
 9 MS. DAVIS: If we could put it in front of
 10 Dr. Gersten, maybe he will know.
 11 THE WITNESS: I'm still learning California
 12 acronyms. There is a chance I confused...
 13 MR. AFFELDT: This is it.
 14 THE WITNESS: This isn't the precise document I
 15 looked at recently.
 16 Why don't I send that particular one to you,
 17 because I will get confused with the --
 18 MR. AFFELDT: Great.
 19 THE WITNESS: That one had more of a grid
 20 structure to it.
 21 MS. DAVIS: Okay.
 22 THE WITNESS: And I'll just send -- I'll
 23 just --
 24 MR. AFFELDT: Okay.
 25 THE WITNESS: And I may have gotten the

1 acronyms mixed up. I got it from people who worked in
 2 the schools.
 3 MS. DAVIS: All right.
 4 MR. AFFELDT: We'll see.
 5 For the record, we won't mark this as an
 6 exhibit, but it is entitled, "English Language Arts
 7 Content Standards for California Public Schools."
 8 And I have a copy for you, for your own
 9 records.
 10 MS. DAVIS: Thank you.
 11 MR. AFFELDT: But the front page has the stamp
 12 of the State of California and it says, "Adopted by the
 13 California State Board of Education December 1997."
 14 EXAMINATION (Resumed)
 15 BY MR. AFFELDT:
 16 Q Dr. Gersten, as the court reporter reminded you
 17 off the record today and yesterday, you realize you're
 18 still under oath?
 19 A Yes, I do.
 20 Q Okay.
 21 Can you describe the concepts of whole-language
 22 instruction.
 23 MS. DAVIS: Vague and ambiguous.
 24 THE WITNESS: I look at whole language as a
 25 movement rather than one particular specific

1 instructional model, and I think at its heart was the
 2 belief that students -- if students are immersed in a
 3 literature and print-rich environment, it will motivate
 4 students to learn to read and want to read.
 5 And, therefore, the more systematic explicit
 6 practice and drill on phonics and decoding and reading
 7 fluently practice so kids become fluent readers is not
 8 very important.
 9 What is important is an immersion in the sense
 10 of literature almost from kindergarten and first grade.
 11 And let me think for a moment. Probably the
 12 other key thing is teacher and class spontaneity is
 13 very, very important in the whole language movement.
 14 BY MR. AFFELDT:
 15 Q Is decoding and phonics and word structures
 16 absent from whole-language instruction or is it less
 17 emphasized?
 18 A Some of the writing says that it should be only
 19 in context, so if a child is reading a book and they
 20 come across the word "hut," you would right then give
 21 them like a 30-second mini-lesson, and the theory or the
 22 belief is that the children would remember those sounds
 23 and how to blend them together because they really want
 24 to know how to read this word.
 25 So there would be little bit of that, but it

1 would never be systematic. They would never practice
 2 that word family and do "hut" and "mut" and "hit" and
 3 "hat." It would just be in context.
 4 Q And how would you describe the -- I don't know
 5 if you want to call it a movement or a method of
 6 instruction, but how would you describe phonics?
 7 A Well, the people who have advocated phonics
 8 over the generations have argued that the way for
 9 children to learn how to read is for them to learn the
 10 rules for breaking the code, the rules for -- the sound
 11 or sounds that various letters have, and there are
 12 numerous approaches but that they basically spend a good
 13 deal of time working on learning those rules.
 14 And then they practice reading them in books
 15 that use words, most of which are -- the children can
 16 read themselves.
 17 So the idea is that when they're young, in
 18 order to learn how to read, children are explicitly
 19 taught the rules that humans use to decode words.
 20 Q Would you describe phonics as a movement or
 21 would you give it some other description?
 22 MS. DAVIS: Vague and ambiguous.
 23 THE WITNESS: Yeah, I -- I don't know that I
 24 can answer the question.
 25 BY MR. AFFELDT:

1 Q Do you consider phonics a method of
2 instruction?

3 A Yes, or it's an umbrella covering methods of
4 instruction.

5 Q Are there any other major schools of thought on
6 how to teach reading other than whole language and
7 phonics?

8 MS. DAVIS: Vague and ambiguous.

9 THE WITNESS: I'm sure there are. I can't
10 easily recall that, other than the idea that phonics
11 should be combined with phonemic awareness work, which
12 is more to me enrichment or enhancement of the phonics
13 approach based on research findings.

14 BY MR. AFFELDT:

15 Q So the emphasis on phonemic awareness is under
16 the umbrella of phonics but a particular direction; is
17 that fair?

18 A I consider it an enhancement of the phonics
19 approach.

20 Q Is the phonics in whole language debate -- let
21 me ask it this way.

22 Are these notions of phonics and whole language
23 unique to teaching reading in English?

24 MS. DAVIS: Vague and ambiguous.

25 THE WITNESS: Yeah. It's beyond my area of

1 expertise. I would just be speculating.

2 BY MR. AFFELDT:

3 Q So you don't know whether the notion of
4 phonics, for example, exists in reading instruction in
5 other languages?

6 A I -- I know that phonics is used to teach
7 reading at least in Spanish in some countries.

8 I just don't know how -- the extent of the
9 whole language type of approach in Mexico and Israel,
10 Spain, Germany, et cetera. I just don't know.

11 Q Do you have a position on which is the better
12 approach in terms of teaching reading?

13 MS. DAVIS: Vague and ambiguous.

14 THE WITNESS: I think for beginning reading,
15 research seems to consistently show that approaches that
16 have an explicit and systematic phonics -- or
17 phonics-and-phonological component teach more children
18 how to read in the first grade.

19 BY MR. AFFELDT:

20 Q When you have been talking about beginning
21 reading, what grades levels does that cover?

22 MS. DAVIS: Vague and ambiguous.

23 THE WITNESS: I've probably used the term
24 broadly, so at times it's referring to kindergarten
25 through third grade. At times, more first, second

1 grade, depending on the topic or the question.

2 BY MR. AFFELDT:

3 Q Do you have a sense of where the academic
4 community is generally on the debate between phonics and
5 whole-language instruction?

6 MS. DAVIS: Same objection.

7 THE WITNESS: I can't give an exact answer to
8 that other than report factually, based upon what I see
9 in the journals, there are a large, large number of
10 articles on beginning reading talking about various
11 approaches for using phonics and teaching phonological
12 awareness and phonics together.

13 And I don't see many in beginning reading on
14 whole-language-type approaches in the past several
15 years.

16 BY MR. AFFELDT:

17 Q Are there approaches that advocate a
18 combination of phonics and whole-language instruction?

19 MS. DAVIS: Vague and ambiguous.

20 THE WITNESS: I think this becomes vague and
21 broad and hard to give a precise answer to, because for
22 beginning reading -- for beginning reading, and here I'm
23 meaning it more precisely for kindergarten, first grade,
24 half of second grade when kids literally learn how to
25 read -- whole-language approaches do have this phonics

1 which is this kind of 40 seconds here, 40 seconds there,
2 or implicit, letting kids try to figure the rules out
3 from what they remember.

4 So there is some overlap to start with. Whole
5 language typically does not advocate systematic phonics,
6 so it gets too blurry to be able to say that.

7 There are -- if you were to look at a
8 comprehensive elementary program, there definitely would
9 be whole-language activities that -- activities in
10 whole-language tradition that would be a part of it.

11 And it's a -- because it's a loose tradition
12 and deals with many parts of reading, and phonics only
13 deals with the beginning, it's hard to give a precise
14 answer to that.

15 BY MR. AFFELDT:

16 Q What approach does California follow?

17 A My understanding of the Reading Language Arts
18 Standards for kindergarten through third grade is they
19 attempt a comprehensive approach. It definitely
20 includes systematic explicit work in phonological
21 awareness and phonics, and having kids learn to decode
22 words pretty automatically.

23 It also encourages a lot of rich work in
24 comprehension and analyzing and reading for pleasure,
25 even with very young children, in first grade.

1 So it borrows parts from many traditions but it
2 definitely stresses implicitness in the system,
3 including introducing kids for strategies for
4 comprehending text.

5 Q Does phonics work, in your opinion, with older
6 adults who are just, for example, coming to the United
7 States and trying to learn to read in English?

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

10 THE WITNESS: That would be asking me to
11 extrapolate too much beyond what I know or know of
12 research, so I just don't -- I just can't answer that.

13 BY MR. AFFELDT:

14 Q Does phonics work, in your opinion, with high
15 school students who are new to the country and trying to
16 learn to read English?

17 MS. DAVIS: Same objections.

18 THE WITNESS: Yeah, I feel here, too, I don't
19 know of systematic research in that area, so I can't
20 give an opinion.

21 BY MR. AFFELDT:

22 Q Do you know of any systematic research beyond
23 the beginning reading grade levels?

24 A I know of some studies beyond the beginning
25 grade levels, yes.

1 Q Does phonics work for children beyond the
2 third-grade level who are new to English and trying to
3 learn to read in English?

4 MS. DAVIS: Same objections.

5 THE WITNESS: I don't know of specific research
6 studies on this topic.

7 BY MR. AFFELDT:

8 Q So do you have an opinion as to whether or not
9 a phonics-based approach works for fourth graders and
10 beyond trying to learn to read in English?

11 MS. DAVIS: Same objections.

12 THE WITNESS: Well, there is some research for
13 native English speakers, including students from ethnic
14 minority groups that an approach that has this explicit,
15 systematic phonics and phonological component is
16 successful in teaching the students how to read.

17 BY MR. AFFELDT:

18 Q And what students are you talking about in that
19 research?

20 A These would be students who may be by third or
21 fourth grade weak readers and who are taught quite
22 intensively the rules of, you know, phonics,
23 phonological awareness, practice in fluency, practice
24 in -- all these other components: Vocabulary,
25 comprehension. But these students were not English

1 learners in the research I'm aware of.

2 Q And those students were born in the United
3 States?

4 A I assume so. I don't know that it's explicit
5 in the research report, but it's -- I would assume so.

6 Q Other than that research, are you aware of any
7 other research that addresses the effects of a
8 phonics-based approach on students beyond the third
9 grade's ability to learn to read English when they are
10 new to the English language?

11 A Let me think.

12 I'm not aware of any such studies. It doesn't
13 mean they don't exist, but I'm not aware of them.

14 Q Do you have an opinion on the efficacy of using
15 phonics to learn -- to teach students new to the English
16 language beyond the third grade how to read?

17 A I'm only speculating here, but my opinion would
18 be there would be promise in using some of the same
19 techniques that are used with native English speakers
20 who were poor readers, the intensity and systematic work
21 in learning how to read where words -- and having kids
22 really learn the rules for phonemes and phonics, that
23 that would be a basis but one piece of a program. That
24 would be just speculation on my part.

25 Q What approach does California follow currently

1 to teach reading to English learners arriving in
2 California without English proficiency in grades 4 to 6?

3 A I haven't studied that issue, so I would be
4 speculating, and I'd rather not for a question that
5 specific.

6 Q Do you have an opinion on the best way to teach
7 English learners who are new to the English language
8 reading at the grades -- at the middle school level?

9 MS. DAVIS: Vague and ambiguous.

10 THE WITNESS: I don't have an opinion of a
11 clear approach. My guess would be, though, that for
12 students -- since it seems that if students learn the
13 rules for how to decode words in a language, they're
14 more likely to learn how to read. That -- that should
15 be a component, but I'm extrapolating beyond data that I
16 am personally aware of.

17 BY MR. AFFELDT:

18 Q Are you familiar with any instructional
19 materials designed for teaching newcomer English
20 learners to read in English in grades 7 through 12?

21 A I am not.

22 Q You've mentioned phonemic awareness as one of
23 the skills necessary for learning to read.

24 What are the other types of skills that you
25 consider necessary for learning to read?

1 MS. DAVIS: I'm just going to object to the
2 extent that might mischaracterize his testimony; vague
3 and ambiguous, as well.

4 THE WITNESS: I don't understand the question
5 in that beginning -- "learning to read" has so many
6 meanings. Is it just being able to read a few sentences
7 in a language? Is it being able to pick up a novel,
8 you know, a sophisticated novel and being able to read
9 it with understanding?

10 So it depends how long up the road we're
11 talking about.

12 BY MR. AFFELDT:

13 Q Let's start with an ambitious goal of learning
14 to read a sophisticated novel. What are the types of
15 skills one needs to learn in order to achieve that goal?

16 A I'm going to leave some out, because there are
17 many. Obviously, learning how to decode or read words
18 would be critical. Building fluency is critical for
19 being able to read a novel with understanding, and
20 there's many ways people become fluent.

21 Vocabulary development is critical, and there
22 are numerous factors there: Home, school, reading. All
23 three seem to -- and conversations about words with
24 friends, teachers, parents, whatever, all contribute to
25 that.

1 Really working on comprehension and literary
2 analysis seems important and learning how through some
3 type of serious exposure to expository text in science
4 and social studies, that would be less important for
5 reading novels but that would be important for someone
6 being a proficient reader.

7 Those are -- yeah, those probably five elements
8 are critical. And there are always children who teach
9 themselves or develop one or several on their own, but
10 to reach a broad number of students you need those five
11 elements.

12 BY MR. AFFELDT:

13 Q You listed four. Is that because we were
14 assuming phonemic awareness?

15 A And phonics. I was blending them together,
16 yeah, but they are actually distinct.

17 Q You were blending what?

18 A Phonics and phonemic awareness together but
19 they are really distinct the elements. I was blending
20 them together since we talked about them so often.

21 Q So what are the five elements?

22 A Okay. Phonemic awareness, phonics or decoding.

23 Q Okay.

24 A Fluency, building fluent reading; vocabulary
25 and comprehension.

1 Q So when you use the term "decoding, reading
2 words," that is what you would consider phonics?

3 A Well, "decoding" is a little broader than
4 phonics, which is why this list could include 111
5 elements because you also need to work with children on
6 irregular words and sight words as they learn, you know,
7 how to read, so you want to do both.

8 Q Are you familiar with the term "syntactic
9 processing"?

10 A No. I know what the two words in isolation
11 mean and I can try to blend them together but I'm not --

12 Q Blending the two words together, what do you
13 come up with?

14 A Being able to comprehend or process the kind
15 of -- the formal structures of a language, but I'm --
16 I'm -- I'm kind of guessing here. That's just my
17 attempt that a person can understand the syntax of a
18 language, which every language is somewhat different.

19 Q What do you mean by "syntax"?

20 A I'm not a linguist.

21 I would mean the sentence structures, whether
22 adjectives typically come before or after nouns; tense
23 agreement; having a feel for clauses and phrases and how
24 to use those; how we kind of convey a thought in the
25 language, be it the English language, German language,

1 the structures we use to do that.

2 Q Is syntactic processing part of learning to
3 read?

4 MS. DAVIS: Vague --

5 THE WITNESS: Since I'm guessing --

6 MS. DAVIS: He's saying -- calls for
7 speculation.

8 THE WITNESS: I don't think -- I think that
9 would be too much.

10 BY MR. AFFELDT:

11 Q Let me ask whether understanding the syntax of
12 a language is part of learning to read.

13 A I'd feel more comfortable answering: Is it
14 part of learning to write? Because then if I understand
15 the term "syntactic processing," I think it would be
16 important in learning how to write.

17 In terms of learning how to read, I'm just --
18 I'm not comfortable enough with the term or that way of
19 looking at things to really give an answer, including:
20 Which comes first? People acquire that through reading
21 and -- I don't know. I would just be speculating too
22 much beyond my knowledge.

23 Q What is "morphology," as you understand the
24 term?

25 A I'd be making an educated guess. I'm not that

1 fluent or conversant with the language of linguistics,
 2 so I -- I may use different phrases to refer to things,
 3 and I'm afraid I'm going to say things that are wrong.
 4 Q What would your educated guess be?
 5 MS. DAVIS: Calls for speculation.
 6 THE WITNESS: Yeah. I -- my comfort level on
 7 guessing isn't --
 8 BY MR. AFFELDT:
 9 Q So you're not comfortable venturing an educated
 10 guess?
 11 A I'm afraid no. No, I would be extrapolating.
 12 Q Do you have an understanding what the term
 13 "semantics" means --
 14 A I do --
 15 Q -- in a linguistics context as opposed to a
 16 lawyerly --
 17 MS. DAVIS: I know that one.
 18 THE WITNESS: Well, I'll tell you -- I don't --
 19 the linguistic thing is meanings, and I remember that
 20 early work in language development. The syntax is
 21 formal structure and the semantics is the meanings.
 22 At least, that's what I learned 35 years ago.
 23 BY MR. AFFELDT:
 24 Q Meanings of what?
 25 A I think meanings of -- here I'm not -- I

1 learned the formal definition so long ago. What stuck
 2 with me and so this could be wrong, and I'm sure it's
 3 imprecise, would be meanings of words or clusters of
 4 words or sentences or -- that kind of thing.
 5 Q Is semantics part of -- strike that.
 6 Is semantics one of the skills that an
 7 individual needs to learn in order to learn to read?
 8 MS. DAVIS: Calls for speculation.
 9 THE WITNESS: See, you'd be asking me -- this
 10 is a term that I learned about 35 years ago in terms of
 11 oral language development of young children, so to
 12 extrapolate, I easily could get my definitions mixed
 13 up.
 14 And I may well -- it's possible that I think
 15 it's important but I use different words to convey it
 16 and I just don't want to use words that I don't know
 17 what they mean precisely.
 18 BY MR. AFFELDT:
 19 Q Is there a word that you use that you think is
 20 synonymous with semantics?
 21 MS. DAVIS: Calls for speculation.
 22 THE WITNESS: This is really speculative, not
 23 knowing formally how people use that word in terms of
 24 reading.
 25 I would say that work in vocabulary and

1 comprehension involves in both cases meanings of words,
 2 words in context, so that they may be related, but I --
 3 I'm speculating.
 4 BY MR. AFFELDT:
 5 Q Is understanding word meanings part of learning
 6 to read?
 7 MS. DAVIS: Vague and ambiguous.
 8 THE WITNESS: John, could you repeat the
 9 question quickly?
 10 BY MR. AFFELDT:
 11 Q Is understanding word meanings part of learning
 12 to read?
 13 A Well, it's part of reading and it would seem
 14 that in order to read one needs to understand word
 15 meanings.
 16 Q Would that be decoding, under your list of
 17 skills, or part of decoding?
 18 A Word meanings? No, it would not.
 19 Q Where would that fall in your list?
 20 A That's typically what -- rich vocabulary
 21 includes meanings of words and groups of words.
 22 Q What is the skill of coming to a word that
 23 you've never seen before but being able to surmise its
 24 meaning, based on its -- its letters, its root words,
 25 et cetera?

