

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN FRANCISCO

3 --oOo--

4 ELIEZER WILLIAMS, et al.,)

)

5 Plaintiffs,)

)

6 vs.)

No. 312 236

)

7 STATE OF CALIFORNIA; DELAINE)

EASTIN, State Superintendent)

8 of Public Instruction; STATE)

DEPARTMENT OF EDUCATION;)

9 STATE BOARD OF EDUCATION,)

)

10 Defendants.)

)

11 DEPOSITION OF JOSE GARCIA

12 VOLUME 2 PAGES 199 - 386

13 FRIDAY, OCTOBER 12, 2001

14
15
16
17
18
19
20 REPORTED BY: DIANE M. WINTER, CSR NO. 3186 (5-112333)

21
22
23
24
25

INDEX
INDEX OF EXAMINATIONS
PAGE

BY MR. ROSENTHAL 202
BY MS. LHAMON 383

EXHIBITS MARKED FOR IDENTIFICATION

No.	Description	Page
1	3 pages; Declaration of Jose Garcia	328
2	17 pages; Defendant State of California's Notice of Depositions of Plaintiffs, Plaintiffs' Guardians Ad Litem, and Non-Party Declarants; Request for Production of Documents	374

BE IT REMEMBERED that on FRIDAY, OCTOBER 12, 2001, commencing at 1:06 p.m. thereof, at 275 Battery Street, San Francisco, California, before me, DIANE M. WINTER, a Certified Shorthand Reporter, there personally appeared:

JOSE GARCIA
--oOo--

ACLU FOUNDATION OF SOUTHERN CALIFORNIA, 1616 Beverly Boulevard, Los Angeles, California 90026-5752, 213.977.9500, represented by CATHERINE E. LHAMON, Attorney at Law, appearing as counsel on behalf of the Plaintiffs.

LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA, 301 Mission Street, Suite 400, San Francisco, California 94105, 415.543.9444, represented by BRROKS M. ALLEN, Attorney at Law, appearing as counsel on behalf of the Plaintiffs.

OMELVENY & MYERS, LLP, 400 South Hope Street, Los Angeles, California 90071-2899, 213.430.7201, represented by MICHAEL T. ROSENTHAL, Attorney at Law, appearing as counsel on behalf of the Defendants.

--oOo--
P R O C E E D I N G S
JOSE GARCIA,

called as a witness herein and who, being first duly

sworn, was examined and testified as follows:

EXAMINATION

BY MR. ROSENTHAL:

Q Good afternoon, Mr. Garcia. As you probably remember, my name is Michael Rosenthal and I represent the State of California in the Williams action. Do you remember the ground rules we went over two days ago or do you want me to go through those again?

A I remember the rules.

Q And you do understand them all?

A Yes, I do.

Q Okay. Great. When we met on Wednesday we covered a bunch of issues regarding problems you experienced at Fremont regarding textbooks and other areas. I just want to pick up along those lines moving into some areas that we didn't cover.

Why don't we start first with if you can tell me whether you had any problems at Fremont regarding overcrowding. And I know we had discussed in another context one English class where there were insufficient desks for a period of time. But putting that aside, since I think we covered that, if you can tell me if there are any other instances of overcrowding that you experienced at Fremont.

A Yes. Actually the overcrowding affected the

psychological health of the students, since they feel couped up in the facility, which is designed to house an amount lesser than the actual numbers that Fremont had of students. And when I say affect the psychological health, I mean they feel couped up, they start getting stressed or nervous, and they kind of act differently. So it's like some of the students might act in a hostile manner due to the overcrowding, they'll be bumping in the hallways because they are so crowded, which led to conflicts.

Counselors will be definitely overwhelmed by students, especially the first weeks of school, because they are trying to get the classes together. And especially the cafeteria. That's one of the main reasons why we have open campus lunch, is because the cafeteria will not accommodate all those students at the same time. We only have one lunch period, so the cafeteria will probably hold one quarter of the student body. That's my estimate, because it's like really small. So they decided to have open campus. But that policy has been applied for a long time. But they have open campus so everybody can go out and have their lunch.

But then again there is another conflict. See, if everybody goes out to lunch, like in 45 minutes I

1 know they will not be able to go anywhere near to school
2 to get lunch and come back in time for class. So it's
3 sort of a paradox. Either you eat here which it's
4 almost impossible because the lines will be so big, or
5 you go out to lunch and come late for class.

6 Q You've given me a lot of information there.
7 I'm going to come back to many aspects of it
8 piece-by-piece. First of all, do you know how many
9 students attend Fremont High School, at least when you
10 were a student there?

11 MS. LHAMON: Objection, question is compound.
12 Are you asking for a year-by-year, or if there is an
13 estimate for the total?

14 MR. ROSENTHAL: You want to give me
15 year-by-year that's fine.

16 THE WITNESS: I don't recall having any
17 knowledge about the numbers during my ninth grade, tenth
18 grade, and part of my eleventh grade. So by the time I
19 started getting involved and researching all the stuff,
20 it was about, at the beginning of my junior year I found
21 out it was about 16, around 1,600 students. That's an
22 estimate.

23 Q How about during your senior year?

24 A Senior year it was actually around the same
25 number, which was like 1,400. That's at the beginning

1 number go down from approximately 1,400 as the year went
2 on?

3 MS. LHAMON: Calls for speculation.

4 THE WITNESS: It went down, but gradually. It
5 didn't go like all of a sudden, so I guess things
6 started getting a little better after the first semester
7 or so. It was lesser. But because students were --
8 either they transferred to other schools or they just
9 stopped coming to school, you know, boycotting the
10 school.

11 Q (BY MR. ROSENTHAL) I know you couldn't give me
12 a numerical estimate for the number of students during
13 your freshman and sophomore year. Do you remember those
14 years having fewer or more students than what they had
15 during let's say during your junior year?

16 A I do recall they was allowed more people than
17 my freshman year than it was during my sophomore and
18 junior years, so it was a lot more.

19 Q It was more during your freshman year?

20 A Yeah, it was a lot more.

21 Q How about your sophomore year, do you remember
22 that being, do you remember that being less than the
23 number of students than attended during your freshman
24 year?

25 A It was less, the number was less than in my

1 of the year.

2 Q So the beginning of the year is approximately
3 200 less at the start of your senior year than it was
4 during the start of your junior year?

5 A Yeah, but those are estimates. Because during
6 the beginning of the year it like gets really
7 overcrowded. It's overcrowded they start turning people
8 away to other schools or --

9 Q Do you know how many students there were at
10 Fremont, let's say during the middle of the school year
11 during your junior year?

12 A I don't have the numbers on that, so I don't
13 know.

14 Q Was it fewer than 1,600?

15 MS. LHAMON: Objection, speculation.

16 THE WITNESS: It was fewer, but I don't know
17 the numbers.

18 Q (BY MR. ROSENTHAL) Can you estimate how many
19 fewer? Was it 100 fewer, was it 200 fewer?

20 MS. LHAMON: Calls for speculation.

21 Q (BY MR. ROSENTHAL) To the extent you know.
22 I'm just looking for your best estimate.

23 A I don't know. I was really overwhelmed with
24 school work.

25 Q How about during your senior year, did the

1 freshman year. But it was more than during my junior
2 and senior year.

3 Q Now you said that Fremont was designed to hold
4 less students than the number of students that attended
5 Fremont. Can you tell me what your understanding is as
6 to how many students Fremont was intended to house?

7 A I don't know the numbers, but I know that there
8 were sections that were, that were a part of Fremont but
9 are no longer a part of Fremont. But the number of
10 students which were allowed to come in was not
11 decreased.

12 Q So was part of Fremont, the Fremont campus
13 closed?

14 A It was separated, like the pool, which was part
15 of Fremont but now is in front of Fremont divided by
16 Foothill Boulevard. But I think they regained that
17 property. And there is a bunch of houses, like, and
18 liquor store -- no, not liquor store, gas stations that
19 were also part of Fremont, and a car wash. So this,
20 like the surrounding area of Fremont, west Fremont's
21 property.

22 Q Did the amount of classroom space during the
23 four years you attended Fremont remain constant?

24 MS. LHAMON: Calls for speculation.

25 THE WITNESS: Remain constant, I don't recall

1 any classroom being built or facilities being increased.
 2 There were some portables, I think, that were
 3 constructed, but I don't remember if that was before my
 4 freshman year. Because I recall the construction being
 5 done in the summer, like, because I live close to
 6 Fremont so I see the construction.
 7 Q (BY MR. ROSENTHAL) You said you don't recall
 8 any classroom being increased during the four years you
 9 were there. Do you remember there being any decrease in
 10 classroom space during the four years?
 11 A I don't recall any decrease of classrooms.
 12 Q And you said you remembered portables being
 13 constructed but you weren't sure as to the time frame.
 14 Do you remember how many portables were constructed?
 15 A Eight.
 16 MS. LHAMON: Michael, can I just ask for a
 17 point of clarification?
 18 MR. ROSENTHAL: Sure.
 19 MS. LHAMON: Are these line of questions are
 20 you asking to the extent that Jose Garcia knows? Then I
 21 don't have to make those objections.
 22 MR. ROSENTHAL: That's fine. I can't ask for
 23 anything but his knowledge.
 24 MS. LHAMON: Thanks.
 25 Q (BY MR. ROSENTHAL) Were all eight of the

1 portables that you recall being constructed, were they
 2 constructed during one summer?
 3 A Yeah.
 4 Q And you said that you were not sure whether it
 5 was the summer before your freshman year?
 6 A Or the summer during my freshman year.
 7 Q The summer after your freshman year. So it was
 8 one of those two summers?
 9 A Yeah.
 10 Q Now you said earlier that the school was
 11 designed to house fewer students than the number that
 12 attended there. What's the basis for that statement?
 13 A Well, there were several meetings in which the
 14 superintendent, Superintendent Chaconas, which he talked
 15 to faculty, and I was present at those meetings. And he
 16 said he remembered all the area that used to be
 17 Fremont's, because he attended Fremont. He graduated
 18 from Fremont. And he recalls, he recalls not having any
 19 troubles about overcrowding. He recalls having student
 20 services and other, how can I put this, I guess basic
 21 needs of students. And --
 22 Q Do -- sorry. Go ahead.
 23 A And also the principal, when he first came in,
 24 he talked to parents and teachers, and he says that it
 25 was a problem of overcrowding in the school during the

1 first weeks of school in the previous years. So he
 2 recognized there was an overcrowding problem. And I
 3 just, you can just notice it when you are running around
 4 the school.
 5 Q Do you specifically recall Mr. Chaconas saying
 6 that the number of students who were attending Fremont
 7 was more than the school was designed to hold?
 8 A I don't recall him saying that in those
 9 specific words. But, you know, he said that there is an
 10 overcrowding in our public schools, an overcrowding
 11 problem.
 12 Q Now you said that as a result of the, what you
 13 call, overcrowding at Fremont students act differently,
 14 and you've given me at least a general example. Can you
 15 give me some examples of how students act differently as
 16 a result of overcrowding at Fremont?
 17 A Oh, I'm going to speak about -- on, based on
 18 personal experience. Because you walk in the hallways,
 19 it's kind of hard to get around. Because like the
 20 hallways are what, how wide is that, that wall right
 21 there? That's an estimate, I don't know, like what?
 22 MS. LHAMON: Are you talking about the middle
 23 part of the wall?
 24 THE WITNESS: The middle part.
 25 MR. ALLEN: Six feet, six-and-a-half.

1 THE WITNESS: Yeah, so the hallways are
 2 around --
 3 MS. LHAMON: Do you agree to that, Michael?
 4 MR. ROSENTHAL: I guess I can lie down on the
 5 floor.
 6 THE WITNESS: It's around seven.
 7 MR. ROSENTHAL: I would say between six and
 8 seven feet.
 9 THE WITNESS: So it's around between six and
 10 seven feet. Now when you have 1,300 students walking
 11 around the hallways in six to seven feet hallways, you
 12 know, I mean wide, it's kind of hard to walk around.
 13 Especially if you only have five minutes to get to
 14 class. So you start bumping into people, you start
 15 getting mad because you get late or something. And you
 16 just have a bad attitude through the whole day, because
 17 you feel couped. You feel pressure on you.
 18 So that affects your personal ability to learn.
 19 Well, not the ability, but so much your focus. And some
 20 students tend to be hostile, not all students, but some
 21 of them, which have -- which is a common cause of the
 22 majority of conflicts in Fremont, just misunderstanding
 23 and trivial matters.
 24 Q Is it your belief that the students who become
 25 hostile, as you call them, that it's a result of the

1 overcrowding in Fremont?

2 A Not all of them. But I'd say about, I'd say a
3 great majority of them.

4 Q And what is that based on?

5 A Personal experiences, friends, you know, just
6 people around me.

7 Q When you say personal experiences, has somebody
8 told you that they are hostile because Fremont is
9 overcrowded?

10 A Nobody admits that. But when you have people
11 bump into you and they just really talk to you like in a
12 very disrespecting manner or whatever, others, you know,
13 and it happens quite often. But I know we wouldn't be
14 able to bump into each other as much if we had a lot
15 more space to walk around or, you know.

16 Q I think you mentioned this. I want to make
17 sure the record is clear. How much time did you have to
18 pass between classes?

19 A Five minutes.

20 Q Did the number of periods that classes were
21 divided into in a school day at Fremont remain constant
22 over the four years you were there, or did that change?

23 A On Mondays we'll have all six periods.

24 Q Can I just interrupt you for one second? Are
25 we talking about for all four years?

1 minutes straight in the classroom.

2 Q And was that a separate class period?

3 A Yeah. And then from there you go to your
4 class.

5 Q And I believe you said that that silent reading
6 period started during your second semester freshman
7 year.

8 A In my freshman year it was called advisory, so
9 that was like a conference period, for the teacher that
10 was present at the time. And through my sophomore year
11 it was changed to sustained silent reading. Excuse for
12 that was to increase the SAT-9 test scores, and to raise
13 the reading abilities of the student body.

14 Q And did that period remain in effect for the
15 remainder of your time at Fremont?

16 A Yes.

17 Q Did that period take place at a certain time of
18 day? Was it after lunch, for example?

19 A No, it was after the first block of class. It
20 was not held on Mondays.

21 Q So after your first two-hour class then you
22 would go to either the advisory period or the silent
23 reading period, depending on what you were talking
24 about?

25 A Yeah.

1 A Yeah, all four years.

2 Q I'm sorry. Now you can continue.

3 A All four years. On Mondays we have all
4 periods, and during the rest of the week we'll have a
5 block schedule of classes of two hours each. And only
6 five minutes between each class, and a lunch, which was
7 held after the second block of class.

8 Q So on Monday, can you tell me how many class
9 periods there were?

10 A Six.

11 Q On Monday, six class periods?

12 A Six class periods or -- it depends on if you
13 were taking an A period that was seven, which is in the
14 morning, you are going there early in the morning to
15 take an A period, then you started regular day with your
16 six other classes.

17 Q And Tuesdays through Fridays, can you tell me
18 how many class periods there were per day?

19 A Three. I'm sorry, the second semester during
20 my freshman year a new policy was taken which was to
21 have an advisor period, which was the next, which was
22 changed during my tenth grade. It went from counseling
23 or advisory period into a focused reading class, because
24 that's what it's called, sustained silent reading. And
25 every student was to remain silent and read for 45

1 Q Would that be held in a different classroom
2 than your first class of the day?

3 A It depends. Because everybody was assigned, a
4 teacher was assigned by groups, so some go to a
5 different class, sometimes we stay in the same
6 classroom, but not everybody.

7 Q So was there a passing period between the first
8 class and the advisory or reading period, depending on
9 what you were talking about?

10 A Yeah.

11 Q And when you said that there were three classes
12 from Tuesdays through Fridays, does that not include the
13 advisory or silent reading period?

14 A Yeah, it doesn't include it. It was separate.

15 Q Does it include lunch?

16 A Lunch was separate. So you have your first two
17 blocks, okay, you have one block silent reading, then
18 the second block, then you have lunch. Then you have
19 your last class.

20 Q Okay. All right. Thank you. So in a day you
21 just described for me, which would be a typical Tuesday,
22 Wednesday, Thursday or Friday, you have five classes,
23 and between each of those classes there would be a
24 five-minute passing period?

