

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

ELIEZER WILLIAMS, et al., )

)

Plaintiff, )

)

vs. )

No. 312236

)

STATE OF CALIFORNIA, et al., )

)

Defendants. )

)

DEPOSITION OF THOMAS G. DUFFY

Los Angeles, California

Tuesday, July 1, 2003

Volume 2

Reported by:

SHERRYL DOBSON, RPR

CSR No. 5713

JOB No. 43694

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

1 ELIEZER WILLIAMS, et al., )  
2 )  
3 Plaintiff, )  
4 )  
5 vs. ) No. 312236  
6 )  
7 STATE OF CALIFORNIA, et al., )  
8 )  
9 Defendants. )

10  
11  
12 Deposition of THOMAS G. DUFFY,  
13 Volume 2, taken on behalf of  
14 Plaintiffs, at 555 West 5th Street,  
15 35th Floor, Los Angeles, California,  
16 beginning at 9:03 a.m. and ending at  
17 3:46 p.m. on Tuesday, July 1, 2003,  
18 before SHERRYL DOBSON, Certified  
19 Shorthand Reporter No. 5713.  
20  
21  
22  
23  
24  
25

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3 THOMAS G. DUFFY  
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1 APPEARANCES:  
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12  
13 Also Present:  
14 MARIO MATERAZZI  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 Los Angeles, California, Tuesday, July 1, 2003  
2 9:03 a.m. - 3:46 p.m.  
3  
4 THOMAS G. DUFFY,  
5 having been previously duly sworn, was examined and  
6 testified as follows:  
7  
8 EXAMINATION (Resumed)  
9 BY MR. ELIASBERG:  
10 Q Dr. Duffy, you understand that you're still  
11 under oath?  
12 A Yes.  
13 Q Okay. I just wanted to ask a couple quick  
14 follow-up questions about where we ended yesterday. I  
15 was asking about school districts and whether they were  
16 at any of the time that you've been in Murdoch either  
17 clients of yours -- and then I'll follow up to ask if  
18 they've been clients of anybody else at --  
19 A Yes.  
20 Q -- Murdoch, if not you.  
21 In the time you've been there, has Compton  
22 Unified School District been one of your clients?  
23 A No.  
24 Q And has it been the client of anybody else at  
25 Murdoch?

1 A Not to my knowledge.  
 2 Q How about Lynwood Unified?  
 3 A Not a client of mine. I don't think it's been  
 4 a client of the district, no. I mean of Murdoch,  
 5 Walrath & Holmes, no.  
 6 Q How about Inglewood Unified?  
 7 A No, not a client, and not a client of the firm,  
 8 to my knowledge.  
 9 Q Okay. And how about any of the -- I know that  
 10 there are a few in Sacramento. There's Sac City, and I  
 11 believe there's a high school district.  
 12 But any of the Sacramento school districts?  
 13 A Not for me, for Sac City or for San Juan or  
 14 Grant. I don't know if I know all the districts that  
 15 are up there. I don't have knowledge that they're  
 16 clients of the district.  
 17 Q That's fine. I don't want you to speculate. I  
 18 mean, if you did know --  
 19 A Yeah.  
 20 Q -- or had a good reason for --  
 21 A I'm trying to think even into the past if  
 22 there's anything I knew about. None that I can recall.  
 23 Q Do you -- and I'll do it first you personally,  
 24 and then anybody else at the firm, but do you personally  
 25 represent any building association?

1 A Building association.  
 2 Q Well, my understanding is that there are school  
 3 building associations or construction associations or  
 4 authorities. Entities who represent builders and the  
 5 interests of builders.  
 6 A I personally represent -- and we don't refer to  
 7 them, necessarily, as builders but the relocatable  
 8 manufacturers association. It's called SMFA, School  
 9 Facility Manufacturers Association.  
 10 Q Okay. Do you also represent any entities that  
 11 work for the interests of companies that build  
 12 stick-built buildings, as opposed to relocatables?  
 13 A I don't know what that would be.  
 14 Could you be more specific?  
 15 Q Well, I think you may have answered my  
 16 question.  
 17 A Okay.  
 18 Q If you're not sure what the entities would be.  
 19 I had thought that there was something along the lines  
 20 of the school building manufacturers -- not  
 21 relocatables, but school building builders association  
 22 or something like that, and I gather there's not an  
 23 entity like that that you're aware of?  
 24 A There is an entity that is an organization of  
 25 construction managers who work for school districts.

1 They don't work for contractors. And somebody else in  
 2 my firm does represent them, yes, but they're not  
 3 builders, per se. I don't know if that's the area of  
 4 your question.  
 5 Q How long have you represented the relocatable  
 6 manufacturers?  
 7 A Three years.  
 8 Q Do you consider them to be a significant  
 9 client?  
 10 MS. DAVIS: Vague and ambiguous.  
 11 THE WITNESS: Could you define "significant" for  
 12 me.  
 13 BY MR. ELIASBERG:  
 14 Q Well, do you do more than occasional work for  
 15 them?  
 16 MS. DAVIS: Vague and ambiguous.  
 17 THE WITNESS: What would more than occasional be?  
 18 BY MR. ELIASBERG:  
 19 Q Well, assume that you work somewhere between an  
 20 80- or a 40-hour week. So over the course of, you know,  
 21 a year, if you did more than 10 or 15 hours for them, I  
 22 would consider that more than just somebody you answer a  
 23 phone call for.  
 24 A Over the course of the year, I'm sure that I  
 25 spend ten hours or more with them, yes.

1 Q Any estimate as to what you do spend or even a  
 2 range of what you do spend for them?  
 3 A It really varies.  
 4 Q Let's take it in any of the years you've been  
 5 there.  
 6 In the first year, how much time would you  
 7 estimate you work for them?  
 8 A It's probably meeting times, updates on  
 9 legislation, and there are probably four meetings a  
 10 year, maybe five meetings a year, maybe six. They would  
 11 take a couple of hours each. From time to time there's  
 12 a piece of legislation that's of import.  
 13 Q What kind of legislation are you referring to  
 14 that either you or they consider to be of import?  
 15 A Last year there was a bill proposed by a  
 16 member of the Assembly to require two doors out of each  
 17 individual relocatable classroom, and that was something  
 18 that the relocatable manufacturers didn't feel was  
 19 necessary, and so we asked for an amendment to the bill  
 20 to have DSA study it.  
 21 It was considered to be a safety -- fire and  
 22 life safety issue, and this was right on the heels of SB  
 23 575, which required sprinklers and automatic detectors  
 24 for fires in schools, prospectively. And said, well,  
 25 why don't we study this. We proposed an amendment to

1 study, and that study's going on right now.  
 2 Q And you were certainly answering around my  
 3 question, but let me just repeat my previous question.  
 4 Do you have an estimate of approximately how  
 5 many hours you -- or range, how many hours you spend --  
 6 A In a year.  
 7 Q The first year that you were --  
 8 A The first year that I was there.  
 9 Q Yes.  
 10 A The year began in April, to the following  
 11 April, several meetings. I don't know, 50 hours.  
 12 That's more a guess than anything else.  
 13 MS. DAVIS: I'm going to say, clearly he's  
 14 speculating.  
 15 THE WITNESS: Yeah.  
 16 MS. DAVIS: And he's trying to reconstruct  
 17 something.  
 18 BY MR. ELIASBERG:  
 19 Q Fair enough.  
 20 What about the second year that you were at  
 21 Murdoch? Same question, estimate of the number of hours  
 22 you would have worked for them.  
 23 MS. DAVIS: Calls for speculation.  
 24 THE WITNESS: Yeah. I would say it's probably  
 25 about the same.

1 BY MR. ELIASBERG:  
 2 Q And how much of the most recent year you've  
 3 been there?  
 4 MS. DAVIS: Same objection.  
 5 THE WITNESS: The most recent year -- and it  
 6 wouldn't simply be for SMFA, but the labor compliance  
 7 issues that I talked about yesterday have metamorphed in  
 8 a larger issue that is both the concern of C.A.S.H. and  
 9 SMFA. So it would be hard to say who was I  
 10 representing.  
 11 So I attended a couple of hearings, and I  
 12 testified on behalf of C.A.S.H., but I also at one  
 13 hearing mentioned SMFA. That was more recent. So I  
 14 would say the number of hours would be probably the same  
 15 number of hours, maybe more, because of this  
 16 legislation, but I was representing C.A.S.H. also.  
 17 BY MR. ELIASBERG:  
 18 Q When you mentioned yesterday the labor  
 19 compliance issue, am I correct in understanding that at  
 20 least it was possible that the labor compliance issues  
 21 would affect the manufacturers because they, too, would  
 22 have to pay prevailing wages to people who were doing  
 23 work building and the portables?  
 24 A No.  
 25 MS. DAVIS: Vague and ambiguous.

1 BY MR. ELIASBERG:  
 2 Q Then what -- do you have an understanding of  
 3 why they thought that the -- why they believed that the  
 4 labor compliance issues might affect them?  
 5 MS. DAVIS: Calls for speculation.  
 6 THE WITNESS: Yes.  
 7 BY MR. ELIASBERG:  
 8 Q Okay. What is that understanding? I'm asking  
 9 only for your understanding, not for some evanescent  
 10 thought that somebody might have at the School Builders  
 11 Manufacturers Association.  
 12 A The labor compliance programs that were  
 13 identified that I spoke about yesterday are requiring  
 14 school districts to monitor and enforce and to penalize  
 15 with State authority contractors who violate prevailing  
 16 wage law. The modular manufacturers/relocatable  
 17 builders, whatever we would call them, do not pay  
 18 prevailing wage, because it's in-plant production of  
 19 buildings. It's basically an assembly line making what  
 20 is considered under the law to be personal property. So  
 21 they were not considered to be under that umbrella.  
 22 But the agency that is responsible for State  
 23 enforcement, DIR, is an agency that has the authority,  
 24 without legislation, to make what are known as  
 25 precedential determinations, and those determinations

1 typically identify a worker that should be included  
 2 under prevailing wage law.  
 3 On March 4th of this year, the director of the  
 4 DIR issued two precedential determinations. They  
 5 weren't specifically about modular builders or modular  
 6 manufacturing, but because they dealt with sheet metal  
 7 and they dealt with electrical manufacturing, there was  
 8 a concern that they would envelope at some point the  
 9 manufacturers. And that still hasn't been determined.  
 10 In fact, it was the subject of the hearings that I just  
 11 mentioned.  
 12 Q Yesterday you mentioned Kelvin Lee, and I  
 13 believe you said, in sum and substance, that he was a  
 14 person who had -- who was well regarded within the  
 15 C.A.S.H. organization and the school building community;  
 16 is that correct?  
 17 A I believe I said he's well regarded within the  
 18 C.A.S.H. organization. I'm sure that he's well regarded  
 19 in the school building community as well, but I don't  
 20 think I said that yesterday.  
 21 Q Okay. Do you know what -- how Mamie Star is  
 22 regarded in the school building -- I'm sorry, within the  
 23 C.A.S.H. organization?  
 24 A Can you maybe state a little bit more on the  
 25 "how" part?

1 Q Well, I guess, for example, you stated that, I  
2 believe -- and I'm not trying to put words in your  
3 mouth. My memory was that you said that Kelvin Lee was  
4 considered to be intelligent and thoughtful.

5 Did people consider Mamie Star to be  
6 intelligent and thoughtful?

7 A Yes.

8 Q Did they consider her to be dedicated?

9 A Yes.

10 Q Did they consider her to be knowledgeable about  
11 school facilities issues?

12 A Yes.

13 MS. DAVIS: Are you asking that question, Peter, or  
14 are you characterizing his testimony from yesterday?

15 MR. ELIASBERG: No, I'm asking a question.

16 MS. DAVIS: Okay.

17 MR. ELIASBERG: He never previously stated  
18 anything --

19 MS. DAVIS: Okay.

20 MR. ELIASBERG: -- about Mamie Star's reputation or  
21 how she was regarded.

22 Q At least I don't remember your doing so.

23 MS. DAVIS: I didn't either.

24 MR. ELIASBERG: I don't think I asked about it.

25 Q Do you know Floyd Stork?

1 Q Okay. But at one time when you knew Floyd when  
2 he was a practitioner to be knowledgeable about school  
3 facilities issues?

4 MS. DAVIS: Vague and ambiguous.

5 BY MR. ELIASBERG:

6 Q Is that -- I'm asking, is that correct?

7 A I consider Floyd Stork to be knowledgeable. I  
8 consider him to have a very strong interest in school  
9 facility issues.

10 Q Okay. Do you know Gene Hartline?

11 A I do.

12 Q And who is Gene Hartline?

13 A Could you be more clear in the "who"?

14 Q Well, who, meaning what position does he hold  
15 within the school facilities world, if any?

16 MS. DAVIS: Vague and ambiguous.

17 BY MR. ELIASBERG:

18 Q I'm not interested in his personal life --

19 A What role?

20 Q -- I meant his role within the school  
21 facilities community, yes.

22 A He is an employee or member of a firm. I'm not  
23 sure which. But works with a firm that does financings  
24 for California school districts.

25 Q And is it -- didn't he -- did he previously

1 A Yes.

2 Q Do you have an opinion as to Floyd Stork's  
3 intelligence?

4 MS. DAVIS: Vague and ambiguous.

5 THE WITNESS: Can you ask me maybe more directly?

6 BY MR. ELIASBERG:

7 Q Do you think -- let's say within -- how do you  
8 regard Floyd Stork? Do you think he's educated?

9 A Yes.

10 MS. DAVIS: Vague and ambiguous.

11 BY MR. ELIASBERG:

12 Q Do you think that he is knowledgeable on school  
13 facilities issues?

14 MS. DAVIS: Vague and ambiguous.

15 THE WITNESS: He's not a practicing administrator  
16 or consultant today that I'm aware of. Things have  
17 changed dramatically since he was involved. So the  
18 answer to your question is I don't know that he would be  
19 today, but he has been in the past. And he may be  
20 constant. He may have remained constant, I don't know.

21 BY MR. ELIASBERG:

22 Q Okay.

23 A I see him from time to time but haven't  
24 conversed about issues that are emergent issues with him  
25 recently.

1 hold a position within C.A.S.H.?

2 A Yes.

3 Q What position was that?

4 A He was chair of the organization.

5 Q Do you know when that -- approximately when  
6 that was?

7 A He was the first chair of the organization.

8 Q So about when would that have been?

9 A 1978 to about 1979 or thereabouts.

10 Q Okay. And did he also at some time work for a  
11 school district?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: He worked for more than one, I  
14 believe.

15 BY MR. ELIASBERG:

16 Q Do you know what districts those were?

17 A I don't know all the districts, no.

18 Q Do you know any of them?

19 A I thought I did. I'd be guessing.

20 Q I'm not trying to put you on the spot.

21 A I'd be guessing.

22 Q Fair enough.

23 Have you had discussions with Mr. Hartline at  
24 any time in the last five years or so?

25 A Could you define discussions?

1 Q Any conversations.  
 2 A I've had conversations.  
 3 Q Okay. Have you talked about school facilities  
 4 issues with him?  
 5 MS. DAVIS: Vague and ambiguous.  
 6 THE WITNESS: The specific topics, I'm -- I think  
 7 your question is after that. I can't recall specific  
 8 school facility issues in one-on-one conversations with  
 9 him, as we were having yesterday or I've had with  
 10 somebody on the telephone last night. He's past chair  
 11 of the organization, and he attends meetings, and we  
 12 discuss issues. I can't give you any specifics.  
 13 BY MR. ELIASBERG:  
 14 Q But have you heard him discuss school  
 15 facility -- I guess perhaps you interpret it -- or maybe  
 16 I gave across the impression that what I meant by  
 17 conversation was one-on-one or maybe three -- at  
 18 C.A.S.H. meetings have you heard him discuss the school  
 19 facilities issues?  
 20 A From time to time he probably has given input.  
 21 He tends to be quiet.  
 22 Q Do you consider him to be --  
 23 (Telephone interruption.)  
 24 BY MR. ELIASBERG:  
 25 Q Do you consider him to be knowledgeable about

1 THE WITNESS: I created school facility issues.  
 2 BY MR. ELIASBERG:  
 3 Q Did you also learn about school facilities  
 4 issues because you were an administrator?  
 5 A I was definitely learning about them, yes.  
 6 Q Do you know Ron Bennett?  
 7 A Yes.  
 8 Q And who is Ron Bennett? What is his role or  
 9 position within C.A.S.H.?  
 10 A Ron is on the board of directors.  
 11 Q And do you know if he is currently employed at  
 12 a school district?  
 13 A No. I know that he is not employed at a school  
 14 district.  
 15 Q Do you know if he's been employed at a school  
 16 district within the past, oh, five years?  
 17 A May have been before five years.  
 18 Q Do you know what Mr. Bennett does now, if  
 19 anything, for work?  
 20 A Yes.  
 21 Q And what is that?  
 22 A He's president of school services of  
 23 California.  
 24 Q Do you consider Mr. Bennett knowledgeable about  
 25 school facilities issues?

1 school facilities issues?  
 2 MS. DAVIS: Vague and ambiguous.  
 3 THE WITNESS: He's knowledgeable about school  
 4 facility financing issues, in my knowledge of him.  
 5 BY MR. ELIASBERG:  
 6 Q Do you have -- do you think that he's  
 7 knowledgeable about other issues concerning school  
 8 facilities?  
 9 MS. DAVIS: Vague and ambiguous.  
 10 THE WITNESS: He may be. I can't articulate what  
 11 those areas would have been. He was a school  
 12 administrator for a number of years and dealt with a  
 13 number of issues, and I'm sure that he has some level of  
 14 knowledge, but I can't articulate what that would be.  
 15 BY MR. ELIASBERG:  
 16 Q From your experience -- you were a school  
 17 administrator in the business side and facilities  
 18 side --  
 19 A Yes.  
 20 Q -- for a number of years; weren't you?  
 21 A Yes.  
 22 Q Did that experience provide -- enable you to --  
 23 provide for you knowledge about school facilities  
 24 issues?  
 25 MS. DAVIS: Vague and ambiguous.

1 A Yes.  
 2 MS. DAVIS: Vague and ambiguous.  
 3 BY MR. ELIASBERG:  
 4 Q And what's the basis for that knowledge?  
 5 A Interactions with him in past years,  
 6 conversations with him about pending legislation over  
 7 the last three years from time to time.  
 8 Q Do you know Yolanda Mendoza?  
 9 A No.  
 10 Q Do you know -- well, if you don't, then you  
 11 don't. That's pretty much it.  
 12 Yesterday I believe you discussed a paper or a  
 13 document that Kelvin -- you believe that Kelvin Lee had  
 14 written concerning multi-track year-round education; is  
 15 that correct?  
 16 A Yes.  
 17 Q And do you remember -- and I may have asked you  
 18 this, but I'm sorry, I don't remember approximately  
 19 when -- and I'm sure you wouldn't have an exact date,  
 20 but approximately when you were at a meeting in which  
 21 Mr. Lee read from sections of that paper?  
 22 A I do not recall when it was. I know it was in  
 23 the last decade. It was in the 1990s.  
 24 Q Okay. Do you know if C.A.S.H. or any  
 25 subcommittees of C.A.S.H. have put out papers on

1 multi-track year-round education?

2 A As I mentioned yesterday, C.A.S.H. has a  
3 clearing house/resource center that has been in place  
4 for several years. There's -- I'd be speculating, but  
5 there's probably information in there about year-round  
6 education, because we've asked for contributions, and  
7 this was, you know, an area of much discussion. But I  
8 can't tell you what would be there.

9 Q Do you know if C.A.S.H. has an MTYRE  
10 subcommittee or has ever had one?

11 A No.

12 Q You don't know?

13 A I don't know that there ever has been an MTYRE  
14 subcommittee, and to my knowledge, there is not one  
15 today.

16 Q Does C.A.S.H. have a process or set of policies  
17 that address setting up subcommittees?

18 A By process do you mean a formalized process?

19 Q Well, let's start with a formalized process.

20 A No.

21 Q Do they have an informal process?

22 A Yes.

23 Q And what is your understanding of that  
24 informal process?

25 A As issues emerge that may need to be dealt

1 the chair, the chair has the authority to bring --

2 A Yes.

3 Q -- a committee together without a vote of the  
4 organization?

5 A Yes.

6 Q Okay. And do you know if these subcommittees  
7 ever write papers or white papers or anything else that  
8 goes out with the C.A.S.H. heading on it or makes it  
9 appear that the document is a C.A.S.H. document?

10 A What do you mean by a white paper?

11 Q Well, I really -- any paper that discusses  
12 issues or concerns, any document that discusses issues  
13 or concerns that makes recommendations and that has on  
14 it some statement that this is -- a paper's written by  
15 the C.A.S.H. -- by C.A.S.H. or a C.A.S.H. subcommittee.

16 A From time to time, a document may be prepared  
17 that identifies issues that'll have a C.A.S.H. logo or  
18 the C.A.S.H. name on the top. It may be produced by  
19 subcommittee. That may happen from time to time. May  
20 not be exhaustive. It may simply identify issues and  
21 may ask questions.

22 Q Do you know, if the document actually makes  
23 recommendations, is there any process by which someone  
24 other than the members of the subcommittee have to  
25 approve the dissemination -- the public dissemination of

1 with, people will be asked to come together that are  
2 considered to be knowledgeable that lead, and we discuss  
3 issues and try to move toward both education for all of  
4 us as well as discerning a policy issue that we may need  
5 to address.

6 Q Okay. And when you say people will be asked,  
7 who is doing the -- who does the asking?

8 A The asking today would come from someone like  
9 me. In the past would come from someone like Jim  
10 Murdoch. It may come from a discussion with the  
11 C.A.S.H. chair and someone like me, C.A.S.H. vice-chair,  
12 chair and someone like me, that kind of thing.

13 Q And do you know if there is any process by  
14 which the C.A.S.H. membership or the C.A.S.H. board of  
15 directors has to -- if a request is made, for example,  
16 that the C.A.S.H. membership and the C.A.S.H. board of  
17 directors has to approve actually taking the step of  
18 setting up the subcommittee?

19 MS. DAVIS: Vague and ambiguous.

20 THE WITNESS: A recommendation's typically made to  
21 the chair, who has authority to call a committee  
22 together.

23 BY MR. ELIASBERG:

24 Q So just to make sure I understand you, so the  
25 chair would be able to -- if a recommendation is made to

1 the document?

2 A Are you asking whether or not there's a control  
3 gate process about production of a document and whether  
4 or not it's disseminated? Is that the question?

5 Q I think I know where you're getting at, but I'm  
6 not quite sure what you mean by control gate. So let me  
7 try to rephrase the question.

8 Is there some process, whether formal or  
9 informal -- let me put it differently.

10 Does the subcommittee have authority or is  
11 there anything that would prevent a subcommittee --  
12 after they've gotten together on the request of the  
13 chair, the authorization of the chair, written a paper,  
14 can they then publicly disseminate a document with  
15 recommendations in it with C.A.S.H.'s name on the  
16 document without anybody else in the C.A.S.H.  
17 organization looking at that document, reviewing it and  
18 approving it?

19 MS. DAVIS: Vague and ambiguous.

20 THE WITNESS: I don't know what all has taken place  
21 in the past, but typically, what I try to do is to make  
22 sure that the C.A.S.H. board has a document that we may  
23 put out that is, say, a working document. We have some  
24 working documents on LCPs, labor compliance programs,  
25 currently. This is very, very new. They're

1 exploratory. Don't know everything there is to know.  
 2 It's at least a one-page document identifying a  
 3 number of things. That was shared with the C.A.S.H.  
 4 board. It's also shared with some others. I don't know  
 5 that it's actually gone out to the entire C.A.S.H.  
 6 organization so far, but just at least an informal  
 7 protocol would be that we would share it with the  
 8 C.A.S.H. board. At least that's my operating parameter.

9 BY MR. ELIASBERG:

10 Q Okay. Let's -- we'll stick with your  
 11 experience, and I understand that things may have  
 12 happened when you weren't president or whatever.  
 13 Within your experience, have there ever been  
 14 occasions where a member or some members of the board of  
 15 directors have said, I'm not really happy with this  
 16 document or with this portion of the document?

17 A Not those words, no.

18 Q Okay. Have there ever been occasions in any  
 19 words where you've understood that members of the --  
 20 either a member or some members of the board have  
 21 disapproved of some portion of something that a C.A.S.H.  
 22 committee or subcommittee has written?

23 A No. Typically, people ask for clarifying  
 24 information, what do you mean? Can we expand on this?  
 25 So no, I have not had that experience.

1 Q From -- what would you have done when you were  
 2 a -- I believe you were the chair of C.A.S.H. for --  
 3 what years were you chair of C.A.S.H.?

4 A '87 to '89.

5 Q Okay. If a subcommittee or a committee had  
 6 written a report that went to the board of directors  
 7 during the period that you were chair and some members  
 8 of the board of directors had said, really  
 9 uncomfortable -- or, in sum or substance, I have a  
 10 problem with this recommendation or this analysis, what  
 11 would you have done?

12 MS. DAVIS: Calls for speculation, vague and  
 13 ambiguous, assumes facts not in evidence.

14 THE WITNESS: Would you like me to retreat into the  
 15 past and potentially --

16 BY MR. ELIASBERG:

17 Q Love retreating in the -- we talked about your  
 18 school, we talked --

19 A I know.

20 Q -- special education.

21 MS. DAVIS: We're belaboring Dr. Duffy's impressive  
 22 background.

23 THE WITNESS: What I tend to do is, if I think  
 24 somebody's uncomfortable with something, I'll say, let's  
 25 slow down and let's find out what the comfort level is.

1 Let's try to make sure that we continue going into the  
 2 direction that we believe the organization needs to be  
 3 in, but let's make sure that we hear and understand.

4 Because I believe we learn from each other.  
 5 And I may have knowledge of schools and education, but I  
 6 don't know everything there is to know, because new  
 7 things happen every day. And we rely, as an  
 8 organization, upon practitioners, not bureautitions and  
 9 not politicians. We rely upon practitioners who are out  
 10 there doing. And we try to make sure that we learn from  
 11 others outside the organization, and they may be the  
 12 bureautitions or the politicians or the others.

13 So it's that -- going back into the past, I  
 14 think that's probably accurate for the way that I would  
 15 have done something.

16 MR. ELIASBERG: Okay. I'd like to introduce a  
 17 document. It's a document that is entitled "Multi-Track  
 18 Year-Round Education Causes and Effects of Legislative  
 19 Initials and Proposals." I'll give a copy to the court  
 20 reporter to be marked.

21 MS. DAVIS: I think this was an exhibit in  
 22 Ballinger's deposition. Are we just doing separate  
 23 exhibits?

24 MR. ELIASBERG: We don't -- I don't really -- well,  
 25 let's -- we can revisit, depending on what -- if --

1 Dr. Duffy, if we don't really ask a lot of questions on  
 2 this, we may decide not to introduce it as an exhibit at  
 3 this point, but I'll give it to you now.

4 I guess you don't need to mark it at this  
 5 point. I'll just indicate, for the record, that I'm  
 6 giving it to --

7 MS. DAVIS: Okay.

8 MR. ELIASBERG: -- Dr. Duffy, and his counsel.

9 MS. DAVIS: I don't care if you mark it as Exhibit  
 10 2.

11 MR. ELIASBERG: I prefer not to have 8 million  
 12 pages of paper attached to these things if possible, but  
 13 it may depend on what the testimony shows.

14 Q Dr. Duffy, can you just take a minute, or as  
 15 long as you need -- not a minute, take as long as you  
 16 need to look at this document and familiarize yourself  
 17 with it. Again, I don't -- if there's specific things  
 18 in it, I will refer you back to them, but I want to ask  
 19 you questions about it. Just generally familiarize  
 20 yourself with it.

21 A (Witness reviews documents.)

22 Q Dr. Duffy, have you had a chance to review the  
 23 document?

24 A I've reviewed the document.

25 Q Actually, before I ask you a couple questions



1 about that, I want to just -- as I'm getting older I'm  
2 forgetting things. A couple quick questions I wanted to  
3 ask you.