1 MS. DAVIS: Vague and ambiguous.
 2 THE WITNESS: Let me make sure I understand the
 3 question, so I'll try to paraphrase it.
 4 So if you are reading something and you come
 5 across a word and you're not sure what it means, like
 6 "MoFo" here (indicating), you'd use -- I guess you'd use
 7 knowledge of -- you'd use knowledge of -- like that
 8 "anti" means against, usually.
 9 Is that what you're --
 10 BY MR. AFFELDT:
 11 Q Right.
 12 A Yeah. So if you didn't know what "antifreeze"
 13 meant, you'd sort of have a hunch it means -- it doesn't
 14 like freezing and it's going to sort of try to do
 15 something against freezing of something.
 16 That, typically, is part of reading instruction
 17 programs. I believe it's in the State standards. I
 18 would probably say some would group it under
 19 "vocabulary," some under what's called "word study," but
 20 it would be something you would try -- you would try to
 21 teach children these rules.
 22 Q Would that be part of decoding?
 23 A What happens and what we try to mention in that
 24 book chapter is, in my view, in a teacher's head you
 25 want to have all these things there but they don't have

1 to be, "For this half-hour we're only doing decoding,
2 for this half-hour we're only doing meanings."

3 These are the kinds of things you teach to help
4 kids become better readers, so I don't know where I'd
5 fit it. It would be part of a program. I don't know
6 how I'd formally classify it.

7 Q Okay. I want to understand: When you talk
8 about decoding, is that being able to pronounce a word
9 based on sounding out its -- its letter structure?

10 A Based on -- I would define "decoding" --
11 again, I'm not a formal reading researcher -- but, to
12 me, "decoding" means the ability to accurately read
13 words.

14 Q Is there any part of decoding that has to do
15 with the ability to understand the words that you
16 write?

17 A To me and the way I chunk reading, and others
18 may do it differently, those would be vocabulary and
19 comprehension.

20 But as we pointed out in that article, some
21 teachers teach them almost in tandem with each other
22 within the same four-minute segment.

23 Q Which article are you referring to?

24 A The one that Baker and I did, the chapter,
25 because I think we read that yesterday together.

1 Q Is receptive language listening?

2 A To me, it would be -- it would be the ability
3 to understand -- understand what you hear, so listening,
4 yeah, listening to words.

5 Q Listening comprehension?

6 A They're similar. I don't -- they're similar
7 concepts to me.

8 Q When you use "oral language," do you mean
9 speaking?

10 A Yeah, that's how -- I would say oral language
11 is speaking and receptive language is listening and
12 understanding.

13 Q I understand your point about oral language
14 based upon particular research that you're aware of, not
15 being a predictor of reading comprehension. But do you
16 believe that oral language plays --

17 Before I ask the question, you mentioned
18 earlier that having conversations, for example, with
19 family, friends, teachers, builds vocabulary
20 development, which is part of reading comprehension.

21 Is there -- you're shaking your head. Did you
22 not --

23 A Oh, I'm just thinking. I'm just thinking. I'm
24 not disagreeing with that. I'm just thinking about
25 something.

1 It was in my report on Footnote 3. Yeah, I
2 mean, that's just a teenie tidbit.

3 Q Okay. The one that has page "102" in it
4 somewhere?

5 A Yeah.

6 Q What role does oral language skill play in
7 reading comprehension?

8 MS. DAVIS: Vague and ambiguous.

9 THE WITNESS: Both those terms are quite
10 broad. The only finding I'm aware of -- or the only
11 piece of information I want to give is some of the
12 predictive studies that have been conducted over the
13 last five years or so with primarily African-American
14 students and English learners seem to indicate that oral
15 language as we measure it, and it's a very, very hard
16 thing to measure validly, is not a good predictor of
17 kids' reading ability, including their comprehension.

18 Now, we're only dealing with -- many of these
19 studies only go through first or second grade, and
20 there's oral language and receptive language, and
21 they're very different.

22 So -- I mean, they're related but they're
23 different. So it's an area that is well not -- not well
24 understood. It's not well understood.

25 BY MR. AFFELDT:

1 Q I just want to make sure.

2 So the question is: Is there any other way
3 that oral language or receptive language plays a role in
4 reading comprehension?

5 MS. DAVIS: Compound.

6 THE WITNESS: These questions are so broad and
7 vague to me.

8 From my somewhat limited reading here, it seems
9 that comprehension and vocabulary develop a lot by
10 reading, that kids who can read, their vocabularies on
11 average tend to develop better readers, they develop
12 more -- undoubtedly it develops in these other ways,
13 listening, speaking, et cetera.

14 So I don't know -- I think the totality of
15 building vocabulary, building receptive language and
16 understanding of language is definitely linked to
17 comprehension, is my speculation.

18 But which path is more potent than others or
19 maybe different people develop differently, but it seems
20 with reading, it can be pretty potent, especially when
21 kids learn how to read when they're young.

22 BY MR. AFFELDT:

23 Q Should teachers of English learners be trained
24 in the five types of skills you listed earlier for -- in
25 order to be able to teach reading to English learners?

1 MS. DAVIS: Vague and ambiguous.
 2 THE WITNESS: I think for them to -- for
 3 someone to be an optimum -- I can't answer that exactly
 4 because as I said I'm not a "should" kind of person,
 5 like "You should do this, don't do that."
 6 I've always been kind of rebellious and I don't
 7 know that that brings out the best in people.
 8 I think those are five important areas for a
 9 reading teacher, someone who teaches reading to anyone,
 10 basically, to be knowledgeable about, so it's a good
 11 thing.
 12 At certain ages, certain ones are more
 13 important than others, I would think.
 14 BY MR. AFFELDT:
 15 Q Which skills are more important for beginning
 16 reading?
 17 MS. DAVIS: Vague and ambiguous.
 18 THE WITNESS: Yeah, I need to -- I need more
 19 pinpointing of "beginning reading," if it's -- if it's
 20 just the first four months of reading instruction or --
 21 you know, I'd need that to be more precise to answer the
 22 question.
 23 MR. AFFELDT: In kindergarten through third
 24 grade.
 25 MS. DAVIS: Same objection.

1 THE WITNESS: I can't answer that for that
 2 large an age thing, from five to nine. It's --
 3 different things happen.
 4 BY MR. AFFELDT:
 5 Q What about kindergarten through first grade and
 6 the first half of second grade, which is what you
 7 referred to earlier as when kids are learning how to
 8 read?
 9 A If you look at that totality, all five would be
 10 important, though. Depending on the age level and the
 11 kids' reading level, different ones would be of less
 12 importance.
 13 Q So as you get younger and earlier in the
 14 process of learning to read, which skills would you
 15 emphasize more?
 16 A Very young children, the beginnings, I'd
 17 emphasize the phonological and phonics work, vocabulary
 18 and comprehension, which would include a lot of
 19 listening comprehension.
 20 I would not stress fluency with kindergarteners
 21 or during the early time, first grade.
 22 Q And as students get older and get into second
 23 and third grade, which -- how would you modify the
 24 skills you were emphasizing?
 25 MS. DAVIS: Vague and ambiguous.

1 THE WITNESS: I'd say there that the
 2 phonological work would not be so important for many
 3 students in second and third grade.
 4 Phonics would be a fairly complex way and
 5 wouldn't have the same weight it would have in the
 6 earlier grades, and the vocabulary development and
 7 comprehension would be important in ensuring the kids
 8 read fluently, that they have a sense of comfort in
 9 reading and -- and -- so that they can chunk and absorb
 10 the material would be important.
 11 I think I'd like to take a break after this
 12 question, since it's been about an hour.
 13 MS. DAVIS: Yeah, we've been going over an
 14 hour.
 15 THE WITNESS: If this is a good juncture.
 16 MR. AFFELDT: This is a good juncture. Let's
 17 take a break.
 18 (Recess taken.)
 19 BY MR. AFFELDT:
 20 Q Dr. Gersten, do English learners need reading
 21 comprehension to access the core curriculum?
 22 MS. DAVIS: Vague and ambiguous.
 23 THE WITNESS: That question doesn't -- do they
 24 need the -- I don't think the question is phrased in a
 25 way that I could answer it.

1 Do they need -- see, reading comprehension
 2 isn't just -- do they need to be able to comprehend what
 3 they read in order to have access?
 4 Is that what you're --
 5 BY MR. AFFELDT:
 6 Q That is a better question. That's a better way
 7 of phrasing my question. Yes. Thank you.
 8 A You know, both those terms are so broad that
 9 depending on the hypothetical, the answer could be
 10 absolutely yes or unclear. So I can't give a --
 11 Q What are the two terms that are broad for you
 12 there?
 13 A "Access to the curriculum," which we talked
 14 about, "reading comprehension."
 15 Q When I say "access to the curriculum," I mean
 16 understanding the essence of the curriculum, which is --
 17 A So I'd say not necessarily.
 18 Q And in what instances would the ability to
 19 comprehend what the student reads not be necessary to
 20 access the curriculum?
 21 MS. DAVIS: Calls for speculation.
 22 THE WITNESS: 20 different examples are coming
 23 to mind and it's seeming more and more ambiguous.
 24 Specific answer I could give, I could -- I
 25 could envision a science lesson that students could

1 follow without reading the book, be they English
2 learners or not English learners where there is a clear
3 demonstration and terms are clearly defined.

4 That's one example, but there's a hundred --
5 the term "access to the curriculum" is still a very,
6 very broad term to me.

7 BY MR. AFFELDT:

8 Q Could you give me a couple other examples that
9 you're thinking of?

10 A I could envision kids getting a good
11 understanding of fractions and not being graded,
12 comprehending the math text, being graded in reading
13 comprehension because -- for a variety of factors.

14 There is no question, it is extremely desirous
15 to build reading comprehension in children, but I don't
16 think -- so these would be some examples where kids
17 could learn.

18 Q I think you just answered this in part, but is
19 the ability to comprehend what the student reads all
20 that an English learner needs to access the curriculum?

21 MS. DAVIS: Vague and ambiguous.

22 THE WITNESS: There are many factors in terms
23 of providing access, but, obviously, what the teaching
24 situation is like, how things are explained and
25 clarified, those -- those are all -- those are all part

1 So are you aware of any similar -- of any
2 evidence that indicates that English learners can
3 achieve fluency at the same rate as native speakers?

4 MS. DAVIS: Vague and ambiguous.

5 THE WITNESS: I'm not aware of any evidence
6 that -- so the answer would be no.

7 BY MR. AFFELDT:

8 Q Are you aware of any evidence to demonstrate
9 that English learners can achieve -- can, rather,
10 development their vocabulary at rates similar to native
11 speakers?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: You're -- are you talking about
14 vocabulary in English, in this case?

15 BY MR. AFFELDT:

16 Q Yes.

17 A The question is too vague for me to answer.

18 Q And why is that?

19 A Well, if someone's an English learner, their
20 entry vocabulary would be lower than average than the
21 person who's fluent in English, so -- so I'm not sure
22 what to do with that. I'm not sure what to do with
23 that.

24 Q So -- well, I suppose the question goes to
25 their ability to develop new vocabulary. So even though

1 of providing access to the curriculum.

2 BY MR. AFFELDT:

3 Q If we take your example of a math topic --
4 well, let me ask it this way.

5 What do you mean when you say the teaching
6 situation is a factor in addition to reading
7 comprehension in terms of accessing the curriculum?

8 A How well things are explained, the students get
9 a chance to verbalize.

10 Sometimes in math they use that information, so
11 it's not just reading that goes on in teaching. There's
12 modeling, talking; in science, doing; in math, doing
13 things. So they are all factors in teaching and
14 learning.

15 Q Are you aware of any empirical evidence that
16 demonstrates English learners can achieve fluency at the
17 same rate as native speakers?

18 A I don't understand the question as phrased.

19 Q You cited in your expert report some articles
20 on the ability of second-language learners to learn to
21 decode or obtain phonemic awareness at grades similar to
22 native speakers.

23 I'm going to your third skill on the list of
24 skills needed to learn reading comprehension, which was
25 fluency.

1 they may have a lower base that they're starting from,
2 if they're both entering the first grade at the same
3 time as a native speaker, one potential study would
4 examine whether or not the English learner and the
5 native speaker were building new vocabulary at the same
6 rate.

7 A I don't --

8 Q And I don't want to limit it necessarily to
9 English if you think there is support in other
10 languages.

11 You used the Droop and Verhoeven study to
12 support some of your assertions, so my question is: Are
13 you aware of any evidence that would support the notion
14 that English learners can develop vocabulary at the same
15 rate as native English speakers?

16 MS. DAVIS: Same objection.

17 THE WITNESS: I'm unable to answer the
18 question. There is some studies that are being worked
19 on that may provide us with some answers, and I -- but I
20 don't know that they're completed or published or, if
21 they are, I haven't read them.

22 So at the current point in time, I know of no
23 study. There could be some relevant information in six
24 months or a year, but I don't --

25 BY MR. AFFELDT:

1 Q And what studies are those?
 2 A Some of the work being done by the NICHD
 3 researchers would be the new projects on English
 4 learners are looking at interventions with students with
 5 reading problems, and the interventions include a
 6 vocabulary component, so they may well have measures of
 7 vocabulary development, but I don't know the exact
 8 details of these studies at this point in time.
 9 Q Are you aware of any studies to the contrary
 10 that demonstrate that English learners do not build
 11 vocabulary at the same rate as native speakers?
 12 A No.
 13 Q Are you aware of any studies that demonstrate
 14 English learners do not develop fluency at the same rate
 15 as native speakers?
 16 MS. DAVIS: Vague and ambiguous, calls for
 17 speculation.
 18 THE WITNESS: No, I'm not.
 19 BY MR. AFFELDT:
 20 Q Are you aware of any studies that support the
 21 notion that English learners develop reading
 22 comprehension at the same rate as native speakers?
 23 MS. DAVIS: Vague and ambiguous.
 24 THE WITNESS: I'm not, and there may soon be
 25 some studies that address this but I'm not aware at this

1 current point in time.
 2 BY MR. AFFELDT:
 3 Q What are those studies that may soon address
 4 this?
 5 A The same ones I alluded to before.
 6 Q Are you aware of any studies that demonstrate
 7 English learners -- strike that.
 8 Are you aware of any studies that support the
 9 notion that English learners do not develop reading
 10 comprehension at the same rate as native speakers?
 11 MS. DAVIS: Vague and ambiguous.
 12 THE WITNESS: There may be studies that address
 13 those, but I don't have them at my fingertips now and
 14 I...
 15 BY MR. AFFELDT:
 16 Q I believe you testified that in the
 17 Baker-Gersten -- was it a three-year or two-year
 18 observational study --
 19 A It was a two-year study, two studies we did
 20 each year with them.
 21 Q -- that the classrooms were using Open Court
 22 materials?
 23 A Many of them were but not all of them.
 24 Q Do you recall which ones were using Open Court?
 25 A Yes. I couldn't -- I mean, many of them

1 weren't but I -- yes, so I do recall.
 2 If someone were to give me the roster and I had
 3 my notes, I could tell you which ones.
 4 Q Which districts were you in?
 5 A We were in San Diego, Inglewood and
 6 Los Angeles.
 7 Q Do you remember by district which districts
 8 were using Open Court?
 9 A Los Angeles was using it in all of the
 10 school -- all of the class of schools -- and I don't
 11 know what they call them, schools where reading was at a
 12 relatively low level, so Los Angeles -- all our L.A.
 13 classrooms were using it.
 14 Inglewood, the one school we were at, used
 15 Open Court exclusively and San Diego, one of the
 16 teachers did.
 17 Q And how many classrooms were you in in
 18 San Diego?
 19 A It was a different number each year. I believe
 20 the second year it was either three or four, and one
 21 was Open Court and the others weren't.
 22 Q And I think I asked you this question the other
 23 day and I think you said you thought it was Open Court,
 24 but you weren't sure.
 25 But do you know -- do you remember whether in