25 A Right.

1 Q Just so I'm clear, if you can give me the same
 2 sort of just breakdown, what would a typical Monday be
 3 as far as you would have a class and a reading period or
 4 however it was?
 5 A On Monday we just have classes from one through
 6 the fifth period of class straight, just with passing
 7 periods in-between. And then you have lunch, and then
 8 you come back for one class.
 9 Q And how long were each one of those classes?
 10 A So Mondays was a minimum day, so we start
 11 school at 9:30. So from 9:30 all the way through 3:15.
 12 So most of them 55 minutes, around there.
 13 Q Approximately 55 minutes?
 14 A 55, 45 minutes.
 15 Q Okay. Now during class time, and by that I
 16 mean time when are you not in the passing period, were
 17 all students housed in classrooms?
 18 A Yeah. But then you always have the problem of
 19 roaming students in the hallways.
 20 Q Can you describe to me what you mean by the
 21 problem of roaming students?
 22 A Because some of them would say they don't have
 23 a class, which was true in some cases, due to problems
 24 with counselors or schedule conflicts. And there was
 25 some that due to the new policy of not allowing students

1 to go to the bathroom during class time, they would just
 2 walk out.
 3 Q Did you ever personally have a situation where
 4 you didn't have a class because of a problem with
 5 counselors as you've described it?
 6 A It wasn't a problem. It was because the only
 7 time I didn't have a class was because -- well, there
 8 was two occasions. One was during my junior year, which
 9 I walked out of a class due to a teacher conflict
 10 because he was being -- he was not, he was not teaching
 11 the class properly. And I don't mean -- and I don't say
 12 these out of, you know, me having a conflict with him.
 13 Because everybody in the class, even teachers,
 14 administration, some of the administration, not
 15 everybody, but had the same problem with him. And, and
 16 I was trying to get independent studies, but the
 17 counselor said it was too late, so you have a class. So
 18 I just go to another teacher's classroom or go sit in
 19 the office until my next class.
 20 Q And do you remember what class that was?
 21 A US history.
 22 Q Do you remember the teacher's name?
 23 A [REDACTED] the one that was discussed
 24 yesterday about him, showing movies during class time
 25 and using newspapers instead of books.

1 MS. LHAMON: You mean discussed Wednesday,
 2 because we weren't here yesterday.
 3 THE WITNESS: I mean Wednesday, yes. I'm
 4 sorry.
 5 MR. ROSENTHAL: Seems like yesterday, doesn't
 6 it?
 7 THE WITNESS: Yes, it does.
 8 Q (BY MR. ROSENTHAL) Was that a [REDACTED] you
 9 said?
 10 A Yes. And the second incident where I didn't
 11 have a class was my senior year. But that's because
 12 that I had done all the classes that I was supposed to
 13 do, like all the requirements were met. So I have the
 14 choice of having a free period or having other teachers
 15 in his class time.
 16 Q So in those two instances were you what was
 17 considered to be a roaming student?
 18 A I wasn't roaming. I volunteered in the
 19 library, instead of roaming the school. So I just
 20 volunteered to do volunteer work in school library.
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 Q Can you estimate for me how many, what you'd
 9 call roaming students, there were on a given day, if you
 10 can estimate?
 11 A During the day I'll say 15, but that's not a
 12 very accurate estimate. Because some teachers would
 13 block the windows to prevent distracting activity, you
 14 know, distracting ongoing events from disturbing the
 15 peace of a classroom, so --
 16 Q But is 15 the best estimate you can give --
 17 A Yes.
 18 Q -- as you sit here today?
 19 A Yes.
 20 Q And other than the roaming students during
 21 class time, were all students in classrooms?
 22 A Yes.
 23 Q Now something else that you said you
 24 experienced as a result of overcrowding at Fremont was
 25 that -- it was your belief that the counselors were

1 overwhelmed. Do you know how many counselors are
 2 employed by Fremont?
 3 A I don't know how many are employed.
 4 Q Do you have an estimate? Do you know if it was
 5 more or less than five, let's say?
 6 A I'm assuming it's around five.
 7 Q And when you say that they were overwhelmed,
 8 can you describe for me what you mean?
 9 A There would be lines from the counselors'
 10 office all the way to outside the office building.
 11 Q And were there lines to see the counselors on a
 12 daily basis?
 13 A Yes.
 14 Q Or was it --
 15 A It will last for about three weeks that
 16 students would be lined up in the office since the
 17 morning. Sometimes not even go to class just to be in
 18 line to see a counselor.
 19 Q And was that during the first three weeks of
 20 school?
 21 A Yes.
 22 Q And after the first three weeks of school were
 23 there lines to see the counselors?
 24 A There wouldn't be lines because that's when
 25 they'll start doing appointments and, you know, during

1 the first weeks of school like in every other school
 2 they just like drop-in counseling.
 3 Q Do you have an understanding as to why students
 4 were in line to see counselors during the first three
 5 weeks of school?
 6 A Sometimes because the class that they were
 7 supposed to be taking is full, and they are taking some
 8 class that is not either a requirement for graduation or
 9 it's not college, it won't prepare you for college, it
 10 won't give you any college credit. And other reasons,
 11 they have conflict with the teacher, so -- but that's
 12 the only reasons that I'm aware of.
 13 Q Is it primarily to do with scheduling, class
 14 scheduling?
 15 A Yes. And the class being full and him not
 16 being able, or a person being able to get into that
 17 class that was needed.
 18 Q Were the counselors primarily responsible for
 19 assisting students with their scheduling?
 20 A Yes.
 21 Q One of the other experiences you had relating
 22 to overcrowding in Fremont relating to the cafeteria,
 23 you said that the cafeteria could only house what you
 24 estimated to be approximately one quarter of the student
 25 body.

1 A Right.
 2 Q What's that based on?
 3 A The space dimensions and the number of tables
 4 in the cafeteria.
 5 Q Can you estimate the space of the cafeteria or
 6 the number of tables?
 7 A I'm not very good with metric estimates, so --
 8 Q How about the number of tables, any estimate as
 9 to that?
 10 A They are long foldable tables, so I don't know
 11 how many were there.
 12 Q How many people could sit at each table?
 13 A One table, around 20 on each side. They are
 14 really long tables.
 15 Q So were they rectangular tables?
 16 A Yes.
 17 Q So there would be 20 on one side, 20 on the
 18 other, that's 40, and then there could be some numbers
 19 at the ends of the tables as well?
 20 A No. They will be just on the sides, on the
 21 longer sides of the tables.
 22 Q So 40 total at each table?
 23 A Yes.
 24 Q And do you remember if there were more or less
 25 than ten tables?

1 A Like I say, I don't know how many. Because
 2 they were foldable tables, so I don't know how was the
 3 table set up on school night and where one table began
 4 and where the other one ended.
 5 Q Now you said that Fremont had what you called
 6 open campus lunch.
 7 A Right.
 8 Q Can you tell me what that means?
 9 A It means that during your lunch period you are
 10 allowed to leave the campus and go to lunch, but then
 11 you have to come back before the lunch is over.
 12 Q Can you tell me how long the lunch period was?
 13 You mentioned it, but I just want the record to be
 14 clear.
 15 A 45 minutes.
 16 Q Did all students at Fremont have the same lunch
 17 period?
 18 A Yes.
 19 Q Did you typically get your lunch at school?
 20 A No.
 21 Q Did you get it, did you bring it from home?
 22 A No.
 23 Q Did you go out and get your lunch?
 24 A I went out to get my lunch most of the time.
 25 Q And did you have enough time to typically get

1 your lunch and eat it?

2 MS. LHAMON: Asked and answered.

3 THE WITNESS: Well, most of the times I didn't,
4 because the closest food restaurants were really far
5 away. Well, not really far away, but it won't give you
6 enough time to walk all the way over there and come
7 back, especially because there would be lines to get
8 your food.

9 Q (BY MR. ROSENTHAL) Was there typically a line
10 to get food at the cafeteria?

11 A Long lines. Some students would stay in the
12 line for the whole lunch period.

13 Q So were you typically late to your class after
14 lunch?

15 A Sometimes like if I was going to be late I'd
16 start walking back regardless of whether I had my food
17 or not.

18 Q So were there instances where you were unable
19 to eat lunch on a day when you wanted to eat lunch?

20 A That's correct. Either I was early to class or
21 I would eat lunch in some instances.

22 Q Can you tell me approximately how often that
23 happened?

24 MS. LHAMON: Over the four years or --

25 MR. ROSENTHAL: However he wants to give me the

1 mostly for students with low income, which was called
2 like free lunch, right. But it's not that my family is
3 of high income, it's just that they didn't fight for it
4 this year, so I didn't have a number or anything like
5 that to get lunch. Besides that, the food of the
6 cafeteria being unnutritious and of the magnitude of the
7 lines being so huge, so sometimes I'd rather not eat
8 than to be late to class.

9 Q Other than the free lunch being provided in the
10 cafeteria, was there anyplace else on campus where
11 students could purchase lunch or get lunch?

12 A There is this one place, but it served the same
13 type of food as the one provided on the free lunch. And
14 sometimes when the -- some students are doing like
15 fund-raising activities or events like that, of that
16 manner, they'll sell like sandwiches or sodas. But that
17 was about it.

18 Q And was that something that was available every
19 school day?

20 A No.

21 Q About how often was that available?

22 A That depended on the student organization that
23 was organizing the event or the teachers or the purpose
24 of the event. So it's kind of irregular.

25 Q And just to make sure I'm clear, was there --

1 information.

2 THE WITNESS: During my freshman year I didn't
3 eat lunch that often because I didn't want to be late to
4 class, and so I would just stay around campus during the
5 lunch period. And my sophomore year, it was the same
6 situation. During my junior year I start to go out with
7 my friends and grab lunch, but we try to be earlier to
8 class. And during my senior year, that's when I was out
9 of the campus less often than usual for lunch. But
10 there would be instances that I would be late to class.

11 Q Sounds like you got your lunch off campus most
12 frequently during your junior year.

13 A Yes.

14 Q During that year about how often were you late
15 to your class after lunch?

16 A In a three-week period about ten times.

17 Q When you say a three-week period, are you
18 talking about 15 school days?

19 A Yes.

20 Q Can you tell me how late you would be typically
21 to class?

22 A Five to ten minutes.

23 Q Did you ever get your lunch at school in the
24 cafeteria?

25 A The lunch that was provided at the school was

1 are we talking about two additional places where you
2 could get lunch, or was there one place where the same
3 stuff served for the free lunch was available for
4 students to purchase and also a place where student
5 organizations or fund-raisers were selling sandwiches?
6 A No. The fund-raising and all of those
7 activities will be held at classrooms. And the place I
8 described that was selling the same type of food on the
9 free lunch was right in front of the cafeteria, but the
10 line would be of the same length as the one on the free
11 lunch.

12 Q But every day you could purchase lunch in the
13 cafeteria, you could purchase the same food that was
14 being offered in the free lunch line?

15 A I could try to be in line, but that didn't
16 guarantee me getting food there.

17 Q I understand. But it was available to
18 purchase?

19 A Yes.

20 Q And you say the line to purchase lunch was
21 roughly the same length as the line to get the free
22 lunches?

23 A Yes.

24 Q When you went off campus to get your lunch you
25 said you walked there?

1 A Yes.

2 Q Do you recall how far it was each way, as far
3 as time?

4 A The closest place that was available was about
5 six blocks.

6 Q And how long would it take you typically to
7 walk those six blocks?

8 A Around 15 minutes to go and 15 minutes to go
9 back.

10 Q And when you went off campus to get your lunch
11 did you always go to that place?

12 A No. We would always be trying to look for a
13 place closer, besides the liquor store or a gas station.

14 Q But this place that was approximately a
15 15-minute six block walk was the closest place?

16 A One of the closest places.

17 Q Was there someplace closer?

18 A Yes, but it wasn't always open during school
19 hours.

20 Q Just so I can have a sense of the kind of line
21 we're talking about, when you would go to the cafeteria
22 could you give me an estimate as to how many people
23 would be in line for lunch?

24 MS. LHAMON: Objection, the question is
25 overbroad, assumes facts not in evidence because it

1 A No.

2 Q So you never got lunch from the food provided
3 in the cafeteria?

4 A Exactly. I'll ask somebody to get it for me,
5 who would be like in the front of the line. But that
6 only happened a couple times.

7 Q You've given me the events that you said
8 resulted from the overcrowding at Fremont. Are there
9 any other experiences you had at Fremont relating to the
10 overcrowding that you haven't already told me about?

11 A Teachers will also feel pressure when they have
12 a huge amount of students in their classroom. And some
13 of them don't feel comfortable, and that affects their
14 teaching abilities.

15 Q When you say teachers who had a huge amount of
16 students in their class, what do you mean by a huge
17 amount of students?

18 A When I was in junior high I heard of a measure
19 that was supposed to regulate the number of students in
20 the classroom to no more than 30. And some teachers
21 were really glad of that, because they say that that
22 gives them an opportunity to focus on students in a more
23 individual level so they can do a better job at
24 teaching. So as the number of students increases, the
25 level of attention that a teacher gives to each student

1 assumes that there was a typical line.

2 THE WITNESS: Yeah, I wouldn't know how many
3 people, but it was really big. It was more than 20,
4 more than -- roughly more than 50. And that was a
5 constant number. Like as soon as somebody move out of
6 the line there was people getting in the line, so it
7 would be constant.

8 Q (BY MR. ROSENTHAL) Did you ever personally
9 wait on one of those lines?

10 A A few times.

11 Q And do you recall how long it took you from the
12 point in time you first got in line to the time you
13 received your food?

14 A Once I stood there for half an hour. And then
15 I decided to get out of the line, because I felt like I
16 wasn't going anywhere.

17 Q Is that the longest you ever spent in line?

18 A Yeah, that was the longest. So that gives you
19 enough time to eat your food.

20 Q Putting that instance aside, was there a
21 typical amount of time you would typically wait in line?

22 A If after 20 minutes I'm not getting my food I
23 will get out of the line.

24 Q Did you get your food in less than 20 minutes
25 sometimes?

1 decreases.

2 Q So would you say that any class that had more
3 than 30 students was a huge amount?

4 A I'd say it was overcrowded if it was more than
5 30.

6 Q Do you remember the most students you ever had
7 in any of your classes at Fremont?

8 A 36, 37.

9 Q Now that you've added this information about
10 how having over 30 students in a class affects teachers,
11 is there anything else relating to overcrowding problems
12 at Fremont that you haven't told me about?

13 A I already mentioned the counseling conflict and
14 the schedule conflict. The class conflicts where
15 classes are overcrowded so the counselor puts you in
16 another class regardless of the topic or -- that's all I
17 can think about right now regarding overcrowding.

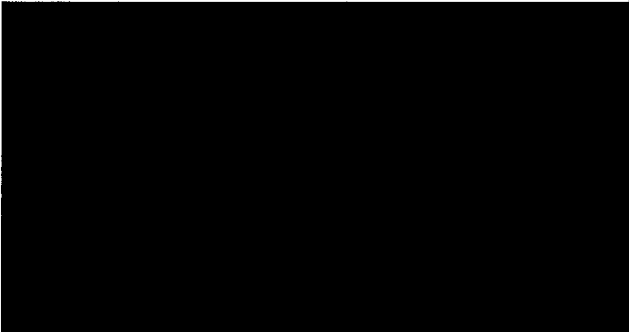
18 Q Why don't we talk just a little bit about what
19 you just mentioned with regards to counselors and
20 scheduling. You said that counselors would move
21 students from a class that was overcrowded to another
22 class regardless of the subject. Can you describe to me
23 what you were referring to?

24 A Okay. So they wouldn't take you away from the
25 class, they just wouldn't put you there, even though you

1 need the class as a graduation requirement or admission
 2 to a university or college, so they just put you in a
 3 class where there's space for you.
 4 Q You ever personally have that situation occur
 5 to you?
 6 A Yes.
 7 Q Can you tell me about that?
 8 A During my junior year, I was supposed to be
 9 taking chemistry, but the teacher said the class was too
 10 crowded, so he sent me to my counselor. He sent about
 11 six or seven of us to the counselor to see if there was
 12 another chemistry class. He sent us to another
 13 classroom. That teacher told us that her class was
 14 overcrowded also, and that she would have chemistry
 15 available for that specific period. So he sent us back
 16 to the first teacher, the one that sent us to the
 17 counselor. And the teacher says, well, I guess I'm
 18 going to have to take you in. So he took us in.
 19 Q So you were able to take chemistry?
 20 A Yes. But there wasn't enough desks for us. So
 21 we'll sit at the lab tables, not on top of the tables,
 22 but we'll get stools from other classes and sit in the
 23 lab tables.
 24 Q So in the class you had your own chair to sit
 25 in?