4 I believe that you testified, in sum or  
5 substance -- correct me if I'm wrong -- that, in your  
6 opinion, Mamie Star was knowledgeable about school  
7 facilities issues; is that correct?

8 A Yes.

9 Q Okay. And what's your basis for that opinion?

10 A I've known Mamie Star for 15 years, maybe  
11 longer, and interacted with her many times, discussed  
12 issues with her.

13 Q And when you say issues, do you mean school  
14 facilities issues?

15 A Variety of issues, school related issues,  
16 issues of governance of schools, financing schools and  
17 school facility issues.

18 Q Are you a member of the board of directors for  
19 C.A.S.H. currently?

20 A No.

21 Q Okay. Have you -- I know you were the chair in  
22 the late '80s.

23 Have you since the late '80s at any time been a  
24 member of the board of directors?

25 A Yes, as past chair.

1 A Okay.

2 Q In fact, unless you want to hang onto it and  
3 read it, I can take it back. But it's not going to be  
4 marked as an exhibit, so --

5 A Okay.

6 Q Let me give you back the document that was  
7 introduced yesterday as Duffy 1.

8 A Thank you for carrying it for me, by the way.

9 Q Oh, my pleasure. That's what Marco's for,  
10 carrying papers around. Not the only thing, but one of  
11 the things.

12 And Dr. Duffy, if I could refer you to your --  
13 the resume portion of your report, which is on -- and  
14 looking at the section couple pages in, which is under  
15 "Professional Association and Responsibilities."

16 Do you see that?

17 A Yes.

18 Q And the first heading there, it says  
19 chairperson, facilities group for the joint legislative  
20 committee to develop a master plan for education,  
21 kindergarten through university.

22 Do you see that?

23 A Yes.

24 Q Can we use as a shorthand the facilities group  
25 or some similar phrase? If I use that phrase, will you

1 Q And when were -- so as past chair you were a  
2 member of the board of directors.

3 For what period of time was that?

4 A From the time I was past chair in the first  
5 year until the time that I went to work for Murdoch,  
6 Walrath & Holmes.

7 Q And why did you cease being on the board of  
8 directors?

9 A Basically, I served the board of directors as  
10 the chief lobbyist for C.A.S.H. So I am a past chair of  
11 the organization, but because of the role that I play in  
12 serving the board and the organization, I don't sit as a  
13 member of the board.

14 Q Referring you to the document that you  
15 reviewed, do you recognize this document?

16 A I don't know that I recognize the document as a  
17 document, no.

18 Q Have you seen this document or any document  
19 that's similar to this document before?

20 MS. DAVIS: Vague and ambiguous, asked and  
21 answered.

22 THE WITNESS: No.

23 BY MR. ELIASBERG:

24 Q Okay. I don't think we need to attach this as  
25 an exhibit.

1 understand? That's quite a mouthful.

2 A It is, indeed.

3 Q Or the master plan facilities group, something  
4 along those lines, rather than using the --

5 A Okay.

6 Q -- whole name.

7 How did you become chairman of the facilities  
8 group?

9 A I was appointed.

10 Q And who appointed you?

11 A Dede Alpert, Senator Dede Alpert.

12 Q And does Dede Alpert -- besides being  
13 senator, does she have a particular position with  
14 respect to the legislative committee -- joint  
15 legislative committee to develop a master plan?

16 A Yes.

17 Q And what is that?

18 A Chairperson.

19 Q Do you know if Senator Alpert -- well, let me  
20 ask you this. Do you know if there were other groups or  
21 working groups within -- as part of the master plan  
22 process?

23 A Yes.

24 Q And do you know, did Senator Alpert appoint all  
25 of the chair people?

1 A I don't know.  
 2 Q Do you know what process she used to select  
 3 you?  
 4 MS. DAVIS: Calls for speculation.  
 5 THE WITNESS: No.  
 6 BY MR. ELIASBERG:  
 7 Q Did you ever ask her --  
 8 A No.  
 9 Q -- why me?  
 10 A No.  
 11 Q Did she ever say, in sum or substance, Tom, let  
 12 me tell you why I want you to be chairperson?  
 13 A No.  
 14 Q Were there other members of the facilities  
 15 group besides you?  
 16 A Yes.  
 17 Q Okay.  
 18 A I was not a committee of one.  
 19 Q Those are the best committees.  
 20 Do you know who appointed those members?  
 21 A (No audible response)  
 22 Q Let me ask you this: Do you know how they were  
 23 selected?  
 24 A I know how one member of our group was  
 25 selected.

1 Q Okay. And what member is that?  
 2 A I'm blanking on her name, but she was the  
 3 teacher that taught at the Davis School District who was  
 4 knowledgeable of technology, and I wanted her to be on  
 5 the committee because of her expertise, and therefore, I  
 6 basically said, by my authority as chairperson, I'm  
 7 appointing her. I don't know that that -- I had any  
 8 real authority to do that, but I did that.  
 9 Q Okay. And what was the name of that teacher?  
 10 A I'm going to have to think about that. I can't  
 11 think right now.  
 12 Q Fair enough.  
 13 Do you know -- do you have any knowledge about  
 14 how any of the other people were selected or appointed?  
 15 A A vague knowledge that there was a request to  
 16 gather people together who had some interest and some  
 17 knowledge of school finance and school facilities,  
 18 because we were a large group that separated into two  
 19 groups, one smaller and the other medium-sized.  
 20 Q Okay. I want to focus for now just on the  
 21 facilities --  
 22 A Okay.  
 23 Q -- subgroup, and I believe that's the smaller  
 24 group --  
 25 A Yes.

1 Q -- that you're talking about; is that correct?  
 2 I think you said it was requested -- and maybe  
 3 I'm misstating it, but I thought you said something like  
 4 it was requested that people be gathered who were  
 5 knowledgeable about finance and facilities; is that  
 6 correct?  
 7 A Yes.  
 8 Q And who did that requesting?  
 9 A I believe it would have come through the  
 10 identified staff to the committee, the joint committee.  
 11 Q Okay. And do you know who was -- what was the  
 12 staff to that subcommittee? I'm sorry to the committee,  
 13 what was the staff to the committee or who were the  
 14 members of the staff to that committee?  
 15 A Stephan Blake, S-t-e-p-h-a-n, first name,  
 16 Blake, B-l-a-k-e, who was lead for all the committees  
 17 under the master plan and spent some time with our  
 18 committee. Mike Ricketts, M-i-k-e, R-i-c-k-e-t-t-s, who  
 19 was assigned two or more committees under the master  
 20 plan. There were others, but I can't tell you who they  
 21 were.  
 22 Q Okay. What position does Mike Ricketts hold  
 23 besides this position of being a staff member to the --  
 24 A This was a full-time position for Mike  
 25 Ricketts.

1 Q Do you know what Mike Ricketts' previous work  
 2 was before -- and I don't mean back in time. I mean  
 3 last job or position before taking this full-time  
 4 position?  
 5 A I have a -- just a smattering of knowledge.  
 6 Q And what is that knowledge?  
 7 A That he worked in the Department of Finance.  
 8 Q Do you have any other knowledge about how the  
 9 people on the committee were -- the facilities  
 10 subcommittee were selected?  
 11 A No. It began as a large group, as I said, and  
 12 separated into a smaller group. Some of it was directed  
 13 by interest. So there was an appointment of a group.  
 14 That group was large and was separated into two groups.  
 15 Interest on the part of the members did have something  
 16 to do with their being there.  
 17 Q Why did you agree to become -- well, to be at  
 18 first -- well, why did you agree to become the  
 19 chairperson of the committee?  
 20 A I have a lot of regard for Dede Alpert. She  
 21 asked for assistance, and I offered that. The end goal  
 22 was at some point in time policy development, and that  
 23 was of interest to me.  
 24 Q Why was of it interest to you?  
 25 A Because education policy and finance are

1 something of interest to me.

2 Q Did Ms. -- Senator Alpert give you specific  
3 direction or task when she appointed you? Did she tell  
4 you, when she appointed you or any time thereafter, Tom,  
5 this is what I expect you to do or this is your role?

6 A Talking to me specifically?

7 Q Yeah.

8 A No.

9 Q Okay. Did she ever communicate that to the  
10 committee as a whole or to members of the committee as a  
11 group?

12 A She in the very beginning spoke to the member  
13 of -- members of the finance and facilities group, the  
14 large group, in the very beginning. When we had come  
15 to -- it wasn't quite at the end, but when we had made  
16 reports to members of the committee, she met with you  
17 afterwards to explore little further with us where we  
18 were.

19 Q Okay. We can talk about the -- after the  
20 reports had been made a little while later, but when she  
21 first

22 spoke to the group, at least -- maybe not everybody  
23 present, but most everybody, what did she say that --  
24 about what she understood your role to be, or what she  
25 wanted your role to be?

1 A What I can tell you -- and I can't tell you  
2 specific things except for one, but what I can tell you  
3 is she said, "Thank you for agreeing to spend time  
4 taking on a pretty sizable task. What I'd like you to  
5 do is to commit yourself to" -- and this is the specific  
6 part of it -- "come up with stretch proposals,"  
7 proposals that would cause us to stretch, but also  
8 proposals that you believe are workable. And she asked  
9 us to make recommendations in the end for whatever  
10 change we thought would improve California.

11 Q Did you have any objections to the task that  
12 Senator Alpert gave?

13 A No.

14 Q Were you paid --

15 A No.

16 Q -- for your work?

17 Do you know if anybody on the group was paid?

18 A No, no one was paid other than the staff to the  
19 committee.

20 Q Do you have an estimate of the amount of time  
21 you spent in the process of -- I'm going to assume some  
22 things, and tell me if these things didn't happen --  
23 going to meetings, working on the report, generating a  
24 report.

25 Do you know how much time you spent on that?

1 A I would have to speculate. I know we had  
2 identified in the beginning, after the initial meeting,  
3 about seven meetings that would occur over the  
4 intervening months from the spring through the end of  
5 the year, and we met at least those seven times. I  
6 think I called for a couple of additional meetings.

7 Q Do you have an estimate of the average length  
8 of these meetings, these seven plus that you discussed?

9 A The length in a day?

10 Q Yeah. The length of time, yeah.

11 A Including a working lunch, we would spend five  
12 and a half or six hours. People would sometimes come  
13 and go, but I'd be there for beginning to end, for the  
14 most part.

15 Q You stated earlier that I think, in sum or  
16 substance, you felt that at least nothing barred you  
17 from making -- selecting somebody to be on the  
18 subcommittee; isn't that correct? A teacher from Davis?

19 A No, I didn't quite say that. I said I  
20 appointed that person.

21 Q Okay.

22 A And basically said I -- we need to have a  
23 teacher on this committee. There was no teacher there.  
24 And I wanted to make sure we had a teacher, and I made  
25 that request, basically.

1 I'd also asked for a principal to be there.  
2 And I'd also asked for someone who had had  
3 responsibility in a school district that was very, very  
4 knowledgeable about school facility issues. And the  
5 second and the third, because of some feedback that I  
6 received on political considerations, I was asked to not  
7 press those issues, and I said, okay, but I'm going to  
8 press the issue of having a teacher here.

9 We're talking about school facilities. We need  
10 to involve a teacher. We're going to deal with things  
11 in the future, and technology has a lot to do with  
12 that. And I'd met a technology teacher in the Davis  
13 Joint Unified School District, and I said she's close  
14 by; she's willing to do it; I want her to be here.

15 Q Okay.

16 A So I didn't -- I didn't have full authority to  
17 appoint every member of the committee, but I basically  
18 said, I want this, and I didn't say, if you want me, we  
19 have to have a teacher here, but I think they understood  
20 that I was very serious about that.

21 Q And if they had refused your request for a  
22 teacher, might you have --

23 A I didn't give them an opportunity to refuse. I  
24 basically invited her to attend, and she was accepted  
25 and we gave her a name tag, and nobody made an issue of

1 it.

2 Q Okay. And I understand you wanted to have a  
3 teacher and you wanted one who was knowledgeable about  
4 technology.

5 What was your -- were there other criteria that  
6 led you to select this other woman? I believe you said  
7 it was a woman; is that correct?

8 A Yes. And I will think of her name. In that,  
9 she was close by, there was no issue of paying -- you  
10 know, flying her from San Diego or having to have a room  
11 and all that. She was willing to come. It was, what,  
12 ten, twelve miles from the city of Davis, and you know,  
13 there should be no issue.

14 And there really wasn't. Nobody made an issue  
15 of it. They seemed to accept her and -- it was great to  
16 have her there, because she really knew nothing about  
17 facilities, but she knew her area and she articulated  
18 the needs of somebody in the high school level.

19 Q So am I correct in saying you felt pretty  
20 strongly that you wanted a teacher included on this  
21 committee?

22 A I did.

23 Q And you insisted on it?

24 A Yes.

25 Q Okay. Did you object to the inclusion of

1 Q Okay. Using that understanding of what  
2 "trustworthy" means, is there anybody on the committee  
3 that -- the facilities subcommittee that you believe  
4 isn't trustworthy?

5 A So is there anybody who is on there that would  
6 have been dishonest, in my view?

7 Q Dishonest or would impart confidential  
8 information.

9 A No.

10 Q My understanding is that there was a larger  
11 group and then there was somewhat of a breakout into a  
12 smaller group that focused on facilities specifically;  
13 is that correct?

14 A Yes.

15 Q And I believe you said you had somewhere in  
16 the -- seven and perhaps a few additional other  
17 meetings.

18 Does that mean seven-plus meetings of the  
19 facilities group alone?

20 A There were seven meetings of both groups. I  
21 asked the facilities group to come together for a couple  
22 of additional meetings.

23 Q Any estimate at all of how many -- of what --  
24 how many additional meetings there were that were just  
25 meetings of the facilities group?

1 anyone who was on the committee?

2 A No, I didn't.

3 Q Is there anyone on the committee -- and  
4 actually, let's focus initially on the -- on the  
5 subgroup.

6 Is there anyone on the committee that you  
7 believe is not trustworthy?

8 MS. DAVIS: Vague and ambiguous.

9 THE WITNESS: Can you define "trustworthy" for me?

10 BY MR. ELIASBERG:

11 Q Did you ever use the word before?

12 A Have I ever used the word before?

13 Q (No audible response)

14 A Yes.

15 Q Do you have an understanding -- what's your  
16 understanding of what "trustworthy" means?

17 A That if I depart confidential information and  
18 say it's confidential, then that will be accepted, and  
19 the words will go no further.

20 Q Let me -- and let's -- I'll accept that as the  
21 definition. Let me add an addition to that, honest.

22 Can you -- if I include honest as within --  
23 falling within the definition of "trustworthy," as we  
24 use it here, are you comfortable with that?

25 A Yes.

1 A There were a couple of meetings. There may  
2 have been three, but there are two that I can  
3 specifically recall.

4 Q And am I correct in assuming that you  
5 understood it as your task that in the end you needed to  
6 write a report or a portion of a report -- and by you I  
7 mean the facilities group -- that would be a part of a  
8 larger report that would include -- that would discuss  
9 facilities and finance issues; is that correct?

10 A Yes.

11 Q Okay. How did either the subcommittee or the  
12 committee as a whole go about writing the facilities  
13 portion of the report?

14 A You mean who wrote the report?

15 Q Well, we can start there, sure.

16 Who wrote the report?

17 A The responsibility for the written report was  
18 to be Mike Ricketts.

19 Q Does that responsibility include both the  
20 facilities piece and the finance piece?

21 A Yes.

22 Q Were -- let's focus on the facilities piece for  
23 a minute.

24 Were there drafts of the facilities piece  
25 written?

1 A Yes.  
 2 Q Who wrote those drafts?  
 3 A Mike wrote the drafts. People contributed some  
 4 language from time to time to the drafts, but basically,  
 5 Mike compiled them.  
 6 Q And do you have an understanding of how he  
 7 compiled the drafts?  
 8 A You mean physically how he compiled the  
 9 drafts?  
 10 Q Well, I guess what I'm trying to understand is,  
 11 the ideas and recommendations that were included in the  
 12 report, were those Mr. Ricketts' ideas and  
 13 recommendations?  
 14 A No.  
 15 Q Okay. Whose ideas and recommendations were  
 16 they?  
 17 A Members of the committee.  
 18 Q And did members of the committee -- and let's  
 19 focus on the -- the facilities portion of the report.  
 20 That's what I'm going to continue to do unless I say  
 21 differently.  
 22 A Okay.  
 23 Q Did members of the facilities group review the  
 24 drafts as Mr. Ricketts -- after Mr. Ricketts had written  
 25 them and I -- well, let me ask you this. Did

1 the entire group to give, basically, like, a progress  
 2 report, where are we, what have we discussed. And that  
 3 would happen as well. It wouldn't happen at every  
 4 meeting, but it would happen.  
 5 Q Did -- do you feel that Mr. Ricketts accurately  
 6 included the comments or suggestions made by the members  
 7 of the facility -- so Mr. Ricketts -- let me step back.  
 8 Mr. Ricketts circulates one draft, and my  
 9 understanding is that then the facilities group would  
 10 talk about that draft, discuss that draft, at one of  
 11 their meetings; is that correct?  
 12 A Yes.  
 13 Q Okay. And is it -- do you believe that  
 14 Mr. Ricketts then accurately put into the next draft the  
 15 comments and suggestions and proposed changes by the  
 16 facilities subgroup?  
 17 A Yes.  
 18 MS. DAVIS: Vague and ambiguous.  
 19 THE WITNESS: He would -- he would try to capture  
 20 what was there, but it wasn't always easy.  
 21 BY MR. ELIASBERG:  
 22 Q Okay. Did -- were there persons who made  
 23 presentations on facilities issues, either to the group  
 24 as a whole or to the facilities subgroup?  
 25 A Yes.

1 Mr. Ricketts circulate --  
 2 A Yes.  
 3 Q -- copies of the drafts after he'd written  
 4 them?  
 5 A Yes.  
 6 Q And did members of the -- did you review  
 7 drafts?  
 8 A Yes.  
 9 Q Okay. And did other members -- at least to the  
 10 extent that you know, did other members review the  
 11 drafts?  
 12 A I believe they did.  
 13 Q Okay. And did you make comments on the drafts  
 14 as Mr. Ricketts circulated them?  
 15 A We would comment on the drafts when we would  
 16 get together in our meeting times and discuss and debate  
 17 those drafts and concepts. Began rather slowly, but  
 18 there began to be issues within the committee at some  
 19 point in time.  
 20 Q Did you -- when you said "we" commented, I just  
 21 want to make sure -- is that just the facilities group,  
 22 or did the group as a whole make comments?  
 23 A Well, it was both. The facilities group had an  
 24 opportunity every time we met to comment on whatever was  
 25 written. We would also give a report, a reporting to

1 Q Okay. Who were those people?  
 2 A I don't know if I can recall them all.  
 3 Q Whom do you recall?  
 4 A Marianne O'Malley was one, who then stayed and  
 5 became a member of the committee, apparently through  
 6 interest. I'd asked people from various school  
 7 districts to come and give a presentation, and -- he  
 8 wouldn't like me forgetting his name. I can't think of  
 9 his name.  
 10 The director of facilities at the Oxnard  
 11 Elementary District made a presentation. There were  
 12 other presentations that were made to the -- to both  
 13 groups. Marianne O'Malley made them to both groups  
 14 together as a whole. There were others that were made  
 15 to the large group, but I can't tell you.  
 16 Q Did Duwayne Brooks make a presentation?  
 17 A Duwayne was a member of the committee and  
 18 shared information willingly from time to time. I can't  
 19 remember a formal presentation, no.  
 20 Q And what's Mr. Brooks's position?  
 21 A What is Mr. Brooks's position?  
 22 Q (No audible response)  
 23 A Mr. Brooks is the director of the school  
 24 facility unit within the California Department of  
 25 Education.

1 Q And is that the School Facilities Planning  
2 Division?  
3 A Yes.  
4 Q Okay. Did Mr. Brooks focus his attention on  
5 the facilities subgroup of the committee as opposed to  
6 the finance group?  
7 A He was a member of the facilities subgroup.  
8 Q Do you consider Mr. Brooks to be knowledgeable  
9 about school facilities issues?  
10 A Yes.  
11 MS. DAVIS: Vague and ambiguous.  
12 BY MR. ELIASBERG:  
13 Q What's your basis for that?  
14 A I've known Mr. Brooks for 15, 17 years, worked  
15 on a number of issues with him over time.  
16 Q Did Kim Rueben make a presentation to either  
17 the committee as a whole or the facilities subgroup?  
18 A I don't recall the name.  
19 Q Did Patricia Koch make a presentation?  
20 A She was a member of the committee.  
21 Q And who is Ms. Koch? What is her position,  
22 title?  
23 A I don't know her exact title, but I believe  
24 that she is in charge of business as an assistant  
25 superintendent for business or a similar name. Could be

1 an associate with Huntington Beach High School District,  
2 I think.  
3 Q Did John Fairbank made a presentation to the  
4 group?  
5 A I don't remember John Fairbank making a  
6 presentation to the group. I know John, but I don't  
7 recall a presentation to the group.  
8 Q Did you -- are you aware of any -- well, let me  
9 put it differently.  
10 Did you miss any meetings of either the group  
11 as a whole or the facilities subgroup?  
12 A I did for portions of meetings, but I don't  
13 think it was many.  
14 Q Did any -- do you remember anyone making a  
15 presentation about polling and the likelihood of  
16 success, the California's voters' perception of school  
17 bonds and likelihood of their passage?  
18 MS. DAVIS: Vague and ambiguous.  
19 THE WITNESS: I've been in a lot of meetings where  
20 those kinds of things have been discussed. I'm not  
21 recalling that they were part of a presentation to the  
22 subgroup or to the whole group. They may have been.  
23 BY MR. ELIASBERG:  
24 Q Do you remember anybody making a presentation  
25 about research, having to do with how bond moneys had --

1 doing a comparison of the distribution of bond moneys in  
2 relation to the property tax values of districts?  
3 MS. DAVIS: Same objection.  
4 THE WITNESS: We had a lot of paper and a lot of  
5 data that included things of what you're talking about,  
6 but I can't tell you specifically what we saw over that  
7 period of time.  
8 BY MR. ELIASBERG:  
9 Q Okay. Just so I -- when I talk about  
10 presentation, I want to -- I mean, I'm including an oral  
11 presentation that may have paper along with it, whether  
12 it's -- or what do they call -- Power Point  
13 presentation. I'm just trying to understand whether you  
14 remember an actual -- somebody coming in and doing an  
15 oral presentation which discussed issues of allocations  
16 of bond money and comparing districts, based on their  
17 property tax wealth and the allocation of bond money.  
18 A As I said, there were a number of times when  
19 similar kinds of issues were discussed. I remember John  
20 Sonsteli giving us a presentation, where there was a  
21 good deal of finance data that was shared. I don't know  
22 that it included all of that. It was basically a larger  
23 focus of his presentation, as I recall.  
24 Q And what was the focus of his presentation?  
25 A The focus of his presentation -- this was to

1 both groups -- was school finance and is there another  
2 model of school finance that we may want to consider in  
3 California.  
4 Q And did Mr. Sonsteli talk about specific other  
5 models?  
6 A I recall him talking about at least one model  
7 that was of strong interest to him.  
8 Q Okay. Who is Mr. Sonsteli besides somebody  
9 who made a presentation to the group?  
10 A He is a professor at University of California  
11 at Santa Barbara, and he's an economist.  
12 Q Did you know Mr. Sonsteli before he made the  
13 presentation?  
14 A I did not know him before the committee came  
15 together and he made his first presentation.  
16 Q Had you ever read any of his -- well, making  
17 the assumption that he's actually written something,  
18 since he is in academia, have you ever read anything  
19 that Mr. Sonsteli had written prior to your work on the  
20 committee?  
21 A Not prior to the work on the committee.  
22 Q What was the model that Mr. Sonsteli  
23 presented?  
24 A I believe it was called the Oregon model.  
25 Q And can you give me the details of what you

1 believe to be called the Oregon model?

2 A Probably not very well. It was, for the most  
3 part, how to fund the school districts that would be the  
4 focus of the model, say school district or districts in  
5 California, for want of a better word, to provide the  
6 general fund revenues to the district.

7 Q Did Mr. Sonstelie or Professor Sonstelie make  
8 any recommendation to what you understand to be known as  
9 the Oregon model?

10 A Recommendations for us to include it as part of  
11 a -- what we would offer to the joint committee? Or --

12 Q Let me start with that, sure.

13 A I don't recall him suggesting that this was  
14 the -- this is an end product that you ought to offer to  
15 the committee, no.

16 Q Do you remember him making any recommendations  
17 whatsoever, in sum or substance, that I think this is a  
18 good model and I think it's an effective way to finance  
19 school facilities?

20 A What I recall is that he was interested about  
21 this and that he was excited about it, that he was  
22 interested in hearing feedback from us on it. I don't  
23 know that he saw it as being whole and complete.

24 Q Did he in his presentation make any comparisons  
25 between the Oregon model and the way California finances

1 THE WITNESS: I don't know that I look at it  
2 exactly as he looked at it. But school districts in  
3 California are dependent upon levels of revenue that  
4 they do not control, and so within that envelope I think  
5 he and I would have some agreement.

6 BY MR. ELIASBERG:

7 Q What questions did you ask him, if you  
8 remember?

9 A One specifically I remember asking him -- maybe  
10 it was two. He's a good teacher, and he was very  
11 excited about this, and so it was difficult for me to  
12 ask this question, because I thought it just blew  
13 everything apart. And that is I said, "You've left an  
14 important point out of this, John."

15 And he said, "What's that?"

16 And I said, "Collective bargaining. You've  
17 taken out a huge, huge impact, a huge variable in  
18 California, and it's not existent in your model and,  
19 therefore, it can't be considered."

20 If you take away collective bargaining, then  
21 there is a construct there where you don't have enormous  
22 pressures. If you put collective bargaining in, then  
23 all the little components that you put together that you  
24 believe are based on need get changed, because there's  
25 going to be an overwhelming need and demand that's going

1 school facilities?

2 A He did make comparisons. I can't tell you all  
3 the differences, but he did make comparisons, yes.

4 Q Can you tell me all the comparisons that he  
5 made that you remember?

6 A What I recall is that he was suggesting that  
7 the Oregon model would -- because it was based on  
8 something that I know from school finance in the past  
9 was a needs-based model as opposed to a revenues-based  
10 model, that you build from the need, working up, and  
11 create what would be a sound financing model. And that  
12 was discussed and debated, and I asked questions about  
13 it.

14 Q What do you mean by revenue-based? What's your  
15 understanding of what a revenue-based model is?

16 A Revenue-based model is, here's how much money  
17 you have to spend. Now create a budget to produce what  
18 it is that you need to accomplish.

19 Q Did Mr. Sonstelie say that, in sum or  
20 substance, that California used a revenue-based model to  
21 finance school facilities?

22 A My recollection is that he believed we had a  
23 revenue-based model here in California, yes.

24 Q Did you -- do you agree with that belief?

25 MS. DAVIS: Vague and ambiguous.

1 to change those variables.

2 Q Do you know if there's collective bargaining in  
3 Oregon?

4 A I don't.

5 Q Did you ask Mr. Sonstelie if there was?

6 A I don't recall asking him that.

7 Q Do you know if there's collective bargaining  
8 for teachers in Arizona?

9 A No, I don't know.

10 Q How did Mr. -- did Mr. Sonstelie respond to  
11 your question?

12 A Yeah, he was very likable guy. He said, "Tom,  
13 I can't answer your question." He said, "You're right.  
14 I can't answer your question as to what we do about  
15 that."

16 Q Were there minutes taken at the -- at some or  
17 all of the meetings of either the -- of both the  
18 subcommittee and the committee as a whole?

19 A We didn't take minutes. We -- in the -- and in  
20 the large committee, the staff that were there may  
21 have -- like, Mike Ricketts may have been taking notes  
22 that he may refer to as minutes, but I never recall  
23 asking. But we did try to capture ideas, so that as we  
24 discussed an idea and components of an idea,  
25 subcomponents, whatever they would be, we tried to

1 capture those.