1 L.A. the teachers were using the supplemental English
 2 learner Open Court materials --
 3 A And I don't -- I don't know at that point in
 4 time if they were or weren't.
 5 Q What about in Inglewood?
 6 A I don't know.
 7 Q Is that the same thing for San Diego?
 8 A It was the one teacher. I don't know. I would
 9 think in her case she wasn't.
 10 Q Was not using the supplemental EL Open Court --
 11 A Yeah, yeah.
 12 Q What was the purpose of the Baker-Gersten
 13 two-year study?
 14 A There were several purposes. One was to
 15 describe what was happening in classrooms implementing
 16 the Reading Language Arts Framework, which was with
 17 English learners under Proposition 227. So that was one
 18 purpose, just describing what we were seeking.
 19 We then also wanted to see whether we could
 20 link observed teaching practices to growth in reading.
 21 MR. AFFELDT: Can you read that last answer
 22 back.
 23 (The record was read as follows:
 24 "A There were several purposes. One was
 25 to describe what was happening in

1 classrooms implementing the Reading
 2 Language Arts Framework, which was with
 3 English learners under Proposition 227.
 4 So that was one purpose, just describing
 5 what we were seeking.
 6 We then also wanted to see whether we
 7 could link observed teaching practices to
 8 growth in reading.")
 9 THE WITNESS: And there was a third purpose
 10 which I'm just recalling now, which was to provide
 11 opportunities for faculty members at CSU schools to be
 12 actively involved in a research project.
 13 BY MR. AFFELDT:
 14 Q What years did the two-year study take place
 15 in?
 16 A Let me think.
 17 I believe and I may be off by a year but I
 18 believe it was '99 to 2000 and 2000 to 2001, those two
 19 school years.
 20 Q Those were the two years that you gathered
 21 data?
 22 A Yeah.
 23 Q And if you were off by a year, then it could be
 24 in either direction?
 25 A It would -- it would be earlier. It would be

1 earlier, and I don't think I'm off by a year. It would
 2 have been '98 to 2000. It's in the report. I just --
 3 Q Right. In either event, whether you're off or
 4 not, you were gathering data before the January 2002
 5 State Board of Education adoption of the Open Court
 6 English-learner supplemental materials?
 7 A That's correct, yes.
 8 Q So do you know what were the supplemental
 9 materials then available for Open Court for English
 10 learners?
 11 A I don't. By "supplemental," you mean the
 12 English language materials, the --
 13 Q Correct.
 14 A I don't.
 15 Q What was your role in this study?
 16 A It evolved. Originally I was going to be a
 17 consultant, and then I tended to play more of a
 18 leadership role because it seemed that by meeting every
 19 couple, few months with a fairly large number of people
 20 we weren't getting a coherent design for the study, so I
 21 wound up observing quite a bit myself.
 22 I originally intended -- my intent was not to
 23 do that, but it seemed useful. And some of the faculty
 24 couldn't observe that much themselves.
 25 Q When you say you took on a "leadership role,"

1 what did that entail?
 2 A Encouraging the group to make decisions so that
 3 we could have a plan for the second year of the study;
 4 trying to cut down the length of the instrument so that
 5 the quality of the observations would be -- would be
 6 higher; suggesting we do a factor analysis of the data
 7 so that we could cluster the items into concepts so that
 8 people could better understand what we were observing,
 9 and also so that we could do statistical analyses.
 10 And I'm sure there were other things, providing
 11 support to individuals who were struggling with issues.
 12 Q And in addition to the leadership role, you
 13 were also an observer?
 14 A Yes.
 15 Q How many observations did you make?
 16 A I don't have the numbers memorized. I think --
 17 I think I probably made between five and seven each
 18 year.
 19 Q So 10 to 14 overall?
 20 A I'd say between 10 and 14 over the two years.
 21 It could even be 9. I just don't recall.
 22 Q And how long was each observation?
 23 A It was two to two-and-a-half hours of reading
 24 language arts instruction with the exception of one
 25 morning when we did reliabilities in San Diego and went

1 to two different rooms, each for about 90 minutes, to
 2 just get a sense of their -- there my role wasn't as
 3 much training as anything else, but they were almost
 4 always the two to two-and-a-half hours.
 5 In some cases, the local observers would go in
 6 two or even three mornings for a full two to
 7 two-and-a-half hours.
 8 Q Approximately how many observations were made
 9 overall as part of the two-year study?
 10 A If I look at the two years, the first year
 11 there were 19 to 20 classrooms, the second year 14. I
 12 think -- I guess a hundred, and this is -- the local
 13 people had the discretion. They could go in two
 14 mornings or three if they so chose until they could
 15 reach a valid assessment of the things we were looking
 16 for based on their field notes and their observations.
 17 So I'm estimating that. That would be my
 18 sense. And we often did reliability, so we would have
 19 two different people observing the same teacher.
 20 Q And then you'd compare how they each rated the
 21 teacher for purposes of determining learner reader
 22 reliability?
 23 A Right. Yeah.
 24 Q As part of the study, did you compare
 25 English-learner performance to native-speaker

1 performance?
 2 MS. DAVIS: Vague and ambiguous.
 3 THE WITNESS: We didn't in a formal
 4 sense. There was some data collected on the native
 5 speakers, but it was -- it varied. Some rooms had none,
 6 some rooms almost half the children were that way, so
 7 there was some data there but it's just -- the focus was
 8 the English learners.
 9 BY MR. AFFELDT:
 10 Q Did you ever discuss with your colleagues
 11 comparing English-learner and native-speaker
 12 performance?
 13 MS. DAVIS: Vague and ambiguous.
 14 THE WITNESS: It's quite possible that issue
 15 came up. There were many meetings and discussions.
 16 BY MR. AFFELDT:
 17 Q But you don't recall that at this point?
 18 A No. I know Dr. Baker did analyses of the
 19 native English speakers, some descriptive analyses.
 20 They're in the data set but I don't remember
 21 discussions.
 22 Q What do you mean by "descriptive analyses"?
 23 A He just reported how -- how they did on these
 24 different measures, and I always had concerns that it
 25 was a very nonrepresentative sample.

1 Q Of native speakers?
 2 A That's correct, yeah. Yeah.
 3 Q How representative do you think your sample of
 4 ELs was?
 5 A It was -- I think it was a reasonable portrait
 6 of the Southern California -- it certainly wasn't done
 7 by stratified demographic sampling but of the type of
 8 students in low-income schools that are English
 9 learners, majority Hispanic, not all Hispanic, some
 10 Somali, Cambodian, et cetera, so it was just in the
 11 ballpark to give a flavor for the kind of students in
 12 schools in these districts.
 13 Q So would you say that was representative in a
 14 descriptive sense?
 15 MS. DAVIS: Vague and ambiguous.
 16 THE WITNESS: I don't understand the question.
 17 MR. AFFELDT: This is as opposed to a
 18 statistical sense.
 19 MS. DAVIS: Same objection.
 20 THE WITNESS: I still don't understand the
 21 question.
 22 MR. AFFELDT: I'll withdraw it.
 23 Q Do you know whether L.A.U.S.D. is still using
 24 the Open Court materials for the basic reading series?
 25 A Yes, I've heard that that is the series they're

1 using.
 2 Q Do you know whether L.A.U.S.D.'s currently
 3 using the English-learner supplemental Open Court
 4 materials?
 5 A I believe they are, but I -- I'm not totally
 6 certain.
 7 Q What effect do you think class-size reduction
 8 had in California on English learners' access to
 9 credentialed teachers?
 10 MS. DAVIS: Vague and ambiguous.
 11 THE WITNESS: I -- I'm not in a position to
 12 answer that question. I didn't live in the state at
 13 that time and, so, I just don't know.
 14 BY MR. AFFELDT:
 15 Q You're not independently aware of any
 16 information on that subject?
 17 MS. DAVIS: Vague and ambiguous.
 18 THE WITNESS: I -- I couldn't hear the
 19 question, in part. Some --
 20 BY MR. AFFELDT:
 21 Q Are you independently aware of any information
 22 on the subject of the impact of class-size reduction on
 23 EL access to credentialed teachers?
 24 MS. DAVIS: What do you mean by "credentialed
 25 teachers"?

1 MR. AFFELDT: Preliminary or Professional Clear
 2 Credential.
 3 THE WITNESS: By "independently aware," does
 4 that mean -- tell me what you mean by that phrase.
 5 BY MR. AFFELDT:
 6 Q Do you have any information on that topic?
 7 A Information on the topic?
 8 Well, it was addressed in Hakuta's report, so
 9 that's a source, or an interpretive source I'm familiar
 10 with.
 11 Q Other than the Hakuta report, are you familiar
 12 with any other information on that topic?
 13 A No.
 14 Q Did you review the reports that Hakuta cited
 15 discussing the impact of class-size reduction on English
 16 learners?
 17 A Not that I recall.
 18 Q Before reading the Hakuta report, were you
 19 aware of any information on the impact of class-size
 20 reduction on English learners?
 21 MS. DAVIS: Vague and ambiguous.
 22 THE WITNESS: No.
 23 BY MR. AFFELDT:
 24 Q Having read the Hakuta report, are you at all
 25 concerned about the reduction in access to credentialed

1 teachers discussed in that report occurring as a result
 2 of class-size reduction?
 3 MS. DAVIS: Vague and ambiguous, assumes facts
 4 not in evidence.
 5 THE WITNESS: Am I concerned? I -- I didn't
 6 see the case of that one and only one factor created the
 7 situation of percentage of certified teachers being
 8 lower. That argument didn't seem compelling to me.
 9 I don't look so much at the economics and
 10 sociology of education, so his argument wasn't
 11 compelling to me.
 12 Around the time I read his report, I noticed
 13 the article that I cited by Keller as well as I believe
 14 newspaper coverage of the legislature saying that
 15 teachers must be certified.
 16 And I've heard that L.A. Unified told teachers
 17 they would be pink-slipped if they're not certified by a
 18 certain point in time in the future.
 19 So the idea that the State was moving towards
 20 demanding certified teachers seemed a good one,
 21 ambitious but good.
 22 BY MR. AFFELDT:
 23 Q Who told you that L.A. teachers will be
 24 pink-slipped if they're not certified in the near
 25 future?

1 A My colleague, Diane Haager, who is in teacher
 2 training and certification and alternate certification
 3 in Cal State L.A., who works a good deal with
 4 L.A. Unified both in research and in her work on teacher
 5 training.
 6 Q When did she tell you that?
 7 A Last night.
 8 Q How long did you talk with Diane Haager last
 9 night?
 10 MS. DAVIS: About this topic?
 11 THE WITNESS: About this topic? Yeah, because
 12 we went to the concert so -- Spike Lee...
 13 BY MR. AFFELDT:
 14 Q How long did you talk with her about any issues
 15 related to your expert report?
 16 A About 10 minutes.
 17 Q And what did you -- what topics did you discuss
 18 in that 10 minutes?
 19 A I think essentially she asked what the case was
 20 about, and I responded to some of the issues raised in
 21 Hakuta's report, as well as my understanding of some of
 22 the other issues in the case. And that's primarily what
 23 we talked about in this brief period of time.
 24 Q Other than the information about L.A. teachers
 25 potentially being pink-slipped, did she provide you with

1 any other new information?
 2 A No.
 3 Q Just for the record, "pink-slipped" means what,
 4 exactly?
 5 MS. DAVIS: Your understanding of
 6 "pink-slipped."
 7 THE WITNESS: My understanding is it means you
 8 can't keep your job if you continue to teach without
 9 getting -- doing the things you need to get certified.
 10 That's my understanding.
 11 BY MR. AFFELDT:
 12 Q Did she tell you by what date she understands
 13 the pink-slip rule will take effect?
 14 A She may have and I may have forgotten. It was
 15 after the concert. It was late.
 16 Q Do you know how many teachers in L.A. Unified
 17 are currently serving on emergency credentials?
 18 A No, I don't.
 19 Q Did she discuss the -- any actions L.A. Unified
 20 is planning to take to ensure they attract and retain
 21 credentialed teachers?
 22 A No, she did not.
 23 Q You produced during the course of your document
 24 production to Ms. Koury who passed it on to us a report
 25 on multitasking by a Carolyn Kneese or --

1 MS. DAVIS: I think this came up on Monday,
 2 didn't it?
 3 THE WITNESS: On Monday. See --
 4 MR. AFFELDT: Not on the record.
 5 MS. DAVIS: Oh, not on the record? Okay.
 6 THE WITNESS: Yeah. I -- I have never seen
 7 this report and I don't know why -- why -- I mean, how
 8 it got to Ms. Koury. It may be from somebody else she's
 9 working with, because I've never seen it, so I don't
 10 know how I could have sent it.
 11 And I wondered if maybe there was maybe some
 12 error in classifying or something, because I am not
 13 vaguely familiar with that report.
 14 BY MR. AFFELDT:
 15 Q So how -- the report we have is entitled, "The
 16 Multitrack Calendar, a Multisite Evaluation by Carolyn
 17 C. Kneese."
 18 A I'll take a look at it but --
 19 MS. DAVIS: It wasn't sent to Dr. Gersten from
 20 O'Melveny & Myers. It was -- by my conjecture, it was a
 21 mistake. It was part of another expert witness'
 22 production and so -- we did not send that document to
 23 Dr. Gersten.
 24 I imagine he would have no other way to obtain
 25 it.

1 MR. AFFELDT: You didn't --
 2 THE WITNESS: No, I've never seen it. I have
 3 no memory.
 4 MS. DAVIS: I actually saw it in there when I
 5 was reviewing the documents and asked Vanessa about it,
 6 because it seemed odd. So she said she had never sent
 7 it to Dr. Gersten.
 8 THE WITNESS: And I never got it.
 9 MR. AFFELDT: Somehow it made it into your
 10 production.
 11 MS. DAVIS: We'll chalk that up to the copy
 12 service or paralegal, somebody trying to be
 13 over-inclusive.
 14 THE WITNESS: Yep, yep.
 15 BY MR. AFFELDT:
 16 Q Do you have an understanding of how many
 17 English learners there are in California in public
 18 schools?
 19 A I know there are many. I believe one of the
 20 many things I read yesterday during this deposition
 21 talked about there being 1.4 million in California, and
 22 I don't know -- I mean, it's fresh in my memory because
 23 I read it yesterday. And I don't know how recent that
 24 report was, because there were things we read from 2000,
 25 2001; I think '98, as well.

1 So I know there were a lot. I'm new enough to
 2 the state that I don't even know the population of
 3 California, in total.
 4 Q Do you know the California public school
 5 population?
 6 A No.
 7 Q And before you read that figure yesterday, did
 8 you have an understanding of how many English learners
 9 there were in California public schools?
 10 A I knew there were a large, large number but I
 11 didn't -- I didn't have a specific number.
 12 Q Do you know how many languages are spoken in
 13 California public schools?
 14 A I don't know the precise number. I think,
 15 again, from the report I read yesterday, I believe they
 16 said over a hundred or approximately a hundred. And
 17 I've read other things over the years. And just having
 18 worked in San Diego Unified, I think some of their
 19 reports years ago, they easily had over 50 languages
 20 there.
 21 In our study, we probably saw, easily, 12 to 15
 22 languages just in these small number of classrooms.
 23 Q Do you know what socioeconomic status -- let me
 24 ask it this way.
 25 Do you know roughly the distribution of English

1 learners in -- by socioeconomic status grouping?
 2 A No.
 3 Q Do you consider the English-learner population
 4 in California to be unique in any way?
 5 MS. DAVIS: Vague and ambiguous.
 6 THE WITNESS: I couldn't hear the question.
 7 BY MR. AFFELDT:
 8 Q Do you consider the English-learner population
 9 in California to be unique in any way?
 10 MS. DAVIS: Vague and ambiguous.
 11 THE WITNESS: I need -- I don't understand the
 12 question as phrased.
 13 BY MR. AFFELDT:
 14 Q What don't you understand about it?
 15 A "Unique," compared to what?
 16 Q Do you consider the English-learner population
 17 in California to be unique compared to other states in
 18 the United States?
 19 MS. DAVIS: Same objection, calls for
 20 speculation.
 21 THE WITNESS: The word "unique" is -- is still
 22 troubling me, so I -- I can't answer the question other
 23 than each state -- I mean, each state's population to me
 24 is unique. Pennsylvania's is unique, Arkansas' is
 25 unique, New York's is unique. So in that sense -- but

1 every state would be unique. Alaska's is unique.
 2 But I don't know what the point is of saying
 3 that, or if that's what you're asking.
 4 BY MR. AFFELDT:
 5 Q Are there characteristics that make
 6 California's English-learner population more different
 7 from other states than you would see with respect to
 8 comparing states beyond California?
 9 MS. DAVIS: Vague and ambiguous, calls for
 10 speculation.
 11 THE WITNESS: Yeah. I -- I don't -- I couldn't
 12 answer that. I'm not a -- I don't have that demographic
 13 information.
 14 I see most states as having unique issues
 15 and -- with English learners.
 16 BY MR. AFFELDT:
 17 Q Do you consider California's English-learner
 18 population to be unique compared to language minorities
 19 elsewhere in the world?
 20 MS. DAVIS: Vague and ambiguous, calls for
 21 speculation.
 22 THE WITNESS: Yeah, I -- that's well beyond
 23 what I can answer.
 24 BY MR. AFFELDT:
 25 Q Why is that?