1 A Stool, yeah.
 2 Q And you had a lab table to sit at?
 3 A Yes.
 4 Q You didn't have to stand in that class?
 5 A No.
 6 Q Putting aside this instance with chemistry
 7 which you were able to take, were there any instances
 8 where you were not able to take a class that was a
 9 requirement for graduation?
 10 A No.
 11 Q Was there ever an instance where you were not
 12 able to take a class that wasn't a requirement for
 13 graduation? By that I mean an elective.
 14 A The art classes will usually get full, so I
 15 have to take another elective. And art, it is a
 16 requirement for UC, for the UC system, for admission.
 17 Q And did you take art at Fremont?
 18 A No.
 19 Q Did you try to take art at Fremont?
 20 A I was trying to take independent art, but I
 21 decided to take an extra class which would give me
 22 college credit directly instead of taking art.
 23 Q Could you have taken independent art?
 24 A I talked to my counselor and he gave me a list
 25 of teachers who might be available. But by the time I

1 got to the teacher there was about five students waiting
 2 for the independent art schedule. So I wasn't, I was
 3 not able to take independent art.
 4 Q You were prevented from taking independent art?
 5 A I wasn't prevented, but it was that there was
 6 only special five independent art students.
 7 Q Were there other art classes available to you
 8 besides independent art?
 9 A No. Because dance is a two semester class.
 10 And acting, you had to be in the arts academy, so -- and
 11 music. I was not able to take music. And I didn't want
 12 to take music.
 13 Q Did music count as art?
 14 A I'm not aware of that.
 15 Q Do you remember what semester you were trying
 16 to take independent art?
 17 A During my senior year, which was --
 18 Q Do you remember if it was the fall or the
 19 spring semester?
 20 A The fall semester.
 21 Q Did you try to take an art class during your
 22 spring semester?
 23 A No, because it's supposed to be two semesters,
 24 so there was no point in me taking just one semester.
 25 Q Did you ever try to take art prior to your

1 senior year?
 2 A No, because I wasn't aware that art was a
 3 requirement for UC. I think that that class was -- I
 4 mean that measure was taken just recently, so I wasn't
 5 aware of that.
 6 
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17 Q Other than independent art, were there other
 18 art classes being offered during your senior year at
 19 Fremont?
 20 A As independent courses, I don't recall any
 21 other art courses besides art.
 22 Q When you say it's an independent course, can
 23 you tell me what you mean?
 24 A The teacher will give you a syllabus, and you
 25 are responsible to get the work done and present it to

1 him in a due date. So I wouldn't go to the classroom,
 2 you do all that on your own.
 3 Q Were there other art classes that were not
 4 independent classes offered during your senior year at
 5 Fremont?
 6 A There were, like the main, the mainstream
 7 classes such as dance, music and arts, like creative
 8 arts. Those were given in classrooms. But I think only
 9 the creative arts was suffering, independent studies.
 10 That's the one I was aware of, which was recommended to
 11 me by a friend.
 12 Q Did you ever attempt to take any of the
 13 in-class art classes that were being offered at Fremont
 14 during your senior year?
 15 A I was in the architecture academy, so they
 16 usually give you first year requirement. And if you
 17 have space for electives, they'll fill those for you.
 18 But it was never offered to me because there was --
 19 there is the arts academy, and they are probably most of
 20 the art classes and space in the arts classes.
 21 Q But did you ever attempt to take an in-class
 22 arts class during your senior year at Fremont?
 23 A Yes.
 24 Q And you were unable to do so?
 25 A I was unable because I had other requirements

1 to fulfill.
 2 MS. LHAMON: Michael, could we take our first
 3 break?
 4 MR. ROSENTHAL: That's fine. I'm flexible.
 5 (Recess taken from 1:35 to 1:43)
 6 Q (BY MR. ROSENTHAL) Mr. Garcia, do you
 7 understand you are still under oath?
 8 A Yes.
 9 Q Do you understand you will be under oath for
 10 the entire day here even though we take breaks now and
 11 again?
 12 A Yes.
 13 Q Great. Before our break we were talking about
 14 some of the scheduling problems that arose from the
 15 crowding at Fremont. Are you aware of any instance of
 16 any student not being able to take a class required for
 17 graduation as a result of the overcrowding of Fremont?
 18 A Yes.
 19 Q Can you tell me about that.
 20 A Okay. My nephew, who is currently going to
 21 Fremont High, was taking during his freshman year about
 22 two ELD classes in the same year. He could have been
 23 taking science or physical education or any other class
 24 that was a requirement for graduation, and that happens
 25 to a lot of students. They get two periods with the

1 same teacher or two classes of the same kind. So that's
 2 one thing.
 3 Q And just so we're clear, when you say an ELD
 4 class, can you tell me what that is?
 5 A English as a -- English learning development.
 6 Q And do you have an understanding as to what
 7 kind of class that is?
 8 A Yes.
 9 MS. LHAMON: Asked and answered. We talked
 10 about this the first day, Michael.
 11 THE WITNESS: This is a class that helps
 12 students with their English-speaking abilities or to
 13 instruct them about the English language.
 14 Q (BY MR. ROSENTHAL) Is your nephew a sophomore
 15 this year, or is he a freshman?
 16 A He's a sophomore.
 17 Q And is he able to take, you gave two examples,
 18 physical education or science, which are graduation
 19 requirements at Fremont. Was he able to take them this
 20 year?
 21 A I'm not aware of his schedule right now.
 22 Q Do you know if your nephew attempted to take
 23 any of these other courses?
 24 A He did come in one conference he had with his
 25 counselor, and he brought it up, but I don't know how

1 that developed.
 2 Q Besides your nephew, are you aware of anybody
 3 else who was unable to take a course that was required
 4 for graduation at Fremont?
 5 MS. LHAMON: I think your question is vague and
 6 I probably should have objected to it, but by unable, do
 7 you mean unable within the four years one is
 8 traditionally in high school, or unable ever and so he
 9 didn't graduate?
 10 THE WITNESS: That's the part of the question
 11 that I didn't understand.
 12 Q (BY MR. ROSENTHAL) Are you aware of any
 13 student at Fremont who was unable to complete his
 14 graduation, his or her graduation requirements, because
 15 of overcrowding?
 16 MS. LHAMON: And so I think the question is
 17 still vague. Are you asking if Jose Garcia is aware of
 18 any student who could not graduate from Fremont High
 19 School because that student could not ever, in any
 20 multi-year period, take all the requirements for
 21 graduation?
 22 MR. ROSENTHAL: Do you understand the question?
 23 THE WITNESS: Yeah, now I do. But --
 24 MS. LHAMON: Plus now when you say now you do,
 25 are you doing it based on the question that I asked?

1 THE WITNESS: Yes.

2 MS. LHAMON: Is that the question you intended
3 to ask, Michael?

4 MR. ROSENTHAL: Do you understand my question?

5 THE WITNESS: Could you rephrase the question?

6 Q (BY MR. ROSENTHAL) Sure. Are you aware of any
7 instant where a student at Fremont was unable to fulfill
8 his graduation requirements because of overcrowding?

9 MS. LHAMON: And I have the same -- vague is
10 the question.

11 THE WITNESS: Yeah, because I'm not aware of a
12 student, I'm not with them the whole time, so -- but I
13 was aware of some students who were taking the
14 requirements that were, that were supposed to be taking
15 their freshman and sophomore year during their junior
16 year, and they are like overwhelmed with all these
17 classes at the same time. So you are only supposed to
18 take one math, one English, one science class. And
19 culture, it could be multi-cultural studies or any other
20 class that's available for you.

21 And that's a choice for you. Whether you want
22 to take physical education or ROTC, which is Reserve
23 Office Training Corps, which is, I guess you can call
24 it, Army preparation class. So the students were making
25 up classes for the ninth grade because they couldn't

1 A No, I'm not aware.

2 Q Now you've given me some testimony about
3 various things that resulted from the overcrowding at
4 Fremont. Have you ever heard any complaints from other
5 students about overcrowding at Fremont?

6 A Constantly, yes, during meetings with staff,
7 faculty, members of the school district, when they have
8 forums or whatever, things like that. Parents will
9 bring that up, students bring that up, teachers will
10 bring that up.

11 Q Was the substance of the other complaints you
12 are aware of the same as those that you've told me
13 about, or were there additional complaints?

14 A There were pretty similar, but I don't have any
15 details of what their complaints were. They were
16 similar about the overcrowding, the conflict schedule, I
17 mean the schedule conflicts, the needs for space for
18 students, the ability to teach from teachers, all those
19 problems.

20 Q So were any of the other complaints that are
21 you aware of not similar to the ones you've already told
22 me about?

23 A Not that I can remember.

24 Q Is there any -- were there any other problems
25 relating to overcrowding at Fremont that you haven't

1 take them during their ninth grade. So that brings up
2 the whole issue of the class they were supposed to be
3 taking due to overcrowding, but it could have been due
4 to something else. I don't have an answer for that
5 question.

6 Q When you said earlier that one of the problems
7 with the overcrowding at Fremont was that students were
8 not able to take courses that were required for their
9 graduation, just so we're clear as to what your
10 testimony was, was it that they were not able to take
11 the course during a particular year, but later were able
12 to take the course, or were they not able to take the
13 course at all for any of their time at Fremont?

14 A Well, I'm not aware of that. But I am aware
15 that they were not able to take it that particular year.
16 So if they don't take it that year, that means they are
17 going to be taking a few extra classes the next year,
18 which puts your schedule in a conflict again.

19 Q So was there ever an instance that you are
20 aware of where a student was not able to take a course
21 required for graduation during any point during your
22 four years at Fremont?

23 A I don't know.

24 Q Are you aware of any such instance? That's a
25 yes or no question.

1 already told me about that you are aware of?

2 A No, I can't think of any more problems right
3 now.

4 Q Were there any problems at Fremont relating to
5 there being any disruptive or external noise at the
6 school?

7 A Can you repeat the question, please?

8 Q Sure. Were there any problems at Fremont
9 relating to there being too much noise at the school?

10 A Occasionally. Since that's from outside
11 disturbances like on the street, because the school is
12 directly, like some of the classrooms are directly on
13 the street. They are just attached to the building. So
14 there will be like cars passing with loud music or
15 people arguing outside the school, or people passing
16 around and banging on the school windows.

17 Q When you say occasionally, can you just give me
18 an estimate as to how many times a week or a semester?
19 And this is obviously based on your experience.

20 A There are various sporadic-like instances.
21 So they were pretty much unpredictable and irregular, so
22 I don't have an estimate.

23 Q Were there any problems at Fremont relating to
24 noise being heard from another classroom when you were
25 sitting in one particular classroom?

1 A Yes. In those classrooms that I mentioned on
 2 Wednesday, the ones with the plastic divider or the
 3 plastic wall or sort of that, where students would be
 4 carrying out a regular class conversation with their
 5 teacher or teacher is giving a lecture and you can
 6 overhear it clearly. So it's not noise, but it does
 7 distract the class. Here you are talking about ethics
 8 and basics, and they are talking about something totally
 9 different, and it's like you cannot pay attention to one
 10 thing or the other.

11 Q And do you remember how many classrooms have
 12 these plastic walls as you call them?

13 MS. LHAMON: Asked and answered on the first
 14 day.

15 THE WITNESS: Yeah. I don't recall how many I
 16 said yesterday.

17 MS. LHAMON: That was Wednesday, but --

18 THE WITNESS: It was Wednesday, I mean.

19 Q (BY MR. ROSENTHAL) Do you remember how many
 20 there were, or you just don't remember what you said on
 21 Wednesday?

22 A I don't remember how many were there. But I
 23 know in which buildings they are, if that's what you are
 24 asking. And I think I did specify that, that I don't
 25 recall the exact number, but I do recall in which

1 buildings they are situated. Now that I can answer.

2 Q If my notes are correct I think you said that
 3 there were approximately eight classrooms in the 1200
 4 building. Does that sound right to you?

5 A Yes. They are all located in the lower floor
 6 of the structure.

7 Q The lower floor of the 1200 building?

8 A Yes.

9 Q Are there any other classrooms at Fremont that
 10 also have the plastic walls, as you call them?

11 A Yes. The ones in the 3200 building.

12 Q And do you remember how many classrooms in that
 13 building have plastic walls?

14 A I don't remember how many, because the
 15 dimensions of those classrooms in the 3200 building are
 16 different from the ones in the rest of the school
 17 buildings.

18 Q Were the rooms that had plastic walls in the
 19 3200 building located on a particular floor?

20 A The second floor.

21 Q Was that the only place that they had plastic
 22 walls in that building?

23 A Yes, because the cafeteria is located under
 24 that floor.

25 Q Does that building only have two floors?

1 A Yes.

2 Q Do you know if all of the classrooms on the
 3 second floor of the 3200 building have plastic walls?

4 A Not all of them.

5 Q Do you know how many classrooms there are on
 6 the second floor of the 3200 building?

7 A I'm not aware of how many classes are in there.

8 Q Can you estimate for me?

9 A I recall five, but in front of those classrooms
 10 there was another section where there is a computer lab
 11 and other classrooms that I never went into. So I don't
 12 know how many are in that section.

13 Q Are there at least five?

14 A More than five, yes.

15 Q Do you know if the classrooms with plastic
 16 dividers were the classrooms connected to the computer
 17 lab or were --

18 A No.

19 Q -- they ones, the other five classrooms we're
 20 talking about?

21 A Yeah, they are separate from the computer labs.

22 Q But not all of the five classrooms in the 3200
 23 building on the second floor have plastic walls?

24 A Only the ones that were adjacent to each other.

25 Q Just so I can have an understanding, can you

1 tell me what you mean by plastic walls. Can you
 2 describe those walls for me?

3 A It's a rectangular structure with a locking
 4 mechanism that interlocks with other dividers. So the
 5 other dividers is like one block connected to the other
 6 one, and it spreads around to form this type of wall
 7 that can be slid or, you know, taken off at any time.

8 Q So they are movable walls?

9 A Yes.

10 Q Do you know what the walls are made out of?

11 A No, I'm not aware. But it's a hard material.
 12 It's kind of hard. But it's not sound proof.

13 MS. LHAMON: It might be plastic if they are
 14 plastic walls.

15 THE WITNESS: Yeah.

16 MS. LHAMON: I don't understand the question,
 17 Michael.

18 Q (BY MR. ROSENTHAL) Are they made out of
 19 plastic?

20 A Yes, they are made out of plastic. And they
 21 are heavy. So if the locking mechanism were to fail and
 22 one of the segments were to fall, it might hurt
 23 somebody. Because they are really tall. So they spread
 24 from the bottom of the classroom all the way to the
 25 ceiling.

1 Q So do the walls go from the floor all the way
2 up to the ceiling?

3 A Yes.

4 Q Is there any space between the ceiling and the
5 wall or any space between the floor and the wall?

6 A Just a little space at the bottom which was to
7 allow the separators to slide or to be moved.

8 Q So were the walls on some kind of a track
9 mechanism?

10 A I'm not aware if it was a track or not. But
11 you can see the space. And sometimes you could see in
12 between each segment, so you could take a peek at the
13 other classroom.

14 Q Was the amount of space between the top of the
15 wall and the ceiling and the bottom of the wall and the
16 floor roughly the same?

17 A I never got to see the space in the top of the
18 divider, so I don't know if it was bigger or small or
19 about the same.

20 Q How much space was there between the bottom of
21 the walls and the floor?

22 MS. LHAMON: I'm going to object on overbroad
23 grounds. It's not clear there is the same amount of
24 space in every room of the divider, but I'll leave it at
25 that.

1 A I'm not aware of that.

2 Q Can you estimate for me?

3 A I can't.

4 Q I'm trying not to go through each of these
5 classrooms with the, what are you calling plastic walls,
6 one by one. So to the extent you can't give an answer
7 for all of them just let me know.

8 Were all four of the walls in each of these
9 classrooms that had plastic walls, were they all four
10 plastic walls, or was it less than that?

11 A No, it was usually the back wall.

12 Q Were there any classes in which more than one
13 wall was a plastic wall?

14 A Not that I seen one. I only seen the ones with
15 the back wall, or the side wall.

16 Q And the classes that had plastic walls that you
17 are aware of, the remaining walls were permanent walls?

18 A Yes, they were permanent walls.

19 Q Did you have any classes in classrooms where
20 there was a plastic wall?

21 A Yes, several classes.

22 Q And you said that from those classes you could
23 hear sound coming from the adjacent class?

24 A Yes.

25 Q And was that always the adjacent class, was

1 THE WITNESS: Just a few centimeters, about.

2 Q (BY MR. ROSENTHAL) Could you stick your finger
3 through it, for example?

4 A In some, because it wasn't constant. It would
5 be like some would be higher than the others. But it
6 wasn't a huge difference. It would be centimeters of
7 difference. And about the finger, I don't know, I
8 haven't heard of anybody getting their finger stuck or
9 trying to stick their finger. It seems kind of
10 dangerous, so I'm not aware of that.

11 Q How about the space between the wall segments.
12 Can you tell me how much space there was between them?
13 And if it varies, let me know.