2 Q How did you -- I mean, in what form did you  
3 try to capture them?

4 A Well, I think just about all of us took notes.

5 Q Do you have copies of your notes from then --  
6 I'm sorry if -- it sounds like you might not have been  
7 finished answering.

8 A Well, I'm just trying to -- thinking back to  
9 what we all did. It was a fairly dynamic time, with a  
10 lot of other things going on. So I don't know what was  
11 going through my head there, but I missed your question.

12 Q My question was: Do you have copies of your  
13 notes?

14 A I doubt it.

15 Q Do you know if Mr. Ricketts took notes?

16 A I don't know if he took notes all the time, but  
17 I think he had to have.

18 Q Are you certain you don't have notes or you  
19 just doubt it?

20 A Personally handwritten notes, I probably  
21 discarded.

22 Q Did you take any notes that weren't personal  
23 and handwritten?

24 A We created, beginning at some point, on a  
25 laptop some information and began to give those to Mike,

1 document request is going to be made, that it's a  
2 good-faith litigation practice not to destroy that --

3 MS. DAVIS: Well, of course, we're not going to  
4 have him destroy it. I just have no idea on what basis  
5 you're going to request these documents, but go ahead.

6 MR. ELIASBERG: And you're free to make your  
7 objections at the time. Of course, if you think they're  
8 not relevant, you can object and you cannot turn them  
9 over, if that's the position you're going to take, but  
10 I'm just putting you on notice that we're going to make  
11 a request for those documents.

12 MS. DAVIS: Okay.

13 MR. ELIASBERG: I'm not suggesting that Mr. Duffy  
14 would destroy them. I'm just putting you on notice that  
15 I'd like them -- Dr. Duffy, I'd like them to remain if  
16 they still exist.

17 I'd like to introduce to you -- actually, let  
18 me do this, because we're probably well at a time that  
19 we could take a break and -- but before we take the  
20 break, let me state something.

21 I have made copies of what is the finance and  
22 facilities working group document, despite the fact that  
23 one can't avoid wasting a lot of paper in litigation.  
24 What I have done is made a copy that includes the  
25 executive summary and the facilities working group

1 who would then use those in the reports.

2 Q Am I correct in understanding you -- well,  
3 who -- when you said, "we" created on a laptop, who --  
4 is that more than one person or one person?

5 A Well, we kind of did it as a committee, but I  
6 thought it was important and brought someone who assists  
7 me and brought a laptop and asked her to begin to  
8 capture.

9 Q And who was that?

10 A Patti Herrera.

11 Q And does she work at Murdoch?

12 A Yes.

13 Q Okay. Do you know if that laptop still exists?

14 A Well, it was my laptop, I believe. So it still  
15 exists.

16 Q Do you know if those notes are still on your  
17 laptop?

18 A I don't know if they're there.

19 Q Okay. I'd like to request that you not take  
20 those notes off if they're still there.

21 MS. DAVIS: On what basis are you requesting that,  
22 Peter?

23 MR. ELIASBERG: Because this is information that  
24 we're going to make a document request for, and I think  
25 that if a witness or an opposing party knows that a

1 section. So it is not a complete document.

2 I don't intend to refer to the sections that  
3 are the finance section, because, in fact, that's the  
4 larger section. If you have no objection, I'd rather  
5 use that and distribute that.

6 If you want me to make copies of the full  
7 document, I can do it, but it seems to me a great waste  
8 of paper to refer to a portion of the document --  
9 obviously, if at some point Dr. Duffy says, I'd really  
10 like to go to the finance section, we can stop, I'll  
11 Xerox the whole document, but it's a difference of  
12 making copies of what's about a 25-page document or  
13 70-page document.

14 So I thought I'd throw it out before the break,  
15 because if you want me to do the full document, I'll  
16 make copies at the break.

17 MS. DAVIS: I think Dr. Duffy should have in front  
18 of him at least the full document, so that when he  
19 reviews it, he can refresh his memory.

20 MR. ELIASBERG: Okay.

21 MS. DAVIS: I'm not saying you have to introduce  
22 the full document as an exhibit and attach it. I  
23 probably don't need the full document.

24 MR. ELIASBERG: Okay. Well, I do --

25 MS. DAVIS: I think, you know, if he wants to flip



1 through it, he should be able to flip through the entire  
2 thing.

3 MR. ELIASBERG: That's fine. I have a full copy,  
4 and I can make sure he has a full thing.

5 MS. DAVIS: Okay.

6 MR. ELIASBERG: All right. It's been an hour and  
7 15 minutes. So why don't we take a break.  
8 (Brief recess taken.)

9 MR. ELIASBERG: I'd like to give to the court  
10 reporter and to Dr. Duffy a copy of a document entitled  
11 "Joint Committee to Develop a Master Plan for Education  
12 Kindergarten Through University Finance & Facilities  
13 Working Group K-12 Education Final Report."  
14 As we discussed previously, I'm giving what I  
15 believe to be a complete copy of that document to  
16 Dr. Duffy, and I'm giving a partial copy to Ms. Davis,  
17 and I'm going to give a partial copy -- if we decide to  
18 later put the whole copy in, I'll, give you -- but for  
19 now let's mark it as at least Duffy 2.  
20 (Plaintiff's Exhibit 2 was marked for  
21 identification by the court reporter.)

22 BY MR. ELIASBERG:  
23 Q Dr. Duffy, you can take whatever time you need  
24 to review that document.  
25 MS. DAVIS: All day.

1 BY MR. ELIASBERG:  
2 Q Well, as I said before -- take whatever time  
3 you need, but we will talk about specific stuff --  
4 A Why don't we just go into the document. If I  
5 need to stop and go back and review something, maybe  
6 that would be more efficient.  
7 Q That would be fine.  
8 Let me just ask you: Do you recognize this  
9 document?  
10 A I recognize the document.  
11 Q Okay. And without leafing through every page,  
12 what do you believe this document to be?  
13 A I believe this document to be the final report  
14 for the finance and facilities working group, as  
15 presented to the joint committee to develop a master  
16 plan.  
17 Q Let me -- just a couple follow-ups before we go  
18 into the document.  
19 I believe you said that Professor Sonstelie  
20 made a presentation to the committee, or at least to the  
21 facilities subgroup, and you discussed --  
22 A No, it was the large group.  
23 Q Oh, it was the large group? Okay.  
24 And you discussed a question that you had asked  
25 him.

1 Did any -- at that -- did any of the other  
2 members of the group ask questions of Professor  
3 Sonstelie?  
4 A There were other questions.  
5 Q Do you remember what the -- any of those  
6 questions were?  
7 A (No audible response)  
8 Q Do you remember who asked any of them?  
9 A No.  
10 Q Did any members of the committee at the time  
11 Professor Sonstelie was present respond to your question  
12 or statement about collective bargaining?  
13 A Did any other members?  
14 Q Yeah.  
15 A It was discussed for a few minutes. I think  
16 there were others that commented, but I can't give you  
17 the detail on that.  
18 Q Do you know if in Wyoming there's mandatory  
19 collective bargaining for teachers?  
20 A I don't.  
21 Q Do you know if there is in Montana?  
22 A I don't.  
23 Q Okay. I believe before the break that you said  
24 that at least some or -- you believed that some or all  
25 of the people had taken notes during the -- during some

1 or all of the meetings of the facilities subgroup; is  
2 that correct?  
3 A From time to time. I don't know if they took  
4 them all the time, but people would take notes, yes.  
5 Q Do you have any recollection of whether Steve  
6 Juarez took notes?  
7 A I don't recall him specifically taking notes.  
8 Q Do you have any recollection of Kathy Tanner  
9 taking notes?  
10 A I can think of one meeting specifically where I  
11 think I saw her writing, yes.  
12 Q Do you know if Donald Zimring took notes at any  
13 of the meetings?  
14 A No.  
15 Q You don't -- you know that he didn't or you  
16 don't remember?  
17 A I don't know that he did or did not.  
18 Q Okay. Let's look at the -- if you would please  
19 turn to -- I guess it would be the page right after the  
20 cover page.  
21 A Hmm-hmm.  
22 Q Well, and we'll probably refer to, actually,  
23 the first two pages after the cover page.  
24 There's a list of names on that first page that  
25 includes your own; is that correct?

1 A Would you ask it again, please?  
 2 Q There's a list of names on that first page that  
 3 includes your own; is that correct?  
 4 A Yes.  
 5 Q Okay. Can you go through that list for me and  
 6 identify the people who were members of the facilities  
 7 subgroup, as opposed to being members of the finance  
 8 subgroup?  
 9 A Besides myself?  
 10 Q Hmm-hmm.  
 11 A There was Duwayne Brooks, there was Steve  
 12 Juarez, there was Patricia Koch, there was Janet Meizel,  
 13 the technology coordinator teacher from Davis Senior  
 14 High School.  
 15 Q Is that the woman that you -- I'm sorry to just  
 16 interrupt, but Janet Meizel is that the teacher that you  
 17 earlier referred to that you had strongly worked to get  
 18 on the committee?  
 19 A Yes.  
 20 Q Okay.  
 21 A Those are the people that are listed here that  
 22 were on our committee.  
 23 Q Okay. Let me just make sure -- I just want to  
 24 make sure that I put check marks in the right place.  
 25 Besides you it was Mr. Brooks?

1 A Duwayne Brooks.  
 2 Q Mr. Juarez?  
 3 A Mr. Juarez.  
 4 Q Ms. Meizel?  
 5 A Yes.  
 6 Q And I'm sorry, did I miss anybody?  
 7 A Patricia Koch.  
 8 Q Patricia Koch, okay.  
 9 And Nicholas Ferguson was not?  
 10 A Nicholas Ferguson came from time to time, but I  
 11 don't recall him being a consistent working member of  
 12 the committee.  
 13 Q Could you turn to the next page.  
 14 A Yes.  
 15 Q There's a list of some more names there.  
 16 Are any of the names there people who were  
 17 members of the -- I would say either occasionally  
 18 attended or regularly attended the facilities subgroup  
 19 meetings?  
 20 A Ron Prescott, Kathy Tanner -- and does  
 21 occasional mean more than one time?  
 22 Q Yeah, I'd say -- let's say two or more.  
 23 A Then I think those two.  
 24 Q Okay. Just out of curiosity, I'm guessing that  
 25 there was somebody who -- that you remember going to one

1 meeting but not more than one.  
 2 Who was that?  
 3 A I think --  
 4 Q And by meeting, I mean just the facilities  
 5 subgroup.  
 6 A Right. I think Don Shelton. I think he came  
 7 in for one.  
 8 Q And Donald Zimring, to your recollection, did  
 9 not attend the facilities subgroup meetings?  
 10 A You know, he may have come in for a meeting,  
 11 but he basically focused on the other group.  
 12 Q Okay. Do you know if there was any sort of  
 13 record of attendance taken? And I don't mean in some  
 14 punitive way, but signed in at the beginning of each  
 15 meeting, just to --  
 16 A No. What I recall is if somebody would miss a  
 17 meeting and we were going to have another meeting, we  
 18 tried to make sure that they had whatever was prepared  
 19 if there were -- if there was additional information,  
 20 whether they were -- so the only -- we would know, oh,  
 21 gee, who was there; who wasn't there, in order to make  
 22 sure that -- we made sure that they had information. If  
 23 they didn't pick it up at the prior time, you know,  
 24 tried to e-mail or mail or whatever.  
 25 Q Okay. Did Mr. Ricketts attend all of the

1 meetings of your subgroup?  
 2 A No.  
 3 Q Okay. Do you remember how many meetings he did  
 4 attend?  
 5 A He was very much stretched, and there was a lot  
 6 of demand from the other group. So one of the reasons  
 7 that I asked Patti Herrera to assist was because of  
 8 recognizing that and wanted to make sure there was some  
 9 way of having some other help and to assist him with  
 10 this. Because I was anticipating that things would  
 11 probably just build up for both groups.  
 12 Q Did Ms. Herrera attend all meetings of the  
 13 facilities subgroup?  
 14 A After a particular point in time, she did, but  
 15 in the beginning, no.  
 16 Q Given that Mr. Ricketts wasn't present for all  
 17 of the meetings of the facilities subgroup, was there  
 18 anyone else who attempted to circulate a draft of the  
 19 facilities subgroup report?  
 20 A I think members sometimes tried to do that.  
 21 Kathy may have done that at one point. But we tried to  
 22 make sure that we worked through Mike, so that he knew  
 23 what was going on.  
 24 Q If you could turn to Page 40 of the report.  
 25 Now, I'm going to start sort of directing you to

1 particular passages in the report, but obviously, take  
2 as much time as you need to feel comfortable with the  
3 context. And you can either look at it now or I can --  
4 if it's easier for you, I can point you to the  
5 particular passage I'm interested in, and then you can  
6 take your time to look at the context, however you want  
7 to do it.

8 A (Witness reviews documents.)

9 Okay.

10 Q Do you see the box that surrounds  
11 Recommendation 5.1?

12 A I do.

13 Q Okay. Right below that, can you look at the  
14 sentence that says, "School facilities are an integral  
15 part of the package of resources necessary to provide a  
16 high quality education for students"?

17 A Yes.

18 Q What is your understanding of the term "school  
19 facilities," as it's used here?

20 A The school plant that includes classrooms,  
21 labs, ancillary facilities that may include laboratories  
22 and multi-purpose rooms, offices, certainly restrooms,  
23 and the exterior school plant.

24 Q Okay. And what's your understanding of the  
25 phrase "package of resources"? And again, I'm not

1 resources to be able to make sure that an adequate  
2 education was given to children and to pupils, and that  
3 term "adequate" kind of warred with itself and with  
4 people.

5 But "high quality" means you have provision of  
6 education to students that we would find acceptable  
7 among the value set of people that sat around that  
8 table. So they were basically people that had a high  
9 demand level.

10 Q Do you agree with the statement that school  
11 facilities are an integral part of the package of the  
12 resources necessary to provide a high quality education  
13 for students?

14 A Yes, I do.

15 Q And is that -- is your -- is that opinion based  
16 on your experience as a teacher?

17 A Personally.

18 Q Among others.

19 A Yeah.

20 Q And is it also based upon your experience as  
21 an administrator?

22 A Yes.

23 Q Okay. Any other sources that you're drawing on  
24 for --

25 A I'm a parent.

1 asking generally what that phrase means, but I mean  
2 specifically as it's used here.

3 MS. DAVIS: If you know.

4 THE WITNESS: Yeah. The -- there were a number of  
5 terms that were debated over and people tried to  
6 define. "Package of resources," just from what I would  
7 say, is the totality of resources necessary to provide  
8 an education for students. That would involve capital  
9 and operating resources, human resources and certainly  
10 books and supplies and materials included in those  
11 resources.

12 BY MR. ELIASBERG:

13 Q And by capital supplies, are you referring to,  
14 at least in part, buildings?

15 A Not capital supplies, capital and supplies.

16 Q Okay. By capital, do you mean things like  
17 buildings, school buildings?

18 A School buildings and dollars to maintain  
19 buildings, dollars to expand buildings, convert  
20 buildings.

21 Q And what is your understanding of the phrase  
22 "high quality education for students"?

23 A I think that's one of those difficult terms  
24 that may be in the eye of the beholder. But we used  
25 such terms to communicate that there should be enough

1 Q And how many children do you have?

2 A Six.

3 Q Okay. And how many -- are they school age or  
4 have they ever been school age?

5 A Yes.

6 Q And have they attended public schools?

7 A Yes.

8 Q Do you know if anybody -- if anybody in the --  
9 anyone else in the facilities -- or if anybody in the  
10 facilities subgroup disagreed with the statement that  
11 school facilities are an integral part of the package of  
12 resources necessary to provide high quality education  
13 for students?

14 A I don't think anybody in the group disagreed  
15 with this statement, no.

16 Q If you would look to Page 44. And again, take  
17 whatever time -- I will point you to specific passages,  
18 but take any time you need to familiarize yourself with  
19 the context.

20 A (Witness reviews documents.)

21 Okay.

22 Q I'd like you to refer to the top of the page,  
23 just below the heading where it says, "Goal: Through  
24 common standards and accountability systems for schools  
25 throughout the state, assure that all students,

1 teachers, administrators and other staff have  
2 appropriate learning and working environments to provide  
3 a high quality education. Assure that standards are met  
4 and maintained in each school through appropriate  
5 monitoring, assistance and intervention."

6 Do you see that?

7 A I see it.

8 Q What is your understanding of the term "common  
9 standards"?

10 A This is one of those things, I think, that we  
11 debated for a while. But that there would be something  
12 that was sufficiently simple and direct that could be  
13 used by school districts and school officials throughout  
14 California relative to the standards/conditions of  
15 schools.

16 Q And what is your understanding of the phrase  
17 "accountability systems"?

18 A From my perspective, both a member of the  
19 committee and, I guess, beyond the committee, was to  
20 have a basis for comparison to the standards that a  
21 school district would utilize and to be able to  
22 demonstrate that it was seeking to meet those standards  
23 and identify when it had met those standards.

24 Q What do you mean by "a basis for comparison of  
25 the standards"?

1 A Well, if -- we didn't propose what those  
2 standards may be. We sort of gave a -- some highlights  
3 as to maybe what should be included, but then we would  
4 identify a criteria, and that criteria would be  
5 something that all schools would compare themselves to  
6 relative to some area of the school facility and say, am  
7 I there or am I not there. And if I'm not there, what  
8 does it take to have me get there.

9 MR. ELIASBERG: Can you read back the -- not that  
10 answer, but the previous answer. Because I think there  
11 were two parts of it, and I only caught the first part  
12 of it.

13 (The record was read as follows:

14 "From my perspective, both a member  
15 of the committee and, I guess, beyond  
16 the committee, was to have a basis for  
17 comparison to the standards that a  
18 school district would utilize and to be  
19 able to demonstrate that it was seeking  
20 to meet those standards and identify  
21 when it had met those standards.")

22 BY MR. ELIASBERG:

23 Q What did you mean by a basis to demonstrate  
24 that it was seeking to meet those standards?

25 A We had put forth that there is something called

1 standards and criteria that school districts must use to  
2 adopt the general fund budget. These standards and  
3 criteria are commonly used throughout California. I  
4 believe that's where the term common came from.

5 That each school district does it in a  
6 different way, but it uses criteria and standards to  
7 offer to the community that it is proposing a budget to  
8 the board or is proposing an increase in salaries  
9 through a negotiation with teachers or other employees,  
10 and that, through these standards and criteria, they  
11 show the effect and impact of those decisions.

12 We said, since that is done in another area of  
13 school operation and area of policy and concerns by a  
14 board of education, by a superintendent, by a community,  
15 that having a process that was similar to that,  
16 specifically identified for school facilities, would  
17 give a board feedback about its district, would allow a  
18 superintendent to identify needs and the needs for  
19 resources and proposed expenditures, but that this would  
20 be used throughout California and, therefore, common.

21 The accountability part of it would be, okay,  
22 we've identified what our needs are. We've identified  
23 resources or a lack of resources, depending upon what  
24 the circumstances are, to try to meet those needs, and  
25 we have a plan in place to meet the standards and

1 identify accountability with those standards. That  
2 would be public, that would be before board of  
3 education, and that would result in the end in a  
4 document that could be used from year to year.

5 Q Does the accountability part also include some  
6 review by some other government agency? Not talking  
7 about the school districts, superintendent or the board,  
8 or the general public, but some other agency.

9 Do you include that as part of the  
10 accountability system?

11 MS. DAVIS: Vague and ambiguous.

12 THE WITNESS: The general public would have  
13 knowledge of this, because it would be agendized.  
14 Should there be some failure that was a consistent  
15 failure on the part of a particular district, County  
16 superintendent of schools may -- like with the standards  
17 and criteria for AB 1200 compliance, may have an  
18 opportunity to comment and do what they do during an  
19 informal or formal intervention on an AB 1200 issue;  
20 that they could do that during this as well.

21 BY MR. ELIASBERG:

22 Q Just so I'm sure we're all speaking the same  
23 language here, can you just briefly set forth for me  
24 what you mean by AB 1200 compliance?

25 A What I was speaking about there is that, with

1 AB 1200, the requirement that a district adopt its  
2 budget -- general fund budget according to standards and  
3 criteria that are then reviewed by the County Office of  
4 Education. The County Office of Education questions  
5 whether or not there is real compliance there, unless it  
6 has an issue with the general fund assumptions that are  
7 made -- you have to use assumptions in projecting  
8 income, use assumptions in projecting expenditures --  
9 that if it has an issue there, it can come back to the  
10 school district informally, and say, we need to talk  
11 with you about that. Can you explain this a little  
12 further for us? Can you give us more detail?

13 And if they're satisfied, to say, thank you  
14 very much. If they're not, they may ask informally, can  
15 you go back and review your budget again and can you  
16 make these changes?

17 If that isn't something that works, then -- and  
18 depending upon the County, they may not even have that  
19 informal step. I don't know. I haven't worked in all  
20 58 counties in California, but the County superintendent  
21 can send a letter to the governing board and the  
22 superintendent to say, I have issues with your budget.  
23 Or not approve that budget.

24 Q When was AB 1200 adopted? Do you know?

25 A I forget. It was legislation -- there were a

1 decision-making, and you can look -- you, public, or  
2 you, County office, or whomever, can understand that  
3 we're adhering to this kind of a standard and this is  
4 how we're intending to meet that standard.

5 So the assurance comes in a board ratification,  
6 a board adoption, documentation that becomes part of  
7 that, part of a governing board agenda that is on file,  
8 with minutes that anybody can go back to.

9 Q And the phrase little further down in the same  
10 sentence, "appropriate monitoring," what do you mean by  
11 "appropriate monitoring"? What's your understanding of  
12 that phrase?

13 MS. DAVIS: Vague and ambiguous.

14 THE WITNESS: My understanding of the phrase  
15 "appropriate monitoring" is that somebody's paying  
16 attention in the school district. That's the first line  
17 of making sure that students are being served, is at the  
18 school district level, that somebody is taking that  
19 responsibility at the school district.

20 And if there is a failure there, that  
21 potentially the County Office of Education steps in and  
22 assists. Maybe it's because the district doesn't have  
23 adequate staff or isn't knowledgeable, but somebody's  
24 there to give some backup. And then going beyond that,  
25 if necessary.

1 series of pieces of legislation in the late '80s, early  
2 '90s, and I believe it was early '90s for AB 1200, so --

3 Q Do you believe the adoption of AB 1200 was a  
4 positive step for the California education system?

5 MS. DAVIS: Vague and ambiguous.

6 THE WITNESS: I believe it has become something  
7 that is positive.

8 BY MR. ELIASBERG:

9 Q Let me refer back to the same thing -- part  
10 that we were looking at before, the "Goal" section.

11 A Yes.

12 Q We talked about common standards and  
13 accountability.

14 What is your understanding of the meaning of  
15 the phrase "assure that standards are met and  
16 maintained"?

17 A That those common standards and practices, to  
18 demonstrate adherence to them, and "accountability"  
19 would be something that became part of the regular  
20 process of the district, as the AB 1200 budget adoption  
21 process is and as is the process that is used to notify  
22 the public when a collective bargaining agreement is  
23 being ratified by a board or proposed for ratification;  
24 that, in essence, you can know what it is that we are  
25 proposing to do. This is the basis for our

1 BY MR. ELIASBERG:

2 Q Okay. And just -- and so I understand a couple  
3 terms, what do you mean by the phrase or the word  
4 "backup"?

5 A We talked yesterday about County schools and  
6 what County schools can do for school districts. The  
7 appropriate monitoring, if a -- someone in a school  
8 district really doesn't understand -- maybe they're new,  
9 maybe there has been a huge change in the district --  
10 that the County superintendent of schools, which is  
11 there to assist and serve school districts -- that's  
12 part of their function and their role -- would be there  
13 to assist them and offer help.

14 Q Okay. And how would they -- or how are you  
15 contemplating that they would assist or offer help?

16 A I think it's wide open. Could be understanding  
17 what these standards and criteria are, how do you  
18 approach a board, how do you develop a budget, how can  
19 you compare from year to year, and if someone is  
20 failing -- if there's an overt failure, to try to  
21 address what's contemplated here. That County Office of  
22 Education has the authority, under AB 1200, to say, as I  
23 told you a few minutes ago, you know, we have trouble  
24 with your budget here.

25 You could say we have trouble with the plan

1 that you have because you -- it's identified two years  
2 ago you had this problem, and nobody's done anything to  
3 fix it. And you may be new here, but we've got to tell  
4 you we have a problem with that. So we'll offer  
5 resources in personnel or whomever to assist you in that  
6 regard.

7 Q And the word -- the last word in this "Goal"  
8 paragraph, if you want to call it that, "intervention,"  
9 do you see that?

10 Is that different from assistance, to your  
11 understanding?

12 A No, I'm seeing the same thing.

13 Q Now, I'm going to ask you to put on a different  
14 hat, and this is governor of the state of California.  
15 Or actually, it's probably not a hat anybody wants to be  
16 wearing right now. All-powerful czar of the education  
17 system in the state of California.

18 How would you want to see the County Offices of  
19 Education gather the -- how would you see them actually  
20 gathering the information that a failure was or was not  
21 taking place? And by failure, I mean, you used the word  
22 "failure" a minute ago.

23 MS. DAVIS: Incomplete hypothetical, calls for  
24 speculation.

25 THE WITNESS: Speculative czar.

1 if you operate a school district, people aren't always  
2 going to be happy with you. And they will say, let me  
3 call the next level. And they may want to call the  
4 governor, and that's certainly happened to me. They may  
5 want to call the County office; they may want to call a  
6 State agency. But if they say, can we talk to somebody  
7 else? Sure, call the County office. Talk to the County  
8 superintendent or someone there.

9 They look at that, go and look at this  
10 document, you know, this is missing. You're right. So  
11 there's an opportunity for the public to then go to this  
12 next level. And maybe at that next level, everything is  
13 fine, and the public is then assured that the school  
14 district has done its job.

15 But that model -- and that's where I keep going  
16 back to the AB 1200 model that we proposed as a basis  
17 for this, is something that has worked, and we believe  
18 it can work in this other area. May not be something  
19 that gets implemented in a year, gets implemented in  
20 five years, but it's suggested over at least a five-year  
21 period.

22 MR. ELIASBERG: Can you just read back the last  
23 two sentences of that answer.

24 (The record was read as follows:

25 "But that model -- and that's where

1 BY MR. ELIASBERG:

2 Q Let me ask you this. Have you thought about  
3 the process by which you would think that the County  
4 office of -- or the process by which -- the best process  
5 by which the County office could gain that information?

6 MS. DAVIS: Vague and ambiguous.

7 THE WITNESS: The idea, the concept here, as I  
8 recall it from discussions and trying to move people  
9 along in the role that I had, was that there's something  
10 that's already in place that works. What we know in  
11 educational resource is that if there's something that's  
12 in place and works, you can build from that, because  
13 there's been success and people can train other people  
14 who have been successful.

15 So let's use this AB 1200 -- it's not a model  
16 anymore, it's a practice. And let's create a model that  
17 we apply to school facilities. And in that model, if  
18 the first level is failing at the district I was talking  
19 about a few minutes ago, somebody's new there and the  
20 County office comes in, that the County office would  
21 have had reports that had been filed with them in prior  
22 years, as budget reports are, and if everything is well,  
23 thank you very much, you know, we recognize that you've  
24 taken care of business here in this important area.

25 And if there isn't or if somebody complains --

1 I keep going back to the AB 1200 model  
2 that we proposed as a basis for this,  
3 is something that has worked, and we  
4 believe it can work in this other area.  
5 May not be something that gets  
6 implemented in a year, gets implemented  
7 in five years, but it's suggested over  
8 at least a five-year period."

9 BY MR. ELIASBERG:

10 Q So am I correct in understanding that you  
11 support this goal that's set forth in this master plan  
12 document? And by that goal, I mean the one that begins  
13 "Through common standards."