1 A I -- I think I know a bit about the world, but,
2 again, if I were to look at like the Laps in Finland
3 or -- there are so many language issues I just don't
4 have any knowledge of. The immigrants in Germany -- I
5 just don't know. I read occasional things in the
6 newspaper but I don't have a good feeling for -- for
7 this to make those kinds of comparisons.

8 Q Do you see similarities in the way California
9 educates English learners compared to other states?

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

12 THE WITNESS: It's a huge, huge level of
13 speculation, because I've seen up close the -- most of
14 California, a little bit Delle Valley, Texas and El
15 Paso, Texas, very little bit in Dade County. And it
16 just seems unique to -- each place is unique.

17 BY MR. AFFELDT:

18 Q In terms of the research that you've done in
19 California, I believe you've mentioned the more recent
20 Baker-Gersten work and a 1993-94 research project?

21 A Yeah.

22 Q Is there any other research you've done in
23 California?

24 A Yeah, yeah. The -- I think I mentioned that
25 the first day. We looked at -- there were several

1 studies done in southeast San Diego, one done in math in
2 every high school in San Diego.

3 We did one in special ed math in about four
4 high schools.

5 We did one -- we looked at five elementaries in
6 southeast San Diego.

7 Q And when was that?

8 A When was '78 to '80, one was '83 to '85. The
9 high school one was '83 to '85, another high school one
10 was about '87.

11 Then there was -- then we did one in south --
12 some of the southeast San Diego schools in '89-90-91,
13 and then the other project, which was that '92, '3, '4
14 period.

15 So I guess it was probably a five-year break
16 from '94 to '99.

17 Q If you could turn to page 9 of your report,
18 please.

19 The third line down, second to third line down,
20 you refer to -- this is discussing the Thomas & Collier
21 study. Students in Houston who received no English
22 language development instruction, and you are saying in
23 the -- in between dashes "...in violation of both
24 Federal case law and current California state policy..."

25 What is the federal case law that you're

1 referring to there?

2 A Castenada.

3 Q Any others?

4 A That's the only one that I'm familiar with,
5 based on my two years working with OCL. And there maybe
6 other more recent ones, but I still see it cited.

7 Q Are you familiar with Lau v. Nichols?

8 A Yes.

9 Q Is it your understanding that -- would you
10 include Lau v. Nichols in the federal case law that
11 would be violated when a student received no
12 English-language development instruction?

13 A Because I'm -- don't have the -- a strong legal
14 background, my understanding of -- from the folks at OCR
15 was that Castenada kind of subsumed -- was consonant
16 with Lau but more specific.

17 So I don't feel comfortable answering it that
18 way about Lau v. Nichols. But I'm more familiar with
19 Castenada and they led me believe that's currently but
20 at least the federal Department of Justice and OCR
21 relied primarily on.

22 Q What California current state policy are you
23 referring to there?

24 A I think some of the materials we were reading
25 yesterday on English learners, that the students have --

1 I think it was either -- I think it was either 30 or 45
2 or 30 to 45 minutes of English-language development
3 instruction, and that was in -- it was within one of
4 these three. I can -- I mean --

5 Q The three you're pointing to are Exhibits 8, 9
6 and --

7 A 7.

8 Q -- 7.

9 A And more likely 8 or 9.

10 Q Are you aware of whether there currently exists
11 in California students who are receiving no
12 English-language services whatsoever?

13 A I'm not aware of that.

14 I'd like to take a break in about -- either now
15 or in the near future. I mean...

16 Q Okay. A couple more questions?

17 A Okay. Two more.

18 Q All right. Would it concern you if you knew
19 that 70,000 English learners in California do not
20 currently receive any English-language support
21 services -- strike "language." English-learner support
22 services?

23 MS. DAVIS: Objection. Vague and ambiguous,
24 calls for speculation, assumes facts not in evidence.

25 THE WITNESS: Yeah. I'd like to review the

1 material and have a better sense of what the finding is
2 and what the source is before I would even speculate on
3 that.

4 BY MR. AFFELDT:

5 Q The hypothetical I'm posing to you assumes that
6 there's a valid, verifiable finding that 70,000 English
7 learners in the state have no English-learner support
8 services being provided to them.

9 Would that concern you?

10 MS. DAVIS: Vague and ambiguous, incomplete
11 hypothetical.

12 THE WITNESS: Yeah, it seems incomplete to me,
13 because I don't know about -- whether they receive
14 English language development. I wouldn't know that.

15 BY MR. AFFELDT:

16 Q That's part of my hypothetical, so "getting no
17 services," that means no English-language development,
18 no primary-language instruction, no sheltered-content
19 instruction, nothing.

20 MS. DAVIS: Same objections.

21 BY MR. AFFELDT:

22 Q Would that concern you?

23 MS. DAVIS: Same objections.

24 THE WITNESS: Yeah, I -- I -- I'm not
25 comfortable conjecturing in this area.

1 The word "concern," I mean, a lot of things
2 concern me. Probably if I saw that report I'd like to
3 know more and I'd like to know how the kids are doing,
4 get a sense of how they're doing and -- but I -- I just
5 don't want to conjecture in that area.

6 BY MR. AFFELDT:

7 Q So without more information, your answer is no,
8 you would not be concerned?

9 MS. DAVIS: Mischaracterizes his testimony.

10 But go ahead.

11 THE WITNESS: I'm not comfortable answering
12 that question. I don't know that -- I'm just not
13 comfortable answering that question.

14 BY MR. AFFELDT:

15 Q Do you know whether there is a State system to
16 detect how many English learners in California are not
17 receiving any English-learner support services?

18 A I don't know.

19 Q Do you know whether there's a mechanism in
20 California to correct the situation of an English
21 learner not receiving any EL support services?

22 MS. DAVIS: Vague and ambiguous, assumes facts
23 not in evidence.

24 THE WITNESS: I don't -- I don't know of the
25 existence. I'm far from an expert on the California

1 Department of Education, their functions.

2 BY MR. AFFELDT:

3 Q Have you read -- other than a portion of
4 Dr. Hakuta's deposition, have you read any other
5 depositions from this case?

6 A No.

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

8 MS. DAVIS: Okay.

9 (Recess taken.)

10 BY MR. AFFELDT:

11 Q Dr. Gersten, the same portion of your report on
12 page 9 we were looking at, the third line, you referred
13 to California state policy being violated.

14 Are you aware of whether any State laws
15 governing teaching of English learners in California
16 would be violated by the denial of any English-learner
17 support services to ELs?

18 A No.

19 Q And by "state laws," your lack of awareness
20 includes not being aware of any case law, statutory law
21 or regulations; is that correct?

22 A That's -- that's correct. I don't have a good
23 legal -- there's much I don't know about California
24 state law.

25 Q In your opinion, does a teacher in a mainstream

1 classroom with English learners need the same training
2 that a teacher of English learners in a -- in an
3 immersion classroom would have?

4 MS. DAVIS: Vague and ambiguous.

5 THE WITNESS: Yeah, I'm -- I'm not
6 understanding the question.

7 BY MR. AFFELDT:

8 Q Which part don't you understand?

9 A I think -- it seems to me so many mainstream
10 classrooms in California have English learners in them
11 that that's where I get confused, so...

12 Q Do teachers in those mainstream classrooms need
13 training to teach the English learners that are in their
14 classes?

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

17 BY MR. AFFELDT:

18 Q And by "training," I mean the type of training
19 you've described during your deposition as what you
20 think a teacher of English learners should have.

21 MS. DAVIS: Same objections.

22 THE WITNESS: I think where I get confused is I
23 see such overlap between the kind of training to be an
24 effective reading teacher that is needed. And many of
25 the skills for teaching reading and language arts to

1 English learners, there is so much overlap that I just
2 get confused and I don't know -- I have a -- my sense of
3 what would be desirable, but I don't know what should be
4 required.

5 And, so, I don't feel comfortable saying, "This
6 must be required" or "That must be required."

7 BY MR. AFFELDT:

8 Q What is your sense of what would be desirable?

9 A What would be desirable? Many things I've been
10 talking about before: Teachers who were very attuned to
11 vocabulary and teach it in a way to kids to expand their
12 vocabularies and to develop a love for words and
13 language would be highly desirable.

14 Classrooms where kids do have those
15 opportunities to -- for extended discourse in academic
16 language would be highly desirable.

17 They're hard skills to build in teachers.

18 Q Yesterday, you talked about teachers of English
19 learners needing the ability to make adjustments to
20 their teaching to accommodate the English learners.

21 Does that -- does that skill also apply to
22 teachers teaching English learners in mainstream
23 classrooms?

24 A I think the knowledge would be helpful. By
25 "training," I think something like the use of visuals

1 A I could definitely conceive of that.

2 Q Similarly, do you think a teacher teaching only
3 English learners in an immersion classroom could be
4 qualified to teach those students if that teacher had no
5 other training on teaching English learners but 20
6 minutes of training on a visual?

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

9 THE WITNESS: Yeah, yeah, I can't speculate
10 there, because some of the teachers I saw in the '80s, I
11 don't think they got any formal training and some of
12 them seemed to have taught themselves or each other.

13 So I can't speculate what people teach
14 themselves and what they transfer and how they attune
15 instruction to the children they teach.

16 You know, types of formal training are real
17 good, but if I had to pick the one thing, it just would
18 depend. I'd probably -- a course in psycholinguistics
19 would not be the one thing I would pick.

20 BY MR. AFFELDT:

21 Q Does a middle or high school teacher of English
22 learners need any more extensive training than
23 elementary -- than teachers of elementary English
24 learners?

25 A I know so much less about middle school and

1 and writing words down, I think some people, the
2 training could be a five-minute reminder four times from
3 a reading specialist or a language specialist and they
4 may say, "Yeah, that makes a lot of sense," try it and
5 be fine.

6 So I think those things I talked about, the
7 visuals and being aware of use of synonyms, would be
8 good for teachers -- for all teachers to have that
9 awareness and that capacity.

10 I'd love to see more work done along those
11 lines, because they are really pragmatic and clear and
12 linked to what teachers do.

13 Q Do you think that some teachers who otherwise
14 had had no training on how to teach English learners
15 would be qualified to teach English learners in a
16 mainstream classroom with as little as 20 minutes of
17 training on visuals a year?

18 MS. DAVIS: Vague and ambiguous, calls for
19 speculation.

20 THE WITNESS: It would depend on the skills of
21 the person, so I couldn't answer that.

22 BY MR. AFFELDT:

23 Q But you think it's possible --

24 A Yeah --

25 Q -- if you had a skilled person?

1 high school that I can't answer that.

2 Q Are you familiar with the bilingual teacher
3 training program in California?

4 A I have some familiarity but not in depth.

5 Is that the same as the BCLAD or different?

6 Q It's different.

7 A I definitely have spoken with people who have
8 that certification, to some people, so I have some
9 familiarity with it. And I've definitely seen certified
10 bilingual teachers in action in the work we did in the
11 '90s. And -- yeah.

12 Q But you're not familiar with the bilingual
13 teacher-training program as a professional-development
14 program for teachers of English learners in the state?

15 A I have some familiarity with it but I don't
16 have an-in depth familiarity with it, no.

17 Q Do you understand it to be a State-funded
18 professional-development program for English learners,
19 or a separate certificate?

20 A I don't understand the state -- I don't
21 understand the question.

22 Is this a -- well, I don't understand the
23 question.

24 Q Okay. Your response indicated that you
25 understand the bilingual teacher-training program to be

1 a certificate program.

2 Is that correct?

3 A I've just known people who've said they were
4 trained to be bilingual teachers, and I know when I talk
5 to colleagues at California state schools, they talk
6 about bilingual courses or bilingual programs. And I
7 haven't tracked that much. As I said, I have a very dim
8 familiarity with that.

9 Q Have you ever heard of a formal program called
10 the "Bilingual Teacher Training Program" which is a
11 state-funded professional development program?

12 A I don't -- I don't believe so.

13 Q Under California's approach that you describe
14 in your report when English learners are in the 30- to
15 40-minute-a-day session focusing on their unique needs,
16 what are native speakers doing?

17 MS. DAVIS: Vague.

18 THE WITNESS: I don't know, myself, what --
19 what are native speakers doing in the same class? Is
20 that what you're asking?

21 BY MR. AFFELDT:

22 Q During that same time period.

23 A If they're in the same class, what are they
24 doing?

25 Q Yes. Right. If it's a mainstream classroom

1 to 45-minute session for English learners, is it your
2 understanding that that 30- to 45-minute session
3 reinforces the basic lesson?

4 A My understanding is that there is an attempt to
5 link it to material in the lesson in terms of related to
6 language and also to build language skills, and that's
7 based partly on that appendix we looked at together
8 yesterday, I believe, so that there are both things in
9 that lessons.

10 It's actually systematically building skills in
11 English and there is an attempt to really link it so
12 that the kids will both -- have a better understanding
13 of what is being covered that week, let's say, in that
14 sequence of lessons.

15 And I don't have an in-depth understanding, but
16 that is my sense of the intent of the State by the
17 directives we were looking at yesterday.

18 Q What is your understanding under the State's
19 program of how English learners are supposed to catch up
20 on the content they miss out on when they're engaged in
21 English-language development activities?

22 MS. DAVIS: Vague and ambiguous, assumes facts
23 not in evidence.

24 THE WITNESS: Yeah. I'm not sure the State has
25 a particular policy there or if -- if I've ever seen one

1 with a 30- to 40-minute session to focus on
2 English-learner needs, what are the native-speaking
3 peers doing?

4 A I -- I don't know. I'm probably more familiar
5 with the teachers who spend time working with kids in
6 small groups for sometimes 15 minutes or 30 minutes, and
7 they do a variety of things. Some of them have these
8 workstations for kids, some use their instructional
9 assistants to do different activities or have kids work
10 on projects.

11 I would guess some of those same things would
12 be done, but I'm just guessing. I have not seen this,
13 so I don't know. I don't know.

14 Q Is it fair to assume that the native-speaking
15 students would be working on learning academic content
16 during that time period?

17 MS. DAVIS: Calls for speculation, assumes
18 facts not in evidence.

19 THE WITNESS: Yeah. I don't -- I don't know.
20 I don't want to make any such assumption. Without
21 knowing -- without seeing it myself or having the
22 report, it's invalid.

23 BY MR. AFFELDT:

24 Q Taking as an example the Open Court program
25 which supplements the basic reading series with the 30-

1 in any state for kids who receive pull-out ESL or
2 pull-out speech and language or pull-out special ed
3 services.

4 I just don't know that I've ever seen a
5 formalized policy. I just don't know.

6 MR. AFFELDT: I missed a word there and I think
7 our reporter might have, too.

8 (Discussion off the record.)

9 (The record was read as follows:

10 "THE WITNESS: Yeah. I'm not sure the
11 State has a particular policy there or
12 if -- if I've ever seen one in any state
13 for kids who receive pull-out ESL or
14 pull-out speech and language or pull-out
15 special ed services.

16 I just don't know that I've ever seen
17 a formalized policy. I just don't know.")

18 BY MR. AFFELDT:

19 Q What is the purpose of the English-learner
20 teacher guide?

21 MS. DAVIS: Vague and ambiguous.

22 MR. AFFELDT: I'm not done with the question.
23 Hopefully, it will clarify it some.

24 Q With respect to the Houghton Mifflin and
25 Open Court materials, what is the purpose of the teacher

1 guide for the supplementary EL materials?

2 MS. DAVIS: Same objection.

3 THE WITNESS: I don't understand the
4 question. When you say what -- what is the purpose of
5 it?

6 BY MR. AFFELDT:

7 Q What is the purpose of teacher guides, in
8 general?

9 A Okay. Teacher -- my sense is that teacher
10 guides, in general, are supposed to help the teacher,
11 give the teacher many suggestions or directions to take
12 in presenting lessons to students.

13 Sometimes they will give some of the rationale,
14 occasionally, and sometimes they link it to scope and
15 sequence, but that -- so that's my sense of the purpose
16 of the teacher guide.

17 Q And do Open Court and Houghton Mifflin have
18 teacher guides for the basic series?

19 A Yes, they do.

20 Q And they also have the teacher guide for the EL
21 supplemental materials, don't they?

22 A I believe they do.

23 Q So what -- what is the EL supplemental material
24 teacher guide serving?

25 A What purpose does it serve?

1 know.

2 Sometimes especially for something like
3 supplemental series, they might -- they might begin more
4 quickly.

5 Q Other than your general knowledge of the cycles
6 that publishers work on, are you aware of any specific
7 plans for revisions with respect to either Houghton
8 Mifflin or Open Court materials?

9 A I was aware that Open Court was thinking of
10 revising their guide, but they have not made a firm
11 decision. So they're thinking of it in the fall and
12 they hadn't made a firm decision as of April.

13 Q At least as of --

14 A April.

15 Q And that's your current understanding?

16 A Since -- I don't know what's happened at that
17 company since April.

18 Q What is your understanding of the reason for
19 Open Court considering revising the teacher guide?

20 A To improve it.

21 Q Which teacher guide are we talking about?

22 A The -- related to English-language learners,
23 the supplemental materials.

24 Q What is your understanding of -- what areas of
25 improvement is Open Court considering revising the EL

1 Q Yes.

2 A I would say its goal -- its purpose is the same
3 as any other teacher's guide.

4 Q Could the -- to what extent could the English
5 learner supplemental materials be taught in accord with
6 the Open Court program without the EL teacher guide?