14 A Yeah, it varies. I saw one that was about six
15 millimeters. But it would vary. So those have little
16 or no space, but some of them would have a noticeable
17 amount of space.

18 Q Did you ever see enough space where you could
19 again stick your finger through it?

20 A Yeah.

21 Q Did you ever stick your fist through it?

22 A No. But you can unlock it, though, and slide
23 it in. And you can move freely between the classrooms.

24 Q Do you know the total number of classrooms in
25 Fremont?

1 that always the class that shared the plastic wall?

2 A Yes.

3 Q Did you ever hear noise from other classrooms
4 that did not share an adjacent wall, adjacent plastic
5 wall with the class you were in?

6 A I heard it from other classrooms, but not in
7 that room. It was always the one with the adjacent wall
8 that they would let the sound through more clearly and
9 loudly than the regular classrooms with permanent walls.

10 Q So you would hear noise and classrooms with
11 permanent walls as well, but just not to the same level?

12 A Only loud noises, yeah.

13 Q Can you give me an example of a loud noise that
14 you would hear in a class, that you would hear from a
15 class that you shared a permanent wall with?

16 A Somebody screaming like you can hear, or the
17 time that I, in my Spanish classroom that the blinds
18 collapsed, that the rooms adjacent to us had permanent
19 walls but they could hear it. That was the time the
20 whole blinds collapsed. They were metal blinds.

21 Q And what kind of sound would you hear from a
22 classroom in which your class shared a plastic wall
23 with?

24 A Whispering, talking. Just when people walk you
25 can hear it. Or you can hear the walls shaking or like

1 moving about.

2 Q So if somebody in a class, if somebody in an

3 adjacent class to yours that you shared a plastic wall

4 with was whispering in the class, you would hear it in

5 your classroom?

6 A If I was close to the wall, yeah. But last

7 minute I had to stick my ear -- you have to be at least

8 about a feet, between a feet and a two-foot range to

9 hear noises loud and clear, like really clear that you

10 can hear people in the conversation or people

11 whispering.

12 Q Is it fair to say that the further away you

13 were from the plastic wall the less you would hear from

14 the classroom?

15 A Yes.

16 Q Assuming first for a second that you were --

17 the plastic wall in a classroom was in the back of the

18 class, as you said, was fairly typical, if you were in

19 the front of the classroom what kind of noise would you

20 be able to hear from that class?

21 A It would be a fair noise. It wouldn't be loud

22 and it wouldn't be faint, but it would be a fair amount,

23 like. It wouldn't be as disruptive, but you could still

24 hear it clearly. Not loud and clear, but just clearly.

25 Q Could you hear whispering?

1 US history class.

2 Q Is that all you can remember right now, or are

3 you thinking about other ones?

4 A I'm thinking about other ones, but -- yeah,

5 that's all I can remember right now.

6 Q You said one of the classes in which you had a

7 plastic wall was your freshman year Spanish class.

8 A Yes.

9 Q Do you remember what grade you got in that

10 class?

11 A It was a [REDACTED]

12 Q And you said that your second semester

13 sophomore English class was also a class in which you

14 had a plastic wall. Do you remember what grade you got

15 in that class?

16 A A [REDACTED]

17 Q And you testified earlier that you got a [REDACTED] in

18 US history; is that right?

19 A Yes.

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 Q Just so I'm clear, your freshman year Spanish

24 class, was that a full-year course?

25 A Yes.

1 A Not whispering, but just regular talking.

2 Q Now you said that when you were in those

3 classes with plastic walls that the sound you would hear

4 would be distracting. Could you describe for me how the

5 noise was distracting?

6 A If you are supposed to be paying attention to a

7 lecture regarding -- on a specific topic, and you hear

8 somebody, most of the times it will be a teacher talking

9 about a different topic. That is the same as

10 somebody -- I mean it's the same as sitting next to

11 somebody who is having a conversation, socializing. So

12 it doesn't let you concentrate.

13 Q So were you not able to concentrate in the

14 classes in which you had class and there was a plastic

15 wall in that classroom?

16 A Most of the times I was unable, especially when

17 the other class was watching a movie. We would have to

18 ask them several times to keep it down, but they said

19 that they also have to keep it loud enough for them to

20 hear the movie, so -- that's when there would be

21 conflicts.

22 Q Can you give me some examples of classes you

23 had in classrooms in which there was a plastic wall?

24 A My sophomore English class, during the second

25 semester, my Spanish class during my freshman year, my

1 Q When you say you got a [REDACTED] was that for the full

2 year or for one of the semesters?

3 A That was the latest grade that I can remember.

4 I'm not sure if I got a [REDACTED] or another grade during the

5 first semester.

6 Q Any other complaints you have about noise at

7 Fremont other than what we've discussed?

8 A There was this incident in which I was present

9 during my senior year which I thought to be very unsafe,

10 which was the collapsing of the blinds. These are metal

11 blinds that are about, I can estimate 70 pounds of

12 weight. And they collapsed from the ceiling -- well,

13 not all the way from the ceiling, but a few inches away

14 from the ceiling, all the way to the floor and hit a

15 desk in which a student was sitting. They are very

16 heavy blinds. The whole thing collapsed including the

17 base of the blinds. It took us about 30 minutes to get

18 the class to focus again, and for ourselves to fix those

19 blinds.

20 Q I'm going to ask you to focus just on my

21 question. I'm asking if you had any other complaints

22 about noise at Fremont.

23 A Oh.

24 MS. LHAMON: Objection, argumentative. It's

25 not clear that response -- that that answer was not

1 responsive. It's really noisy when blinds fall from the
 2 ceiling to the floor.
 3 MR. ROSENTHAL: That's your presumption.
 4 MS. LHAMON: That is my presumption.
 5 THE WITNESS: They were really loud. I mean
 6 they were 70 pounds or more. I'm assuming it's aluminum
 7 blinds. Even just the shaking makes noise. So imagine
 8 them collapsing all the way to the floor and the base
 9 hitting the desk, that's fairly loud. We had complaints
 10 from the other classroom, what was that noise.
 11 Q (BY MR. ROSENTHAL) And was that a one-time
 12 occurrence when the blinds fell?
 13 A It happened twice that day. And after that we
 14 got somebody to take a look at it. And I don't know if
 15 they fixed it.
 16 Q So other than what you've testified about, do
 17 you have any other complaints about noise at Fremont?
 18 A Just the incident I also described about the
 19 TVs being too loud, even though they were not really too
 20 loud. It's just that the sound was, it was so easy to
 21 carry through a plastic wall, so --
 22 Q So another complaint of yours is that sound
 23 from TV in a classroom with which you shared a plastic
 24 wall carried into the classroom?
 25 A Yes, and that was made by me and the teacher.

1 Not just me, my classmates and the teacher, so --
 2 Q Do you have any other complaints about noise at
 3 Fremont that you haven't told me about?
 4 A Not that I can remember right now.
 5 Q Are you aware of any other complaints that
 6 anybody else has had regarding noise at Fremont that are
 7 different in substance than the ones you've told me
 8 about already?
 9 A Not that I can remember.
 10 Q Do you know what a multitrack school is?
 11 A I'm familiar with the tracking program, but not
 12 what a multitrack school is.
 13 Q Do you know during your four years at Fremont
 14 was Fremont on a traditional school year calendar for
 15 all four years? And by traditional school year
 16 calendar, I mean starting roughly in the end of summer,
 17 beginning of the fall, and running through the end of
 18 the spring, beginning of the summer?
 19 A Yes.
 20 Q Do you have an understanding as to whether
 21 Fremont was ever a multitrack school?
 22 A I'm not familiar with the multitrack term.
 23 Q Are you aware of, during your four years at
 24 Fremont, are you aware that any number of students were
 25 bussed to Fremont from other areas of Oakland?

1 A What do you mean bussed? You mean like they
 2 are leaving another area of Oakland to come to Fremont?
 3 Q Right.
 4 MS. LHAMON: I'm just going to object to the
 5 question as it's vague as to whether you are referring
 6 to taking a city bus to get to school or whether the
 7 school district is busing students in from other areas.
 8 THE WITNESS: Yeah, can you clarify that,
 9 please.
 10 Q (BY MR. ROSENTHAL) Sure. Are you aware of
 11 there being any students who attended Fremont who were
 12 bussed to the school and did not reside in the
 13 neighborhood that Fremont was intended to serve?
 14 MS. LHAMON: Well, now the question calls for
 15 speculation, and otherwise I have the same objections.
 16 THE WITNESS: Yeah. I wasn't aware, because I
 17 know people come from at least, see, I know people who
 18 lived about 20 blocks away from school, I guess, because
 19 that was the closest one that was there. But I'm not
 20 aware of anybody coming from extremely far distances
 21 into the school.
 22 Q (BY MR. ROSENTHAL) Are you aware of any
 23 students who reside in the neighborhood that Fremont
 24 served but they were bussed to schools other than
 25 Fremont?

1 A Yes.
 2 Q Can you tell me about those situations that you
 3 are aware of?
 4 A I know students that live fairly close to
 5 Fremont and go to schools like Skyline or Oakland Tech
 6 and those other schools.
 7 Q That first school, can you spell that for me?
 8 A Skyline, S-K-Y-L-I-N-E.
 9 Q And do you know why students went to Skyline
 10 rather than Fremont?
 11 A They said it was better and they had more space
 12 over there.
 13 Q So did they go to Skyline voluntarily?
 14 A Some of them did. Some of them would transfer
 15 while attending to Fremont, they'll transfer to other
 16 schools.
 17 Q When they transferred, were they transferring
 18 voluntarily?
 19 MS. LHAMON: Calls for speculation.
 20 THE WITNESS: I don't know.
 21 Q (BY MR. ROSENTHAL) Are you aware of any
 22 instance where a student was forced to go to Skyline?
 23 A I'm not aware of that.
 24 Q Do you have an understanding as to why some
 25 students went to Oakland Tech rather than Fremont?

1 A I'm basing my assumptions in testimonies I
 2 heard from students. They'll tell me that Skyline has
 3 better programs or they'll say that Skyline has more
 4 space, because literally the school is bigger than
 5 Fremont. And those are the type of issues they'll bring
 6 up when they say, when they'll ask why are you
 7 transferring. They'll come up in a regular
 8 conversation, like socializing.

9 Q Again I just want you to try to listen to my
 10 questions. I was asking about Oakland Tech in that
 11 question. Do you know why students went to Oakland Tech
 12 rather than Fremont?

13 A I'm not aware of that.

14 Q Do you know if students went to Oakland Tech
 15 instead of Fremont voluntarily?

16 MS. LHAMON: Calls for speculation.

17 MR. ROSENTHAL: I'm asking if he knows.

18 MS. LHAMON: Same objection.

19 THE WITNESS: I don't know.

20 Q (BY MR. ROSENTHAL) You don't know?

21 A I don't.

22 Q Have you ever heard of an instance where a
 23 student was forced to go to Oakland Tech rather than
 24 Fremont?

25 A When you say forced, you mean that there is so

1 much space here so they have to go over here, or do you
 2 mean that the administration told them not to go to
 3 Fremont during the school year or transferred them?

4 Q I'm looking for a situation where a student had
 5 wanted to attend Fremont, and was unable to do so, and
 6 went to Oakland Tech instead.

7 A Not specifically to Oakland Tech, but to other
 8 schools, yes.

9 Q Can you give me, can you tell me about those
 10 situations, where a student wanted to go to Fremont and
 11 was not able to do so?

12 A During the first school, first weeks of school,
 13 school get too full, so they said that they have no more
 14 space for students. Either they'll get on the waiting
 15 list to see if anybody drops out or transferred out of
 16 Fremont to see if there is a space available for them.
 17 Sometimes they'll wait or they'll just decide to go to
 18 other schools.

19 Q Are you aware of any instance where somebody
 20 who decided to wait was still unable to go to Fremont?

21 A The one that I'm aware of was at least two
 22 weeks. After two weeks they decided they just go to
 23 another school.

24 Q That's the only instance you are aware of?

25 A That's the only one I heard about from my

1 friend. I think it was her brother.

2 Q Do you remember his name?

3 A No, I don't remember his name.

4 Q Were there any problems at Fremont regarding --
 5 we'll try to deal with them together, heat and air
 6 conditioning?

7 A Yeah, several. Okay. During the spring some
 8 classrooms that were facing directly the street and were
 9 hit directly by sunlight will get extremely hot. There
 10 is no ventilation. And opening the window would do
 11 little or no help. So this causes the room to overheat.
 12 And teachers are required to lock their doors after the
 13 tardy bell. So this contributes to the temperature
 14 increase in the classroom.

15 And the ROTC room, which is located directly
 16 under the office, I don't know whose office, but there
 17 is an office above us, there is piping exposed and there
 18 is no insulation, because you just -- walls like brick
 19 walls. So if it's hot, and since you are underground,
 20 it's going to get -- it will get really hot. And during
 21 the winter it will get extremely cold to like a
 22 ventilation, when it's underground, so -- it's little or
 23 no chance of that room to get warmed up by sunlight or
 24 any other source of heat.

25 Q Is there air conditioning in Fremont?

1 A Yes.

2 Q Is it located throughout the school or is it in
 3 particular areas of the school?

4 A It's located throughout the school, but in some
 5 rooms it doesn't work.

6 Q Are there any classrooms at Fremont that don't
 7 have air conditioning?

8 MS. LHAMON: Calls for speculation.

9 THE WITNESS: At the same time that I was there
 10 there were several classrooms without air conditioning.
 11 And it would usually be the ones with the plastic
 12 dividers. So there would be rooms with air
 13 conditioning, there will be rooms without it. The
 14 classroom had the ventilation vent, either the vent, the
 15 ventilation ducts, but there would be no air running
 16 through it. So it gives you the impression that it
 17 wasn't working.

18 Q Are you aware of any classroom at Fremont that
 19 did not -- that was not hooked up for air conditioning?

20 A I'm not aware if it was hooked or not, but I'm
 21 aware that it didn't work in some classrooms.

22 Q When you say didn't work in some classrooms,
 23 did it not work during the entire four years you were at
 24 Fremont, or was it limited time?

25 A In my Spanish class during my junior year I

1 went without air conditioning or heating through the
2 whole year. And it wasn't fixed until I was in my
3 senior year during the, almost the end of the second
4 semester. So I don't know if it worked before I got
5 there or not. But it remained unoperational for a whole
6 year-and-a-half.

7 Q But at some point during your second semester
8 of your senior year the heating and air conditioning in
9 your Spanish classroom was fixed?

10 A At the very end of the semester, the second
11 semester.

12 Q And after it was fixed did it function
13 properly?

14 A There was no way to control it, so sometimes it
15 would get like a meat locker it would get so cold. And
16 when you opened the door and you stepped outside, there
17 would be this overwhelming heat and that makes you feel
18 sick to the sudden change of temperature.

19 Q So after it was fixed you say it wasn't
20 functioning properly?

21 A Yes. Because -- I'm not sure how it works. So
22 they have to control the temperature in one room from
23 another room or the office or I don't know where the
24 controls were. So if one room is complaining that the
25 classroom is too hot, they'll turn on the air

1 saying that the heating or air conditioning in any of
2 the portables was not functioning?

3 A No.

4 Q You've given me an example of the air
5 conditioning and heat not working in your Spanish class.
6 Are there any other classes that you are aware of that
7 either the heat or the air conditioning was not
8 functioning?

9 A The architecture and designing classroom .

10 Q Is that one classroom?

11 A That's one classroom.

12 Q And can you tell me about the problems with
13 regard to heating and air conditioning in that class?

14 A Well, it's the same issue as the other ones.

15 It was usually hot, because it was hit by direct
16 sunlight. Since the air conditioning was not working,
17 there was no controls for it, so the teacher would take
18 the initiative in bringing his own fan, which did little
19 or no help to cooling or improving the situation.

20 Q Can you tell me how long you were in the
21 architecture and design class? Was that a semester, a
22 year-long class?

23 A It's a semester course, but I took it three
24 semesters because it has three different sections.

25 Q So you took it for -- were you in the same

1 conditioning with -- I think it turns on for the whole
2 building. So regardless whether you are hot or cold, it
3 turns on for you.

4 Q Do you know if there was central air
5 conditioning at the school?

6 A What do you mean by central?

7 Q Do you have an understanding as to what central
8 air conditioning is?

9 A No. The only rooms that I'm aware of that had
10 individual controls for air and heating were the
11 portables, because they were new.

12 Q So the portables had their own controls for
13 heating and air conditioning?

14 A Yeah, because they were separate to the
15 buildings. They were individual structures.

16 Q Are you aware of any instance when the heating
17 and air conditioning in the portables was not
18 functioning?

19 A I'm not aware of that.

20 Q Have you ever heard anybody say that the
21 heating or air conditioning in any of the portables was
22 not functioning?