14 A I supported the idea of giving a school  
15 district an opportunity to deal with issues that are  
16 fiscal and facility issues. I didn't support having the  
17 State come in as a czar and tell school districts what  
18 to do. What I supported, as an individual member of  
19 that committee and as a practitioner, was to identify a  
20 set of standards and to begin to implement a process to  
21 give districts a chance to make comparisons.

22 Q And did you also support the idea that, in some  
23 circumstances, there might be the opportunity for some  
24 agency outside the district, such as the County board  
25 of -- County superintendent's office, to play what you

1 called a backup role?  
 2 A Yes, I did.  
 3 Q Did other members of the facilities group  
 4 support this goal?  
 5 A Yes.  
 6 Q Do you remember who they were?  
 7 A I remember first discussing this at a meeting  
 8 in San Diego. Kathy Tanner was there; Duwayne Brooks  
 9 was there; Steve Juarez was there for a while. I think  
 10 Jan Meizel was there. So that was the beginning. But  
 11 of course, we discussed this later at other meetings.  
 12 Q The first time this idea was discussed, do you  
 13 remember if Mr. Brooks supported the idea?  
 14 A I believe that he did.  
 15 Q Okay. And do you remember if Ms. Tanner  
 16 supported the idea?  
 17 A I believe that she did.  
 18 Q And Mr. Juarez?  
 19 A I believe that he did.  
 20 Q And Ms. Meizel?  
 21 A I believe so.  
 22 Q Okay. At any later discussions that the group  
 23 had -- and we can count, really, any, whether it was in  
 24 the context of the group as a whole -- by that I mean  
 25 finance and facilities group -- or the later meetings

1 that I understand that you called to just bring the  
 2 facilities group together or portions of the facilities  
 3 group together as a subset.  
 4 Do you remember other members of the facilities  
 5 group that you've identified expressing support for this  
 6 goal?  
 7 A I believe that it was fairly well supported,  
 8 yes.  
 9 Q Okay. What's the basis for that belief?  
 10 A This wasn't an area where there was tremendous  
 11 amount of discord and debate, and we had discord and  
 12 debate.  
 13 Q Did you know Kathy Tanner before this process?  
 14 A I knew Kathy, yes.  
 15 Q And what is her -- I mean, never -- I can never  
 16 come up with the right word, but what does she do --  
 17 A Professional status?  
 18 Q Yes, professional status.  
 19 A Kathy was administrator with Del Mar School  
 20 District at this time, and she was responsible for  
 21 school facility issues and, I believe, other school  
 22 facility -- you know, in charge of school facility  
 23 planning and execution. And I think also in the  
 24 business area.  
 25 Q Okay. Sounds like she had responsibilities at

1 least somewhat similar to the ones that you had when you  
 2 were at Moorpark; is that correct?  
 3 MS. DAVIS: Assumes facts not in evidence, calls  
 4 for speculation.  
 5 THE WITNESS: Yeah, I don't know the totality of  
 6 her role, and I -- but smaller district, and I believe  
 7 there -- that her title was a different title, and I  
 8 don't think her responsibilities were exactly the  
 9 responsibilities that I had.  
 10 BY MR. ELIASBERG:  
 11 Q Okay. I'm really trying to get more at her  
 12 responsibilities with respect to facilities.  
 13 A Yes.  
 14 Q Do you understand her to be a person in charge  
 15 of facilities, understanding that the superintendent is  
 16 generally in charge of everything, but --  
 17 A Yes.  
 18 Q -- do you understand her to be the person at  
 19 the district who is charge of facilities?  
 20 A I believe that her role includes, in large  
 21 measures, facilities for the district.  
 22 Q Do you know about how long she's done that?  
 23 A No.  
 24 Q Have you had opportunities prior to this -- the  
 25 facilities working group process to discuss school

1 facilities issues with Ms. Tanner?  
 2 A I don't recall doing so. I've known her -- I  
 3 don't recall discussions of school facilities issues at  
 4 length, no.  
 5 Q But there were obviously discussions about  
 6 school facilities issues during this process; is that  
 7 correct?  
 8 A During this process?  
 9 Q Yes.  
 10 A During the master plan process?  
 11 Q Yes.  
 12 A Yes.  
 13 Q And do you consider Ms. Tanner to be  
 14 knowledgeable about school facilities issues?  
 15 MS. DAVIS: Vague and ambiguous.  
 16 THE WITNESS: You've asked me that question about a  
 17 number of other people today. Her knowledge level is  
 18 not as comprehensive as many of the people that you  
 19 mentioned earlier.  
 20 BY MR. ELIASBERG:  
 21 Q Okay. Do you consider her to be a layperson  
 22 with respect to school facilities issues?  
 23 A Not all --  
 24 MS. DAVIS: Vague and ambiguous.  
 25 THE WITNESS: She's not like a member of the

1 public.

2 BY MR. ELIASBERG:

3 Q So do you feel that she has specialized  
4 knowledge about school facilities that most members of  
5 the public don't have?

6 MS. DAVIS: Vague and ambiguous.

7 THE WITNESS: Yes.

8 BY MR. ELIASBERG:

9 Q Who is Ms. Meizel? What professional role does  
10 she have?

11 A Ms. Meizel is -- or at least was a member of  
12 the faculty at the Davis Joint High School in Davis,  
13 California.

14 Q So this is -- sorry, I can't keep all the names  
15 straight. This is the woman who you worked very hard to  
16 put on the committee; is that correct?

17 A Yes.

18 Q Do you remember Mr. Prescott ever expressing  
19 a -- I mean, I -- well, actually you know what? I don't  
20 need to go into that.

21 MR. ELIASBERG: You know, actually, we've been  
22 going about an hour. Why don't we do this. Let's shoot  
23 for about the same lunch time. Probably makes this a  
24 good time to take a short break.

25 MS. DAVIS: Okay.

1 facility issues in California.

2 Q Do you consider yourself to be a stellar person  
3 with respect --

4 A I consider myself to be very knowledgeable in  
5 the area and have worked in it for a lengthy period of  
6 time resolving issues, policy issues, practical issues.  
7 So I was disappointed at the participation that was  
8 there.

9 Q If you were to put together a committee, would  
10 you have included yourself?

11 A Yes.

12 Q Would you have included Duwayne Brooks?

13 A Yes.

14 Q When you made the comment to your counsel, did  
15 she have any response?

16 A She said, "Tell him."

17 Q Anything else you discussed?

18 A No. Coke. We discussed Coke.

19 Q I assume you mean the liquid.

20 A Yes.

21 MS. DAVIS: Yes.

22 BY MR. ELIASBERG:

23 Q Let me ask you a question about AB 1200.

24 Is it mandatory that districts provide their  
25 budgets to the County offices?

1 MR. ELIASBERG: And then we can go for about  
2 another hour period.

3 THE WITNESS: Is it 11:30?

4 MR. ELIASBERG: It's about 11:15. So this would  
5 give us a good break time.

6 THE WITNESS: Okay.

7 (Brief recess taken.)

8 BY MR. ELIASBERG:

9 Q Did you have any discussions about this case  
10 during the break with your counsel?

11 A I did.

12 Q What did you discuss?

13 A Well, I was just interested in your question  
14 about the people on this committee.

15 Q And did your --

16 A Well, I was going to make the comment.

17 Q Okay. Is this the comment that you made during  
18 the break?

19 A Yes, it is.

20 Q Okay. What was that comment?

21 A Basically, if I were asked to put together a  
22 committee that represented people knowledgeable about  
23 school facilities in California, it wouldn't have been  
24 this committee. Because this committee was not a  
25 stellar committee with regard to people that knew school

1 A Yes.

2 Q And does the statute contemplate that the  
3 County offices will review -- that -- well, does the  
4 statute give County offices discretion to review budgets  
5 or are they required to review budgets?

6 A They're required to review the budget.

7 Q Is it your understanding that the process of  
8 monitoring that you talked about in the goal here would  
9 include mandatory review of the district statements with  
10 respect to how they're meeting the standards and what  
11 resources they're putting to meet the standards and the  
12 timetable they're meeting the standards, that it would  
13 be mandatory, that it would be reviewed by the County  
14 offices?

15 A The concept, in my mind, was that it would  
16 eventually get to that.

17 Q And why did you want it to be mandatory? I  
18 understand eventually, but why did you think that it  
19 should be mandatory?

20 A There are a couple reasons for that. One  
21 reason that was compelling to me, as a practitioner, is  
22 that if there's something that the law compels me to do  
23 and the board of education doesn't want to do it for  
24 other reasons, I have a very, very large support in the  
25 law to say the law is telling us we need to do this.



1 So that if there is a debate as to whether or  
2 not we need to provide sufficient general fund support  
3 to the deferred maintenance program or to ongoing  
4 maintenance or to an issue that just emerges and there  
5 is a challenge because in collective bargaining there  
6 are various demands that are being made or maybe demands  
7 being made by another community group for something, I  
8 can say, this is a prudent thing to do, and they may  
9 say, you know, it's a wonderful idea, great. We're  
10 going to do this other thing. We're going to make  
11 another decision, avoiding the decision you're making.

12 But with something such as this as a support to  
13 be able to say, we're being compelled by the law to make  
14 sure that we address these kinds of issues, we've  
15 identified them in the past, we can't stop now. So you  
16 got a tough decision to make as to how we balance  
17 things, balance budgets, deal with collective  
18 bargaining, deal with other demands, but we want to make  
19 sure that we deal with issues that are health and safety  
20 issues and regular maintenance issues that need our  
21 focus. So that's one.

22 Another is that it's been recognized that there  
23 are some districts that have been troubled districts in  
24 the past. Maybe there are some that are troubled  
25 districts still today. To be able to offer if there's

1 something that works in that district and within the  
2 board and its administration and there is inertia in  
3 dealing with what continues to be a troubling issue or  
4 issues having to do with facilities, to be able to have  
5 these standards and criteria for, as you were asking,  
6 another entity such as the County office to say, you've  
7 failed to focus on this, you've failed to address these  
8 issues and you're not planning to address them this  
9 year, and we have to ask you to go back and reconsider  
10 those. I realize that you may be -- you may not have a  
11 board majority willing to go forward on this, but I have  
12 to ask you to go back and do it again, because the law  
13 compels us to be there as a support to you, and part of  
14 that support is to say, rethink your decision-making.

15 Q Okay. Am I correct in understanding, then,  
16 that you understood that this -- well, let me ask you  
17 this.

18 When you just talked about a law, were you  
19 talking about a State law?

20 A Yes.

21 Q And am I correct in understanding that you  
22 believe that that State law should not only make it  
23 mandatory for the district to go through that process,  
24 but make it mandatory for the County superintendents to  
25 review what -- the district's decisions?

1 A As I said, eventually to do that.

2 Q Do you have any sense about how long it should  
3 take for it to be mandatory for the County boards to do  
4 that?

5 A I can't give you a number of years, but what we  
6 talked about -- and I believe it's in the document -- is  
7 that at the time that we say it is mandatory, the  
8 district have a five-year plan to be able to get there.  
9 What I would do if it wasn't mandatory -- but, you know,  
10 here's a set and it's going to be coming down the road,  
11 the district should begin that very soon, in the first  
12 or second year. There's a reason for that, by the way,  
13 and part of that is to develop expertise.

14 Q What do you mean by that, develop expertise?

15 A Well, if school districts realize that they  
16 need to focus on an area and they haven't been focusing  
17 on it, then, obviously, they're going to need to acquire  
18 the resources, human resources and maybe other  
19 resources, to assist them.

20 Same thing for a County office. County office  
21 may not be focused on this and it's not, I think, the  
22 best way to implement important education policy by  
23 saying, here, go do this, and by the way, we're not  
24 going to give you an opportunity to gear up to do it.  
25 That basically happened with AB 1506, and we're trying

1 to bridge that gap right now.

2 Q I'm sorry, what is AB 1506?

3 A It's the labor compliance law that I was  
4 talking to you about today and yesterday.

5 Q You said a minute ago that it's been recognized  
6 that there have been troubled districts.

7 A Yes.

8 Q By whom has it been recognized?

9 A Duwayne Brooks was on the committee. Duwayne  
10 Brooks called about Compton and some of the  
11 interventions of the State in Compton. And he was in  
12 Compton at least once and discussed some of the issues  
13 in Compton.

14 Q And -- I'm sorry, I didn't mean to cut you  
15 off.

16 A Well, that was what I was referencing.

17 Q Okay. Were there any other troubled districts  
18 that you were referring to?

19 A I was thinking of Compton, because it was part  
20 of the -- part of the discussion that brought this about  
21 was using the Compton School District and the issues of  
22 Compton as the basis for how would we prevent this in  
23 the future from happening. That was the -- that was the  
24 basis for the discussion.

25 Q And did Mr. Brooks say that the process that

1 had -- the State intervention that had taken place in  
2 Compton was -- well, let me step back.  
3 Did Mr. Brooks say that any of the  
4 interventions that had taken place in Compton were of  
5 the kind that were being -- that are set forth in this  
6 goal?

7 MS. DAVIS: Vague and ambiguous.

8 THE WITNESS: I don't recall him talking about  
9 interventions being what were contemplating in this  
10 goal. We were talking about a means of doing this kind  
11 of thing, to put -- to put a plan in place to be able to  
12 help districts meet standards and be accountable.

13 And the discussion of Compton began, and so I  
14 remember asking some of the questions about, well, what  
15 was encountered in Compton? What were some of the  
16 outcomes in Compton? Some of them sounded sort of off  
17 the chart for what I would expect to see in a school  
18 district, but maybe the circumstances there warranted  
19 it. But that's where this really began.

20 BY MR. ELIASBERG:

21 Q And so as -- when the -- am I correct in  
22 understanding that as the committee was going through  
23 the process of writing this report, including the goal  
24 that we've just talked about, that they were -- that at  
25 least you and Mr. Brooks were thinking about what can we

1 understanding of "clear, concise and workable  
2 standards"?

3 MS. DAVIS: I'm just going to object to just this  
4 line of questioning and parsing words as just calling  
5 for speculation.

6 I think Dr. Duffy has testified that it was a  
7 collaborative process. He didn't write the master plan,  
8 and there were varying opinions within the subgroup. So  
9 he may not -- he may be speculating as to what some of  
10 this means.

11 BY MR. ELIASBERG:

12 Q Dr. Duffy, I'm asking for your understanding of  
13 the meaning of the phrase "clear, concise and workable  
14 standard."

15 A Well, as I believe I testified to earlier this  
16 morning, that having something that was relatively  
17 simple and able to understand, that really is workable,  
18 that school districts could identify that they have been  
19 able to meet a particular standard because it's clear  
20 and understandable and that they can get there;  
21 basically, it's workable, with the goal of supporting  
22 high quality and high performance teaching and learning.

23 Now, just thinking back on what Counsel just  
24 identified, a number of these terms were really heavily  
25 debated and, you know, who knows what high quality/high

1 do that would be effective to address the problems that  
2 Mr. Brooks identified in a district like Compton?

3 A Yes.

4 Q Let me turn you -- now, on the same page if you  
5 could refer down to -- let me ask you -- I'm sorry, one  
6 last question.

7 The requirement that the County offices -- that  
8 districts take certain steps with respect to the budget  
9 and that the County offices then review those budgets,  
10 that's set forth in AB 1200; is that correct?

11 A Yes.

12 Q Is it your belief that legislation would be  
13 needed to set up in order to bring about the goal that  
14 is set forth in -- on Page 44 here?

15 A Yes.

16 Q Okay. If you could refer down to the box that  
17 is Recommendation 5.4, which states, "Establish a clear,  
18 concise and" -- establish -- excuse me, "Establish  
19 clear, concise and workable standards that are  
20 characteristic of facilities that provide a high  
21 quality/high performance teaching and learning  
22 environment."

23 Do you see that?

24 A Yes, I do.

25 Q What did you mean -- or what is your

1 performance is. If you asked Jan Meizel, it may have  
2 one meaning, and if you ask Kathy you may have another.  
3 And if you asked Duwayne, it may have another. But we  
4 tried to come together on these recommendations.

5 When bodies sit together as we did, both the  
6 whole group and the subgroup, there's this sense of --  
7 and I felt this a number of times -- of oh, let's be  
8 very idealistic, and I was attempting to say, let's be  
9 practical. So words like "workable standards," words --  
10 and I can't remember specifically if that word came from  
11 me, but it was my plan to say, okay, what's this really  
12 going to do in a school district?

13 You know, offering something that isn't going  
14 to be achievable is really not what I saw our goal as.  
15 Now, others in the committee differed with me. They  
16 said, well, how do you know it's not achievable? Well,  
17 I don't know. I've been there, I guess.

18 So it's got to be workable. It's got to be  
19 something that we can put together so people can't  
20 fail. But then we'll say, okay, well, let's make sure  
21 it's high quality, whatever that really means.

22 BY MR. ELIASBERG:

23 Q Do you believe it's possible to set up a set of  
24 facilities standards that are clear, concise and  
25 workable?

1 A I believe that it is possible, yes.

2 Q And do you believe that you could set up  
3 standards that are -- would help support the ability of  
4 students to get an education in that facility?

5 A Yes.

6 Q Did you -- I understand that you saw as -- at  
7 least one of your purposes, to make sure that this  
8 report was not a pie-in-the-sky report but was actually  
9 proposing workable solutions.

10 Do you believe that the recommendation here is  
11 a workable recommendation? Recommendation 5.4 is what  
12 I'm looking at.

13 A To identify clear, concise workable standards  
14 for facilities, yes. That the high quality/high  
15 performance -- there are various groups doing various  
16 things in California and elsewhere today that are using  
17 various kinds of terms, and they may not be something  
18 that I would necessarily say is providing an adequate  
19 education to children that really meets the test. And  
20 they produce reports from time to time.

21 So the high quality/high performance part of  
22 it -- you know, I think I know what high quality is.  
23 But what the taxpayers of California have taught me over  
24 the 25, 30 years I've been in public education is, you  
25 know, don't make us pay anything more than we really

1 A No.

2 Q You just look down a little further on Page 44,  
3 and the section that says, "The facilities group  
4 recommends the following language be amended to  
5 Education Code Section 17251(g) in reference to  
6 developing statewide facilities standards," colon, and  
7 then it cites to the Education Code and says, "The  
8 California Department of Education shall develop  
9 standards for use by school districts to evaluate  
10 existing school facilities."

11 Do you see that?

12 A I do.

13 Q Okay. Do you think it's a good idea for the  
14 California Department of Education to develop standards  
15 for use by school facilities to evaluate existing school  
16 facilities?

17 A I believe if it's done in a manner that much of  
18 school facility legislation has been implemented in  
19 California in the past, yes.

20 Q And what -- focusing on the situations where  
21 you believe that the facilities legislation has been  
22 implemented in a positive way, what would that manner  
23 be?

24 A Using the State Allocation Board's  
25 implementation committee or a committee that, if it's

1 have to to make sure we get the job done, and so I'm not  
2 quite sure exactly what I would say this term really  
3 means.

4 But as a parent, I guess, as an educator, and  
5 somebody that has built schools, say I think I know what  
6 adequate means to get the job done. And that term was a  
7 word that was debated back and forth and kind of settled  
8 on.

9 Q Okay. Were you in favor of including this  
10 recommendation in the report?

11 A Yes.

12 Q Were others in the facilities subgroup in favor  
13 of including this recommendation in the report?

14 A Yes.

15 Q And just so I'm -- I know sometimes when we  
16 talk about groups we may -- we'll get majorities as  
17 opposed to specifics.

18 Was Mr. Brooks in favor of including this  
19 recommendation in the report?

20 A I can't recall specifically that he was in  
21 favor or not in favor, but from all the work we did  
22 together, I think he would have been. So that may be  
23 some speculation, but I think he would have been.

24 Q Do you remember Mr. Brooks ever objecting to  
25 the inclusion of Recommendation 5.4 in this report?

1 tasked with simply this, that is made up like that  
2 committee, of practitioners and State-level  
3 administrators and, you know, policy writers, where  
4 there is an even and open and honest debate.

5 Q Why would you include those various types of  
6 people?

7 A I think it's been demonstrated that -- I used  
8 the term yesterday. If you use top down only, you don't  
9 achieve success very easily. If you use bottom up only,  
10 depending upon the level of resources, you may or may  
11 not. If you have an authority above and you have  
12 authorities below that each work together and they  
13 articulate what their goals and objectives are and they  
14 articulate solutions that become hammered out as policy,  
15 they become effective.

16 And the State Allocation Board's implementation  
17 committee is one very effective body that's been in  
18 existence since 1986 that has done this, basically.

19 Q So assuming that the standards were developed  
20 through a process like the implementation committee or  
21 some similar process, you would be in favor of  
22 developing those standards; is that correct?

23 A It's basically the way I conceived of those  
24 standards to be developed.

25 Q Is it your opinion that clear, concise and

1 workable standards that are characteristic of facilities  
 2 that provide a high quality -- well, let's just say is  
 3 it your opinion that a clear, concise and workable  
 4 standards governing the condition of school facilities  
 5 currently exists in the state of California?  
 6 MS. DAVIS: Vague and ambiguous.  
 7 THE WITNESS: I think that there are standards that  
 8 exist, and there are people that recognize them and that  
 9 adhere to them. They come through the California  
 10 Department of Education. But I believe that with the  
 11 history of what's happened in the state with regard to  
 12 resources, availability of resources, that districts --  
 13 some districts in particular have had difficulty in  
 14 recognizing and maintaining those standards because of  
 15 the reality of life in those school districts.  
 16 BY MR. ELIASBERG:  
 17 Q I think you said that those standards exist  
 18 through the California Department of --  
 19 A I meant in the regulations.  
 20 Q Let's -- if you would look down a little  
 21 further below, there's a sentence, "The standards shall  
 22 include, but not be limited to, the following  
 23 categories."  
 24 Do you see that?  
 25 A Yes.

1 Q And the first category is "Classrooms, address  
 2 the adequacy of the number and size of classrooms to  
 3 deliver the local educational program."  
 4 Do you see that?  
 5 A Yes.  
 6 Q Are there either statutes or regulations that  
 7 address the adequacy of the number and size of  
 8 classrooms that deliver the local education program?  
 9 MS. DAVIS: Vague and ambiguous.  
 10 BY MR. ELIASBERG:  
 11 Q Currently existing.  
 12 A There is for the size of classrooms. I can't  
 13 tell you the -- how the number of classrooms is  
 14 addressed specifically in the regulation, but the advent  
 15 of collective bargaining has dealt with that in a number  
 16 of districts, because class sizes are frequently set in  
 17 a contract, and those class sizes then dictate how many  
 18 classrooms are on a campus, so that the State standard,  
 19 if it's more specific -- and I can tell you what it  
 20 says, really -- becomes moot, because the collective  
 21 bargaining agreement is what controls that.  
 22 Q I believe you said there is a standard that  
 23 governs the size of classrooms?  
 24 A (No audible response)  
 25 Q Let me make sure I understand.

1 When we talk about size, are we talking here  
 2 about the number of pupils in the classroom, or are we  
 3 talking about the --  
 4 A Physical size of the classroom.  
 5 Q And where is that standard set forth?  
 6 A I believe it's in a regulation adopted by the  
 7 State Board of Education. It was either 2000, 2001. I  
 8 think the purpose of it was to -- with class size  
 9 reduction legislation, not limit to small -- too many  
 10 small classrooms; in essence, to keep classrooms that at  
 11 least above a particular size.  
 12 Q Do you know what that size is, as is set forth  
 13 in the reg?  
 14 A 700 square feet. I'm guessing. I remember  
 15 there was a range that was being discussed. Normal  
 16 classrooms are -- regular classrooms are 960 square  
 17 feet. It was less than that, but it wasn't terribly  
 18 small.  
 19 Q And do you know if that regulation applies to  
 20 new construction, or does it apply to classrooms of any  
 21 school building?  
 22 A No, it's the -- I believe the intent of it was  
 23 for newly-constructed classrooms.  
 24 Q Do you know whether there's any regulation or  
 25 statute that governs class size with respect to

1 already-existing buildings as opposed to  
 2 newly-constructed buildings?  
 3 A Well, for -- yes. There is, yes.  
 4 Q And where does one find that standard?  
 5 A It's -- goes beyond a standard. People have  
 6 kind of forgotten about this with class size reduction  
 7 in grades "K" through three, but there are class size  
 8 penalties for elementary grades -- specifically the  
 9 primary grades that school districts have both an  
 10 average class size per grade per school plus looking at  
 11 individual classes, and if they exceed -- I can't --  
 12 it's been a while since I've worked those out, but if  
 13 you exceed those, you can receive a penalty, which is  
 14 basically a reduction of a general fund portion of it,  
 15 because you've had too many children in the class.  
 16 Q Let me understand. That's a regulation that  
 17 governs the number of students in a class.  
 18 A I thought that's what we were talking about.  
 19 Q No, I'm actually trying to understand whether  
 20 there's any regulation that governs actual --  
 21 A Size.  
 22 Q -- physical size of the classroom for a  
 23 building -- not a newly-constructed building --  
 24 A Oh.  
 25 Q -- but an existing building.

1 A I don't know. I don't know.  
 2 Q You don't know if there is one.  
 3 A No.  
 4 Q Can you look down at Number 2, maintenance.  
 5 "Address the condition of the building, good repair,  
 6 painted, roofs in good condition" --  
 7 A Yes.  
 8 Q -- "and inspections occur on an adequate  
 9 periodic basis."  
 10 A Yes.  
 11 Q Do you know if there's currently a standard  
 12 that governs the maintenance of school facilities?  
 13 MS. DAVIS: Vague and ambiguous.  
 14 THE WITNESS: You're talking about a State  
 15 standard?  
 16 BY MR. ELIASBERG:  
 17 Q Hmm-hmm.  
 18 A I can't identify for you any State standard. I  
 19 don't know that I've ever been worried about a  
 20 particular State standard. There are guides for school  
 21 districts that come through organizations like CASBO  
 22 that make recommendations that districts use in  
 23 developing budgets on the number of custodians and  
 24 groundsmen.  
 25 Q I appreciate that, Dr. Duffy, but I'm actually

1 Q I understand that you left Moorpark around the  
 2 year 2000; is that correct?  
 3 A Yes.  
 4 Q Okay. But during the 15 or so years that you  
 5 were at Moorpark, were you -- did you consider yourself  
 6 to be very knowledgeable about the State standards  
 7 governing school facilities?  
 8 MS. DAVIS: Vague and ambiguous.  
 9 THE WITNESS: I was knowledgeable.  
 10 BY MR. ELIASBERG:  
 11 Q Okay. Were you aware at any time during the  
 12 period that you worked at Moorpark as to whether there  
 13 was a standard -- a State standard or regulation  
 14 regarding the painting of the school facility?  
 15 A I never really concerned myself with a State  
 16 standard for such things.  
 17 Q And why didn't you concern yourself?  
 18 A Well, I believe that we had well-maintained  
 19 buildings, and we addressed issues and focused on those.  
 20 Q Are you aware of whether there are any State  
 21 standards or regulations with respect to the condition  
 22 of school building roofs?  
 23 A No.  
 24 Q You're not aware?  
 25 A I'm not aware.

1 asking just simply about either a State standard or  
 2 regulation and if one exists.  
 3 A I can't articulate that. I can't point you to  
 4 one or not.  
 5 Q Okay, thanks.  
 6 Do you know if there's a standard that  
 7 governs -- well, let me ask you this.  
 8 When you -- it says here, "Maintenance, address  
 9 the conditions of the building, good repair, painted" --  
 10 what's your understanding of the phrase "painted"  
 11 there?  
 12 MS. DAVIS: Calls for speculation.  
 13 THE WITNESS: Well, this was maybe one of those  
 14 areas where we struggled with what we included. But  
 15 believing -- as I think we talked about yesterday.  
 16 Believing that painting buildings does a number of  
 17 things, including invite people in, we think that  
 18 painting -- I thought that painting was part of  
 19 maintenance.  
 20 BY MR. ELIASBERG:  
 21 Q Do you know if there's currently a State  
 22 standard or regulation that governs --  
 23 A No.  
 24 Q You don't know?  
 25 A No, I don't know.