7 MS. DAVIS: Calls for speculation.

8 THE WITNESS: I -- I can't -- I can't answer
9 that. I don't have the knowledge or background to
10 answer that.

11 BY MR. AFFELDT:

12 Q What would you need to be able to answer that?

13 A I'd need to know the teacher guide well and I'd
14 need to watch people use it with and without the
15 teacher's guide.

16 Q Do you know the EL supplemental materials
17 teacher guide well with respect to either Open Court or
18 Houghton Mifflin?

19 A No, I do not.

20 Q Do you have any idea when Open Court or
21 Houghton Mifflin will next revise any of their
22 materials?

23 A Publishers typically work on a four-year cycle,
24 so my guess is -- it's 2002, so they would probably be
25 working on revisions 2004, 2005. But I -- I don't

1 teacher guide in?

2 A I don't know.

3 Q How do you know that they're considering
4 revising it at all as of April?

5 A Because of my conversations with the gentleman
6 who is with Open Court, whose name I forget.

7 Q What is his position at Open Court?

8 A He works for SRA, that's capital S-R-A,
9 McGraw-Hill, who publish Open Court, and he works on
10 different projects with both the SRA curriculum and
11 Open Court curriculum, but I don't know his exact role.

12 Q Do you know his title?

13 A No.

14 Q Do you know where he's based?

15 A Ohio. I think Columbus, Ohio.

16 Q When did you talk to him?

17 A In April.

18 Q Where did the conversation take place?

19 A It was at one of the conferences I presented
20 at, probably the Council for Exceptional Children.

21 Q How long did you speak with him?

22 A Three minutes.

23 Q Other than that conversation, do you have any
24 other information on Open Court's plans for revising its
25 EL teacher guide?

1 A No, I don't.
 2 Q What did he tell you in that conversation?
 3 A That it was -- it was uncertain when they would
 4 do that, so he just wanted to tell me that, and he
 5 enjoyed my presentation which he had gone to.
 6 Q Did he tell you the reason why they were
 7 considering revising their teacher guide?
 8 A No.
 9 Q Wasn't this the teacher guide that was just
 10 adopted in 2002 by the State Board of Education?
 11 A Yes, yes. And I don't know if it was the
 12 teacher guide or the whole series. It was pretty broad,
 13 but -- I mean, not the whole series, but teacher guide
 14 in other activities.
 15 But he basically was saying they were, you
 16 know -- it was unclear when they would do this.
 17 Q Did this conversation give you any concerns
 18 that the Open Court materials may not be appropriate for
 19 teaching English learners?
 20 MS. DAVIS: Vague and ambiguous.
 21 THE WITNESS: I saw it as a desire to improve
 22 this. This is a fairly new area, as people have said.
 23 The bilingual-education community has just done this
 24 disastrous job of English-language development
 25 materials, and so people are just beginning to develop

1 quality materials.
 2 And it usually takes a long time for them to
 3 get better, because it's fairly new.
 4 BY MR. AFFELDT:
 5 Q Did you have this conversation before or after
 6 you submitted your expert report in April?
 7 A I don't know. I think they were both April,
 8 and I forget the exact day I submitted it.
 9 Q When was the conference on the Council for
 10 Exception Children?
 11 A Sometime in April. I could check my calendar
 12 at home, but I don't recall -- I have two conferences in
 13 April, so I forget which was which.
 14 Probably about the middle of the month,
 15 probably.
 16 Q Where was the conference?
 17 A It's a blur.
 18 Where was the conference? I think Seattle. I
 19 think it was Seattle.
 20 Q But, in any event, you were not concerned about
 21 the EL teacher guide being -- or other materials being
 22 revised as far as it being an issue of the quality of
 23 the Open Court EL materials.
 24 Is that fair?
 25 A I was happy that EL materials are going in a

1 direction that seems sensible for me, so the fact major
 2 publishers are putting energy into it, upgrading them or
 3 trying to upgrade them I think is very positive.
 4 As opposed to, well, the other materials that
 5 we used or ESL in the past, that was generally perceived
 6 by teachers throughout the country as not very useful.
 7 Q So you saw it as a positive that they were
 8 revising it, not a negative?
 9 A Yeah.
 10 Q And did you do any follow-up to determine the
 11 precise reason that Open Court was revising their
 12 EL materials?
 13 A No.
 14 MS. DAVIS: Can we go off the record for a
 15 second?
 16 MR. AFFELDT: Sure.
 17 (At the hour of 12:45 P.M., a luncheon
 18 recess was taken, the proceedings
 19 to resume at 2:00 P.M.)
 20 (At the hour of 2:25 P.M., the proceedings
 21 resumed at the same place, the same
 22 persons being present.)
 23 EXAMINATION (Resumed)
 24 BY MR. AFFELDT:
 25 Q Dr. Gersten, are you at all familiar with the

1 State Board of Education textbook adoption process in
 2 California?
 3 A I'm a little bit familiar with it.
 4 Q What is your understanding of that process?
 5 A That the State forms a committee of various
 6 educators and they review materials from the publishers
 7 on whatever the topic is, reading or math or science,
 8 and make recommendations as to what's acceptable and
 9 what's not.
 10 Q Did you review the process as part of preparing
 11 your expert report in order to determine whether or not
 12 it's, in your opinion, a sufficient process for
 13 selecting materials for English-language learners?
 14 MS. DAVIS: Vague and ambiguous.
 15 THE WITNESS: No, I didn't do a formal review
 16 of the process.
 17 BY MR. AFFELDT:
 18 Q Are you comfortable with relying on the State's
 19 own process for selecting materials for English-language
 20 learners?
 21 MS. DAVIS: Vague and ambiguous.
 22 THE WITNESS: Yeah. I don't understand the
 23 question.
 24 BY MR. AFFELDT:
 25 Q You've testified in your expert report about

1 Open Court and Houghton Mifflin materials selected from
2 the State Board's textbook adoption process and you have
3 praised those materials, but you haven't necessarily
4 reviewed them that closely, you also testified.

5 So I'm asking you if you are thereby relying in
6 part upon the State Board textbook adoption process to
7 choose appropriate materials for English-language
8 learners.

9 MS. DAVIS: Same objection.

10 THE WITNESS: I don't know enough about it to
11 either say I relied or didn't rely on it.

12 BY MR. AFFELDT:

13 Q Are you aware of any concerns raised by any
14 members of the public with respect to the State Board's
15 textbook adoption process?

16 A No.

17 Q Are you aware of any complaints that have been
18 made regarding the appropriateness of English -- of
19 Open Court or Houghton Mifflin materials for teaching
20 English learners in California?

21 MS. DAVIS: Vague and ambiguous.

22 THE WITNESS: I can't say that I've ever
23 personally heard or read a complaint about -- about
24 their appropriateness, so no.

25 BY MR. AFFELDT:

1 complaining about Open Court generally or for ELs, in
2 particular?

3 A What I remember is generally.

4 Q What about Terry Emett? Was she talking about
5 Open Court generally?

6 A Generally, yes.

7 Q Do you know what her position is at the State
8 Board -- the Department of Education?

9 A I don't.

10 Q In what context did you receive this
11 information about Ms. Emett's complaint?

12 A I was on a panel to develop guidance for
13 reading excellence at -- for California for English
14 learners, and State department people attended some
15 meetings, so she attended one meeting.

16 And during one of the coffee breaks, she
17 mentioned this.

18 Q To you, directly?

19 A I think so. I think maybe I had been talking
20 about what we had been seeing, and she -- yeah, it was
21 to me. And there may have been other people there.

22 I didn't know who she was at that time. I
23 thought she was a building principal but I later found
24 out, a year later, she was with the State department.

25 Q When was that panel?

1 Q Have you heard complaints about Open Court or
2 Houghton Mifflin secondhand?

3 A By members of the public?

4 Q By anyone.

5 A There was an article in the L.A. Times talking
6 about how much teachers in one district in Orange County
7 didn't like Open Court and wanted the district to adopt
8 Houghton Mifflin. They liked it better.

9 So there was a complaint about one of them by a
10 group of teachers, I don't know how many teachers, but I
11 did read that.

12 Q Do you know when that article was?

13 A Winter, spring, I believe.

14 Q Of '03?

15 A Yeah.

16 Q Have you heard any other complaints from any
17 source regarding Open Court or Houghton Mifflin?

18 A There was a woman who works for the State
19 department who said she didn't like Open Court because
20 it's too structured.

21 Q What is her name?

22 A Terry Emett. I believe it's E-m-e-t-t.

23 Q M, as in Mary?

24 A Yeah.

25 Q The Orange County educators, were they

1 A I think it was the summer of 2001, two years
2 ago.

3 2001 -- yeah, it wouldn't have been last summer
4 so, yeah, two summers ago.

5 Q What did she say about Open Court,
6 specifically?

7 A She said either she or -- she thought teachers
8 didn't like programs that were scripted.

9 Q In your review of Open Court, is that a fair
10 characterization, that the program is scripted for
11 teachers?

12 A Parts are scripted and parts are not, so I'd
13 say, no, that's not a good description of the
14 two-and-a-half hours of Open Court instruction.

15 Q On an average two-and-a-half hour lesson, how
16 much of it is scripted?

17 A I -- I don't know. I don't know. I think it
18 would depend from day to day.

19 The parts that are scripted are the more
20 structured, the quick activities with sounds and that
21 kind of thing, practicing sounds, phonemes and phonics.

22 I don't know.

23 Q Have you come to hear or know about any other
24 complaints concerning Open Court or Houghton Mifflin
25 from any source?

1 A No.
 2 Q In the Baker-Gersten study that you furnished
 3 to us in a draft form, what are the sample sizes that
 4 you're working with in that study?
 5 A Of classes or children?
 6 Q Let's start with children.
 7 A I need to look at the document for that. I
 8 have a copy of it? I don't know that...
 9 Q I haven't been making it an exhibit. I
 10 neglected to get a copy.
 11 Do you have your own?
 12 MS. DAVIS: I gave you two. Do you have an
 13 extra one?
 14 MR. AFFELDT: I do have the second one.
 15 Do you have your own version?
 16 MS. DAVIS: Yeah.
 17 (Gersten Exhibit 10 was marked for
 18 identification by the court reporter
 19 and is bound separately.)
 20 (Discussion off the record.)
 21 THE WITNESS: 194.
 22 BY MR. AFFELDT:
 23 Q Is that the total number of students that were
 24 in the classes you were making observations about?
 25 A Those were the total number of students in

1 class in the classes who were present in the beginning
 2 of the school year, third week or so of the school year
 3 and present at the end of the school year.
 4 So probably the classes range from 18 to 20, so
 5 probably there are about -- in the 14 rooms there would
 6 have been about 260 or so students total but we only
 7 measured those that we could look for growth.
 8 Q Does that mean 260 something minus 194 left at
 9 some point during the year and moved to a different
 10 classroom?
 11 A Yeah, yeah. Yeah.
 12 Q If you look at Table 4, which is on page 10, is
 13 that where you got your 194 --
 14 A Yes.
 15 Q -- by adding those three at the top?
 16 A That's also how I did it, but it also says
 17 "194" above there.
 18 Q It seems that for certain analyses you had
 19 smaller sample sizes as noted by the notations under the
 20 table.
 21 Am I reading that correctly?
 22 A That's correct.
 23 Q Why was it that you had smaller sample sizes
 24 for those analyses?
 25 A Because -- those kids were not tested on that

1 particular measure.
 2 And let me look at E and C. E is -- was the
 3 experimental measure word use fluency, so that just
 4 meant the data was missing for those children.
 5 Q Are you referring to the small "en" equals 80?
 6 A Yeah.
 7 Q Isn't that associated with the reading -- oh, I
 8 see. It's associated with both reading comprehension
 9 under Spanish speakers and word use fluency under other
 10 primary languages?
 11 A No. It's -- that "e" must be a typo,
 12 because -- see for reading comprehension, what that
 13 would say is only 80 of 110 of the Spanish speakers had
 14 a score for that.
 15 I don't know what that "e" on the bottom -- it
 16 wouldn't -- you couldn't say out of the 31 from other
 17 primary languages, 80 took the test. So I think that is
 18 a typo.
 19 Q Okay. At least as the word use fluency column?
 20 A That's what's in the word use fluency column,
 21 yes. And that would be the logic.
 22 And this is a working draft that we haven't
 23 reviewed as a team.
 24 Q Right. Well, I've got a question mark --
 25 MS. DAVIS: Shot right to the error.

1 THE WITNESS: Well, now I know. We'll hire you
 2 for the --
 3 MS. DAVIS: Text-editing error. I think you
 4 have a calling.
 5 MR. AFFELDT: Yeah. I'm probably in the wrong
 6 business.
 7 MS. DAVIS: You could be an editor somewhere.
 8 BY MR. AFFELDT:
 9 Q And your sample for teachers?
 10 A Was 14.
 11 Q Generally speaking, what do you consider to be
 12 a sufficient sample size when making conclusions based
 13 on statistical data?
 14 MS. DAVIS: Vague and ambiguous, calls for
 15 speculation.
 16 THE WITNESS: The general rule in statistics is
 17 it's enough subjects so that results can be
 18 statistically significant, so there is no -- there are
 19 so many variations on this.
 20 BY MR. AFFELDT:
 21 Q Does 14 teachers give you enough subjects to
 22 make conclusions that are statistically significant?
 23 A I believe it does, yeah.
 24 Well, don't forget correlate -- yes, it does.
 25 Under Table 5, for example, there are significant

1 correlations because that's what the asterisks stand for
2 in APA style.

3 This is the style that researchers use.

4 Q "APA" meaning a "American Psychological" --

5 A "Association."

6 Q -- "Association"?

7 A Yeah.

8 Q And, in fact, there are a number of double
9 asterisks, meaning higher level of statistical
10 significant, i.e., at the .01 level?

11 A That's correct, yeah.

12 Q Is that in part a function of smaller sample
13 size?

14 A No. The .01 is -- it works in reverse.

15 If "P" is less than .05, there is only a
16 5-percent chance -- it's hard to -- let's see.

17 There is only a 5-percent chance that this is
18 not -- that the relationship in the real world if we had
19 used, let's say, in hundreds and hundreds of teachers,
20 is not significant.

21 So it's reverse logic. So what it kind of says
22 is there is a 95-percent chance this is a significant
23 relationship if it's 0.5. And if it's .01, there's a
24 90-percent chance it is a significant relationship.

25 I think that's clear.

1 A Statistics takes into account several things:
2 The magnitude of the relationship, the sample size for
3 correlations. It takes those two things into account.

4 So it depends -- so if the relationship is very
5 strong -- so, basically, all the statistical things as
6 is -- this correlation is whether or not it's
7 significant or whether it could be due to chance. So it
8 just depends on what the statistic tells you, that each
9 statistic tells you.

10 Q We're looking at page 11, Exhibit 10, fourth
11 paragraph down, the second sentence says, "The
12 difference between the Spanish speakers
13 and English speakers is about .43 standard
14 deviation units, which is moderate. The
15 difference between the" -- the next
16 sentence goes on, "The difference between
17 the English speakers and the Other Primary
18 Languages group is about .38 standard
19 deviations, which is in the low-moderate
20 range. The difference between the Spanish
21 speakers and the Other Primary Languages
22 group is 23 words per minute, about .84
23 standard deviation units. This difference
24 is moderately large, and represents
25 perhaps the most surprising outcome in the

1 Q At the .01 level -- another way to say would be
2 at the .01 level there is a one in a hundred chance that
3 the relationship is occurring by chance?

4 A Yeah, yeah. Except -- and I started doing that
5 but then chance comes up twice.

6 Q That's true. But my question, which wasn't
7 phrased very well, was: Is the fact that there are
8 several relationships reflected in Table 5 that the
9 .01 level is a function of there being a smaller sample
10 size?

11 A The answer would be no. All things being
12 equal, the larger your sample size the more likely
13 you're to get things at an .01 level rather than an .05
14 because you have more confidence in your finding, all
15 other things being equal.

16 Another way to look at this is just that the --
17 this -- bigger numbers are -- tend to be .01, and the
18 numbers that are somewhat smaller are at the .05 level.

19 Q Statistically speaking, what effect size do you
20 think is significant?

21 MS. DAVIS: Vague and ambiguous.

22 THE WITNESS: I can't answer the question as
23 framed.

24 BY MR. AFFELDT:

25 Q And why is that?

1 posttest battery."

2 So, in this instance, how did you determine the
3 .43 standard deviation units was moderate, .38 was
4 low-moderate?

5 A In addition to doing statistical tests,
6 researchers have been strongly encouraged to report the
7 effect sizes, which is what technically these are
8 called, and then the conventions are .2 is small, .5 is
9 moderate and .8 is large. And that is in addition to
10 significance, so people are encouraged to present both.

11 Q In this study, what did you control for in
12 terms of family effects?

13 A We didn't control for family effects. It was
14 virtually all the students in all the class, if not all,
15 were free and reduced-lunch low-income schools based on
16 what principals and teachers -- the information they
17 gave us.

