

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

ELIEZER WILLIAMS, et al.,)
)
 Plaintiffs,)
 vs.)
)
STATE OF CALIFORNIA, DELAINE)
EASTIN, State Superintendent)
of Public Instruction, STATE)
DEPARTMENT OF EDUCATION,)
STATE BOARD OF EDUCATION,)
)
 Defendants,)
-----))
STATE OF CALIFORNIA,)
)
 Cross-Complainant,)
)
 vs.)
)
SAN FRANCISCO UNIFIED SCHOOL)
DISTRICT, et al.,)
)
 Cross-Defendants.)
-----))

No. 312 236

DEPOSITION OF TOAI DAO

San Francisco, California

Wednesday, August 15, 2001

Reported by:
TRACY L. PERRY
CSR No. 9577
JOB No. 852038

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 2 COUNTY OF SAN FRANCISCO
 3
 4 ELIEZER WILLIAMS, et al.,)
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 5 Plaintiffs,)
 vs.) No. 312 236
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 7 STATE OF CALIFORNIA, DELAINE)
 EASTIN, State Superintendent)
 of Public Instruction, STATE)
 8 DEPARTMENT OF EDUCATION,)
 STATE BOARD OF EDUCATION,)
 9)
 Defendants,)
 10 _____)
 STATE OF CALIFORNIA,)
 11)
 Cross-Complainant,)
 12)
 vs.)
 13)
 SAN FRANCISCO UNIFIED SCHOOL)
 14 DISTRICT, et al.,)
)
 15 Cross-Defendants.)
 _____)
 16
 17
 18 Deposition of TOAI DAO, taken on behalf of
 19 Defendant State of California, at 275 Battery
 20 Street, 26th Floor, San Francisco, California,
 21 beginning at 9:50 a.m. and ending at 6:07 p.m.,
 22 on Wednesday, August 15, 2001, before TRACY L.
 23 PERRY, Certified Shorthand Reporter No. 9577.
 24
 25

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1 APPEARANCES:
 2
 3 For Plaintiff and the Witness:
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 17 Also Present:
 18 Soly Perez
 19
 20
 21
 22
 23
 24
 25

1 San Francisco, California, Wednesday, August 15, 2001
 2 9:50 a.m. - 6:07 p.m.
 3
 4 TOAI DAO,
 5 having been first duly sworn, was examined and testified
 6 as follows:
 7
 8 EXAMINATION
 9 BY MR. ROSENTHAL:
 10 Q Good morning. Can you please state and spell
 11 your name for the record?
 12 A Sure. My name is Toai Dao. It's spelled
 13 T-o-a-i, last name is Dao, D-a-o.
 14 Q And can you please also tell me your home
 15 address, current home address?
 16 MS. LHAMON: Objection. He's not going to give his
 17 home address but he can give the city in which he lives,
 18 but the home address is private information.
 19 THE WITNESS: I live in [REDACTED]
 20 MR. ROSENTHAL: Are you instructing the witness not
 21 to give his home address?
 22 MS. LHAMON: Yes, I am.
 23 MR. ROSENTHAL: You're representing this witness?
 24 MS. LHAMON: I am.
 25 BY MR. ROSENTHAL:

1 Q Are you represented by counsel today, Mr. Dao?
 2 A I'm represented by Ms. Lhamon, so --
 3 Q Do you have an understanding as to when that
 4 representation began?
 5 A Not exactly.
 6 Q Are you a party to this litigation?
 7 A I believe not.
 8 Q Can you please state your home address for the
 9 record, please?
 10 MS. LHAMON: I'm instructing the witness not to
 11 answer.
 12 THE WITNESS: [REDACTED]
 13 BY MR. ROSENTHAL:
 14 Q Are you going to follow your attorney's
 15 instruction?
 16 A Of course.
 17 MR. ROSENTHAL: What's the basis for the
 18 instruction?
 19 MS. LHAMON: It's private information. You don't
 20 have access to people's home addresses.
 21 MR. ROSENTHAL: I think that's limited to the
 22 parties in the case.
 23 MS. LHAMON: I disagree.
 24 BY MR. ROSENTHAL:
 25 Q You understand that by not giving your home

1 address you may be required to come back for a second
 2 day of testimony?
 3 A No problem.
 4 Q Mr. Dao, my name is Michael Rosenthal and I
 5 represent the State of California in this action.
 6 And have you ever had your deposition taken
 7 before?
 8 A No, I have not.
 9 Q Are you aware what a deposition is?
 10 A Can you clarify, please? Actually, so, no, I'm
 11 not exactly sure.
 12 Q Well, basically what we're going to do here
 13 today is I'm going to ask you a series of questions and
 14 I'm going to ask you to provide answers to those
 15 questions. And you know we're here on the Williams
 16 matter, which I assume you know a bit about.
 17 Are you familiar with the current action that's
 18 pending, the Williams versus State of California action?
 19 A Like you said, I know a bit about it.
 20 Q You understand that you've just taken an oath
 21 and it's the same oath you would take in a court of law,
 22 and you understand that all the testimony you are giving
 23 here today is under oath and subject to penalty of
 24 perjury?
 25 A Definitely.

1 Q And sitting next to us we have a court reporter
 2 who is basically transcribing everything that we say
 3 here today, and at the end of the deposition you'll
 4 receive a copy of the transcript of everything that was
 5 said and you'll have an opportunity to review that
 6 transcript and make any changes you think are necessary.
 7 Do you understand that?
 8 A Yes.
 9 Q And you also understand that if you make any
 10 changes to the transcript that any attorney in this
 11 action will have the opportunity to comment on any
 12 changes you've made?
 13 A Okay.
 14 Q And because we have a court reporter trying to
 15 transcribe everything that's being said, it's important
 16 that you give me verbal answers to my questions as
 17 opposed to nods of the head, you know, shaking the head.
 18 A Okay. Yes.
 19 Q So to the extent you can do that -- remember to
 20 do that, that would be helpful.
 21 A I'll try.
 22 Q Also to make sure the record is clear it's also
 23 helpful if we have one person speaking at a time. So to
 24 the extent you can wait until I finish my question and
 25 then give your answer, and I'll let you finish your

1 answer before I start my next question. Do you
 2 understand that?
 3 A Of course. Thank you.
 4 Q It's also important to listen to my questions
 5 carefully. For any reason you don't understand the
 6 question, just feel free to ask me to clarify the
 7 question or to rephrase it and I'll do so if I can. Do
 8 you understand that?
 9 A Yes.
 10 Q Also I ask you not to guess in response to any
 11 of the questions I ask. To the extent you're able to
 12 give your best estimate to a particular question, that's
 13 the sort of testimony I'd prefer, but I don't want you
 14 to guess. If you don't know the answer, please don't
 15 guess. Do you understand that?
 16 A What's the difference between a guess and
 17 estimate though?
 18 Q Do you have an understanding? What's your
 19 understanding of what an estimate is as opposed to a
 20 guess?
 21 A I'd like to hear -- can you clarify that for me
 22 so there's a definitive --
 23 Q I'd prefer to work off your definition, so do
 24 you have an understanding between -- of the difference
 25 between a guess and an estimate?

1 A Let's say no.
 2 Q You don't have an understanding?
 3 A No.
 4 Q When that situation arises, just let me know if
 5 you're concerned that you might be guessing and then
 6 we'll deal with it then.
 7 A Okay.
 8 Q And if you need a break for any reason, please
 9 let me know if you need to go to the restroom, if you
 10 need a drink of water or anything like that.
 11 A Okay.
 12 Q I'm happy to take a break whenever --
 13 A Great. Thank you.
 14 Q -- you need to.
 15 Also, sometimes I may ask a question or a
 16 series of questions in a particular area and sometime
 17 later during the day you may recall some information
 18 that was responsive to an earlier question. If that
 19 happens just feel free to let me know that you've
 20 remembered something that would be responsive to an
 21 earlier question and we can go back to that particular
 22 area and you can provide me with that information.
 23 A Okay.
 24 Q Do you understand that?
 25 A Yeah.

1 Q Do you have any questions about any of these
 2 ground rules?
 3 A No, it sounds pretty --
 4 Q You understand them all?
 5 A I think so.
 6 MS. LHAMON: Except for the difference between a
 7 guess and an estimate.
 8 THE WITNESS: I'll feel that out. I'll ask him
 9 afterwards.
 10 MR. ROSENTHAL:
 11 Q Is there any reason why you might be unable to
 12 give your best testimony today?
 13 A Not that I know of, no.
 14 Q Are you taking any medication?
 15 A No.
 16 Q Have you consumed any alcohol?
 17 A No.
 18 Q Do you suffer from any sort of disability that
 19 may impair your memory?
 20 A No.
 21 Q Can you tell me what you did to prepare for
 22 this deposition today?
 23 A I read over my declaration that Catherine
 24 presented me with, and --
 25 MS. LHAMON: Remember, you don't want to testify

1 about any communication that you and I have had. You
 2 can say what you read if you want to, but be sure not to
 3 testify to the content of the communication that we've
 4 had.
 5 THE WITNESS: Okay. And I talked with Catherine.
 6 BY MR. ROSENTHAL:
 7 Q Can you tell me when you spoke to Catherine
 8 about? And by "Catherine," you mean Catherine Lhamon
 9 sitting next to you?
 10 A In terms of -- yes, sir. Do you mean in terms
 11 of this deposition or --
 12 Q In connection with preparation for this
 13 deposition. Let's limit it to that now.
 14 A Sure. She told me --
 15 MS. LHAMON: Remember not to say what I told you
 16 about. You can say when you talked to me.
 17 THE WITNESS: Right. I think I talked to her
 18 approximately -- perhaps two weeks ago to know that
 19 there was a deposition, and she -- and we talked
 20 yesterday.
 21 BY MR. ROSENTHAL:
 22 Q Two weeks ago when you spoke to Catherine, was
 23 that in person or over the phone?
 24 A I believe it was over the phone.
 25 Q And do you recall how long you spoke to

1 Ms. Lhamon?
 2 A Perhaps five minutes.
 3 Q Was there anybody else present on the call?
 4 A Not that I'm aware of, no.
 5 Q And when you spoke to Ms. Lhamon yesterday, was
 6 that in person or over the telephone?
 7 A That was in person.
 8 Q And do you recall for how long that was?
 9 A I'd say about two hours.
 10 Q Was anybody else present at the meeting?
 11 A Yes.
 12 Q Can you tell me who?
 13 A I believe her name is Leecia Welch.
 14 Q Do you have an understanding who Ms. Welch is?
 15 A I believe she works for Mo Fo.
 16 Q Do you know if she's an attorney?
 17 A I do not, due to the fact that I'm not sure
 18 definitively what the legal term for an attorney is, to
 19 clarify.
 20 Q Did you meet with anybody else to prepare for
 21 your deposition today?
 22 A No, I did not.
 23 Q Did you review any documents to prepare for
 24 your deposition other than the declaration you've
 25 already testified to?

1 A I believe I saw another student's document --
2 declaration, and I also saw the com- -- the Fremont
3 High -- the complaint that was filed, only to the
4 specific part, the bit concerning Fremont High School.

5 Q Did you review any other documents in
6 connection with preparing for the deposition?

7 A No, sir.

8 Q Did you speak to anybody else besides
9 Ms. Lhamon about preparing for your deposition?

10 MS. LHAMON: Ms. Welch he's also testified as
11 speaking to.

12 THE WITNESS: Yes, I spoke to Ms. Welch and
13 Ms. Lhamon. That's it.

14 BY MR. ROSENTHAL:

15 Q Have you spoken to anybody else about
16 testifying here today?

17 A I spoke -- I had mentioned that I was speaking
18 with the ACLU -- not specifically to give a
19 deposition -- to one of my coworkers, but he was -- it
20 was more of a -- it was one way. I feel like it was a
21 one-way thing. I just told him, "Hey, I'm going to go
22 speak with the ACLU," and he said, "Fantastic," I think
23 was his response.

24 Q Do you recall when the conversation was?

25 A That was yesterday. Sorry.

1 Q Can you tell me the name of the co-worker
2 you're referring to?

3 A Yes. Steve Miller.

4 Q Can you tell me what Mr. Miller does?

5 A He's a teacher, a science teacher as well.

6 Q Is he a teacher at Fremont High School?

7 A He was.

8 Q Can you tell me where he's a teacher now?

9 A Life Academy.

10 Q Is that where you're currently teaching?

11 A In September is when we're planning to start
12 the school. So come September, yes.

13 Q So when you say he was a teacher at Fremont,
14 was he a teacher up until the end of the 2001 school
15 year, 2000-2001 school year?

16 A I'm not sure when technically he -- his Fremont
17 High School status ended and his Life Academy status
18 starts, so I don't know.

19 Q I was trying to clarify because you said you're
20 not currently teaching at Life Academy but your view is
21 that he is?

22 A No. I'm not sure when our contract says
23 Fremont High School and when it takes over and says that
24 we're -- you know, our exact title is Life Academy. So
25 to the best of my knowledge, I'd say we're somewhere

1 transitioning between Fremont High School and Life
2 Academy.

3 Q And that's true for both of you?

4 A Correct.

5 Q Can you tell me the substance of your
6 conversation with Mr. Miller?

7 A Sure.

8 MS. LHAMON: Asked and answered.

9 Go ahead.

10 THE WITNESS: I said -- I believe it was not quite
11 verbatim, but it was, "Steve, I'm going to go -- I have
12 to get out of here. I have to go meet with the ACLU."
13 And he said, "Fantastic." And that was generally the
14 idea of the conversation, not much more than that.

15 Q Had you spoken to Mr. Miller about your
16 involvement in this lawsuit before?

17 A He had asked me, he said, "I heard that you
18 might be a witness for the" -- I'm not sure witness --
19 I think he might have said "witness," but I'm not sure
20 if that's what the exact phrase was, but he said, "I
21 heard you're a witness for the ACLU."

22 And I said, "Yes."

23 And he said, "Great." And I think we were off
24 because teacher's day is pretty busy, so...

25 Q Do you recall when that conversation was?

1 A No, I do not, not an exact date.

2 Q Other than the two meetings with counsel
3 you've discussed, did you do anything else to prepare
4 for your deposition today?

5 A You said two meetings with counsel?

6 Q Let's strike that.

7 Your two communications with counsel.

8 A Okay, great. To prepare for this deposition.

9 Can you repeat the question one more time?

10 Q Sure. Did you do anything else to prepare for
11 your deposition other than the two communications you
12 had with counsel that you've already testified about?

13 A And reading my declaration, no.

14 Q Did you read your declaration on your own?

15 A Yes.

16 Q Did you also review it with counsel?

17 MS. LHAMON: I'm going to instruct you not to
18 answer because it's the contents of a communication with
19 counsel.

20 BY MR. ROSENTHAL:

21 Q Are you going to follow that instruction?

22 A Yes, sir.

23 Q Did you bring any documents with you today in
24 response to the document request that was served on you
25 in connection with this deposition?

1 A Counsel gave me some documentation.
 2 MS. LHAMON: Remember not to talk about the
 3 contents of communications with me, and so anything that
 4 I've given you is something you should not testify
 5 about. The question is, Did you bring any documents
 6 with you today for this deposition?

7 THE WITNESS: Not that I was -- I didn't plan to
 8 present it, no.

9 BY MR. ROSENTHAL:

10 Q Did anybody ask you to collect any documents?

11 A Oh, no.

12 Q I'd like to turn to your personal background
 13 information. Let's start with your education. If you
 14 can tell me what your highest level of education that
 15 you've achieved is and work backwards from there.

16 A Okay. Sure. I got a bachelor of arts in
 17 sociology, departmental distinction, and I also have a
 18 bachelor of science in molecular biology with a chem
 19 minor -- I'm not sure exactly how detailed you want
 20 this, so I apologize if I'm being too specific -- from
 21 the University of Illinois in Urbana-Champaign, and then
 22 from that I got my high school diploma -- do you want me
 23 to go further --

24 Q You can tell me where you graduated high
 25 school.

1 A Buffalo Grove, Illinois. Then Cooper Junior
 2 High.

3 Q That's fine. We don't need to go back that far.

4 A Sorry.

5 MS. RUSSELL: Let's not go to kindergarten here, or
 6 I will see 4:00 that way.

7 BY MR. ROSENTHAL:

8 Q Did -- you mentioned a bachelor of arts in
 9 sociology and a bachelor of science in molecular
 10 biology. Did you receive both of those from the
 11 University of Illinois?

12 A Yes, sir.

13 Q What year did you receive those degrees?

14 A '99.

15 Q That's for both of them?

16 A Yes.

17 Q Can you just tell me when you graduated high
 18 school?

19 A '95.

20 Q Did you attend any graduate school?

21 A No, I have not.

22 Q [REDACTED]

23 A [REDACTED]

24 Q Can you tell me when you received that?

25 A I received that the summer of '99 when I passed

1 the CBEST.

2 [REDACTED]
 3 [REDACTED]

4 A Yes, sir.

5 [REDACTED]
 6 [REDACTED]

7 A Actually, I will be enrolling or applying to
 8 Cal State Hayward for the Oakland/Cal State Hayward
 9 teacher partnership program.

10 Q As of today you haven't applied for that
 11 program yet?

12 A No. It should happen next week possibly.

13 Q Do you possess any other teaching credentials?

14 A No.

15 Q Why don't we turn to your work experience, and
 16 let's start with your current position. I know that's a
 17 little unclear at this point, but --

18 A Sure.

19 Q -- we'll work our way backwards from there.

20 A So I am a ninth and tenth grade science teacher
 21 or slotted to be a science teacher at Life Academy.
 22 Before the summer I was working at Fremont High School.
 23 Past two years I was at Fremont High School working as a
 24 ninth grade physical science teacher, and before that I
 25 was at -- I'm not sure if this classifies, if I'm an

1 employee of it, but I was at the Teach For America
 2 summer institute right before that.

3 Q Was that during the summer of 1999?

4 A Yes.

5 Q Can you tell me where the Life Academy is
 6 located?

7 A I believe it's on 22nd at International in
 8 Oakland.

9 Q And is that a public high school?

10 A Definitely.

11 Q You said prior to that you were teaching at
 12 Fremont High School. Can you tell me why you left
 13 Fremont High School to go to Life Academy?

14 A There's many reasons. One would be because I
 15 wanted more support for myself. So to go to a better
 16 performing school -- a school that I could perform
 17 better at would be the appropriate phrase. Sorry.

18 Q What do you mean by that?

19 A Right now I don't see Fremont having the
 20 successes that I would like it to see, and I think that
 21 Life Academy, with, you know, its more energetic staff I
 22 feel can produce better -- better student work and
 23 better student performance than Fremont High School.

24 Q Do you think Life Academy is a better school
 25 than Fremont?

1 A I can -- I cannot say that right now, I mean,
2 since we're opening our doors in September. In terms of
3 the staff, I'm kind of bias obviously, you know. I work
4 there, so...

5 Q So this is a new school that's never been
6 opened before?

7 A That's right. Sorry.

8 Q Do you know where the staff has been drawn?

9 A Sure. The staff has been drawn from a
10 nationwide recruiting effort. I know the principal is
11 from Harvard, a master's in education. Some teachers
12 came from Fremont High School, and some other people
13 came from some Stanford and Columbia master's in
14 education program. Their exact resumes I do not know.

15 Q Can you tell me who the principal of Life
16 Academy will be?

17 A Yes. Ms. Laura Flaxman.

18 Q And do you know if she was a teach -- whether
19 she was a principal at any schools prior to coming to
20 Life Academy?

21 A She was not a principal at any other schools
22 before coming to Life Academy, but she was the vice
23 principal at Fremont High School.

24 Q Did somebody ask you to begin teaching at Life
25 Academy or is that a decision you reached on your own?

1 A It was a decision that I reached upon my own.

2 Q So you applied for a job at Life Academy?

3 A Life Academy is the -- was -- Fremont High
4 School is divided into a few different academies. The
5 health and bio science academy answered a request for
6 proposal by BAYCES, which is the Bay Area Coalition for
7 Essential Schools, OCO, which is Oakland Community
8 Organization.

9 MS. RUSSELL: Organization.

10 THE WITNESS: And OUSD, Oakland Unified School
11 District, had put out a request for proposal about
12 opening new small autonomous schools in Oakland.

13 The Life -- excuse me -- the bio science and
14 health academy submitted a proposal, and I was one of
15 the people cited in the proposal. So to say that I
16 applied would be -- I applied, but also since I wrote
17 the proposal I was also in on the -- during the
18 ground -- the foundations of the school.

19 Q I don't want to put words in your mouth, but
20 were you one of the teachers who helped get the Life
21 Academy off the ground to begin with?

22 A Definitely. Yes, sir.

23 Q And is the -- strike that.

24 With the opening of the Life Academy, will
25 there continue to be a -- the health academy or I forgot

1 exactly what you called it. I think it was the
2 health and -- what was the name of the academy?

3 A The bio science and health academy.

4 Q The bio science and health academy. Will that
5 continue to exist at Fremont High School?

6 A I believe not.

7 Q And are -- other than you, are there other
8 teachers from the bio science and health academy at
9 Fremont going to be teaching at the Life Academy
10 beginning in the fall?

11 A Yes, definitely.

12 Q Are there any teachers who will not be teaching
13 at the Life Academy?

14 A Yes, definitely.

15 MS. LHAMON: Objection. Just to clarify the
16 question, did you mean any other teachers from the
17 health and bio science academy that will not be teaching
18 at Life Academy in the fall?

19 MR. ROSENTHAL: That's what I meant.

20 THE WITNESS: Yes, there will not be some teachers
21 coming from the bio science and health academy.

22 MS. RUSSELL: There will not?

23 THE WITNESS: There will not be some teachers of
24 the bio science and health academy in Fremont going to
25 Life Academy.

1 MS. RUSSELL: Some of the teachers will remain and
2 some will go.

3 THE WITNESS: Right. Yes.

4 MS. RUSSELL: Okay. Good. I was making sure.

5 THE WITNESS: Sorry.

6 MR. ROSENTHAL: Who's testifying here?

7 MS. RUSSELL: I'm just trying. You know, that's
8 what he said, but he just said it in a convoluted way.

9 THE WITNESS: Thank you, Ms. Russell.

10 BY MR. ROSENTHAL:

11 Q Can you just give me a rough breakdown of how
12 many teachers will be teaching at the Life Academy and
13 how many will not be?

14 MS. LHAMON: From the bio science and
15 health academy?

16 MR. ROSENTHAL: Yes, all these questions are
17 tailored to that.

18 THE WITNESS: I am not actually from the bio
19 science and health academy, but there are three science
20 teachers from the bio science and health academy and one
21 math teacher so -- and one English teacher. So a total
22 of five teachers from the bio science and health academy
23 are going to Life Academy, plus myself, who is not part
24 of the bio science and health academy, just for clarity.
25 Leaving behind I would give a rough estimate of about

1 between five and ten, but I really cannot tell you. I
 2 apologize.
 3 Q Between five and ten teachers from the bio
 4 health and science academy --
 5 A Will be left.
 6 Q Who are not going to Life Academy?
 7 A Yes.
 8 Q Is it your understanding they will continue to
 9 be employed at Fremont High School?
 10 A I believe so. I do not know.
 11 Q Are you guessing?
 12 MS. LHAMON: Well, since he's testified that he
 13 doesn't know the difference between a guess and an
 14 estimate, that's not a fair question for him. If you
 15 want to define it then you should go ahead and do that,
 16 but --
 17 BY MR. ROSENTHAL:
 18 Q Do you not understand when I asking you, "Are
 19 you guessing?" what that means?
 20 A Can you clarify?
 21 Q What's the basis for your belief that those
 22 five to ten teachers will continue to be employed at
 23 Fremont?
 24 A I do not know their personal lives and I do not
 25 know if they're returning to Fremont, would be my basis

1 for why I don't know if they're continuing their
 2 employment.
 3 Q You said you believed that they were going to
 4 continue to be employed at Fremont High School. Why do
 5 you believe that?
 6 A Because for the most part teachers return to
 7 continue where they teach, and I think that they would
 8 have a vested interest in the community to return to
 9 where they're teaching, but Oakland Unified School
 10 District does not always secure -- does not always have
 11 the retention of teachers that they would like to have.
 12 So, you know, statistically if you look at things, I'd
 13 say I believe so but I do not know.
 14 Q Have you asked any of them?
 15 A No.
 16 Q Have any of them told you?
 17 A No.
 18 Q So you're assuming that some are staying for
 19 the reasons you've stated, but it's not based on any
 20 conversation you've had with any of teachers; isn't that
 21 right?
 22 MS. LHAMON: Asked and answered.
 23 THE WITNESS: I'm sorry?
 24 MS. LHAMON: Asked and answered, but you can go
 25 ahead and answer.

1 THE WITNESS: What does that mean?
 2 MS. LHAMON: That means I'm objecting to the form
 3 of the question.
 4 THE WITNESS: Okay. One more time? I'm sorry,
 5 Michael.
 6 MS. LHAMON: Then it will be asked and answered.
 7 MR. ROSENTHAL: Now it's really asked and answered.
 8 MS. RUSSELL: Just means he already asked and you
 9 already answered.
 10 BY MR. ROSENTHAL:
 11 Q That's her objection, but you can still give
 12 answers.
 13 I was saying that you're assuming that these
 14 teachers are going to be continuing -- are continuing to
 15 be employed at Fremont High School based on the reasons
 16 you've stated but not based on any conversations you've
 17 had with them?
 18 A Correct.
 19 Q You stated earlier that you were involved in
 20 preparing the proposal to form the Life Academy; is that
 21 correct?
 22 A Yes.
 23 Q And you also testified that these sorts of
 24 proposals had been encouraged by the district; is that
 25 correct?

1 A Correct.
 2 Q Are you aware of any other schools that have
 3 been formed in a similar manner?
 4 A I am. I believe there are -- two middle
 5 schools and two elementary schools have already been
 6 approved by the Oakland Unified School District.
 7 Q Do you know the names of those schools by any
 8 chance?
 9 A I know one is Ascension, and that might --
 10 that's the middle school, and I do not know the names of
 11 the other schools.
 12 Q And those are schools that are opening this
 13 school year as well -- and by "this school year" I mean
 14 the fall of 2001 -- or are they schools that have
 15 already opened?
 16 A These are schools that are new that will be
 17 opening in September.
 18 Q You mentioned that there were five teachers
 19 from the bio science and health academy who were going
 20 with you to Life Academy. Do you know the names of
 21 those teachers?
 22 A Yes. Sandy Calvo.
 23 Q Can you spell that, please?
 24 A Sure. S-a-n-d-y, last name C-a-l-v-o; Rich
 25 Boettner, R-i-c-h, last name B-o-e-t-t-n-e-r; Preston

1 Thomas, P-r-e-s-t-o-n, last name T-h-o-m-a-s; Steve
 2 Miller, S-t-e-v-e, M-i-l-l-e-r; and Rebecca Huang,
 3 R-e-b-e- -- I believe two Cs -- c-c-a, and H-u-a-n-g.
 4 Q And you would be the sixth teacher at the
 5 school. Are there more teachers than just the six?
 6 A Yes.
 7 Q Do you know how many total teachers that will
 8 be teaching at Life Academy?
 9 A We are trying to have 15 teachers.
 10 Q Do you know how many teachers have been hired
 11 so far?
 12 A I believe the number is 13.
 13 Q Just generally do you know where the other
 14 seven teachers have come from?
 15 A Some from the aforementioned nationwide
 16 recruiting effort that we had. So some that were from
 17 Columbia Teacher's College, some of them were from
 18 Stanford's program, so...
 19 Q Have any of them come from other schools in
 20 California?
 21 A Not to the best of my knowledge, no.
 22 Q Are you involved in hiring any of the teachers?
 23 A Minimally, just in terms of perhaps I sent out
 24 for Teach for America, the organization that I was
 25 affiliated with -- I sent out an ad, a job advertisement

1 I guess would be the best way to describe it, but in
 2 terms of hiring them, no, I have not made any decisions.
 3 I was not a decision-maker on that end.
 4 Q Do you know who was involved in hiring the
 5 teachers for Life Academy?
 6 A I believe it was Ms. Laura Flaxman, Ms. Sandy
 7 Calvo, and Mr. Preston Thomas, along with parents and
 8 students of the community.
 9 Q You said the school plans to have 15 teachers,
 10 but there are only 13 hired right now; is that correct?
 11 A Yes.
 12 Q Are you still looking for two additional
 13 teachers?
 14 A Yes.
 15 Q Do you have an understanding for how long
 16 they've been looking for two additional teachers?
 17 A I believe since our proposal was approved and
 18 we planned our master schedule. I would say we've been
 19 looking for approximately three months now.
 20 Q Do you have an understanding as to whether
 21 there's been any difficulty in finding two additional
 22 teachers?
 23 A Definitely.
 24 Q There has been some difficulty?
 25 A Yes.

1 Q Can you tell me why?
 2 A I believe that we have not had a substantial
 3 number of qualified teachers, and there -- I understand
 4 that there's also a large shortage of math teachers for
 5 the Oakland Unified School District in general.
 6 Q Is that shortage of math teachers something
 7 that's limited to the Oakland Unified School District?
 8 A I would say definitely not.
 9 Q Is that a -- would you say it's a broader
 10 problem?
 11 A Yes.
 12 Q Is it a statewide problem or a nationwide
 13 problem? Do you have an understanding?
 14 A I know it's definitely a statewide problem and
 15 I would even venture to say it's definitely a nationwide
 16 problem as well.
 17 Q You said part of the reason for the Life
 18 Academy not being able to hire -- to fill the two last
 19 spots at the school was that you haven't gotten -- there
 20 was not a substantial number of qualified teachers who
 21 have applied?
 22 A Qualified applicants, not necessarily teachers.
 23 Q Fair enough.
 24 What do you mean by qual- -- what do you mean
 25 by "qualified applicant"?

1 A Somebody who's had experience within the
 2 classroom is what we're looking for. Somebody who
 3 understands our community and the ways that our students
 4 learn and -- just that would probably be the biggest
 5 points.
 6 Q Does an applicant need a full credential to be
 7 what you call a qualified applicant?
 8 A No, not necessarily.
 9 Q And why is that?
 10 A Because at this juncture we'd be happy to take,
 11 for example, a brand-new -- we're not happy, but we
 12 would settle for a Teach for America teacher who is
 13 uncertified, completely new to the teaching field, but
 14 due to the shortage of people qualified to teach math in
 15 the state of California and Teach for America are not
 16 credentialed teachers, so I would say it's not necessary
 17 to have a credential to teach at our high school.
 18
 19
 20
 21
 22
 23
 24
 25 Q What's the distinction between qualified and

1 completely qualified? Is it just having the credential
2 or is there something more to it?

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 [REDACTED] I think that's a big determinate factor of
14 how you will succeed in the classroom.

15 Q You stated a little bit earlier that you would
16 settle for a teacher from the Teach for America program
17 or programs like that who have no teaching experience
18 right now. Have you had difficulty even getting those
19 types of applicants?

20 A Yes.

21 Q And the two positions that you're looking to
22 fill, are those -- I've gotten the sense that they're
23 math openings; is that correct?

24 A No. One is a math opening and one is a
25 technology consultant/technology teacher.

1 settled they found a vacancy, they located a vacancy at
2 Fremont High School.

3 Q Let me just take a step back. Why were you
4 employed at the Oakland Unified School District as
5 opposed to some other district in the country?

6 A Because Teach For America has I believe an
7 agreement with the Oakland Unified School District to
8 send it some recent college graduates to fulfill some of
9 the shortage areas that the district has.

10 Q Did you want to teach in California?

11 A I wanted to teach in Oakland.

12 Q Did you express that interest to somebody at
13 Teach For America or --

14 A Definitely.

15 Q -- at Oakland Unified School District?

16 A Definitely.

17 Q People at both places?

18 A Yes, definitely.

19 Q When did you find out that you were hired by
20 the Oakland Unified School District?

21 A I signed my contract I believe perhaps one day
22 before school started, luckily, since some other
23 teachers could not sign their contract until two weeks
24 after the school year had started.

25 Q Do you have an understanding why you signed

1 Q Can you tell me just briefly what a technology
2 consultant/technology teacher is? Is that like a
3 computer teacher?

4 A Sure. Yes, I would define it in layman's terms
5 as a computer teacher. Even in typing, I guess.

6 Q I'd like to focus your attention on your two
7 years at Fremont High School. First just tell me how
8 you got the job at Fremont.

9 A Well, I came, I was placed through Teach For
10 America in Oakland to fill a science position. I was at
11 Castlemont, the high school down the street, two days --
12 the first two days of opening school -- after the
13 opening of school or the first two days of school. The
14 first two days of school I was at Castlemont doing
15 paperwork while my students at Fremont High School sat
16 in a classroom with I believe a temporary sub and even
17 at times without a teacher until I arrived there on the
18 end of the second day as their permanent teacher.

19 Q You said that you were placed at Fremont High
20 School by Teach For America. Can you describe for me
21 what you mean by that?

22 A Sure. I was not necessarily placed by Teach
23 For America. I was placed by the district office
24 temporarily at Castlemont. And then after some of the
25 management -- the human resource, management things

1 your contract one day before school started as opposed
2 to at an earlier date?

3 A Because I wanted to secure a job at Oakland
4 Unified School District. Oh, versus earlier? I'm
5 sorry.

6 Q Earlier, yes.

7 A Since Oakland -- that was the earliest Oakland
8 would commit to me, unfortunately.

9 Q Do you have an understanding why that was the
10 earliest Oakland would commit to you?

11 A Not exactly, but to the best of my estimate I
12 would probably say it's because that the human resources
13 department did not have a firm understanding of how many
14 teachers it would actually need to -- for the school
15 year, which it never did end up finish accomplishing.

16 Q But one day before school started the Oakland
17 Unified School District notified you that they, in fact,
18 did need your services? I'm not trying to put words in
19 your mouth. I'm just asking if that's what you're
20 saying.

21 A No, no, no, no. I'm trying to figure out the
22 best way to explain this without -- I showed up at the
23 contract signing not at the request of Oakland Unified
24 School District, so it was through my own efforts and
25 motivation that I knew -- and Teach For America's

1 support that I knew to show up at this given time to
2 sign a contract without an exact placement.

3 And through the mismanagement of Oakland
4 Unified School District I luckily got to sign my
5 contract without having secured a teaching position.

6 Q So when you signed a contract one day before
7 school started you did not have a teaching position yet?

8 A No, I did not.

9 Q Was it your understanding that you would be
10 assigned to a position as soon as there was an opening?

11 A I was hoping so. I was worried I might be
12 doing filing work for my first year for Teach For
13 America, which some of the Teach For America
14 matriculants did get -- did get. Say, for example, I
15 believe it was either San Jose or East Palo Alto where
16 they were doing filing work instead of teaching in the
17 classroom where they wanted to be for their placement.

18 So I was worried about getting a filing
19 position or a clerical position I guess would be
20 correct.

21 Q When you signed your contract with the Oakland
22 Unified School District did anybody from the district
23 make any representations to you as to what you would be
24 doing?