1 Q Are you aware of whether there are any State  
 2 standards or regulations concerning inspections  
 3 occurring on an adequate periodic basis?  
 4 A Inspections of buildings for maintenance  
 5 purposes?  
 6 Q Yes.  
 7 A No.  
 8 Q You're not aware of a standard?  
 9 A Not aware of a standard.  
 10 Q Assuming that these standards don't exist, do  
 11 you think it would be a good idea for the State to  
 12 establish clear, concise and workable standards with  
 13 respect to issues of repair, painting, condition of  
 14 roofs and the frequency of inspection?  
 15 MS. DAVIS: Assumes facts not in evidence,  
 16 incomplete hypothetical.  
 17 BY MR. ELIASBERG:  
 18 Q I want you to make that assumption.  
 19 Assuming that those standards don't exist, do  
 20 you think it would be a good idea for the State to  
 21 develop those standards?  
 22 MS. DAVIS: Same objection. Calls for speculation,  
 23 vague and ambiguous.  
 24 THE WITNESS: I have believed that it's important  
 25 for the State to encourage school districts to maintain

1 their buildings, for reasons I articulated a few minutes  
2 ago, that sometimes there's a struggle at the  
3 superintendent/board level on do we maintain buildings  
4 or do we pay employees higher salaries, and I have a  
5 belief from my time in education that the maintenance of  
6 buildings was forgone because of collective bargaining  
7 reasons. And so having a standard that is identified by  
8 practitioners and others makes sense to me.

9 BY MR. ELIASBERG:

10 Q If you could just turn to the next page and  
11 look at Number 3 there, cleanli- -- which says,  
12 "Cleanliness, address litter and graffiti, assure clean  
13 and adequate food preparation and serving facilities."

14 Do you see that?

15 A Yes.

16 Q Are you aware of whether there are current  
17 State standards or regulations that governs the  
18 cleanliness of school facilities?

19 MS. DAVIS: Vague and ambiguous.

20 THE WITNESS: With regard to food preparation and  
21 serving facilities, there are both Federal and State  
22 standards that exist.

23 BY MR. ELIASBERG:

24 Q Okay. And where are -- where would the State  
25 standards be found? Are those regulation or code

1 would, where it says, "Safety, address fire hazards,  
2 emergency telephone accessibility, air quality and other  
3 health issues."

4 A Yes.

5 Q Do you see that?

6 Do you know if there are currently any State  
7 regulations or standards -- I'm sorry, either State code  
8 sections or regulations that govern air quality?

9 A No.

10 Q Assuming that those standards don't exist, do  
11 you think that it would be a good idea for the State to  
12 promulgate clear, concise and workable standards  
13 concerning air quality?

14 MS. DAVIS: Incomplete hypothetical, assumes facts  
15 not in evidence.

16 THE WITNESS: Whether it's dealing directly with  
17 air quality or it's dealing with overall maintenance,  
18 the -- I think it's an area of concern, and that there  
19 be something that guides school districts, how often do  
20 you maintain your air conditioning systems.

21 BY MR. ELIASBERG:

22 Q Why is it an area of concern?

23 A The reasons we discussed yesterday. Students  
24 are compelled to be in school. They're breathing air in  
25 the classroom. Try to make sure that it's air that's

1 sections?

2 A I can't tell you. They may reference the  
3 Federal standards. But they're typically found in a --  
4 at school district level, in a school district policy.  
5 I can't remember if the Feds actually required the --  
6 that they be referenced in a local policy, but it may be  
7 that they do. Federal programs for free and reduced  
8 lunch provide that requirement.

9 Q Do you have an understanding of whether there's  
10 currently a State standard or regulation that governs  
11 litter and graffiti in school facilities?

12 A No.

13 Q You don't know?

14 A I don't know.

15 Q Okay. Assuming that that standard doesn't  
16 exist, do you think it would be a good idea for the  
17 State to promulgate such a standard?

18 A A workable standard, as we've said before, yes.

19 Q And as part of that process, would you  
20 recommend that it be done through something like the  
21 implementation committee?

22 A Yes.

23 MS. DAVIS: Vague and ambiguous.

24 BY MR. ELIASBERG:

25 Q Okay. Can you look down at Number 4, if you

1 good air that gets exhausted from the classroom, and if  
2 there are any other issues having to do with the -- how  
3 the air is supplied, that those would be addressed.

4 Q Okay. And in your opinion, would it be a good  
5 idea that that be -- that -- whether it's through  
6 addressing maintenance or through directly making  
7 reference to air quality, that there should be a  
8 regulation or statute that's mandatory?

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

11 THE WITNESS: I think the workable standards --  
12 which is the term that we've talked about. The way that  
13 I would see it happening is that there would be some  
14 statutory language, upon which regulations would be  
15 developed, where locals and State-level officials come  
16 together as to what it is we do to provide this, and  
17 then a period of time to be able to implement it. So  
18 the answer is yes, with that construct.

19 BY MR. ELIASBERG:

20 Q And can you look down at -- well, actually,  
21 again at Number 4, when you talk about other health  
22 issues, speaking not -- during the process of -- well,  
23 let me ask you this.

24 Do you personally -- taking this out of the  
25 context of the master plan, I'm asking for your

1 particular beliefs, not what someone else may have  
2 expressed at that -- in the master plan group.

3 Do you think that there are other health issues  
4 for which there should be standards or regulations other  
5 than fire hazards, telephone accessibility and air  
6 quality, which are listed here?

7 MS. DAVIS: Vague and ambiguous. And Peter, we're  
8 getting so far afield from Dr. Duffy's expert report in  
9 this case. I mean, in the -- it's noon on Day 2, and we  
10 haven't even touched on his expert opinions as reported  
11 in his report.

12 MR. ELIASBERG: Lynne, if you think his expert  
13 opinions don't touch on the master plan report --

14 MS. DAVIS: No, I'm just -- I'm saying, you know,  
15 we're -- I just urge you to move on and move on quickly.

16 THE WITNESS: I don't know what --

17 MR. ELIASBERG: Dr. Duffy, this is part of the  
18 deposition process, but I want to say one thing on the  
19 record.

20 You or your colleagues spent 13 days deposing  
21 Jeanne Oakes.

22 MS. DAVIS: That's irrelevant.

23 MR. ELIASBERG: It's not appropriate.

24 MS. DAVIS: Jeanne Oakes had three reports.

25 MR. ELIASBERG: Jeanne Oakes had three reports.

1 Then it strikes me I should have four to five days with  
2 Dr. Duffy, based on that schedule.

3 MS. DAVIS: Peter, this --

4 MR. ELIASBERG: I'm doing fine, and I don't have to  
5 justify myself. I'm going to continue to ask questions  
6 of Dr. Duffy. He's been very respectful and responsive  
7 in answering, and I think we can just continue on that  
8 basis.

9 MS. DAVIS: I think that's fine, but it's  
10 inappropriate to comment on Jeanne Oakes' deposition,  
11 and I'm able to make a comment as well.

12 THE WITNESS: I can't recall the other health  
13 issues, and I don't know what they would be. At this  
14 time I can't recall the other health issues.

15 BY MR. ELIASBERG:

16 Q Dr. Duffy, is it your -- are you aware of any  
17 standard -- current standard or regulation that governs  
18 whether windows at schools are operable, safe and clean?

19 A No.

20 Q Assuming that such a standard or -- I'm sorry,  
21 such a regulation or statute doesn't exist, do you think  
22 it would be a good idea to promulgate them, with the  
23 caveats that you previously stated, it be done through  
24 an appropriate procedure and that the standards be clear  
25 and workable?

1 MS. DAVIS: Incomplete hypothetical.

2 THE WITNESS: Yes.

3 BY MR. ELIASBERG:

4 Q Dr. Duffy, are you aware of whether there are  
5 any current regulations or standards that govern whether  
6 restrooms be operable, safe and clean?

7 A No.

8 Q I'm asking you to assume here that such a  
9 standard doesn't exist, with the caveats that I've  
10 previously given you, that the standards be drawn up  
11 through a procedure like the implementation committee.

12 Do you think it would be a good idea for the  
13 State to develop standards concerning restrooms?

14 MS. DAVIS: Incomplete hypothetical, vague and  
15 ambiguous.

16 THE WITNESS: Yes, in the process we talked about.

17 BY MR. ELIASBERG:

18 Q Okay. In an effort to speed that up, with all  
19 of the same assumptions, do you think that it would be a  
20 good idea for the State to develop standards with  
21 respect to drinking water fountains, so that fountains  
22 are operable, safe and clean?

23 A Yes.

24 MS. DAVIS: Same objections.

25 BY MR. ELIASBERG:

1 Q And why is that?

2 MS. DAVIS: Vague and ambiguous.

3 THE WITNESS: For the drinking water only?

4 BY MR. ELIASBERG:

5 Q Yeah. Actually, no, let's -- yeah, let's do it  
6 for drinking water only.

7 A Students, even adults, depending upon where you  
8 are in California, may want to consume a whole lot of  
9 water, because we all need water. If students are on a  
10 campus and they don't have access to water through some  
11 other means, I think it's important that children be  
12 able to drink water, you know, as we do.

13 It's -- you know, it's a mainstay for living,  
14 and if you're at school for six hours and you're playing  
15 and you get warm and you get thirsty or you're not  
16 feeling good, having access to water is, you know -- at  
17 a public school, as in any other public building, is  
18 important. But we ask students to be at school, so we  
19 should be able to make sure that they have some water.

20 Q I believe earlier, when we were first  
21 introducing the subject of the State standards -- and  
22 then you said at least some standards existed through  
23 the California Department of Education; is that correct?

24 A Yes.

25 Q And I believe you also said that there were

1 districts that -- however, that have had difficulty  
2 recognizing and maintaining their schools in accordance  
3 with those standards; is that correct?

4 A Yes, I believe I said something that was fairly  
5 close to what you said, yes.

6 Q Okay. What districts are those?

7 A Well, I mentioned one earlier; Compton is one.  
8 Having read the original documents filed in the Godinez  
9 lawsuit, L.A. Unified appeared to be another. I can't  
10 tell you specifically other districts where I could  
11 focus on either what I've experienced through  
12 discussions with people like Mr. Brooks or reading court  
13 documents, which is what I was -- I assumed were valid  
14 because of what they identified school by school. So  
15 those two at least.

16 Q Were there other districts besides Compton that  
17 Mr. Brooks identified?

18 A I don't recall another district, no.

19 Q Have you read any of the reports put out by  
20 FCMAT with respect to Oakland?

21 A No.

22 Q Have you ever visited any of the schools in  
23 Ravenswood?

24 A No.

25 Q Have you ever visited any of the schools in

1 School District or any schools in San Francisco Unified  
2 School District?

3 MS. DAVIS: Same objection.

4 THE WITNESS: I represented San Francisco Unified  
5 for a short period of time. Met with their facilities  
6 people and was in one building there that was being used  
7 as the district office but had been either a high  
8 school -- must have been a high school. Could have been  
9 another kind of school, but was rather large.

10 What I recall is scaffolding and other  
11 buttresses to allow access for cars into a portion of  
12 the building into an interior courtyard the first time I  
13 arrived there and just noting the conditions of the --  
14 this particular building, I understood why it wasn't  
15 being used as a school anymore but, rather, as a  
16 district office or a district support facility.

17 And I can't remember the details of the issues  
18 that we talked about. They were mainly how to get the  
19 new construction money -- no, I don't remember anything  
20 more than that particular building I was in, and I was  
21 in that more than one time.

22 BY MR. ELIASBERG:

23 Q Okay. Just so -- I want to make sure that I've  
24 got your testimony correct.

25 Did you -- other than that building, which I

1 west Contra Costa County?

2 A No.

3 Q Do you have any basis to evaluate the  
4 conditions of the facilities in Ravenswood?

5 MS. DAVIS: Vague and ambiguous.

6 THE WITNESS: No.

7 BY MR. ELIASBERG:

8 Q Any basis to evaluate the condition of the  
9 facilities in west Contra Costa?

10 MS. DAVIS: Same objections.

11 THE WITNESS: No.

12 BY MR. ELIASBERG:

13 Q Any basis to evaluate the condition of the  
14 facilities in Oakland?

15 MS. DAVIS: Same objection.

16 THE WITNESS: The only reference point that I would  
17 have for Oakland is the documents that I read as an  
18 expert witness in the two cases that I identified for  
19 you that demonstrated a number of schools seeking  
20 modernization funds. I can't recall specific  
21 information, though, from those documents relative to  
22 Oakland and your question.

23 BY MR. ELIASBERG:

24 Q Do you have any basis to evaluate the  
25 facilities conditions in the San Francisco Unified

1 understand had been a school but was not currently being  
2 used as a school, did you visit any other buildings that  
3 were currently being used as schools in San Francisco?

4 A I visited two other schools that I can recall.

5 One was the Tenderloin School, which was in very good  
6 repair, and I was very much impressed with what was  
7 happening there.

8 Q What was the other school?

9 A I'm trying to think of the name of the school.  
10 Tenderloin School was a school built on a very, very  
11 small parcel of land. This other school was also built  
12 on a very small parcel of land, multi-storied. But it  
13 was also in good repair. I was impressed with what I  
14 saw happening at both those schools. I can't remember  
15 the other school.

16 Q Did you review any documents in the district  
17 office that gave you a basis to evaluate the conditions  
18 of any of the other schools besides the two that you  
19 visited?

20 MS. DAVIS: Vague and ambiguous.

21 THE WITNESS: No. They were verbal reports. No.

22 BY MR. ELIASBERG:

23 Q Have you ever read a report by Dr. Gary McCord  
24 concerning the San Francisco Unified School District?

25 A No. I haven't read it, no.



1 Q Do you know what -- do you know anything about  
2 it?

3 A Only from reading Mr. Corley's statements.

4 Q Did you make any attempt to verify whether  
5 Mr. Corley's statement about the report were accurate  
6 statements?

7 A No.

8 MS. DAVIS: Vague and ambiguous.

9 THE WITNESS: No.

10 BY MR. ELIASBERG:

11 Q And did you make any attempt to verify whether  
12 the statements -- my first question really concerned  
13 whether Mr. Corley had properly characterized what was  
14 in the report.

15 My next question is: Did you make any efforts  
16 to see whether the statements that Mr. McCord had made  
17 or that Mr. Corley characterized were accurate  
18 representations of the conditions in schools in San  
19 Francisco?

20 MS. DAVIS: Vague and ambiguous.

21 THE WITNESS: No to both.

22 MR. ELIASBERG: This is a good time to break for  
23 lunch. About 12:15.

24 MS. DAVIS: Okay.

25 (Lunch recess taken from 12:14 p.m. to

1 reasonable period of time, that you haven't gone to  
2 those schools and looked at the schools in that school  
3 district?

4 A Yes.

5 Q Okay. That's all.

6 Oh, during the break did you have any  
7 discussions about this case with your counsel?

8 A We discussed olive oil and transportation,  
9 basically.

10 Q And what is the relationship between olive oil  
11 and this case?

12 MS. DAVIS: There may be one. You never know.

13 BY MR. ELIASBERG:

14 Q If you could turn to Page 45 of the document  
15 that's Duffy 2. And if you could look at the box  
16 entitled "Recommendation 5.5."

17 Do you see that?

18 A Yes.

19 Q If you would look up when you've had a chance  
20 to look at that.

21 A I'm sorry. Yes.

22 Q No, you can answer looking down. I just want  
23 to understand that you've had the chance of looking at  
24 it --

25 A Yes.

1 1:20 p.m.)

2 BY MR. ELIASBERG:

3 Q You understand you're still under oath,  
4 Dr. Duffy?

5 A Even with my tie unfastened?

6 Q Even with your tie unfastened. Yeah, I know.  
7 That doesn't change the rules, but I have to ask that as  
8 a matter of course.

9 Briefly, before the break, I had asked you  
10 about your basis of knowledge for evaluating the  
11 conditions in certain schools or school districts, and I  
12 just want to ask you about a couple more.

13 Do you have any basis of knowledge for  
14 evaluating the conditions of schools -- of any schools  
15 in the Lynwood Unified School District?

16 MS. DAVIS: Vague and ambiguous.

17 THE WITNESS: No.

18 BY MR. ELIASBERG:

19 Q How about the Inglewood Unified School  
20 District?

21 MS. DAVIS: Same objection.

22 THE WITNESS: No.

23 BY MR. ELIASBERG:

24 Q When I ask that question and if your answer is  
25 no, is it fair to assume that you haven't -- within any

1 Q -- and feel comfortable talking about what  
2 we're talking about.

3 Am I correct in understanding that the  
4 recommendation here, which talks about preparing and  
5 adopting a five-year facilities plan, is part of what  
6 you were talking about before that was set forth in the  
7 goal on Page 44; specifically, the assurance that  
8 standards would be met through appropriate monitoring,  
9 assistance and intervention?

10 A Yes.

11 MS. DAVIS: We're talking about Recommendation  
12 5.5?

13 MR. ELIASBERG: 5.5, right.

14 Q And you see where it says that -- "adopt a  
15 five-year facilities plan to meet or exceed State  
16 facilities standards"?

17 A Yes.

18 Q And can you just briefly explain to me what you  
19 understand a five-year facilities plan to be?

20 MS. DAVIS: I'm just going to say calls for  
21 speculation along the same lines as the other  
22 recommendation.

23 THE WITNESS: What I recall the intent of this to  
24 be was an opportunity for school districts to understand  
25 that there are State standards that have been adopted in

1 the fashion that we've discussed, participants at the  
2 local level, State level coming into agreement that  
3 these are reasonable and workable standards, that there  
4 be a period of time when districts would know that they  
5 can use those standards to compare the conditions in  
6 their schools and their facilities.

7 And for them, at some line of demarcation, to  
8 say, this is the beginning of the first year of the five  
9 years, where you're expected to make efforts to comply  
10 with those standards by the end of the fifth year, and  
11 in the event that there is not, that there be reason for  
12 it that is demonstrated before a board of education,  
13 findings and information and that a plan is put in place  
14 to -- that may exceed the five years, but that there is  
15 in fact a plan in place, so that at that demarcation  
16 line, at whatever time in the future, there would be an  
17 understanding that this is what we want to achieve in  
18 schools in California, noting that there are different  
19 conditions in different schools, different resources in  
20 different schools, but this is, by our common  
21 understanding, the common standards that we want to  
22 achieve.

23 BY MR. ELIASBERG:

24 Q I'm waiting, because I wasn't sure if there was  
25 a last finishing thing, but are you done with your

1 lunch, that under AB 1200 there is the requirement for  
2 public review, where the district makes the comparisons,  
3 and believing that that's something that has worked,  
4 that that could be applied here.

5 So the kind of public review would be  
6 notification on the standard board agenda that there  
7 would be such public review, that it would be an item on  
8 the board agenda for consideration and review by the  
9 staff and the board and then in adoption by the board.

10 So that the public would have notice, as it  
11 does with the AB 1200 requirements, that the district is  
12 considering something that may be of importance to them  
13 and that it becomes part of the record of that board  
14 meeting and the minutes of the board of education for  
15 that date or dates, if it takes more than one meeting.

16 BY MR. ELIASBERG:

17 Q And why do you think that the adoption of  
18 Recommendation 5.5, with -- as the way we've discussed  
19 it, with all the statements you made about how it would  
20 be done and the period of time it would be done -- why  
21 do you think that would be a good idea?

22 A I think it's a good idea because districts that  
23 are already doing this would be able to demonstrate that  
24 they're accomplishing what needs to be accomplished to  
25 make sure that schools are in good conditions. The

1 answer?

2 A Yes.

3 Q Okay. And do you agree with that understanding  
4 of Recommendation 5.5? Do you agree with that? Do you  
5 think that is a good recommendation?

6 A I believe it's a good recommendation, with the  
7 caveats that we discussed earlier.

8 Q Okay. And do you know, did Mr. Brooks at any  
9 time express an opinion as to that recommendation?

10 MS. DAVIS: Vague and ambiguous.

11 THE WITNESS: I recall his being part of the  
12 discussions, and I believe he was in support of this.

13 BY MR. ELIASBERG:

14 Q Just to make sure I'm clear, do you -- is it  
15 fair to assume that you never heard him express an  
16 objection to Recommendation 5.5; is that right?

17 A No. Don't recall any objection.

18 Q Just a quick question about one other -- couple  
19 of words in that recommendation. You talk about  
20 appropriate public review.

21 What is your understanding of what appropriate  
22 public review would be?

23 MS. DAVIS: Calls for speculation.

24 THE WITNESS: Recalling what I do from those  
25 discussions and also what I told you before we broke for

1 districts that are doing it but may have missed  
2 something would have an opportunity to learn. Districts  
3 that maybe are in some middle ground would have the  
4 ability to identify, not only the work that needs to be  
5 done, but the resources that would be necessary to  
6 accomplish that work and the time frames.

7 And if districts are in a condition such as was  
8 described in Compton in our discussions, that there  
9 would be a standard that that district could use that  
10 everyone in that district could understand and that they  
11 could go through the process that we just discussed, and  
12 that anybody on the outside -- and I mean outside of the  
13 district -- that had an interest, because that district  
14 was under State review and guidance -- anybody on the  
15 outside would be able to say, we understand what's  
16 happening there, because we know what these common  
17 standards are.

18 So that whatever -- if there's a continuum of  
19 districts that are in -- have schools in excellent  
20 condition to districts that have schools in very poor  
21 condition, that they would all be able to use these  
22 standards to continue the excellence or move toward the  
23 excellence, to continue doing a very good job or move  
24 toward doing a very good job, whatever we want to call  
25 those qualifying words, but to move them along the

1 continuum over a period of time with the recognition of  
2 what those objectives are.

3 And that they wouldn't -- that they wouldn't  
4 be -- we were talking about high achieving and those  
5 kinds of things. That they wouldn't be in those areas  
6 that are maybe real huge stretches for districts,  
7 because there's a comparison of districts that may have  
8 had an infusion of resources from, you know, a company  
9 that decided to offer computers or the Amgen situation I  
10 talked about yesterday. Those are not for that kind of  
11 consideration. It's basically adequate school  
12 facilities, safe and a place that we would want our  
13 children to go to school.

14 BY MR. ELIASBERG:

15 Q And do you believe that the adoption of this  
16 recommendation would further that goal of making sure  
17 that all facilities were adequate and safe places for  
18 our kids to go?

19 A Yes, I believe it would further that goal.

20 Q You previously stated -- used the word  
21 "continuum," a continuum of school facilities from the  
22 excellent to -- I believe you said something along the  
23 lines of very poor. Is that --

24 A Yes.

25 Q Do you believe that continuum exists in

1 A About 1976, '77 period of time.

2 Q And what about Carver led you to conclude that  
3 it was in very poor condition?

4 A Working in that school for a period of about  
5 six weeks on a daily basis.

6 Q And what particular things did you see that led  
7 you to characterize it being in very poor condition?

8 A It was dark. I don't know whether it was lack  
9 of lights or windows, I can't recall, or clean windows.  
10 It wasn't in particularly good repair. There was  
11 security issues with some students roaming about the  
12 halls and coming in classrooms and seems the doors  
13 didn't lock. So I had to be part instructor and  
14 coordinator and also security person. Just not a  
15 pleasant place to be, at least at that period in time.

16 Q Fair to say you wouldn't have wanted to send  
17 any of your children to Carver?

18 MS. DAVIS: Vague and ambiguous.

19 THE WITNESS: If they were with me when we walked  
20 through the door, I would have been okay, because I had  
21 to be there with students, and I wanted to make sure  
22 they were okay. So if I was there, I would have been  
23 fine with it. But if they were to go there by  
24 themselves, I would have had concerns.

25 BY MR. ELIASBERG:

1 California today?

2 A I believe it exists today.

3 Q What's your basis for that belief?

4 A Maybe 30 years of public education, having been  
5 in schools, not even just recently, but you know, in the  
6 past, in the early years of my work in schools, that  
7 sometimes schools were not in good condition. Just  
8 things that I've read, hearing from people like  
9 Mr. Brooks. That's probably it.

10 Q Just try to get a little bit more detail on  
11 that.

12 When you said schools that you've seen, I  
13 understand that you said that over -- maybe over a  
14 relatively long period of time.

15 Do you have particular examples or specific  
16 schools that you're thinking of that you've seen that  
17 were in very poor condition?

18 MS. DAVIS: Vague and ambiguous.

19 THE WITNESS: Yes, I can think of one I could  
20 articulate. Not probably very far from where we are.

21 BY MR. ELIASBERG:

22 Q Where was that?

23 A It was Carver Junior High School.

24 Q And when did you go to -- or when did you see  
25 Carver?

1 Q What about the school led you to believe that  
2 the school was not in particularly good repair? I'm  
3 looking for specifics.

4 A Well, the broken door locks, the toilet  
5 facilities -- I think they were working, but they didn't  
6 necessarily -- what I'm recalling is that they were old  
7 and not attractive. You know, it wasn't an attractive,  
8 appealing place.

9 Q Have you at any time since 1976 -- well,  
10 what -- I'm sorry, strike the beginning of that.

11 What district is -- or was Carver Junior High  
12 School in?

13 A L.A. Unified.

14 Q Have you made any effort since 1976 to see  
15 whether the conditions are similar or have changed?

16 A No.

17 MS. DAVIS: Vague and ambiguous.

18 THE WITNESS: No, I've had no opportunity to go  
19 back there.

20 BY MR. ELIASBERG:

21 Q Are there other -- you were talking about  
22 schools that you've seen that you thought were in poor  
23 condition.

24 Are there any others that you can think of?

25 A I described Moorpark High School, the original

1 Moorpark High School to you, I think, at some length  
2 yesterday.

3 Q And we don't need to --

4 A Yeah, we don't need to go into that one.

5 Q -- go into that again.

6 Any others?

7 A That I've personally seen and visited?

8 Q (No audible response)

9 A Building in -- I have to think.

10 I'm having trouble remembering if I was in this  
11 building or if it was described to me, because I was on  
12 the campus but I don't know if I actually went in the  
13 building. Maybe I didn't actually go into the  
14 building. But it was a relocatable building in Ocean  
15 View School District that was very old and had a floor  
16 that broke through.

17 Q I think I understand what you mean, but just to  
18 be sure, what do you mean by broke through?

19 A Somebody fell through the floor.

20 Q That person was injured?

21 A The person might have had minor injuries,  
22 maybe, of scrapes and a couple splinters. The person  
23 was very heavy, and this was really quite old. That was  
24 replaced, and it was replaced pretty quickly. Actually  
25 was not being used for students at the time, so they --

1 district.

2 I know more that I can identify that I've read,  
3 but there seems to be a common understanding that there  
4 seems to be at least some districts in California that  
5 don't necessarily have facilities that are up to an  
6 acceptable standard.

7 Q And when you say a common understanding, among  
8 whom? I know you can't identify all 6 million people in  
9 the state or whatever, but when you said there was a  
10 common understanding, who are the people that you  
11 believe share that common understanding?

12 A Particular people? I don't know that I could  
13 identify particular individuals, but having attended  
14 numerous State Allocation Board meetings over the years,  
15 you will hear districts requesting assistance from time  
16 to time, where they will identify facilities that need  
17 to be replaced. There are appeals for replacement of  
18 facilities under the facility hardship program. I was  
19 involved in such a replacement just recently because of  
20 termite infestation in a series of school buildings.

21 Q I want to come back to that in a second, but  
22 can you think of any specific districts that you  
23 remember coming to SAB meetings and asking for hardship  
24 funds in order to replace or do significant work on  
25 school buildings?

1 there was a meeting in there of adults, and one adult  
2 actually was kind of inspecting the building and looking  
3 at the condition and fell through the floor.

4 Q I think you also said that -- when we were  
5 talking about, just to put it in context, the  
6 continuum --

7 A Yes.

8 Q -- and I think you said that you believed that  
9 there were schools in either -- or have been schools in  
10 California that have been in very poor condition, and  
11 one of the bases for that is that you read things?

12 A Yes.

13 Q Any specific things?

14 A Well, the Godinez documents, I mentioned those.

15 Q Hmm-hmm.

16 A The report I mentioned yesterday that was in  
17 the L.A. Times on Concept 6 relative to the L.A. Unified  
18 School District.