23 A I'm not aware of that.

24 Q Let me ask the question again, it's a yes or no
25 question. Do you know, have you ever heard of anybody

1 classroom for that class each of the three semesters
2 that you took it?

3 A Yes.

4 Q And can you tell me where that classroom is
5 located?

6 A It's at the very top of the school, so it's
7 like in the 4300 area.

8 Q Was it in a particular building?

9 A It's sort of those portables that I described
10 that were supposed to be temporary, but they became
11 permanent, so they just put windows, and things like
12 that.

13 Q And were there any problems with regard to
14 heating in that classroom?

15 A There was no heating.

16 Q So the heating didn't function in that
17 classroom?

18 A Not that I ever noticed it.

19 Q Did that classroom ever get uncomfortably cold?

20 A Yes.

21 Q Can you tell me about that?

22 A It would be usually during winter or the rainy
23 season. So you just get to a classroom, you sit on the
24 desk, work on the computer, they are regular chairs, it
25 gets really cold. They would be regular plastic chairs.

1 So every time -- it was basically cold.
 2 Q So it's your opinion that neither heating nor
 3 air conditioning functioned in that classroom?
 4 A Not that I ever noticed or anybody else around
 5 me ever noticed.
 6 Q And was that a problem that went on during all
 7 three semesters that you attended class in that
 8 classroom?
 9 A Yes.
 10 Q Are you aware of any attempt to repair the
 11 heating or air conditioning in that classroom?
 12 A Well, repairs and all the modifications
 13 occurred during the summer, so if there was, I'm not
 14 aware of it, because I wasn't there.
 15 Q When you say the summer, do you mean the summer
 16 that just concluded, the summer of 2001?
 17 A No. I mean like I say, every modifications or
 18 repairs go during the summer. So when they have
 19 projects or anything regarding fixing the school or
 20 changing, it goes through the summer. So I don't know
 21 if they attempted or they didn't.
 22 Q Are you aware of any repairs being made to the
 23 heating or air conditioning in that classroom during the
 24 school year?
 25 A During the school year, no. They avoid working

1 on structure during the school year to avoid distracting
 2 or disrupting classes. But they do it, though, in some
 3 instances, if it's an emergency or --
 4 Q Just going back to your Spanish class for a
 5 second. You said that the, both the air conditioning
 6 and the heat didn't work in that classroom. Did that
 7 classroom ever get -- we've been focusing on class
 8 getting hot. Did that class ever get uncomfortably
 9 cold?
 10 A Usually, because I'll take the class in the
 11 morning also, so it was the same classroom. So it would
 12 be extremely cold. And it all depended on the weather.
 13 Q Other than your Spanish classroom and your
 14 architecture design classroom, were there any other
 15 classrooms that you experienced problems with the heat
 16 and/or air conditioning?
 17 A My advanced algebra classroom.
 18 Q Before we get to that, I'm sorry, can I just
 19 ask you where your Spanish classroom was located, the
 20 Spanish classroom you've been talking about?
 21 A In the lower bottom of the 1200 building. The
 22 room number is 1111.
 23 Q Now we can turn to your advanced algebra
 24 classroom. Why don't you first tell me where that
 25 classroom is located.

1 A It's 1200 building on the second floor. I
 2 don't recall the room number.
 3 Q Can you tell me what problems you experienced
 4 in that class with regard to heating or air
 5 conditioning?
 6 A It wouldn't get very cold, but regarding to
 7 heat it would get extremely hot. Extremely hot that it
 8 will make you get a headache. Or in the worse cases if
 9 you suffered migraines from time to time it was
 10 basically was likely to trigger one. And since it was
 11 by the sun, like it was facing directly the street, you
 12 would get direct sunlight rays hitting the desk or the
 13 whole classroom, so it would get extremely hot. The
 14 classroom will get extremely bright. Your eyes will
 15 hurt. You get a headache. Feel indisposed, feel like
 16 you just want to go home, and you get sleepy or you feel
 17 like are you going to faint due to the heat.
 18 Q Just so the record is clear, did your advanced
 19 algebra class ever get uncomfortably cold?
 20 MS. LHAMON: Asked and answered.
 21 MR. ROSENTHAL: I don't think it was answered.
 22 I don't think it was asked.
 23 THE WITNESS: Okay.
 24 MS. LHAMON: Okay. Answered.
 25 THE WITNESS: We never really had problems in

1 that classroom. Teacher would just advise us to bring a
 2 coat.
 3 Q (BY MR. ROSENTHAL) So that classroom did get
 4 cold?
 5 A Yes.
 6 Q Can you tell me about the instances where that
 7 classroom got uncomfortably cold?
 8 A During winter.
 9 Q Did the heat not function in that classroom?
 10 A I don't know where in the classroom, but I know
 11 other classrooms around it could function. So, because
 12 I, that was my last class, it was usually in the
 13 afternoon. It was not as cold as if it was in the
 14 morning. So usually by the afternoon not everybody, not
 15 all the heat is functioning. They usually turn it off
 16 or something.
 17 But I know the adjacent rooms had air
 18 conditioning, and they had heat functioning regularly.
 19 And it wasn't until they started fixing the air
 20 conditioning structure schoolwide that we started
 21 getting air conditioning. So I don't know if the heat
 22 functions or not. Like I said, that happened also at
 23 the very end of the semester, the second semester of my
 24 senior year.
 25 Q And just so the record is clear, so is it your

1 testimony that the heat in your advanced algebra class
2 did or did not function, or was it just not functioning
3 for a period of time?

4 A I don't know if it functioned or not. But it
5 wasn't turned on by -- in the whole time that I was in
6 the class.

7 Q And that classroom did not have an individual
8 control as far as turning on the heat?

9 A No.

10 Q And do you remember days where the classroom
11 was uncomfortably cold?

12 MS. LHAMON: Asked and answered.

13 THE WITNESS: Yeah, not in that class, because
14 that's -- I took it, it was my last class, so it would
15 be right after lunch or something.

16 Q (BY MR. ROSENTHAL) Do you recall -- I'm sorry.

17 A So it wouldn't be as cold as it was in the
18 morning. So I wouldn't know if it got uncomfortably
19 cold for other classes. But for mine it wasn't.

20 Q Is your testimony that when it was cold in your
21 advanced algebra class the heat was not turned on, but
22 the heat was turned on in --

23 A In adjacent classrooms.

24 Q -- in the adjacent classrooms?

25 A Yes.

1 improvement in your advanced algebra class as far as
2 functioning of the heating and air conditioning?

3 A We still didn't have any control over it. But
4 it wouldn't get extremely hot. They put some, I'm
5 assuming it's an individual temperature control which
6 shows the temperature, but it's on a plastic box, and
7 it's under a key, which the teacher doesn't have one, so
8 we don't have any access to it.

9 Q After the repairs were made to the air
10 conditioning and heating, did the classroom ever -- was
11 the classroom ever uncomfortably hot?

12 A It was towards the very end of the year, so
13 there was fewer, few times that I was in the classroom.
14 But at the time that I was, it wasn't -- it usually was
15 pretty cold, the air conditioning.

16 Q Just so the record is clear, so after the
17 repairs were made there were instances where that
18 classroom was uncomfortably hot, or were there not?

19 A There were not.

20 Q Were there instances where that classroom was
21 uncomfortably cold after the repairs were made?

22 A Yes, couple times. And as soon as we're
23 usually, including me, we were in our summer clothes and
24 it was really cold. And there was no ways for us to,
25 there was no way for us to control the temperature in

1 Q Is that your testimony?

2 A Yes.

3 Q Did anybody ever complain to the teacher the
4 the class was uncomfortably cold on those occasions?

5 MS. LHAMON: Calls for speculation.

6 A Yeah, the teacher, I don't know if he took any
7 action or anything. Because they usually called the
8 office or something. But ours didn't function, so --
9 and the teacher, she usually would just tell us to bring
10 a coat. Because she didn't want to waste any class time
11 dealing with those issues.

12 Q And did you ever bring your coat to that
13 classroom?

14 A Yeah, very often.

15 Q Can you tell me what year we're talking about
16 your advanced algebra class?

17 A Senior year.

18 Q Was it a full year class?

19 A Yes.

20 Q And you testified earlier that at some point
21 towards the end of your second semester there were some
22 repairs made on the heating and air conditioning at the
23 school; is that right?

24 A Yes.

25 Q After the repairs were made was there any

1 the room because we had not, we had no access to the
2 controls.

3 Q Are you aware of what the classroom
4 temperatures were in the adjacent classrooms on the days
5 it was uncomfortably cold in the classroom?

6 A No, I'm not aware of that.

7 Q You testified earlier that the teacher of the
8 class -- why don't we get the teacher's name. Could you
9 tell me what the teacher's name is for that class?

10 A For what class?

11 Q Advanced algebra. I'm sorry.

12 A Mrs. Reyes.

13 Q R-E-Y-E-S?

14 A Yes.

15 Q Now you testified that Mrs. Reyes told the
16 students to bring coats to class when it was cold in the
17 classroom.

18 A She only said it once. But it was implied if
19 it was cold you have to bring your, if you want to be
20 comfortable or something you have to bring your own
21 coat.

22 Q And was this before or after the repairs were
23 made to the air conditioning? Because you testified
24 that after the repairs were made that the classroom was
25 frequently very cold.

1 A Yeah, but that was before.
 2 Q Was it before, she said that beforehand?
 3 A Yeah, before the repairs.
 4 MS. LHAMON: How you doing, Jose? Want a
 5 break, or want to keep going?
 6 THE WITNESS: No, let's just keep going.
 7 Q (BY MR. ROSENTHAL) Now again I'd like to you
 8 focus on your advanced algebra class, we've been
 9 primarily talking about the situations where that
 10 classroom was uncomfortably cold both before and after
 11 the repairs. And you briefly mentioned that the
 12 classroom was also uncomfortably hot at times.
 13 A Yes, but that was prior to the repairs.
 14 Q Right. Is it your testimony that the air
 15 conditioning in the advanced algebra classroom was not
 16 functioning for the entire time you had the class, or
 17 was it not functioning for just a period of time?
 18 A There was a period of time where it wasn't
 19 functioning. And there was a period of time where I
 20 assume it was malfunctioning, because the temperature
 21 was different from the adjacent classrooms.
 22 Q Was there ever a period of time where the air
 23 conditioning in that classroom was functioning properly
 24 prior to the repairs?
 25 MS. LHAMON: Calls for speculation. Are you

1 cold?
 2 A Yeah, in some winters. Like during the winter,
 3 there was a couple instances where it was uncomfortably
 4 hot -- I mean cold.
 5 Q So even though it's your testimony that heat
 6 was functioning in that classroom, the classroom was
 7 still uncomfortably cold on some occasions?
 8 A Yeah, on some occasions, but not always.
 9 Q And can you tell me, is your US history class
 10 in the 1200 building?
 11 A 3200.
 12 Q And you said that you didn't notice any air
 13 conditioning in your US history class. Did that
 14 classroom ever get uncomfortably hot?
 15 A Yes.
 16 Q Can you tell me about those instances.
 17 A Well, it was extremely hot, the conditions were
 18 similar to the ones I described before. And that
 19 teacher will use it as an excuse not for us to do any
 20 work. He would say it's too hot, try to read the
 21 newspaper, and that's all he'd say. So we would not
 22 carry on with the quote unquote "lecture" that he gave.
 23 Q Were there vents in the US history class that
 24 would indicate that there might be, that it might be
 25 hooked up to air conditioning?

1 limiting it to the time that Jose Garcia was in that
 2 classroom?
 3 MR. ROSENTHAL: Yes.
 4 THE WITNESS: Well, prior to the repairs it
 5 wasn't functioning at all, so --
 6 Q (BY MR. ROSENTHAL) So it didn't function at
 7 all for the entire time prior to the repairs being made?
 8 A Yes.
 9 Q Any other classrooms at Fremont where air
 10 conditioning or heat was a problem that you haven't told
 11 me about?
 12 MS. LHAMON: Calls for speculation. He wasn't
 13 in every classroom. But if the question is limited to
 14 classrooms that he was in it would make more sense.
 15 THE WITNESS: I can only speak for the
 16 classrooms I've been in, so it was usually the ones in
 17 the 1200 building and my US history classroom. We never
 18 noticed any air conditioning functioning there.
 19 Q (BY MR. ROSENTHAL) Any problems with the heat
 20 in your US history class?
 21 A I don't recall any problems with the heat,
 22 because when they turn on the heat, I'm not sure if it's
 23 schoolwide or buildingwide, so -- but it was
 24 functioning.
 25 Q So is your US history class ever uncomfortably

1 A Can you elaborate on that question, please?
 2 Q Were there any vents in the classroom where you
 3 had US history?
 4 A Vent, yeah, there was -- I don't recall how
 5 many, but I do recall seeing some vents.
 6 Q Do you recall, can you tell me if those vents
 7 look similar to the vents in other classrooms in which
 8 there was air conditioning?
 9 A Yes.
 10 Q Did they look similar?
 11 A Yes, they were similar, but they would only
 12 work when the heat was turned on.
 13 Q So when you said that you never noticed any air
 14 conditioning there, you never noticed any cool air
 15 coming into the classroom; is that what you meant?
 16 A Yes.
 17 Q Earlier you said that some of the classrooms
 18 that became uncomfortably hot were classrooms that were
 19 in the direct sunlight.
 20 A Right. Or adjacent to the street, like facing
 21 the street.
 22 Q And were the classrooms adjacent to the street
 23 the classrooms that were in the direct sunlight?
 24 A Yes.
 25 Q Was your US history class one of those classes?

1 A No, but it was, it was also hit by direct
2 sunlight, but it was coming from the courtyard. It's
3 facing the courtyard.

4 Q Any other classrooms at Fremont where heating
5 or air conditioning was a problem?

6 MS. LHAMON: Calls for speculation to the
7 extent that he wasn't in every classroom.

8 THE WITNESS: Yeah, like I said earlier, I can
9 only give testimony of the ones I've been in, so --
10 that's about all of the classrooms that I'm aware of.

11 Q (BY MR. ROSENTHAL) Did you ever hear any other
12 students or teachers say that there was a problem with
13 the heat or air conditioning in their classrooms?

14 A I hear students, but they wouldn't tell me room
15 number or specify which room.

16 Q Did you ever hear any teachers say that they
17 had any problems with heating or air conditioning in
18 their classrooms?

19 A Yes. And during their conversation they will
20 sometimes argue about how does your classroom have air
21 conditioning and mine doesn't, or how come your
22 classroom has heating and mine doesn't, and it would be
23 an ongoing argument between teachers.

24 Q And do you know what classrooms they were
25 referring to?

1 A No.

2 Q Do you recall any specific instances of those
3 conversations between teachers?

4 A Well, my advanced algebra teacher had
5 previously been my sustained silent reading teacher and
6 she would always have conversations with the teachers
7 adjacent to her room. And she was always saying that my
8 room is really cold, isn't it. And the teacher was oh,
9 really, mine is fairly warm. And it was the one
10 adjacent. Or they would always have air conditioning
11 when we didn't. Sometimes the hallways will be cooler
12 than the classroom that I was in.

13 Q So the instance you just described you recalled
14 Mrs. Reyes speaking to other teachers about the air
15 conditioning and heat in her classroom?

16 A Yes.

17 Q And did the teacher she spoke to say that the
18 heat and the air conditioning in their classrooms was
19 functioning properly?

20 A Yes.

21 Q Do you ever remember an instance where
22 Mrs. Reyes was talking to another teacher and they said
23 that the heat or air conditioning in their classroom was
24 also not functioning properly?

25 A I don't recall having any conversation like

1 that. But I don't recall anyone saying that.

2 Q Do you recall any other specific instances of
3 teachers discussing problems regarding heating or air
4 conditioning in their classes?

5 A Yes. My Spanish teacher. He'll complain
6 through the phone to the office, he'll talk to other
7 teachers about it.

8 Q Can you tell me the Spanish teacher's name?

9 A Dr. Abeyta.

10 Q And did you just hear Dr. Abeyta's end of the
11 conversation, or did you hear the conversation on the
12 other end?

13 A No, I just hear his part of the conversation.
14 I also heard his complaints on the phone while he talked
15 to the office.

16 Q And did this situation, was the problem with
17 heating or air conditioning that Dr. Abeyta was
18 reporting to the office get resolved after he informed
19 the office in any way?

20 A No. The problem wasn't solved until the
21 repairs, which were at the end of the second semester in
22 my senior year.

23 Q So other than the classes you've identified for
24 me, you are not aware of any other classes at Fremont in
25 which there were any problems with regard to the heating

1 or air conditioning?