25 A Did they make any representation as to what I

1 would be doing? They would -- I believe they had gone
2 on the assumption that I would be teaching, but they
3 hadn't told me exactly, "You would be teaching." I'm
4 not sure exactly the specifics of my contract.

5 Q Did anybody tell you that you would be a
6 teacher during the 1999-2000 school year?

7 A I am -- I do not know. I do not remember.

8 Q I just want to go back to one thing you said
9 earlier. You said you wanted to teach at the Oakland
10 Unified School District. Can you tell me why?

11 A I believe that the students of the Oakland
12 Unified School District have -- you know, do not have
13 the same opportunities that I had as a student, so I
14 really want to -- I guess the saying goes to even the
15 playing field.

16 Q Did you go to school in California?

17 A I did not.

18 Q So when you say students in the Oakland Unified
19 School District don't have the same opportunities as
20 student elsewhere, what do you mean by that?

21 MS. LHAMON: That mischaracterizes his testimony.
22 He said that he believed that the Oakland Unified School
23 District student did not have the same opportunities
24 that he had.

25 THE WITNESS: I'm sorry. Can you repeat the

1 question, Michael?

2 BY MR. ROSENTHAL:

3 Q Sure. Fine. Let's deal with that question.

4 Why do you think that -- when you say students don't
5 have the same opportunities that you had, what do you
6 mean by that?

7 A I mean that they don't have teachers like I
8 did, you know. Like in my declaration there were some
9 classes that during the whole school year they never
10 found permanent teachers who were what I would say
11 qualified to even teach the subject matter.

12 I found myself, you know, from my own
13 experience, I even saw that I was subbing in classes
14 like in an English class where there was no curriculum
15 for me to teach it in. I'd sit there and essentially be
16 babysitting the students who did show up and wasting
17 their time, and I think that really limits their
18 education, their educational opportunity.

19 It's very much like, you know, Jonathan Kozol
20 describes in *Savage Inequalities*.

21 MS. LHAMON: It's K-o-z-o-l.

22 THE WITNESS: Sorry. Just like in the
23 declaration, students -- I don't think a student can
24 concentrate on school work when they don't have, you
25 know, toilet paper in the stalls for the students to

1 use. I think that, you know, if you believe in
2 Maslow's Hierarchy of Life, not to get all
3 philosophical on you, but the basic essential human
4 needs need to be addressed first before you can ascend
5 up the scale, education and, you know, other sorts of
6 enlightenment.

7 Q I don't want to get bogged down in the
8 specifics here, but you said that -- you gave me a few
9 of the opportunities that you feel that Oakland Unified
10 School District students are being deprived of that you
11 had when you were at school, such as not having
12 permanent teachers, have substitutes that were not, for
13 lack of a better term, experts in the field, in the
14 subject that they're substituting for, and not having
15 toilet paper in the bathrooms. Can you tell me other
16 opportunities that --

17 MS. LHAMON: Objection --

18 BY MR. ROSENTHAL:

19 Q -- that you feel they're being deprived of?

20 MS. LHAMON: I'm going to object that that
21 mischaracterizes the testimony, but you can answer.

22 THE WITNESS: There's a lack of science equipment,
23 and they say that, you know, the strongest way for
24 students to learn is through experiential education in
25 science. So the students a lot of times, because they

1 lack science equipment, they do not have the experience
2 to use science equipment.

3 And so let's say even if a student does make it
4 through the Oakland Unified School District, the high
5 school system, and gets to college. I find it -- and I
6 know that a lot of our students, even the ones who
7 persevere the most to get to Stanford that come out of
8 the bio science and health program cannot go toe to toe
9 with another kid in let's say the Piedmont District
10 because the Piedmont District has all its science
11 equipment. It actually has a surplus every year, and
12 their students have more experience because there's not
13 a limitation of resources like as there were -- as there
14 was in my classroom.

15 BY MR. ROSENTHAL:

16 Q Any other opportunities that you feel the
17 Oakland Unified School District students are being
18 deprived of?

19 A Yeah. I think that their concern, I mean, for
20 like where they're -- the way -- the facility that they
21 have, I mean overcrowding of a facility makes it really
22 difficult for the students to learn. Like when I
23 have -- you know, I have more students than I have
24 seats. I think that again, going back, like the basic
25 necessities of learning are not there for the students.

1 So a lot of it has to do with the resources
2 that Oakland Unified School District has, whether it's
3 human resources or whether it's material resources. I
4 think that that's two of the biggest ways that the
5 students are limited. Two of the bigger ways. Excuse
6 me. Two of the bigger ways.

7 Q Are there any other specific opportunities that
8 you can think of that they're being deprived of? You've
9 given me a list of about five or six things.

10 A Sure. I also think that, I mean, if you
11 want -- again, you said you didn't want to go into the
12 specifics, but like, say, the teachers that they bring
13 to the school district are not the same type of caliber
14 teacher that you'd see, whether it's in a private -- the
15 type of employees you see in a private industry or let's
16 say even in another school district.

17 Our students are not -- our teachers are not
18 connected to the real world as much as let's say one of
19 Piedmont High because, you know, how many of the
20 teachers that stand in front of Piedmont High could have
21 gotten acceptance into medical school compared to how
22 many could have gotten in from Oakland Unified School
23 District? And I think that that also speaks to like --
24 it limits the students in the sense that the teachers do
25 not have all the know-how that they should have, and

1 that Oakland, due to its limited resources, cannot
2 recruit the best qualified applicants.

3 Q Any other opportunities that they're being
4 deprived of?

5 A Any other opportunities that they are being
6 deprived of? I would say their whole experience. It
7 just, you know, sums up that they are deprived students.
8 I would say probably -- we'd probably stay here a long
9 time. I mean, you can talk about like field trips.
10 They get limited in field trips. Technology. They have
11 no idea how to use the technology I believe for about --
12 I think the school has about 2200 students enrolled.
13 There is about 60 networked computers. And "networked,"
14 I mean Internet accessible computers.

15 And, you know, I think that now as we're going
16 to like a more technology-based society, the students --
17 there's no way that they can have -- most of them don't
18 know how to type. I just don't see them being able to
19 succeed or having the same opportunities that I had,
20 because I learned how to type when I was in eighth
21 grade, or seventh actually.

22 MS. RUSSELL: Long ago.

23 BY MR. ROSENTHAL:

24 Q I just want to give you the opportunity to tell
25 me all the opportunities that you feel they're being

1 deprived of. So I'll ask you again, Is there anything
2 else that you can think of?

3 A I'm sure there are more, but not any that --
4 that comes to my mind right now.

5 Can I clarify something?

6 Q Sure.

7 A Like, for example, the thing with the teachers,
8 the reason why it kind of bothers me that the caliber of
9 teachers is so low is because let's say for example the
10 Piedmont High School students, their teachers have
11 friends who are within the industry because of the
12 caliber where -- of the teachers that Piedmont attracts.
13 Their caliber of teachers that they get have access in
14 the network to know how to prepare a student for Harvard
15 or Yale or some of the better schools.

16 And I know if you look at some of my coworkers,
17 I don't believe that they can prepare our students to be
18 the best that they can be so they can compete with those
19 students. Like even the teachers -- when a student went
20 to Stanford, she was a great student, but she was
21 limited by her teachers who couldn't offer her the
22 internship of let's say somebody who worked at Piedmont
23 who has the intangible connections to get her the summer
24 internship, to give her, you know, the science
25 experiment that -- you know, to give her the Berkeley

1 connections to get her science experience, science
 2 equipment experience.
 3 Q You've mentioned Piedmont High School a couple
 4 of times. Is that a school in California?
 5 A That is a school that's actually -- you could
 6 say geographically it's completely bordered by Oakland
 7 Unified School District, so it sits -- so, yes, it is in
 8 California.
 9 Q Is it a school in the Oakland Unified School
 10 District?
 11 A It is not a school within the Oakland Unified
 12 School District.
 13 Q Do you know what district it is a part of?
 14 A I believe it's part of the Piedmont Unified
 15 School District.
 16 Q How do you know so much about Piedmont High
 17 School?
 18 A Because there was this one particular teacher
 19 named Tanya Philips, who is actually I believe the vice
 20 president of American Chemical Society, so a very --
 21 American Chemical Teacher's Society. Excuse me. A
 22 very -- she's a great teacher. And she had taught me a
 23 lot of the ways -- she had taught me a lot of chemistry
 24 lesson plans.
 25 Q How do you know Ms. Philips?

1 A Through Teach For America.
 2 Q Was she a participant in that program with you?
 3 A No. She became friends with another Teach For
 4 America friend of mine.
 5 Q So you had a mutual friend?
 6 A Correct.
 7 Q Was this mutual friend a participant in the
 8 Teach For America program with you?
 9 A Yes, he was.
 10 Q And did he then go on to teach at Piedmont High
 11 School?
 12 A No, he did not.
 13 Q Is he teaching somewhere else?
 14 A He went on to New York University Med School.
 15 Q And do you know how he knows Ms. Philips?
 16 A I do not know exactly.
 17 Q You stated earlier that you thought the caliber
 18 of teachers at Oakland schools was not at the same level
 19 as it is at, for example, Piedmont High School. You
 20 said that one of the reasons was because Oakland had
 21 limited resources.
 22 A Yes.
 23 Q Can you tell me what you mean by that?
 24 A I think that the teachers -- for example, if I
 25 was to go teach at Piedmont High, I would have an

1 allocated budget to work with for science equipment.
 2 For me to go teach at Fremont High, my first
 3 year I was given perhaps -- you know, I think it was
 4 something like five triple beam balances and a few meter
 5 sticks, whereas at Piedmont I would probably be able to
 6 get centrifuges, I can get ovens, I can get glass wear.
 7 I would have a real budget, actually, a surplus like I
 8 mentioned before. They actually have a surplus of funds
 9 for their teachers.
 10 So I feel like when I say "limited resources,"
 11 the support and the resources that you get as an Oakland
 12 Unified School District teacher is not comparable by any
 13 means to a Piedmont High School teacher.
 14 Q Do you have an understanding as to why that is?
 15 A Not exactly.
 16 Q I know you stated earlier that -- when you gave
 17 me this list of opportunities that you feel that
 18 students have been denied at Oakland Unified School
 19 District vis-a-vis your experience in high school.
 20 Would you say that Oakland Unified School District
 21 students are being given the same opportunities as other
 22 students in other California public schools such as
 23 Piedmont High School?
 24 A No.
 25 Q So would you say they're being denied the same

1 opportunities that you testified to earlier?
 2 MS. LHAMON: Objection; the question is vague.
 3 BY MR. ROSENTHAL:
 4 Q Do you understand the question?
 5 A Can you go ahead and repeat it?
 6 Q Sure. Do you feel that -- is it your belief
 7 that students at the Oakland Unified School District are
 8 being denied the opportunities being given students at
 9 other schools in California such as Piedmont High
 10 School?
 11 A Compared to Piedmont High School I would say
 12 they're being denied, but compared to the overall state,
 13 I'd say the State of California is not being accountable
 14 to students, no. But I do think that in every situation
 15 that you always have your exceptions.
 16 Q And are they being denied the opportunities
 17 that you testified to earlier, the list of
 18 opportunities?
 19 A Not all, but yes.
 20 Q So are there some opportunities that you've
 21 listed that students are being denied -- all California
 22 students are being denied compared to your experience in
 23 Illinois?
 24 MS. LHAMON: Objection; calls for speculation. He
 25 doesn't know every student in California. He doesn't

1 have experience in every California public school.
 2 THE WITNESS: I would have to say correct, I
 3 cannot -- I do not know the breadth of what students
 4 have at all California schools, what they're receiving.
 5 BY MR. ROSENTHAL:
 6 Q You said one of the opportunities that students
 7 in the Oakland Unified School District are being denied
 8 is that oftentimes they have substitute teachers who are
 9 not familiar with the subject of the class that they're
 10 asked to fill in; is that correct?
 11 MS. LHAMON: Objection; the question is vague. Are
 12 you saying -- are you asking whether he's testifying to
 13 students being denied an opportunity to have a teacher
 14 who is not a substitute teacher who does know the
 15 subject matter?
 16 THE WITNESS: So what were you asking?
 17 BY MR. ROSENTHAL:
 18 Q Did you not understand the question?
 19 MS. LHAMON: He asked you to clarify it.
 20 THE WITNESS: I heard the objection --
 21 MR. ROSENTHAL: I heard a speaking objection. I'd
 22 ask you to make your objection and then we can move on.
 23 It seems when you make these speaking objections, he's
 24 losing the train of the questions so --
 25 MS. LHAMON: I don't think that's fair to

1 characterize --
 2 MR. ROSENTHAL: Your objection is "vague." It's on
 3 the record, and we'll move on from there. If he doesn't
 4 understand the question he can always ask me to rephrase
 5 it. I'd like to try to speed this along.
 6 MS. LHAMON: I appreciate that and I'd like to
 7 speed this along, too. I think you're more in control
 8 of that than I am, but I do need to clarify why I think
 9 your question is vague when I think your question is
 10 vague.
 11 MR. ROSENTHAL: I think that's coaching the witness.
 12 MS. LHAMON: I disagree and I think it's an
 13 inappropriate characterization.
 14 MR. ROSENTHAL: Well, a proper objection is that
 15 it's vague and --
 16 MS. LHAMON: We've both made our record. Thank
 17 you.
 18 BY MR. ROSENTHAL:
 19 Q I'll try to rephrase the question.
 20 A Thank you.
 21 Q You stated that students in the Oakland Unified
 22 School District sometimes have substitute teachers in
 23 classes for which those teachers are not familiar with
 24 the subject area; isn't that right?
 25 A Correct.

1 Q And you said that that was an opportunity --
 2 that was an experience that was different than your
 3 experience in high school; isn't that right?
 4 A Definitely.
 5 Q So in your experience in Illinois, did you ever
 6 have a substitute teacher for a class in which that
 7 teacher was not familiar with that subject matter?
 8 A Not at the rate that my students have it at.
 9 Q But you have had that experience?
 10 A Probably. I would probably say even -- I would
 11 go close to saying one-twentieth of the experience that
 12 my students have had.
 13 Q So you feel Oakland Unified School District
 14 students experience that approximately 20 more times
 15 than you did when you were in high school?
 16 A If not more.
 17 Q At least 20 times?
 18 A I would venture -- that's too much of
 19 speculation for me. I don't know the whole exactly -- I
 20 cannot tell you exactly how many times the student -- I
 21 had a substitute versus them. But I'd probably say
 22 yeah, at least 20 if you actually think about it in the
 23 sense that there were some classes that there was never
 24 a teacher in ever, and all the students did where there
 25 was a substitute -- yes, I would say probably at least

1 20 times.
 2 Q I'd like to get back to talking about the
 3 start of your employment at Fremont.
 4 You said -- just to get us back on track here,
 5 you said you signed a contract one day before school
 6 started; is that correct? Before the school year
 7 started in fall of '99?
 8 A I believe that was the date. I don't know the
 9 exact date. I apologize.
 10 Q So you're not sure if it was one day before the
 11 school year started?
 12 A Correct. And actually, it could have even been
 13 afterwards. I do not have -- looking back at it, I
 14 would have to say that I think it could have even been
 15 afterwards, after the school year started. I do not
 16 remember.
 17 Q Is there a document that would reflect --
 18 A My contract.
 19 Q -- the beginning of your employment?
 20 A My contract, yes.
 21 Q And do you have a copy of that contract?
 22 A I think somewhere.
 23 Q And you said it was based on your own
 24 initiative that you went down to -- was it the district
 25 office to sign your contract?

1 A Yes.

2 Q And although you don't recall the exact day,
3 was there a reason you went on a particular day to sign
4 the contract or did you just choose a day of your own
5 liking?

6 A Teach For America had to inform me -- not the
7 district. Teach For America had to inform me, "Today
8 the district is signing contracts. Try to get yourself
9 to sign the contracts," which was a process that took
10 approximately three hours to sign about -- you know,
11 what could have taken ten minutes' worth of paperwork.

12 Q So it was on a day that other teachers were
13 signing contracts, as well?

14 A Yes.

15 Q You said you spent your first two days at
16 Castlemont doing paperwork?

17 A Yes.

18 Q Do you recall if those two days were the first
19 two days of the school year in 1999?

20 A Yes.

21 Q Can you tell me what kind of paperwork you were
22 doing there?

23 A I was making ID pictures for the students.

24 Q So you were doing sort of the clerical work
25 that you referenced --

1 Q So Ms. Gaddis didn't show you to your
2 classroom; it was somebody else?

3 A Right. It was Johnnie Ward, Ms. Johnnie Ward.

4 Q Who was the vice president -- vice principal
5 at Fremont?

6 A Yes.

7 Q And were you assigned to a particular classroom
8 at Fremont?

9 A I was lucky enough to be the last science
10 teacher to get assigned a permanent class -- yes, a
11 classroom, a permanent classroom versus a roving
12 teacher. I'm trying to make that distinction.

13 Q Can you tell me where that classroom is
14 located?

15 A Yes. It was in a pretty rundown portable. I
16 believe it was P, as in Peter, 6. P6.

17 Q Was it located in a particular area of the
18 campus?

19 A It was not within the main building of the
20 school. It was out in -- it was on the outskirts by the
21 other portables where there is a high lack of security.

22 Q Was there a name for the area of the campus
23 where the portable was located or was it just referenced
24 as "P6"?

25 A The students would call it, you know, "the old

1 A Laminating IDs. I'm not sure if you call that
2 clerical work more -- I don't know. I don't know what
3 you call it, but yeah, I was laminating IDs.

4 Q You were not teaching?

5 A I was not doing what I should -- you know,
6 wanted to do.

7 Q And how did you find out that you would be
8 taking over a class at Fremont High School?

9 A Castlemont told me to go down the street to
10 Fremont High School. I came in through the security
11 gate of Fremont High School. I remember this very
12 vividly because it was a very powerful experience to go
13 into my first placement.

14 I had to beat the crowd of -- you know, I think
15 there was just a very large mob in front of the office
16 of parents trying to get their students enrolled for the
17 school year, and when I got to the office they wouldn't
18 let me in because they thought I was a student, of
19 course. And after I finally got in, the principal took
20 me to the classroom and said, "This is where you're
21 teaching tomorrow. This is your roll book. These are
22 your students." And that was it.

23 Q Do you recall who the principal was?

24 A Emily Gaddis. But I believe she actually had
25 the vice principal show me to my classroom.

1 portables."

2 Q But no other formal name or anything like that?

3 A Yeah. Yeah, I'm sorry.

4 Q So how did students know where their class was
5 located? Was it assigned a classroom number? Was it
6 just a classroom in P6 or how would a student know to go
7 to that classroom?

8 A P6. It was called P -- portable 6. So it was
9 portable number 6.

10 Q I'm not asking you to speculate, but on a
11 student's schedule if they were assigned to your class,
12 it would have said it was located in P6? That's what it
13 would say?

14 A Their little schedule would say, you know,
15 "Room Number P6," correct.

16 Q Did you have that classroom for all of your
17 classes during the 1999-2000 school year?

18 A Yes. I shared it with -- my fifth period with
19 an English teacher. I'm sorry. To clarify, she came in
20 during fifth period and I shared my classroom, but I did
21 not have a class during my fifth period. Just so you
22 realize there's not two classes in there.

23 Q I understand. Was fifth period your conference
24 period?

25 A Correct.

1 Q How many periods were there during the school
 2 year -- well, during a school day? Sorry.
 3 A Sure. There was six teaching periods plus one
 4 lunch and plus one class called "focused reading," which
 5 is essentially a home room. But we were on block
 6 scheduling. I'm not sure if you're familiar with that.
 7 Q Just to clarify, so how many classes would a
 8 student have in a typical day? I realize that not all
 9 students may have the same number of classes, but let's
 10 assume somebody has a full schedule.
 11 A It's quite a complicated schedule. Like on
 12 Monday they would have one through six.
 13 On Tuesday they would have first period,
 14 focused reading, third period, lunch, and then fifth
 15 period.
 16 On Wednesday they would have second period,
 17 focused reading, fourth period, lunch, and sixth.
 18 Thursday would be like Tuesday, and Friday
 19 would be like Wednesday.
 20 Q I'm not sure if I got my math exactly right,
 21 but were there six periods on Monday and five the rest
 22 of the week?
 23 A I mean, are you counting focused reading as a
 24 period? It depends on how you define a period.
 25 Q Let's deal with that briefly. Is that not a

1 full-length class?
 2 A No, it is not. It is a 30-minute period.
 3 Q And other periods last for how long?
 4 A So on Mondays some periods -- on Mondays the
 5 periods would last 55 minutes.
 6 Q I'm sorry. 55?
 7 A I believe so, 55 minutes. And on Tuesday
 8 through Friday they would last -- the academic, not the
 9 focused reading periods, would last an hour and 45
 10 minutes.
 11 Q That is confusing. Did the school day start
 12 and end at the same time each school day?
 13 A No. Monday would start at 9:30 and release at
 14 9 -- 3:15 Tuesday through Friday would go -- I believe
 15 it was 8:20 to 3:15.
 16 Q I'll just do it this way: How many different
 17 classes did you teach during the 1999-2000 school year?
 18 A I would have five periods of science and one
 19 period of focused reading.
 20 Q And did you have a lunch period?
 21 A Yes.
 22 Q Did you also have a conference period?
 23 A Yes.
 24 Q Did that fill up your entire school day or were
 25 there any other periods that you had to have time to

1 account for?
 2 A No. But sometimes I didn't get my conference
 3 period due to the lack of teachers. So there was a
 4 period where I remember I think two weeks straight I had
 5 substitute taught during my conference period. So I had
 6 no conference period for two weeks straight, and that
 7 was not a rare occurrence for the teachers.
 8 Q Now, the five periods of science that you
 9 taught, did you teach a particular class? Was it just
 10 called "physical science"?
 11 A Yes, it was just called "physical science."
 12 Q And it was for ninth graders; is that right?
 13 A Mostly ninth graders. Some students were in
 14 the tenth grade who had to repeat it. Some in the
 15 eleventh, and even some in the twelfth.
 16 Q But it was intended for ninth graders?
 17 A Correct.
 18 Q You also said you had one focused reading
 19 period. Can you just tell me what that focused reading
 20 period was all about?
 21 A Sure. It's like a home room, and the students
 22 are to sit there and work on their -- it's like a silent
 23 sustained reading to work on their reading skills.
 24 Q So they would read things from other classes or
 25 would it be reading that you assigned?

1 A Readings that I assigned, but it was very
 2 unstructured. So some teachers would teach things that
 3 they would assign, some teachers would let the students
 4 do homework. Sometimes the students didn't even go to
 5 the classes, so...
 6 Q Did you take attendance during this period?
 7 A For focused reading?
 8 Q Right.
 9 A Yes.
 10 MS. LHAMON: Michael, when you come to a stopping
 11 point I could use a bathroom break.
 12 MR. ROSENTHAL: Okay. We can -- now is fine.
 13 MS. LHAMON: Good.
 14 (Recess taken: 11:04 until 11:15 a.m.)
 15 MR. ROSENTHAL: Let's go back on.
 16 Q Mr. Dao, you understand you're still under
 17 oath?
 18 A Yes.
 19 Q You understand that every time we take a break
 20 and we come back you'll still be under oath so I don't
 21 have to ask you this repeatedly?
 22 A Thank you. Yes.
 23 Q Great. Now, I just want to go back to one
 24 thing you said earlier. You said that the teachers in
 25 the Oakland Unified School District are not of the

1 same -- I think you used the word "caliber" of teachers
 2 located at other schools, for example, at Piedmont High
 3 School. That's the example you've been giving me.
 4 MS. LHAMON: Objection; that mischaracterizes the
 5 testimony slightly, but...
 6 BY MR. ROSENTHAL:
 7 Q Do you believe that to be true today?
 8 A Yes. Today, yes.
 9 Q Is it your opinion that the caliber of teachers
 10 at the Life Academy is not at the same level of that at
 11 Piedmont High School?
 12 A Yes, I believe that we have a lot of
 13 inexperience, and that Piedmont High School is
 14 something, you know, to be admired for all students.
 15 Q Of the 13 teachers at Life Academy who have
 16 been hired, how many have no teaching experience at all?
 17 A I believe none have -- none of them have never
 18 taught before.
 19 Q So they all have teaching experience?
 20 A Correct.
 21 Q So when you say the caliber of teachers at the
 22 Life Academy isn't at the level of Piedmont High School,
 23 you say that one thing they're missing is experience.
 24 You just testified that all teachers at the Life Academy
 25 do have teaching experience. Is it just the amount of

1 A I know approximately I believe three teachers.
 2 Q And can you just quickly give me their names?
 3 A Sure. I don't think I can. Tanya Philips I
 4 know very intimately. There is a gentleman, I call him
 5 Phil from Brown. He went to Brown University so I call
 6 him Phil from Brown, and there was another science
 7 teacher there and I don't know her name either. But
 8 I've had discussions with them and -- to see, you know,
 9 ask them how is it teaching -- you know, teachers like
 10 to commiserate and compare teaching experiences, so...
 11 Q Do you know how much teaching experience
 12 Ms. Philips has?
 13 A I would say a lot. So no, I do not know how
 14 much teaching experience Ms. Philips has.
 15 Q Can you quantify it in the number of years
 16 she's been teaching?
 17 A I would estimate 20-plus years. I mean for me,
 18 honestly, after ten years it's -- it kind of blurs. I
 19 think you're a pretty good teacher if you've made it
 20 past ten years.
 21 Q So she's been teaching for at least ten years,
 22 we can say --
 23 A Yeah.
 24 Q -- and perhaps as many as 20 or more?
 25 A And perhaps even 30 or 40, I'd venture to say.

1 experience you're referring to?
 2 A The amount and the quality of experience. For
 3 example, we have a gentleman named [REDACTED] who just
 4 came out of the Stanford program, and he has only
 5 student taught. Has not yet taught by himself, I
 6 believe.
 7 Q And the teachers at Piedmont High School -- do
 8 you know if all the teachers at Piedmont High School
 9 have teaching experience?
 10 A The ones that I know of, yes. Can I say to all
 11 of the staff at Piedmont High School? No. But also,
 12 again, like, this is in comparison to the woman who is
 13 the vice president of -- the American Chemistry science
 14 teacher would be like -- and she's not a rare teacher
 15 for Piedmont High School to have or recruit or retain.
 16 Retention is also I think something that should
 17 be added to the quality of teachers. Not to be cited on
 18 the exact number, but I do know the retention rate for
 19 Oakland Unified School District for new teachers is less
 20 than two years. I would say it's closer to 1.3. It's
 21 between 1.3 and 1.1 years, whereas Piedmont High School,
 22 they retain their teachers a lot more, or even my high
 23 school.
 24 Q How many teachers do you know who teach at
 25 Piedmont High School?

1 She's quite the legend.
 2 Q How about the teacher you referred to as "Phil
 3 from Brown"?
 4 A Phil from Brown, I believe he's been there five
 5 years.
 6 Q Did he have any experience prior to that?
 7 A I believe he was actually a certified teacher
 8 at Brown University.
 9 Q And you'd mentioned that there was another
 10 science teacher --
 11 A Mm-hmm.
 12 Q -- that you know at Piedmont High School as
 13 well. Do you know how much experience he or she has?
 14 A It was a she, and I think she also had five
 15 years teaching, very similar to Phil's situation. She
 16 came from Berkeley. So again, Piedmont High School is
 17 getting the more reputable named schools' teacher. I
 18 didn't conjugate that correctly.
 19 Q The Life Academy is getting teachers from
 20 schools like Columbia and Stanford as well; isn't that
 21 right?
 22 A Correct. Correct.
 23 So to clarify or to add on, we do have the
 24 potential to become a Piedmont High School, but as the
 25 way that things stand right now, we will still be an

1 exception within the Oakland Unified School District
2 versus being the -- can I get help for a word? Like
3 being -- you know, we're more the exception versus being
4 the norm.

5 Q So do you view the creation of the Life Academy
6 as a positive?

7 A Definitely. I'm one of the founding teachers.
8 It's something that as of right now I'm very committed
9 to and I'm willing to put my next five or six years
10 there.

11 Q And the creation of the other schools -- I
12 believe you mentioned there were two middle schools and
13 two elementary schools that were created in a similar
14 manner. Is that also a positive development for the
15 Oakland Unified School District?

16 A Yes, I think it's a step in the -- I think it's
17 a tremendous step in the right way, seeing as how most
18 of them have been -- a few of them are opened under the
19 auspices of people who taught in Oakland Unified School
20 District. And these are all Teach For America, and so
21 this is also an external factor to, you know, the
22 state's policy or even Oakland Unified School District
23 policy.

24 But what it's really been, it's Teach For
25 America going out recruiting people who have been of med

1 MS. RUSSELL: I know how that goes.

2 BY MR. ROSENTHAL:

3 Q So would you say it was a popular proposal?

4 A I think there were a lot of other proposals
5 that they had rejected, but I think due to the fact that
6 I think there was nothing -- you couldn't have been more
7 supportive of this school, you know. So, yes, I think
8 it was a very popular proposal.

9 Due to the fact that we also rallied for
10 community support is how we got the majority of our
11 support, not so much as our paper proposal.

12 Q Is it your belief that the creation of schools
13 like the Life Academy will resolve many of the issues
14 that we discussed earlier that you described as
15 opportunities that students in the Oakland Unified
16 School District are being deprived of?

17 A I think that's a really good question. I think
18 that my stance would be no, and it's why a lot of people
19 refused to join the Life Academy. There are also
20 actually some teachers that we had asked to join Life
21 Academy from Fremont, and they said, "This is going to
22 be an exception. This will only affect 250 students,
23 but it still neglects approximately the 15,000 high
24 school students of Oakland Unified School District high
25 schools alone."

1 school, law school or business school caliber to come
2 teach. And then so we have had particular people who
3 have stayed there who taught -- you have to teach --
4 supposedly you're supposed to teach about six years in a
5 public school, and then some of them have taught six
6 years in Oakland Unified School District, went back to
7 school, got their master's in education from Harvard,
8 recruited Ms. Flaxman, actually, came back -- and also
9 themselves -- and that's how these new schools are
10 opening. That's how I see these new schools opening, is
11 due to the efforts of Teach For America and specific
12 exceptional individuals.

13 Q Does the Oakland Unified School District
14 encourage people to propose schools such as the Life
15 Academy?

16 A They are trying to, but I see it as a very slow
17 and strenuous process.

18 Q In order to get the Life Academy created you
19 needed the approval of the Oakland Unified School
20 District though; isn't that correct?

21 A Correct. To my knowledge, it's the first thing
22 that passed by unanimous decision in 30 years.

23 MS. RUSSELL: No, no, you wouldn't want to say that
24 on the record. That's not true.

25 THE WITNESS: Okay. That was to my knowledge.

1 And so a lot of people -- we've lost some
2 people because they still feel like this is not the
3 right way to do it.

4 So it was not -- to answer your question, if I
5 can correctly remember it, I don't think that this is
6 going to be the one and only solution for Oakland
7 Unified School District.

8 Q You said that some people have expressed to you
9 that they think these sorts of schools will be the
10 exception to the rule rather than, you know, the rule
11 itself. Is that your belief?

12 A I don't know. I don't know. It depends on how
13 much the state and the district can support these
14 schools of these sorts of manner. And I think the more
15 support we get from the state I think the more that it
16 becomes the norm. I think if there's lack of support
17 from the state or from the district, then it becomes the
18 exception and that it becomes more of, you know, a PR
19 piece that like -- you know, for the state to turn to
20 and say, "Look at this. We have one good performing
21 high school in Oakland." And I would hate for -- and
22 that is one of my big fears actually.

23 Q In that answer you said a couple of times
24 "support from the state." What do you mean by that?

25 A I think that -- I know that the funding of

1 public education is in the 40 -- for being as rich as
2 the state of California is, we are very low in our
3 funding of our public education system. I believe we
4 are perhaps 43rd or 4seventh in our funding of public
5 education.

6 So I think funds would be a good way to
7 help, would be, you know, a very big determinant to buy
8 better resources, to attract better teachers, to retain
9 better teachers, and to get the material resources that
10 we need.

11 Q So far as support from the state, you're saying
12 basically the state should provide more money for the
13 reasons you've -- you know, for human resources,
14 material resources and for whatever else?

15 A More money and perhaps some way to have the
16 state have more accountability to the students. That I
17 feel since the federal government obviously feels -- I
18 think the federal government feels that education is
19 something that they -- you know, in the federalism
20 policy that we have, education is definitely more of a
21 state determinant thing, that it is the state's
22 responsibility to do it.

23 Q Is it your view that -- strike that.

24 So it's your view that the Oakland Unified
25 School District could use more funding from the state?

1 THE WITNESS: Yes.

2 BY MR. ROSENTHAL:

3 Q Would you say there's a shortage of funding in
4 the Piedmont Unified School District?

5 MS. LHAMON: Asked and answered.

6 THE WITNESS: I can say yes and I can say no.

7 BY MR. ROSENTHAL:

8 Q Why can you say yes?

9 A I could say yes because they have -- compared
10 to Oakland High -- I mean Oakland Unified School
11 District, they are very pretty, they are sitting very
12 nicely. But compared -- but compared to maybe one of --
13 like Illinois, I do not know. As far as I can tell
14 though, and I -- I believe I was -- this was cited, and
15 maybe, Catherine, you could do a little research on
16 this -- sorry -- but Dennis Chaconas says that when he
17 goes to -- when he goes for -- his funding level is
18 somewhere about \$4,000 per student, and when he goes to
19 Boston in Massachusetts, they get about -- well, he said
20 \$13,000, but I think Ms. Flaxman cited \$8,000. So they
21 get double the funding that, you know, his students are
22 getting. And I'm not sure if that's a state thing or a
23 district thing, but regardless, it's still obviously a
24 big disparity.

25 MS. LHAMON: Toai, just to clarify for the record,

1 A Definitely.

2 Q Is that true for the Piedmont Unified School
3 District as well?

4 A Not so much, but I think -- I believe it's due
5 to the local community support.

6 Q So do you think Piedmont Unified School
7 District needs more funding from the state or not?

8 MS. LHAMON: Asked and answered.

9 THE WITNESS: It could -- no, it probably does not
10 need more funding from the -- being as how -- to be
11 honest, I would say I do not know because I do not -- I
12 know right off the way that they're ran, they're happy,
13 but is it because they're happy due to ignorance? I
14 don't know. Like they just don't know better? They
15 don't know how much better that their education system
16 could be? Could it be like -- is it because Piedmont
17 does not know there's a better performing high school in
18 Illinois?

19 So to be honest, to the best of my expertise, I
20 would say I do not know, if I had to go on record.

21 Q Fair enough.

22 Let me try it this way: Would you say there's
23 a shortage of funding in the Oakland Unified School
24 District?

25 MS. LHAMON: Asked and answered.

1 Dennis Chaconas is the superintendent of Oakland Unified
2 School District?

3 THE WITNESS: That is correct. That's the one I'm
4 speaking of.

5 BY MR. ROSENTHAL:

6 Q Just one more question about Piedmont. Well, I
7 can't promise it's the last question about Piedmont,
8 but you mentioned earlier that in fact they had a
9 surplus. Were you referring to a surplus of money to
10 buy science supplies or just a surplus of actual
11 physical supplies? I just want to clarify that.