19 During the -- you were asking me about San  
20 Francisco Unified and personal experience there. Actual  
21 physical contact with the facilities was maybe limited,  
22 but the review being done by the district by Arthur  
23 Andersen, and Arthur Andersen called me and interviewed  
24 me at some length and they referenced facilities that  
25 they understood or believed to be in disrepair in that

1 A Well, I asked for them for Moorpark High School  
2 and converted that into an elementary school.

3 Q Just -- I appreciate that --

4 A Others.

5 Q -- I'm basically look for --

6 A Others. I can't think of others, I'm sorry. I  
7 can't think of others specifically. Just over the years  
8 I've heard conditions expressed and requests for  
9 assistance from the Allocation Board.

10 Q And what was the -- and this issue with the  
11 building or buildings with termite infestation, what is  
12 that?

13 A Filmore Unified.

14 Q And was that an elementary school or middle  
15 school, high school?

16 A It was part of a high school.

17 Q And do you know how long the building had been  
18 infested with termites?

19 A I don't know how long it had been infested with  
20 termites. The district had been dealing with,  
21 apparently, termites in the area and then really started  
22 taking apart the building. So about last July they  
23 discovered what they thought was significant damage. I  
24 suggested to them that they bring in a structural  
25 engineer. They did. The buildings are now gone.

1 Q And were they able to actually get moneys from  
2 the facilities hardship program?

3 A Yes, they were.

4 Q Are you aware as to whether, in the last five  
5 years, there have ever been times when there has not  
6 been sufficient funds in the facilities hardship program  
7 to fund all the applications that have been approved?

8 MS. DAVIS: Vague and ambiguous.

9 THE WITNESS: To my recollection, there has been  
10 facility hardship funding available, going back through  
11 Prop 1A dollars into -- I think the program has had some  
12 changes and has actually improved. If there was new  
13 construction money available, a district with such  
14 facility would typically be able to have it replaced or  
15 repaired. If there wasn't new construction money  
16 available that would not necessarily stop the district  
17 if they could do some financing and have the State  
18 basically reimburse them.

19 But there was money available. In fact, the 1A  
20 money was still available when the new bond came about.  
21 That was probably the only new construction money  
22 available. Prop 1A had a specific amount identified for  
23 facility hardship, understand. Under the current bond  
24 it's not specifically identified, but new construction  
25 money is there.

1 MS. DAVIS: Vague and ambiguous.

2 THE WITNESS: Specifically about school facilities  
3 that were not in good condition, such as my  
4 conversations with Mr. Brooks?

5 BY MR. ELIASBERG:

6 Q Sum or substance, where you gained information  
7 that would allow you to form an opinion about the  
8 condition of school buildings.

9 MS. DAVIS: Same objection.

10 THE WITNESS: Well, I had a conversation with  
11 Mr. Hancock that I initiated about the Filmore issue, to  
12 make sure he was aware of it. And that --

13 BY MR. ELIASBERG:

14 Q Any other -- I mean, I appreciate that.

15 A Yeah. Not specifically that I can recall, no.

16 Q Okay. If you could look down just two  
17 paragraphs below the recommendation box, the paragraph  
18 that begins, "The initial five-year plan must be  
19 designed to ameliorate all deficiencies within the first  
20 five years, with the recognition that appropriate State  
21 funding support will be in place."

22 A Yes.

23 Q What is your understanding of the phrase "the  
24 recognition that appropriate State funding support will  
25 be in place"?

1 BY MR. ELIASBERG:

2 Q And again, I don't want you to -- not that I  
3 don't enjoy it, but I don't need you to repeat things  
4 that we've already --

5 A Okay.

6 Q -- talked about, but I think that you said the  
7 third basis that you had for your opinion that there  
8 were facilities in California that were in very poor  
9 condition was things that you heard from Mr. Brooks.

10 Anything beyond what we've already talked about  
11 about what he told you about the conditions in Compton?

12 A (No audible response)

13 Q This would be at any time, not just in context  
14 of the master plan discussion.

15 A Any discussion with him at any time.

16 No.

17 Q Do you ever remember -- well, do you know who  
18 Bruce Hancock is?

19 A Yes, I do.

20 Q And have you spoken to Bruce Hancock on  
21 occasions?

22 A Yes.

23 Q Do you ever remember Mr. Hancock talking with  
24 you about school facilities that sounded to you at least  
25 were not in good condition?

1 MS. DAVIS: Calls for speculation.

2 THE WITNESS: Well, I may be speculating about what  
3 others were thinking, but a concern that everybody had  
4 about a five-year plan, especially if the amelioration  
5 of deficiencies was -- in that five years was a  
6 requirement of law, was to have law and regulation that  
7 was put in place, such as we've discussed, that having  
8 sufficient State funds available because of  
9 modernization issues and because of deferred maintenance  
10 issues or even the general fund being funded in such a  
11 way that, you know, districts weren't having to roll  
12 back expenditures, that those kinds of things were key  
13 to this.

14 So part of this had to do with another part of  
15 this recommendation that you'll probably get to in a few  
16 minutes that -- I mean, that came out -- not this  
17 recommendation but another recommendation that had to do  
18 with funding. So there's a linkage here of a  
19 recognition of fund levels and meeting the standards  
20 that we talked about. And again, that's the new  
21 construction, modernization, deferred maintenance and  
22 potentially others. But clearly, those programs.

23 BY MR. ELIASBERG:

24 Q Okay. And there's a lot in this report,  
25 obviously. But -- and I will talk about the finance

1 piece. You read my mind, as it were.  
 2 But just to understand generally, is it your  
 3 position that if you are -- if the State were to put in  
 4 place a program that required districts to have these  
 5 five-year plans and then put in place a plan to meet  
 6 those five-year plans and to meet the standards, that it  
 7 was important that funding be available for them to do  
 8 so?

9 A Yes.

10 Q Okay. And why is that?

11 A The State from time to time -- Feds do it  
 12 too -- will mandate something. I have a background in  
 13 special education. There have been many mandates in  
 14 special education that have never been funded. So I was  
 15 compelled as a teacher and as an administrator, as a  
 16 superintendent, to provide services and achieve  
 17 objectives for students, and yet the compulsion of law  
 18 was not supported by resources.

19 So educators are sensitive to that. Being a  
 20 resource allocator for many years, I was particularly  
 21 sensitive to that, and I'm sure others were. So the  
 22 idea is that there needs to be some kind of linkage  
 23 between a standard that the State has and the State  
 24 having resources or structures being there for the  
 25 district to rely on that are resources.

1 So during the period of time that we were in  
 2 the process of putting this together, we had a -- I  
 3 forget what the predecessor to Prop 39 was, but we had a  
 4 failure and then we had a success of the local bond  
 5 being reduced from two-thirds to 55 percent. So that  
 6 resource -- available resource, potentially-available  
 7 resource, is something that at least I saw with this,  
 8 because it's hard to get a two-thirds vote to support  
 9 something, but that the State's recognition that it  
 10 would need to, in my mind, continue to have support for  
 11 schools by the general obligation bonds that it has and  
 12 potentially going further -- you know, in the finance  
 13 part of this you read about a 55 percent vote for parcel  
 14 taxes, which can be used for a variety of things beyond  
 15 bonds and other kinds of taxes.

16 But a linkage and a message to the Legislature,  
 17 if we set standards and we all agree to those standards,  
 18 you can't meet those standards without having a  
 19 resource -- I'm belaboring it, I think, but without a  
 20 resource that would allow you to meet it -- and maybe  
 21 you can't meet it all in a given year, but over five  
 22 years and other years you do. It's not the deferred  
 23 maintenance program all over again, which is a good  
 24 program, but it's another program that we all agree  
 25 upon, because they're standards and the program of

1 funding comes from local, State funding that we can all  
 2 work toward achieving, and some of it, I think, is here  
 3 with us today in California.

4 Q If you could turn to the next page and look at  
 5 Recommendation 5.6.

6 A (Witness reviews documents.)

7 Okay.

8 Q Am I correct in understanding that what's set  
 9 forth in Recommendation 5.6 is basically what you and I  
 10 talked about earlier with respect to having a process  
 11 where districts would have to draw up five-year plans,  
 12 have public review, at some point in the future provide  
 13 those plans to the County office for review and  
 14 approval, that that is -- that we talked about earlier  
 15 is, in sum and substance, the same as Recommendation  
 16 5.6?

17 A Yes.

18 Q And is it fair to say that you agree with or  
 19 think that Recommendation 5.6 is a good idea, that the  
 20 implementation would be a good idea?

21 MS. DAVIS: Vague and ambiguous.

22 THE WITNESS: I supported the concept that's  
 23 identified here. As I said to you earlier, having been  
 24 a practitioner where others may have not appeared to  
 25 have the same level of expertise and yet want to compel,

1 for whatever reason, be they practitioners in schools or  
 2 maybe sometimes there are laypeople that have other  
 3 kinds of experience, identifying the technical  
 4 assistance is important.

5 That being able to say, we have certain  
 6 expectations and we'll support you in developing  
 7 competencies, having information, having personnel  
 8 available, not in a top-down fashion but in the fashion  
 9 of let me be supportive and help you and assist you.  
 10 And if there are difficulties, that assistance may  
 11 increase.

12 BY MR. ELIASBERG:

13 Q Okay. I think I understand it, but let me make  
 14 sure I do, because you used a couple of phrases here.

15 When you say not a top-down fashion, so I'm  
 16 sure I understand what you mean, what do you mean by  
 17 non -- what do you mean by a top-down fashion?

18 A Having a State agent who's never visited a  
 19 school before come in and begin to identify deficiencies  
 20 and say, you need to start fixing these things, is not  
 21 the way to get things done in a school district. So  
 22 that's not what I would have ever agreed to.

23 Having a State -- a trained State agency person  
 24 who may be highly experienced and developed competencies  
 25 in making assessments who would work in a collaborative

1 way with a school district to meet all of the goals it  
2 has -- because facilities are not simply -- you and I  
3 know that -- their only goal -- to be able to come in  
4 and assist is what I was referring to there.

5 Q I think you also said -- and I think I  
6 understand exactly what you mean by assistance and not  
7 top down.

8 I think you said that at some point that this  
9 review at this intermediate level agency might go beyond  
10 just assistance; is that correct?

11 A If there is consistent failure and, let's say,  
12 unsafe conditions were to exist and the technical  
13 assistance and the offer of expertise, all that is not  
14 moving it along, I think being progressive with the  
15 assistance, becoming more assertive, makes sense.

16 Q Okay. Outside the context of the master  
17 plan -- just asking for your opinion as Dr. Tom Duffy.

18 What steps do you think would be -- might be  
19 warranted beyond technical assistance? In appropriate  
20 circumstances.

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

23 THE WITNESS: Can you give me a context?

24 BY MR. ELIASBERG:

25 Q Well, I'm going to try to use one of your

1 Now, the budget does not get approved, the  
2 superintendent cannot be paid and other things can't  
3 happen in the school district. So something moves the  
4 district along if they're that recalcitrant. And if  
5 there continues to be other failures, that may be  
6 something that goes from year to year.

7 If the situation would warrant further action,  
8 that may include the County saying, you know, we don't  
9 have enough personnel to take care of this, because  
10 we're dealing with 25 other districts in the County, or  
11 however many there are. We may need certain assistance  
12 from a State agency.

13 And I don't know what that would be, but the  
14 continuum of the district that's in good repair to not  
15 very good repair can also have another continuum of  
16 intervention, no intervention and to some other level of  
17 intervention where, potentially, if it was necessary,  
18 that conditions were such, that somebody could be  
19 authorized to come in and basically ignore bidding  
20 statutes and everything else to say, let's take care of  
21 this business and get it done and get it done soon. If  
22 in the end the district is really being that  
23 recalcitrant.

24 BY MR. ELIASBERG:

25 Q Is it fair to say that you believe that County

1 contexts.

2 I think you talked about perhaps a repeated  
3 failure to live up to the --

4 A Agreed-upon standards?

5 Q Agreed-upon standards, and the plans that you  
6 said that the districts stated that it had to meet those  
7 standards in a five-year plan.

8 Under that context, what do you think might be  
9 appropriate intervention beyond just assistance?

10 MS. DAVIS: Same objections.

11 THE WITNESS: In that there's reference here to AB  
12 1200 again, and I've referenced it before. In that,  
13 facilities issues can be -- at least in estimates, be  
14 identified as fiscal issues. The first level of review,  
15 being the County Office of Education, to identify for  
16 the district, we've been here before, we've talked to  
17 you about this. Now what we're not going to do is  
18 approve your budget. We're not going to approve your  
19 budget because you haven't taken resources and made them  
20 available to fix this problem that you've estimated to  
21 be certain number of dollars and that we have agreed,  
22 but maybe we've increased that because that estimate's  
23 two years old or a year old and we've inflated it. So  
24 you include that in your budget, and we'll approve your  
25 budget. That would be, I think, a prudent step.

1 offices of education could put in place some kind of  
2 progressive -- or would be the best thing for them to do  
3 would be to have progressive steps in order to make sure  
4 that the facilities standards are met?

5 MS. DAVIS: I would object just to the extent that  
6 any of his testimony has been mischaracterized.

7 BY MR. ELIASBERG:

8 Q And again, I'm not trying to mischaracterize  
9 it. If that's not what you intended to say --

10 A If it -- what's in my mind is that I think  
11 there's already a tool in place called the AB 1200,  
12 standard, that if we didn't do anything else and if I  
13 were a County superintendent and believed that someone  
14 was failing, that I could say, I'm not going to approve  
15 this budget until you deal with this issue.

16 Now, County superintendents are wanting to  
17 assist districts and work with districts. Let's just  
18 say that in the context of your question, without a  
19 change in law, because of the fiscal connection of  
20 school facilities and decisions that districts boards  
21 may make -- and I've referenced collective bargaining  
22 and others, but there may be a variety of reasons to  
23 avoid expenditures.

24 County superintendent could, I think, under  
25 current law say, here, I'll approve the budget once you

1 include this kind of proposed project or projects to  
2 deal with an issue that has been lagging and may be a  
3 safety issue. May be a health issue.

4 Q Okay. I appreciate the analogy to AB 1200, and  
5 I'm sure you know it better than I do. I just want to  
6 make sure I understand.

7 Is it your position, though, that currently  
8 County superintendents have the authority to do -- to  
9 say to a district, we don't think you've made an  
10 appropriate allocation for -- to deal with facilities  
11 conditions in your district, and as a result, we're not  
12 going to approve your budget?

13 A I don't think --

14 MS. DAVIS: Same objection.

15 THE WITNESS: I don't think it's necessarily in  
16 law. It would be a very aggressive move on the part of  
17 the County.

18 What I'm linking is AB 1200 and school -- the  
19 general fund budget and basically making ends meet and  
20 identifying a problem and saying, if this is such a huge  
21 problem, if I'm an aggressive County superintendent, I  
22 can maybe make that stretch. Somebody could complain,  
23 but what I'm saying is that if it takes a change in law  
24 to make it more commonplace, I think that the model is  
25 in place with AB 1200. And that's the linkage I was

1 they --

2 BY MR. ELIASBERG:

3 Q Well, actually, I don't want you to speculate.  
4 I'm asking you how you would go about answering that  
5 question.

6 MS. DAVIS: Calls for speculation.

7 THE WITNESS: If a County superintendent of schools  
8 office has a person that has a lot of experience in  
9 school facility areas -- and sometimes they do.  
10 Sometimes they don't have even a person identified for  
11 that. If they had a person who had that kind of  
12 expertise, they could rely upon that person making an  
13 assessment for them, potentially.

14 If they don't, I think there would be no basis  
15 for them to even know how to gauge it. Because we  
16 haven't said what these standards are. We haven't  
17 talked about any kind of criteria. So if I were a  
18 researcher and I wanted to say, well, in the first  
19 instance, could this work, I would have to say, how many  
20 of the 58 counties have somebody that's dedicated to  
21 this, that's there to serve school districts, basically,  
22 because of having expertise and the time and the  
23 resource to do that.

24 BY MR. ELIASBERG:

25 Q And if Recommendation 5.6 were translated into

1 trying to make.

2 BY MR. ELIASBERG:

3 Q Okay. So is it fair to say that this is not  
4 commonly done by County superintendents today with  
5 respect to school facilities issues?

6 A I believe it is -- I don't know of any instance  
7 where it would be done, and it would be very aggressive,  
8 I think, if somebody did that. Because I think there  
9 are defined parameters, and they are the criteria and  
10 standards that I mentioned that are commonly used.

11 Q Okay. Do you think that County superintendents  
12 currently have the capacity -- and I'll define capacity  
13 both by fiscal -- enough money and also capacity with  
14 technical expertise -- to do that today?

15 MS. DAVIS: Vague and ambiguous.

16 THE WITNESS: I don't know if I have the ability to  
17 answer your question, based upon the 58 counties and all  
18 the roles that they play.

19 BY MR. ELIASBERG:

20 Q How would you go -- if I was able to force you  
21 to answer my question, how would you go about figuring  
22 out whether the County superintendents do have that  
23 capacity?

24 MS. DAVIS: Calls for speculation.

25 THE WITNESS: I guess I could speculate that if

1 law, do you think that an effort should be made to make  
2 sure that County offices of education do have the  
3 capacity to do the review?

4 A Yeah, that --

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

7 THE WITNESS: The technical assistance that I'm  
8 referencing there includes, in that last sentence --  
9 "Technical assistance, which may be warranted based on  
10 such review, shall be available to school districts  
11 throughout regional and State agencies."

12 The regional agencies could be County  
13 superintendent of schools offices or they could be  
14 something else. There's frequently legislation proposed  
15 to do away with County schools and do something else, so  
16 there be an intermediate unit that's there. I don't  
17 know what County we choose, would say typically the  
18 County superintendent and the school district  
19 superintendents and others in the County  
20 superintendent's office and with related activities in  
21 school districts dialogue and thinking that the County  
22 unit is -- if the district has consistent difficulties,  
23 the County unit's the first place to go, whatever --  
24 whatever that unit may be called, County schools or  
25 something different in the future.



1 But that it's related territorially to this  
2 school district. It's not the person coming in from  
3 Sacramento to say, I'm here from the Government and I'm  
4 here to help you.

5 BY MR. ELIASBERG:

6 Q I think I understand that.

7 So is it fair to say that you support  
8 recommendation -- or you think Recommendation 5.6 is a  
9 good idea, with the understanding that if that were --  
10 recommendation became law, that steps would need to be  
11 taken to ensure that County superintendents or whatever  
12 intermediate agency plays this role have the capacity to  
13 do the kind of monitoring and intervention you're  
14 talking about?

15 A Yes.

16 MS. DAVIS: Objection to the extent it  
17 mischaracterizes his testimony.

18 BY MR. ELIASBERG:

19 Q Can you turn to Page 47, if you would,  
20 Dr. Duffy. I'm sorry, and I don't -- I really don't  
21 mean to repeat questions, but I really don't remember  
22 having asked this one.

23 With respect to Recommendation 5.6, do you  
24 remember if Dr. Brooks supported this -- I actually  
25 don't even know if it's Dr. Brooks or Mr. Brooks --

1 A No.

2 Q I promised you 5.7, but let's take a short  
3 break, because I have -- you don't have to put that line  
4 on the record, but I have the coffee problem.

5 MS. DAVIS: Keep the line on the record.

6 MR. ELIASBERG: Let's take a couple minutes here.

7 (Brief recess taken.)

8 BY MR. ELIASBERG:

9 Q Let me turn to Recommendation 5.7, which reads,  
10 "It is the recommendation of the group that the State  
11 create a statewide facilities inventory system that will  
12 assist State and local decision makers to determine  
13 short- and long-term school facilities needs. It is  
14 imperative that the State collect only the most  
15 critical basic information needed to make necessary  
16 management decisions. The State will utilize  
17 information contained in existing data collection  
18 reports before requiring school districts to report any  
19 additional information needed for the school facilities  
20 inventory system."

21 Do you see that?

22 A Yes, I do.

23 Q What is your understanding of a statewide  
24 school facilities inventory system?

25 MS. DAVIS: That calls for speculation.

1 Duwayne Brooks supported --

2 A We'll give him an honorary degree if he doesn't  
3 have one.

4 Q I've met him, and I think he's entitled to an  
5 honorary degree if he doesn't have one.

6 Do you know if he supported Recommendation 5.6?

7 MS. DAVIS: Vague and ambiguous.

8 THE WITNESS: What I'm recalling is in the context  
9 of all of this that we've discussed today and the  
10 interlinking recommendations that we've discussed. I  
11 believe he recognized this as something that he  
12 supported as a concept or concepts, yes.

13 BY MR. ELIASBERG:

14 Q And do you remember if any member of the -- any  
15 other member of the facilities group not you, not  
16 Dr. Brooks.

17 Did anybody else object to this  
18 recommendation?

19 MS. DAVIS: Vague and ambiguous.

20 THE WITNESS: No. I don't recall anybody objecting  
21 to it, no.

22 BY MR. ELIASBERG:

23 Q And do you remember anybody in the larger  
24 group, the whole -- the committee as a whole objecting  
25 to it?

1 THE WITNESS: This was warmly discussed and  
2 debated. The question is what's my understanding.

3 Some of what's in here implies my  
4 understanding, because the most critical and basic  
5 information -- asking information about school districts  
6 about their facilities and then compiling that for some  
7 reason -- and I was not a zealot for this, by any  
8 means. I was working in schools when the State  
9 attempted to inventory in the mid 1980s. It was mid to  
10 late but mid 1980s.

11 School districts were not warm to the request.  
12 There was no compulsion that they fill out the  
13 information. They weren't trustful of the information.  
14 School districts have to put together a variety of  
15 different reports.

16 I don't really know what this gives to us, does  
17 for us. But if it were to occur, I wanted it to be  
18 critical and basic information. And what I understand  
19 from those that talk about this is that we need this  
20 kind of information so we can size bonds in the future  
21 for modernization, so we can identify how many school  
22 buildings we really have in California, so that  
23 somebody, Big Brother or somebody's watching over school  
24 districts. And I don't believe that that's really  
25 terribly helpful.

1 Now, having said that, I guess if something  
2 were to be requested of districts, I don't think there  
3 should be any punitive there if districts don't put it  
4 all together. You know, there shouldn't be, you can't  
5 get in the State program unless you've done this. So  
6 I -- I don't know that I'll be championing the  
7 legislation that implements -- or brings this to the  
8 Legislature in any way unless there's something else  
9 that's really compelling there. So I don't really know  
10 how it helps, but it's one of the recommendations.

11 BY MR. ELIASBERG:

12 Q Okay. Do you know if Dr. Brooks supported this  
13 recommendation?

14 MS. DAVIS: Vague and ambiguous.

15 THE WITNESS: I don't recall.

16 BY MR. ELIASBERG:

17 Q Have you read -- are you aware that Dr. Brooks  
18 has been deposed in this case?

19 A Yes.

20 Q And are you aware that -- well, did you read  
21 his deposition testimony?

22 A No.

23 Q Did he talk to you about his deposition  
24 testimony only in the aspect -- I know you've said  
25 that -- I think he did talk to you about it generally,

1 Architects, that has, to my understanding -- and I've  
2 accessed it on occasion -- that has every school  
3 building in California that has been approved and the  
4 date of that approval.

5 Q Just so I understand, when you say approve,  
6 approved for what?

7 A Approved by DSA as a -- meeting the structural  
8 safety law, which is the Field Act in California  
9 schools. The regulations for the modernization program  
10 reflect that the age of the school is -- it's either 12  
11 months or 18 months after the stamp on the plans. So  
12 that OPSC, if they want to check, have a reference  
13 point, and that's in place because they believe, once  
14 the plans have been stamped, it may take 12 months to 18  
15 months to have the facility constructed and basically  
16 utilized.

17 Q You were involved in the negotiations to put  
18 together the new bond; weren't you?

19 A Yes.

20 Q Are you aware during the process -- well, let  
21 me ask you this. Let me start with you.

22 Did you make any attempt to look at the archive  
23 at DSA in order to determine how many school buildings  
24 in California were eligible for modernization?

25 A No.

1 but did he tell you there was some discussion during the  
2 deposition about inventory?

3 A No. No, I don't recall that at all.

4 Q It's correct, isn't it, that in order for a  
5 district to be eligible for modernization funds, its  
6 school facilities -- or at least buildings have to be of  
7 a certain age? That's correct; isn't it?

8 A Yes.

9 Q Given that, wouldn't it be helpful for the  
10 State to know -- well, let me say -- wouldn't it be  
11 helpful for Californians to know how many school  
12 buildings or school facilities actually are of an age  
13 that makes them eligible for -- no, let me -- that's a  
14 complicated question. Let me strike that.

15 Given that modernization eligibility currently  
16 turns on the age of school buildings or school  
17 facilities, wouldn't it be helpful in planning bonds to  
18 know the age of school facilities in California?

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

21 THE WITNESS: The State already has that  
22 information.

23 BY MR. ELIASBERG:

24 Q And how does the State have that information?

25 A There's an archive at DSA, Division of State

1 Q Okay. Did you direct anybody to do that?

2 A No.

3 Q Do you know if anybody in any State agency did  
4 that?

5 A No.

6 Q Do you know if anybody -- just because I'm not  
7 a hundred percent sure if it's considered a State  
8 agency, do you know if anybody at OPSC did that?

9 MS. DAVIS: Calls for speculation.

10 THE WITNESS: It is a State agency. And OPSC  
11 reviewed the question of how much modernization we need.  
12 I'm not sure exactly how they came to their  
13 conclusions. In conversations that I had with OPSC  
14 about these kinds of things, we talked about new  
15 construction/modernization, and there were certain  
16 estimates that were needing to be made about  
17 modernization, whereas, there was greater existing data  
18 for new construction needs.

19 So I know that they reviewed it, reflected upon  
20 it, tried to come with -- come together with decent  
21 estimates.

22 BY MR. ELIASBERG:

23 Q When you say they reviewed it, do you mean  
24 reviewed the question of how much modernization money  
25 was needed?

1 A Yes, projecting how much would be needed over  
2 the next four-year period.

3 Q But do you know if they reviewed the actual  
4 archived data at DSA or any summary of that archived  
5 data?

6 A No, I do not.

7 Q Who at OPSC was responsible for doing the  
8 review to try to determine the appropriate amounts of  
9 modernization funding?

10 A My contact point was Bruce Hancock.

11 Q Do you know how Bruce -- and again, I'm not  
12 asking you to speculate; only based on knowledge you  
13 have from conversations with Bruce or documents you  
14 looked at.

15 Do you know how Bruce went about trying to  
16 estimate what modernizations were needed?

17 A Specifically, no.

18 Q Generally, do you know?

19 A There was a recognition -- and I did some of  
20 this work myself in working with him. There was a  
21 recognition of how much was being demanded -- had been  
22 demanded by -- basically, by applying, by school  
23 districts applying. And looking at that consistency  
24 over a number of months, we projected over the next  
25 number of months and projected based upon the average

1 A 2003.

2 Q And your understanding is that there will be --  
3 approximately \$3 billion of mod money will become  
4 available when?

5 A With the passage of the bond, March 2004.

6 Q Did anyone else work with you and Bruce Hancock  
7 to try to make an estimate of the amount of mod money  
8 would be necessary or should be included in the new  
9 bond?

10 A In terms of trying to get the technical  
11 information?

12 Q Yeah.

13 A No. I would imagine there were people in his  
14 office, but I worked independently, he worked -- we  
15 collaborated. We did work with people across the  
16 street; that is, legislative staffers and others,  
17 sharing the information. They would question from time  
18 to time how we came to something. But no, I can't  
19 recall anybody that actually worked with the data and  
20 tried to project.

21 Q Do you know if anybody in -- let me broaden it  
22 to any State agency, although I understand it may be  
23 OPSC.

24 But do you know if any people in any State  
25 agencies made an estimate of the number of -- not of

1 and helped to come to the number using that number.