18 Q Other than having that information about their
19 families, did you have any other information about their
20 families?

21 A No. This was not a study of families, nor was
22 it a study of looking at differences between English
23 speakers and Spanish and other primary languages.

24 The design wasn't such that -- this is
25 supplemental information. It's snapshots. That was not

1 the purpose in doing this.

2 Q You did testify to that effect earlier, but
3 that was going to be my next question.

4 A Yeah.

5 Q You've got Table 4 and 10, the sentences I just
6 read comparing Spanish speakers to native speakers and
7 other primary language speakers.

8 Were you or were you not as part of this study
9 examining the performance of English learners against
10 native speakers in any way?

11 A I had -- I personally had no interest in that
12 comparison whatsoever, because it -- it was -- as I
13 mentioned yesterday in samples some other members in
14 this large team were interested in it, and it is just
15 supplemental information to give a flavor of the nature
16 of -- well, it's just supplemental information,
17 essentially.

18 Q What do you mean by "supplemental
19 information"?

20 A Well, just like the -- on Table 1, it's
21 information that -- it gives the context, describes a
22 little bit in this case the years' teaching experience,
23 ethnicity of the teachers. There are just ways -- so
24 people know a little bit what -- what went on.

25 It was not a major purpose. I mean it just --

1 California are disproportionately taught by
2 uncredentialed teachers?

3 MS. DAVIS: Vague and ambiguous.

4 THE WITNESS: I believe that was mentioned in
5 Hakuta's report.

6 BY MR. AFFELDT:

7 Q You didn't take issue with that in your report,
8 correct?

9 A That's correct.

10 Q Are you aware of any other -- any contrary
11 information?

12 A No.

13 Q Were you asked by Ms. Koury or any other
14 lawyers from O'Melveny & Myers or the State Department
15 of Education to provide an opinion in response to
16 Dr. Hakuta's evidence on the matter of English learners
17 being -- disproportionately being taught by
18 uncredentialed teachers?

19 A No.

20 Q When analyzing the achievement of English
21 learners over time, do you have an opinion on how to
22 treat those former English learners who have been
23 reclassified as RFEP?

24 MS. DAVIS: Vague and ambiguous.

25 THE WITNESS: It would depend upon the nature

1 if we only presented the correlations, people would want
2 to know where the numbers came from, so that's how I
3 look at this.

4 What this -- this data cannot be extrapolated
5 out because they are not representative of the English
6 speakers, in particular.

7 Q Why don't you think the sample of English
8 speakers are representative?

9 A Because districts varied in terms of which
10 English speakers were in these classes. One district
11 intentionally had the classes about half English
12 speakers and half not.

13 Another district would have only usually one
14 native-English speaker per class.

15 And a hunch we had were these were fairly --
16 fairly low-performing students.

17 Q The English speakers?

18 A The English speakers, yeah. Yeah.

19 Others had -- the classes were all Hispanic
20 English learners because the English speakers were put
21 in different classes.

22 So -- so it's just such an odd conglomeration
23 of people and it also represents different schools in
24 different districts and very different numbers.

25 Q Do you know whether English learners in

1 of the particular question the analysis addressed.

2 BY MR. AFFELDT:

3 Q Can you give me an example of when you would
4 treat the RFEPs as no longer an English learner?

5 MS. DAVIS: Vague and ambiguous.

6 THE WITNESS: I can't -- I can't think of --
7 probably if I sat here for half an hour, I could think
8 of questions.

9 Well, I can think of one. One would be what
10 percent of students at a given point in time are
11 classified as limited English proficient, so then the
12 kids -- so that there, if you looked at data, I would
13 call those kids fluent, because they're no longer
14 classified that way by the districts and schools, so
15 that would be an example.

16 BY MR. AFFELDT:

17 Q What would be an example of when you would
18 classify the RFEPs as together with ELs?

19 A If you did a controlled experimental study
20 looking at groups of students who began kindergarten,
21 first grade as this type or this type as EL or the
22 low-income African-American, whatever these groups are,
23 and you wanted to track them over four years in a whole
24 variety of measures, I would keep those longitudinal
25 samples intact so the kids even when they're

1 reclassified, I would report that as supplemental
2 information but I would definitely want to keep them
3 with their sample.

4 Q Do any of the reports that you cite in your
5 expert report demonstrate that English learners can
6 comprehend substantive matters other than reading at
7 rates similar to native speakers?

8 MS. DAVIS: The documents speak for themselves.

9 THE WITNESS: This report only looked at the
10 passage of -- comprehension of first-grade passages.

11 BY MR. AFFELDT:

12 Q You're referring to Exhibit 10, your --

13 A Yeah. Yeah.

14 Q -- current study?

15 A Yeah, yeah.

16 Q What about -- my question went to any of the
17 reports cited in your expert report.

18 A Did any of them finish -- could you --

19 Q Did any of the reports cited in your expert
20 report support the notion that English learners can
21 comprehend substantive content other than reading?

22 MS. DAVIS: Same objection. Vague and
23 ambiguous.

24 THE WITNESS: It is vague. I think some of the
25 things we probably alluded to in the Gersten and Baker

1 I -- I don't have it in front of me.

2 Q Assuming that's true, is it correct, then, that
3 the study doesn't tell us anything about how EL students
4 perform in comparison to native speakers after the first
5 grade?

6 A Then that would be true, yes.

7 Q What grade children was the Geva study focused
8 on?

9 A She did several, and they attended I believe
10 also kindergarten and first grade. I don't recall if
11 she ever followed kids through second grade. I just
12 don't recall at this moment.

13 Q And Droop and Verhoeven, what grade children
14 were they looking at?

15 A They were in the early stages of
16 reading. That's all I recollect.

17 Q But, similarly, the Droop and Verhoeven studies
18 don't tell us how -- anything about how English learners
19 perform in comparison to native speakers after the early
20 stages of reading grades that that study covers?

21 A That's correct.

22 Q In order to make statewide policy for grades K
23 to 12 on reading programs for English learners, do you
24 think it's important to have information beyond studies
25 that just focus on beginning reading grades?

1 chapter had -- there were studies of -- studies -- there
2 was one study of math.

3 Let me stop and think from memory.

4 So from memory, I remember at least one study
5 of math, perhaps two studies of math, and one was
6 content-area learning, but I don't remember that much
7 about it.

8 And I don't know the extent to which we dealt
9 with it in depth in this chapter as opposed to other
10 writings we've done.

11 BY MR. AFFELDT:

12 Q "This chapter," meaning the chapter we were
13 just referring to --

14 A Yes, correct, the 2003.

15 Q What about Chiappe?

16 A That was only reading for young children.

17 Q What about Geva?

18 A Geva's work is also young children, reading.

19 Q What about Droop and Verhoeven?

20 A I don't recall there being anything other than
21 reading and perhaps various language -- language
22 measures.

23 Q The Chiappe study only deals with kindergarten
24 and first graders, correct?

25 A To the best of my recollection, that's true but

1 MS. DAVIS: Vague and ambiguous.

2 THE WITNESS: I can't imagine a state basing
3 policies on nonexistent bodies of literature, so it's
4 not hypothetical. If such studies were conducted, it
5 would be relevant. But since they haven't been, to the
6 best of our knowledge, so -- I -- I can't conceive how
7 it could serve as a basis.

8 BY MR. AFFELDT:

9 Q Where did the Chiappe study take place?

10 MS. DAVIS: The document speaks for itself.

11 THE WITNESS: It was in Canada.

12 BY MR. AFFELDT:

13 Q Do you know what the demographics of the
14 Canadian students in the Chiappe study were?

15 MS. DAVIS: Same objection.

16 THE WITNESS: I'd need to look at report -- her
17 article.

18 BY MR. AFFELDT:

19 Q Do you recall how many different language
20 groups were being studied in the Chiappe study?

21 MS. DAVIS: Same objection.

22 THE WITNESS: No. At this point in time, no.

23 BY MR. AFFELDT:

24 Q The Geva study took place in Israel; is that
25 correct?

1 MS. DAVIS: Same objection.
 2 THE WITNESS: I believe she did one study in
 3 Israel and her more recent research has been done in the
 4 Toronto area.
 5 MR. AFFELDT: Let's mark as Exhibit 11 a
 6 Chiappe study.
 7 Let me know if you recognize that once you get
 8 your copy.
 9 (Gersten Exhibit 11 was marked for
 10 identification by the court reporter
 11 and is bound separately.)
 12 BY MR. AFFELDT:
 13 Q Do you recognize that?
 14 A Yes, I do.
 15 Q Are those your marks in the margins on the
 16 first couple of pages?
 17 A Yes, they are.
 18 Q Good. I thought they were my assistant's.
 19 A I didn't catch the --
 20 (Discussion off the record.)
 21 BY MR. AFFELDT:
 22 Q So looking at this, can you tell me where in
 23 Canada this study took place?
 24 MS. DAVIS: The document speaks for itself,
 25 assuming it does.

1 THE WITNESS: It took place in the North
 2 Vancouver school district in 30 schools.
 3 BY MR. AFFELDT:
 4 Q Where are you --
 5 A It's on page 373, if you look at the pagination
 6 on the top.
 7 Q And what were the demographics of the children
 8 involved?
 9 MS. DAVIS: The document speaks for itself.
 10 THE WITNESS: The document does speak for
 11 itself on page 374.
 12 BY MR. AFFELDT:
 13 Q Does that refresh your recollection as to the
 14 demographics?
 15 A Yes, it does.
 16 Q How would you compare those demographics of
 17 Canadian students in Vancouver to California English
 18 learners?
 19 MS. DAVIS: Vague and ambiguous.
 20 THE WITNESS: I think this population bears
 21 some similarities to some of the schools we've worked in
 22 in San Diego in terms of the number of languages, and I
 23 tended to see many fewer Japanese and Farsi children,
 24 for example in those schools.
 25 Obviously, the percent of Spanish speaking is

1 lower than the statewide averages, but this is kind of a
 2 constellation that one will find in schools with perhaps
 3 a few less languages than this.
 4 But if you were to put together, what was it,
 5 30 schools, I think you could easily look at schools in
 6 San Francisco, San Diego, L.A. Unified that would have a
 7 large mix of languages.
 8 You'd definitely see more Somali in San Diego,
 9 for example.
 10 BY MR. AFFELDT:
 11 Q But if you put together 30 schools in a large
 12 urban district in California, do you agree that it's
 13 very unlikely that you will only have less than
 14 7 percent of those students being Spanish speakers?
 15 A If you randomly picked 30 schools. If you
 16 selectively pick schools that have multiple diverse
 17 languages groups, so -- it would depend which way you
 18 did it.
 19 Q So if you randomly picked 30 schools, are you
 20 agreeing with me or --
 21 MS. DAVIS: Calls for speculation.
 22 BY MR. AFFELDT:
 23 Q I'm asking you a probability. Isn't it
 24 unlikely that you would only have approximately
 25 5-percent Spanish speakers in --

1 A Yes.
 2 Q -- a group of 30 schools from a larger district
 3 in California?
 4 A Based on the data I saw yesterday, if you
 5 randomly picked 30 schools, and we're talking about --
 6 and your goal was to understand the quote, unquote,
 7 typical ELL population and believed furthermore in a
 8 one-size-fits-all approach, yes, it would be -- it would
 9 be unusual to get that number.
 10 Q Do you think this sample of the English
 11 learners from the Chiappe study is sufficiently
 12 comparable to English learners in California in order to
 13 reach -- in order to extrapolate conclusions of her
 14 study in California?
 15 MS. DAVIS: Vague and ambiguous.
 16 THE WITNESS: It would depend to what -- I
 17 think some of the insights of that basic processing
 18 would hold and the relative predictive power of some of
 19 the different measures, I would think.
 20 I would think these samples would -- for the 19
 21 percent of the 1.4 million or so that the report
 22 yesterday talked about, this would be quite germane,
 23 though you'd have the Somali and Hmong, H-m-o-n-g, are
 24 two of the large groups. The Vietnamese are larger
 25 here.

1 So it's relevant material. It's not identical.
 2 BY MR. AFFELDT:
 3 Q What 19 percent of the 1.4 million are you
 4 referring to?
 5 A In one of the exhibits, one the documents we
 6 read together yesterday, they talked about 1.4 million
 7 English learners in California. And they talked about
 8 19 percent being from languages other than Spanish, one
 9 of them, approximately one in five.
 10 Q In the Droop and Verhoeven study, the second
 11 language-learner population consisted of Moroccans and
 12 Turkish students, correct?
 13 MS. DAVIS: The document speaks for itself.
 14 THE WITNESS: I'd say the document speaks for
 15 itself. I definitely remember the Turkish. Just right
 16 at the moment I can't recall the other but could with
 17 the document.
 18 BY MR. AFFELDT:
 19 Q Do you recall that the target language they
 20 were attempting to learn was Dutch?
 21 A That's my recollection, yes.
 22 MR. AFFELDT: Let's mark and look at Exhibit 12
 23 which is the -- let me know if this is the Droop and
 24 Verhoeven you relied on.
 25 (Gersten Exhibit 12 was marked for

1 identification by the court reporter
 2 and is bound separately.)
 3 THE WITNESS: It looks like it is, yes.
 4 BY MR. AFFELDT:
 5 Q Why don't you take a moment to review it and
 6 tell me what the ethnic background of the
 7 second-language learners was.
 8 MS. DAVIS: Same objection.
 9 THE WITNESS: Well, it does speak for itself,
 10 but if you'd like, I can read this from the abstract in
 11 this case.
 12 "...low SES minority third and fourth graders
 13 from a Turkish or Moroccan background..." And the other
 14 samples were high- and low-SES Dutch third- and
 15 fourth-graders.
 16 BY MR. AFFELDT:
 17 Q Do you recall whether the minority children
 18 were immigrants to the Netherlands?
 19 MS. DAVIS: Same objection.
 20 THE WITNESS: I'd rather look at it.
 21 BY MR. AFFELDT:
 22 Q Okay. On page 83, in the first column under
 23 "Method," subtitled "Participants" about, oh, four, five
 24 sentences in it says, "Only those minority children
 25 either born in the Netherlands or with at

1 least a Dutch kindergarten education were
 2 selected for participation in the study."
 3 Does that refresh your recollection?
 4 A Yes.
 5 Q Knowing that only minority children who started
 6 kindergarten in the Netherlands were the participants,
 7 does the study tell us anything about how newcomer
 8 immigrants who arrive in the public schools in
 9 California during the course of their public school
 10 career -- how they perform in relation to native
 11 speakers?
 12 MS. DAVIS: It's vague and ambiguous. It also
 13 looks to me like the document says they were either born
 14 in the Netherlands or had at least Dutch kindergarten
 15 education so it's either/or.
 16 THE WITNESS: Yeah. They could have been born
 17 in Morocco and the parents -- they seem -- this is not
 18 relevant to students who begin American education after
 19 kindergarten, but there's a large, large number of
 20 English learners who attend American school from
 21 kindergarten through high school, a large -- I mean, at
 22 least in the schools I've been at in the districts, I've
 23 seen, because I looked at kindergarten enrollment
 24 figures, and they're extremely high with English
 25 learners.