12 A Sure. I know in their particular science
13 department they had a surplus, and whether that's due to
14 private funding that they get or, you know -- I'm even
15 told that it's due to the large white envelopes that
16 appear on their doorstep every now and then. I don't
17 know where the funding comes from, but for the science
18 department I do know that sometimes they do end up with
19 a surplus of monetary funds.

20 Q Okay. When you began teaching at Fremont, did
21 you have an understanding that you were taking over a
22 class for another teacher?

23 A I'm sorry. I don't understand the question.
24 Like, do you mean I'm taking over -- like I was taking
25 over a class for one specific teacher, or that I would

1 be the prime teacher in the classroom?
 2 Q Let me try it this way: Do you know if you
 3 replaced a teacher who had left Fremont when you began
 4 teaching there?
 5 A I did not know that when I began teaching
 6 there, no.
 7 Q Do you know that now?
 8 A Yes.
 9 Q And did you replace a teacher who left Fremont?
 10 A Yes.
 11 Q Do you know who that teacher was?
 12 A I believe his name was -- well, the students
 13 said Ms. Glooshenco (phonetic), but I believe it was a
 14 Mr. Glooshenco.
 15 MS. LHAMON: Do you know how to spell that for the
 16 court reporter?
 17 THE WITNESS: I wish I did. I'm sorry. I think
 18 it's G-l-o-o-s-h-c -- co. Sorry.
 19 BY MR. ROSENTHAL:
 20 Q Or something like that?
 21 A Yeah.
 22 Q Now, was this teacher the teacher during the
 23 first two days of the school year or was this a teacher
 24 in the school year prior to that?
 25 A That was the teacher prior to that, but

1 A Depending on when you ask me within the school
 2 year, there would be different figures, of course. Like
 3 I believe there was -- you know, the very first day of
 4 school, some of the classes -- I cannot tell you -- no,
 5 I cannot tell you. If you want a very straight answer,
 6 I cannot tell you exactly how many students I had in
 7 each class. If I had to take an estimate from my memory
 8 I would say that in the beginning of the school year,
 9 say in September and even in early October, some classes
 10 had 59 students, and -- but I -- by the end of the
 11 school year I would have 32 to 34 students in the class,
 12 I believe.
 13 Q I'm going to try to ask these questions
 14 generally applying to all five classes.
 15 Did the number of students you had in each of
 16 your classes stabilize at some point during the school
 17 year?
 18 A Yes.
 19 Q Do you recall what time of -- I'm going to deal
 20 with it class by class. I think it will be easier that
 21 way.
 22 Did you have a first period physical science
 23 class?
 24 A Yes, I did.
 25 Q Do you remember how many students approximately

1 actually his name was still on my students' schedule.
 2 So whether he was there the two days there -- I mean I
 3 know he was not there the two days there, but whether he
 4 was still slated up to the point before school opened
 5 its door, I don't know.
 6 Q Now, you said you taught five periods of
 7 physical science during the 1999-2000 school year. Let
 8 me ask this question for background: Were you on a
 9 semester calendar or was it a full-year course that you
 10 taught?
 11 A It was a full-year course that I taught.
 12 Q So for each class you had the students from the
 13 beginning of the school year until the end of the school
 14 year sometime in the late spring or early summer of
 15 2000?
 16 A Correct. Two days short, of course, but...
 17 Q I'm sorry. What did you say?
 18 A I said two days short, of course, but those are
 19 the very marginal two days.
 20 Q Fair enough.
 21 Can you tell me how many students you had in
 22 each of your five classes? Why don't we start with the
 23 earliest class in the morning? If you want to tell me
 24 your first period class or whatever you want to call
 25 them.

1 you had at the start of the school year?
 2 A No, I do not.
 3 Q At some point did the number of students in
 4 that class stabilize?
 5 A I would say for all the classes the number
 6 stabilized around late November/early December, and then
 7 the number was changed again with the new semester
 8 because some students would come in from different
 9 classes at that point to take -- if they had failed the
 10 second half of physical science. And that would be --
 11 that's the reason why.
 12 But for all classes, pretty much late
 13 November/early December the number started to stabilize.
 14 Q You stated that the early part of the school
 15 year some of your classes had approximately 59 students.
 16 Was that true for all five of your classes or was it for
 17 less than five classes?
 18 A That was not true for all five classes. There
 19 were -- I know there were three out of my five periods
 20 that had, let's say, 43 students or more on the roll
 21 sheet, and pretty much every day I would not have enough
 22 seats for them.
 23 As for the two other classes, I would have
 24 enough seats for them on the fact that some students
 25 were always absent -- or not some students were always

1 absent. Excuse me. That some students -- or yeah, I'm
 2 sorry.
 3 Q Do you remember how many seats you had in your
 4 classroom?
 5 A I believe the number was 29. 30 including my
 6 desk.
 7 Q 29 for students?
 8 A Uh-huh.
 9 Q You said that all of your classes eventually
 10 stabilized at approximately 32 to 34 students.
 11 A Mm-hmm.
 12 Q Did all the students have seats at that point?
 13 A On the fact that some of them would always be
 14 absent, yes.
 15 Q So you would -- strike that.
 16 Do you recall any occasions after the class
 17 size stabilized that you did not have enough seats for
 18 students in your class?
 19 A No, I do not.
 20 Q So after the class size stabilized for all five
 21 of your classes you never had more than 29 students in
 22 your class?
 23 A Right. After three months of teaching was
 24 lost, yes.
 25 Q What do you mean after three months of teaching

1 was lost?
 2 A Not until, like I said, late November was it
 3 that I had enough seats for my students on a -- did I
 4 have a stability in having all the seats for all my
 5 students.
 6 Q Did you not teach when there were too many
 7 students in your class?
 8 A I would try the best that I can, but I would
 9 not call it good teaching.
 10 Q Did students learn during the time that there
 11 were more than 29 students in your class?
 12 A Not to the best of their capabilities, no.
 13 Q So is it accurate to say that the teaching was
 14 lost?
 15 MS. LHAMON: Objection; you're badgering the
 16 witness. He's already testified the teaching was lost.
 17 THE WITNESS: But I would say yes, there -- I mean
 18 there was a significant amount of teaching lost.
 19 BY MR. ROSENTHAL:
 20 Q You said that three out of your five classes
 21 had more than 43 students on the roll sheet; is that
 22 right?
 23 A Yes.
 24 Q And the remaining two classes had a number less
 25 than that?

1 A Right; which had the number like 32 to 35-ish.
 2 Q And they had that number from the start of the
 3 school year?
 4 A No, they did not. All my classes were well
 5 above the contractual -- the contractual proposal of 32
 6 students per class. But I would not -- but that was --
 7 yeah. Okay. Strike that, I guess, or whatever you say.
 8 Sorry.
 9 MS. RUSSELL: Just a point of clarification. All
 10 your classes had more than the number stated in the
 11 contract; is that correct? I'm just trying to make sure
 12 I understood what you said.
 13 THE WITNESS: Sure. At one --
 14 MS. RUSSELL: At the beginning?
 15 THE WITNESS: At the beginning, yes, but definitely
 16 afterwards they did fall under the...
 17 BY MR. ROSENTHAL:
 18 Q So I want to clarify that even further just to
 19 make sure I'm clear.
 20 So for each of the five classes that you taught
 21 from the beginning of the school year, you had more than
 22 the contractual amount of students in your class,
 23 physically in your class?
 24 A It's hard to say because of the students'
 25 attendance. When you added the -- in my class my roster

1 was always over the number of my seats.
 2 Q The number of students on the roster or roll
 3 sheet was above the contractual amount?
 4 A Yes.
 5 Q And is it your understanding that all the
 6 students on the roster or roll sheet were supposed to
 7 attend your class?
 8 A Oh, of course. Yes.
 9 Q Do you have an understanding of the process of
 10 how students who switch classes get removed from your
 11 roster or roll sheet?
 12 A I think I was a motivated enough teacher to
 13 know when a student -- if a student left my class. I'd
 14 spoke well enough to the other teachers to know that
 15 they would be in another class. So I would say I was
 16 well-informed of how accurate my roster was. That's in
 17 terms of them switching the classes. That's not -- I
 18 mean I knew that level.
 19 Q Did you receive updated rosters or roll sheets
 20 from the school?
 21 A Yes.
 22 Q How frequently did you receive those?
 23 A I cannot recall.
 24 Q Was it on a daily basis?
 25 A No, it was not.

- 1 Q Was it on a weekly basis?
 2 A I would not -- no, not on a weekly basis, no.
 3 Q Was it more frequently or less frequently than
 4 that?
 5 A Less frequently than that.
 6 Q And when you got updated rosters or roll
 7 sheets, did the number of students in each of your
 8 classes decline or increase or --
 9 A No. I made sure that they declined.
 10 Q So the rosters or roll sheets reflected the
 11 stabilization of students in your classroom; is that
 12 right?
 13 A Right.
 14 Q You said that classes stabilized around late
 15 November/early December. Were all of your rosters or
 16 roll sheets -- did they all have no more than between 32
 17 and 34 students' names on them?
 18 A Yes.
 19 Q Do you keep copies of your rosters or roll
 20 sheets?
 21 A Yes.
 22 Q And do you still maintain those?
 23 A Yes. Do I still have them, do you mean?
 24 Q Yeah.
 25 A No, I do not.

- 1 Q Did you throw them out?
 2 A No, I did not.
 3 Q What did you do with them?
 4 A Turned them into the principal or one of the
 5 administrators. I'm sorry.
 6 Q Did you turn in each one of the updated rosters
 7 or roll sheets that you got?
 8 A I turned in the best way I could with -- since
 9 my roster, sometimes some students were not on the
 10 roster. I had to keep their names on a note card,
 11 because the roster comes out as a blue, you know, graph
 12 paper sheet, right? And then when a student was added
 13 to my class I would put their name on a note card.
 14 So to the best of my ability I kept the records
 15 of my students' attendance, yes.
 16 Q Do you currently maintain any records regarding
 17 the number or identity of the students who were in your
 18 classes during the 1999-2000 school year?
 19 A I'm sorry. Can you clarify the word
 20 "maintain"?
 21 Q Do you have them as we sit here today?
 22 A I have them on my -- yeah, I do have some of my
 23 old students' report cards, and if they ever come visit
 24 me I can talk to them about how they improved. But just
 25 their grades, not their attendance.

- 1 Q And would those records be limited to students
 2 who actually remained in the class until the end of a
 3 marking period to receive a grade?
 4 A Not necessarily, no. But when students would
 5 disappear -- no, not necessarily. Once a student
 6 disappeared it was hard to know when they definitely
 7 disappeared.
 8 Q Let me try it this way: Based on the records
 9 you have, is there any way for you to go back and be
 10 able to figure out how many students you had in your
 11 class for various periods of time?
 12 A Yes.
 13 Q So, for example, for your first period physical
 14 science class, would it be possible for you to go back
 15 and figure out how many students you had at the start of
 16 the semester?
 17 A Ideally, yes.
 18 Q What do you mean by "ideally"?
 19 A Well, the district should have it on file.
 20 Q How about you personally?
 21 A I do not have it on file.
 22 Q Do you personally have any records like that
 23 that you'd be able to figure out how many students you had
 24 in your class at a particular point in time?
 25 A Not to an exact figure, no.

- 1 Q You said that at the end of the semester you
 2 sometimes had students who would join the class because
 3 they had presumably not successfully completed the
 4 second semester of the physical science course, and I
 5 would assume some people also stopped -- some people
 6 also left the class at the end of the first semester
 7 because they only needed to redo the first semester; is
 8 that right?
 9 A Yes.
 10 Q Do you recall approximately how many students
 11 on average would join the class or leave the class?
 12 A A marginal amount. Probably maybe one out of
 13 the 32 students would switch that way, but, you know,
 14 some years it was different. Like this new year we had
 15 a lot of students that finally had gotten rolled into
 16 the school district, and then they -- Ms. Laura Flaxman,
 17 who really likes me, ended up, you know, impacting my
 18 classes with a lot of the new students.
 19 So depending on the -- like 1999-2000, the
 20 first year, just a marginal bit, but once word got out
 21 that "Mr. Dao is a class you want to take," kids were
 22 like, "Oh, I can't work with this teacher." So
 23 different numbers for different years.
 24 Q You mentioned earlier that some of your classes
 25 had 59 students. Did any of your classes ever have 59

1 students physically present in the class?
 2 A No, but there was a class that had about 45
 3 students physically present.
 4 Q So the most students you've ever had during any
 5 of your classes during the 1999-2000 school year was 45?
 6 A Right, with 29 seats.
 7 Q Do you recall how many times that occurred?
 8 A No, I do not.
 9 Q Was it for a day or was it more often than
 10 that?
 11 A It was more often than that, but it was also
 12 definitely earlier in the school year.
 13 Q Do you recall if that situation lasted for a
 14 week? I'm just trying to pin it down as much as we can.
 15 A Sure. That situation lasted -- to the best of
 16 my memory I really don't recall, but I think it lasted
 17 for about a month to two months. You know, as the new
 18 teacher, you have bigger problems to worry about or
 19 other problems to worry about.
 20 Q So for about a month to two months you had 45
 21 students in your class basically every day?
 22 A In some classes, yes.
 23 Q Can you tell me in how many of the five classes
 24 you had --
 25 A It was the three out of five that I mentioned

1 before.
 2 Q So in three out of five classes you had never
 3 more than 45 students in a class, and that lasted for
 4 about a month or two months; is that right?
 5 A Yes.
 6 Q Was it -- for these three classes was it
 7 ever -- strike that.
 8 How about for the other two classes? What was
 9 the maximum number of students you ever had in any of
 10 those?
 11 A Again, there's a disparity between the roster
 12 and the students, the warm bodies in the room. So which
 13 number would you like me to give you?
 14 Q Let's deal with physically present in the
 15 classroom.
 16 A Physically present in the classroom, I'd say
 17 there would probably be less than 29 students in the
 18 classroom, but it does not mean that -- I had to still
 19 care for about 32 to 35 students, which still puts --
 20 which stresses my teaching load.
 21 Q When you gave me the 59 figure, was that the --
 22 that's from a roster; is that right?
 23 A Right.
 24 Q Was that the largest roster or roll sheet you
 25 recall having during the school year?

1 A Just for clarity, I'm not sure if it was
 2 exactly 59, of course.
 3 Q Give or take a couple?
 4 A Yeah, but I'm pretty -- yeah, give or take a
 5 couple. But the question was?
 6 Q Was that number from -- that was from a roll
 7 sheet or a roster or whichever word you prefer?
 8 A Yes.
 9 Q Are those the same things, a roster and a roll
 10 sheet?
 11 A I believe so. But yes --
 12 Q So we can use those interchangeably and it
 13 won't confuse you?
 14 A Sure. Yes, please.
 15 So that was from a roster.
 16 Q And do you recall -- well, let me try it this
 17 way: Was that for a roster for one class or was it for
 18 all three classes that you had the number of
 19 approximately 59 students?
 20 A No. That was definitely for one -- maybe one
 21 or two classes. But again, the more important thing is
 22 the warm bodies in the classroom, which stayed usually
 23 around the mid-40s for those three classes.
 24 Q Do you recall which of your five classes had a
 25 roster of approximately 59 students? By which, I mean

1 which period of the day.
 2 A Yeah, I believe it was second, third -- I know
 3 second and third for sure, and it might have been sixth,
 4 was the other period.
 5 Q For your second period class you said the most
 6 students you'd ever seen in your class was 45 at a time.
 7 Had you ever seen 59 different individuals at any time
 8 in that class? Do you understand the question?
 9 A Yes, I do understand the question. I'd
 10 probably say something like maybe five of them didn't
 11 show up ever. So I possibly had about 55 students that
 12 I would see for one period in the manner that you
 13 described.
 14 Q So there were some students on your roster who
 15 you never saw during the school year at all --
 16 A Like --
 17 Q -- in your class?
 18 A Right. Yes. Like the five. Like five of
 19 them.
 20 Q And is that true for all five or your classes?
 21 A No, not necessarily. So, like, some classes,
 22 45 kids, 45 kids would show up. Some classes 59 kids,
 23 45 kids show up, but out of 55 kids that tend to show
 24 up, I mean ten probably dropped out once they realized
 25 there wasn't a seat at the school for them.

1 Q So your second, third, and sixth period classes
2 were the classes that were the most crowded; is that
3 right?

4 A To the best of my recollection, yes.

5 Q And then you had two other classes. Were the
6 other ones first period -- can you tell me what periods
7 the other classes were?

8 A They were first and fourth.

9 Q And those were the classes that were -- had
10 fewer students relative to second, third, and sixth
11 period, at least at the beginning of the school year?

12 A That -- yes.

13 Q Did you do anything to alleviate the
14 overcrowding in your classroom?

15 A Yes. I had to go bring it to the
16 administrators' -- which in terms -- I also mean
17 counselors, I'm also including counselors' -- attention,
18 who seemed to be unaware of the situation.

19 Q Did you bring it to -- strike that.

20 Do you recall who you first informed about the
21 overcrowding in your classroom?

22 A I believe I spoke to one of the counselors,
23 either Mr. Baranco or Ms. Campbell or Ms. Moonsamy.

24 Q Did you do that on the first day you were
25 teaching at Fremont?

1 Q Do you recall if you brought the overcrowding
2 to the attention of counselors at the end of the grace
3 period, during the grace period, or what time?

4 A I had given them the heads-up that my classes
5 were impacted before the grace period -- the ending of
6 the grace period.

7 Q And are counselors the ones who do the
8 scheduling at the school? Is that why you went to them?

9 A Yes.

10 Q Did you tell anybody else aside from the
11 counselors about the overcrowding in your classes?

12 A The OEA, Oakland Educators Association rep.

13 Q Do you know who that is?

14 A That was Mr. Miller, Steve Miller.

15 Q What did you tell him?

16 A He was also my department head.

17 Q And what did you tell him?

18 A Oh, I'm sorry. I thought you said, "Why did
19 you tell him?"

20 Q That will come next.

21 A Okay. I told him that my class -- like, am I
22 supposed to have 45 students? I asked -- I was asking
23 him if I'm supposed to have 45 students in a class where
24 I don't have enough seats, and he said, "No. You need
25 to bring this to the attention of the counselors."

1 A Yes. I mean it was a -- I first -- I'm sorry.
2 To clarify, I do not know exactly who I spoke to at
3 first, but I know that I -- it was those people that I
4 brought it to their attention that -- could they do
5 something about it. Did I first speak to them on the
6 first day at school, the first day that I was teaching?
7 No, because I wanted to see how many kids show up on a
8 regular basis.

9 So I gave it about the -- contractually they
10 give a two-week lag time -- or the first -- it might be
11 the first -- I don't know what time it is actually.
12 Sorry. Sometime, but there is a lag time for the
13 union -- not for the union -- for the school to have the
14 numbers down to the suggested or regulated number.

15 Q So is it your understanding there's a grace
16 period of some amount of time during which there can be
17 more students in your classroom --

18 A Right.

19 Q -- than contractually permitted?

20 A Right. Right. Yes.

21 Q But you're not sure how long that grace period
22 is?

23 A I know it is -- it's between -- I think it
24 might be within the first two weeks of school to the
25 fourth week of school.

1 And then I followed the standard order of
2 procedure or chain of command, however you want to
3 describe it.

4 Q But when you spoke to him had you already
5 spoken to the counselors, or did you go to the
6 counselors after you spoke to Steve Miller?

7 A I spoke to Steve Miller first, hoping to
8 respect the chain of command, not -- you know, because I
9 thought maybe perhaps the department head or the
10 department chair would be the one who fixes your
11 schedule first and then the counselors, but then he told
12 me to go to the counselors.

13 Q Just to clarify, the first person you told was
14 not a counselor; it was actually Steve Miller?

15 A Yes. I apologize.

16 Q That's okay. Just want to make sure we're
17 clear.

18 A Yes, definitely.

19 Q Did you tell anybody else about the
20 overcrowding in your classes?

21 A I might have mentioned it to a vice principal
22 since I never saw the principal.

23 Q Do you recall which vice principal you might
24 have told it to?

25 A I think it was Ms. Johnnie Ward.

1 Q Do you recall the substance of that
2 conversation?

3 A I do not.

4 Q And you're not 100 percent sure that it
5 actually occurred?

6 A No, I'm not 100 percent sure that it occurred.

7 Q During this time you said Ms. Gaddis was the
8 principal at Fremont High School; is that right?

9 A Yes, she was.

10 Q Did you ever speak to her about the
11 overcrowding in her classrooms?

12 A She was not to be found a lot of times at the
13 school site, so no, I could not get ahold of her.

14 Q Did you try?

15 A Of course.

16 Q Can you tell me what efforts you made to get
17 ahold of her?

18 A I asked where she was, and every day the
19 secretary told me, "She's not in." And at anytime --
20 not anytime, but whenever I -- whenever -- at my -- you
21 know, I would try on like every other day. I would go
22 over there and be, like, "Is Ms. Gaddis around?"

23 And they would say, "No." But also to speak
24 with her about other concerns, as well.

25 Q Did you ever meet Ms. Gaddis during the

1 on Ms. Gaddis.

2 But all I wanted to do was give Ms. Gaddis the
3 heads up, while the counselors I was hoping for, you
4 know, some action.

5 Q So once Mr. Miller told you to speak to the
6 counselors, then you gave up on trying to find
7 Ms. Gaddis to solve the problem?

8 A I lessened my efforts.

9 Q Did you make any efforts to deal with
10 Ms. Gaddis to resolve the issue after that time?

11 A I -- not with such priority, no. But it would
12 have been something that I would have liked to -- I had
13 other concerns for Ms. Gaddis, and it would have been on
14 my list of concerns.

15 Q The first time you went to speak to Ms. Gaddis
16 about the overcrowding did you speak to Ms. Gaddis'
17 secretary?

18 A Yes, I did.

19 Q Did you leave a message for Ms. Gaddis?

20 A I do not recall. I would assume so.

21 Q Did Ms. Gaddis ever get back to you?

22 A I don't -- no, I don't think so.

23 Q Do you recall in your message asking Ms. Gaddis
24 to get back to you if you left a message?

25 MS. LHAMON: He doesn't recall whether he left a

1 1999-2000 school year?

2 A Yes, I did.

3 Q Do you recall how many times?

4 A Minimal. I would probably say we had -- we had
5 teacher meetings, but that's not exactly the correct
6 forum to go talk to the principal with. So on a
7 one-to-one basis maybe once, maybe twice.

8 Q Do you recall when the one meeting or the two
9 meetings occurred?

10 A No, I do not.

11 Q Did you mention the overcrowding in your
12 classes to her at that point?

13 A I believe it was solved by that time.

14 Q You said you went to try to find her several
15 times to inform her about the overcrowding; is that
16 right?

17 A Yes.

18 Q Do you recall when the first time you went to
19 tell her about it was?

20 A I think it was earlier when I stepped out of
21 the chain of command because I think I first went to try
22 to find her and also try to talk to Steve Miller, and
23 then Steve Miller was the one who told me to go to the
24 counselors, and then after that point I focused my
25 attention on the counselors versus focusing my attention

1 message, so I have an objection that that question is
2 improper.

3 THE WITNESS: I do not recall Ms. Gaddis getting
4 back to me.

5 BY MR. ROSENTHAL:

6 Q Do you recall asking Ms. Gaddis to get back to
7 you?

8 A No, I do not recall if I left a message.

9 Q You said after you spoke to Steve Miller he
10 directed you towards the counselors, and you said you
11 spoke to one of -- you gave me three names of
12 counselors. Do you recall the substance of that
13 conversation with -- did you speak to one of the
14 counselors or did you speak to all three?

15 A I can't recall exactly who I spoke to or what
16 the substance of the conversation was even about. I
17 just remember that I told the counselors that I have a
18 lot of students in my classes. It might have been that
19 Ms. Gaddis was the one who made the decision for my
20 classes to go down to suggested sizes.

21 So I think that's how Ms. Gaddis plays into it.
22 I don't know how she would have received word of it.
23 Maybe it was through a counselor. Maybe I mentioned it
24 to Ms. Gaddis as a message, you know, "Ms. Gaddis, I
25 have impacted classes," or maybe Steve Miller brought it

1 to her attention. But I believe it was Ms. Gaddis or
2 Ms. Ward who ordered the counselors to have my classes
3 minimized or reduced.

4 Q What's the basis of your opinion that it was
5 Ms. Ward or Ms. Gaddis that was responsible for reducing
6 the size of your classes?

7 A I believe it was because the changes that they
8 made, the counselors made were pretty poor changes in
9 that the fact that they slotted students into classes --
10 they decided to even greater impact the classes that
11 were already impacted with even more students where
12 there was no teacher. And they wanted to know who had
13 ordered the changing of the students' schedule for
14 this -- you know, this worsened, terrible change.

15 And I think it was mentioned like, "Well,
16 Ms. Gaddis is the one who ordered it," but in terms of
17 the execution of it, it was I believe still the
18 counselors.

19 Q Did you ever hear that counselors intentionally
20 put large numbers of students in particular classes?

21 A Did I ever hear that? I'm trying to figure out
22 what people told me about the counselors. I'm trying to
23 remember. What did they say about the counselors? I
24 don't think so. I don't think I heard that counselors
25 would put large groups of kids in people's classes.

1 Q You never heard a rumor like that that
2 counselors were trying to create a situation with
3 overcrowding at Fremont?

4 MS. RUSSELL: I'm sorry. I didn't hear your last
5 word there.

6 MR. ROSENTHAL: "At Fremont."

7 THE WITNESS: No, I did not think they were trying
8 to create -- I did not hear a rumor of the counselors
9 trying to create an atmosphere of overcrowding at
10 Fremont.

11 BY MR. ROSENTHAL:

12 Q Just to follow up on the steps you were taking
13 to resolve the issue, you spoke to Steve Miller, you
14 went to speak to a counselor and you informed them of
15 the situation. Can you tell me what happened next as
16 far as resolving the issue?

17 A I brought it to the counselor's attention, and
18 I think what put it over the top was Ms. Gaddis or
19 Ms. Ward or one of the administrators telling them that
20 they have to reduce my class.

21 And they did so, but with -- but when they did
22 that they put the students into a different impacted
23 class without a teacher in it.

24 Q Do you recall how much time elapsed from the
25 time you reported the issue to the counselors to the

1 time the students were removed from your classes?

2 A No, I do not recall that.

3 Q You said earlier that by late November or early
4 December your class sizes had stabilized. Did it take
5 that long?

6 A I think for different classes it took different
7 time lengths, and so to -- for those three classes, even
8 within those three classes -- I would say I think it did
9 take that long for one particular class of mine.

10 Q Did you do anything in the intervening weeks?

11 A Between?

12 Q Between I guess the very early part of the
13 school year and late November or early December when the
14 issue was resolved to your satisfaction.

15 A I tried to speak with the counselors.

16 THE REPORTER: I need to change paper.

17 MR. ROSENTHAL: Okay.

18 (Recess taken: 12:10 until 1:12 p.m.)

19 BY MR. ROSENTHAL:

20 Q Before our lunch break we were talking about
21 some overcrowding issues. I'm going to change gears and
22 we'll come back to that a little later on.

23 Earlier today when you said that you met with
24 counsel that you also reviewed another student's
25 declaration. Do you remember which student's

1 declaration that was?

2 A Yes.

3 Q Can you tell me whose declaration you reviewed?

4 A Jose Garcia's.

5 Q Did you review any other declarations aside
6 from Jose Garcia's and your own?

7 A No.

8 Q Can you tell me how you first became involved
9 in this lawsuit?

10 A There was a note, an e-mail I think sent out by
11 Teach For America just describing the lawsuit.

12 Q Do you remember who sent the e-mail?

13 A No, I do not.

14 Q Do you remember when you received the e-mail?

15 A I could say -- I mean not exactly, but
16 approximately, hmm, maybe one year ago.

17 Q Do you remember the content of the e-mail?

18 A Oh, I'm sorry. A year and a half ago, because
19 I was still living with other people at that time so it
20 had to be around a year and a half ago.

21 Q Do you remember the content of the e-mail?

22 A No, I do not.

23 Q Do you recall that it mentioned this litigation?

24 A Can you clarify the word "litigation" for me,
25 please?

1 Q Sure. Lawsuit.
 2 A I'm not sure -- I don't think it was a lawsuit
 3 at the time. I don't know. I just know that the ACLU I
 4 think was trying to see if there are any teachers that
 5 feel that the State of California should be more
 6 accountable to the students.
 7 Q Do you still have a copy of that e-mail?
 8 A No.
 9 Q Was it sent to you directly?
 10 A No, it was not. Directly -- it was sent to my
 11 e-mail address but not personally to me. I'm not sure,
 12 just to clarify the word "directly."
 13 Q Fine. And do you recall who you received the
 14 e-mail from?
 15 A No, I do not.
 16 Q Was it a friend of yours?
 17 A No, it was not.
 18 Q It was somebody who didn't know you well?
 19 A It might have been the Teach for America Bay
 20 Area office, or it might have been a forwarded e-mail
 21 from somebody else. I -- to be honest it could have
 22 been either: somebody I knew or somebody I did not
 23 know.
 24 Q And what did you do as a result of receiving
 25 this e-mail?

1 A I think I responded to it -- I mean I replied
 2 to it and said I'd be interested in hearing the details
 3 of the lawsuit or the litigation.
 4 Q Either word is fine.
 5 A Okay.
 6 Q And what happened next? Did you get a response?
 7 A I think at that time Catherine -- I mean I
 8 don't know where we are in the time line right now, but
 9 at that time Catherine contacted me.
 10 Q Was the e-mail originally from Catherine? Do
 11 you know that?
 12 A I do not know that.
 13 Q Do you recall when Ms. Lhamon contacted you?
 14 A I do not. I do know it was perhaps the spring
 15 or summer of last year.
 16 Q So the spring or summer of 2000?
 17 A Yes.
 18 Q And about how long after you received the
 19 e-mail did you receive a phone call from Ms. Lhamon?
 20 A I do not remember. And can I clarify? It
 21 could have even been in the winter, like it could have
 22 been the winter, spring, or summer.
 23 Q When you spoke to Ms. Lhamon?
 24 A When I first got the e-mail and when I first
 25 spoke to Ms. Lhamon.

1 Q Okay. But you got the e-mail before you ever
 2 spoke to Ms. Lhamon?
 3 A Yes. I'm sorry. I'm pretty sure it's the
 4 spring or summer.
 5 Q I can't remember what happened yesterday, so
 6 don't worry about it.
 7 A Okay. Thank you.
 8 MS. RUSSELL: Just wait until you guys get a little
 9 older. You'll know lack of memory very well.
 10 BY MR. ROSENTHAL:
 11 Q When you spoke to Ms. Lhamon for the first time
 12 sometime -- well, was it during 2000 or could it have
 13 been in late 1999 as well?
 14 A I'm pretty sure I'd put it in 2000.
 15 Q So even though you're not a hundred percent
 16 sure, I'll just refer to it as being in 2000.
 17 A Please.
 18 Q When you spoke to Ms. Lhamon for the first time
 19 sometime in the first half of 2000, can you tell me the
 20 substance of your conversation?
 21 A I cannot remember what the exact substance of
 22 the conversation was.
 23 Q Do you recall discussing this litigation?
 24 A I do remember that she was wondering about the
 25 conditions of my school. She had asked me that, and she

1 had asked me how do I feel about those conditions.
 2 Q And what did you respond to those two inquiries?
 3 A I told her I think the conditions were a
 4 travesty and just deplorable and that something should
 5 be done about it.
 6 Q Did you give her any more detail than that?
 7 A I might have just -- I'm not sure when I gave
 8 her my declaration, but I might have described it then
 9 initially and then had it formalized later. I do not
 10 remember.
 11 Q You said she also asked you how you felt about
 12 the conditions. How did you respond about that?
 13 A You know, personally I'm pretty -- it just goes
 14 with my whole philosophy of why I came out here to
 15 teach, you know, so I was pretty -- and even though I
 16 was bracing myself for the conditions of Oakland Unified
 17 School District, I was still pretty shocked at the
 18 conditions. So I definitely felt like there is
 19 something that should be done about it.
 20 Q And what did Ms. Lhamon say after you
 21 described the conditions and how you felt about them?
 22 A I don't remember what her response was because
 23 I feel like at that point I think it was just more of
 24 gathering information. I don't know if there was
 25 like -- I don't think there was a response to it.

- 1 Q Did she indicate that she wanted you to do
2 anything additional?
3 A Not -- not specifically, no. Just keep in
4 touch with her like for future reference.
5 Q Did she ask you if you knew anybody else who
6 might be interested in helping out in litigation?
7 A She did.
8 Q Did you provide her with any names?
9 A I tried to [REDACTED]
10 [REDACTED]
11 Q So you gave her some names?
12 A Right.
13 Q Do you remember the names you gave her?
14 A Yeah. Yaron Prywes.
15 Q Can I ask you to spell that?
16 A Y-a-r-o-n, last name Prywes, P-r-y-w-e-s; Janie
17 Fossner, J-a-n- -- I think she has an "i" in there -- e,
18 Fossner, F-o-s-s-n-e-r; and Eric Berson, E-r-i-c, last
19 name Berson, B-e-r-s-o-n.
20 Q And all three of these individuals are friends
21 of yours?
22 A They were my roommates, yes.
23 Q Roommates. Were they also teachers?
24 A Yes, they were.
25 Q Can you tell me where each of them taught?

- 1 A Sure. Yaron did his two years for Teach For
2 America at Castlemont.
3 Q In the Oakland Unified School District?
4 A That's right.
5 Janie, her first year was at Castlemont, second
6 year was at Highland Elementary.
7 Q Is that also in Oakland?
8 A That is also in Oakland. Which brings us to
9 Eric teaching two years at Highland Elementary.
10 Q Did each of them complete their two years as of
11 the end of this most recent school year?
12 A Yes, they did.
13 Q Do you know where they'll be working in the
14 future?
15 A Yaron and Janie moved back to New York where
16 they're from, with Keith. They all left me for
17 New York. And they are going to Columbia for graduate
18 school, and I don't know exactly which school it was.
19 Eric -- you want to know about Eric?
20 Q Mm-hmm, please.
21 A Eric just left Oakland Unified School District
22 to go teach in San Francisco Unified School District.
23 Q Do you know what school he'll be teaching at?
24 A I think -- I do not.
25 Q Do you know if it's an elementary school?

- 1 A Yes, it is.
2 Q Would you recognize the name if I showed you a
3 list of elementary schools?
4 A I think I have a good idea of what school it
5 is. It might be -- I'm not sure if there is a high
6 school or an elementary school called Barrell (phonetic)
7 Heights. That would be my only recognition that I would
8 have of the school.
9 Q Are you still living with Eric or has he moved
10 elsewhere?
11 A He has moved -- the house separated and I live
12 with -- I live -- yeah, I do not live with them anymore.
13 Q But you know where he lives now?
14 A Yes, I sure do.
15 Q Do you know if Ms. Lhamon contacted any of
16 these three names that you gave?
17 A I think -- that's what I meant earlier is that
18 she unsuccessfully -- they did not respond to her, or I
19 don't even think -- I'm not sure if she contacted them.
20 Q Did you give her any other names other than
21 these three?
22 A Not -- not that I can think of.
23 Q You mentioned the name Keith before. Was that
24 somebody else --
25 A Right.