2 We did the same thing with new construction,  
3 if you get to that question, but here's an important  
4 point. We're able to move the Legislature because the  
5 information we gave to back up from a November bond to a  
6 March bond because we're going to run out of money for  
7 both programs before we got there, before we got to  
8 November. So I think we were fairly accurate, in terms  
9 of the first bond, because the expectancy's we're going  
10 to run out of the mod money this summer, which is about  
11 the time we expected, maybe a little before the time we  
12 expected.

13 Q And assuming the next bond passes, when will  
14 they -- when will there be a replenishment of the mod  
15 money?

16 A Assuming the next bond passes -- and  
17 remembering there'll be \$3 billion available immediately  
18 after March 2004, if I'm answering your question.

19 Q Well, let me see if I can put the pieces  
20 together to make sure we're on the same page.

21 Is it your testimony that the expectation,  
22 based on how things have gone so far, is that the mod  
23 money will run out this summer?

24 A Yes. By at least September.

25 Q Of 2003?

1 applications that you expect, but of the numbers of  
2 districts -- sorry, the number of school buildings that  
3 are actually eligible for modernization? And by  
4 eligible, I'm defining it as are the correct age in  
5 order to -- 25 years with respect to permanent  
6 buildings -- I hope I'm getting this right -- 20 years  
7 with respect to portables?

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

10 BY MR. ELIASBERG:

11 Q Do you understand the question?

12 A Let me repeat it back to you. Am I aware of  
13 anybody in any State agency that has tried to identify  
14 the threshold date for eligibility for schools, both  
15 permanent and modular, 20 and -- 25 and 20 years,  
16 respectively, in terms of their eligibility. And no.

17 Q Okay. I think I was not as clear as I wanted  
18 to be. It's slightly different from what you repeated  
19 back to me.

20 I want to know whether anybody has -- and maybe  
21 your answer will be the same, but whether any State  
22 agency has made an effort to estimate how many school  
23 buildings are currently eligible for modernization,  
24 based on the age of the building, 25 years or older with  
25 respect to permanent buildings, 20 years or older with

1 respect to portable buildings?

2 MS. DAVIS: Same objections.

3 THE WITNESS: And that was the question I was  
4 thinking I was answering. Maybe I didn't say it the  
5 same way. And the answer is no.

6 BY MR. ELIASBERG:

7 Q Okay. Dr. Duffy, are you familiar with the --  
8 a document that's referred to as school facilities  
9 fingertip facts?

10 A I know what it is. I don't know that I've seen  
11 one recently, but I'm familiar. TD's put that out  
12 periodically from time to time.

13 MR. ELIASBERG: I'd like to introduce as -- I  
14 guess Duffy 3 a document that is entitled "School  
15 Facilities Fingertip Facts."

16 Because there's been -- these documents have --  
17 a document like this has been introduced in a number of  
18 depositions, and some of them were put out in different  
19 years, I want to identify -- and I'm not trying to trick  
20 anybody and say, oh, the number here's different from --  
21 that this particular document that I'm introducing is  
22 dated November 2002 in the right corner, and in the left  
23 corner it says "School Facilities Planning Division,"  
24 California Department of Education. I'm going to give a  
25 copy to the court reporter for marking.

1 Do you see that?

2 A Yes.

3 Q And looking at -- there're sort of two groups  
4 of data one, towards the left side of the page and one  
5 towards the right side of the page, and I'm interested  
6 particularly in the data that's on the right side that's  
7 started with an italic heading "Number of Public Schools  
8 8,914."

9 Do you see that?

10 A Maybe I don't know where you're looking.

11 MS. DAVIS: (Indicates)

12 THE WITNESS: Oh, I see. That number's at the  
13 top. Okay.

14 BY MR. ELIASBERG:

15 Q And then below that there's a box, and then  
16 below that there's some italic writing that says,  
17 "Classrooms over 25 years old," and then to the right of  
18 that in bold there is a number, 204,000, and then in  
19 parentheses, 73 percent.

20 A Yes.

21 Q Do you have an understanding -- well, let me  
22 ask you this.

23 Have you looked at this November 2002 document  
24 before?

25 A I don't believe that I've looked at this. I've

1 MS. DAVIS: Do you know if this document -- I know  
2 you said it's updated or changed periodically -- has  
3 been changed since November 2002?

4 MR. ELIASBERG: I don't believe that it has. And I  
5 went on the Web, although I didn't go directly to the  
6 SFPD Web site as I went through Google, but given this  
7 is what came up through Google, it's my understanding --  
8 and it's also my understanding from talking to somebody  
9 else, this is the most recent version, and I don't  
10 believe my questions are -- they're not attempted to  
11 play any tricks with the fact that the number may be  
12 slightly different if it's been updated.

13 (Plaintiff's Exhibit 3 was marked for  
14 identification by the court reporter.)

15 BY MR. ELIASBERG:

16 Q Dr. Duffy, you can take as much time as you  
17 need to review this document.

18 A Okay.

19 Q And it's two pages, so if you could take the  
20 opportunity to look at the second part too, I'd  
21 appreciate it.

22 A Okay.

23 Q I'm going to refer you specifically to some  
24 data that's on -- in Section V, Roman V, which is  
25 entitled "Public School Data 2001-02."

1 seen other fingertip facts, but I -- I don't  
2 specifically recall this one.

3 Q Okay. With respect to any fingertip facts  
4 documents that you remember looking at -- and I think  
5 we've all agreed that there've been different versions --

6 A Yes.

7 Q -- at the time, do you ever remember seeing a  
8 fingertip fact that made an estimate of the classroom  
9 over 25 years old, the number of classrooms that were 25  
10 years old?

11 A I don't know if it was 25 or 30 years -- I  
12 remember seeing information, as I said, from time to  
13 time that identified classrooms, existing classrooms.  
14 Again, I don't know if 25, 30 years or even what was  
15 identified there, but just existing schools.

16 Q Do you have any understanding of how that  
17 number was arrived at by -- in the compilation of this  
18 version of the school facilities fingertip facts?

19 MS. DAVIS: Calls for speculation.

20 BY MR. ELIASBERG:

21 Q I'm really only interested if you have an  
22 understanding.

23 A No.

24 Q Have you ever seen or discussed with anybody in  
25 OPSC or any State -- well, let me just say OPSC or SFPD

1 whether they had any estimate of the number of  
2 classrooms in the state of California that were over 25  
3 years old?

4 A Well, the discussions with Bruce were centered  
5 around estimates for new -- or for modernization as well  
6 as new construction. Don't know if we focused on  
7 classrooms specifically. Several years ago, remembering  
8 a slide we had in a Power Point presentation -- this is  
9 before Prop 1A. So it was probably early '98.

10 We did have a number -- it was a mod number, if  
11 I recall correctly, represented the State's share of  
12 anticipated modernization needs. And I believe the  
13 information came from CDE. I did not compile it from  
14 CDE or get it from CDE, but it was in a Power Point  
15 presentation, if I recall.

16 Q Do you have any recollection of what the -- the  
17 size of that number was?

18 A May have been 15 million -- I'm sorry, not  
19 million. 15 billion. Maybe it was 12, in that range.

20 Q Just so we're clear -- and I understand you  
21 don't remember the exact figure, but your best  
22 understanding is that the range was 12 to 15 billion.

23 That number was the State's share of the  
24 modernization need?

25 A That's what I'm remembering. It could have

1 their district.

2 Q Right.

3 And if they knock on the door and don't have  
4 that, you don't need to go through any of the --

5 A Yeah.

6 Q -- other processes.

7 Am I correct in understanding that, under  
8 Proposition 1A, that if a school district is eligible  
9 for modernization funds for a school building in that  
10 district -- and let's start with permanent buildings,  
11 not portables, modernization funds for a permanent  
12 building in that district -- the building is 25 years  
13 old or older?

14 A Yes.

15 Q Okay.

16 A If it's not been modernized before.

17 Q Okay. Does the current bond -- well, let me  
18 ask you this.

19 Does the second criteria, the it hasn't been  
20 modernized before -- did that criteria apply under the  
21 rehab/modernization provisions of the lease-purchase  
22 program?

23 A It's current law. So the answer is that it  
24 applied under that program, having been modernized under  
25 that program, seeking funds under the new program. If

1 been the whole -- it could have been the whole mod need,  
2 but something's kind of triggering that we were trying  
3 to identify the -- no, must have been the whole mod  
4 need, because this is before -- this is before AB 20.  
5 So it had to be the whole mod need.

6 Q Do you have any idea how that figure was -- I  
7 understand that you didn't compile it, but do you have  
8 any understanding of how that figure was arrived at?

9 A No. I'm just remembering that there was a  
10 reference to the CDE at the time.

11 Q Dr. Duffy, is it correct that, under Prop 1A, a  
12 school district was eligible for modernization funds --  
13 let me try to do it this way.

14 When I use the phrase "eligible," I'm not  
15 referring to whether they've filled out their  
16 applications correctly or whether they've provided their  
17 share of the funds. I'm just talking about a --

18 A Potential.

19 Q -- particular threshold that has to do with the  
20 age of buildings.

21 So do you understand that's my use of  
22 "eligible" here? I understand there are other hoops  
23 that one has to jump through in order to --

24 A It's that if somebody knocks on the door, they  
25 have entrance because they have that eligibility in

1 those buildings were modernized, then you couldn't have  
2 them modernized a second time.

3 Q Okay. And does that second redistribution --  
4 i.e., the not for those who have been modernized  
5 before -- apply under AB 16?

6 A Yes.

7 Q Do you -- have you -- let's start with you  
8 personally.

9 Have you made -- attempted to make any estimate  
10 of the number of school buildings -- I'm sorry, the  
11 number of school classrooms that have been modernized  
12 under the lease-purchase program and the current school  
13 facilities program?

14 MS. DAVIS: Compound.

15 BY MR. ELIASBERG:

16 Q I'm trying to get the total -- I don't want to  
17 make it compound. I'm trying to understand. There have  
18 been different processes or programs by which you get  
19 money. I'm trying to understand what's the total number  
20 of classrooms starting, I guess, in 1976 or whenever the  
21 rehab/remodel program came in.

22 A 1982.

23 Q 1982. The total number of classrooms that have  
24 been rehabbed, remodeled or modernized since 1982.

25 A Do I know?

1 Q Yes.  
 2 A No to the first answer. I mean no to the first  
 3 question.  
 4 Q Okay. I didn't -- was there a second question?  
 5 A You asked about the two different programs.  
 6 Q Okay. And --  
 7 A And the second program is the school facility  
 8 program begun in '98, and the answer to that is no also.  
 9 Q Do you know if anybody in any State -- anybody  
 10 at any State agency has compiled data on the question of  
 11 how many classrooms have been modernized since 1982?  
 12 MS. DAVIS: Calls for speculation.  
 13 THE WITNESS: The -- what I have seen is a document  
 14 that was presented to the State Allocation Board -- it  
 15 was, I think, late last year, late in 2002 -- that  
 16 identified the expenditure of all the Proposition 1A  
 17 moneys for modernization, and I believe there was a  
 18 number of schools -- maybe there was a number of  
 19 classrooms as well, but I think there was a number of  
 20 schools that were identified, in terms of the total  
 21 expenditure for mod and how many districts, and I think  
 22 schools were included within that program.  
 23 I don't know of anything prior to that for the  
 24 old program.  
 25 BY MR. ELIASBERG:

1 Q Okay. Do you have any -- and I understand you  
 2 may not be clear on whether it was schools or classrooms  
 3 or school buildings, but to the best of your  
 4 recollection, do you remember what that number was and  
 5 whether it was schools or classrooms or buildings?  
 6 A Besides the dollar amounts, there were other  
 7 descriptors that were there.  
 8 Q Using the dollar amounts that were expended on  
 9 modernization, paid to the districts as modernization  
 10 funds under Prop 1A, could you estimate the approximate  
 11 number of classrooms that have been modernized?  
 12 A I would be hesitant to do that.  
 13 Q Okay. Do you know if Bruce Hancock or anybody  
 14 in any State agency has attempted to do that?  
 15 A Well, I think the document that was shared with  
 16 the Allocation Board's probably available. So how much  
 17 mod money was there, how much went out in what time  
 18 frame, how much -- you know, and there was none of the  
 19 qualifiers, schools, classrooms, school districts,  
 20 certainly, but I think -- I believe schools were  
 21 modernized.  
 22 Q Could you look at the first page of the school  
 23 facilities fingertip facts. And it would be under Roman  
 24 II. And there's sort of two sections under Roman II or  
 25 two tables under Roman II.

1 Do you see that?  
 2 A Yes.  
 3 Q And one of them is "Modernization, five year  
 4 need"?  
 5 A Yes.  
 6 Q And if you could look at the third column, if  
 7 you would, please, the heading of that column being  
 8 "Classrooms to be modernized 2002-2007."  
 9 Do you see that?  
 10 A Yes.  
 11 Q And at the bottom, in sort of the column  
 12 that -- the vertical columns, it reads across, does it  
 13 not, that the total classrooms to be modernized in  
 14 2002-2007 is 40,876?  
 15 MS. DAVIS: The document speaks for itself.  
 16 BY MR. ELIASBERG:  
 17 Q Is that correct? Do you see that?  
 18 A I see that number.  
 19 Q And is it your understanding that that number  
 20 is an estimate of the -- how many classrooms can be  
 21 modernized between 2002 and 2007 with the -- any  
 22 remaining funds that are in Prop 1A and the 1990 -- I'm  
 23 sorry, the 2002 bond and the 2004 bond, assuming the  
 24 2004 bond passes?  
 25 MS. DAVIS: Using these November 2002 figures?

1 MR. ELIASBERG: Yes.  
 2 THE WITNESS: I think what I heard in your question  
 3 was that these numbers could be modernized with those  
 4 dollars?  
 5 BY MR. ELIASBERG:  
 6 Q Yeah.  
 7 A I don't know that that's what this chart is  
 8 reflecting. What I took from what I saw of this chart,  
 9 it was the classrooms to be modernized -- well, having  
 10 read the statement underneath the bold up at the top,  
 11 "New construction mod classroom need," then what you  
 12 said does make sense. That it would be the -- based on  
 13 the eligibility documents, the five-year need for new  
 14 and mod. So that does make sense.  
 15 Q Let me make sure I understand you. Well, I'll  
 16 just ask a separate question.  
 17 Do you have -- did you make an estimate -- I'll  
 18 start with just did you in your work getting ready for  
 19 the new bond.  
 20 Did you make an estimate as to how many  
 21 classrooms could be modernized using the money in the  
 22 2002 bound and the 2004 bond, assuming that passed?  
 23 A Specifically identifying classrooms, no.  
 24 Q Did you make an estimate on the number of  
 25 buildings that could be modernized?

1 A No.

2 Q Did you make an estimate of the number of  
3 facilities as a whole that could be modernized?

4 A No.

5 MS. DAVIS: Vague and ambiguous.

6 BY MR. ELIASBERG:

7 Q Do you know if anybody in OPSC or any other  
8 State agency made an estimate as to the number of  
9 classrooms that could be modernized using the money in  
10 the 2002 and the 2004 bond?

11 MS. DAVIS: Calls for speculation.

12 THE WITNESS: What I know is that Bruce Hancock --  
13 and I know he must have been working with others in his  
14 office, could have been working with others from other  
15 agencies -- came up with numbers that were reduced to  
16 per-pupil amounts, at least I'm remembering specifically  
17 for new construction, not necessarily for modernization.

18 And there was a presentation of information to  
19 the joint committee on school facilities, which he made  
20 and shared information. Information that he was sharing  
21 was consistent with the estimates we were making, based  
22 upon the demand rate of dollars, which was the measure I  
23 was using.

24 BY MR. ELIASBERG:

25 Q Were you involved in the negotiations and the

1 applications?

2 A Yes, I believe that's what it was to be  
3 structured.

4 Q And did you -- and if I'm asking the question  
5 again, I'm sorry, but I just want to be sure I'm  
6 understanding you.

7 Do you know if anyone in OPSC or any State  
8 agency attempted to figure out how many -- either the  
9 total number or the total dollar amount of new  
10 modernization applications they expected to get above  
11 and beyond the amount that was in Proposition 203, the  
12 backlog from Proposition 203?

13 MS. DAVIS: Calls for speculation.

14 THE WITNESS: I don't -- I don't know. Don't  
15 recall. As I identified for you earlier, that year  
16 there had been information that was put together  
17 estimating mod, new construction, deferred maintenance  
18 and other needs. It's in a Power Point that I can  
19 recall this one frame. Was based on information we had,  
20 I believe, gleaned from State agencies.

21 That's -- and that was a much bigger number  
22 than was actually included in the bond. So no, I  
23 don't -- I don't recall beyond that.

24 BY MR. ELIASBERG:

25 Q Okay. Do you know if an amount -- actually,

1 process of putting together Prop 1A?

2 A I was around from time to time, but no, the  
3 integrals of that, no. There were a couple policy  
4 issues where I was involved, but not the entire bond and  
5 the legislation that implemented the bond and all.

6 Q Do you -- and I'm really, again, asking for  
7 what you know. If you weren't involved or don't know  
8 it, I don't want you to guess at it. If you, for  
9 example, heard secondhand, I'd like to know that. I  
10 understand you can tell me that it wasn't your direct  
11 knowledge; you got that secondhand, but I am entitled to  
12 know if you have a basis for information.

13 A Okay.

14 Q Leading up to Prop 1A, do you have an  
15 understanding of how the amount to be put in the  
16 modernization pool for Prop 1A was arrived at?

17 A No. Other than we knew there was a backlog  
18 that existed, even with the passage of Prop 203, because  
19 there wasn't enough in Prop 203. So even -- with that  
20 backlog that existed after '96, that was certainly part  
21 of the argument.

22 Q Okay. Was it your understanding that the  
23 amount that was set aside for modernization or dedicated  
24 for modernization in Prop 1A was intended to address the  
25 Prop 203 backlog and also provide for new modernization

1 let's put it -- I want to do it in numbers of  
2 applications as opposed to size of.

3 Do you know whether the number of applications  
4 for modernization funding were lower, the same,  
5 approximately, or higher under Prop 1A than under Prop  
6 203?

7 MS. DAVIS: Vague and ambiguous.

8 THE WITNESS: The term that I've used was the --  
9 for gauging this current bond was the burn rate.  
10 Looking at the burn rate we saw with Prop 1A.

11 The burn rate for Prop 1A -- and that's in  
12 dollars accessed monthly -- was faster than it was  
13 before, to the extent that we used the modernization  
14 money within a frame of November '98 through July 1st of  
15 2000. So the money was depleted more quickly. There  
16 was a high rate of demand.

17 BY MR. ELIASBERG:

18 Q And am I correct in understanding that there  
19 were actually two phases to the funding under Prop 1A?  
20 And help me out. What were the dates for the  
21 first phase of funding?

22 A The date of the election, November '98, through  
23 June 30th of 2000. July 1st, 2000, through the  
24 expenditure of the funds in 2002.

25 Q And did the funds that were dedicated for

1 November '98 to June 30th, 2000, run out before June  
 2 30th, 2000, for modernization only?  
 3 A Yes, they did.  
 4 Q Okay. And do you remember approximately when  
 5 they ran out?  
 6 A It's May or June of 2000 that the first -- if  
 7 that's what you're asking, the first cycle of  
 8 modernization funds were allocated or apportioned.  
 9 Q And how about the second phase of funding? Did  
 10 those funds run out before 2002?  
 11 A They were all apportioned in the same month,  
 12 which was the first eligible month in 2000, which was  
 13 July.  
 14 Q The money was available for a month, and then  
 15 fully apportioned within that month?  
 16 A There were enough applications there to  
 17 basically use all that money up.  
 18 Q Okay. Did you have an opinion -- well, let me  
 19 put it this way.  
 20 Was the demand for modernization under Prop 1A  
 21 higher than you expected it would be?  
 22 MS. DAVIS: Vague and ambiguous.  
 23 THE WITNESS: I think it was higher than about  
 24 everybody expected it would be. And there was something  
 25 to celebrate about that; in that, the State program was

1 streamlined, to use a much-used term. The pupil funding  
 2 formula and other things that identified that you could  
 3 get from application to funding more quickly, which had  
 4 been a big part of getting Senate Bill 50, the operating  
 5 statute for the bond, getting that in place and to  
 6 negotiating that. So it was to be celebrated but I  
 7 think people were taken aback that it went so fast.  
 8 BY MR. ELIASBERG:  
 9 Q Do you have an opinion as to whether the amount  
 10 of -- the number of applications rises to meet the money  
 11 available? In other words, if more money is available,  
 12 more districts end up applying?  
 13 MS. DAVIS: Vague and ambiguous, calls for  
 14 speculation.  
 15 THE WITNESS: Well, just -- I can give you my --  
 16 what I experienced, having worked through a number of  
 17 bonds and having sat on the implementation committee for  
 18 a number of years. We had this old addage that never  
 19 were people more into arguing key components of the  
 20 State program and technical features than when there  
 21 wasn't any money. And people were busy applying for  
 22 those dollars, expecting that they would be there.  
 23 So my experience is that, notwithstanding the  
 24 fact that there wasn't money, people would say, let me  
 25 get in line and be ready. The Oakland lawsuits that I

1 mentioned, that was basically the substance of the  
 2 lawsuits, that the district took issue with these two  
 3 architects saying, we were ready and yet you didn't help  
 4 us get there and we -- you know, we missed out on  
 5 funding. I had that experience myself where I would --  
 6 people would ask, what do we do? Well, get in line,  
 7 because money will be there. We believe it's going to  
 8 be there.  
 9 So I never saw a diminishment, and if there was  
 10 money, there would be more people apply, recognizing  
 11 that it was there? There may have been some effect. I  
 12 don't know. My experience is that if people were  
 13 eligible, they made sure that they -- we were saying  
 14 before it got to the door.  
 15 MR. ELIASBERG: Okay. It's a little bit before  
 16 3:00. Why don't we take a very short break, and then  
 17 we'll go for the last shorter session.  
 18 MS. DAVIS: Okay.  
 19 MR. ELIASBERG: And let you get to the airport.  
 20 THE WITNESS: Thanks.  
 21 (Brief recess taken.)  
 22 BY MR. ELIASBERG:  
 23 Q Dr. Duffy, just a couple quick questions here,  
 24 and then I want to turn to your report.  
 25 If you could turn to Page 46. At the top --

1 this is in the master plan. And at the top there's a  
 2 Recommendation 5-6, but I actually wanted to look at a  
 3 paragraph that's sort of in the middle of the page that  
 4 starts "The working group recommends."  
 5 A Uh-huh.  
 6 Q And there's a sentence in there that says,  
 7 "County offices of education, as a part of providing  
 8 such support, would monitor and verify facilities  
 9 planning and progress at its districts, and when  
 10 applicable," so on. I don't need to read the whole  
 11 sentence.  
 12 MS. DAVIS: Do you want him to read the whole  
 13 sentence?  
 14 MR. ELIASBERG: Yeah, sure.  
 15 MS. DAVIS: Okay.  
 16 MR. ELIASBERG: I'm not going to focus on the last  
 17 part of the sentence.  
 18 MS. DAVIS: Okay.  
 19 THE WITNESS: (Reviews documents.)  
 20 Yes.  
 21 BY MR. ELIASBERG:  
 22 Q Okay. I believe you testified previously that  
 23 at least one component of monitoring and verifying the  
 24 facilities planning and progress would be for somebody  
 25 in the County office to actually look at the five-year



1 plan and the budgets that the district provided to the  
2 County office; is that correct?

3 A We had talked about two things. One was  
4 looking at the general fund of the district and is that  
5 something that's in law today, and it's not, but it may  
6 be a model. The other would be looking at the five-year  
7 plan of -- that's conceived in this report, and the  
8 districts' response, in terms of a plan that's a fiscal  
9 plan relative to that report, as well as identifying  
10 what it would do.

11 Q Okay. In your opinion, would it ever be  
12 appropriate for someone from the County office to go  
13 beyond looking at the documents that we've discussed but  
14 actually go out to the district and look at the  
15 facilities in order to see whether the progress is being  
16 made on the condition of the facilities?

17 MS. DAVIS: Calls for speculation.

18 THE WITNESS: The issue of technical knowledge to  
19 provide the technical assistance is in that area, both  
20 in how do we estimate costs and, you know, can I provide  
21 that assistance, as well as are you -- can you  
22 demonstrate, besides contracts -- which may exist  
23 because counties will want to make sure they have a  
24 contract before they issue warrants to pay the  
25 contractor, so it's -- that's a measure, but would -- if

1 I don't see it as a direct link to providing  
2 for facilities that are what we've termed adequate  
3 school facilities for students, and if it's burning  
4 resources to do this that could be better served doing  
5 something else, I wouldn't want to do that. There are  
6 too many reports, too much demands on school districts  
7 today where, instead of having people that focus on  
8 serving students, there's a focus on serving a paper  
9 mill. And I'm not an advocate for that.

10 Q Are you aware of any states where any school  
11 facility inventory has been done where actually someone  
12 outside the district actually did the inventory in  
13 conjunction with the district but the district wasn't  
14 required to do the paperwork?

15 MS. DAVIS: Vague and ambiguous.

16 THE WITNESS: No. I'm not. I have the sense that  
17 you could tell me some that may be out there, but no, I  
18 don't know of any.

19 BY MR. ELIASBERG:

20 Q Well, you can think about that one on the  
21 plane. You might be right.

22 A Okay.

23 Q Let me see. I believe -- do you have a copy of  
24 the report, or did you give it back to me, your  
25 particular report?

1 your question is would this concept involve walking out  
2 and walking around a building, and that may include  
3 that.

4 I would see that as not something that would  
5 happen initially, unless the district requested it,  
6 because the expectation is that districts are going to  
7 do what they should be doing. But if there is a -- I  
8 used the term "recalcitrance." If there is  
9 recalcitrance, it may involve, say, a physical visit,  
10 inspection, discussion about, gee, this has been on your  
11 plan for three, four years and you haven't done anything  
12 about it.

13 BY MR. ELIASBERG:

14 Q Thanks.

15 And just with respect to Recommendation 5.7, I  
16 believe you said something, in sum and substance, along  
17 the lines you would not be a zealous advocate or  
18 supporter if legislation was proposed to put this  
19 recommendation in place; is that correct?

20 A That's correct.

21 Now, there may be some people in the C.A.S.H.  
22 organization would say, we really want you to do this.  
23 Can you go do this for us? And I would, of course, say,  
24 yes, let me comply with that request. Or demand,  
25 depending upon what it may be.

1 MS. DAVIS: I think it's here.

2 THE WITNESS: Oh, it's over on the side.

3 BY MR. ELIASBERG:

4 Q If you'll give me just a second. I'll shift  
5 gears here.

6 Let me ask you to actually look at just the top  
7 paragraph on Page 2.

8 A Of the report itself?

9 Q Yes, of the report. Beyond your -- we're not  
10 going back -- at least I don't plan to go back to your  
11 resume.

12 If you could look at that whole paragraph, and  
13 perhaps it might be good if you could actually read the  
14 whole paragraph.

15 MS. DAVIS: Which paragraph? I'm sorry.

16 MR. ELIASBERG: It begins, "The revenue issue  
17 emerged first" and ends with a sentence that reads, "The  
18 State was directed by the decision to change education  
19 finance policies so as to eliminate the disparity  
20 between school districts' level of income per student."

21 THE WITNESS: (Reviews documents.)

22 Okay.

23 BY MR. ELIASBERG:

24 Q I assume you're familiar with the Serrano  
25 decision; is that correct?

1 A I'm familiar with it.

2 Q Okay. Did you have any role in that  
3 litigation?

4 MS. DAVIS: Vague and ambiguous.

5 THE WITNESS: No, I was an undergraduate at the  
6 time.

7 BY MR. ELIASBERG:

8 Q Okay. I'm sorry. I wasn't trying to suggest  
9 that you --

10 A That's okay.

11 Q -- were older than you were.

12 Do you think that the Serrano decision brought  
13 about positive change for education in the state of  
14 California?

15 A No.

16 MS. DAVIS: Vague and ambiguous.

17 BY MR. ELIASBERG:

18 Q And why is that?

19 A Maybe not by itself, but just with all the  
20 changes that occurred, the dramatic changes in the 1970s  
21 and how school finance became a function of State  
22 finance and governance. But I think that the decision  
23 in the long-run wasn't the best for California.