2 A Not that I can recall or I know of.

3 Q So as you sit here today you are not aware of
4 any other classrooms that had any problems with regard
5 to air conditioning or heating?

6 A Yes.

7 Q With regard to the classrooms you've described
8 to me which there were problems with respect to it
9 getting uncomfortably hot, were all of those classrooms
10 classrooms that were, as you called it, in direct
11 sunlight?

12 A Most of them were.

13 Q Were there any that you identified that were
14 not?

15 A Can you mention the ones that I --

16 Q Sure. Why don't we take them one by one. You
17 mentioned your Spanish class. Was that in direct
18 sunlight?

19 A Yes.

20 Q You mentioned the architecture design
21 classroom. Was that in direct sunlight?

22 A No.

23 Q You mentioned your advanced algebra class. Was
24 that in direct sunlight?

25 A Yes.

1 Q And you mentioned your US history class which I
2 think you already testified was in direct sunlight.

3 A Yes.

4 Q Even though I know you just told me that there
5 are no other classrooms that you can recall right now
6 that -- where there was a problem with regard to heating
7 or air conditioning, I think earlier you mentioned your
8 ROTC classroom.

9 A Right.

10 Q Can you tell me about the problem that existed
11 in that class?

12 A There was no ventilation because it's
13 underground. So I just know natural or artificial
14 ventilation, besides windows, which is a few located at
15 the very top of the classroom, which would be the floor
16 of the school.

17 Q Did your ROTC classroom -- well, first, why
18 don't you tell me where the ROTC classroom is located.

19 A It's under the office. I don't know whose
20 office it is, but I know it's directly, the classroom,
21 lecture room is directly under the, I think it's the
22 faculty's bathroom. Because you can see the piping.
23 And when they flush the toilet you can hear the noise.

24 Q Is it in a particular building, is it in the
25 main building?

1 Q And how many of those were in the class?

2 A They were not in the class, they were in the
3 office. The office is separate from the classroom.

4 Q So there were no individual heaters in the ROTC
5 class?

6 A Not while I was present.

7 Q Was the office that you are referring to where
8 these heaters were connected to the ROTC classroom?

9 A There is a hallway in-between, so they are
10 separate from the classrooms, and the shooting range.

11 Q Was there air conditioning in the ROTC
12 classroom?

13 A No.

14 Q Can you just tell me what semester or year you
15 took the class in the ROTC classroom. Was the class you
16 were taking called ROTC?

17 A Yes.

18 Q Can you tell me when that was?

19 A Freshman year. I took it for two semesters.

20 Q Both semesters in your freshman year?

21 A Yes.

22 Q The ROTC classroom ever become uncomfortably
23 cold?

24 A A few times it really got really cold,
25 extremely cold.

1 A The main building, the office. So I was like,
2 the main entrance, there is the office, so you go around
3 which will be the back of the main office, right under.
4 There is some stairs that lead down to the classroom.

5 Q Did the ROTC classroom have heating?

6 A No. They would usually bring individual or
7 those electronic heaters. But --

8 MS. LHAMON: You were indicating with your
9 hands. Were you indicating a size when you were doing
10 that or --

11 THE WITNESS: Yeah. And I don't know the exact
12 name of them or what they are really called. Just the
13 kinds that you plug into an outlet and then the wires
14 heat up and they produce warmth. They are fairly small.
15 And they were used by the staff of the ROTC, which had
16 their own office and the classrooms.

17 MS. LHAMON: If you wanted us to be able to
18 understand the size that you were indicating with your
19 hand later, you need to tell us an approximate size.

20 THE WITNESS: If it's necessary I can give you
21 an estimate of the size, but --

22 Q (BY MR. ROSENTHAL) Why don't you go ahead and
23 do that.

24 A Okay. So it would be about a feet-and-a-half
25 by 18 inches tall.

1 Q When you say a few times, how many times are we
2 talking about?

3 A Four times a week. It all depended on the
4 weather. I was there during only one winter, so --

5 Q So four times a week during the winter?

6 A Yes.

7 Q How about the rest of the school year?

8 A The rest of the school year was either hot or
9 extremely hot.

10 Q Was the classroom temperature in the ROTC
11 classroom ever comfortable?

12 A During fall. But it would be sometimes during
13 fall, especially in the Bay Area when it's really cold.
14 And during fall it's usually the temperature is usually
15 irregular. So it would be, I'd say, about two days out
16 of five during the fall.

17 Q Two days out of five during the fall the
18 temperature in the class would be comfortable?

19 A Yeah, and it all depended on the weather.

20 Q Was the temperature in the classroom
21 approximately the same temperature that was outside of
22 the classroom?

23 A Yes, like on the outside.

24 Q Right. I mean outside of the school, the
25 outside temperature.

1 A Yes.

2 Q Were there ever any instances when the
3 classroom temperature and the ROTC classroom was
4 significantly warmer than the outside temperature?

5 A Yes, during the first weeks of school, and
6 during spring, all the way through the summer due to the
7 lack of ventilation.

8 Q And did the temperature in the ROTC classroom
9 ever get significantly colder than the temperature
10 outside?

11 A It will only be a few degrees in difference,
12 but it was very cold in the winter.

13 Q Just so I'm clear, when you say really cold,
14 what are you talking about as far as can you give me an
15 estimate as to temperature?

16 A Around 60, high 50s, high high.

17 Q When you say very hot or extremely hot, can you
18 give me an estimate as to what kind of temperature you
19 are referring to?

20 A High 90s and above.

21 Q And would temperatures between those ranges,
22 would you consider those temperatures comfortable?

23 A I considered 80s uncomfortable, but not
24 extremely hot. But they are uncomfortable, especially
25 in a room where there is no ventilation, because you are

1 design teacher, they'd bring fans which did little or no
2 help to the conditions. But that was about the only
3 teachers that I remembered taking any steps, any self
4 initiative to improving the classroom, the conditions.

5 Q (BY MR. ROSENTHAL) No other teachers brought
6 fans that you are aware of?

7 A No, not that I can remember.

8 Q Do you know where they got the fans from?

9 A Their houses.

10 Q How do you know that?

11 A Because my -- Dr. Abeyta told us.

12 Q How about Mr. Dulkan?

13 A I don't know where he got his from. It was, it
14 looked like an industrial fan. It was fairly big.

15 Q Do you know if he got it from the school?

16 A I don't know if he got it from the school. But
17 if that was the case, shouldn't they be enough and
18 shouldn't they be available for the rest of the teachers
19 without air conditioning?

20 Q You mentioned earlier that in your ROTC class
21 in the nearby office there were individual heaters. Did
22 any of your teachers use individual heaters to alleviate
23 a situation where a classroom was too cold that you are
24 aware of?

25 A I don't recall.

1 underground. And anything below 60, low 70s, would be
2 considered chilly or cold when you have no source of
3 heat in the classroom.

4 Q I'm sorry, I didn't quite get that. Anything
5 below 60 and then you said something about 70s?

6 A Low 70s.

7 Q So anything above -- I'm trying to narrow this
8 down. So above the low 70s to somewhere in the 80s is a
9 range of temperature that you would consider to be
10 comfortable?

11 A Yes, anything --

12 Q And below the low 70s is what you'd call
13 uncomfortably cold?

14 A It will be cold, yes. Of course it would be
15 cold.

16 Q In the classes where the temperature became
17 uncomfortable, whether it was uncomfortably cold or
18 uncomfortably hot, you've given me some examples but I
19 just want to focus on those now.

20 Can you tell me if any of your teachers took
21 any steps to attempt to resolve the temperature problem
22 in the class?

23 MS. LHAMON: Calls for speculation.

24 THE WITNESS: Some of my teachers, such as
25 Dr. Abeyta and Mr. Dulkan, which was my architecture and

1 Q Did any of the, just going back to your ROTC
2 class for a second, you said there were individual
3 heaters in the office that was somewhat nearby that
4 classroom. I'm just trying to understand why you
5 brought it up. Was there -- could you feel the heat
6 from the individual heaters?

7 A No. They were visible. They were close to
8 their desks.

9 Q And did they heat up the classroom at all?

10 A No, not the classroom, the office. So whenever
11 I go ask Major Bryant for a question about the
12 assignment or regarding any errand that I might be
13 running for the instructor, I walk into the office and
14 I'd notice there it would be fairly warmer than the
15 classroom.

16 Q On hot days did any teachers in classrooms
17 where the class temperature was too hot, did they open
18 the class windows?

19 MS. LHAMON: Calls for speculation to the
20 extent that he wasn't in every classroom. But you can
21 answer about your own classrooms.

22 THE WITNESS: Yeah, in the classrooms that were
23 we always opened the windows. But every morning we'd
24 come in and we'd find them closed. So even if it was in
25 the early morning when we opened the classroom it would

1 be extremely hot because there was no ventilation
2 overnight. Or they didn't allow any time for the
3 classroom to cool down.

4 Q (BY MR. ROSENTHAL) Did opening the windows
5 alleviate the heat problem to some extent?

6 A No. Because the temperature outside would
7 often be either as hot or hotter than in the classroom.
8 So sometimes it would make it worse.

9 Q You said before that some classrooms had no
10 ventilation. Did opening the windows create some
11 ventilation?

12 A It will allow the air to circulate, but it
13 wouldn't decrease the temperature significantly.

14 Q Would it, upon occasion, decrease the
15 temperature, at least how the classroom felt
16 temperaturewise on occasion?

17 A If it was windy outside.

18 Q Did you think opening the windows helped in the
19 classroom that was hot, or did you think that it did not
20 help?

21 A It all depended on the conditions, on the
22 environment.

23 MS. LHAMON: I could use a break when you are
24 at a stopping point.

25 MR. ROSENTHAL: That's fine. We can stop here.

1 what do you call it, the health clinic was on the lower
2 part of the gym, which was the part that was in
3 construction. So we pretty much stayed out of the
4 health office for about a semester. Later on they
5 opened up provisional health clinic or service, health
6 service providing facility located adjacent to the gym.

7 Q Do you recall when the repairs to the gym were
8 being made during your time at Fremont?

9 A They started the summer before entering my
10 senior year, and they were ongoing all the way through.
11 Wow, I don't know if they finished the ones in the gym.
12 But it took a whole semester to repair the library,
13 which was completely closed. They say that they were
14 wiring, they were putting new carpet, and they say that
15 they were rewiring again. So it was closed for a
16 semester and the whole month of January.

17 Q And when you say it was closed for a semester
18 and the month of January, you are referring to the
19 library?

20 A Yes.

21 Q Is the library in the same building as the gym?

22 A No, it's located on the -- it's located above
23 the main office.

24 Q Let's focus in on the repairs being done to the
25 gym building first, and then we'll discuss whatever is

1 I may have a few things to rap up in this area.

2 (Recess taken from 3:08 to 3:21)

3 Q (BY MR. ROSENTHAL) Mr. Garcia, before we took
4 our break we were discussing air conditioning and
5 heating at Fremont. And you told me that during your
6 second semester of your senior year there was some
7 repairs being done to the heating and air conditioning
8 systems at Fremont; is that right?

9 A Yes.

10 Q What was your understanding of the purpose of
11 those repairs?

12 A To make sure that air conditioning and heating
13 services were provided to each one of the classrooms.

14 Q And were any other repairs done with regard to
15 Fremont's facilities in connection with those repairs,
16 or was it limited just to the purposes you've described?

17 MS. LHAMON: Calls for speculation.

18 THE WITNESS: Yeah, during that particular
19 period of time there was other repairs that I noticed.
20 But earlier there had been some ongoing repairs
21 regarding the gym, the inside area of the gym, which
22 includes the lower part of the gym and the basketball
23 court. I think that was there where they were
24 repairing.

25 But the thing was that the nurse's office and

1 being done to the library. You said the gym repairs
2 were started during the summer prior to your senior
3 year.

4 A Yes.

5 Q Were those repairs ever completed?

6 A Not during my senior year.

7 Q So by the time you graduated those repairs were
8 still ongoing?

9 A Yes.

10 Q Was the gym open at all during your senior
11 year?

12 A I didn't have gym, so I wasn't aware if it was
13 closed or if it was only restricted access to that area.

14 Q Do you recall when the repairs to the library
15 were started?

16 A During the summer of -- before entering my
17 senior year.

18 Q And those repairs were completed after January
19 of 2001?

20 A At the end of January.

21 Q And how did the library look after the repairs
22 were done?

23 MS. LHAMON: The question is vague, but go
24 ahead, Jose.

25 THE WITNESS: Okay. Compared to the previous

1 condition it was looking good.

2 Q (BY MR. ROSENTHAL) Okay.

3 A It had a lot of improvements including
4 lighting, computers, and Internet access.

5 Q Other than the repairs that you've mentioned,
6 are you aware of any other repairs or modernization that
7 was done to the facilities at Fremont during the time
8 you were there?

9 A The repairs that I mentioned on Wednesday on
10 the auditorium, which were finished about the same time
11 as the library.

12 Q Any other repairs or modernizations to the
13 facilities at Fremont during the four years that you are
14 aware of?

15 A Not that I can remember. Do you consider the
16 painting of the facility like the outside a repair?

17 Q During your four years was the outside of the
18 school repainted?

19 A Constantly. But I don't know how that counts
20 or not.

21 Q When you say constantly, what do you mean?

22 A Once or twice a month.

23 Q Do you have an understanding as to why the
24 outside of the school was being repainted once or twice
25 every month?

1 heard about it during my sophomore year.

2 Q Do you remember the specifics of those
3 instances?

4 A No. They were brought in to me in a
5 socializing type of way. So they were not giving me
6 details type of thing.

7 Q Do you remember hearing any instances like that
8 during your junior year?

9 A Not that I can remember, about the first day of
10 school, no. I don't remember.

11 Q Do you remember hearing any instances like that
12 during your senior year?

13 A I don't recall situations like that. Although
14 during the year there was classes that were being, I
15 guess you can say babysitted for substitutes during
16 almost a semester, more than a semester.

17 Q Why don't we move to talking about substitute
18 teachers. Do you have any classes where during your
19 four years at Fremont did you have any classes where you
20 started the class with one permanent teacher, and for
21 one reason or another that permanent teacher during the
22 school year left the class?

23 A Yes. The ones I mentioned on Wednesday which
24 were my multicultural studies class and my world culture
25 class.

1 A Due to the quality of the paint and very often
2 vandalism. Like I said on one day after a rain or when
3 it was usually hot weather the paint will start
4 separating from the wall, because it's acrylic paint on
5 the outside walls of the school. Well, the surface
6 doesn't adapt very well to the paint so it doesn't
7 really stick so it start separating. So it forms
8 bubbles that later on turn into holes, and then the
9 paint starts tearing off, being carried about by the
10 water.

11 Q During your four years at Fremont did you ever
12 start a class where you did not have a permanent teacher
13 on the first day of class?

14 A Not on the first day of class, no.

15 Q Is there a class you've taken at Fremont on the
16 first day of class you had a permanent teacher who was
17 assigned to teach that class?

18 A I did, yes.

19 Q Did you ever hear of other students having a
20 situation where they started a class, and on the first
21 day of class they did not have a permanent teacher
22 assigned to teach that class?

23 A Yes.

24 Q Can you tell me about those instances?

25 A It happened during my freshman year, and I

1 Q Are those the only two classes that you took at
2 Fremont in which that situation occurred?

3 A Yes.

4 Q Did you ever hear of that situation occurring
5 for other students?

6 A Yes.

7 Q Can you tell me what you recall about those
8 instances?

9 A They'll complain about having substitute
10 teachers for the rest of the year. And since substitute
11 teachers are not allowed to give any official grades
12 such as semester grades or marked computer grade,
13 they'll get a no mark grade appearing on their report
14 cards. I don't know about their transcripts.