- 1 Q -- who was living with you?
2 A No, he was our fifth roommate, but he's kind of
3 a stressed out fellow so we like to keep him to his own
4 little world.
5 Q Is he a teacher as well?
6 A He's a teacher as well.
7 Q Did you give Ms. Lhamon his name?
8 A No.
9 Q Did you ever speak to these three individuals
10 about your involvement in the lawsuit?
11 A I asked them if they were interested in it, and
12 being that they understood the situation of our schools,
13 they were, but it seems like they were never -- they
14 were never contacted or they -- I guess they -- I don't
15 know on whose end, like if it was Catherine or their
16 end, but the communication was never made between those,
17 I believe.
18 Q Do you know why?
19 A I do not know why. They are pretty lazy.
20 Q Did you have subsequent contact with Ms. Lhamon
21 after this initial phone call? It was a phone call,
22 right? The first contact?
23 A Right. Actually, no, I cannot remember if it's
24 a phone call or e-mail, so I cannot remember. Did I
25 have contact after her with that (sic)? Yes, I think

1 so. I mean, obviously.

2 Q Do you recall the next time you spoke to

3 Ms. Lhamon?

4 A I do not.

5 Q Do you recall approximately when that was?

6 A I really -- I think there was a big lag time
7 between what I would call her gathering information
8 stage to when she contacted me again.

9 Q Do you recall how she contacted you the next
10 time she contacted you?

11 A I do not. I would assume from me, though, due
12 to my lifestyle, it was via e-mail.

13 Q And when Ms. Lhamon contacted you again, do you
14 recall why she was contacting you?

15 A I mean, if -- chronologically I would assume
16 the next contact -- point of contact would be for a
17 declaration.

18 Q Did Ms. Lhamon describe for you what a
19 declaration was?

20 A I think I finally understood yesterday what a
21 declaration was, but yeah.

22 Q What's your understanding of what a declaration
23 is?

24 A It's just -- I mean I guess I would describe it
25 as an affidavit or -- is there a difference? Well,

1 representing him, so...

2 MS. LHAMON: That's why I didn't give him a date.

3 BY MR. ROSENTHAL:

4 Q Do you recall ever having a conversation with
5 Ms. Lhamon about her representing you as her attorney?

6 A I do have a recollection of when she -- when
7 she did say, you know, like, "From this time on..."

8 So, yes. As to when, I do not remember.

9 Q Did you ask her to represent you?

10 A No.

11 Q Do you have an understanding as to why you need
12 to be represented in connection with this action?

13 MS. LHAMON: Assumes facts not in evidence.

14 You can answer the question.

15 THE WITNESS: Do I have -- do I understand why I
16 need representation?

17 BY MR. ROSENTHAL:

18 Q Actually, I'm going to withdraw the question.

19 I'll ask you a different question first.

20 Do you feel that you need to be represented in
21 connection with this action?

22 A I think I need counsel, like in terms of
23 helping me, you know, like, understand exactly the whole
24 situation.

25 Q Any other reasons you feel that you need to be

1 anyway --

2 MS. RUSSELL: He asks the questions, you give the
3 answers. There we go.

4 THE WITNESS: Is that the \$60,000 question?

5 No, a declaration is something that I say under
6 testimony -- or it's to be something that I swear to
7 under testimony to be presented -- to maybe be used as,
8 you know, a reference in litigation.

9 BY MR. ROSENTHAL:

10 Q Did Ms. Lhamon ever explain to you what your
11 role would be in this litigation?

12 A I know that I'm not the plaintiff, I'm not the
13 defendant, and that I feel like the way I would describe
14 myself is like just a witness.

15 MS. LHAMON: And Toai, I'm going to remind you
16 that when you're answering these lines of questions you
17 don't want to talk about anything that we talked about
18 since I started representing you. So you should answer
19 these questions based on information that you learned
20 from me before that time.

21 THE WITNESS: Answer the questions -- before this
22 time. Okay.

23 MS. LHAMON: Okay.

24 MR. ROSENTHAL: Just so the record is clear, I
25 don't think the witness knows exactly when you began

1 represented by counsel?

2 A To make sure that I communicate -- I properly,
3 legally communicate my ideas correctly.

4 Q At some point Ms. Lhamon told you she was
5 representing you as -- she was representing you in
6 connection with this action; is that right?

7 MS. LHAMON: I'm going to object because the
8 question does call for content of conversation between
9 lawyer and client. If you want to know whether he
10 understands he's represented, that's an appropriate
11 question, but it's not appropriate for him to talk about
12 the contents of conversations.

13 I'm going to instruct you not to answer
14 regarding the content of any conversation you and I have
15 had.

16 THE WITNESS: Okay.

17 BY MR. ROSENTHAL:

18 Q Are you going to follow that instruction?

19 A Yes.

20 Q Do you remember the first time you ever
21 discussed with Ms. Lhamon the possibility of having her
22 represent you in connection with this action?

23 MS. LHAMON: Asked and answered.

24 THE WITNESS: Do I remember the first time that she
25 said she would represent me in the lawsuit? Was that

1 the question?

2 BY MR. ROSENTHAL:

3 Q Yes.

4 A No.

5 Q Was it in connection for preparing for this
6 deposition?

7 A I do not remember. Making me feel kind of dumb
8 here.

9 Q You said after you had your initial contact
10 with Ms. Lhamon sometime in roughly the first half of
11 2000 you had a second conversation with her in which you
12 discussed the possibility of providing her with a
13 declaration. Is that about right?

14 A I did not offer -- can you repeat that? You --

15 Q During your second -- we'll call this the
16 second conversation. I know you're not absolutely clear
17 whether it was the second conversation or not, but did
18 Ms. Lhamon at some point ask you to provide her with a
19 declaration?

20 A Yes, she did.

21 Q And did she tell you what she wanted the
22 declaration to contain?

23 A No, she did not. I -- I would -- she asked me
24 what the declaration would contain. I spoke from my
25 experience. Like she asked me for the situation of my

1 you received the declaration?

2 A Well, because I didn't want to be the
3 impediment of, like, her research or whatever the next
4 stage was, pretty -- pretty quickly. I mean I think I
5 signed it within two or three days after reading it, I
6 think. So, asking her some questions -- or maybe not.
7 I don't even remember.

8 Q So what did you do after you received the
9 declaration in the mail? What did you do with it?

10 A As far as I remember I signed it and turned it
11 in to Ms. Lhamon.

12 Q Did you read it first?

13 A Yeah.

14 Q When you signed the declaration did everything
15 in the declaration appear to be accurate?

16 A Yes. I was putting my name to it, so...

17 Q So you didn't call Ms. Lhamon and point out any
18 inaccuracies in the declaration?

19 A No. I might have asked her -- I'm not sure if
20 I did that before getting the declaration or after
21 getting the declaration in the written format -- but
22 what its uses were.

23 Q Do you recall what she told you in response to
24 that request?

25 A She satisfied my curiosity with, you know, it

1 school. I'm not sure if that was -- like if that's what
2 she wanted for the declaration or whatnot, but...

3 Q Did she ask you -- I don't want to put words in
4 your mouth, but was she asking you about the conditions
5 of the school to then create a declaration?

6 A I do not know.

7 Q Do you know how your declaration was created?

8 A I -- no, I do not know.

9 Q Did you draft it?

10 A Perhaps verbally, but I do not know.

11 Q When was the first time you saw your
12 declaration in written form?

13 A In written form. Thank you. A while ago. I
14 don't remember.

15 Q Do you remember where you got it from?

16 A In the mail from Ms. Lhamon.

17 Q When you say "a while ago," can you do any
18 better than that or --

19 MS. LHAMON: Well, the declaration is dated, so
20 there's some time restriction on that already, Counsel.

21 THE WITNESS: I know it was like -- I mean it was
22 sometime last year, 2000.

23 BY MR. ROSENTHAL:

24 Q Do you remember how -- I'm sorry. Do you
25 remember how long before you signed the declaration that

1 will be used in the litigation, and that's it.

2 Q And did that satisfy your curiosity or did you
3 have any other questions?

4 A I might have asked her who had access to it.

5 Q Do you recall what she said?

6 A No. It was obviously nothing -- she might
7 have -- I might not have even asked the question, first
8 of all, but whatever her answer would have been, it
9 would have been -- I think it was I felt confident in
10 the answer. I was happy with the answer so I signed it
11 and turned it in.

12 Q So before you signed your declaration you made
13 no changes to the draft as it was sent to you by
14 Ms. Lhamon; is that right?

15 A Right.

16 Q Do you know who drafted your declaration?

17 MS. LHAMON: Asked and answered.

18 THE WITNESS: I thought I verbally drafted it.

19 BY MR. ROSENTHAL:

20 Q When you say you verbally drafted it, was it
21 your belief that as you told information to Ms. Lhamon
22 she was writing down exactly what you said?

23 A Yes.

24 Q After you sent in the signed declaration to
25 Ms. Lhamon did you have any contact -- subsequent

1 contact with her?
 2 A Yes.
 3 Q Can you tell me about that?
 4 A Yes. She had wanted to see if there were any
 5 parents or students who would want to speak to the
 6 situation of the school.
 7 Q Was she asking you for names of potential
 8 students or parents to contact?
 9 A I only gave her one name of one parent -- well,
 10 one parent and one student.
 11 Q Was that the purpose of her inquiry, to ask you
 12 for names?
 13 A Yes.
 14 Q Do you remember the parent and student's names
 15 that you gave her?
 16 A Sure. One was Ngan, N-g-a-n, last name Nguyen,
 17 N-g-u-y-e-n. That was the student. And the parent was
 18 Angie, A-n-g-i-e, Gonzalez, G-o-n-z-a-l-e-z.
 19 Q Did Ms. Lhamon ask you for -- strike that.
 20 Did she ask you for the names of parents or
 21 students who might be interested in becoming involved in
 22 the litigation?
 23 A I think she -- she asked me if I knew anyone
 24 who would be interested in the litigation, yes.
 25 Q And why did you come up with this -- let's

1 start with the student. Why did you come up with Ngan?
 2 Is that how you pronounce the first name?
 3 A Ngan.
 4 Q Is that a male or female?
 5 A It's a female. She's an articulate student of
 6 mine who I feel has -- you know, a lot of my students
 7 have the inability to communicate very well, so she was
 8 a very articulate student, as well as Ms. Gonzalez, who
 9 has been involved with the community for a long time.
 10 Q Did Ms. Lhamon ask you for articulate students
 11 or for people who were involved in the community?
 12 A No. That was something that I came to my own
 13 conclusion that I figured that she needed.
 14 Q Why did you figure that that's what she needed?
 15 A Because you wanted, you know, people who can
 16 express their ideas clearly so that they're not
 17 misunderstood in trying to find the truth of something.
 18 Q Do you know if these two individuals that
 19 you've named were contacted by Ms. Lhamon?
 20 A I believe Ms. Lhamon did contact Ngan and
 21 Ms. Gonzalez.
 22 Q And did you hear anything about their
 23 conversations?
 24 A Ngan's parent respectfully declined, I believe.
 25 And I really am not sure what ever became of

1 Ms. Gonzalez. I mean, Ms. Gonzalez, I still work with
 2 her, but I never asked her what level did she interact
 3 with Ms. Lhamon with.
 4 Q Do you know why Ngan's parents declined to get
 5 involved in the lawsuit?
 6 A I have some of my philosophies. It's just
 7 that, you know, they're --
 8 MS. LHAMON: Toai, the question is, Do you know
 9 why?
 10 THE WITNESS: No, I do not.
 11 BY MR. ROSENTHAL:
 12 Q Do you have an understanding why they did not
 13 want to be involved?
 14 A Well, what would be the difference between
 15 knowing and understanding?
 16 Q Have you ever heard of a possible reason for
 17 why?
 18 A Oh, no, I have not heard of any possible reason
 19 for why.
 20 Q So you have no idea why Ngan's parents decided
 21 not to become involved in the litigation?
 22 A No, other than my -- no, other than, like,
 23 racial stereotyping, no. Because she's Vietnamese, like
 24 my parents. Sometimes you say, "Oh, it's a Vietnamese
 25 thing." We have those too, you know.

1 MS. RUSSELL: Hey, I understand. Trust me. I do
 2 understand.
 3 BY MR. ROSENTHAL:
 4 Q You haven't spoken to Ms. Gonzalez about her
 5 getting involved in this litigation?
 6 A No, I have not.
 7 Q Before giving these names to Ms. Lhamon, did
 8 you ever let Ms. Gonzalez or Ngan know that they may be
 9 contacted by Ms. Lhamon?
 10 A I let Ms. Gonzalez know, and Ngan, it was
 11 summertime so I did not let her know.
 12 Q When you told Ms. Gonzalez, how did she
 13 respond?
 14 A I think she responded, "Okay. I'd be
 15 interested in what they have to say," at a very, you
 16 know, critical stance in making sure she knew what she
 17 was getting involved with.
 18 Q And you had no subsequent conversations with
 19 her about why she would not get involved?
 20 A Right. Right. I didn't want to impose my
 21 values on somebody else.
 22 Q Just very quickly going back to your earlier
 23 conversation with Ms. Lhamon where she was getting
 24 information to put in the declaration, when she was
 25 asking you for the conditions that exist at Fremont High

1 School, what sorts of information did she ask you to
2 provide her?
3 A She just said, you know -- I think she asked
4 me -- or the way I would verbalize it is like why --
5 what conditions at my school make me want to get
6 involved with this litigation.
7 Q Did she ask you to be comprehensive? Was she
8 asking for a few examples?
9 A I cannot remember.
10 Q Was it your intention to just give her a few
11 examples of conditions that you deemed were problems at
12 Fremont or were you trying to give her an exhaustive
13 list?
14 A I would say by far I could only -- anytime I
15 speak to anybody within one sitting I can only give, you
16 know, a bit -- not an -- not an exhaustive list. Excuse
17 me.
18 Q But then you tried to give her as much
19 information that you could at the time without
20 guaranteeing that you were giving her everything?
21 A Right. Yes.
22 Q When you reviewed your declaration before
23 signing it and sending it back to Ms. Lhamon, did you
24 recall any other conditions that you deemed problematic
25 that were not contained in the declaration?

1 A I'm sure there are, but I didn't want to slow
2 her down with some of the paperwork so I figured what
3 she had was sufficient.
4 Q So did you recall additional ones?
5 A Yes.
6 Q Do you remember what those were?
7 (Secretary enters the room.)
8 (Brief pause.)
9 THE WITNESS: Some of the things that I would
10 remember now were some of the things that I mentioned
11 before about the quality. I'm not sure if they were
12 pertinent to her -- to the litigation, though, so...
13 BY MR. ROSENTHAL:
14 Q That's what I'm trying to get at. How did you
15 know which issues Ms. Lhamon wanted to hear about?
16 A The ones -- I felt like I gave the tangible
17 ones. I feel some of the other ones could be a little
18 bit more -- the other ones, I wasn't ready as a new
19 teacher to make that kind of, you know, judgment.
20 Q Can you give me an example of one of those
21 sorts of problems that you weren't able to make that
22 kind of judgment on yet?
23 A Sure. My comparisons to it with Piedmont High
24 School. I didn't know how it compared to Piedmont High
25 School, as I'm sure I will never be able to make that

1 kind of judgment, though. Like I feel like there's only
2 the fact -- like you could say, well, the quality of
3 teaching could always be speculated, I guess, but if the
4 students don't have toilet paper, that's very factual,
5 you know.
6 Q When you signed your declaration and submitted
7 it to Ms. Lhamon were there any of these tangible
8 problems that you believe were not contained in the
9 declaration that were, in fact, problems?
10 A I think there could have been something added
11 about textbooks perhaps.
12 Q What could have been added about textbooks?
13 A Just quality and quantity of textbooks as
14 another resource, which is usually found in, you know,
15 traditional conventional schools.
16 Q And when you signed your declaration was there
17 a problem with the quantity or quality of textbooks at
18 Fremont?
19 A There was, but I think that I felt that it
20 wasn't needed.
21 Q It wasn't --
22 A -- needed to be in the declaration. Not so
23 much as the textbooks weren't needed, but it wasn't
24 needed to be included in the declaration.
25 Q Why do you say it didn't need to be included in

1 the declaration?
2 A Just because I feel like I'm sure other schools
3 talked about it, and so I left it. You know, just to
4 add -- there's no reason for more egg on the face of a
5 textbook issue, you know.
6 Q Did you tell Ms. Lhamon during these
7 conversations that you had with her in connection with
8 her preparing the declaration about any textbook
9 problems at Fremont High School?
10 A Oh, in her preparing? I would not say that --
11 I might have asked her if she needed me to include
12 anything about textbooks, but -- and it -- let's see. I
13 could have told her to add -- I could have added
14 something about textbooks or I could have told her to
15 admit it. It was one of the things that I can't really
16 remember which one -- which path of reasoning I went
17 down.
18 MS. LHAMON: Toai, when Michael is asking questions
19 today, you want to answer what you can remember and not
20 speculate about things that you might have done but
21 don't remember. So you should give him the most
22 information that you have today.
23 THE WITNESS: Okay.
24 BY MR. ROSENTHAL:
25 Q Other than the textbook issue, were there any

1 other tangible problems at Fremont High School that you
2 knew to exist at the time you submitted your declaration
3 but did not include?

4 A Not that I can remember.

5 Q Now, you said that you had -- after you
6 submitted your declaration to Ms. Lhamon that you had
7 subsequent contact with her where she asked you for
8 names of parents or students that might want to be
9 involved in litigation. Did you have any contact with
10 Ms. Lhamon after that?

11 A I think she said it would be nice for us to
12 have met face to face, let's just put a name with a
13 face, but other than that, no, not -- I mean not until
14 this time. I cannot remember.

15 Q In between the time that she asked you for the
16 names of the parents or students who might want to
17 become involved and her phone call to you about this
18 deposition did you have any contact with her during that
19 time frame?

20 A I think I got the ACLU newsletters about the
21 trial or the case, I'm sorry, I don't know what it's
22 called, but I don't remember anything directly from
23 Ms. Lhamon.

24 Q Do you recall speaking to any other attorneys
25 representing the plaintiffs in this action other than

1 that.

2 BY MR. ROSENTHAL:

3 Q We've just marked as Exhibit 1 a three-page
4 document entitled, "Declaration of Toai Dao" that
5 appears to be dated on July 21st, 2000.

6 Mr. Dao, do you recognize this document?

7 A Yes, I do.

8 Q And is this the declaration you referred to
9 earlier?

10 A Yes, it is.

11 Q And you stated earlier that it was -- that
12 everything contained in the declaration was accurate as
13 of the time you signed it. Is there anything contained
14 in the declaration that appears to be inaccurate as you
15 sit here today? You can have a minute to read it over
16 or as long as you need.

17 A That's not necessary. Let me see, actually.

18 (Interruption in the proceedings. Secretary
19 enters the room.)

20 THE WITNESS: No, it seems like everything is still
21 true.

22 BY MR. ROSENTHAL:

23 Q Everything appears to be accurate as you sit
24 here today?

25 A Yes, it still holds true.

1 Ms. Lhamon? And I know you also met with Ms. Welch.

2 A Right. And those are the only two that I met
3 with.

4 Q No other contact with --

5 A Yeah. I mean contact with, no.

6 Q I think it's time to mark the declaration.

7 MS. LHAMON: I just want to note for the record
8 that we've talked for ten minutes shy of an hour about
9 Toai Dao's contact with me about this litigation, and I
10 don't think that's an effective use of his time or
11 anyone else's time here today.

12 MR. ROSENTHAL: Can you mark this as number 1,
13 please.

14 (Deposition Exhibit 1 was marked.)

15 MR. ROSENTHAL: I'd just like to also say for the
16 record that the creation of this declaration is
17 something that's relevant and, in fact, it's something
18 that you have asked for with regards to a number of
19 principals and to reopen those depositions for that
20 exact purpose.

21 MS. LHAMON: That does mischaracterize our request,
22 but I don't think it's worth going into in any further
23 length here today, given the time constraints.

24 MS. RUSSELL: I want to support not adding to the
25 length of this deposition today. I do want to support

1 Q I'd like to ask you some questions about the
2 information contained in this declaration. We had begun
3 talking about some of the overcrowding issues, which
4 I'll direct your attention to paragraph number 3. And
5 if you want a second just to read that paragraph, and
6 then we'll focus on that.

7 A Okay.

8 Q The way I'm going to do this for the most part
9 is we'll deal with it sentence by sentence because
10 there's a lot of information contained in each
11 paragraph.

12 In the first sentence you say that Fremont is
13 badly overcrowded. Can you describe for me what you
14 mean by that?

15 A Sure. The student body consists of about 2300
16 students, and it is on a campus that was built with the
17 intent for I believe about 1300 students, and for
18 today's standards it should only have I believe either
19 400 or 800 students, one of those two numbers. Brian
20 McKibbens, the principal, would know more.

21 So I also know that Fremont High School sits
22 on a pot of land -- or plot of land -- excuse me -- that
23 is considered -- it has the highest number of students
24 per area in the state of California.

25 Q Now, you said that Fremont was intended for

1 1300 students; is that correct?

2 A Yes.

3 Q And how do you know that?

4 A It's something that was cited to me by the
5 principals, Ms. Emily Gaddis and Brian McKibbens.

6 Q When Ms. Gaddis and Mr. McKibbens told you
7 that it was intended for only 1300 students, were they
8 referring to the structures at Fremont High School that
9 exist now or the structures that existed when the school
10 was built?

11 A They referred to the structures that were
12 built, so they referred to the structures when it was
13 built. If they referred to it for now, it would be a
14 lower number of either 800 or 400, I couldn't remember
15 which number he said, but the number actually decreased
16 if -- he said if it was up to code today.

17 Q Just to make sure I'm clear, were structures
18 removed from Fremont High School, or why would the
19 figure go down?

20 A I've -- maybe perhaps -- I do not know, but --
21 I do not know. I would speculate that with time
22 people -- not people -- but the policy makers or the
23 planners or school designers felt that students need
24 more space in the particular -- like the number, the
25 ratio of students per area went down, and so therefore

1 question.

2 Q Let's deal with that first.

3 A Sure. There was -- you could say there is
4 space for the students to be inside the class if they
5 were to sit on the counters, if they were to sit on my
6 desk, if they were to sit on each other's laps, sure,
7 but you have to have a student with a certain -- you
8 know, a nice learning environment where they have their
9 own space, their own lockers. Let's say, not
10 necessarily, but trying to walk through the hallways,
11 it's a catastrophe during the passing periods because
12 it's just wall to wall with the students.

13 So when I say that Fremont is overcrowded, I
14 mean that, you know, they do not get allocated enough
15 space, because students need space to learn. You know,
16 they need -- the sitting room is not sometimes enough
17 for some of these students.

18 Q When you said after your class sizes become
19 stabilized everybody in your class has their own seat --
20 I guess you said there's sometimes students that are
21 absent and that's why everybody is able to have their
22 own seats. I just want to be sure I'm not misstating
23 your testimony. Where did the students who were on
24 counters and sitting on your desk go?

25 A They went to the classroom where there was no

1 the student -- the facility of Fremont, its capacity
2 went down as well.

3 Q Do you know what the ratio of area per student
4 should be in the school?

5 A I've heard it cited but I do not know.

6 Q You've heard it cited but you don't recall
7 the --

8 A I do not know.

9 Q -- the amount?

10 A No, I do not.

11 Q You also said that you heard that Fremont was
12 the most -- this is my term -- densely populated school
13 in the state of California. Do you recall who you heard
14 that from?

15 A Sure. I heard that on the first day of school
16 by either Ms. Emily Gaddis or Johnnie Ward. I've heard
17 that from Mr. McKibbens. I also believe I've heard it
18 from the superintendent and district architects or
19 construction -- builders. I'm not sure who does what
20 with the planning, but...

21 Q When you say the school is overcrowded, does
22 that mean -- I'm just trying to get a sense of what you
23 mean by that. Is there not enough physical space for
24 students to be in class?

25 A Okay. I didn't know if you were done with the

1 teacher, and when they showed up to the classroom with
2 no teacher they obviously felt that, you know, they were
3 not important, I feel, and so they -- there's -- they
4 dropped out of school, I would assume, or no longer
5 attended Fremont High School.

6 Q So when you say the school is overcrowded, is
7 it your opinion that there are not enough desks for all
8 the students at one time?

9 A Desk and land.

10 Q So that -- I'm sorry.

11 A So very -- another predicament that we have at
12 the school is that during lunch time if the students
13 were to stand in line and wait for lunch at one time --
14 let's say the bell rings, the student gets right into
15 line. There is not -- the cafeteria does not have the
16 capacity to hold all the students in the cafeteria at
17 one time.

18 The school does not have a facility where the
19 school can meet as an entire school at one time, so we
20 do not have the assemblies where the students can have
21 some ownership over their classrooms or even over their
22 school. They just don't have -- and such a lack -- so
23 it's a lack of facilities due to the lack of space.

24 Q So do you know that -- do you know whether --
25 on any given day at Fremont High School do you know

1 whether there are students who -- at least some students
2 in any class who do not have their own desk to sit?
3 There are students sitting on counters or a teacher's
4 desk or somewhere else?

5 MS. LHAMON: Vague as to time. Are you talking
6 about now or are you talking about the two years he
7 taught at the school or are you talking about some other
8 time period?

9 BY MR. ROSENTHAL:

10 Q Do you not understand the question?

11 A I just want to know just for clarity when you
12 were asking.

13 Q Let's deal with the entire period that you're
14 familiar with Fremont High School.

15 A Okay. I would say that there were times
16 that -- if the school was supposed to be performing at
17 the level that I'm sure the state would want it to be
18 performing, that means that students are in school,
19 okay, then there would no -- there's no way that there
20 would be enough seats for all the students to be in.

21 If the school -- but the way that the students
22 solve the situation, as they have to always creatively
23 maladjust to whatever the situation is, is that they
24 just ditch school.

25 Q That's because they don't have a desk? That's

1 on what context you want to use, you know, the term
2 "utilization."

3 Q I'm just trying to get to the bottom of what
4 you say here. You say that there weren't enough -- you
5 know, you've told me that students had to sit on
6 counters and had to sit on your desk in order to be in
7 your classroom, but there was additional classroom space
8 where there were additional desks and places for these
9 students to sit, you know, putting aside the issue of
10 whether or not there was a teacher in the classroom. I
11 mean, we'll get to that.

12 A For those classrooms, those classrooms actually
13 did not have seats or desks within them. The students
14 basically went to an empty classroom and stood there for
15 the period. So there was space, but I wouldn't call it,
16 you know -- I would not call it teaching space. It
17 could not have been utilized as a classroom, but it was
18 utilized, again, for -- I mean as Fremont's creative
19 maladjustment to the situation, so...

20 Q Are all classroom spaces at Fremont used every
21 period during the school day?

22 MS. LHAMON: Objection; calls for speculation.

23 THE WITNESS: I would have to say I do not know
24 that.

25 BY MR. ROSENTHAL:

1 your opinion?

2 A My opinion, and I've been verbalized that by
3 some of my students.

4 Q That is your opinion --

5 A And that --

6 Q -- and as you've been told by students, as
7 well?

8 A As I've been told by students, as well.

9 Q You said that when you had -- you said that
10 when you had too many students in your class they were
11 transferred to a classroom where there was no teacher,
12 and we'll get to that issue a little bit later, but they
13 were sent to a classroom that was not in use? Was it an
14 empty classroom?

15 A It was a -- it was a room. Empty? Obviously
16 not because it's somewhere where the students went. So
17 I would not say it was an empty classroom. I would say
18 it was an unstaffed classroom.

19 Q But it was class space that was not being
20 utilized by another class?

21 A But I still -- I still feel utilized in the
22 sense that those students had to go somewhere and that's
23 where they went, so it was being utilized to house those
24 kids. And we're not trying to house kids at the school;
25 we're trying to teach kids at the school. So it depends

1 Q Are you aware of any classrooms at Fremont that
2 are not being used for particular periods during the
3 school day?

4 A I would say -- can you repeat it? I'm sorry,
5 Michael.

6 Q Are you aware of any classrooms at Fremont that
7 are not used during any part of the day?

8 A I -- I'm -- I know there are some classrooms
9 that do exist that they do not use the classrooms part
10 of the day.

11 Q And those classrooms have desks in them?

12 A Those classrooms do have desks in them. But
13 for the teachers to break -- like particularly sometimes
14 they're science classrooms, so that you cannot have
15 science -- the way it works, so that people understand,
16 it was a science classroom and you have your science
17 equipment set up on a desk, and you have an English
18 classroom come in there. You cannot have expensive
19 science equipment sitting in front of students without
20 them, you know, like -- without breaking down the
21 science equipment first.

22 Q Well, are the only classrooms that you're aware
23 of that were ever unused during the school day -- were
24 they science classrooms with lots of equipment, or were
25 there other ones as well?

1 A You know what? Actually, I do not know. I
2 only know towards the science classrooms, that those
3 were the ones that went unused. I cannot honestly speak
4 towards the other classrooms.

5 MS. LHAMON: Just for point of clarification, when
6 you're talking about unused classrooms, are you talking
7 about unused during a teacher's conference period?

8 THE WITNESS: I am talking about unused classrooms
9 during a teacher's conference period.

10 MS. LHAMON: Thank you.

11 BY MR. ROSENTHAL:

12 Q Are those the only instances when there is an
13 unused classroom?

14 A Are those the only instances where there is an
15 unused classroom?

16 MS. LHAMON: Calls for speculation, but you can
17 answer to things that you know.

18 THE WITNESS: For this -- which circumstances do
19 you speak of?

20 BY MR. ROSENTHAL:

21 Q Are you aware of -- let me just rephrase the
22 question.

23 Are you aware of any classrooms being empty
24 during any times other than a teacher's conference
25 period?

1 A Absolutely not.

2 Q Is your classroom vacant during your conference
3 period?

4 A There was a class -- no, it was not.

5 Q The second sentence contained in paragraph 3,
6 you say in October -- this is October of 1999; is that
7 correct?

8 A That's correct.

9 Q You had approximately 48 kids with only 28
10 seats in one of your classes.

11 A Mm-hmm.

12 Q Was that one of the physical science classes
13 you were -- that you testified to earlier today?

14 A Yes, that was one of the classrooms that I
15 testified to earlier today.

16 Q And here you say it was one of your classes.
17 You told me earlier that in fact it was three of your
18 classes that had similar overcrowding problems; isn't
19 that right?

20 A I did.

21 Q Is there some reason why you were focused on
22 only one class here?

23 A Because I know for sure for one class I had the
24 48 kids, versus some of the other classes I might have
25 had something like -- this is the one solid number I

1 knew I could pretty much give, while some of the other
2 classes I know it was well above the 32-seat capacity.

3 Q Is this the worst of the three classes that you
4 were referring to?

5 A Well, I notice that I say "approximately 48
6 kids," yeah. That's 48 warm bodies. So that is the
7 worst of the situation, yes, it is, but it does not mean
8 that I have 48 kids in that class. I would probably
9 have something like -- that class would have 55 students
10 on the roster. So it would rely on seven kids being
11 absent -- approximately seven kids being absent to get
12 to the number of 48.

13 Q Just to make sure we're clear, that also
14 includes -- you said that there were some students on
15 the roster who you never saw, so it wasn't a matter of
16 them being absent. There were students who you never
17 saw in the class ever? I mean they were absent for the
18 year?

19 MS. LHAMON: Objection; mischaracterizes the
20 testimony. He didn't give the testimony as to any
21 specific class. He's not clear that it's this class.

22 MS. RUSSELL: Could you just read that back?

23 (The record was read as follows:

24 "MS. LHAMON: Objection; mischaracterizes the
25 testimony. He didn't give the testimony as to

1 any specific class. He's not clear that it's
2 this class.")

3 THE WITNESS: So when I say the 55 number, I'm
4 not -- I'm already -- I'm already adjusting for the
5 five souls that won't be there. So the class could have
6 been 60 on the roster, five never show up. 55 are on
7 the roster now. Out of 55, 48 warm bodies inside my
8 room, seven absent. Of those seven, on any given day it
9 could be a different group of seven, for clarity.

10 BY MR. ROSENTHAL:

11 Q Thank you for clarifying that.

12 Also in that sentence you say that in October
13 that was the situation.

14 A Uh-huh.

15 Q You testified earlier that the overcrowding
16 didn't get resolved until late November, early December.
17 Was there some reason why you say October here and limit
18 it to that?

19 A No, because I -- because I say late November
20 because I think that's when the situation was solved.
21 But even to that extent, October is still -- they still
22 have lost one month of teaching.

23 Q Was it your -- as you sit here today, is what
24 you have written in your declaration more accurate than
25 what you testified to earlier or --

1 MS. LHAMON: Objection. You're badgering the
 2 witness. There's no inconsistency here. He said in
 3 November was when they got the class size resolved.
 4 He's testified in his declaration to a specific class
 5 number in October, which is well in excess of his
 6 contractual class size.
 7 THE WITNESS: I don't think they contradict each
 8 other. I think that October and late November -- I mean
 9 obviously if the situation is solved in late November,
 10 then in October the situation still existed, as well.
 11 BY MR. ROSENTHAL:
 12 Q So by saying October, you weren't limiting it
 13 to that month?
 14 A Right. I would not say I'm limiting it to that
 15 month. But for this piece of declaration, definitely,
 16 I mean -- I want -- you know, I'm limiting it to that
 17 month for this declaration because I already signed it,
 18 so yes.
 19 Q You go on to say that there was a ninth grade
 20 English teacher who had 63 or 65 students in her class
 21 in the beginning of the year.
 22 A Yes.
 23 Q Do you recall who that teacher was?
 24 A It could have been one of three teachers, or it
 25 could have been all three teachers actually. It could

1 have been either Maureen Benson, Adele Hamilton. Oh,
 2 man. Sorry. I said, "Oh, man" because her name just
 3 slipped my mind. Monica Robles.
 4 MS. RUSSELL: Monica Rohas?
 5 THE WITNESS: Robles, R-o-b-l-e-s.
 6 BY MR. ROSENTHAL:
 7 Q Do you recall, was it one of the classes? Was
 8 it more than one of these classes?
 9 A Oh, come to think of it, I'm -- the person I
 10 would star most likely would be -- I believe it was
 11 Ms. Maureen Benson who had the class. I'm pretty -- I'm
 12 pretty sure of. I think Monica wasn't there yet, and
 13 Adele was not a first-year teacher. But I believe both
 14 those classes were also impacted, but just for sake of
 15 time or for sake of efficiency or whatever, I kept it
 16 short to just one teacher instead of describing all
 17 these different multiple incidents.
 18 Q Was the situation you described the worst of
 19 the three instances?
 20 A You know, I -- no, it was not. I think at one
 21 point in time she had -- I didn't want to be cited on
 22 this because I'm not sure of the exact number, but I
 23 think it was up to 70 or 80 students. And I think that
 24 number 63 reflects the warm bodies in that class.
 25 Q Just to make sure we're clear, you believe her

1 roster reflected a higher number of 70 or 80 students?
 2 A Right.
 3 Q And Ms. Benson had 63 or 65 students physically
 4 present in her classroom at the beginning of the year?
 5 A Yes.
 6 Q How did you find out about that situation?
 7 A It was brought up during I believe a faculty
 8 meeting.
 9 Q Do you recall how the situation was resolved,
 10 if it was resolved?
 11 A I do not recall clearly.
 12 Q Do you know if it was resolved?
 13 A Ms. Benson is pretty aggressive so I would
 14 assume yes, it was resolved.
 15 Q Do you know how long it took to get the
 16 situation resolved?
 17 A No, I do not.
 18 Q When you say the other class -- the other ninth
 19 grade English classes were impacted as well, do you know
 20 approximately how many students were physically present
 21 in those classrooms?
 22 A No, but I remember commiserating with some of
 23 my colleagues, telling them I had a lot of students, and
 24 they said, "Well, that's the same for all of us, you
 25 know. We all have that same situation."