24 Q Okay. And why was that?

25 A Because it basically identified in the end that

1 was from the East, and I mentioned, you know, when  
2 people come to California, they're always saying, jeez,  
3 you know, what are you guys doing with schools? Because  
4 they finance schools completely differently there.

5 So it just -- in overall, I don't think in the  
6 long-run it was the best for K-12 education in  
7 California. And I believe in equity and I believe in  
8 conserving children that are poor that may have less  
9 resources, but I think the State could have fulfilled  
10 that role rather than basically controlling and, maybe  
11 in some way, suppressing the amount of money that could  
12 go into school districts from the local property tax.

13 Q Is it your opinion that the situation that  
14 existed as you describe it prior to Serrano, where  
15 districts, such as Baldwin Park, had much lower  
16 resources available to them than districts such as  
17 Beverly Hills -- did you think that that situation was a  
18 good one?

19 MS. DAVIS: Vague and ambiguous.

20 THE WITNESS: No. What I was saying is that I  
21 thought the State could be the equalizer, that if  
22 Baldwin Park had fewer dollars to spend per child, then  
23 the State, through its means, could make up that  
24 difference. And if districts are doing well, just  
25 basically leave them alone.

1 the State had to be the intervenor and take away a very,  
2 very stable source of income that has now been gone, the  
3 property tax. Notwithstanding what happened with  
4 Proposition 13 in controlling taxes. So that school  
5 districts lost their control of income and the ability  
6 to depend upon that income to continue to serve  
7 students.

8 I think that there would have been, with a  
9 different decision -- the issues of disparities could  
10 have been addressed legislatively, where the State would  
11 have used a different mechanism to fill the differences  
12 between districts.

13 Q Is it your opinion that the decision itself was  
14 not a positive one or that the legislative response to  
15 the decision was not a positive one?

16 A Well, I think it's probably a blend. With the  
17 high court saying we're not going to depend on property  
18 tax base for schools any longer and the subsequent  
19 legislation which -- was it SB 90? -- which brought  
20 about the issues of revenue limits and caps and all and  
21 then, of course, the furtherance of what happened after  
22 13, all just turned education finance on its head.

23 And we see that in other states -- we always  
24 get compared to New York and New Jersey and others. I  
25 was talking to somebody just about a week or so ago who

1 The bands of income that were talked about in  
2 Serrano and the other Serranos, those kinds of bands  
3 could have been identified and used without disturbing  
4 what was a very longstanding way of financing schools in  
5 California.

6 BY MR. ELIASBERG:

7 Q Prior to the Serrano case, are you aware of  
8 steps that the State had taken to effect the  
9 equalization that you were talking about?

10 A Just vaguely from school finance. There  
11 were -- I have taken school finance courses in the past  
12 and finding them very interesting at the time. There  
13 were a number of different models. In fact, they  
14 continued on through the -- at least proposed through  
15 the 1970s. But I can't articulate what all those  
16 differences would have been.

17 Power of equalization was one term that I think  
18 had to do with taking money from richer districts and  
19 distributing them to poorer districts. I think Texas  
20 did that, didn't necessarily succeed. I think it became  
21 law, but I think they changed the law after a couple of  
22 years. But no, I can't recall what positive or negative  
23 steps took place before Serrano, in terms of statutory  
24 proposals.

25 Q I understand that, at least in broad strokes,

1 you have an idea of how you think the State could have  
2 equalized in a way that would have been positive?

3 A Yes.

4 Q Do you think that the Legislature would have  
5 done that absent the Serrano decision?

6 MS. DAVIS: Calls for speculation.

7 THE WITNESS: That's a good question. Up through  
8 that time California had such a reputation for education  
9 and higher education. I don't know.

10 BY MR. ELIASBERG:

11 Q Well, if you were tasking yourself to answer  
12 that question, as an attempt to answer whether it would  
13 have happened, is there any methodology you would use to  
14 try to answer that question?

15 A Well, if I'd been there in the role I'm in now  
16 or having been involved in school districts, I would  
17 have been a zealot for saying stay away and let me take  
18 care of the business of running the schools. We're  
19 doing fine. We're taking care of our own revenues. Or  
20 if I'm in a district that needed some, I would be there  
21 saying, make up the difference because I don't have as  
22 much as the guy next door.

23 Q Are you aware if districts such as Baldwin  
24 Park had ever gone to the Legislature and attempted to  
25 make those arguments?

1 Q Are you aware of particular districts or any  
2 research that looked at how the advent of collective  
3 bargaining had shifted resources away, at least in some  
4 districts, from maintenance, building and ground repair  
5 accounts?

6 A At the time I may be able to think of a  
7 district or two, but at the time that Rodda came  
8 about -- it was implemented over a two-year period -- I  
9 was in a master's program. People in such programs are  
10 typically in -- doing different jobs in school  
11 districts, teachers, administrators and others.

12 There was a lot of discussion and debate about  
13 what was happening. I continued to be in graduate-level  
14 classes, including a doctoral program, in the '80s,  
15 where there were practitioners, so there were people  
16 besides me who were there talking about what was  
17 happening in schools. There, of course, were reports in  
18 newspapers, professional articles and others.

19 There was -- there were school districts where  
20 this kind of tension that I described disrupted the way  
21 they did their work, and -- trying to think of one in  
22 particular. I think the school district superintendent  
23 about had a meltdown, nervous breakdown and later left  
24 the district because of the activities.

25 I want to say Garden Grove, but I don't think

1 A No.

2 Q Do you have an understanding as to whether --  
3 well, since you don't know whether the arguments were  
4 made, I guess you can't say whether they succeeded or  
5 not.

6 Okay. A little further down on Page 2, you  
7 make a reference to the Rodda Act.

8 A Yes. Rodda.

9 Q Rodda, I'm sorry.

10 And I'm particularly interested in -- there's a  
11 paragraph that begins, "As the Legislature took  
12 action."

13 A Hmm-hmm.

14 Q But I want to focus on the sentence that's sort  
15 of halfway down that begins -- or a couple of sentences,  
16 "The advent of the collective bargaining statute brought  
17 with it tension and conflict emanating from the demands  
18 of labor for higher salaries and benefits and the demand  
19 to negotiate working conditions such as class size  
20 limits, which, when granted, increased expenditures or  
21 shifted expenditures from other competing needs within  
22 the school district such as maintenance and building and  
23 grounds repair accounts."

24 Do you see that?

25 A Yes.

1 it was Garden Grove. But it was a very different kind  
2 of business of taking care of schools in California  
3 after this. So yes, there were many, many things in  
4 newspapers and elsewhere. But hearing it from  
5 practitioners, what's going on in your district, what  
6 are the practices, what's happening.

7 Q So the basis of the statement is not  
8 theorizing, it is that you heard discussion of this from  
9 a variety of different practitioners that this was  
10 occurring?

11 A Right. And when I was on the campus of Rio  
12 Mesa High School, as I described to you, I was a County  
13 employee, but I was there, and there was tension in the  
14 district. I was concerned about what would occur,  
15 because I would have been the only teacher on that  
16 campus, should there have been a strike, and there was  
17 the potential of a strike.

18 These were good people, but the constructs of,  
19 gee, you're a bad guy because you're the superintendent,  
20 you don't want to give us money, and the construct of  
21 no, you're the union person and you're making demands  
22 that are unacceptable demands. You know, if you  
23 represent somebody, you got to try to do some work for  
24 them.

25 Q I appreciate that. I want to try to focus, not

1 so much on the any labor tensions or whatever --

2 A Sure.

3 Q -- things this may have engendered, but the  
4 effects, if any, on the facilities and facilities  
5 conditions.

6 Do you have an understanding about how the  
7 shifting of expenditures from -- I guess what you mean  
8 by that as away from building and maintenance and ground  
9 repair accounts affected schools in California?

10 MS. DAVIS: Vague and ambiguous.

11 THE WITNESS: As I said, there were ongoing  
12 anecdotes that would happen, but I could give you at  
13 least a point of just learning from me to an extent of  
14 what happened to me in one school district in Simi  
15 Valley.

16 Simi Valley had been -- probably still is the  
17 largest school district in Ventura County. In the --  
18 may have been '84, but somewhere in the early '80s, mid  
19 '80s, they went to the voters with a bond measure, and I  
20 think it was like \$35 million. Other than a small  
21 amount for -- I think what was an athletic facility, it  
22 was all there to take care of maintenance that had not  
23 been done for a period of almost ten years in the  
24 district because of demands for spending money  
25 elsewhere. And there were higher teacher salaries, but

1 frame.

2 Q And was it your understanding that the district  
3 had not done maintenance that it felt that it should  
4 have done for about ten years prior to the passage of  
5 that bond?

6 A Yes.

7 Q And at least one of the reasons that it hadn't  
8 been able to do that maintenance was because there was  
9 competing demands for higher teacher salaries?

10 A Yes.

11 Q Are there any other examples that you can think  
12 of that illustrate the point that you made here?

13 A Well, doing the work that I did for the County  
14 office, where I was assisting school districts, they  
15 never seemed to have money available for maintenance.

16 Ojai Unified asked me to come out for a visit  
17 and to bring a State agent down, and I did that. They  
18 had severely deteriorated playgrounds and such that, if  
19 you were playing basketball and you tried to stop to do  
20 a jump shot, you could continue to slide because the  
21 gravel was there, and the rest of the asphalt was gone.  
22 So we visited.

23 It was at more than one school. And it had  
24 just not been done. And commonly districts will do  
25 slurry sealing on those kinds of outdoor facilities and

1 there were facilities that were wanting because dollars  
2 hadn't been spent there.

3 So the district went to the community --  
4 sophisticated district, too, with a good superintendent,  
5 good person in the business office, and I worked with  
6 them, who was at the County office at the time, I  
7 think. But they had to go to the voters to say -- and  
8 they were successful the second time because they made  
9 the case. But they hadn't done things because they  
10 didn't put money into maintenance, and they had to go  
11 back and backfill.

12 BY MR. ELIASBERG:

13 Q And you may have said, but tell me -- you said  
14 the second time, so when was -- the bond passed the  
15 second time they attempted that?

16 A Yeah, and I can't remember whether it was a  
17 March or a June, November, but it may have been, like, a  
18 June and then a November, because districts could do  
19 that. If they failed, there was enough time to get it  
20 back on the ballot.

21 Q And approximately when was this? What year?

22 A '84, maybe -- so it would have been a parcel  
23 tax, then, if it was '84 -- because the general  
24 obligation bond didn't come back into effect until '86.  
25 I guess it could have been '86, but it was in that time

1 on parking areas on a cycle of every, you know, three or  
2 four years.

3 This was so bad that my recommendation was they  
4 didn't let anybody play on it, because you'd end up with  
5 kids falling, and if they're in shorts, embedding gravel  
6 in their knees and, you know, their bottoms and  
7 everywhere else. So eventually we were able to get  
8 them -- I think we went after some critical hardship,  
9 deferred maintenance moneys to let them go in and take  
10 care of a number of schools to get that done. So  
11 there's another one that I saw.

12 In working with some of the smaller  
13 districts -- I can't remember the details of it, but Rio  
14 was a little district, and there was a business guy  
15 there named Charles Turk, who was kind of an interesting  
16 guy. Was really anxious to get money to use on  
17 maintaining the schools and didn't have dollars to  
18 maintain. And -- what I kept hearing was, you know,  
19 we're -- it's going away. It's at the bargaining table.

20 So, you know, I believe in high teachers'  
21 salaries, and I worked to try to do that in Moorpark. I  
22 took a proposal to teachers that surprised them one day,  
23 because they said, we want to benchmark ourself to  
24 Canejo, the district we mentioned yesterday.

25 But I think there needs to be a balance, and I

1 think that the tables were tilted, and districts had  
2 tremendous difficulty during that time. And I don't  
3 think we've really gotten back on track.

4 Q With respect -- just to step back just a  
5 second, with respect to Simi Valley, did the people you  
6 talked with in that district tell you -- let me step  
7 back.

8 I believe you said that they were of the  
9 opinion that there was maintenance that they should have  
10 done over the course of ten years that they hadn't done.

11 Did they talk to you about the actual  
12 consequences of, you know, particular conditions that  
13 they wanted to address that hadn't been addressed?

14 A I remember seeing some of the listing, you  
15 know, you have a bond measure and -- whatever it is,  
16 parcel tax, you have a listing. I can't tell you what  
17 they were. I don't -- I don't remember the details.

18 The superintendent was somebody I respected,  
19 and the assistant or associate superintendent for  
20 business, who was responsible for putting this all  
21 together, was somebody who was very good and very  
22 detailed, and I remember her talking about those needs.  
23 But I'm sorry, I can't remember a lot of them. But they  
24 involved a number of different schools. There were many  
25 schools in that district. It's a big district.

1 Q They then go -- they go out to -- and are able  
2 to obtain bond fund to do work that has now become major  
3 maintenance.

4 Do you understand that --

5 A Yes.

6 Q -- part of the hypothetical?

7 Assuming that that bond fund passes and they're  
8 able to do the major maintenance work -- the major  
9 maintenance work, the passage of the bond wouldn't  
10 necessarily relieve a continuing tension between  
11 teachers' salaries and routine maintenance and  
12 operations; is that correct?

13 MS. DAVIS: Incomplete hypothetical, vague and  
14 ambiguous.

15 THE WITNESS: The competition would continue for  
16 the general fund dollar and where that dollar would go.

17 BY MR. ELIASBERG:

18 Q I'm going to turn to Page 4. And I'm looking  
19 at -- I guess at the first complete paragraph on Page 4  
20 that begins, "In 1979 the Legislature again responded to  
21 the needs of local schools through the creation of the  
22 deferred maintenance program. The effect of the  
23 collective bargaining statute upon budgetary decisions  
24 made at the district board level and the uncertainty of  
25 revenue sources had caused districts to begin to spend

1 Q Am I correct in understanding that the  
2 teachers' salaries -- whether they're low or high or  
3 increased, that money would come out of the district's  
4 general fund budget; is that correct?

5 A Yes.

6 Q So the -- any competition with teachers'  
7 salaries would be with -- would be with routine  
8 maintenance and operations as opposed to capital  
9 expenditures; is that correct?

10 A Yes. The relationship there is routine  
11 maintenance left to itself, then the kind of  
12 deterioration we've talked about, whether it's the paint  
13 or something else, you know, the pay-me-now,  
14 pay-me-later scenario, you end up paying more later on,  
15 because things become so dilapidated or they're just --  
16 they don't work.

17 Q And let me just -- I'm just going to use a  
18 hypothetical to make sure I understand this.

19 A district in that scenario that you've laid  
20 out, there's been a competition between teachers'  
21 salaries and maintenance and operations. They haven't  
22 paid now with respect to maintenance and operations, and  
23 then the facilities have therefore deteriorated.  
24 That's -- understand that scenario?

25 A Yes.

1 less of their general purpose revenue in areas such as  
2 major maintenance needs," and I believe we've already  
3 talked about that basic concept.

4 If you'd focus on the next sentence, "The  
5 deferred maintenance program provided an incentive to  
6 districts by the offering of \$1 for each district dollar  
7 transferred to a deferred maintenance fund up to a half  
8 percent of the district's expenditure side of its  
9 general fund budget."

10 Do you see that sentence?

11 A Yes, I do.

12 Q Am I correct that over the years since 1979,  
13 the State has not actually offered a full dollar to each  
14 district dollar that's transferred to the deferred  
15 maintenance fund?

16 MS. DAVIS: Vague and ambiguous.

17 THE WITNESS: There may have been several years  
18 where it was a dollar for dollar, but there became a  
19 time in -- I think it was in the late 1980s, where the  
20 way that this fund was fueled at the State level began  
21 to have diminished revenues, and so the State was then  
22 putting general fund money into it and so less was put  
23 in than the State's full dollar. Yes, that's true, that  
24 for many years that was what occurred and will occur  
25 again.

1 BY MR. ELIASBERG:

2 Q Do you know for approximately how many years it  
3 did occur? I'm looking for an estimate here. I'm not  
4 trying to catch you '85 versus '86.

5 A You know, there was a time when I remember  
6 focusing on that, because I was arguing for deferred  
7 maintenance money several years ago, but I can't -- I  
8 can't tell you -- no, I can't tell you. But it's --  
9 there have been more years where it's been less than  
10 there have been years when it's been at the level.

11 Q Do you know how low it's gone, in the sense of  
12 20 cents to a dollar or 30 cents to a dollar? How low  
13 it's gone in the last 20 years?

14 A No. I can't tell you. Other than this year it  
15 may be very low.

16 Q Any estimate of how low that might be?

17 A Well, the prospective year, the budget year,  
18 there will be some money in deferred maintenance, but I  
19 don't know if it'll be 12 cents of the State's dollar.  
20 Some number, very low number.

21 Q And just so I'm sure I understand it, that  
22 would mean that if -- based on the number you gave --  
23 just gave, if a district put a dollar into its deferred  
24 maintenance budget, your expectation is that the State  
25 may pay something around 12 cents in a match?

1 Q Do you remember approximately when that was? I  
2 know you say may not have been '97. Do you remember  
3 when you met with the LAO?

4 A It was somewhere mid '90s.

5 Q Do you remember if the LAO actually came out  
6 with a report of serious recommendations?

7 A Yes, there was a report, and there were  
8 recommendations.

9 Q Did you read that report?

10 A I at least read the executive summary of the  
11 report. I may have read part or -- the report in whole  
12 or in part because of interest, yes.

13 Q Do you -- I'm sorry.

14 A Yes. I'm trying to remember back on this. I  
15 do remember the report.

16 Q Do you remember if the LAO incorporated any of  
17 the recommendations you made to them?

18 A I believe they did in a different way. I think  
19 they didn't quite go in the direction that we had hoped  
20 they would. But at least it was a proposed change that  
21 was positive. They had listened. You could tell that  
22 they had listened to what we said.

23 Q Do you know if the Legislature ever implemented  
24 any of those recommendations?

25 A I don't believe so. There was a bill, and I

1 A And I don't know if it'll be 12 cents, but some  
2 very low number, based upon a recognition that there are  
3 some dollars that are still fueling this fund. But no  
4 real expectation that deferred maintenance money will  
5 happen.

6 Now, what I understand is that there have been  
7 some support for deferred maintenance being funded to a  
8 certain degree, at least in the Senate side of the  
9 budget, but if you read the paper today or see what's  
10 been happening, there seems to be no agreement on  
11 anything. So I don't know that we can depend upon much  
12 there.

13 Q Are you aware that -- of an LAO report from  
14 approximately 1997 making recommendations of changes as  
15 to the -- with respect to the deferred maintenance  
16 program?

17 MS. DAVIS: Vague and ambiguous.

18 THE WITNESS: I don't remember '97, but I remember  
19 a report from the LAO. And I remember meeting with the  
20 LAO and a couple other people to try to explain to them  
21 what deferred maintenance was and what ongoing  
22 maintenance was and what major maintenance was and  
23 suggesting that we needed to have a continuous funding  
24 of deferred maintenance.

25 BY MR. ELIASBERG:

1 can't tell you the number that was offered and that  
2 had -- it made its way to the governor, and you know how  
3 bills sometimes change. It was honed down to a change  
4 of the name from deferred maintenance to major  
5 maintenance, which is something we sought. And the  
6 governor vetoed the bill.

7 I can't even tell you the author of the bill.  
8 But that -- so something did happen there, but all that  
9 we asked for certainly did not.

10 Q Am I correct in understanding that the bill  
11 that actually made it -- even the bill that made it to  
12 the governor was vetoed?

13 A Yes.

14 Q And that bill didn't incorporate the changes --  
15 most of the changes that you'd recommended?

16 A What it had finally been compromised to was at  
17 least a change of the name of the program, and even that  
18 was unacceptable for some -- whatever reason.

19 Q Radical change, then.

20 A We thought major maintenance sounded better.  
21 Deferred maintenance sounds like you kind of forgot to  
22 do something.

23 Q If you could look down towards the bottom on  
24 Page 4 -- and I'm aware that we're getting close and I --

25 A Okay.

1 Q Our watches may be different, whatever. You  
2 can call it. I think my watch may be a little slow.

3 MS. DAVIS: Okay.

4 BY MR. ELIASBERG:

5 Q There's a sentence in the bottom paragraph near  
6 the bottom, but not the last, that says, "The new  
7 modernization requirements of additional local  
8 contributions, 40 percent rather than 20 percent, while  
9 the State's match remains essentially the same dollar  
10 amount as before, as discussed below, moves in the  
11 direction of a focused approach to meeting major repair  
12 needs of schools through a thoughtful, deliberative plan  
13 of action."

14 Do you see that sentence?

15 A Yes, I do.

16 Q What do you mean by "moves in a direction of a  
17 focused approach to meeting major repair needs of  
18 schools"?

19 A Well, maybe I'm not as clear as I could have  
20 been. The State -- the proposal of staffers was to make  
21 the mod program a 60-40 program and diminish the State's  
22 contribution that's in statute. And we argued from the  
23 C.A.S.H. organization, through a number of meetings and  
24 proposals, that the program be left intact at 80-20.  
25 But knowing that when we got to the end we had to move,

1 program there was some State oversight of it, at least,  
2 you know, plan review, but that with the districts  
3 contributing more money -- and that seemed to be  
4 compelling to the policy makers and those that served  
5 them -- that the districts are going to be really  
6 careful about what they're doing with that money,  
7 because they're largely going to the voters to come up  
8 with that difference.

9 So that their -- that is a more focused  
10 approach, more deliberative planning approach, than the  
11 approach before, jeez, how much money can I get and what  
12 can I do with it, you know, I have various needs, such  
13 as we were discussing, you know, yesterday.

14 Q Was there a concern that with the 80-20 match,  
15 some districts had actually not spent their money wisely  
16 because the vast, vast majority was the State's money?

17 A There was a belief that with the 80-20  
18 approach, that the State's 80 got spent and there was no  
19 district 20.

20 Q Were there -- you know, whether this would be  
21 bookkeeping or some -- was there oversight in place that  
22 was designed to prevent that spending of the State's 80  
23 and ignoring the district's 20?

24 MS. DAVIS: Vague and ambiguous.

25 THE WITNESS: The only oversight that I think would

1 and we did that. And the move was, you keep the State's  
2 dollar contribution the same, with the inflators  
3 happening, and we'll just do the math differently and  
4 we'll call that 60 percent and we'll come up with the  
5 difference locally.

6 So what I'm saying there -- and I'm not real,  
7 real clear, I guess, is that, in a focused approach to  
8 meeting major repair needs through schools, through a  
9 thoughtful and deliberative plan of action, we were  
10 saying, because we have a new tool called Prop 39,  
11 schools can go out and ask the voters to contribute more  
12 or to contribute something, and we'll put more at the  
13 local level into the mod programs, with the caveat that  
14 you don't diminish it now or in the future. And that  
15 was the deal. And we argued that.

16 Q Okay. And I just -- because I want to  
17 understand your language, you say it moves in the  
18 direction of a focused approach.

19 Is it your position that the previous approach  
20 wasn't focused?

21 A There had been discussions throughout the '90s  
22 that the mod program was something that districts -- you  
23 know, from the State resource providers that districts  
24 came and got those dollars and decided what to do with  
25 them, for the most part, locally, although under the old

1 have believed was in place at the time, and still is in  
2 place now, is the audit that may be done at the end of a  
3 project.

4 Now, it could be that a district says, I  
5 promise to put in 20 percent, spends the State's 80  
6 percent now, and next year, through a variety of  
7 means -- and maybe it's a little bit of general fund  
8 money and some federal money or some borrowing -- that  
9 they make up that additional difference, and that would  
10 be okay. But there was a sense, and it was articulated  
11 back to us, that districts were fudging.

12 BY MR. ELIASBERG:

13 Q Did you ever attempt to see whether this  
14 concern actually reflected a reality of what was going  
15 on on the street?

16 A I mentioned it from time to time when I would  
17 interact with people from districts, but I took no  
18 proactive role to go out and say, by the way, are you  
19 fudging? No, I didn't do that. But it's my experience  
20 that if policy makers or those that serve policy makers  
21 believe that something like that is occurring, then it's  
22 going to affect how they come down on whatever the new  
23 policy may be.

24 So what I argued is we're going to have to come  
25 up with more.

1 Q So sometimes, in making policy, the perception  
2 is as important as the reality, perception of the policy  
3 makers?

4 MS. DAVIS: I'm not sure if that characterizes his  
5 testimony properly.

6 BY MR. ELIASBERG:

7 Q I'm not trying to mischaracterize. I'm trying  
8 to understand if I'm accurately capturing your point.

9 A What I was saying is if there's a belief from  
10 one or more instances -- and sometimes, unfortunately,  
11 it may be one instance; it may be a big one, but one --  
12 that will color policy making. And so what I have to do  
13 is I have to turn up the horsepower to say what can I  
14 show you to let you know that what we're doing is the  
15 right thing.

16 Here I said, let me demonstrate to you that we  
17 believe -- because I'll commit to you, on behalf of  
18 C.A.S.H., that we'll support this. This was considered  
19 the proposal of ours. And what it's going to mean is  
20 districts are really going to have to show you 40  
21 percent worth of work, as opposed to, gee, we're going  
22 to get 20 percent down later on.

23 MS. DAVIS: I think we're getting close.

24 MR. ELIASBERG: Okay. There's no point --

25 MS. DAVIS: I'm concerned that if we go into

1 that -- let me just say this. I haven't, you know --  
2 any amount of time that I take is not really -- I  
3 haven't said I'm going to take this and you don't get  
4 any or anything. I'm not speaking with LAUSD.

5 MS. DAVIS: No, they have a conflict on Thursday.

6 MR. ELIASBERG: I understood that.

7 MS. DAVIS: So they're not showing up. So you want  
8 to take all day Thursday, that's fine.

9 MR. ELIASBERG: Okay. I guess I was only  
10 referring, just to make sure that we're clear, that I  
11 had not accepted what appeared to be Peter Cho's  
12 proposal, which was that it was going to be three days  
13 for everybody, including LAUSD.

14 MS. DAVIS: Yeah, I think we've straightened -- my  
15 understanding is that Peter and Kevin DeBorde have  
16 spoken.

17 Okay. So the bottom line is we'll be here at  
18 9:00 on Thursday.

19 MR. ELIASBERG: That sounds good.

20 \_\*\*\*\_  
21  
22  
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25

1 another line --

2 MR. ELIASBERG: There's no point in asking another  
3 line of questions.

4 MS. DAVIS: Should we just state our understanding  
5 that we're reconvening Thursday at 9:00?

6 MR. ELIASBERG: That's fine.

7 MS. DAVIS: My understanding is that plaintiffs  
8 plan to finish their questioning of Dr. Duffy; is that  
9 correct?

10 MR. ELIASBERG: That's our hope, but as my  
11 understanding of the practice on the depositions has  
12 been, nobody's been willing to commit because of the way  
13 depositions work. I can promise that we'll finish.  
14 We'll assure you of that. I'll certainly make every  
15 effort --

16 MS. DAVIS: You'll finish?

17 MR. ELIASBERG: No, I said I will make every effort  
18 to do that. I respect Dr. Duffy's time, and -- that's  
19 my hope.

20 MS. DAVIS: Okay. And I'll just say I think three  
21 days is probably sufficient for a 25-page report, but I  
22 know that is your hope and your plan.

23 MR. ELIASBERG: And just so I -- I don't want to be  
24 making representations or appearing to speak for LAUSD.  
25 I assume that there are discussions going on with LAUSD

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9 I, THOMAS G. DUFFY, do hereby declare under  
10 penalty of perjury that I have read the foregoing  
11 transcript; that I have made such corrections as noted  
12 herein, in ink, initialed by me, or attached hereto;  
13 that my testimony as contained herein, as corrected, is  
14 true and correct.  
15 EXECUTED this \_\_\_\_ day of \_\_\_\_\_,  
16 \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.  
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20 THOMAS G. DUFFY  
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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: \_\_\_\_\_

\_\_\_\_\_  
SHERRYL DOBSON  
CSR No. 5713