15 Q Do you remember when you heard about those
16 instances or when those instances occurred?

17 A Sophomore year, junior year, senior year.

18 Q Do you remember hearing any of those instances
19 during your freshman year?

20 A Not besides the one that happened to me, which
21 were my multicultural studies class.

22 Q And just so I'm clear, your multicultural
23 studies class was during your freshman year?

24 A Yes.

25 Q Was that a full year course?

1 A One semester.
 2 Q Fall semester or spring semester?
 3 A Spring semester.
 4 Q How about your world culture class. Do you
 5 remember what year that was?
 6 A Sophomore year. And it's a four-year class.
 7 It's also a graduation requirement.
 8 Q World culture is?
 9 A Yes.
 10 Q I believe you said your, correct me if I'm
 11 wrong, your permanent teacher for multicultural studies
 12 was [REDACTED]
 13 A Yes.
 14 Q And did [REDACTED] at some point -- or is he no
 15 longer the teacher for multicultural studies at some
 16 point?
 17 A Yes.
 18 Q When did that happen?
 19 A After the first marking period, which is about
 20 six weeks.
 21 Q And I think you may have testified to this, but
 22 do you know why [REDACTED] left the class?
 23 A Like I said on Wednesday, I don't know, but
 24 there was speculations about him getting in conflict
 25 with other teachers or the administration, and

1 complaints from the students.
 2 Q After [REDACTED] left did you get a new teacher in
 3 the class?
 4 A We didn't get a new teacher, we got one
 5 substitute which left after a couple weeks. Then we got
 6 what they call a permanent substitute.
 7 Q Did you have a substitute in the class on the
 8 first day that [REDACTED] was no longer there?
 9 A No.
 10 Q Was there --
 11 A Took about two days.
 12 Q So who taught the class?
 13 A Nobody taught the class. There was just
 14 somebody to supervise the class.
 15 Q So for two days there was an individual
 16 supervising the class?
 17 A Yes.
 18 Q Who was not a substitute teacher?
 19 A Yes.
 20 Q Was it the same individual on both days?
 21 A I don't recall.
 22 Q Do you know what that individual's job was?
 23 A I don't recall.
 24 Q Was it another teacher for Fremont?
 25 A I don't recall the person, who it was.

1 Q So you don't know if it was a teacher or not?
 2 A Yeah.
 3 Q And I know you've testified to this in another
 4 context, but I just want to make sure our record is
 5 clear. You said that after the first two days where
 6 [REDACTED] wasn't there you had a substitute for a couple
 7 of weeks. Can you tell me did that substitute teacher,
 8 the first substitute teacher you had, did that
 9 individual instruct you in multicultural studies?
 10 A No, he didn't.
 11 Q Can you tell me what you did in class while
 12 that other individual supervised the class?
 13 A What I did? Well, I tried to do work for my
 14 other classes since we didn't have any assignments or
 15 anything. So instead of wasting time I'd do assignments
 16 for other class, or just pretty much nothing to do.
 17 Q Do you recall that substitute's name?
 18 A No, I don't.
 19 Q You said that that substitute was there for a
 20 couple of weeks. Can you narrow it down any more than
 21 that? Are we talking, do you know if it was two weeks,
 22 three weeks, or four weeks?
 23 A Two weeks, three tops.
 24 Q And after that the class was assigned, you
 25 called a permanent substitute?

1 A Yes.
 2 Q Do you remember that individual's name.
 3 A I don't know the correct spelling or the
 4 correct pronunciation, but it's [REDACTED]. He told us
 5 he was originally from South Africa or something. He's
 6 a Caucasian man.
 7 Q And did that individual instruct you in
 8 multicultural studies?
 9 A In some ways. He showed a film about Mandela,
 10 like I said, and he made us do crossword puzzles
 11 regarding African American culture and other cultures.
 12 But that was about it. And then usually on Fridays
 13 he'll turn on the TV for some students, like at the very
 14 last minutes of class. He also issued points for
 15 cleaning the room.
 16 Q Did that individual, did the permanent
 17 substitute give you quizzes or exams in multicultural
 18 studies at all?
 19 A I recall one quiz, which was based on the
 20 Mandela film that we watched.
 21 Q Did you receive a grade in multicultural
 22 studies?
 23 A Yes.
 24 Q Was that grade given to you by the permanent
 25 substitute?

1 A Yes.

2 Q Would you say the permanent substitute who

3 taught the class, multicultural studies class, was

4 qualified to teach the class?

5 MS. LHAMON: Calls for speculation and for

6 expert testimony.

7 THE WITNESS: I don't know the parameters on

8 the qualification for multicultural studies, so I

9 wouldn't know how to answer your question.

10 Q (BY MR. ROSENTHAL) I'm asking for your

11 opinion. Do you have an opinion as to whether or not he

12 was qualified to teach the class?

13 MS. LHAMON: Same objection.

14 THE WITNESS: I said earlier, if we didn't get

15 any instruction I wouldn't have any point of reference

16 whether we were -- I'm assuming we didn't, I didn't

17 learn much. And he did a good work at keeping order in

18 the classroom. That was about it.

19 Q (BY MR. ROSENTHAL) Did you learn about Mandela

20 as a result of watching the film on Mandela?

21 A Not much. Only specific details on his life,

22 but that was about it. I doubt that's enough to qualify

23 me as a person who took a successful world culture

24 class.

25 Q Do you remember what grade you got in

1 multicultural studies?

2 MS. LHAMON: Objection, vague as to time. Are

3 you referring to the first semester, second semester or

4 the whole year?

5 MR. ROSENTHAL: I think it's a one-semester

6 class.

7 MS. LHAMON: Oh, I'm sorry.

8 MR. ROSENTHAL: That's okay.

9 MS. LHAMON: Good thing you're paying

10 attention.

11 MR. ROSENTHAL: I try.

12 THE WITNESS: I remember, I think it was a

13 Q (BY MR. ROSENTHAL) Is the permanent substitute

14 who taught multicultural studies, did he continue to

15 teach at Fremont after the semester course ended?

16 A I don't know.

17 Q Did you ever see him again at the school?

18 A I don't recall seeing him at the school.

19 Q Why don't we turn to your world culture class,

20 full year class during sophomore year.

21 A Yes.

22 Q Can you tell me this, tell me the individual's

23 name who taught the class, who was the permanent teacher

24 when the class was started? I'm sorry, I cut you off.

25 A The one who started was Mrs. Kennis, K-E-N-N --

1 I'm not sure if it was an I or a Y at the end, S. She

2 was female. And she taught the class based on the book.

3 She would just tell us to read from chapter to chapter

4 and do the work in the book. That's what she based her

5 class on. There was hardly any lectures whatsoever.

6 And then I think she went through the same as

7 Mr. Kay, troubles with the administration or something

8 that her class was, her whole class was transferred to

9 another teacher, which was Mr. Price, P-R-I-C-E.

10 Q Did Ms. Kennis leave Fremont at some point

11 during this school year, your sophomore year?

12 MS. LHAMON: Objection, question is vague. Do

13 you mean leave as in no longer employed there, or just

14 left the school today?

15 MR. ROSENTHAL: I don't think he'd have

16 knowledge as to whether she was employed. Do you

17 understand the question or want me to try to rephrase

18 it?

19 THE WITNESS: Yeah, can you rephrase it?

20 Q (BY MR. ROSENTHAL) Sure. Do you know if

21 Ms. Kennis was a teacher at Fremont at the start of your

22 sophomore year; is that right?

23 A Yes.

24 Q At some point was she no longer a teacher at

25 Fremont?

1 A I'm not aware of that. I did continue to see

2 her for a couple of weeks after the whole class was

3 transferred, but I don't know if she continued to teach

4 there.

5 Q At some point did Ms. Kennis stop being your

6 world culture teacher for your particular class?

7 A As soon as we were transferred to Mr. Price's

8 class we stopped being her students. We became his

9 students.

10 Q So was there one day in which Ms. Kennis was

11 teaching you world culture, and then subsequent school

12 day in which Mr. Price was then your world culture

13 teacher?

14 A I don't remember if it was after a certain

15 marking period or if it was over a, you know, a radical

16 change from day-to-day. So I don't recall that.

17 Q Did you have any other teachers teach you world

18 culture aside from Ms. Kennis or Mr. Price?

19 A Not that I knew of.

20 Q Were there any -- I'm sorry.

21 A Or remember any counselor giving -- telling us

22 if there was other teachers or giving us a choice.

23 Q After Ms. Kennis's last day of teaching you

24 world culture, did you have any substitute teachers

25 prior to having Mr. Price as your teacher?

1 A No. Mr. Price was teaching his class, and he
2 had his own classroom, so --

3 Q And Mr. Price continued to be your world
4 culture teacher for the rest of the school year?

5 A Yes.

6 Q Now you said you had heard about other
7 instances that other students, where other students had
8 a permanent teacher at the start of the school year and
9 subsequently that permanent teacher left for one reason
10 or another. Can you tell me about some of the specifics
11 of those instances that you recall?

12 A I don't have any details since I was in those
13 classes, except the ones that I've given testimony
14 about. So I'm not sure what, what it is that you are
15 asking me to verify for you.

16 Q Do you remember hearing about any other
17 specific classes in which a class started with a
18 permanent teacher and at some point during the school
19 year that permanent teacher no longer taught the class
20 and the class was taught by somebody else?

21 A I don't recall any names or specific numbers,
22 so --

23 Q Do you remember approximately how many
24 occasions there were like that, that you were aware of
25 that you'd heard about?

1 to school drunk, and he wasn't sticking to the
2 curriculum.

3 Q So for these purposes we'll call him

4 [REDACTED]

5 A Yes.

6 MS. LHAMON: The school district will
7 appreciate that, I'm sure.

8 THE WITNESS: I think he's -- I have to check
9 in my year book, because I think he was there. I think
10 he was still there.

11 Q (BY MR. ROSENTHAL) So was he, just so we're
12 clear, did [REDACTED] at some point cease to be a
13 permanent teacher at Fremont, or was he always there and
14 you are just remembering one instance where he came to
15 school drunk, or remember hearing about an instance
16 where that --

17 A I think he was really from two weeks, but I'm
18 not sure when or why.

19 Q Do you know what subject he taught?

20 A No, I don't want to guess, so I don't know.

21 Q Do you recall when that occurred?

22 MS. LHAMON: That he was relieved from duties?

23 THE WITNESS: Yeah, I think I said earlier that
24 I don't know when or why.

25 Q (BY MR. ROSENTHAL) Do you know which year it

1 MS. LHAMON: My objection is just that the
2 question is vague. Are you asking how many occasions he
3 heard about it, or how many classes he heard had that
4 happen.

5 MR. ROSENTHAL: Why don't I try rephrasing the
6 question.

7 Q (BY MR. ROSENTHAL) Can you tell me how many
8 classes that you are aware of in which a permanent
9 teacher started the school year and at some point during
10 the school year the class was taught by somebody else
11 because the permanent teacher left for one reason or
12 another?

13 A I can only verify those two that I mentioned,
14 Mrs. Kennis' class and [REDACTED] class. I don't recall
15 any other classes. I do recall hearing about it, but I
16 don't recall any other classes.

17 Q Do you know the number of classes that you
18 heard about that situation arising in?

19 A No. I do recall one specific teacher now that
20 I remember. I think his -- I don't know how -- he
21 sounds -- well, his name, I'm not sure how is the
22 pronunciation or the spelling, but everybody called him
23 [REDACTED] I'm not sure if that's his real name.
24 Because I've heard other teachers referring to him as
25 that, so -- I think there was problems that he once came

1 was? I don't want you to guess. Just if you remember
2 it's helpful.

3 A Yeah, I still heard about him through my senior
4 year, so I'm assuming he was still there.

5 Q Do you remember was [REDACTED] classes after
6 he was relieved of his duties, whether those classes
7 were taken over by other teachers?

8 A I don't know how that specific incident
9 developed, so I don't know.

10 Q Okay. Have you ever heard of any instances,
11 either personally or hearing from other people, in which
12 a class at Fremont had no teacher in it at all?

13 A I don't understand your question.

14 Q Why don't we deal with them separately. Have
15 you ever attended a class at Fremont in which there was
16 no teacher physically present in the class?

17 A Yes.

18 Q Can you tell me about those instances?

19 A Okay. One happened during my freshman year.
20 It was in my algebra class. I think they said that
21 somebody notified the office that there was no teacher
22 present or that she had reported to be absent, but they
23 didn't send a substitute to cover that specific period.
24 Or I don't think there was anybody available. So my
25 class stayed there without a substitute for the whole

1 day. And then a security guard walked in the class and
2 noticed that there was no teacher, and she asked us
3 where was the teacher. We says we don't know, he hasn't
4 been here all day. So she sat there for the rest of the
5 period. That was the one, the only one I can remember
6 during my freshman year.

7 During my sophomore year, it was in Mr. Price's
8 class, he had been absent one day when he had a
9 substitute for the first block of class, I don't
10 remember what day of the week was it, but we have block
11 schedule. And he was also my teacher for my sustained
12 silent reading. So we have a substitute for two hours
13 and 45 minutes or no supervision at all.

14 My junior year, through my junior year my
15 American history teacher would be absent from class
16 quite often, especially on Fridays. Sometimes we
17 wouldn't have a substitute, but that was occasionally.

18 And during my senior year we always had a
19 teacher or substitute.

20 Q All right. Why don't we deal with some of
21 these instances individually. During your freshman year
22 you said there was an occasion where you did not have a
23 substitute for your algebra class.

24 A That's correct.

25 Q Was it limited to one day?

1 A It was limited to the one day. After that we
2 got a substitute.

3 Q And you said that there was no substitute for
4 your particular algebra period. Do you know if there
5 was a substitute during other periods that that teacher
6 taught the class?

7 MS. LHAMON: Objection, mischaracterizes the
8 testimony.

9 THE WITNESS: Yeah, I don't know. I wasn't
10 there for the rest of the day or went to check if there
11 was a teacher or a substitute.

12 Q (BY MR. ROSENTHAL) When you said that there
13 was -- that a security guard eventually came into the
14 classroom and stayed with the class for the rest of the
15 period; is that right?

16 A Yes.

17 Q Do you recall how long after the class started
18 that the security guard came in to supervise the class?

19 A Around the second half of the two-hour period.

20 Q Turning to your sophomore year, you said there
21 was a day when Mr. Price was absent?

22 A Yes.

23 Q Was that also limited to one day where you did
24 not have any substitute?

25 A Yes.

1 Q And did a security guard come to supervise that
2 class at any point?

3 A No, because that class is at the very back of
4 the school. So there is usual -- well, there is rarely
5 any security around there at all. It's a very
6 unsupervised area.

7 Q And you said during your junior year your
8 American history class, your teacher was absent often.
9 Can you tell me who that teacher was?

10 A [REDACTED]

11 Q When you say often, can you tell me how many
12 times during a month or a semester or however you can
13 best estimate?

14 A Sometimes twice a week, and some month every
15 Friday of the week, he'll use the excuse that he's the
16 track coach. But we were not always aware or we never
17 knew if those excuses were legitimate, so -- we don't
18 know what was the basis for his absences, but it would
19 happen sometimes like four times a month, sometimes only
20 once a month. So it was a regular.

21 Q And you said that occasionally when [REDACTED]
22 was absent there would not be a substitute in the class
23 to supervise the class?

24 A That's right. So there would be like, like one
25 out of three times we wouldn't have a substitute. And

1 most of the times it's because he didn't notify the
2 school that he was going to be absent, so they wouldn't
3 have a substitute ready for his class.

4 Q So when you say one out of three times, you
5 mean one out of the three times that [REDACTED] was
6 absent?

7 A Yes.

8 Q And you say the reason was that [REDACTED]
9 didn't notify the school that he was going to not be in
10 class?

11 A I said that might be a reason. Sometimes we
12 just have a teacher walk by and see the classroom
13 unsupervised. And he'll ask us -- if that teacher, I
14 guess, felt sorry or something, and he had a free
15 period, he'll stay with us for the rest of the class.
16 But that was, that only happened once.

17 Q When [REDACTED] was absent from the American
18 history class, do you know if he notified somebody at
19 the school that he would be absent?

20 A I don't know.

21 Q You said that once there was a teacher who came
22 in and supervised the class when there was no
23 substitute. Did a security guard ever come in to
24 supervise the class when there was no substitute there?

25 A No.

1 Q Do you know why there were no substitutes in
2 these instances that you've testified to?

3 A I'm not aware of the causes.

4 Q You said during your senior year there was
5 never any instance where you had a class that was
6 unsupervised.

7 A That's right.

8 Q Did you ever hear of other instances from other
9 students in which they had classes that were
10 unsupervised by a teacher, substitute teacher or
11 security guard or other adult?

12 A Yes, through my whole four years, they happen
13 constantly.

14 Q Do you remember any specifics?

15 A Well, there was a lot, so it's kind of hard to
16 think about a specific case that I can remember. I'll
17 say sometimes we'll find out due to the excess noise or
18 we'll notice because we were in the adjacent class. Or
19 sometimes they'll, they'll come into our classroom,
20 they'll say they didn't have any teachers.

21 And another thing that happened quite often is
22 that if there was no substitute or anybody to supervise
23 the class, and the faculty or the security was aware of
24 it, they'll take the whole class and they put them in
25 somebody else's classroom so they can be supervised by a

1 Q You said that teachers were getting irritated
2 that they had to supervise classes when other teachers
3 were absent. Was that something that was happening more
4 frequently?

5 A Yes, it was happening more frequently.

6 Q Do you have an understanding as to whether the
7 number of classes that actually went unsupervised
8 decreased during your senior year as compared to earlier
9 years?

10 A No. I don't think it increased or I noticed
11 that it decreased -- yeah, I didn't notice a decrease in
12 the number of classes.