1 So that's actually why I feel like the
 2 counselors weren't just -- when you had mentioned before
 3 the counselors, maybe they might be just giving the
 4 perception of a crowded school by dumping a lot of
 5 students on one teacher, I felt like it was something we
 6 could all commiserate on because I remember them telling
 7 me that a lot of student classes were impacted,
 8 including -- Monica came -- Ms. Robles came later.
 9 Ms. Hamilton I really did not get to talk to, but
 10 Ms. Benson became the department head and she was the
 11 one -- being a first-year teacher, we obviously
 12 commiserated a lot together. And she actually was the
 13 department head, as well, and she told -- she was the
 14 one who actually had to go out to the district -- and I
 15 know it was after that lag time that I was speaking of,
 16 the contractual lag time earlier, that -- to find and
 17 recruit new teachers to the school on her own
 18 initiative.
 19 Q Did you have an understanding as to why there
 20 were a number of classes that were so overcrowded? You
 21 mentioned just now that they went out to recruit more
 22 teachers. Was it because there was a shortage of
 23 teachers?
 24 A You know, I really, really wish I did have an
 25 understanding of that question or else I wouldn't

1 probably be here. I'd probably be somewhere else making
2 some policy.

3 To say -- but I think to say that there's a
4 shortage of teachers definitely is the tip of the
5 iceberg. I think it's one of the many reasons as to why
6 there were overcrowded classes.

7 Q You mentioned that earlier the counselors were
8 primarily responsible for programming students or
9 scheduling the students. Just generally, did you think
10 the counselors did a good job of doing that?

11 A I thought they did a terribly horrible job of
12 that.

13 Q Did you ever hear any other teachers complain
14 about the jobs that counselors did with students?

15 A On a perennial basis. I'm not sure if
16 "perennial" is the right word.

17 I'm sorry, Ms. Perry. I'm sure you hate that
18 editorial stuff.

19 Q Was it a frequent topic of conversation?

20 A Yes, it is.

21 Q In the last sentence in paragraph 3 you say,
22 "Kids were eventually moved to other classes, but they
23 lost learning time while they were waiting in my class
24 without seats."

25 When you say, "Kids were eventually moved to

1 example, the one classroom I said there were no seats.
2 Do you remember that? So they put the teachers there
3 first, but then they started running out of space,
4 but -- they were saying we were going to have classes on
5 the roof.

6 But after that, then they implemented a thing
7 where they take away our conference period classroom
8 time and put in a teacher that would go -- you know,
9 let's say somebody had conference period one. They'd go
10 there, and they'd move to another classroom for
11 conference period two, for three, four, five and then...

12 Q But all these teachers taught their classes in
13 physical classroom spaces?

14 A Not their own. Not where there was ownership
15 of the classroom, no.

16 Q I understand that, but students were being
17 taught in physical classroom spaces as opposed to on the
18 roof or outside?

19 A Yes, yes, yes.

20 Q But some students -- some teachers just weren't
21 in the same class for the entire day?

22 A Some teachers were not in the same class for
23 the entire day, right. And they even took away the
24 teachers' lounge to make it into two classrooms.

25 Q So by -- strike that.

1 other classes," when we discussed earlier about classes
2 stabilizing, is that what you're referring to there?

3 A Yes.

4 Q So at some point the students who were in
5 overcrowded classrooms were transferred to classes that
6 were somewhat less overcrowded and student population in
7 classes was stabilized throughout the school?

8 A No. They were moved to classes where they
9 finally filled the position for a teacher.

10 Q So when new teachers were hired, new classes
11 were added to house the students who were in overcrowded
12 classes?

13 A Yes.

14 Q And when new teachers were hired, were they
15 given -- did they have classroom space to teach the
16 classes?

17 A I think, by -- no, they were not. A lot of new
18 teachers -- it's somewhere in here, but you see that
19 there were roving teachers without classrooms. And
20 that's how they -- they did not get their own classroom.

21 First their priority was to place all the
22 teachers into classrooms where there were students
23 already, where there was not enough space.

24 Remember in the classrooms where there were no
25 teachers, that already had a classroom? Like, for

1 Would you say that the overcrowding problem
2 during the 1999-2000 school year was largely resolved by
3 the end of November or early December?

4 A Due to the fact that the students that appeared
5 in the first two months of class time, a lot of them
6 dropped out. You'll actually notice in my roster
7 exactly -- in my roster how I said -- let's say I had 60
8 students that were on my roster. Let's say 20 of them
9 go to another class. There's still eight of them, and
10 eight of them would drop out.

11 So if you want to say that overcrowding was
12 resolved, it was resolved, but was it in, you know, a
13 manner that the students still got an education? No,
14 far from that. They would drop out. That's the manner
15 it was resolved.

16 Q But sometime around late November/early
17 December the overcrowding you testified to earlier and
18 mentioned in your declaration was largely resolved to
19 whatever reason?

20 A "To whatever reason" highly emphasized, but yes.

21 Q And it's your view that if a number of
22 students hadn't dropped out, the problem would not have
23 been resolved?

24 A I would say yes, definitely.

25 Q How do you know the students dropped out of

1 school all together from classes of yours?

2 A You would -- we'd go about asking if they've
3 attended any of the classes. There would be times when
4 the school would come together and ask the students if
5 they attended any of the classes, and they found out the
6 students did not attend any classes and they would drop
7 them from the school roster. I believe that was the
8 procedure that was implemented.

9 Q But if somebody was transferred from one of
10 your classes to another class, that name would also be
11 removed from your roster? I'm just trying to understand
12 how you'd know if somebody was dropped out of school or
13 transferred to another class.

14 A Okay. We would also get a list of -- "These
15 are the students that are no longer" -- there were
16 lists, I believe, that were put out of the students who
17 were removed from the school, who were dropped from the
18 roster completely.

19 And there were also students who were on my
20 roster that even with the 35 students, even with --
21 let's say I had 35 students in one class. I still had
22 two or three students who were on my roster who never
23 showed up. So in that sense they dropped out because
24 when I went to look at their file, if they didn't go to
25 any classes, just because their name is listed on

1 we're working with these limited resources. We have to
2 know exactly how we're going to -- for the best
3 allocation of these resources.

4 So if a student moved, I definitely brought it
5 to somebody's attention. But the majority of the
6 students just dropped out.

7 Q How would you find out if a student moved?

8 A We would -- actually, that would be through
9 the -- what do you call that person at the school? Not
10 the clerk. Might be the clerk. But the person who
11 keeps the -- all the students' files. I'm sorry. The
12 person's name leaves -- the person's name I know. I
13 don't know what the title is. Ms. Gillis would be able
14 to tell us if another school requested their transcripts
15 and their file.

16 Q Finally, in paragraph 3 you say students lost
17 learning time while they were waiting in classes without
18 seats.

19 Can you just describe for me how your teaching
20 was affected by having students in the class without
21 seats?

22 A Sure. They had a hard time sitting still
23 because they had to like -- because they had to compete
24 for seats. It became actually -- it was -- these kids
25 wanted to learn so bad, some kids actually even fought

1 someone's roster, I did not consider them attending
2 school or getting an education and I would file them
3 under a drop-out. So in that sense some students
4 dropped out while still being on the roster, and some
5 also dropped out while being removed off the roster and
6 put on the drop-out list.

7 Q Just to make sure I'm clear, when you say "drop
8 out," do you know if, for example, a student who moves
9 either out of the district or to a different part of
10 town or out of the state -- I mean is that somebody you
11 consider a drop-out?

12 A I would consider them dropping out from my
13 school. But mostly when I asked the students -- you
14 know, I would ask them -- because they're my students.
15 I love my students. I care for them. And I would ask
16 them, "Where are they?"

17 And somebody would say, "Oh, they just dropped
18 out of school." "They're no longer going to school,"
19 was the most popular answer I got.

20 Like, they will tell me while I'm taking
21 attendance, "He moved away." And I'd run down to the
22 counselor as soon as I heard the word "he moved" almost
23 New York ticker tape stock exchange style, you know. He
24 moved. Take him off the roster because we need to -- we
25 need to run the ship pretty tight right now because

1 over chairs. I'm not saying that's a good thing, but to
2 know students want to learn, that's pretty impressive.

3 So that was very disruptive. When you don't
4 have seats, it's very hard to write things down, and for
5 my students, who I just don't feel like -- I feel the
6 kids understand and realize that they are not valued
7 when they don't have a seat for them, and so they take
8 no value or ownership of the school, and then they tend
9 to be a little bit more disruptive in class. Some of
10 the intangibles that I -- that would be one of the
11 intangibles that I described.

12 Q Just to be clear, you continued to teach in
13 class regardless of how many students were physically
14 present in your class; isn't that right?

15 A You can teach to -- I could say you could teach
16 to a bunch of three-years-olds, like, astrophysics, but
17 if they don't retain it or learn it, then I don't feel
18 like that's teaching.

19 So if my students don't retain or learn, I
20 don't feel like it's teaching. And I feel like it was
21 due to the fault of the impacted classes, so I feel like
22 no, I was not teaching. It depends how you define
23 "teaching," and me, for my standards of teaching and my
24 relation to teaching, there was not the teaching that I
25 had at Buffalo Grove High School.

1 Q Again, I just want to be clear here. You
2 continued to instruct the students, but it's your view
3 that they didn't learn as well with -- when there were
4 many students in the class?

5 A I would probably say it's my view, the
6 principal's view, the parents' view, the students' view.
7 I'm pretty sure it's a pretty universal view. If you
8 don't have seats or tables for students, it's a hard
9 time for them to learn. So I would not limit it to just
10 my view.

11 Q I wasn't asking you to limit it. I was just
12 asking if it was your view.

13 A Sorry.

14 Q But you said you had approximately 28 or 29
15 seats. Again, I'm just trying to understand, you know,
16 what your belief is. If there was one than more student
17 over the number of desks in the class, the value of
18 everybody's education in the class decreases, or at what
19 point do you cross the line?

20 A Okay. I cross the line at the point of seats.
21 I think that's also a very good question. I think that
22 you can't just say -- every other class has its own
23 dynamics. By all means, every good teacher should be
24 able to tell you that every other class has its own
25 dynamics. Some truths hold stronger than other truths.

1 The truth of whether you have enough seats holds strong.
2 It's pretty strong.

3 Now, granted, I don't dispute the fact that if
4 I had 35 students and I only had 30 seats, I could
5 probably teach. It if was my class -- and let me tell
6 you, I had this one fourth period class, they were just
7 angels. I cleared my throat and they would be quiet.

8 In some classes there would be great teaching
9 even if it's overcrowded like that, in that sense.

10 But I'll tell you, probably 99 percent of the
11 time if you don't have a seat for that kid, that kid is
12 going to be looking for something else to do,
13 particularly when -- how do you assign which kid gets
14 the seat? How do you prioritize that? How do you
15 prioritize which students get the bad teacher or which
16 students get the limited resources? I don't think you
17 can really do that. So that puts up an ethical dilemma
18 for me.

19 And kids, they're just like sponges.
20 Everything to them has to be fair. And for me to be
21 fair with my students, I'd say first one who comes to
22 class gets the seats, which is very unorthodox, as most
23 teachers would say. I'm assigning all the good kids
24 seats, and the bad kids don't get seats. Not to say
25 there are good kids and bad kids, but this is how

1 teachers would phrase it.

2 So if you set it up where the good students get
3 the seats -- if you set up it where the bad students get
4 the seats, the good students would say, "It's not fair.
5 We're the ones who benefit from the seats."

6 If you set it up where the good students get
7 the seats, the bad ones say, "That's not fair because we
8 need the seats."

9 Fairness is another thing. My resolution to
10 this was time. First come, first serve. And besides,
11 who really knows who is going to show up on any given
12 day?

13 So of course the students who tend to show up
14 late are also the students who tend to disrupt the
15 classes, and so -- and one or two kids is all it takes
16 for you to not be able to control your class, whether
17 you're the best teacher I've ever seen or the worst
18 teacher I've ever seen.

19 So these students make it very difficult for
20 you to teach, and I feel like -- so I think, Where do
21 you draw the line? I think it would be easier for the
22 state just to supply the seats than for us to sit here
23 and have a discussion about whether or not who gets the
24 seat or who does not get the seat.

25 Q So it's -- again, just to clarify, if you had

1 seats for all your students in your class, you don't
2 think that the students that were disruptive would have
3 been disruptive? You think the desk would have resolved
4 their disruptive behavior?

5 A Yes, I think it adds to the structure of a
6 class. You have to structure your classes so the
7 students -- students need the structure for them to
8 learn.

9 Q So is every student who did not have a seat a
10 disruptive student, or were some students without seats
11 well behaved students?

12 A The latter. Some of the students who did not
13 have seats were the well behaved seats (sic).

14 MS. LHAMON: Students.

15 THE WITNESS: What did I say?

16 MS. LHAMON: "Seats."

17 BY MR. ROSENTHAL:

18 Q All seats are well behaved.

19 A I've seen some mean ones. No, the students.
20 But still, that was really -- that's a really bad
21 scenario that you're setting up there with that
22 situation in the sense that then the good students --
23 then you're losing the good student who does not feel
24 valued, and they drop out. And the question is -- what
25 you're saying when you're not giving a student a seat is

1 "I don't value you. I think you should drop."
 2 I'm not saying, "I think you should drop out,"
 3 but I'm saying the students, what they internalize is
 4 more important. They don't care what I'm saying. What
 5 they internalize is they're not being valued. So what
 6 is the point for them to stick around here and get an
 7 education? And who do you want internalizing that? It
 8 could be the good students or bad students. I think it
 9 shouldn't be any students. I don't know anybody who
 10 would say only the bad students should be internalizing
 11 that. No, because you want them in the classroom.
 12 Well, then, you lose the good students. Well, no. We
 13 shouldn't have to choose between which students get the
 14 seat.

15 Q So you said that some students that don't have
 16 seats are well behaved, some are less well behaved. Are
 17 there students who have seats who -- do you recall any
 18 instances of students who are in seats misbehaving?

19 A Of course. Of course, yes.

20 Q Did you ever ask to get additional desks put in
 21 your classroom?

22 A Yes, I did. And I even took the initiative to
 23 go out and, you know, sweet talk the custodians into
 24 getting some extra desks. I think I had initially
 25 started with 25 desks in my classroom.

1 Q When you say you asked somebody for desks, did
 2 you ask anybody in addition to the custodians?

3 A I might have asked -- after I got some seats I
 4 might have asked a vice principal, and at which time he
 5 might have said, "There's no way you're going to get
 6 another set of seats in here." Because the seats, it
 7 was practically wall to wall with -- there was so little
 8 space in my classroom I could not walk down the aisles
 9 between my seats. Setting them up in the most efficient
 10 way I could set up the seats, there was no way for me to
 11 walk down the aisle, between the aisles. So I think
 12 the physical facility -- my physical portable could no
 13 longer take any more seats.

14 MS. LHAMON: I'd like to take a break if this is a
 15 good stopping point.

16 MR. ROSENTHAL: That's fine. I need a bathroom
 17 break anyway.

18 (Recess taken: 2:40 until 3:00 p.m.)

19 BY MR. ROSENTHAL:

20 Q Just to pick up wherever we left off, we were
 21 still discussing some of the overcrowding issues.

22 Now, you said that the overcrowding in your
 23 classes was largely resolved by the end of November, the
 24 beginning of December, around that time. Did -- was
 25 overcrowding an issue for any part of the remainder of

1 that school year, 1999-2000 school year?

2 A Like I said, it was just resolved by the
 3 students taking their own initiative to withdraw
 4 themselves from school. So not so much.

5 Q And by the hiring of new teachers and all the
 6 other reasons we discussed?

7 A Hiring of new teachers and -- right. Using the
 8 teachers' conference period classroom space/time.

9 Q And did you hear of any other overcrowding
 10 problems from any other teachers after that time?

11 A The ones at other high schools, like Oakland
 12 High was very crowded, and that was all I heard of was
 13 Oakland High.

14 Q But no more overcrowding problems at Fremont
 15 during that 1999-2000 school year?

16 A No, no.

17 Q When you reported the problem to the counselors
 18 and various other people, were you ever told that part
 19 of the problem was there weren't enough teachers at
 20 Fremont High School?

21 A I do not remember if there was an explanation
 22 as to -- if I ever received an explanation as to why the
 23 situation was so overcrowded.

24 Q So you don't recall anybody saying that part of
 25 the reason the school was overcrowded is because there

1 was a shortage of teachers at Fremont?

2 A I'm not sure what the counselors told me. I
 3 mean, to your previous. And this question, if anybody
 4 told me, I do remember some other teachers telling me
 5 that it's probably because there's a shortage of
 6 teachers.

7 Q So other teachers told you that they believed
 8 at least part of the reason the school was overcrowded
 9 was because there was a shortage of teachers?

10 A Yes.

11 Q But you don't remember hearing it specifically
 12 from the counselors?

13 A Yes.

14 Q Are there any documents that exist that you're
 15 aware of that would reflect your discussions or
 16 complaints made to the counselors and other individuals
 17 about the overcrowding?

18 A No.

19 Q You didn't fill out any sort of complaint form
 20 or anything like that?

21 A Actually, Oakland Educators Association, which
 22 is our union, took polls -- found it necessary to take
 23 polls of how many teachers were having overcrowded
 24 classrooms by how many bodies. So in terms of it was
 25 brought to the attention of the principal so that every

1 day we had to turn in daily sheets of how many warm
2 bodies we had in the classroom that day. So in a way, I
3 would say that was their form of documentation of the
4 overcrowding situation.

5 Q And those forms were turned in to the principal
6 or turned in to the union?

7 A Turned in to the principal. Sorry.

8 Q So you turned them in to Ms. Gaddis or at least
9 sent them to her office?

10 A Yeah. Yes.

11 Q Were there any overcrowding issues at Fremont
12 High School this past school year, the 2000-2001 school
13 year?

14 A Yes, there were but not as bad.

15 Q Did you teach five classes again in the
16 2000-2001 school year?

17 A Yes, I did.

18 Q Were you teaching physical science again?

19 A Yes, I was.

20 Q And were you teaching the ninth graders
21 generally?

22 A Yes, I was.

23 Q Can you tell me how many students you had in
24 each of your five classes, to the extent you recall?

25 A In the beginning of the school year?

1 is I do believe -- I know for sure that without a doubt
2 my class was crowded by maybe -- maybe I had 44 students
3 maybe roughly, like 10 to 15 students more warm bodies
4 extra in the classroom, but because the situation -- I
5 think the situation was resolved I think a week after
6 the OEA deadline.

7 Q You said you had 10 to 15 more students in your
8 class above the contractual amount. Was that true for
9 all five of the classes that you taught or was it --

10 A It was true for all five of the classes I
11 taught, I believe.

12 Q And you say the situation was resolved a week
13 after the deadline? Do you mean after the grace period
14 we were talking about before?

15 A Yes, sir.

16 Q Were some classes resolved prior to the
17 deadline or were they all resolved, you know, one week
18 after and suddenly they were all resolved?

19 A I believe they were all resolved -- they were
20 resolved at different times. So I would probably say at
21 the deadline two of the classes were okay -- two or
22 three, and at a week afterwards the last -- whether
23 there was two or three left, whichever was the number
24 that was left were the ones finally resolved at that
25 time.

1 Q Why don't we start with that?

2 A Okay.

3 Q And again, if you want to specify the class by
4 period, that would be helpful.

5 A You know what? I think this year it went -- I
6 know for the science classes it went a lot better. Oh,
7 I know why it went a lot better. Because this time they
8 just -- instead of having the students inside my
9 classroom, instead of putting them inside a classroom
10 where there was no teacher, which was their temporary --
11 like there are so many stages of how they solved the
12 situation in '99 and 2000 that in 2000-2001 they decided
13 to take the students and put them into classes where
14 there were no teachers right off the bat.

15 So there were no permanent teachers right off
16 the bat so that we can start off our school year on a
17 more positive note without so much transitioning of the
18 student body.

19 Q I just want to say thank you. You're providing
20 very helpful information, but my question actually was
21 just how many students you had in each of your five
22 classes. I know it's very easy to get sidetracked and
23 the extra information you're providing is helpful, but I
24 want to try to get answers to my questions.

25 A Oh, sorry. Sure. So what I was trying to say

1 Q At the end of the deadline the two or three
2 classes that were not resolved, were they partially
3 resolved? You know, had there been some students
4 removed during that grace period, or were they all
5 removed at once after the deadline?

6 A I cannot remember whether it was a slow
7 migration or a big, big movement out of my class of all
8 the students that were over.

9 Q So after your five classes were stabilized or
10 resolved how many students did you have in each class?

11 A I believe it was actually 32 on the roster in
12 each class.

13 Q And did that remain the case basically for the
14 rest of the school year?

15 A Basically.

16 Q Give or take a few coming in at the end of the
17 semester and various other happenings?

18 A You got it.

19 Q Do you recall ever being above the contractual
20 amount of students in your class after the situation
21 resolved a week after the grace period?

22 A Yes. It was the situation that I described
23 earlier. Ms. Flaxman really liked my teaching style so
24 she would always call me up. And that was more like --
25 it was something I did not need to do, but Ms. Flaxman

1 would ask me, "Would you mind taking" -- well, something
2 you need to realize also is I also switched classrooms
3 between my first and second year so I moved into like
4 this really nice classroom. It's huge. I love it. I'm
5 sorry. And so I had more space for the students.

6 Q So you could accommodate more students in your
7 classroom?

8 A Right. So I was happy to take -- I think one
9 class had 38 students, but I had no problem as long as I
10 had my seats. And, you know, Ms. Flaxman, who was our
11 new administrator, showed me the kind of support that
12 I've always been looking for in any administrator. If I
13 have a problem with a student, she'll be happy to
14 resolve the situation immediately. And that was our
15 agreement.

16 Q Can you tell me where your new -- your
17 classroom during the 2000-2001 school year, where that
18 class was located?

19 A Sure. It was in the 3200 building, room 3207.

20 Q Do you recall how many desks you had in that
21 classroom?

22 A You know, that room was plenty big, in all
23 honesty. So I had it where it was set up enough for 32
24 seats would be in the classroom, and -- but I could have
25 thrown in an extra, you know, six desks in there more if

1 where did those students sit?

2 A For the first week they would sit on the
3 counter and wherever they could find space, and then
4 after the week I found some more desks so I could
5 accommodate them.

6 So let's say I had a student body of like 45
7 students. Again, we're saying, you know, like the
8 roster might read 50, with 45 students, warm bodies in
9 the class -- I mean 45 people who show up on a regular
10 basis. So I would just grab some chairs. Chairs are
11 much easier to come by than individual desks. So you
12 can grab some chairs from anywhere or stools, grab from
13 everything. So instead of having four students to a
14 table I could have like six students to a table.

15 Q So after about a week then whoever was in your
16 class had a seat pretty much when they needed it with
17 perhaps a few exceptions?

18 A Right, yeah. Yeah, definitely.

19 Q Sounds like the overcrowding situation at
20 Fremont vastly improved from 1999-2000 to 2000-2001; is
21 that right?

22 A I would say yes, it vastly improved, but that's
23 because -- that was because they were quicker to move
24 the students outside. Like, remember when I had 60 last
25 year on my roster? We'll say the '99 roster. It went

1 I wanted to if need be. I had them sitting in tables
2 this time versus sitting in chairs, so that's what I
3 mean.

4 Q So rather than students having individual
5 desks, they had chairs and tables that they shared?

6 A Yes, yes, four to a table.

7 Q You stated at some point I guess you increased
8 some of your classes to about 38 or so. When you did
9 that at Ms. Flaxman's request, did all the students have
10 their own seats to sit in?

11 A Yeah. By that time, because it's at the
12 semester, right? Within the semester, and when the
13 school year progresses students drop out. And so there
14 is a time where they actually drop out so severe that
15 they overcompensate for the overcrowdedness, that there
16 are out -- they are out of the classroom even when there
17 are some desks that are empty. And so I definitely
18 stole some desks from some other teachers.

19 Q You got additional desks on your own or did you
20 ask anybody for desks?

21 A I got the desks on my own. Sorry.

22 Q You're in trouble now.

23 A Okay.

24 Q When you had the 10 to 15 additional students
25 in your classes for the first part of the school year

1 down to 50 because those -- because they would take out
2 those ten kids and put them immediately into class where
3 there was no teacher. In the '99 period they tried to
4 keep them in my class as long as they can until the last
5 second that they had to move them out.

6 Q When you say they put them in a class with no
7 teacher, you mean there was no permanent teacher who had
8 been hired to teach that class or no permanent teacher
9 that was assigned to that class? They were put in a
10 class with what I presume to be a substitute teacher?

11 A Or one of the permanent teachers taking their
12 conference period to substitute teach.

13 Q But they were not unsupervised without a
14 teacher?

15 A Right.

16 Q They were put in physical classrooms with a
17 physical teacher?

18 A For the most part. There were a few
19 exceptions, you know, maybe one out of 30 given periods
20 or one out of 20 every given period. There wouldn't be
21 a teacher for a particular class and they would sit
22 there without a teacher, but...

23 Q And you said earlier that they were quicker in
24 moving students around. The "they" is the counselors
25 who did the programming for the students?

1 A I would say the counselors, but that's due to
2 the fact that the new administration that came in was a
3 lot sharper than last -- than '99 because the whole
4 administration team got completely revamped. All five
5 administrators that we had for 1999-2000 were no longer
6 with Fremont, and five new administrators were brought
7 in.

8 Q Do you recall the names of the new
9 administrators?

10 A Yeah, definitely. Of the new ones?

11 Q The new ones, right.

12 A Yes. Well, we were headed by Ms. Lannelle
13 Jennings, who is friends -- do you need the spelling on
14 that, Tracy?

15 THE REPORTER: I'll get all the spellings after the
16 deposition. Thank you.

17 THE WITNESS: Lannelle Jennings, who is -- actually
18 the reason why we got all the teachers that we wanted is
19 because she had been friends with Mr. Chaconas I believe
20 for about 26 years and they went through teaching school
21 together, and that's how we got some of our temporary
22 teachers as well really quickly, too.

23 Ms. Jennings, she was our interim principal
24 because we did not have a permanent principal, but
25 still, she did a great job. She was backed up by

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 Q Did you hear of any other teachers having
7 overcrowding problems during the 2000-2001 school year?

8 A I think to the same degree as mine, but because
9 it was cleared up within a three-week period, which I
10 still think is an atrocity, but I think that because it
11 was cleared up within a three-week period that the
12 teacher satisfaction was a lot higher than it was in
13 '99-2000.

14 So yeah, there were -- to answer your question,
15 yes, there were some other teachers that had a situation
16 like that.

17 Q When you say it was an atrocity, you think it
18 was an atrocity to have 10 or 15 extra students in the
19 class for approximately the beginning three weeks of the
20 school year?

21 A Mm-hmm.

22 Q Why is that?

23 A Because they're losing teaching time. Also
24 because I don't teach the -- excuse me -- I don't teach
25 the same curriculum at the same time as other physical

1 Ms. Flaxman, Laura Flaxman, Ms. Delores Delbarco,
2 Benjamin Schmookler, and Ms. Mary Lawson.

3 And Ms. Jennings was replaced later, just to
4 let you know, in about June (sic) or February by
5 Mr. McKibbens.

6 Q And what month was that? I'm sorry?

7 A January or February of the school year.

8 Q And the Ms. Flaxman you referred to is the same
9 person who is going to be the principal of Life Academy?

10 A Yes.

11 Q Just wanted to make sure.

12 A Right.

13 Q Do you have an understanding why the
14 administration at Fremont was replaced?

15 A No, I do not.

16 Q Have you heard any teachers talking about why
17 the administration was replaced?

18 A Not without speculation, of course.

19 Q Well, have you heard any teachers talking about
20 it or --

21 A Have I heard any teachers talking about it? Of
22 course, yes.

23 Q What have you heard?
24 [REDACTED]
25 [REDACTED]

1 science teachers. So they go into another class and
2 they get a different type of content or different ideas.
3 And so it's almost like my three weeks I've slowed them
4 down when they get switched into another class, and so
5 they're really confused. And I think that the situation
6 is -- could be solved, you know, easily. I mean
7 compared to like the '99-2000, it's a complete godsend,
8 but compared to Buffalo Grove, it is an atrocity.

9 Q You mentioned --

10 MS. LHAMON: I'm sorry. Just to make it clear,
11 when you say when compared to Buffalo Grove, you're
12 comparing it to the high school you grew up in?

13 THE WITNESS: That's correct.

14 BY MR. ROSENTHAL:

15 Q You mentioned earlier that the first part of
16 the 1999-2000 school year you had difficulty teaching --
17 you had some degree of difficulty teaching the class
18 because of the number of students in the class.

19 Did you have similar difficulties at the start
20 of the 2000-2001 school year when you had the 10 or 15
21 extra students in the class?

22 A Yes, I would say so, but because there was more
23 space, I would say that things became a lot -- my
24 teaching life became a lot more easier in terms of when
25 you teach science, kids need to move around to do

1 experiments and they need space to shoot things across
2 the room, let's say. Sorry. I'm going to get in
3 trouble again, but they need space to shoot around and
4 be kids and to learn by their own experience. And as I
5 told you, my other portable before that I had no -- I
6 had no more space to put even more desks in, you know.
7 Because you had asked me why I didn't try to get more
8 seats in, and it's because I couldn't put any more desks
9 in.

10 So this new space -- I mean the new space
11 was -- made it more amicable to teach this year than
12 the -- the 2000-2001 school year.

13 Q So would you say it was easier to teach the
14 number of students -- strike that.

15 Would you say you had an easier time during the
16 2000-2001 school year teaching your class even when it
17 was overcrowded?

18 A Yes, due to there was more space, yes.

19 Q And you said during the first week of the
20 2000-2001 school year there were some students who sat
21 on counters and things like that and you largely had
22 that resolved after the first week, but is there any
23 distinction in your ability to teach the class between
24 those two periods? Was it easier during the first week
25 or harder?

1 much.

2 So teaching gets easier as you go along, and
3 it's also a time variable thing. So to isolate it
4 versus like where they're sitting, on the counter or
5 sitting on the seat, you can't isolate it to that.

6 Q Just to clarify, so during the 2001-2001 school
7 year you don't recall any instances where it took more
8 than a few weeks to have a class that was overcrowded to
9 be -- to have the excess students removed like you said
10 existed in 1999-2000?

11 A Not severely as 1999-2000. But I mean it might
12 have taken an extra week, but that's -- I do not recall
13 exactly the date, but just that it came very close,
14 within a week of the deadline is -- within a week of the
15 deadline is again, you know, a godsend for us Fremont
16 High School teachers.

17 Q You said that you were moved to a new classroom
18 or a different classroom and you were pleased with the
19 new classroom. It was a larger classroom; is that
20 right?

21 A Yes.

22 Q Was it a newly renovated classroom?

23 A It was -- it did get modernized, something that
24 I believe the school building hadn't had for 17 years,
25 but it got -- they ripped out the carpeting of it, which

1 A Between the first week and the -- the week
2 where they were moved out and then were finally into the
3 seats?

4 Q No. Actually, let me try the question again.

5 You said that during the first week --
6 approximately the first week of the 2000-2001 school
7 year you had students who did not have their own seats
8 and were sitting on counters and things like that, and
9 then after about a week, even though they hadn't been
10 moved out of the class yet, you were able to obtain
11 additional seats for them and put them at tables with
12 other students and things like that.

13 A Right.

14 Q Was it easier or harder or was there no
15 difference in your ability to teach in those two
16 environments?

17 A I'd say it would be easier, but that's not
18 because of the variable -- it's definitely the variable
19 that they also got -- they sat down, but it's also the
20 variable that at that time they've now known me for a
21 week and they've known some of my systems that I instill
22 in the class, the procedures and process so they're not
23 so overwhelmed by the -- because I teach ninth graders
24 and this is their first year in the high school.
25 They're not overwhelmed by the process of high school so

1 today most schools -- most science classes do not have
2 carpeting. They have tile floors because of all the
3 science experiments that you do on the floor.

4 So in the sense -- actually, the way I acquired
5 it was a Teach For America teacher was leaving and I got
6 in with the principal real quick and said, "Hey, can I
7 get this room?"

8 And he said, "Fine."

9 You could say it was a new classroom, but it
10 was not a newly renovated. Like renovated, do you mean
11 constructed classroom or just modernized? How would you
12 fit the word "modernized" against the word
13 "renovation"?

14 Q Who is asking the questions here?

15 A Oh, I'm sorry.

16 MS. RUSSELL: That's what I thought. I said let's
17 see, we're having questions from that side of the table
18 now?

19 BY MR. ROSENTHAL:

20 Q Other than the removing of the carpet was there
21 any other work done in the classroom that you're aware
22 of?

23 A I think they finally fixed the air-conditioning
24 three months after the school year began, which we
25 didn't need the air-conditioning anymore, but they got

1 the heat in there. So, yeah, there was -- they fixed
2 some of the temperature controls of the classroom.

3 Q You were satisfied with your classroom?

4 A I love my classroom. Well, no, I did not love
5 my classroom. It still lacked a lot of science
6 equipment, but in terms of the physical facility of it,
7 it was great.

8 Q You thought it was an adequate classroom for
9 students to be taught in?

10 A Adequate, yes.

11 Q It was conducive to learning?

12 MS. LHAMON: The question is vague. Are you asking
13 if it's conducive to learning anything or conducive to
14 learning science, given that it didn't have science
15 equipment?

16 THE WITNESS: Yes, which one would you be asking?

17 BY MR. ROSENTHAL:

18 Q Was it conducive to learning the classes that
19 you were teaching?

20 A It would not be conducive to learning science
21 due to the fact that it only had one sink in it. If I'm
22 to teach chemistry, you know, my high school had like a
23 fume hood, it had gas jets for all the Bunsen burner
24 experiments that you would do.