1 BY MR. AFFELDT:
 2 Q And do you think the results of this study can
 3 be extrapolated to those English learners who start in
 4 kindergarten American schools?
 5 A It may seem relative. It's information
 6 that, yeah, it can't be barely applied and that's why we
 7 synthesize large amounts of available research. But
 8 they well could be findings that are relevant.
 9 Q Did you say can be or can't be?
 10 A Can be.
 11 Q Can be literally applied?
 12 A They cannot be literally applied.
 13 Q That's what I thought.
 14 A -- but can be -- can be relevant, you know; in
 15 part some of these phenomena from Hebrew to English who
 16 are then found from other language to English and
 17 English to -- so their relationships seem to cut
 18 about -- cut across languages, so that's how science
 19 develops.
 20 But as long as they're alphabetic, the reading
 21 is alphabetic.
 22 Q As opposed to what languages aren't
 23 alphabetic?
 24 A Chinese.
 25 Beyond that --

1 Q Japanese, Korean?
 2 A -- see a linguist.
 3 Q Languages with characters?
 4 A Yeah, yeah.
 5 I don't want to take risks under oath, I
 6 mean...
 7 Q And is it true, then, that the results of this
 8 study don't tell us anything about English learners
 9 beyond the grades of three and four?
 10 A Yes, that's correct, at least from my memory.
 11 I'd have to really look at the whole study, but it
 12 appears that way.
 13 Q And do you think it's reasonable to compare
 14 Turkish and Moroccan students learning Dutch in the
 15 Netherlands to the English-learner population in
 16 California learning English?
 17 MS. DAVIS: Vague and ambiguous.
 18 THE WITNESS: Yeah, that is vague.
 19 It's certainly fine to compare anything with
 20 anything, so it depends on what your purpose is.
 21 BY MR. AFFELDT:
 22 Q You're right. My question is: Do you think
 23 it's appropriate to use a study on Turkish and Moroccan
 24 students learning Dutch in the Netherlands to draw
 25 conclusions about the diverse English-learner population

1 in California learning English?
 2 MS. DAVIS: Vague and ambiguous, asked and
 3 answered.
 4 THE WITNESS: It does seem vague to me. And I
 5 believe I've answered that in the earlier -- in that
 6 some of the principles are paths that in this case that
 7 they are describing here would seem of interest.
 8 If you're interested in teaching, yeah, and --
 9 teaching and learning for children who are, you know,
 10 in -- either first- or second-generation immigrants
 11 would seem relevant then. Not like it could be easily
 12 applied, but that it's relevant.
 13 BY MR. AFFELDT:
 14 Q Which in your view is a closer comparison,
 15 Turkish and Moroccan students learning Dutch in Holland
 16 or Spanish and Vietnamese students learning English in
 17 Texas?
 18 MS. DAVIS: Vague and ambiguous.
 19 BY MR. AFFELDT:
 20 Q Which is a closer comparison to the
 21 English-learner population in California?
 22 MS. DAVIS: Vague and ambiguous.
 23 THE WITNESS: Yeah. I would want to know
 24 compared on what? What the grade levels was, what the
 25 purpose of the study was, was it a valid study? Those

1 kinds of things, a well-designed study.
 2 BY MR. AFFELDT:
 3 Q All other things being equal, same study, same
 4 demographics of population.
 5 MS. DAVIS: Vague and ambiguous, incomplete --
 6 THE WITNESS: I need to know --
 7 MS. DAVIS: Incomplete hypothetical, calls for
 8 speculation.
 9 THE WITNESS: Yeah. It's a level I can't --
 10 it's just hard -- it's just too hard to speculate that
 11 way. It would depend on many things: How the kids were
 12 taught, were the languages mixed. There are so many
 13 factors that it would depend on any or all of those
 14 factors.
 15 BY MR. AFFELDT:
 16 Q In the hypothetical I've given you, if all
 17 those factors are equal between the two studies. The
 18 only difference is one study examined Turkish, Moroccan
 19 students studying Dutch in the Netherlands and the other
 20 study, otherwise similar, studying Spanish and
 21 Vietnamese students studying English in Texas.
 22 MS. DAVIS: Vague and ambiguous.
 23 THE WITNESS: And, there, too, I think it would
 24 depend on how the students were taught. If they were
 25 taught the class being half Vietnamese and Spanish or

1 the class being half Turkish and half Moroccan, I could
 2 see some differences there because you have kids from an
 3 alphabetic language and not an alphabetic language, so
 4 depending on all -- any of those factors, one could be
 5 more relevant, they both could be highly relevant.
 6 BY MR. AFFELDT:
 7 Q Which language is not an alphabetic language?
 8 A Let me say I'm not sure with Vietnamese.
 9 Q Vietnamese uses Roman characters.
 10 A Roman characters?
 11 Q It's tonal, but it does have Roman characters
 12 of different...
 13 A Does Vietnamese writing use Roman characters?
 14 Q I believe it does, like pho.
 15 Have you ever ordered pho?
 16 A What's that?
 17 Q Have you ever gone to a restaurant and ordered
 18 pho, p-h-o, with sort of an umlaut over the "o"?
 19 A It may well be true. I just am not sure.
 20 Q So you don't know?
 21 A Yeah, I don't know. I don't know. The
 22 cultures are certainly quite disparate. Yeah.
 23 Q Do you know what orthography means when
 24 referring to a language, the orthography of a language?
 25 A I have been learning it. Linguistics doesn't

1 come easily to me but I believe I have an understanding
2 at least of what would be called deep and shallow
3 orthographies. So I have some understanding of it. I'm
4 far from an expert.

5 Q What is the difference between a deep and a
6 shallow orthography?

7 MS. DAVIS: Calls for speculation.

8 THE WITNESS: And I may -- this is just
9 basically what I've learned from colleagues in meetings
10 where I have been on linguistics.

11 My understanding that the language that's a
12 very, very regular like Spanish or Hebrew would be
13 considered having a shallow orthography but a language
14 like English that has many sounds, many rules that have
15 exceptions to them, many sounds that can be pronounced
16 this way or that way, depending on the -- other
17 configurations in the word, that that -- those tend to
18 be called "deep orthographies."

19 And I hope I'm using the right adjectives, but
20 that that worked more or less -- I think I've heard
21 "transparent" and "opaque" used in this context too,
22 that the Spanish-Hebrew would be Arabic transparent,
23 English more opaque.

24 BY MR. AFFELDT:

25 Q Would you agree that Dutch also has a rather

1 shallow orthographies and English, which has deep
2 orthography, may mean that studies regarding decoding
3 are not -- in the shallow orthography languages are not
4 directly translatable to decoding in English?

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

7 THE WITNESS: Yeah. I have no reason to agree
8 with that speculation.

9 I'm thinking I'm about ready for a break?

10 MS. DAVIS: Yeah, we've been going for a little
11 over an hour. No. A lot over an hour.

12 THE WITNESS: Is that okay?

13 MR. AFFELDT: Sure.

14 (Recess taken.)

15 MR. AFFELDT: Can you read the last question
16 and answer, please.

17 (The record was read as follows:

18 "Would you agree that the differences
19 in languages such as Spanish, Dutch and
20 Hebrew that have shallow orthographies and
21 English, which has deep orthography, may
22 mean that studies regarding decoding are
23 not -- in the shallow orthography
24 languages are not directly translatable to
25 decoding in English?

1 transparent orthography?

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

4 THE WITNESS: I'd have to speculate there. I'm
5 not an expert in Dutch.

6 BY MR. AFFELDT:

7 Q If you turn to page 97 of Exhibit 12, on the
8 first column approximately three quarters of the way
9 down, the sentence that reads, "It thus appears
10 that limited proficiency in Dutch does not
11 hamper the acquisition of decoding skills
12 and that the rather transparent Dutch
13 orthography may facilitate the acquisition
14 process."

15 So at least according to Droop and Verhoeven,
16 Dutch has a rather transparent orthography.

17 Would you agree?

18 A Yes. I merely -- my hunch was it did but under
19 oath I need to be really sure and without access to
20 materials, I don't like to speculate.

21 Q Sure.

22 Would you agree that the difference in
23 orthography between languages that -- strike that.

24 Would you agree that the differences in
25 languages such as Spanish, Dutch and Hebrew that have

1 "THE WITNESS: Yeah. I have no
2 reason to agree with that speculation."

3 BY MR. AFFELDT:

4 Q Why don't you agree with that statement of a
5 possibility?

6 A There are probably two reasons: One, it
7 doesn't seem -- that bears no relevance of one body of
8 research to another or, you know, learning to read in
9 Hebrew or Dutch to English.

10 Second, a lot of the correlations showing the
11 importance of phonological awareness, it seems
12 important, extremely important in transparent languages
13 and extremely important in those with like English with
14 deep orthographies. It seems important in both cases
15 and a very strong predictor.

16 Learning -- learning decoding in English is in
17 many ways harder because it's -- the rules are more --
18 the orthography is deep or the rules are more
19 complicated, but certainly having facility with the
20 strategies in the sense of language structures, I guess,
21 would be every bit as important when learning to read
22 English as learning to read Dutch.

23 Q Do you think that the relative depth of the
24 orthography of a language used in the study comparing
25 performance between native speakers and second-language

1 learners should be a factor to consider when trying to
 2 apply the results of a study to a language that has a
 3 different orthography than the original study?
 4 A Yes. Yes, that is definitely a factor.
 5 Q Why is it a factor?
 6 A Because we could always look for similarities
 7 and differences in a language where decoding takes even
 8 more work to learn than in Spanish or Dutch, so it
 9 would -- so it's a factor because it's a heartier,
 10 weightier task to learn to decode in English, relatively
 11 because of the complexity of the system.
 12 So that should be taken into account.
 13 Q And English with a deep orthography is a harder
 14 language to decode than a language with a shallow
 15 orthography.
 16 Is that fair?
 17 MS. DAVIS: Vague and ambiguous.
 18 THE WITNESS: It seems from my perspective, my
 19 very limited knowledge of other languages that English
 20 is a difficult language to learn to decode compared to
 21 the more transparent ones, but I may be missing
 22 something but I would think so.
 23 MR. AFFELDT: I'm going to hand you what we
 24 will mark as Gersten Exhibit 13.
 25 (Gersten Exhibit 13 was marked for

1 adequately aligned to the state content
 2 standards and not specifically designed to
 3 meet EL students' individual needs."
 4 Actually, that's not what I wanted to ask you
 5 about.
 6 Page 10, please. The first sentence under the
 7 subtitle "There is No Evidence Showing that
 8 Teachers Who Take Seven Courses in
 9 Language Positively Impacts Achievement"
 10 says, "Next, Hakuta asserts that teachers
 11 should have at least seven undergraduate
 12 courses in specific aspects of language in
 13 order to teach academic English to English
 14 learners, citing as support a report by
 15 Wong-Fillmore & Snow (2000)."
 16 Where in Dr. Hakuta's report does he assert
 17 that teachers --
 18 A I'll have to look.
 19 Q -- should have at least seven undergraduate
 20 courses?
 21 I'll tell you he references Wong-Fillmore on
 22 page 4.
 23 A And -- so he talks -- so on page 4 he says,
 24 "...Wong-Fillmore and Snow...conclude that
 25 all teachers should have a minimum of

1 identification by the court reporter
 2 and is bound separately.)
 3 BY MR. AFFELDT:
 4 Q I ask if you recognize this as a copy of
 5 Dr. Hakuta's expert report that you responded to.
 6 A Yes, it does look like it. Yes, it does look
 7 like the report I responded to.
 8 Q At the bottom of page 2, the last sentence
 9 which carries over to the top of the next page says,
 10 "Hakuta's argument seems to rest primarily on his
 11 contention that the" --
 12 MS. DAVIS: Where are you?
 13 THE WITNESS: So you've handed out Hakuta's but
 14 now we're referring to my --
 15 MR. AFFELDT: Oh, I'm sorry. I'm on your
 16 report.
 17 THE WITNESS: Okay. I was lost.
 18 Page 2 of my report.
 19 BY MR. AFFELDT:
 20 Q My mistake. I'm on page 2 of your report,
 21 which is Exhibit 1.
 22 Carrying over to the top of page 2, [sic] your
 23 sentence reads, "Hakuta's argument seems to rest
 24 primarily on his contention that the
 25 state's structural materials are not

1 seven college-level courses on specified
 2 aspects of language to ensure their
 3 ability to teach children 'academic
 4 English'. "
 5 And it appears that he is endorsing this
 6 position. He mentions that it parallels the conclusions
 7 of professional practitioners. He seems to endorse
 8 their position that that would be, I think, what many
 9 readers would believe reading this report, concluding.
 10 And it's under the theme or the issue of
 11 "Teachers Must be Qualified to Teach ELS," so I read it
 12 assuming he was telling us what qualifications they
 13 need.
 14 Q Dr. Hakuta states that "The conclusions of
 15 professional practitioners are echoed by experts working
 16 in the field of the ELL language acquisition." And he
 17 reports the Wong-Fillmore conclusion, but do you see
 18 anywhere there that he explicitly adopts and says that
 19 all teachers must have those seven courses in order to
 20 teach academic English to ELs in California?
 21 MS. DAVIS: He just answered that.
 22 THE WITNESS: Yeah, I would stick with that
 23 earlier answer of it seeming to endorse that position,
 24 so the inference that I made and I believe readers would
 25 make.

1 BY MR. AFFELDT:

2 Q Looking at Footnote 6 there where it discusses
3 areas of competency, are there any areas of competency
4 that you think it would be good for teachers of English
5 learners to have?

6 MS. DAVIS: Vague and ambiguous, calls for
7 speculation about what Hakuta means as areas of
8 competence.

9 THE WITNESS: Yeah, I don't know what exactly
10 these things mean and where they overlap and don't
11 overlap.

12 BY MR. AFFELDT:

13 Q So you're not able to give an answer because
14 you can't -- I'll withdraw that question.

15 Looking at those areas of competency, do you
16 know what -- what kind of training and coursework they
17 include?

18 MS. DAVIS: Vague and ambiguous.

19 THE WITNESS: I -- I'm confused with, for
20 example, "language and cultural diversity," why that's
21 going to be a different area than "sociolinguistics for
22 educators in a linguistically diverse society."

23 I don't know what he means -- or they mean by
24 "text analysis," because it's used a lot of different
25 ways. Or really what "language understanding in the

1 there is an array of ways the training could occur.

2 BY MR. AFFELDT:

3 Q Do you understand what "second language
4 learning and teaching" means?

5 A It's vague to me. I know it has something to
6 do with learning a new language, which for many students
7 in America is English.

8 But I don't know exactly what's included there
9 and why that would exclude language of academic
10 discourse, for example; just many who teach or train
11 people in this right away get into the importance of
12 building academic discourse, so these just seem to
13 overlap so much.

14 Q If you could turn to page 16.

15 MS. DAVIS: Of what?

16 MR. AFFELDT: Of your expert report.

17 THE WITNESS: Oh, my report. Okay.

18 BY MR. AFFELDT:

19 Q Yes. I'm sorry.

20 The last sentence you state, "This is
21 a significant accomplishment that
22 contradicts Hakuta's suggestion that
23 California's program will likely lower
24 achievement for English Learners."

25 And by "California's program," you're referring

1 educational setting" means. I don't know what that
2 means.

3 So a lot of these I don't know what they mean
4 and I don't know if these are names of courses or -- I
5 just don't know what exactly to make of this.

6 BY MR. AFFELDT:

7 Q Did you review the Wong-Fillmore report in
8 responding to Dr. Hakuta's report?

9 A No, I did not.

10 Q Do you know what "language of academic
11 discourse" means?

12 A Yes, that I do know. I'm less sure why that
13 has a different competency than knowledge of language
14 and linguistics, just to me.

15 I just -- but I do -- I have a sense of the
16 language of academic discourse. We talked about that
17 over the last several days as being at least roughly in
18 the ballpark of what's sometimes called academic
19 language or academic English in the various writings we
20 have reviewed.

21 Q Do you think it appropriate for a teacher of
22 English learners to have some training in academic
23 English and how to teach it?

24 MS. DAVIS: Vague and ambiguous.

25 THE WITNESS: To have some training in it but

1 to Proposition 227, correct?

2 A Yes.

3 Q Can you find for me in Dr. Hakuta's report
4 where he suggests that California's Proposition 227
5 program will likely lower achievement for English
6 learners?

7 A It was an inference I --

8 Q I can tell you he discusses 227 at pages 42 to
9 44, but I don't mean to limit your review to those
10 pages, if you found that somewhere else.

11 A I would think that a reader would infer
12 that, especially the last paragraph on page 42 when he
13 talks about "...primary language books being removed
14 from use entirely in many rooms despite clear
15 benefits" -- benefits usually are of textbooks, I would
16 think, as learning achievement, "and despite their use
17 being entirely legal."

18 So, to me, that would be one thing that would
19 set the stage for that inference.

20 Q Where is that paragraph?

21 MS. DAVIS: Page 42.

22 THE WITNESS: The bottom of page 42.

23 He also says -- do you see that? It's three
24 lines from the bottom on page 42, excluding the
25 footnote.

1 BY MR. AFFELDT:

2 Q Okay. Go on.

3 A So that -- that would lead me to believe that
4 benefits were being removed from students in terms of
5 learning or achievement.

6 As this paragraph concludes on page 43, so it's
7 the first partial paragraph, "(Schools reported
8 that while Spanish language text were
9 discarded or stored away, no comparable
10 texts were available for students in the
11 new English-only program.)"

12 That led me to believe that learning would be
13 lowered where students used to have textbooks that he
14 feels were benefiting them, and now they were removed
15 and they have nothing would seem that we'd want to
16 predict learning or achievement would go down.

17 (Interruption.)

18 THE WITNESS: So from that section, that's
19 where I saw -- saw that a reader would draw that
20 inference or would make that prediction based on what he
21 indicated there.

22 I don't see anything indicated despite the fact
23 that one would assume that achievement would go down for
24 these reasons. Achievement actually has been
25 increasing. I don't see that in this section here, so

1 CLAD or a BCLAD certificate.

2 And so that is part of California's program, as
3 is Proposition 227, as is the Reading Language Arts
4 Standards and Framework.

5 Q Sir, I didn't understand that.

6 What was your point about in order to teach an
7 immersion program one does not --

8 A Does not need, yeah. That's what he asserted
9 in this report, I believe. So --

10 Q Asserted critically or asserted as a statement
11 of fact?

12 A As a statement of fact.

13 Q Where does he assert that?

14 A It's on page 47 that to improve things in the
15 state, "...all ELL teachers," and I assume he's meaning
16 teachers implementing Proposition 227 as well as waiver
17 classrooms, "must at least have the equivalent of a CLAD
18 or SB 1969/395 certification before providing ELD and/or
19 SDAIE instruction..."

20 Q What do you take from that assertion?

21 A That for a teacher to properly implement an
22 immersion program that they must have one of those two
23 endorsements.

24 Q And is it your understanding that the State
25 does not currently require those endorsements in the

1 that's why I think many would draw that inference.

2 BY MR. AFFELDT:

3 Q When you say "achievement's increasing," you're
4 relying on the AIR/WestEd report?

5 A Yes.

6 Q So do you understand Dr. Hakuta's critique to
7 be -- in his report to be against the concept of
8 Proposition 227 for its implementation?