25 So I think for me, coming from Portable 6, it

1 A Okay.

2 Q I think we've touched on some of this issue in
3 connection with the overcrowding, but just so we're
4 clear, in the beginning of the 1999 school year is it
5 your belief that there were 11 teacher vacancies at
6 Fremont High School?

7 A Not at the beginning of the school year. There
8 was actually an even higher number than that. As it
9 says in the declaration, up until sometime in December
10 there were 11 vacancies, so at the beginning of the
11 school year I'd say the number was higher than that.

12 Q Do you recall how many teacher vacancies there
13 were at the start of the year?

14 A I don't recall that.

15 Q Do you recall it being more than 11?

16 A Yes. I mean it depends when you begin the
17 beginning of the school year, as well. Do I fill a
18 vacancy, so I would have been the twelfth vacancy?
19 Because I came in two days late, right? So situations
20 like that. But I would have to say I know for sure that
21 the number was higher.

22 Q So when you say that there are 11 teacher
23 vacancies that went unfilled until sometime in December,
24 were they vacant for the entire period from the start of
25 the school year until sometime in December?

1 was just, you know, the most wonderful classroom you
2 could have, but if you take, you know, a teacher from
3 Buffalo Grove and put him inside, you know, the Fremont
4 High School, he would -- he'd have a really hard time
5 teaching, so...

6 Q And you were teaching physical science in this
7 classroom, right?

8 A Yes.

9 Q Were you able to successfully teach the class
10 to your students?

11 A I would not say successfully. I mean obviously
12 not if they didn't score well on their -- on the
13 so-called statewide standardized test scores.

14 Q Is it your belief that the reason you were not
15 able to teach them adequately was because there was a
16 lack of supplies in the classroom?

17 A Yes.

18 Q Any other reason?

19 A Lack of time to work with my coworkers to
20 develop a curriculum that was -- that met the needs of
21 our individual students.

22 Q Any other reasons?

23 A Nope, not that I can think of or remember.

24 Q Why don't we take a look at paragraph 4 in your
25 declaration. I'll give you a minute to look that over.

1 A Yes.

2 Q Do you have an understanding as to why there
3 were this number of vacancies at the Fremont High
4 School?

5 A I really wish I do, but I don't.

6 Q Did you ever hear that the number of teachers
7 who were scheduled to teach at Fremont High School
8 didn't show up for one reason or another?

9 A No. I think a lot of the teachers that showed
10 up at Fremont -- no, I did not hear that reason.

11 Q You said that these teacher vacancies -- these
12 11 were filled sometime in December?

13 A Not all of them.

14 Q Do you recall how many of the 11 teacher
15 vacancies were filled in September?

16 MS. LHAMON: December?

17 MR. ROSENTHAL: Sorry. Thank you. The answer
18 would probably be zero.

19 MS. LHAMON: Never know.

20 THE WITNESS: In December. Let me see.

21 BY MR. ROSENTHAL:

22 Q Perhaps I'm reading this wrong, but the way I
23 read it it says it went unfilled until sometime in
24 December, which to me implies that in December they were
25 then filled, and if that's wrong then you can tell me

1 that.

2 A Right. That is -- I mean, like you said, it's
3 implied, which is --

4 Q I can listen from here.

5 A -- which was pretty inaccurate. I think they
6 were filled, you know, but because -- they were filled,
7 and a lot -- some teachers get released, but I -- so how
8 many went and got filled in December? I know they were
9 still short a science teacher at the end of the year. I
10 think they were short another math teacher at the end of
11 the year.

12 So I guess I would say I couldn't tell you, but
13 I know -- I believe at the end of the year, of the
14 1999-2000 school year there was still a math position
15 unfilled and a science position that was unfilled.

16 MS. RUSSELL: Are you talking about June of 2000?

17 THE WITNESS: Yes, I am.

18 MS. LHAMON: And Toai, are you talking about the
19 same positions, or are those different positions than
20 the 11 positions in paragraph 4 of your declaration?

21 THE WITNESS: They were the same positions, so --
22 right. They were the same positions.

23 BY MR. ROSENTHAL:

24 Q So there were some positions that remained
25 unfilled for the entire 1999-2000 school year?

1 A Yes.

2 Q Do you recall approximately how many did not
3 finish out the school year?

4 A No, I do not.

5 Q Did most of them stay for the school year?

6 A Yes.

7 Q Do you recall the names of any of the new
8 teachers that were hired in December?

9 A Sure. I think there's one named Kathleen
10 Strickland. I think Monica Robles joined us in
11 December. And who else joined us later? Oh, I think
12 his name was Stephen Lausch. I don't know the spelling
13 of that.

14 MS. RUSSELL: L-a-u-s-c-h, I think.

15 THE WITNESS: Dana Meriday. There was one
16 gentleman that was hired and then he got fired in two
17 weeks, so --

18 MS. RUSSELL: That happens a lot.

19 THE WITNESS: Yeah, that happens a lot. I don't
20 know. I couldn't name all of them. I'm sorry.

21 BY MR. ROSENTHAL:

22 Q That's helpful.

23 I think you said Monica Robles was an English
24 teacher; is that right?

25 A Yeah.

1 A They were filled with what you call stip subs,
2 who I believe are -- stip subs, who are there on a
3 three-month contract. And ideally you would want the
4 stip subs to remain there for the whole year, but
5 some -- sometimes the stip subs couldn't be there more
6 than three months. So they were -- yeah, so at times
7 they were filled, but for the most part I would say they
8 were unfilled.

9 Q Do you remember there being a number of
10 teachers -- permanent teachers being hired in December
11 1999?

12 A Yes.

13 Q Do you recall approximately how many new
14 teachers were hired?

15 A Maybe between seven and nine. But also, some
16 of those permanent teachers did not work so well so they
17 ended up being, like, released.

18 So to answer your question technically right,
19 so maybe between seven and nine people might have been
20 hired as permanent teachers, but because they didn't
21 work out, how many were retained would be more, you
22 know -- the more important thing would be that not, you
23 no, all of them stayed there.

24 Q So seven to ten were hired in December but not
25 all remained until the end of the school year?

1 Q Do you recall the subjects the other teachers
2 taught?

3 A Sure. Kathleen Strickland was initially to be
4 used as an English teacher, but that didn't work out so
5 well and so she went to special ed. Mr. Lausch was used
6 I believe for math and science, and maybe they just
7 threw English in for --

8 MS. RUSSELL: I didn't hear that.

9 THE WITNESS: Mr. Lausch was used for maybe math,
10 science and English. Dana Meriday was the roving
11 science teacher, who I think got an article in the
12 New York Times because he pushed around a big cart all
13 day because he didn't have a classroom. So he'd teach
14 science without permanent class, which is pretty
15 difficult. Is there anybody else I left off the list?

16 Q Those are the four names you gave me.

17 Do you know who taught -- strike that.

18 A And I'm sorry. There was one teacher that I
19 called the teacher in room G2. G2 was a class that was
20 consolidated. It was the class of my students that
21 went -- remember when my students left my classroom?
22 They went to G2, where they didn't have any stuff in
23 there. They didn't have a teacher or any desk even.

24 So in December they finally got the teacher
25 there. When they got the teacher there that's where the

1 gentleman stayed for two weeks and got fired, and then
2 another gentleman came in and he taught science, as
3 well.

4 Q Did he teach in that classroom?

5 A Yes, he taught in G2.

6 Q Were chairs and desks and things like that
7 brought into the classroom?

8 A Right, yes, at that point in time somehow the
9 district finally allocated some more chairs for Fremont.

10 Q Do you recall the name of the teacher who
11 filled in in that class after the gentleman who was
12 there for only two weeks?

13 A No, I do not.

14 Q You testified earlier that the hiring of these
15 new teachers was part of the reason that the
16 overcrowding situation that existed was resolved; is
17 that right?

18 A Yes.

19 Q And when these new teachers were hired, were
20 new classes opened up so students could be transferred
21 into those classes?

22 A Yes.

23 Q The second sentence in paragraph 4, you say
24 that, "That meant that there were 11 classrooms without
25 any permanent teacher at all for all that time."

1 they -- so a little bit of both situations. He would
2 also take on some new classes and also pick up the
3 classes that they were not there for. Because then they
4 would realize that there's 50 students in one class and
5 it would be brought to their attention that they had to
6 open up another section of a class.

7 Q Just, again, looking at paragraph 4, the 11
8 teachers who came on did not take over 11 classes who
9 were without permanent teachers?

10 MS. LHAMON: Asked and answered.

11 BY MR. ROSENTHAL:

12 Q Isn't that right?

13 A They would come in and take -- I'm sorry. What
14 was -- how was the question?

15 BY MR. ROSENTHAL:

16 Q I'm just trying -- I mean you stated -- this
17 gets a little complicated. You stated that when these
18 new teachers were hired the school was able to transfer
19 students from some overcrowded classes into the classes
20 of teachers who had recently been hired and the new
21 classes had been added.

22 A Okay.

23 Q So doesn't that mean that the classes that were
24 added didn't exist prior to the time of these new
25 teachers being hired?

1 Is that true?

2 A The second paragraph? Second --

3 Q Paragraph 4, second sentence.

4 A "That meant that there were 11 classrooms
5 without any permanent teachers at all for all that
6 time."

7 Up to December you mean, right?

8 Q Right.

9 A That's how I meant that interpret -- meant that
10 statement to be read. So yes, up to December there were
11 no -- there were not 11 -- there were 11 classrooms
12 without any permanent teachers up to December.

13 Q Didn't you just say that when these new
14 teachers were hired additional classes were opened up
15 and students were transferred into those classes? So
16 those classes didn't exist prior to the hiring of those
17 teachers, right?

18 A A little bit of both. Like remember how I said
19 earlier Oakland -- I mean Fremont does things in stages?
20 So they had -- they would do it where they sent some
21 students who were already there, and then they would --
22 let's say they had -- that teacher only had like 26
23 students or even sometimes they would have like 50
24 students in the classroom without a permanent teacher.

25 And then also once the new teacher came,

1 A Not necessarily, in the sense that some of
2 those classes were not running at full capacity. Some
3 of those classes would have 26 students.

4 And so my classes, who were already
5 overcrowded -- let's say I had a class of 38. He would
6 take my extra six students into his class. So in a
7 sense it opened up some new sections.

8 But also they were also coming to some spots
9 that where there were -- there was no teacher already.
10 So he did both -- he had had -- he had two jobs. His
11 job was to pick up the classes where there were no
12 teachers, and also pick up the classes where there was
13 overcrowded -- pick up the slack for the overcrowded
14 teachers.

15 MS. RUSSELL: Just for clarification, these new
16 teachers handled the overflow from already existing
17 classes and took over classes that previously had
18 substitute teachers?

19 THE WITNESS: Yes.

20 MS. RUSSELL: Okay.

21 BY MR. ROSENTHAL:

22 Q They took over classes where there was no
23 permanent teacher, and they also added additional
24 classes to further alleviate the overcrowding?

25 A Yes.

1 MS. LHAMON: Additional classes or additional
2 students to their classes?

3 BY MR. ROSENTHAL:

4 Q Additional -- I can't answer, but did you mean
5 to say that there were additional classes?

6 A Right.

7 Q New classes were opened up as a result of the
8 hiring of these teachers?

9 A These new teachers, yes.

10 Q Classes that did not exist before these
11 teachers were hired?

12 A Right.

13 Q Prior to the hiring of the permanent teachers
14 to fill these vacancies you stated that the classes that
15 were in existence at that time were taught by
16 substitutes?

17 A Yes.

18 Q Your third sentence in paragraph 4 says, "No
19 learning takes place in the classroom with no permanent
20 teacher." What did you mean by that?

21 A I meant if you have a substitute teacher there,
22 the first thing I was told by all my peers was don't
23 even try to teach the students anything. What you want
24 to do is make sure you control the class, and your
25 biggest priority is that a fight does not break out

1 "Mr. Dao, we're going to need you in room G2 to teach
2 science today."

3 And then the next day they would say -- or the
4 next time my conference period came up, which would be
5 another day, they would call me up third period,
6 "Mr. Dao, we need you to teach in room 3206, drama."

7 So would I ever have to teach the same class
8 twice? Perhaps, but I would not know of it until
9 possibly the day of. A. And point B though, but there
10 are times that I would have -- like if you're asking to
11 know in terms of how that affected my teaching? What it
12 did was it disrupted my planning time on a consistent
13 basis, but it would not have me teach the students on a
14 consistent basis.

15 Q Were these classes that had permanent teacher
16 vacancies staffed in that sort of manner, or did they
17 have long-term substitutes in those classes?

18 A Well, I'm sorry. These classes --

19 Q Without permanent teachers -- do you want me to
20 repeat the whole question?

21 A No, no -- yeah, please.

22 Q In the classes that were missing permanent
23 teachers that you're talking about in your declaration,
24 were they staffed in a similar manner to the way you've
25 just described where teachers were called on a

1 because this class does not have any structure or rules
2 established in it, and what you need to do is establish
3 the rules for the class.

4 So learning takes a backseat to security in
5 classes where there are no permanent teachers.

6 Q Is that speaking from your experience as a
7 substitute teacher?

8 A Definitely speaking from my experience as a
9 substitute teacher.

10 Q Did you ever -- were you ever a substitute
11 teacher on a long-term basis, more than a day or two
12 here or there?

13 MS. LHAMON: Asked and answered. He's already
14 testified to two weeks in a single class.

15 MS. RUSSELL: I didn't hear you.

16 MS. LHAMON: Asked and answered. He's already
17 testified to two weeks in a single class.

18 THE WITNESS: For clarity on that though, they --
19 I would be -- I would be sometimes, but not -- sometimes
20 not specifically for -- I would not know -- so first of
21 all I would not know until the day of that I would have
22 to substitute teach for a particular class.

23 So one day they can say "Mr. Dao" -- like it
24 can be -- as my schedule would have it, they would call
25 me third period -- right before third period and say,

1 day-to-day basis to sit in on those classes, or did
2 those classes have long-term, you know, 30-day
3 substitutes or stip substitutes as you testified to?

4 A For the most part I would say half and half.
5 Some of the classes would have the three-month contract
6 teachers, what they call a stip sub. Let's say about
7 six of those classes would have a stip sub on a
8 three-month contract. Some classes would have the
9 day-to-day, like six classes would have the day-to-day,
10 for example, the G2 position.

11 Q So several classes had no permanent teacher up
12 until approximately December and had different
13 substitutes maybe not every day, but they had teachers
14 who were permanent teachers at the school filling in as
15 a substitute on a day-to-day basis in those classes?

16 A Up to December, yes.

17 Q In the classes that had what I'll call
18 long-term substitutes, were those teachers teaching the
19 class in the subject matter that they were in the class
20 for?

21 A Yes. They could plan accordingly because they
22 would know that tomorrow they're teaching English versus
23 drama.

24 Q What you call a 30-day substitute or
25 three-month substitute, whatever you want to call them,

1 do you consider them to be permanent teachers?

2 A I guess no, I would not, not if they're a
3 30-day teacher.

4 Q So again, looking at the --

5 A Because the student -- I'm sorry -- because the
6 students know that they're not there, so the students
7 have no commitment to this teacher at all. They know
8 that this teacher will be gone in one month, so...

9 Q So again, looking at the third sentence in
10 paragraph 4 of your declaration you say, "No learning
11 takes place in a classroom with no permanent teacher."
12 Isn't that in fact not true in classes where there are
13 long-term substitutes?

14 A It depends on how you want to define
15 "learning," and I think there's two different contexts.
16 Like if you want to say, for example, there's the
17 learning that you have with a permanent teacher who is
18 there. The more permanent the teacher is, the more
19 learning you have. And so if you have a teacher there
20 that is for -- there for 30 days, I still don't think
21 that -- I would not -- if I had to put that down as a
22 declaration, I would not say that that's learning, no.

23 But if -- for me, and I guess -- I guess for --
24 compared to learning that takes place for a teacher that
25 goes on a day-to-day basis, I'd say yes, there is

1 learning. And so it depends on which context you were
2 asking me in.

3 Q Maybe I missed something in that last answer,
4 but you said that -- when you said the teachers on a
5 day-to-day basis, you weren't referring to substitutes
6 that come in on a day-to-day basis? You were talking
7 about permanent teachers who are in a class on a
8 day-to-day basis, right? Or did I misstate that?

9 MS. LHAMON: I think you misstated that, but if you
10 want to read it back, I think you can hear it.

11 MR. ROSENTHAL: It's a long answer, but do you want
12 to read it back?

13 MS. RUSSELL: Off the record a minute.
14 (Discussison off the record.)

15 (The record was read as follows:

16 "Answer: But if -- for me, and I guess -- I
17 guess for -- compared to learning that takes
18 place for a teacher that goes on a day-to-day
19 basis, I'd say yes, there is learning. And so
20 it depends on which context you were asking me
21 in.")

22 BY MR. ROSENTHAL:

23 Q In your prior answer were you referring to a
24 substitute on a day-to-day basis or a permanent teacher
25 on a day-to-day basis?

1 A I guess let me clarify because I don't
2 really --

3 Q That would be helpful.

4 A If that would be all right.

5 So in the context of comparing a 30-day sub
6 compared to a day-to-day sub, I say learning takes
7 place. Compared to -- a permanent teacher compared to a
8 30-day sub, I say no learning takes place.

9 So the answer is you have to put it in
10 comparison, in relative context.

11 Q Is it fair to say that you think that in a
12 class that's taught by a 30-day sub there is less
13 learning than in a class that had a permanent teacher,
14 or do you maintain the position that the proper phrase
15 is "no learning"?

16 MS. LHAMON: Well, now you're badgering the
17 witness. He's clarified why he thinks no learning takes
18 place and the context that learning takes place, and so
19 the question has been asked and answered now a couple of
20 times and you're badgering him.

21 THE WITNESS: So I think that for me when I made
22 the statement it would be no learning takes place in the
23 classroom with no permanent sub teacher, I stand by that
24 statement, and I would say that minimal learning, and
25 not to the point of where the State of California should

1 be happy with a 30-day sub. I mean there is some
2 learning, but ask me why 20 percent of the students
3 probably can't do nine plus five, you have your reason.
4 BY MR. ROSENTHAL:

5 Q At the end of paragraph 4 you say the teachers
6 gave up their conference periods to teach -- to
7 substitute in various classes as needed, and I think
8 we've largely covered that.

9 Did -- were permanent teachers at Fremont given
10 any additional compensation for teaching during their
11 conference periods?

12 A Yes and no. I would -- it depends on whether
13 or not the paperwork was filed correctly. Ideally the
14 idea of it was yes, we were to get compensated, but
15 oftentimes, as any teacher would tell you, the paperwork
16 was lost and we were never compensated.

17 And also we did not have the choice to decline
18 whether or not we wanted to sub. The contract is very
19 vague, and I don't -- the contract is very vague as to
20 whether we can decline or accept, and being the new
21 teacher, I didn't want to decline on my
22 responsibilities.

23 But a lot of people say that they could not --
24 you cannot decline. The administration oftentimes would
25 not accept an answer of "I do not think I have the time

1 to sub today." So subbing was not a choice thing, but
2 when it was -- I mean and even -- and after subbing you
3 might get paid; you might not get paid.

4 Q Whose responsibility was it to have the proper
5 paperwork completed in order to get paid?

6 A One of the administrators.

7 Q One of the administrators at the school site or
8 at the district?

9 A You know, that would be a great question. I
10 don't know if the school site administrators lost it or
11 the district lost it or even payroll lost it, but
12 somebody lost it. My money's lost, man.

13 Q So did you ever get paid for substituting
14 during your conference period or did you not?

15 A I got paid every now and then, but not on a
16 regular consistent like basis to where it was worth my
17 time to sub.

18 THE REPORTER: I need to change paper.

19 MR. ROSENTHAL: Okay.

20 (Recess taken: 3:58 until 4:03 p.m.)

21 BY MR. ROSENTHAL:

22 Q We left off talking about some permanent
23 teacher vacancies at Fremont, and you mentioned that
24 there were a few teacher vacancies that remained through
25 the entire school year during the 1999-2000 school year.

1 A It was -- I know -- I think it was the science
2 and math, and there were attempts to do the English
3 class.

4 Q So is it your testimony that for -- that there
5 was no long-term substitute for any of those classes
6 that had no permanent teacher?

7 A To the extent that they tried to hire a teacher
8 let's say for the math, science, or English class, the
9 three vacancies, but I think a few of those positions
10 did not work out.

11 So to say that they went unfilled the whole
12 year, no, there were times that they were filled but
13 only filled for two weeks, which makes them unfilled
14 again. So their status would change in the course of a
15 year.

16 Q Were any of those classes ever filled by a
17 long-term substitute?

18 A Yes.

19 Q Is that true for all two or three of the
20 classes?

21 A I do not know.

22 Q In any of those classes do you ever remember a
23 long-term substitute being hired for the remainder of
24 the school year?

25 A Of the two or three classes? Yes?

1 A Yes.

2 Q I think you said that there was a -- I don't
3 want to mischaracterize it. I think you said there were
4 science and math teacher positions that were not --
5 remained unfilled, or am I --

6 A You remembered correctly.

7 Q Were there other positions that were unfilled
8 during the entire school year?

9 A Perhaps English.

10 Q You're not sure?

11 A I'm not sure.

12 Q And do you know who taught those three classes
13 during the 1999-2000 school year?

14 A No. They were -- it was the class that we
15 rotated into, one of the classes that we rotated into.

16 Q When you say "we rotated into," do you mean
17 day-to-day substitutes who were permanent teachers at
18 Fremont rotated into one of the classes for the entire
19 school year?

20 A Yes, you got it.

21 Q A long-term substitute was never hired for that
22 one particular class?

23 A I believe not.

24 Q Do you recall which class that was? Was that
25 the science, math, or possibly English class?

1 Q Right.

2 A Do I remember a teacher being hired for the
3 remainder of the school year? There was that gentleman
4 that was hired for G2, I believe he might have stayed
5 there for the whole year, but I don't remember.

6 Q But he was a permanent replacement, right? He
7 wasn't one of instances where there was a teacher
8 vacancy that remained for the entire year?

9 A No. He was a -- he was a permanent
10 replacement, but then the vacancy -- it would go on and
11 off because he would have problems. And so two weeks
12 later he would be hired, and I think two weeks later he
13 would not be there. Two weeks later it would be like,
14 "Oh, yeah, your paperwork is here. You're getting
15 paid." And two weeks later he's not getting paid. So
16 the clarity of it is I do not know.

17 Q But one of the positions that you said remained
18 vacant for the entire year was the situation involving
19 that gentleman?

20 A Yes.

21 Q And you don't recall if he finished out the end
22 of the 1999-2000 school year?

23 A I do not recall.

24 Q Do you remember there being any teacher
25 vacancies at the start of the 2000-2001 school year?

1 A Any vacancies? Yes, as a matter of fact there
 2 was one that went throughout the whole year for sure
 3 next to my classroom all year. God bless that class.
 4 Q Any other classes -- any other teacher
 5 vacancies that you're aware of outstanding in the
 6 2000-2001 school year?
 7 A There were no vacancies, but as the school year
 8 began some teachers left the school due to their
 9 inability to teach the students or their dissatisfaction
 10 with the district.
 11 Q Do you recall how many vacancies developed
 12 during the 2000-2001 school year?
 13 A I can name for you -- let me try to name them.
 14 I'll think of them out loud for a second. There was
 15 that science position that was right next to door to me.
 16 There was Joe Smith, who they never replaced. There was
 17 Wendell Stewart, who they never replaced. And I don't
 18 know if Wendell Stewart was the same English class
 19 that -- there was one more math class. So in the course
 20 of the year I would say there were four vacancies that
 21 were left unfilled I'm pretty sure at least, and I'd
 22 probably say maybe plus two more perhaps. Oh, there was
 23 a special ed difficulty. There was a special ed
 24 difficulty, as well.
 25 MS. RUSSELL: Who was the Joe somebody?

1 THE WITNESS: Joe Smith.
 2 BY MR. ROSENTHAL:
 3 Q Do you recall when Joe Smith left Fremont?
 4 A Joe Smith left at the beginning of the second
 5 semester, so approximately late January or early
 6 February.
 7 Q Do you know who taught his class after he left?
 8 A I know I did rotate into that class on one of
 9 my conference periods, but I think that was one of the
 10 vacancies that were unfulfilled, like with a day-to-day
 11 rotation.
 12 Q Did you rotate into his class more than once?
 13 A Yes, I do believe so.
 14 Q Was it during a particular time of the school
 15 year or was it spread out throughout the whole school
 16 year?
 17 A It was spread out throughout the whole school
 18 year.
 19 Q Was there ever a long-term substitute hired to
 20 fill Mr. Smith's position?
 21 A Not that I'm aware of, no.
 22 Q How about Mr. Stewart? Do you remember when
 23 Mr. Stewart left Fremont?
 24 A Mr. Stewart, they tried to fill that position
 25 and I think the students scared the teacher off within

1 two weeks.
 2 Q Do you recall when Mr. Stewart left?
 3 A I think it was early in the year, would be
 4 my -- is what I would venture to say.
 5 Q Just to go back to Mr. Smith, do you know what
 6 subject he teaches?
 7 A Math.
 8 Q How about Mr. Stewart?
 9 A I believe he taught English.
 10 Q So a replacement was hired for Mr. Stewart, who
 11 only lasted for a brief period of time. Was a
 12 replacement hired subsequent to that?
 13 A There -- sorry. Something else occurred to me
 14 too. There was an electronics teacher that was out for
 15 a good six months, but he came back. He was medically
 16 ill, but at that time that added to the predicament that
 17 Fremont was in.
 18 Q Was Mr. Stewart -- was there ever a permanent
 19 replacement for Mr. Stewart?
 20 A I do not know.
 21 Q You said a math class also developed a teacher
 22 vacancy. Do you recall when that vacancy developed?
 23 A No, I do not. I just -- that one I was more
 24 along the lines shocked that there was still a vacancy
 25 at that point in time, but no I don't. Part of it

1 was -- it might have even been staffed at the beginning
 2 of the school year and opened up during the school year,
 3 and I don't know what teacher we lost, but there's also
 4 a gym teacher vacancy.
 5 Q You also said that there was a difficulty with
 6 a special ed teacher. Did a teacher vacancy develop in
 7 connection with that position?
 8 A I don't know.
 9 Q What was the difficulty with the special ed
 10 teacher?
 11 A I think he -- I think some students complained
 12 about him harassing them, so...
 13 I would assume that he left for some
 14 administrative leave time.
 15 Q How about -- you subsequently said there was an
 16 electronics teacher who was on medical leave and
 17 eventually came back?
 18 A Yes.
 19 Q And there was a gym teacher vacancy. Do you
 20 remember when that developed?
 21 A I think that was early in the beginning of the
 22 school year. He -- very similar to the situation with
 23 Mr. Stewart and the special ed teacher. Some students
 24 had some beef with him, so -- and Mr. Smith throw in
 25 there too.

1 MS. RUSSELL: Mr. Smith?

2 THE WITNESS: Same with Mr. Smith as well.

3 BY MR. ROSENTHAL:

4 Q Do you recall permanent replacements being
5 hired for any of the positions we've discussed?

6 A For the gym teach- -- I believe not. I don't
7 think so, no.

8 Q Do you know who those classes were taught by
9 when there was no permanent teacher?

10 A I would think we rotated them in or we had stip
11 subs again with a 30-month -- 30-day subs, or I don't
12 know. I just don't know. So, no, I do not know. Let's
13 keep it short.

14 Q Do you know the total number of teachers
15 employed at Fremont?

16 A I believe the number is between upper 70s,
17 lower 80s, or that might be our staff. I'm sorry. So I
18 do not know the number of teachers.

19 Q Why don't we take a look at paragraph 5 in your
20 declaration. Have you had an opportunity to review that
21 paragraph?

22 A Yes, thank you.

23 Q Why don't you take a look at the first sentence
24 contained in that paragraph, which says that in some
25 instances -- I'll read it verbatim. "If a teacher is

1 the sub?"

2 Well, "We don't have one."

3 So I'd ask them, "Why didn't you get a sub
4 today?" They would say the teacher called in sick or
5 whatever reason. I mean called in sick late or
6 something like that so they didn't have time to hire a
7 sub, regardless of the time. Just in conversations with
8 other folks.

9 Q You stated earlier that one way classes without
10 teachers were staffed were by using permanent teachers
11 who were employed by Fremont, and they would give up
12 their conference period and sit in on classes that would
13 otherwise be unsupervised. Why didn't that occur? Did
14 you have an understanding why that didn't occur in these
15 instances?

16 A Mismanagement. I would probably write it up to
17 that.

18 Q Mismanagement by who?

19 A By the school staff, the school administration.

20 Q Who was responsible for ensuring that a
21 substitute is hired to fill in a class that requires a
22 substitute?

23 A I don't know.

24 Q Well, just a minute ago you said that -- well,
25 is it personnel at the school who would be responsible

1 absent from Fremont, sometimes there will be no teacher
2 at all in the room because the school does not hire a
3 substitute."

4 Do you recall any instances of that occurring
5 at Fremont?

6 A Definitely, yes.

7 Q Can you tell me about the instances that you
8 recall?

9 A Not exactly because it happens so often. I
10 think sometimes you go and see a classroom, you see a
11 bunch of kids sitting there and you ask them where their
12 teacher is, and they tell you, "We don't have a sub
13 Mr. Dao, shhhhhh." But being the responsible adult I
14 am, I call the office.

15 Q I'm sorry?

16 A Yeah, that's it.

17 Q When you say it happened often, can you
18 quantify that for me?

19 A Yeah, sure. Probably twice every three weeks I
20 would run across that occurrence.

21 Q Do you have an understanding why a class would
22 be without a teacher of any kind?

23 A Because they didn't hire the sub for that day.

24 Q How do you know that?

25 A Just the secretaries, I'd ask them, "Where is

1 for that or do you know?

2 A I think everybody is responsible, I mean, to
3 these kids. I mean we're all responsible to these kids.
4 Somewhere I think, like I say, the greater society is.

5 Q But you couldn't personally go out and hire a
6 substitute to sit in on a class, could you?

7 A I could do my darnedest to call one of my idiot
8 friends and have them, you know, get into the sub system
9 for the bad pay and have them deal with bureaucracy and
10 get in it, but -- so I think to even a lesser degree I
11 think everybody -- I mean we all have to blame ourselves
12 for our students.

13 Q But if you knew a class was going to be empty
14 you couldn't just call in your friend and say, "Come in
15 and sub"? They would have to go through some process,
16 right?

17 A Not in that immediate -- yes, they have a
18 process.

19 Q Do you have an understanding as to what that
20 process is?

21 A I'm pretty sure I do in the sense that there's
22 not too much of a difference between being on a
23 temporary contract and being a substitute teacher. So
24 they both have to pass the CBEST. So that would be the
25 process, is they would have to pass the CBEST, I know,

1 is one of the requirements.

2 Q And how would the school become aware that an
3 individual was interested in being a substitute?

4 A I'm sorry. I didn't understand that initially.
5 The way that the system works is that a teacher calls
6 in, phones the school on the sub line, as we call it,
7 the substitute line, the phone line. They punch in
8 their code, they ask -- you know, it's an automated
9 system. It asks you, "Why are you sick?" "When will
10 you be sick from?"

11 And which in turn the automated system gets one
12 in and kicks out another phone call, and Joe Schmo gets
13 a phone call where they say, you know, "You have been
14 requested at Fremont at 7:30 to teach English. Do you
15 accept or decline?"

16 And that's the way that the substitute gets
17 into the system. It's a very almost laissez-faire
18 system by the district.

19 Q Do you think it's an effective system in
20 ensuring that substitutes are secured for classes that
21 require them?

22 A I think the idea is good, but I think the
23 execution of it is pretty poor.

24 Q Do you have an understanding if this system of
25 assigning substitutes is run on a school-wide basis or

1 terms of you can -- if I liked a particular sub I can
2 ask for that particular sub before I depart so that my
3 good sub does not get stolen by another teacher.

4 Q What makes somebody a good sub?

5 A If they can control the classroom without any
6 fights breaking out.

7 Q Nothing more than that?

8 A No, not much more than that.

9 Q Do you ever leave lesson plans for substitutes?

10 A I leave lesson plans for substitutes. For my
11 standards, a good sub is -- which are usually my Teach
12 For America friends who teach at all year-round schools
13 so they can also enter the sub network.

14 So lesson plans are left behind sometimes,
15 but -- and I would just be happy even with my Teach For
16 America friends if a fight does not break out in the
17 classroom, because oftentimes you have the students
18 without the teachers so they do not stay in the
19 classroom. They do not stay in the classroom. They
20 come to my classroom and they start messing with my
21 students, and fights break out. So that's part of the
22 job that a sub deals with.

23 Q When you leave a lesson plan for a sub do you
24 find that the sub instructed the class according to the
25 lesson plan or gave the work that you had left behind or

1 is it a district-wide basis?

2 A I believe it's a little bit of both. Like I
3 said, they call in to the district sub line, yes, and
4 then they get the phone call, but also at the same time
5 I know every morning the school gets -- the secretaries
6 get -- I see them when I get there at seven o'clock in
7 the morning. They're listening for like, you know, how
8 many people are sick. I mean, they're sitting for
9 about 30 minutes listening to a whole list of teachers
10 that are sick.

11 Q So there's administrative staff on site at
12 Fremont who are notified before the school day starts as
13 to what teachers have called in to the system that they
14 will not be at school that day?

15 A Yes.

16 Q And are those -- is that staff also notified of
17 the substitutes who will be filling in for those
18 teachers to the extent they were able to secure them?

19 A That I do not know, but I think -- I believe
20 so. I know that sometimes I hear in the staff -- I do
21 know that somebody will say -- you know, Ms. Low will
22 say, "Oh, don't worry about it. Mr. Jackson is coming
23 in and he's filling in for Mr. Thomas."

24 So they do know beforehand. And you can also
25 request your -- a sub before you leave, as well, in

1 what's been your experience with that?

2 A With -- usually what I do is before I leave I
3 get either one of my really good Teach For America
4 friends or I get a teacher that -- even better, which
5 tends -- actually I tend to -- actually I've never
6 gotten a Teach For America friend. What I do is go get
7 the permanent teachers and have them rotate into my --
8 rotate like I had explained before into my day in my
9 class on their conference period, because a permanent
10 teacher has the rapport with the kids for them to do
11 their kind of learning.

12 So the permanent teacher comes in and tries to
13 teach the lesson plan that I have already there for
14 them. And only -- and oftentimes the reports that I've
15 gotten is that my classes are just a bunch of angels,
16 because I'm very strict with them. I'm very stern and I
17 have a great rapport with my students. I'm like --
18 again, I'm the exception to the rule. I don't mean to
19 put myself on a high chair or anything like that, but my
20 students, you know, they know Mr. Dao is gone and he
21 will call back in and he will find out names and he will
22 come and hunt you down and call your mom.

23 So my experience has been to get the permanent
24 teachers to come in because they have a very good
25 rapport with the students so the fights don't break out

1 and then you can get some teaching taught there.
 2 Q Now, you say that you are aware of classes
 3 going completely unsupervised about twice every three
 4 weeks. That was your estimate, right?
 5 A Yes, yes.
 6 Q What do you do when you see a class that's
 7 unsupervised?
 8 A A few things. I have in the past taken them
 9 into my class and just say, "Sit here," and make sure
 10 they're not lighting something on fire, or I call -- I
 11 go into that particular classroom, call in.
 12 So until they can send security, they can send
 13 somebody there -- and oftentimes it's a security officer
 14 that sits there just to secure the classroom. But I
 15 would not leave those students unattended.
 16 Q Have you ever inquired as to why this happens,
 17 that classes are going unsupervised on a regular basis?
 18 A Have I ever inquired about that? I think I did
 19 at a time, but then I got -- then I don't think anyone
 20 ever gave me the answer. I think I got the "I don't
 21 know" too many times.
 22 Q Do you remember who you asked?
 23 A I'm sure it was just in passing conversations.
 24 Q Did you ever think of discussing it with the
 25 school principal?

1 A With -- for Ms. Gaddis, if you could find her.
 2 I -- no, I never discussed it with the school principal.
 3 Q Is it your belief that school administration is
 4 aware that classes are going unsupervised?
 5 A I think they -- yes, I think it is my belief
 6 that they are -- no, they are not aware of it at that
 7 certain moment, but they do know that it does occur.
 8 Whether they react to that, like, in the moment, no -- I
 9 mean in the moment, yes, of course. I mean the security
 10 personnel.
 11 But do they set up a long-term system of a
 12 solution? No, they have not, and that's actually been
 13 the source of contention for a lot of the teachers at
 14 Fremont High School is how much we have to sub and who
 15 has to do the subbing.
 16 Q So when a class goes unsupervised and you
 17 happen to stumble upon a class, whether it be in the
 18 classroom next to you or however you come across it,
 19 when you -- if you notified somebody in I guess the main
 20 office, they were not aware that that class was
 21 unsupervised?
 22 A There have been times, yes.
 23 Q And other times they are aware?
 24 A No, I don't think so. They never express to me
 25 that, "Oh, yeah, just leave them alone." No. It's,

1 "Oh, we'll get on that right away. I did not know that
 2 they were there."
 3 I would say, "Well, okay."
 4 Q I'm just trying to figure out how the process
 5 works to some extent. In the morning some school
 6 administrator becomes aware that X number of teachers
 7 are going to be absent. Is there any process -- and
 8 perhaps they know whether substitutes are coming in to
 9 fill those classes, but is there any effort made to
 10 figure out which classes are being supervised and which
 11 classes are not?
 12 A I think there's an effort. Whether or not
 13 it's -- I mean the effort is producing, you know, some
 14 quality -- is performing well, no, I don't think so.
 15 Q Is somebody at the school dropping the ball on
 16 this issue?
 17 A Yes, I think so.
 18 Q Looking at the middle part of paragraph 5 you
 19 talk about a particular instance when you were on a
 20 field trip.
 21 A Yes. Okay.
 22 Q Are you aware of any -- strike that.
 23 You said there was no substitute teacher for
 24 your class until after second period?
 25 A Mm-hmm.

1 Q Do you recall why that happened?
 2 A I didn't ask. I didn't ask.
 3 Q Is there any sort of school policy that when a
 4 teacher goes on a field trip they require -- before they
 5 go on the field trip they're required to ensure that a
 6 substitute has been found to cover their class?
 7 A I was actually requested by the math department
 8 head to go on the field trip, and so -- a lot earlier,
 9 so yes, I gave sufficient notice, everything in line. I
 10 called in to the system. I think I actually ended up
 11 taking one of my own personal sick days off. But
 12 they -- yeah, you are definitely required to get, you
 13 know, prior clearance.
 14 Q You're required to find out to ensure that a
 15 substitute has been secured before you go on the field
 16 trip?
 17 A No, you are not required to do so. That was
 18 actually the only time that I was sick for that school
 19 year, I think, or maybe the first time I was sick for
 20 the school year. So I never understood the process of
 21 getting a sub before until the people told me, "Get
 22 people to rotate in for you." And that may be the best
 23 way to do it is to have people brought in.
 24 MS. RUSSELL: Point of clarification. Are we still
 25 in '99-2000 or --

1 THE WITNESS: '99-2000.

2 MS. RUSSELL: Okay.

3 BY MR. ROSENTHAL:

4 Q Are you aware of whether Fremont or the
5 district provides any additional support to teachers who
6 come in to teach classes that need substitutes either on
7 a short-term or long-term basis?

8 MS. LHAMON: Objection; vague as to "additional
9 support."

10 THE WITNESS: I do not know.

11 BY MR. ROSENTHAL:

12 Q Have you ever heard that there were assistants
13 assigned -- well, strike that.

14 Why don't we take a look at paragraph 6.
15 Before we do that, actually, when you said that you see
16 classes without any substitutes approximately two times
17 every three weeks, is that true for the -- for both
18 years you were at Fremont?

19 A No, that was definitely more true for the first
20 year at Fremont.

21 Q Do you see that less frequently now during the
22 2000-2001 school year?

23 A Yes.

24 Q About how often would you say that problem
25 occurs now?

1 Q You say there are about eight roving teachers
2 during the '99-2000 school year; is that right?

3 A Mm-hmm.

4 Q Is that true for the 2000-2001 school year, as
5 well?

6 A No, I think we didn't have any roving teachers
7 in 2000-2001.

8 Q Do you know why?

9 A I do not.

10 Q There was that change? You don't know why?

11 A I don't know why.

12 Q In paragraph 6 you say that science teachers
13 had to -- at least one teacher had to take the science
14 equipment that he needed to teach the class with him
15 from class to class?

16 A Right. The one that the equipment that he got
17 on his own, yes.

18 MS. LHAMON: It's -- but that highly
19 mischaracterizes this statement. The declaration says
20 that there's two roving science teachers. "Fortunately
21 I was not one of them. One science roving had to go into
22 an English classroom with none of the science equipment
23 in it to conduct his class."

24 MR. ROSENTHAL: Right. It said he took the
25 equipment with him to the class.

1 MS. LHAMON: You're talking about the 2000-2001
2 school year?

3 MR. ROSENTHAL: Yes.

4 THE WITNESS: Maybe once every three weeks.

5 BY MR. ROSENTHAL:

6 Q Do you have a belief as to why the problem has
7 been somewhat remedied?

8 A Ms. Flaxman. No -- yeah, I think that's part
9 of it, and I think that -- I do not know why
10 specifically.

11 Q Is it because of better administration at the
12 school?

13 A I do not know exactly why.

14 Q Do you believe that's at least part of the
15 reason?

16 A Yes.

17 Q When you were in high school do you ever recall
18 having a class where you had no substitute teacher?

19 A No.

20 Q Never happened?

21 A Never happened.

22 Q All right. Now we can take a look at paragraph
23 6. I know you just looked at it. This is the roving
24 teacher issue.

25 A Uh-huh.

1 MS. LHAMON: It was a nit.

2 MR. ROSENTHAL: I mean, the declaration speaks for
3 itself.

4 MS. LHAMON: Now we can all go home.

5 MS. RUSSELL: Okay.

6 MR. ROSENTHAL: I wish.

7 Q Do you recall that two of the eight roving
8 school teachers were science teachers?

9 A Yes.

10 Q Do you recall what the other six were?

11 A No.

12 Q What they taught?

13 A No. I mean, I know one was English because she
14 was in my class.

15 Q Did any of the other teachers have any similar
16 issues of having to take their equipment with them to
17 the various classes?

18 A Yes.

19 Q Can you give me some examples?

20 A The English teacher would always come into my
21 class about first period, disrupt my class, take her
22 books to her first period class. So I know the English
23 teacher would have to move her textbooks from my class
24 to another class to another class to another class.

25 Q And can you tell me how having roving school

1 teachers affected the ability of students to get an
2 adequate education at Fremont High School?
3 A Sure. If you refer down to paragraph
4 number 7 -- can we continue? You don't have to look at
5 it or anything else. I was just trying to be respectful
6 of your time, too.

7 You know, they just -- they don't have any
8 sense of ownership in the classroom. They don't put any
9 of their own work up, and for students, a lot of
10 teachers say in the classroom environment the students
11 have to have ownership for them to be able to perform
12 well in the class.

13 Q But that problem doesn't exist at Fremont
14 anymore, does it?

15 A Hmm?

16 Q Roving teachers. There are no more --

17 MS. LHAMON: Objection; you're mischaracterizing
18 the testimony. He said he doesn't know if there's any
19 more. To his knowledge there are no more.

20 THE WITNESS: Right; to my knowledge, there
21 are no more roving teachers at Fremont High School.

22 BY MR. ROSENTHAL:

23 Q So it's your belief that that problem doesn't
24 exist anymore?

25 A There's no more ownership of the classrooms --

1 their own permanent classroom space in which they could
2 hang up, you know, projects they've done or things like
3 that?

4 A Oh, the solving of them hanging up projects is
5 just one. I mean, ownership is a multi-faceted kind of
6 phenomenon, I guess you could say, where the students,
7 you know, they have ownership of the school, ownership
8 of their classroom, ownership of their class work.

9 By having the ownership of their classroom is
10 just one of the aspects that I would feel that students
11 need to succeed. They also need to have ownership of
12 their school and ownership of their community and
13 ownership of their own space.

14 MS. LHAMON: I think we should take a break for a
15 minute if we could.

16 (Recess taken: 4:40 until 4:43 p.m.)

17 BY MR. ROSENTHAL:

18 Q If I could focus your attention on paragraph
19 7, you identify some concerns you have about students
20 having no sense of ownership over a classroom is because
21 they're being taught by roving teachers.

22 A Okay.

23 Q You stated earlier that you did not believe
24 that there were any roving teachers during the 2000-2001
25 school year; is that correct?

1 that the roving teacher problem --

2 Q Caused by having roving teachers, which you've
3 identified doesn't --

4 THE REPORTER: Wait a minute. Wait a minute.

5 THE WITNESS: Can you start the question over
6 again, please?

7 BY MR. ROSENTHAL:

8 Q I can try. You stated earlier that you didn't
9 believe there were any roving teachers at Fremont during
10 the 2000-2001 school year.

11 A Mm-hmm.

12 Q And you said that one of the problems caused by
13 having roving teachers is that students don't have
14 ownership in the classroom. Does that problem -- did
15 that problem continue to exist during the 2000-2001
16 school year at Fremont?

17 A Yes.

18 Q Can you tell me why?

19 A Because of the still -- there's still a lack of
20 space, and again, the students need space for some sense
21 of ownership of things. And so there was still no sense
22 of ownership for the students because of lack of space,
23 which I stated earlier.

24 Q But without there being any roving teachers,
25 how did students not have their own classroom space,

1 A Yes.

2 Q So have the problems you've identified in
3 paragraph 7 -- do they continue to exist? Did they
4 continue to exist during the 2000-2001 school year?

5 A Yes.

6 Q Maybe I'm not following something here, but
7 please tell me how.

8 A Because just removing the roving teachers does
9 not remove -- does not automatically instill the sense
10 of ownership for the students because it's a
11 multi-faceted phenomenon.

12 Q But to your knowledge, all teachers at Fremont
13 have a permanent classroom now?

14 A Yes.

15 Q And so all students are able to put up their
16 work in the classrooms and things like that? They have
17 the same classroom, the teacher has the same classroom
18 permanently and can put up whatever he or she wants?

19 A They have a better success rate. They have a
20 better chance of putting -- or a better -- excuse me --
21 a better opportunity of putting up their class work
22 inside the classroom, but, for example, you could have
23 another class come in there and tear it down still,
24 whether it's the roving teacher or whether it's the
25 permanent teacher.

1 So there's -- I mean, but still, roving
 2 teachers make it -- it's more of a severity of the
 3 situation than non-roving teachers.
 4 Q So regardless of whether there are roving
 5 teachers or not there are still some problems of
 6 students' ownership over their classrooms even in
 7 classrooms where there are teachers assigned to a
 8 permanent class? Is that what you're trying to say?
 9 A Yeah, regardless of whether there are roving
 10 teachers are not there are still some problems with
 11 ownership of the classroom. But it is definitely --
 12 roving teachers definitely make it very conducive for
 13 students to have no sense of ownership over the
 14 classroom.
 15 Q So the fact that there were no roving teachers
 16 in 2000-2001 to the best of your knowledge has improved
 17 the situation?
 18 A Yes.
 19 Q Let's move to paragraph 8.
 20 A Okay.
 21 Q Have you had an opportunity --
 22 MS. RUSSELL: Michael, do you want me to move the
 23 curtain?
 24 MR. ROSENTHAL: It is really getting warm in here,
 25 isn't it?

1 MS. RUSSELL: It is.
 2 BY MR. ROSENTHAL:
 3 Q Have you had an opportunity to review paragraph
 4 8?
 5 A Yes.
 6 Q In paragraph 8 are you referring to the
 7 classroom you had in portable P6, I believe it was?
 8 A Yes.
 9 Q And was there no air-conditioning in that
 10 portable? Is that accurate?
 11 A There still is not any.
 12 Q Is there a classroom currently being taught in
 13 that portable?
 14 MS. LHAMON: When you say "currently," are you
 15 referring to the 2000-2001 school year, not the summer?
 16 MR. ROSENTHAL: I'm sorry. I've been unclear about
 17 that.
 18 Q I meant during the 2000-2001 school year. Was
 19 there a class taught during that time? I still feel
 20 like we're in a school year.
 21 A Yes.
 22 Q About how often would you say the portable P6
 23 classroom became uncomfortably hot?
 24 A Probably for one to one and a half months at
 25 the beginning of the school year and one and one and a

1 half months at the end of the school year.
 2 Q So in the first sentence of paragraph 8 where
 3 you say it was -- "The room gets uncomfortably hot by
 4 the afternoons for about a month of the school year,"
 5 you're not saying -- you mean two to three months?
 6 A I probably mean 30 school days, but like in the
 7 sense that a month is a month and a half. So there
 8 might be like -- it does not stay a month and a half hot
 9 in the beginning of the school year like from -- what's
 10 that, 45 straight days? It will probably stay hot for
 11 about 20 days and then 20 days -- 20 days spread among
 12 the month and a half at the end of the school year.
 13 MS. RUSSELL: At the end?
 14 THE WITNESS: Right; and at the beginning.
 15 BY MR. ROSENTHAL:
 16 Q So your testimony is approximately for 20 days
 17 in the beginning and 20 days at the end of the school
 18 year, so for a total of 40 days?
 19 A Right. Spread out in the month and a half
 20 period of time.
 21 Q So not every school day during the --
 22 A -- month and a half --
 23 Q Right.
 24 A Right.
 25 Q Some days the temperature in the classroom is

1 perfectly comfortable and other days it was
 2 uncomfortably hot?
 3 A Unbearably hot.
 4 Q Did you do anything to alleviate the heat in
 5 the classroom?
 6 A You'd like to open the doors and -- well, if
 7 you open the doors you'd have the students who aren't in
 8 class come in and disrupt the class, but regardless, I
 9 still opened the doors and that did not help out. So
 10 that's the only thing I really did.
 11 Q Were there any windows in the classroom?
 12 A There were two windows.
 13 Q Did you ever open the windows?
 14 A I'm sorry. Yes, I did open those windows, as
 15 well.
 16 Q And did that help alleviate the heat in the
 17 classroom?
 18 A Not to where they can conductively learn.
 19 Q Did your high school in Illinois have
 20 air-conditioning?
 21 A Oh, yeah. It's Illinois. We need
 22 air-conditioning, and heat, so...
 23 MS. RUSSELL: You were in a Piedmont type place.
 24 That's what it sounded like to me.
 25 THE WITNESS: I was, yeah.

1 BY MR. ROSENTHAL:

2 Q You go on to say in paragraph 8 that the
3 classroom was uncomfortably hot for only part of the
4 day. Is that right?

5 A Yes.

6 Q Particularly you mention your sixth period
7 class. Were there any classes prior to sixth period
8 that were affected by the heat in the class?

9 A The second half of the -- when it was on the
10 block scheduling days of the fourth period and of the
11 third period. And also, I mean, you could also say the
12 fifth period class that was in there, the English class,
13 that was pretty unruly definitely because of the heat.

14 Q Do you recall the classroom becoming hot at a
15 particular time of day? Perhaps it's easier to do it
16 that way.

17 A Sure, sure. It would be getting hot -- I mean
18 for sure by 1:00 it was sweltering, so -- and sometimes
19 it could even get hot at around 11:30 it could start
20 getting hot, or 11:00. So pretty hot, but definitely
21 the one that -- man, by 1:00 it was a sauna in there.

22 Q Was the classroom temperature comfortable for
23 the first couple of hours of the school day even on days
24 it became hot later in the day?

25 A Yes.

1 Q So not all of your classes were affected by --

2 A No.

3 Q -- the heat issue?

4 It was the ones that occurred in the second
5 half of the day generally?

6 A Yes.

7 Q Did you ever hear any other teachers
8 complaining about the heat in their classrooms?

9 A Definitely.

10 Q And do you recall how many teachers you heard
11 complain about the heat in their classes?

12 A The ones -- I know the ones on the P portable,
13 so I think there are eight P portables, so eight
14 classrooms. And those I knew for sure, and I don't
15 remember about the other parts of the school. Oh, I'm
16 sorry. And the -- I think it's the 4300 portables,
17 which are another set of portables, and I don't know how
18 many there are out there.

19 Q Were other portions of Fremont air-conditioned?

20 A I think so, yes. Yes.

21 Q So some classrooms had air-conditioning, others
22 didn't?

23 A Some classes had air-conditioning, and in the
24 winter.

25 MS. RUSSELL: Some classes had air-conditioning in

1 the winter?

2 THE WITNESS: Because the system was broke.

3 BY MR. ROSENTHAL:

4 Q Were there particular buildings that had
5 air-conditioning at Fremont? You've identified some
6 buildings that did not have air-conditioning. Were
7 there buildings that had air-conditioning?

8 A Yes.

9 Q Do you recall which ones those were?

10 A I -- I would say the 3200 building, and I don't
11 know any other ones. I don't know which other ones had
12 air-conditioning.

13 Q Did you ever complain to anybody about the heat
14 in your classroom?

15 A Yes, but it was something that -- yes.

16 Q Do you recall who you complained to?

17 A Probably definitely my coworkers, asking them
18 "What is going on here?" And the custodians, asking
19 them, and perhaps the administrator, asking for like an
20 in-the-window air-conditioning unit.

21 Q What would you contact the custodians about?
22 What could they do for you?

23 A Maybe they knew how to go about -- how to bring
24 in putting in, you know, an in-the-window
25 air-conditioning unit. Maybe they had them stored

1 somewhere I could get one.

2 Q Do you remember asking an administrator to get
3 an air-conditioning unit?

4 A I do -- no, not specifically. That's a good
5 solution. I think by that point the custodian told me,
6 "We can't do anything about it because there's bars on
7 the window, so you can't put air-conditioning on there."

8 Q Did you think the custodians had the final say
9 on whether you could get an air-conditioner?

10 A I think since I couldn't get science equipment
11 I didn't see what was wrong at that point asking for an
12 air-conditioning unit.

13 MS. LHAMON: Did you say you could not get science
14 equipment?

15 THE WITNESS: Yeah, could not. Sorry.

16 BY MR. ROSENTHAL:

17 Q Could you tell me how the heat in the classroom
18 for the limited time period we're talking about affected
19 the ability of students in your class to learn?

20 A Sure. There's a lot of different ways that you
21 can say it affected my students' ability to learn. One
22 was just that unbearable heat makes people become all
23 groggy. So the students didn't want to do that -- the
24 students used it as an excuse not to learn.

25 Some students would be -- they wear scantily

1 clad -- the females wear scantily clad items, and they
2 should have been sent home but due to the fact that they
3 weren't sent home, some of the male students -- the male
4 hormones are -- kicked in. That story.

5 They all liked to stand up and run their heads
6 underneath the water, and for me to not have them run
7 their head underneath the water when it's 95 -- I don't
8 even know if it even got hotter than that. So I would
9 not want to say no to my students in all humane aspects.
10 So they ran their heads under the water all the time.

11 Water fights was a really big issue at the
12 school, mostly with the doors open. Water balloons were
13 frequently tossed inside my classroom. I'm not sure if
14 that's something that the heat brings out, but I would
15 say so. You see less water fights in the winter, you
16 know. So disrupting things like that.

17 Q So your classroom during the 1999-2000 school
18 year remained without an air-conditioner for the entire
19 school year; is that right?

20 A Yes.

21 MS. LHAMON: Asked and answered.

22 BY MR. ROSENTHAL:

23 Q How about your classroom this past school year,
24 2000-2001? Did you have an air-conditioner in that
25 classroom?

1 degrees?

2 A I just remember it reaching that one instance
3 explicitly, but other than that --

4 MS. RUSSELL: Talk louder.

5 THE WITNESS: I don't have any other explicit
6 recollections. Sorry.

7 BY MR. ROSENTHAL:

8 Q When the classroom got hot did you check the
9 thermostat on a regular basis?

10 A No.

11 Q Just on this one instance you happened to
12 remember looking at it?

13 A Yes. Now I'm shouting. Sorry.

14 MS. LHAMON: You're doing fine.

15 MS. RUSSELL: No and yes. We like that. That's
16 good.

17 BY MR. ROSENTHAL:

18 Q During the 2000-2001 school year have you heard
19 any teachers complaining about heat in their
20 classroom -- excessive heat in their classroom?

21 A Yes.

22 Q Can you tell me what you've heard?

23 A "This is unbearable, isn't it?" Or sort of
24 like that. I remember walking into some classrooms to
25 ask a teacher a question, and they'll say that "This is

1 A Yes, I believe three months after the
2 contractors finally got the system on the roof working.

3 Q Do you recall your classroom during the
4 2000-2001 school year ever being uncomfortably hot?

5 A Yes, in the beginning. And then it got
6 uncomfortably cold, and then they finally got the
7 systems done.

8 Q After the air-conditioning was installed did
9 you ever experience any difficulties with excessive heat
10 in your classroom?

11 A No. There might have been times where it was
12 broken for a day, but I'm not sure if that's worth
13 mentioning.

14 Q In paragraph 8 you say that the classroom
15 reached 95 degrees one afternoon near the end of the
16 school year. How do you know the temperature in the
17 class was 95 degrees?

18 A The thermostat in the room.

19 Q Was that thermostat something that functioned
20 throughout the entire school year?

21 A Yes.

22 Q Was that the only instance that it reached a
23 temperature of 95 degrees that you recall?

24 A No, I just remember that instance explicitly.

25 Q Do you remember it ever reaching more than 95

1 ridiculous," you know, and so yes.

2 Q Was this during particular times of the school
3 year?

4 A Same times that it was the previous school year.

5 Q At the beginning of the 2000 school year and at
6 the end of the 2001 school year?

7 A Yes. Yes.

8 Q And were those complaints from teachers who
9 were in classrooms that did not have any
10 air-conditioning?

11 A Yes. Those were the ones that were in the
12 P portables. I visit my old neighbors.

13 Q Do you recall any complaints from teachers who
14 were in the 4300 portables?

15 A There might have been one or two that I
16 interact with. To let you know, I very seldom interact
17 with a lot of my colleagues. I only interact with a few
18 of them.

19 Q So do you recall specific instances of any of
20 those teachers telling you that their classrooms were
21 excessively hot?

22 A Yes.

23 Q Can you tell me about those?

24 A Well, there was one gentleman who was in the P
25 portables. You know what? Just for the record though,

1 I don't know if it was the P portables or we were in the
 2 B portables. I always confuse them. So it might be the
 3 B portables, just to clarify.
 4 MS. LHAMON: Every time you've been referring to
 5 the P portables it might actually be the B portables?
 6 THE WITNESS: Yes.
 7 BY MR. ROSENTHAL:
 8 Q So your classroom in 1999-2000 may have in fact
 9 been B6 instead of P6?
 10 MS. RUSSELL: But you're asking about 4300.
 11 THE WITNESS: Right. Right. Sorry about that.
 12 MS. RUSSELL: That's okay.
 13 THE WITNESS: About the memory of P or B.
 14 MS. LHAMON: Michael said at the beginning if you
 15 had something to clarify, he wanted you to do it. It's
 16 really helpful for you to do that.
 17 THE WITNESS: This teacher that taught history, he
 18 had some fans running in his classroom. I think he had
 19 like three or four fans running inside his classroom and
 20 that did not solve solution (sic) at all.
 21 I asked him, "How do you teach in here?"
 22 He's like, "I don't know. It's really hot."
 23 So just on that level, you know, what we do best,
 24 complain.
 25 Q Now, is this a teacher in the 4300 portables or

1 some fans?"
 2 They'd say, "Slip me a five dollar bill and
 3 I'll get you some fans." But other than that I did not
 4 ask any administrator.
 5 Q Do you know where the neighboring teachers got
 6 their fans from?
 7 A They bought them themselves.
 8 Q Are you aware of any teacher being provided a
 9 fan from the school?
 10 A I am not.
 11 Q Can you tell me roughly what the breakdown is
 12 at Fremont between the number of classrooms or the
 13 percentage of classrooms that have air-conditioning and
 14 the percentage that do not?
 15 A I cannot because I don't know when the systems
 16 were working. Like because I do not know when the
 17 air-conditioning unit was working for the 3200 building
 18 and when it was not working for the 3200 building or the
 19 3100 building or the main building.
 20 Q Would you say most classes have
 21 air-conditioning or do not, to the extent you can answer
 22 that?
 23 A I would say it's too close for me to call.
 24 Q Is it about half and half then?
 25 A Yes. Right.

1 was he in the P portables?
 2 A The P portables.
 3 Q Do you recall -- I think the question I asked
 4 was tell me about the instances of complaints you heard
 5 from teachers who taught in the 4300 portables.
 6 A I'm sorry. From the 4300 portables I believe
 7 that some of the teachers at the Life Academy complained
 8 retrospectively to me saying, "Man, I'm glad I'm not in
 9 that fungus infected hot room like" -- you know. And we
 10 would complain about how hot it is at -- you know,
 11 somewhere, and they would say, "This is just like my
 12 classroom, you know."
 13 And the thermostat used to go over so-and-so
 14 figures, as well. So I do remember, but I do -- I don't
 15 talk to very many teachers at my school.
 16 Q You mentioned that one teacher had fans in his
 17 classroom. Did you ever request to get fans in your
 18 classroom to alleviate any of the heat problems?
 19 A I asked if there's -- I asked if there's any
 20 fans, from my coworkers -- from all my coworkers. They
 21 said, "Yeah, good luck trying to get the school to buy
 22 you some fans."
 23 So other than asking my neighboring teachers
 24 who had the fans and everything, no. Same thing with
 25 custodians. It was like, "Do you know where I can get

1 Q We briefly discussed some modernization that
 2 was being done at the school, and your classroom during
 3 the 2000-2001 school year was one of the classes that
 4 was affected. Was part of the modernization project to
 5 address the air-conditioning issue?
 6 A The portables were -- I believe to my knowledge
 7 were not touched during the modernization period, so no,
 8 the old classrooms were not. You're referring to my
 9 '99-2000 classroom, yes? It was not modernized in any
 10 way.
 11 Q Was there air-conditioning in your classroom --
 12 the classroom that you had during the 2000-2001 school
 13 year, was there air-conditioning in that classroom
 14 during the '99-2000 school year, to the extent you know?
 15 A You mean 2000-2001?
 16 Q Was your most recent classroom -- did it have
 17 air-conditioning prior to the modernization?
 18 A It had it but then it lost it because they
 19 tried to fix it and then they broke it, and then we got
 20 it back. That would be my 3207 classroom, is what I
 21 hope we're referring to.
 22 Q So the 3207 classroom had air-conditioning
 23 during the '99-2000 school year?
 24 A Right.
 25 Q Was that air-conditioning functioning during

1 that school year, to the extent you know?
 2 A Yes, it was functioning, but also during the
 3 winter, so they had to fix it.
 4 Q Was that fixed in connection with the
 5 modernization project that occurred in the early part of
 6 the 2000-2001 school year?
 7 A Later in the 2000-2001 school year, yes.
 8 Q And was the problem fixed?
 9 A I think so. It's a very fickle machine. So
 10 every now and then, like I said earlier, a day or two it
 11 will be busted and you'll have a hot day or you'll have
 12 a really cold day.
 13 Q And when that happened did you report that to
 14 somebody at the school?
 15 A Definitely.
 16 Q And was the problem fixed in a timely manner?
 17 A Timely? Maybe to the best of their abilities,
 18 yes.
 19 Q Do you recall the air-conditioning ever not
 20 functioning and you not being able to get it fixed in a
 21 timely manner?
 22 MS. LHAMON: In the 2000-2001 school year?
 23 MR. ROSENTHAL: That's the only year he had
 24 air-conditioning.
 25 MS. LHAMON: Just asking. You're talking about his

1 A Because I went out and got them from Berkeley
 2 or -- University of California Berkeley labs, or I went
 3 up to Piedmont High and asked my good friend Tanya
 4 Philips for some equipment, but only through initiative
 5 and motivation of my own.
 6 Q So you solicited some donations?
 7 A Yes.
 8 Q Do you have an understanding why you did not
 9 have science materials to teach your class?
 10 MS. LHAMON: During the '99-2000 school year or
 11 from the school --
 12 BY MR. ROSENTHAL:
 13 Q Let's start with '99-2000.
 14 A In speaking with other teachers and also with
 15 administration, they told me the school did not have any
 16 funds.
 17 Q If you needed science materials -- strike that.
 18 So is it your belief that the school didn't
 19 purchase any science materials for you to use in class?
 20 A With the exception of some triple beam balances
 21 and meter sticks, yes.
 22 Q Do you recall the department head having
 23 control over the distribution of science materials?
 24 A No.
 25 Q Was there any sort of supply room or supply

1 classroom?
 2 THE WITNESS: Yes.
 3 BY MR. ROSENTHAL:
 4 Q You do recall instances when it was not fixed
 5 in a timely manner or --
 6 A Sorry. That was kind of -- it was fixed in a
 7 timely manner, so I do not recall any instances where it
 8 was not fixed.
 9 Q It was always fixed in a timely manner, right?
 10 A It was always fixed in a timely manner.
 11 MS. RUSSELL: In 2000-2001.
 12 THE WITNESS: In 2000-2001.
 13 BY MR. ROSENTHAL:
 14 Q Why don't we turn to paragraph 9. I'll give
 15 you a minute to glance at that.
 16 A Yeah, that's one I definitely -- okay.
 17 Q In this paragraph you say you were lacking
 18 science materials, and this is in connection with your
 19 class during the '99-2000 school year?
 20 A Yes.
 21 Q Did you continue to have the same problem
 22 during the 2000-2001 school year?
 23 A No.
 24 Q Did you have science materials during this past
 25 school year?

1 closet for science materials at Fremont during the
 2 1999-2000 school year?
 3 A No.
 4 Q So if you needed science materials while
 5 teaching during the 1999-2000 school year there was
 6 nobody you could go to ask for materials at the school?
 7 A I could go ask for -- individual science
 8 teachers for their personal equipment.
 9 Q Did you ever speak to the school principal
 10 about obtaining materials to assist you in teaching the
 11 science classes?
 12 A I know I spoke to the administrator. He said
 13 there was no funds available for the school. Perhaps
 14 not the principal.
 15 Q Did you ever hear of teachers going out to buy
 16 supplies on their own and getting reimbursed by the
 17 school?
 18 A No.
 19 Q Did you ever hear of the principal going out to
 20 buy supplies and providing them to teachers who needed
 21 them?
 22 A She did give us office supplies, but she did
 23 not buy them on her own. I'm sorry. You said the
 24 principal going out and getting supplies on her own?
 25 She got them through the district. The district gave us

1 some office supplies that we got.
 2 Q But not supplies to conduct science experiments?
 3 A No.
 4 Q How were you able to teach your science class
 5 without the supplies that you feel you needed?
 6 A Poorly. That's it.
 7 Q Do you feel that students that took your class
 8 learned physical science as a result of attending your
 9 class?
 10 A I think I was more concerned with them learning
 11 the process of high school more than them learning the
 12 content of physical science. So, no, I do not feel that
 13 they learned physical science to a high school -- for a
 14 college prep -- for college prep, so...
 15 Q Did you perform any experiments in the physical
 16 science classes that you taught?
 17 A Definitely.
 18 Q How did you do those without having science
 19 materials?
 20 A I would borrow the demonstration equipment from
 21 other teachers at other schools usually.
 22 Q So you were able to conduct experiments?
 23 A I was able to conduct experiments, but the
 24 students were not able to conduct their own experiments
 25 so -- often times.

1 MS. LHAMON: You're dropping off at the end.
 2 BY MR. ROSENTHAL:
 3 Q During the 2000-2001 school year were students
 4 able to conduct their own experiments through the
 5 materials you had obtained?
 6 A Yes.
 7 Q And those were all materials that you obtained
 8 through solicitations on your own? They were not
 9 materials provided to you by the school?
 10 A Mostly, yes.
 11 Q When you say "mostly," what did the school
 12 provide you in the way of materials?
 13 A I mean, I just want to make sure that you
 14 understood that they gave me meter sticks, triple beam
 15 balances.
 16 Q So you had basically the same supplies during
 17 both school years that you were there?
 18 MS. LHAMON: From the school?
 19 THE WITNESS: From the school, yes. My personal
 20 individual collection expanded tremendously.
 21 BY MR. ROSENTHAL:
 22 Q Other than meter sticks and some scales, the
 23 school provided you no other science materials?
 24 A Some glassware.
 25 Q Anything else?

1 A Not that I can think of.
 2 Q Can you give me just one or two examples of the
 3 sort of experiments you conducted in teaching the
 4 physical science class so I can get an idea of the types
 5 of materials that were necessary to conduct them?
 6 A Did you want the ones that I conducted or the
 7 ones that I would have the students conduct, which was
 8 to my preference?
 9 Q Why don't we deal with the '99-2000 school year
 10 first?
 11 A Of some of the experiments that I conducted?
 12 Q The students didn't conduct any on their own
 13 during that school year. Isn't that what you said?
 14 MS. LHAMON: No. That mischaracterizes his
 15 testimony.
 16 THE WITNESS: No, I did not say that.
 17 BY MR. ROSENTHAL:
 18 Q The students did, in fact, conduct experiments
 19 during the '99-2000 school year?
 20 A Some they did.
 21 Q You want to give me an example of an experiment
 22 that the students conducted during that school year?
 23 A During the course of the school year I had
 24 acquired a lot of materials on my own, so they would
 25 conduct experiments where they would take light bulbs

1 and socket and wire and batteries, all that I purchased
 2 on my own, and put them in a series and parallel
 3 circuits to compare and contrast parallel and series
 4 circuits.
 5 They also conducted -- what other experiment
 6 did they conduct? They conducted an experiment where
 7 they created electrical static by induction. Do you
 8 want to hear about it?
 9 Q I don't need to go into the details. I'm
 10 trying to get a sense of the materials that were used.
 11 So the materials that were used to conduct
 12 these experiments, you said you purchased them on your
 13 own?
 14 A Yes.
 15 Q Did you ever seek to get reimbursed for those
 16 expenses?
 17 A There was no funds for reimbursement.
 18 Q Did you ever seek to get reimbursed for those
 19 expenses?
 20 A If you -- if I asked if there was any funds for
 21 reimbursement, they would say, "There's no funds for
 22 anything," so --
 23 Q So did you ask somebody to get reimbursed?
 24 MS. LHAMON: Asked and answered.
 25 MR. ROSENTHAL: I don't think it was.