9 MS. DAVIS: Vague and ambiguous.

10 THE WITNESS: Yeah, it's vague and ambiguous.
11 I don't know that I can understand -- I can't answer
12 that question as an either/or.

13 BY MR. AFFELDT:

14 Q Why not? Does he criticize anywhere in this
15 report the theory behind Proposition 227?

16 A Let me look at it some more.

17 Let me frame it this way, why, to me, when I
18 use the term "the State's program."

19 So I think if I were careful, to me a program
20 is really both the formal law and perhaps underlying
21 theory and the implementation, because California's
22 program, part of that is that it did not, if I'm -- if
23 this is -- this material here is accurate -- if the
24 material in Hakuta's report is accurate, in order to
25 teach an immersion classroom, a teacher did not need a

1 immersion classes as a matter of policy?

2 A I'm not clear -- I guess what I know from this
3 is the State program -- the State program does not --
4 does not in reality have all teachers who are trained
5 with this, and so that to me is the State program.

6 Q When you say "the current State program," you
7 mean the current state of affairs in the State --

8 A Yeah. Yeah.

9 Q -- as a matter of fact doesn't have everyone
10 with a CLAD or 1969/395 teaching --

11 A Yes, that's correct.

12 Q Do you know whether or not the State's policy
13 is to have everyone who's teaching English learners to
14 at least possess a CLAD or a SB 1969/395?

15 A I don't. I know it used to be for the language
16 development specialists, and I've gathered the Board is
17 interested in changing that dramatically in part to
18 align with the current standards, so I don't know
19 exactly what the policy is now.

20 MR. AFFELDT: This is probably a good place to
21 take a break and let me review my notes and see if I can
22 get finished before 5:00.

23 MS. DAVIS: Okay.

24 THE WITNESS: Okay.

25 (Recess taken.)

1 BY MR. AFFELDT:

2 Q If you could look at page 6 of your expert
3 report where you are discussing the Thomas and Collier
4 study, the last sentence of the second paragraph says,
5 "Furthermore, the sample is, at best, idiosyncratic, and
6 not representative of the EL student population neither
7 in the U.S. in general or the state of California."

8 What sample are you referring to there?

9 A The -- the -- in particular, the -- the remote
10 districts in Maine, the one school in Oregon. In
11 particular, it was those two. I forget about the
12 anonymous district.

13 In particular, those two where native English
14 speakers were -- was in the Maine study. The students
15 weren't English speaking, but they had French Canadian
16 parents and didn't seem to resonate with issues
17 throughout the state, be it for Somali or any group of
18 students in the state.

19 Houston, the relevant -- there is, you know --
20 that sample is more relevant, for sure.

21 Q Why is that?

22 A Well, there's a large Hispanic population and a
23 Vietnamese population, so it seemed more relevant.

24 Q Because California also has a large Hispanic
25 and Vietnamese population?

1 students. I just don't recall that.

2 And in Houston, I guess they didn't. They
3 failed to report it, except it did not appear that any
4 of the students were taught in their native language,
5 Vietnamese. It did not appear there was a native
6 language Vietnamese program in Houston, at least when I
7 read the report.

8 Q Are you looking at your report?

9 A Yeah. Page 8.

10 Q Where are you looking?

11 A Page 8, the first full paragraph.

12 Q Can you read for me what you have been looking
13 at?

14 A "Similar sampling deficiencies are noted in
15 Thomas and Collier's evaluation of the much larger set
16 of programs provided by Houston..."

17 Is it okay if I skip a few of these --

18 Q Sure.

19 A Yeah. "Here," they "compared students who
20 were taught to read in their native
21 language with students who were taught
22 completely in English. The report fails
23 to provide information regarding the
24 language and socio-economic background of
25 the students in each group. Given that

1 A Yeah. Yeah. Especially large Hispanic, yeah.

2 Q Dr. Hakuta doesn't rely on any findings of
3 Thomas and Collier other than from Houston, correct?

4 MS. DAVIS: The document speaks for itself.

5 THE WITNESS: I believe I would need to check
6 that. My memory -- focus was on one aspect of the
7 Houston study.

8 BY MR. AFFELDT:

9 Q On page 7 of your expert report, the first full
10 paragraph, the third sentence from the bottom says,
11 again, we're talking about Thomas and Collier,

12 "For example, in some instances their
13 study does not indicate whether the
14 samples they are comparing are the same.
15 In other instances, the report flat out
16 concedes that the two samples being
17 compared are dissimilar."

18 What samples are you referring to in that
19 paragraph?

20 A It has been a while since I looked at that, and
21 I believe in the Maine study they were explicit that the
22 groups were different.

23 Houston, I just don't recall if they either
24 didn't mention if they were comparable or not or if
25 they -- if they said they were different in terms of

1 Houston has a large Vietnamese as well as
2 Hispanic population, it's impossible to
3 know whether they were comparing like
4 groups. It may well be that they were
5 comparing Vietnamese-speaking students to
6 Spanish-speaking students - a fact that
7 would certainly undermine the results of
8 the study."

9 Q Did you read the entire Thomas and Collier
10 report in responding to Dr. Hakuta's report?

11 A I read all of the introductory and concluding
12 material and for the cite-by-cite studies, I focused on
13 the first one in Maine and then Houston, so I did not
14 study the other several...

15 Q Are you familiar with the requirements for
16 teacher certification that were in effect in Texas at
17 the time of the study?

18 A No.

19 Q Are you familiar with the requirements for
20 certification that were policies of the Houston
21 Independent School District at the time of the study?

22 MS. DAVIS: Vague and ambiguous.

23 THE WITNESS: That's too vague for me to
24 answer. I don't understand the question.

25 BY MR. AFFELDT:

1 Q Are you aware of the hiring policies of the
2 Houston Independent School District that were in effect
3 at the time this study was carried out as concerns the
4 types of certifications they require for their teachers?

5 A No, other than what I gleaned from the Thomas
6 and Collier report and indirectly hearing from a friend
7 that knowledge of Spanish is essential for teaching in
8 the bilingual classrooms, the native-language emphasis
9 classrooms.

10 Q Is that what you gleaned from the friend or
11 from the report?

12 A From the friend, the friend. The report, I
13 didn't glean much in this area.

14 Q Dr. Hakuta, looking at that paragraph we were
15 just looking at on page 8 --

16 A Which paragraph?

17 Q The first full paragraph.

18 A On page?

19 Q 8 of your report.

20 A Okay.

21 Q Dr. Hakuta didn't rely on any findings from
22 Thomas and Collier with respect to their comparing
23 students who were taught to read in their native
24 language with students who were taught completely in
25 English, did he?

1 Q So he wasn't making the comparison that you
2 have on page 8, which is a group of students "...taught
3 to read in their native language with students who were
4 taught completely in English"?

5 A That's correct. That was the major focus of
6 Thomas and Collier's report.

7 And he doesn't deal with that issue, but he
8 doesn't indicate to the reader that they are most likely
9 to be misled by this utterly flawed piece of work.

10 And -- nor does he say much -- I mean, he's
11 inferring that the children learned reading and
12 mathematics and language arts from a certified teacher,
13 but it sounds to me like these were ESL pull-out
14 programs, that the kids had pull-out, and I don't know
15 how many minutes a day, it might be a half hour, from
16 some uncertified person in the rest of their day. We
17 don't know who taught them, if they were trained
18 especially, what they were trained in. We just don't
19 know.

20 Even I don't know. The report doesn't tell
21 you.

22 Q In fact, Dr. Hakuta quotes the report as
23 saying,

24 "only one percent of the bilingual/ESL
25 teachers in a given year may not be

1 MS. DAVIS: The document speaks for itself.

2 THE WITNESS: Yeah. Let's have the document
3 speak for itself.

4 Certainly Thomas and Collier did that and he
5 perceived this as an adequate piece of research to
6 cite. This -- I felt this was the -- worthy discussing
7 the methodology and the inferences the authors drew from
8 the type of design they wound up using.

9 I'm in Dr. Hakuta's report. On page 7, he
10 does talk -- he says, "...students who were enrolled
11 in neither transitional bilingual ed nor
12 ESL services had extremely poor
13 educational outcomes."

14 And then his inference is, "These students were
15 most likely not in classrooms with teachers trained in
16 either ESL or bilingual education and methodologies..."

17 And then he draws a straightforward connection
18 between teacher qualifications and outcomes.

19 BY MR. AFFELDT:

20 Q Dr. Hakuta is comparing a group of -- the group
21 of students who were receiving some sort of
22 English-learner services, be it transitional, bilingual
23 ed or ESL services, against a group of EL students that
24 were receiving no services, correct?

25 A Yes, that's correct.

1 certified when initially hired
2 ...subsequently they take coursework and
3 receive their teaching credentials during
4 the first year of teaching."

5 A So we know they're certified teachers. It's
6 ambiguous as to whether -- the typical ESL teacher is a
7 pull-out teacher. That's a very traditional model.

8 It's one that -- it's a traditional model, and
9 that was my assumption about what was happening, so that
10 the children had a certain period of time for
11 English-language development with a certified ESL
12 teacher, but the rest of the day it's unclear if the
13 teacher was certified, the teacher who was responsible
14 for reading, math, et cetera, reading, math, language
15 arts, history, was certified at all.

16 Or whether they just allowed the child to be
17 pulled out for their ESL lessons which would be very
18 much like, for example, the Oregon model.

19 Occasionally the ESL people -- teachers come
20 into rooms and do a pull-in approach, but I don't know
21 based on this report. I don't know how he drew that
22 inference.

23 He may know more than I do about this, but I
24 couldn't see it.

25 Q If you could turn to page 9 of your report. In

1 the first full paragraph, second sentence says,
 2 "For one thing, there is virtually no
 3 information about teachers who taught
 4 reading, math and science in the schools
 5 where instruction was almost exclusively
 6 in English, save for a brief English
 7 language development."
 8 Was there supposed to be a --
 9 A Lesson or --
 10 Q -- course?
 11 A It's usually not called a course in grade
 12 school. A lesson or session.
 13 Q Can you add that to your --
 14 MS. DAVIS: If he's set on a word right here,
 15 he can, but I don't want him to guess and cross one out.
 16 THE WITNESS: Yeah. Yeah. That's a good
 17 idea. Let me think for a minute.
 18 MR. AFFELDT: Sure.
 19 (Gersten Exhibit 14 was marked for
 20 identification by the court reporter
 21 and is bound separately.)
 22 BY MR. AFFELDT:
 23 Q What have you decided on?
 24 A I added the word "lesson."
 25 Q I'm going to hand you what has been marked as

1 Gersten Exhibit 14 and ask if you can find in the Thomas
 2 and Collier report, which is what this exhibit purports
 3 to be, the part where it provides you with information
 4 on these brief English-language development lessons that
 5 you referred to on page 9 of your expert report.
 6 A No. That was an inference I made.
 7 Q Oh.
 8 A Yeah. That was an inference I made. I don't
 9 believe they said anything about the day for these
 10 children, what the school day was like, other than when
 11 they had ESL, the teachers were trained, were licensed,
 12 credentialed.
 13 Q I see. Is this basically the same inference
 14 you were just explaining to me a moment ago?
 15 A Yep. Yep.
 16 Q So there's nothing in the Thomas and Collier
 17 report that says it was a pull-out program. That's your
 18 inference?
 19 A That's an inference because that is, to me,
 20 traditionally the difference between an ESL model and an
 21 immersion model, is that the ESL model is the child has
 22 as part of his or her day an ESL lesson.
 23 Q Are you familiar with the ESL model that was
 24 employed in Houston during the time this study was
 25 going --

1 A No. I just relied on the report.
 2 Q In the Droop and Verhoeven study, do all
 3 students in that study have approximately the same
 4 access to the instructional materials?
 5 MS. DAVIS: Vague and ambiguous.
 6 THE WITNESS: I'd have to either reread the
 7 report or speculate, and I'd prefer not to speculate.
 8 BY MR. AFFELDT:
 9 Q If it's not explicitly stated that they do in
 10 the report, would that be your underlying assumption?
 11 A They all had the same access to instructional
 12 materials?
 13 Q Approximately the same access to instructional
 14 materials.
 15 MS. DAVIS: Calls for speculation.
 16 THE WITNESS: Yeah, I can't speculate. That
 17 would not necessarily be my assumption or -- not be my
 18 assumption.
 19 One thing as I look at the Thomas and Collier
 20 report, they do say the Houston school system provides
 21 an ESL-content program for these students, which is what
 22 I would call an ESL lesson, I think. I mean -- yeah,
 23 that's what I would call an ESL lesson.
 24 BY MR. AFFELDT:
 25 Q Is that what you would consider to be a

1 pull-out program or is that a -- isn't a content program
 2 usually one that is dealing with academic content?
 3 A But these are -- when there's less than 20 in
 4 one grade level, so there's not enough students for a
 5 class, they're given an alternative language support
 6 program.
 7 So I assume it's -- their regular instruction
 8 would not be in -- would not be by the ESL teacher,
 9 because this teacher is providing support and would be
 10 working with, perhaps, 18 children who are native
 11 English speakers.
 12 It isn't obvious to me that most of the day
 13 these children are taught by ESL specialists.
 14 Q Is one possibility that an ESL content course
 15 means something akin to a sheltered content course?
 16 MS. DAVIS: Calls for speculation.
 17 THE WITNESS: It would be real speculative.
 18 It's possible.
 19 BY MR. AFFELDT:
 20 Q So you would be speculating either way?
 21 A Yeah. It could be -- yeah, it could be content
 22 area, ESL, but I certainly -- there's no reason to
 23 assume that children are taught most of the day by an
 24 ESL specialist, a specially trained ESL
 25 teacher. They're in a room where they are far fewer

1 than the minimum 20 for a grade level.
 2 It doesn't -- I mean, anything is possible, but
 3 it's the least conceivable thing. Exactly what happens
 4 in the lessons is -- I don't know, but there would be no
 5 reason from based on what they said to make that
 6 assumption, other than they did receive some special
 7 help.

8 Q What page are you referring to?

9 A Page 123.

10 Q Have you read any of the other expert reports
 11 in this case other than Dr. Hakuta's?

12 A No, I haven't.

13 Q From either defendants or plaintiffs?

14 A No, I haven't.

15 MR. AFFELDT: Dr. Gersten, thank you for your
 16 time.

17 (Discussion off the record.)

18 MR. AFFELDT: The stipulation that the parties
 19 have been using to date are: That the court reporter
 20 will keep the original until the changes and signature
 21 pages are received by the court reporter and the court
 22 reporter will provide a copy and an original signature
 23 page to the deponent; the court reporter will inform all
 24 parties of the changes, if any, and the court reporter
 25 will seal the original transcript and signature page and

1 batch I received from Esquire didn't have one, so that
 2 made things a little confusing.

3 MR. AFFELDT: Sure. Let's say when you get
 4 these, which may be before we actually -- you may get
 5 these before the final hour of questioning.

6 MS. DAVIS: Right. Okay. So 45 days from
 7 receipt to make changes.

8 And is it clear, what am I getting so far? Am
 9 I getting anything?

10 MR. AFFELDT: You're getting a copy.

11 MS. DAVIS: A copy. And this is the copy that
 12 Dr. Gersten is supposed to --

13 MR. AFFELDT: Review.

14 MS. DAVIS: -- review. Okay.

15 MR. AFFELDT: And make any changes to.

16 MS. DAVIS: To the copy, the certified copy?

17 MR. AFFELDT: Yeah.

18 (Discussion off the record.)

19 MS. DAVIS: Send the certified copy to my
 20 attention. That is the version that Dr. Gersten will
 21 make any changes to. The original is going to
 22 Morrison & Foerster.

23 (Discussion off the record.)

24 MS. DAVIS: I'll send you notification of any
 25 changes by Dr. Gersten to his deposition transcript, and

1 changes in one envelope and send it to Ryoko Kita at
 2 Morrison & Foerster in San Francisco.

3 MS. DAVIS: Just for the record, so far this is
 4 totally different. I'm not really concerned that it's
 5 different, but I have original transcripts and certified
 6 copies and never heard of this person at Morrison &
 7 Foerster, but --

8 MR. AFFELDT: Okay.

9 MS. DAVIS: -- I'm open to it.

10 MR. AFFELDT: Okay.

11 And we'd also like to order one copy of the
 12 certified transcript to be sent to Ms. Ryoko Kita, as
 13 well. R-y-o-k-o last name K-i-t-a.

14 (Discussion off the record.)

15 MR. AFFELDT: What do you need?

16 MS. DAVIS: 45 days, if that's okay.

17 MR. AFFELDT: Sure --

18 MS. DAVIS: Okay.

19 MR. AFFELDT: -- from the conclusion of the
 20 questions from intervenors, assuming that that
 21 happens --

22 MS. DAVIS: Do you want to do it 45 days --

23 MR. AFFELDT: From now?

24 MS. DAVIS: -- from like the receipt of when I
 25 get these? I would say transmittal letter but the last

1 you will then notify Mr. Affeldt.

2 MR. AFFELDT: And Ryoko Kita.

3 (At the hour of 5:30 P.M., the deposition
 4 was adjourned sine die.)

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

EXECUTED this ___ day of _____, 2003, at _____, _____.
(City) (State)

RUSSELL GERSTEN, Ph.D.
Volume 4

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

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

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

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

Dated: _____

LORI SCINTA, RPR
CSR No. 4811