1 MS. LHAMON: He said no.
 2 THE WITNESS: So I guess yes and no because yes, I
 3 did ask to get reimbursed, but then no, I -- I put it in
 4 a sense like after a while I also didn't. So depends
 5 which materials you're also asking about and what time.
 6 Like what specific time are you asking about?
 7 BY MR. ROSENTHAL:
 8 Q So in some instances you asked to be reimbursed
 9 and you were told you could not be reimbursed?
 10 A Right.
 11 Q Do you remember who you talked to?
 12 A No.
 13 Q Did you speak to the administrator?
 14 A I spoke to the department head and I also spoke
 15 to the administrators.
 16 Q And the department head, was that Mr. Miller?
 17 A Yes, that was.
 18 Q Do you remember what administrators you spoke
 19 to?
 20 A No, I do not.
 21 Q Did you speak to the principal or vice
 22 principal?
 23 A I believe it was the vice principal.
 24 Q Do you remember which vice principal?
 25 A No.

1 Q And in both of those instances you were told
 2 you could not be reimbursed for the expenses you
 3 incurred to buy supplies?
 4 A Correct.
 5 Q And then at some point you stopped asking to be
 6 reimbursed because you knew the answer?
 7 A Because -- yes, I knew the answer.
 8 Q If you could briefly take a look at paragraph
 9 10.
 10 A Okay.
 11 Q The information contained in that paragraph
 12 again relates to the classroom that you had in '99-2000;
 13 is that right?
 14 A It can refer to both classrooms, but yes.
 15 Q So your current classroom is this -- strike
 16 that.
 17 When you signed this declaration you were
 18 referring obviously only to the 1999-2000 classroom; is
 19 that right?
 20 A Yes.
 21 MS. LHAMON: Presumably, except for the first
 22 sentence that refers to all science classrooms at
 23 Fremont.
 24 BY MR. ROSENTHAL:
 25 Q The first sentence in paragraph 10, does that

1 continue to be the case -- did that continue to be the
 2 case during the 2000-2001 school year?
 3 A To the best of my knowledge.
 4 Q Have you been in all the science classrooms at
 5 Fremont High School?
 6 A Most of them, yes.
 7 Q There are some that you've never been in?
 8 A Some classes you really don't even call a
 9 science class. There was one class that was next door
 10 to me where they never had a permanent teacher there. I
 11 wouldn't call that a science classroom at all.
 12 So there are some classes that are like -- so
 13 yes, I think I have been in all science classrooms, yes,
 14 except for one. One classroom I have not been to.
 15 Q And is there any other distinction between
 16 classes in which -- classrooms in which science classes
 17 are taught as compared to other classrooms, other than
 18 there being a sink?
 19 A There are four classes -- classrooms at the
 20 school that actually do have the lab benches and they
 21 even have the gas jets, but they don't have the gas.
 22 And there are, I would venture -- I would approximate
 23 about seven or eight classrooms where the only thing
 24 that designates them as a science classroom is the sink.
 25 But I also know that there were some classrooms that

1 they taught science where there was no sink.
 2 Q So some classrooms at Fremont had -- in which
 3 science class was taught had more than just a sink; is
 4 that right?
 5 A Yes.
 6 Q And things look -- well, strike that.
 7 In the classroom in which you taught during
 8 the 2000-2001 school year were there any additional
 9 science aspects to it other than the existence of a
 10 sink?
 11 A For me I would say there are storage cabinets.
 12 Q And nothing else?
 13 A No, nothing else.
 14 Q You didn't have lab benches and things like
 15 that?
 16 A No.
 17 Q Why don't we move to paragraph 11.
 18 A Okay.
 19 Q Let's just -- there's a couple of issues here
 20 about bathrooms. Let's deal with the first sentence.
 21 It says, "The student bathrooms are locked during
 22 lunchtime and during passing periods so students can go
 23 in."
 24 Is that true during the entire 1999-2000 school
 25 year?

1 A I cannot say for the entire. I do not know
 2 like every moment, but I would say that for the most
 3 part, yes.
 4 Q Were bathrooms unlocked during class time
 5 during the 1999-2000 school year?
 6 A Certain sets of bathrooms were unlocked.
 7 Q Were some bathrooms locked for the entire
 8 school year? Were they never opened?
 9 A No, no, no.
 10 MS. RUSSELL: No, they were never opened, or no --
 11 MR. ROSENTHAL: That's what I'm going to ask for
 12 clarification.
 13 Q So just so we're clear, were there any
 14 bathrooms that were locked at all times during the
 15 1999-2000 school year?
 16 A No. Double negatives.
 17 Q Do you have an understanding why bathrooms were
 18 locked during lunchtime and during passing periods?
 19 A I do not.
 20 Q Did you ever hear that it was school policy
 21 to -- for the students' safety?
 22 A No.
 23 Q Never heard that?
 24 A No.
 25 Q Did you ever ask anybody why the bathrooms were

1 majority of the time.
 2 BY MR. ROSENTHAL:
 3 Q Just so I'm clear, you seem to be -- well,
 4 pointing out that the bathrooms were locked during
 5 particular times in the day implies that they were
 6 unlocked during other periods of time during the day.
 7 I just want to be clear here. Were bathrooms
 8 locked for the entire day including lunchtime and during
 9 passing periods?
 10 MS. LHAMON: Asked and answered.
 11 THE WITNESS: Were they locked the entire day? No.
 12 They were unlocked during the classroom period of time.
 13 BY MR. ROSENTHAL:
 14 Q So bathrooms were unlocked during class time?
 15 A Some bathrooms were unlocked during classroom
 16 periods of time.
 17 Q And others were not?
 18 A And others were not.
 19 Q When were the ones that were not unlocked
 20 during class time -- when were they open?
 21 A I do not know. They were open in the course of
 22 a day for that day, for that given day.
 23 Q You told me earlier that there were no
 24 bathrooms that are closed for the entire school year.
 25 MS. LHAMON: Well, they might have been unlocked on

1 locked during lunch or during passing periods?
 2 A I have.
 3 Q And who did you ask?
 4 A I asked a few teachers, so my few fellow
 5 teachers that I speak with.
 6 Q Do you remember what they said?
 7 A Yes.
 8 Q What did they say?
 9 A "Custodians are lazy."
 10 Q Did you ever ask any administrators why
 11 bathrooms were locked during lunchtime and during
 12 passing periods?
 13 A I did not need to because they would try to
 14 address it during the teacher staff meetings and they
 15 would often say, "We are trying to unlock" -- "have the
 16 bathrooms unlocked during passing periods and
 17 lunchtime." But I found that to be a lot of lip
 18 service.
 19 Q So when you say in paragraph 11 that the
 20 bathrooms are locked during lunchtime and during passing
 21 periods, was that true all the time or are you saying
 22 that happened some of the time?
 23 MS. LHAMON: Asked and answered.
 24 THE WITNESS: Again, I can't say it was done all
 25 the time all the way through, but I'd say a clear high

1 different days, Michael.
 2 THE WITNESS: Yes, that's what I mean.
 3 BY MR. ROSENTHAL:
 4 Q I'm asking for your testimony.
 5 MS. LHAMON: I understand that but, I mean, you're
 6 belaboring the point.
 7 MR. ROSENTHAL: I understand but you're coaching
 8 the witness.
 9 MS. LHAMON: I'm absolutely not coaching the
 10 witness. I think you should listen to his testimony and
 11 move on.
 12 MR. ROSENTHAL: I'm trying to listen to his
 13 testimony and not your testimony. So I'd appreciate it
 14 if he could give his testimony --
 15 MS. RUSSELL: One at a time. One at a time for
 16 the court reporter.
 17 THE WITNESS: So what I was trying to say actually
 18 was that on any given day a different group of bathrooms
 19 could be unlocked during class time, but most bathrooms
 20 were locked during lunchtime and the passing periods.
 21 BY MR. ROSENTHAL:
 22 Q Did students complain to you about the
 23 bathrooms being locked?
 24 A From a daily to weekly basis, yes.
 25 Q And what sort of complaints did you hear from

1 students?

2 A "Mr. Dao, why is that bathroom locked?"
3 "Mr. Dao, why are there no toilet papers in our
4 bathroom?" "Mr. Dao, do you know which of the bathrooms
5 are unlocked?" "Mr. Dao, why are the bathrooms locked
6 during passing periods and during lunchtime?" So, to
7 those -- to that extent.

8 Q Do you ever recall there being a school policy
9 that during class time there would be one bathroom
10 unlocked in a central location so that it could be
11 supervised adequately?

12 A No.

13 Q Is it your opinion that that, in fact, did not
14 happen?

15 A In fact, students were not to use the
16 bathroom -- this is very illogical. Students were not
17 to use the bathroom during class time. So the bathrooms
18 were to be locked during class time, according to
19 administrative policies.

20 Q So your understanding of the policy is that
21 bathrooms were supposed to be unlocked during passing
22 periods and during lunchtime?

23 A They were, but they never were in reality.

24 Q Do you ever recall any instances when students
25 were unable to find an unlocked bathroom?

1 a gun threat at my school. The security person took 10
2 minutes, I think, actually, to get up to my classroom.

3 So security personnel was not always the most
4 reliable thing, but one time I remember I saw one in
5 sight and said, "Can you please open the bathroom for
6 this one particular student?"

7 Q So in addition to the custodians, the security
8 guards also had the ability to lock and unlock the
9 bathrooms?

10 A I think so. I don't know. I asked this person
11 if he could -- I don't remember the exact extent of the
12 conversation, but I said, "Can you find a bathroom for
13 this young lady? She needs to use the bathroom."

14 And he said, "Yes, I'll take care of it." So
15 whether he went to find a custodian himself or he went
16 to find an administrator or how he solved the situation,
17 hopefully -- I mean, I think the situation got solved.

18 Q Do you know what the policy is at -- what the
19 policy was at Fremont during the 2000-2001 school year
20 regarding the locking or unlocking of bathrooms?

21 A No, I do not.

22 Q Do you know if the policy changed?

23 A They did not adjust the policy of locking and
24 unlocking of bathrooms during the 2000-2001 school year.

25 Q Have you ever heard students complain --

1 A I do.

2 Q Can you tell me about that instance or more
3 than one instance if there is more than one?

4 A No, I cannot tell you that explicit instance,
5 but I do remember instances saying, "Mr. Dao, which
6 bathroom is unlocked?"

7 And I'd say, "I really don't know." And I
8 think one instance I told the kid to walk around some
9 more until he found one. So there's been multiple, but
10 to answer the question -- I'm sorry -- there's been
11 multiple instances that I do remember some kid saying
12 they can't find an open bathroom.

13 Q Do you know if they were successful in finding
14 an open bathroom after you sent them to look around for
15 an open one?

16 A I think I was scared to ask what their solution
17 was.

18 Q Did you ever speak to any school administrators
19 or custodians in an effort to assist your students in
20 finding a bathroom?

21 A I think I spoke one time to security personnel
22 when one student came back to my classroom and couldn't
23 find a bathroom and when I saw a security person within
24 my sight. Otherwise, the security person takes about 15
25 minutes to respond even when -- you know, one time I had

1 A Can I --

2 Q You need to add something? Go ahead.

3 A I do need to add. I'd like to clarify that.
4 Mid-year when Brian McKibbens came in I remember --
5 actually I think that it was addressed that the
6 bathrooms will be open for the students to use, and that
7 did ameliorate a lot of the situation.

8 Q So since Mr. McKibbens took over he changed the
9 policy and it's become less of a problem?

10 A With the bathrooms opening, yes. But then we
11 still have the shortage of toilet paper.

12 Q As far as just focusing on the opening and
13 locking of bathrooms --

14 A Yes.

15 Q -- is it your view that the locking and
16 unlocking of bathrooms is an issue that's dealt with on
17 a school-by-school basis?

18 A Yes.

19 Q And that the problem can be resolved or created
20 depending on how a particular administration imposes
21 their policies?

22 A To a certain degree, yes, they can solve part
23 of the problem. But again, it's a multi-faceted
24 problem, where like Highland Elementary, for example, I
25 think the count was they had one boy's bathroom stall

1 for 500 students and one girls bathroom stall for 500
2 students.

3 So do administrations really have full control
4 to let these children relieve themselves in the
5 necessary manner? I would say no.

6 Q I would like to just focus in on Fremont at
7 this point. Is there a shortage of physical bathrooms
8 at Fremont?

9 A Usable ones, I would say yes.

10 Q When you say "usable," what do you mean by
11 "usable ones"?

12 A Because bathrooms are open that does not
13 necessarily mean they're usable.

14 Q Are there bathrooms at Fremont that you believe
15 are not usable?

16 A Yes.

17 Q Is it your opinion that there are not enough
18 usable bathrooms for all the students at Fremont?

19 A Yes.

20 Q When you say it's not usable, are they -- are
21 they broken? I don't have an understanding what you
22 mean by "not usable."

23 A Some are broken, and a description I got from
24 one bathroom was a teacher went in there and she saw
25 blood on one toilet seat, she saw feces all over the

1 wasn't not usable for an entire school year. It was for
2 limited periods of time?

3 A But it would be like this on a daily basis.

4 Q Do you know if there were custodians who
5 cleaned the bathrooms at Fremont?

6 A I do not know if there are custodians who clean
7 the bathroom at Fremont.

8 Q Did you ever hear of a bathroom becoming
9 unusable for one reason or another from one of your
10 students?

11 A Yes.

12 Q And did you attempt to do anything to get the
13 situation resolved?

14 A I think sometimes I gave them tissue paper
15 for -- to ameliorate the toilet paper. I think
16 sometimes I creatively maladjusted and let them use the
17 faculty bathroom. So in terms of getting the situation
18 solved, I would try to ask -- you know, to have -- "Why
19 isn't the bathroom fixed?"

20 And the custodians would tell me, "We don't
21 have toilet paper. We don't have the right cleaning
22 supplies." Just the list of excuses goes on.

23 Q So the custodians would tell you that there was
24 nothing they could do about it? Again, I'm not trying
25 to put words in your mouth, but they were unable to

1 other seat, and wasn't even about to attempt the third
2 stall left, so...

3 And also while we're talking, for the kids to
4 use the bathroom you think you'd need toilet paper, and
5 they didn't have any. So they would use notebook paper,
6 which was sometimes seen inside the bathroom, which was
7 pretty bad.

8 Q And the bathroom you just described that you
9 said was unusable, you didn't physically go in there,
10 did you?

11 A That was the girls bathroom. The one that --
12 the boys bathroom you go to, again, some of the stalls
13 are just overflowing with urine the whole time, or not
14 with urine but with -- well, a mixture of urine -- I
15 mean water is just flowing over, which puts urine all
16 over the floor.

17 Again, you have the same problem with the feces
18 on the seats or on the ground, not quite making it to
19 its proper disposal, not enough toilet paper with the
20 men's bathroom, but situations like that.

21 Q The problems you described, such as the blood
22 on the toilet seat, were these problems that existed for
23 more than a day?

24 A Sometimes, yes.

25 Q So when you say the bathroom is not usable, it

1 resolve the situation?

2 A It wasn't speaking of most, because I actually
3 am pretty disturbed by the fact that -- the conditions
4 of the bathroom. So they would say that they -- yeah,
5 there's really nothing they can do, and the point of
6 them doing anything is it's just going to happen the
7 next day as well because there's just not enough
8 bathrooms for all these students, would be one of the
9 reasons that they would cite.

10 Q Do you know if bathrooms are stocked by
11 custodians after school or before school starts with
12 items such as toilet paper on a regular basis?

13 A I know when I have walked into the bathroom in
14 the morning it does not seem like a stocked Buffalo
15 Grove, Illinois High School bathroom by any means.
16 There's no soap, so sanitation is down to a minimum
17 and -- if they're clean at all from the previous night.

18 Q Were there instances when you went into the
19 bathroom when it had not been cleaned from the previous
20 night?

21 A Yes.

22 Q And you know you were the first person in the
23 bathroom at the outset of that day? It had not been
24 used by anybody?

25 A Getting there at 7:00 in the morning puts me

1 pretty ahead of the pack, but no, I cannot confirm that.
 2 Q All right. Why don't we take a quick
 3 few-minute break, and then I will wrap up.
 4 (Recess taken: 5:39 until 5:42 p.m.)
 5

6 EXAMINATION

7 BY MS. RUSSELL:

8 Q Just a few questions.

9 As you sit here today, do you know why -- I
 10 know you testified that in 1999-2000 that in your
 11 classes, three out of five of your classes, you had
 12 something like 57 to 59 students who were initially
 13 programmed into your classes; is that correct?

14 A Yes.

15 Q Do you know the availability of space in other
 16 classrooms staffed by a permanent teacher at that time?

17 A Whether those classes were also running at full
 18 course loads?

19 Q Yeah. I'm asking you, Did you know if there
 20 was space available?

21 A Space for students?

22 Q Yes.

23 A I believe there was not space for students at
 24 that time.

25 Q Did you know whether or not there was space

1 A To the union rep.

2 Q To the union rep as to the overcrowding.

3 A Yes.

4 Q Did you raise these concerns orally?

5 A Yes.

6 Q Did you ever put your concerns to the union in
 7 writing?

8 A Through the sheet that they requested by the
 9 daily attendance of the students that we submitted every
 10 day.

11 Q Okay. On that sheet, you said that the OEA,
 12 Oakland Education Association, requested the sheet; is
 13 that correct?

14 A No, the Fremont High School administrators
 15 requested this sheet. OEA I think released the sheet.

16 Q Now I'm confused. OEA -- you complained to the
 17 OEA --

18 A The rep.

19 Q -- rep. Right, the OEA on campus. And as a
 20 result of your oral complaints to the OEA, daily
 21 attendance sheets were generated from and turned in to
 22 the principal's office. Is that your testimony?

23 A Not due to my personal complaint, but due to I
 24 feel -- I would assume the complaints of other staff,
 25 colleagues, as well.

1 available in other high schools in Oakland?

2 A I did not know. I did not know.

3 Q Did you ever see the master schedule?

4 A Briefly, yes.

5 Q When did you see that?

6 A I saw that on -- I think a week after I started
 7 the school year approximately.

8 Q And who showed it to you?

9 A It was posted in the teachers' lounge where
 10 they were doing the work on it.

11 Q Did you discuss the master schedule with
 12 anyone?

13 A No.

14 Q You testified that you raised your concerns in
 15 terms of the --

16 A Can I clarify something? Going back -- sorry
 17 to interrupt -- the master schedule was never actually
 18 completed or set into permanency, obviously due to the
 19 lack of teachers.

20 Q But they had something denominated as the
 21 master schedule and you did see that?

22 A They had something denominated as the master
 23 schedule, which often changed, but yes, I did see that.

24 Q You said you raised your concerns -- I think
 25 you testified that you raised your concerns to the union.

1 Q Are you familiar with the uniform complaint
 2 procedure?

3 A No, I'm not. No, I'm not.

4 Q You stated that students who were transferred
 5 out of your class to classrooms that didn't have a
 6 permanent teacher dropped out because they didn't feel
 7 valued.

8 A I would think so, yes.

9 Q Did you talk to every student who transferred
 10 from your class and subsequently dropped out?

11 A No, I did not.

12 Q Do you think there are any other reasons aside
 13 from not feeling valued by Fremont High School as to why
 14 students dropped out?

15 A Of course.

16 Q What are some other reasons you might think of?

17 A Maybe because there's some problems at home
 18 that they have to take care of, some other
 19 responsibilities at home that they need to attend to.

20 Q You've referred in your testimony repeatedly
 21 to -- well, comparing Fremont to Buffalo Grove.

22 A Yes.

23 Q Did the State of Illinois give more money than
 24 the State of California as far as you know?

25 A I do not know the exact funding of that.

1 Q Was your Buffalo Grove community similar to
 2 Piedmont in terms of its economic base?
 3 A Yes.
 4 Q Let's see. You said earlier that students
 5 can't concentrate on school without toilet paper. I'm
 6 just going with what you said, so let me ask my question.
 7 MS. LHAMON: Well, objection; I think that
 8 mischaracterizes the testimony.
 9 MS. RUSSELL: I wrote it down verbatim.
 10 MS. LHAMON: Okay. Just made my objection.
 11 MS. RUSSELL: Okay. Sorry.
 12 Q How do you -- did you mean by that that in a
 13 school where the toilet paper is either absent or
 14 sporadic, one can conclude that when you see that
 15 condition you're going to know students can't
 16 concentrate?
 17 A No, I would not say that it's that scientific.
 18 Q I'm rushing. You testified that for new
 19 teachers, they were only retained on average of 1.3 --
 20 1.1 to 1.3 years; is that correct?
 21 A To the best of my knowledge, yes.
 22 Q What is the source of your information there?
 23 A Just discussions with colleagues, not any exact
 24 source.
 25 Q You said -- when we were talking about

1 only work for 30 days or three months. What is the
 2 basis of you saying that?
 3 A I don't know for sure what's the exact
 4 timelines of stip subs, and my understanding is that
 5 there's different contracts for different subs, but I do
 6 know that different -- a stip to me means a short-term
 7 sub but not a day-to-day-basis sub.
 8 Q But can short-term be six months?
 9 A I do not know.
 10 Q Nine months?
 11 A I do not know.
 12 Q You said in the 1999-2000 school year that
 13 there were up to 11 vacancies coming up to December.
 14 A Uh-huh.
 15 Q How do you know that?
 16 A I think it was brought up at the staff meetings.
 17 Q So that one of the administrators is reporting
 18 this?
 19 A I believe so.
 20 Q You said in 2000-2001 at the beginning of the
 21 semester they just about had all the teachers they
 22 needed but that some teachers left because they couldn't
 23 teach the students and other teachers left because of
 24 something else, and --
 25 MS. LHAMON: Objection; mischaracterizes the

1 overcrowding, you said that on any given day there
 2 weren't enough seats for students and that students cut
 3 because they didn't have individual desks.
 4 A Sure.
 5 Q Once again, are there other reasons why
 6 students might cut?
 7 A Yes, of course.
 8 Q You used a phrase "creative maladjustment."
 9 A Yes.
 10 Q At least three times that I recall. Would you
 11 tell me what that means?
 12 A I think that's when you are in a dysfunctional
 13 place and you try to do what is in your power to make
 14 something right.
 15 Q Is it your testimony that the only reason that
 16 in the 2000-2001 year for the period when Lannelle
 17 Jennings served as the interim principal -- is it your
 18 testimony that the only reason that Fremont got all the
 19 teachers they wanted was because Lannelle knew Dennis
 20 Chaconas?
 21 A I would not say only, but I would say
 22 definitely one of the reasons why I feel Fremont got the
 23 teachers that it needed.
 24 Q Okay. At one point you said that -- you were
 25 talking about stip subs and you said that stip subs can

1 testimony.
 2 BY MS. RUSSELL:
 3 Q You can answer.
 4 A Because they couldn't teach the students.
 5 Q Thank you.
 6 A And you're asking for --
 7 Q You gave two reasons, and I'm really -- you
 8 know, I could have asked her to read it back but I
 9 didn't want to interrupt things, but you gave two
 10 reasons. If you don't recall the second one, it's okay.
 11 A Okay. I feel like they -- either they couldn't
 12 teach the students or because they did not have the
 13 resources that they need to teach the students.
 14 Q You described the sub system as being a
 15 laissez-faire system. What did you mean by that?
 16 A Not so much as laissez-faire, which was
 17 probably the improper word, but maybe where this
 18 district plays a minimal effort in seeing the execution
 19 of getting substitutes into the classrooms for teachers
 20 that are absent.
 21 So I felt like it was more along the lines of
 22 an automated telephone system versus, you know, a
 23 staffed office.
 24 Q Do you know whether or not the district had a
 25 staffed office?

1 A It does, but they never pick up their phone.
 2 Q Did you ever ask why?
 3 A They never pick up their phone?
 4 Q Yeah -- no. Why they went from a person
 5 saying, "Good morning, this is Oakland Unified," into an
 6 automated system.
 7 A I would speculate for efficiency.
 8 Q No, don't speculate for any reason.
 9 MS. LHAMON: Assumes facts not in evidence.
 10 MS. RUSSELL: I'm asking if he knows. He said that
 11 there was a laissez-faire system. Then he went on to
 12 explain here now that they have a system that he doesn't
 13 think is efficient.
 14 THE WITNESS: Right.
 15 BY MS. RUSSELL:
 16 Q And you were saying the reason you said that is
 17 because they have this automated system.
 18 A Right.
 19 Q So my question comes from that. I'm saying --
 20 A Right.
 21 Q -- is it your view that if they had a person
 22 sitting there that it would be more efficient?
 23 A Yes, it would be more efficient, but -- in
 24 terms of getting the substitutes inside the classroom.
 25 In terms of its efficient use of the district's money to

1 do it that way? No, I think it could be an integration
 2 of both an automated system and a more competent sub
 3 office with human resources.
 4 Q So you feel that part of the reason why the
 5 district doesn't have a combination system, which you
 6 think would be more efficient, is because of lack of
 7 financial resources?
 8 A Yes.
 9 Q Finally, you said that a custodian -- you
 10 asked a custodian for a fan and he told you to give him
 11 \$5.
 12 A Yes.
 13 Q Could you give me the name of that custodian,
 14 please?
 15 A I do not recall to the best -- I think the
 16 custodian actually is -- I can't recall which custodian
 17 it was. No, I do not know which custodian it was.
 18 Q Okay. This is more a question of clarity.
 19 You described your pleasure at the classroom
 20 you have in 2000-2001 versus the 1999-2000, and you said
 21 that that is a room that's outfitted with tables.
 22 A Okay.
 23 Q But in your declaration you talk about the
 24 absence of lab benches, and I'm not understanding the
 25 distinction.

1 A Sure. The lab benches would have the ability
 2 for the students to let's say store their equipment,
 3 have their racks for science equipment. They would also
 4 not be sitting in the same formation that they do at the
 5 regular table. Tables are all cracked, but whether or
 6 not -- I guess that doesn't matter if it's a lab bench
 7 or not.
 8 They don't have the gas jets that a lab bench
 9 would have. They don't have the computers that some lab
 10 benches would have. So those are some definitive
 11 differences. They don't have the chemical safety top
 12 that some lab benches have that you sometimes would want
 13 for chemical resistance benches. So again, I think
 14 that's due to lack of funding.
 15 Q Finally, really finally, you said that -- you
 16 made a statement at one point that the security
 17 personnel were unreliable and that coworkers said that
 18 custodians are lazy.
 19 A Is there a question?
 20 Q Yes. I just wanted you to nod in case I
 21 mischaracterized what you said.
 22 Do you think that if we paid custodians and
 23 security personnel more that we would have a higher
 24 caliber group of people?
 25 A Yes, I do. I think that from that you would --

1 you know, if you would pay people more, you would get
 2 just a higher caliber of people applying, which means --
 3 and a bigger pool -- first it would go to a bigger pool
 4 because, you know, you show people the money and you get
 5 a bigger pool of applicants.
 6 From the applicants, you'd get -- because
 7 there's a bigger pool, there's a higher potential for
 8 you to get higher caliber people, and from that you can
 9 get better custodians or security personnel.
 10 MS. RUSSELL: No further questions.
 11
 12 EXAMINATION (Further)
 13 BY MR. ROSENTHAL:
 14 Q I just have very few brief questions. I
 15 promise I won't go more than a couple minutes.
 16 You testified earlier that when certain
 17 problems arose in Fremont, in the instances when you
 18 went to speak to somebody about it, you went primarily
 19 to personnel located on the physical site at Fremont;
 20 isn't that right?
 21 A Yes.
 22 Q And why did you go to those people as opposed
 23 to somebody else?
 24 A Because I feel like they were the ones with the
 25 ability to create the change for my classroom first.

1 Q Did you ever consider going to anybody at the
2 district offices to have the problems you were concerned
3 about resolved?

4 A Yes, I have, but I think that -- yes, I have.

5 Q You've thought about it or you've actually done
6 it?

7 A No, I've thought about it.

8 Q And you decided not to?

9 A I decided to create a small school to try to
10 get to be successful with 250 students with the limited
11 resources that I have within the system that exists
12 right now.

13 Q But when there were problems existing at
14 Fremont, your first instance was to deal with people on
15 site at Fremont to get the problem resolved?

16 A Yes.

17 Q Because it was your belief they could start the
18 process to get any problems or whatever arose resolved?

19 A Yes.

20 Q Why didn't you raise any of your concerns with
21 any state officials? Let me ask this question first:
22 Did you raise any of your concerns with any statewide
23 officials?

24 A You know, my chances to meet the statewide
25 officials are limited, but there was one time that we

1 that were made available to you at Buffalo Grove?

2 A Yes.

3 Q Anything less than that would result in a
4 student getting an inadequate education, in your
5 opinion?

6 A Depends on the student definitely, but I would
7 say for the most part, yes.

8 Q And you described a certain type of lab bench
9 that you did not have in your classroom at Fremont. Did
10 you have those sorts of lab benches at Buffalo Grove?

11 A Yes.

12 Q It had computers in the lab benches and sort of
13 the safety aspects of it that you described --

14 A Well, I was there -- you've got to remember I
15 was there approximately eight years ago, so computers
16 were not of a modern thing, but even back then we did
17 have a few lab benches that had computers.

18 But nowadays, yes, they definitely have them
19 there and they definitely have methane gas jets there,
20 as well. So they have more than their fair share of
21 scientific equipment and furniture.

22 Q Do you think if the state increased funding to
23 school districts throughout the state that any of the
24 problems you've raised would be resolved?

25 A If they increased the funding and depending on

1 could have -- Teach For America did attract Gray Davis,
2 and I wish I had his ear there. That was one month
3 after my teaching so I did not have the insight as to
4 what the situation was yet.

5 And the times -- I feel like, though, that this
6 is not a problem isolated to only Oakland, and for me, I
7 want to do one success at a time first and try to work
8 from there until I have enough so I can make greater
9 changes at the state level.

10 Q Is part of the reason why you didn't contact
11 any state officials to get the problems resolved because
12 you thought that it would be more efficient to go to the
13 administration at the school or perhaps even at the
14 district to get the problem resolved?

15 A I think it could have been, but I think -- I
16 mean a lot of it's also accessibility, I mean, who is
17 accessible to me immediately. So a little bit of both,
18 yes.

19 Q Promise, just two or three more questions.

20 We've talked a lot about your high school,
21 which is Buffalo Grove High School; is that correct?

22 A Yes.

23 Q Is it your opinion that in order to get an
24 adequate education that a student would need to go to a
25 school with the sort of resources, material and staff

1 what they do in the execution of how they oversee that
2 funding, yes.

3 Q What do you mean by that?

4 A Like how they use their money, like whether
5 they -- are they going to put it into personnel or other
6 things like that? Such questions as these I'm not sure
7 if I'm qualified to answer.

8 Q I'm just asking for your opinion. That's all.

9 A Sure.

10 Q So if the state gave additional money to school
11 districts and required them to spend it in a certain way
12 you think that would help resolve the problems?

13 A You know what? Alfi Coen, who is this -- I'm
14 not sure if you ever read anything from him. He's
15 supposed to be like the number one leading policymaker
16 in the U.S. about -- he's the number one academic about
17 that, about education. And his policy says, you know,
18 the one thing that really dictates how well students do,
19 like on the test scores, is -- he says you could just
20 tell by how much money the school gets and -- well, he
21 also says the minority breakdown or the demographics of
22 the students, but -- the demographics of race and the
23 demographics of, you know, like money.

24 So according to him, to cite him, I would say
25 yes, that more funding would definitely equate into

1 better performing students.
 2 MR. ROSENTHAL: Okay. I have nothing further.
 3 MS. LHAMON: Before we do our stipulations I just
 4 want to state for the record that although we were happy
 5 to go forward today, you did not serve a subpoena on
 6 Mr. Dao or to my knowledge anyone else in this series of
 7 deponents noticed, and we will assume that you will do
 8 so and that you will also send a check.
 9 MR. ROSENTHAL: That's fine, but it was my
 10 understanding -- I don't know if you were privy to these
 11 conversations -- but my understanding was that we asked
 12 if you would accept service of deposition notices on
 13 behalf of these people, and the original response was
 14 no, and then the response was changed, that you would
 15 accept service on behalf of a few individuals.
 16 MS. LHAMON: Right. There's been three letters
 17 saying we would accept service and we haven't received
 18 service. That's all I'm saying.
 19 MR. ROSENTHAL: Service of deposition notice?
 20 MS. LHAMON: Of deposition subpoenas and the check.
 21 MR. ROSENTHAL: So you're not accepting -- have you
 22 received service of the deposition notice that was
 23 served?
 24 MS. LHAMON: Absolutely. That's how we responded
 25 to you, but we haven't received the subpoena or the

1 check.
 2 MR. ROSENTHAL: Is that something that you
 3 requested?
 4 MS. LHAMON: That's normal in any deposition that
 5 you subpoena the deponent, and we haven't received it.
 6 MR. ROSENTHAL: Okay.
 7 MS. RUSSELL: And we're off the record now?
 8 MS. LHAMON: So should we make our stipulation for
 9 the record?
 10 MR. ROSENTHAL: Yes. Of course I don't have it
 11 here.
 12 MS. LHAMON: The usual stipulation has been that we
 13 relieve the court reporter of all responsibilities for
 14 the transcript; that Mr. Dao's signature on the original
 15 transcript or on changes to that transcript will suffice
 16 in the case, and that Mr. Dao will have 20 days from
 17 receipt of the transcript from the court reporter to
 18 make those changes, and if there are no changes, then we
 19 can use the original transcript as if it is complete.
 20 MR. ROSENTHAL: Yes. And the transcript is
 21 being -- the original transcript is being delivered to?
 22 MS. LHAMON: Me.
 23 MR. ROSENTHAL: You?
 24 MS. LHAMON: Yes.
 25 MR. ROSENTHAL: Great. Then so stipulated.

1 MS. RUSSELL: And we're off the record now?
 2 MS. LHAMON: Do you stipulate? Do you accept that
 3 stipulation?
 4 MS. RUSSELL: Right. I've never been in a
 5 deposition that that had to be stated. That's just
 6 always right there. Yes. Yes. Yes.
 7 MR. ROSENTHAL: Now we're off the record.
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 9 I, TOAI DAO, do hereby declare under
 10 penalty of perjury that I have read the foregoing
 11 transcript of my deposition; that I have made such
 12 corrections as noted herein, in ink, initialed by me, or
 13 attached hereto; that my testimony as contained Herein,
 14 as corrected, is true and correct.
 15 EXECUTED this ___ day of _____,
 16 2001, at _____,
 (City) (State)
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 TOAI DAO
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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: _____

TRACY L. PERRY
CSR No. 9577