13 Q Did you notice an increase or did it remain
14 essentially constant?

15 A I did notice an increase due to the teachers,
16 when the teachers were complaining about it, and when I
17 saw more classes being brought into other classrooms.
18 And I started seeing classes in the cafeteria, just
19 sitting down. I don't know what they were doing or what
20 they were supposed to be doing.

21 Q Were the classes in the cafeteria supervised or
22 unsupervised?

23 A Well, there was always security in the
24 cafeteria, so I don't know if they were supervising them
25 or if they were assigned to them or they were just

1 regular teacher. So instead of getting lecture or, you
2 know, the teacher leaving a lesson plan for the
3 substitute to follow, we'd get supervised by other
4 teacher who has no ground training or has nothing to do
5 with the subject that we were, that the students were
6 supposed to be studying at the time. So I'd just say
7 for the whole period of time doing basically nothing.

8 Q Did this problem you've identified of there
9 being no substitute in classes on occasion, was that
10 constant throughout the four years or did it improve or
11 get worse from year to year?

12 A Actually there were complaints from my senior
13 year teachers that it had gotten worse. Because they
14 were being asked to substitute other classes during
15 their free periods, and the teachers were getting
16 frustrated. And when I say frustrated, I mean mad, like
17 irritated.

18 Q And when you say it was getting worse, are you
19 referring to teacher absences getting worse, or that
20 classes went unsupervised getting worse?

21 A Oh, I think it's a combination of both, of
22 both. And the fact that teachers is -- I don't know how
23 to put this.

24 Q Why don't I try to ask a different question.

25 A Okay.

1 doing --

2 Q I just want to make sure our record is clear.
3 When you say it increased during your senior year, are
4 you talking about teachers being absent, number of
5 teachers being absent on given days increasing or the
6 number of classes that went unsupervised? Do you
7 understand the distinction?

8 A Yeah. I mean the number of classes being
9 unsupervised, and the number of classes that regular
10 teachers had to substitute.

11 Q But your senior year you personally had no
12 classes that went unsupervised, right?

13 A Right.

14 Q Over the four years that you attended Fremont
15 have the same teachers essentially been teaching at
16 Fremont, or have there been large shifts in teachers
17 leaving and coming?

18 MS. LHAMON: Objection, that question is vague
19 as to with respect to the same and large shifts.

20 THE WITNESS: Well, that's kind of hard for a
21 student to know, because you only have a certain amount
22 of teachers. Especially if you are in an academy, you
23 have that certain -- I mean this certain group of
24 teachers teaching you through the whole three years that
25 you are part of an academy. But I heard complaints

1 about teachers leaving due to the conditions of the
 2 school, teachers don't want to teach in Fremont anymore.
 3 So I did hear about a lot of teachers that have been
 4 teaching there for a long time leaving the school.
 5 Q (BY MR. ROSENTHAL) Why don't we focus on your
 6 academy. Which academy did you attend?
 7 A Architecture academy.
 8 Q And when did you join the architecture academy?
 9 A During my junior year.
 10 Q Were you in an academy prior to your junior
 11 year or --
 12 A They had what they called International Academy
 13 or the -- yeah, that's what they called it. That's
 14 where they stick all the students that are lingering in
 15 some sort of limbo that they don't have an academy for I
 16 don't know what reason. But I wanted to join the
 17 architecture academy after I talked to my counselor.
 18 Q Do you know how many teachers are teaching in
 19 the architecture academy?
 20 A I don't know how many teachers are there.
 21 Q Do you remember how many there were during your
 22 junior year?
 23 A Well, each teacher only teaches like one grade,
 24 like chemistry, biology, and they also go by subjects.
 25 But to my junior year I had six teachers from the

1 architecture academy. I'm sure there is more.
 2 Q And do you know the total number of teachers
 3 that were affiliated with the architecture academy, or
 4 you just --
 5 A I don't know the total number. I mean I'm
 6 giving you the ones that I know of.
 7 Q Are you able to tell me approximately how many
 8 new teachers started each year that you started a new
 9 year at Fremont?
 10 A No, I'm not able to answer that question,
 11 because that's the number -- it's kind of -- well, I
 12 could give you an answer based on personal experience
 13 like number of teachers, of new teachers that I had.
 14 Q That's fine. Why don't you tell me about that.
 15 A Okay. Two.
 16 Q Do you remember when those teachers started at
 17 Fremont?
 18 A One started one year prior to me joining the
 19 architectural academy, which was my sophomore year. And
 20 the other one started -- I don't know when the other one
 21 started.
 22 Q And both of the teachers, when they started,
 23 they hadn't taught at Fremont prior to that, to your
 24 knowledge?
 25 A Are you asking me if I knew if they were

1 teaching at Fremont before I --
 2 Q Right.
 3 A One of them didn't. I don't know about the
 4 other one.
 5 Q You said you had two new teachers. Can you
 6 give me the names of these two new teachers?
 7 A One of them was Catherine Michna.
 8 Q Was that M-I-C-H-N-A?
 9 A Yes.
 10 MS. LHAMON: Excellent first name.
 11 THE WITNESS: And the other one was Mr. -- his
 12 name is kind of hard to spell because he was a math
 13 teacher at Frick Junior High.
 14 Q (BY MR. ROSENTHAL) You can only say his name.
 15 I wouldn't ask you to spell it if you can't.
 16 A Boetner, it's B-O-E-T-N-E-R. That's about as
 17 close as I can make it.
 18 Q That's very helpful. Thank you.
 19 A Yes, he was previously teaching at Frick Junior
 20 High.
 21 Q Now during your four years at Fremont were
 22 there ever an instance where you were assigned to a
 23 class and the teacher who taught the class was a brand
 24 new teacher at Fremont? Do you understand the question?
 25 A Yeah. That I was instructed by?

1 Q Right. That you took a class with.
 2 A No. All of my teachers had at least one year
 3 of experience in Fremont.
 4 (Off the record)
 5 Q Mr. Garcia, when we talked two days ago you
 6 said you submitted a declaration in connection with this
 7 case; is that right?
 8 A Yes.
 9 Q Did you ever review a draft of your
 10 declaration?
 11 MS. LHAMON: Asked and answered.
 12 THE WITNESS: Do I have to answer that
 13 question?
 14 MS. LHAMON: Yes.
 15 THE WITNESS: Yeah, I reviewed it, I reviewed
 16 the draft.
 17 Q (BY MR. ROSENTHAL) Did you make any comments
 18 to the draft that you reviewed?
 19 MS. LHAMON: Vague as to comments. Are you
 20 asking if he made any changes?
 21 Q (BY MR. ROSENTHAL) Do you prefer if I use the
 22 word "changes"?
 23 A I just made some tense changes, like from "is"
 24 to "was". It was just one, a couple changes. There
 25 wasn't any major changes in the declaration.

1 Q Other than changing the tense, were there any
2 other substantive changes that you made to your
3 declaration?

4 A In the first draft it said that I had taken
5 algebra for two years but it was only one. So that was
6 fixed. That was about it.

7 Q Do you have a copy of the draft declaration
8 that you reviewed?

9 A The draft? Well, I revised it, changed it, I
10 mean I revised the draft, put the changes, and I sent it
11 back.

12 Q So you physically wrote the --

13 A Changes.

14 Q -- changes on the draft, the declaration that
15 you received, and then you sent it back?

16 A Yes.

17 Q When you say sent it back, did you send it back
18 to Ms. Lhamon?

19 A Yes.

20 Q Is that who you received the draft from?

21 A Yes.

22 Q And did you not maintain a copy of the draft
23 with or without your comments?

24 A I didn't. Of the draft, no.

25 Q Have you ever been asked to collect any

1 whether you provided any documents to anybody else in
2 connection with this case.

3 THE WITNESS: I'm going to follow my lawyer's
4 instruction.

5 Q (BY MR. ROSENTHAL) Did your attorneys ever ask
6 you to collect your report cards from Fremont in
7 connection with this case?

8 MS. LHAMON: I instruct you not to answer.

9 MR. ROSENTHAL: Are you going to follow your
10 attorney's instruction?

11 THE WITNESS: Yes.

12 MS. LHAMON: We can simplify this by just
13 telling you I'm going to instruct him not to answer any
14 question relevant to what I did or did not say to him,
15 or what any other lawyer did or did not say to him in
16 the case.

17 Q (BY MR. ROSENTHAL) Do you have copies of your
18 report cards from Fremont?

19 A At home, yeah. I keep them with documents.

20 Q Do you maintain any kind of file relating to
21 this case?

22 MS. LHAMON: Asked and answered on the first
23 day.

24 MR. ROSENTHAL: You are confusing depositions.

25 MS. LHAMON: No, I'm not.

1 documents that might be relevant to this case?

2 MS. LHAMON: I'm going to instruct you not to
3 answer to the extent that an answer would involve
4 attorney-client communications. But if anybody, not a
5 lawyer in the case, asked you to collect any documents,
6 you can answer that.

7 THE WITNESS: I'm going to follow my lawyer's
8 instruction.

9 MR. ROSENTHAL: I think I'm entitled to ask in
10 this area. I mean there was a document request served
11 on this individual.

12 MS. LHAMON: You are allowed to ask your
13 questions, I'm allowed to make my objections. It's
14 attorney-client privilege.

15 MR. ROSENTHAL: Are you instructing him not to
16 answer the question?

17 MS. LHAMON: That's what I did.

18 MR. ROSENTHAL: Are you going to follow your
19 attorney's instruction?

20 THE WITNESS: Yes.

21 Q (BY MR. ROSENTHAL) Did you ever provide any
22 documents to your attorneys or anybody else in
23 connection with this case?

24 MS. LHAMON: I instruct you not to answer the
25 question as to your attorneys. But you can answer

1 MR. ALLEN: No.

2 MR. ROSENTHAL: Then I may be mistaken but I'll
3 ask anyway. If he's answered already --

4 THE WITNESS: Can you tell me what you mean by
5 file. You mean like documents that are given to me for
6 me to keep like such as contracts that I'm required to
7 keep a copy of or --

8 Q (BY MR. ROSENTHAL) Other than contracts
9 relating to this case, do you maintain any other
10 documents relating to this action?

11 A Headlines from newspapers.

12 MS. LHAMON: That's a yes or no question, yes,
13 you do, no, you don't.

14 THE WITNESS: Yes.

15 Q (BY MR. ROSENTHAL) Can you tell me what kind
16 of documents you maintain?

17 A Newspaper headlines, letters from my lawyer.

18 Q Any other types?

19 A No.

20 Q Are these newspaper, are they newspaper
21 articles?

22 A Yes.

23 Q Are these articles that you collected on your
24 own?

25 A No.

1 Q Are they articles that were provided to you?
 2 MS. LHAMON: I'm going to instruct you not to
 3 answer to the extent that it would invade the
 4 attorney-client privilege. But if somebody else has
 5 provided you documents you can answer that.
 6 THE WITNESS: I can only answer for the ones I
 7 collected myself, which are the ones I collected on the
 8 Internet, which are posted by the San Francisco
 9 Chronicle.
 10 MR. ROSENTHAL: We'll go ahead and mark this as
 11 our first exhibit.
 12 (Whereupon, Exhibit No. 1 was
 13 marked for identification.)
 14 Q (BY MR. ROSENTHAL) I'll ask you to take a look
 15 at that document. Do you recognize that document?
 16 A Yes.
 17 Q Can you tell me what that document is?
 18 A It's my declaration.
 19 Q Is it a complete copy of your declaration?
 20 A Yes.
 21 Q And on the third page, is that your signature?
 22 A Yes.
 23 Q I'll give you as long as you need to read the
 24 document. But I'd like you to tell me if there was
 25 anything in this declaration that was not correct at the

1 time that you signed it. And just before you do that,
 2 it says here that you signed the declaration on June
 3 16th, 2001. Does that seem right to you?
 4 A Yes.
 5 Q Take as long as you need to read the document,
 6 and then let me know if there was anything that was
 7 incorrect at the time that you signed it. Why don't we
 8 go off the record for one second.
 9 (Off the record from 4:15 to 4:21)
 10 Q (BY MR. ROSENTHAL) Mr. Garcia, have you had a
 11 an opportunity to review your declaration?
 12 A Yes.
 13 Q And did you find anything in your declaration
 14 that was incorrect as of the date that you signed the
 15 declaration?
 16 A No.
 17 Q And is there anything contained in the
 18 declaration that is not correct as you sit here today?
 19 MS. LHAMON: Calls for speculation to the
 20 extent that he's not at the school anymore.
 21 THE WITNESS: Well, the only thing that would
 22 change is that now we have air conditioning in room
 23 1111, but that's really it.
 24 Q (BY MR. ROSENTHAL) And how do you know there
 25 is air conditioning in the room 1111?

1 A Because of the reparations that had been
 2 undergoing while I was there, which were after.
 3 Q That's what I was going to ask you. Were those
 4 repairs, did those occur after June 16th, 2001?
 5 A This is the final draft that I signed, so --
 6 which is based on the draft that I sent. The draft was
 7 sent to her before the repairs. And this was signed
 8 before the repairs.
 9 MS. LHAMON: Jose, so I'm clear, are you saying
 10 that the repairs to the air conditioning in room 1111
 11 were completed before June 16th, 2001 then?
 12 THE WITNESS: No, after.
 13 MS. LHAMON: Okay.
 14 Q (BY MR. ROSENTHAL) Okay. I'm going to take
 15 you through parts of these declarations and ask you some
 16 questions. I'm going to try to deal with it to some
 17 extent paragraph by paragraph, and I'll give you as much
 18 time as you need to review the paragraph that I'm
 19 referring to or asking you questions.
 20 The first paragraph I'd like you to focus on is
 21 paragraph three. Why don't you just take a couple
 22 seconds to review that.
 23 A Okay.
 24 Q In the first sentence of paragraph three you
 25 say that, "The facilities at Fremont High are

1 deplorable." Can you just tell me what you mean by the
 2 word "deplorable"?
 3 A That's an over all description. It includes
 4 the bathrooms, I mean the bathrooms, the overcrowding
 5 problem, the text and didactic materials conditions, the
 6 insufficiency in some classes for desks. And that also
 7 includes some of the classrooms that were supposed to be
 8 temporary and are now quote unquote "permanent".
 9 Q So when you referred to the facilities at
 10 Fremont, you are referring to all of the facilities, or
 11 are you referring to some of the facilities?
 12 A All of the facilities.
 13 Q So in your mind all of the facilities at
 14 Fremont are deplorable?
 15 A Except the ones that went under construction
 16 such as the library and auditorium.
 17 Q Is, outside the library and auditorium, you
 18 would describe the remainder of the facilities at
 19 Fremont as being deplorable?
 20 A That's a yes or no question?
 21 Q Yes.
 22 A Yes.
 23 Q And prior to the repairs done to the library
 24 and the auditorium would you have also included those
 25 facilities as being deplorable?

1 A I say they were not functioning properly.
 2 Q You would not characterize them as deplorable?
 3 A No.
 4 Q In the second sentence of paragraph three you
 5 say that, "Some of the buildings at the school were
 6 supposed to be temporary." Can you tell me what you are
 7 referring to there?
 8 A The portables in front of the main building
 9 located next to the gym, and the rooms located at the
 10 very back of the school which is where Mr. Price's
 11 classroom is at, and the classroom that I described with
 12 the fungus.
 13 Q And the classroom with the fungus was one of
 14 the portables?
 15 A Yes.
 16 Q Is that one of the portables in front of the
 17 main building, or is that a portable elsewhere?
 18 A It's in front of Mr. Dulkan's classroom.
 19 Q Were there any other classes at Fremont that it
 20 was your understanding they were supposed to be
 21 temporary and in fact remained permanent structures of
 22 Fremont other than the ones you've told me about?
 23 A No.
 24 Q And what's the basis for your understanding
 25 that those classroom spaces were intended to be

1 the Oakland Unified School District?
 2 A No, I don't remember.
 3 Q Do you know if it might have been a parent?
 4 A I don't know. And what I do remember, one of
 5 the teachers that would have been working there for a
 6 long time were saying that those classrooms were not
 7 supposed to be there.
 8 Q Also in the second sentence of paragraph three
 9 you say that the buildings you referred to supposed to
 10 be temporary buildings have been there for more than
 11 five years. Can you tell me what the basis for that
 12 testimony is?
 13 A I live around that area, so I saw when --
 14 before I went into Fremont they were already there.
 15 Q Do you remember when those structures were
 16 added to Fremont?
 17 A I don't know when they were added, but I know
 18 they have been there for more than five years, because
 19 I've seen them there for more than five years.
 20 Q So all the classes you referred to as
 21 classrooms that you believed to be temporary classrooms
 22 have been there, they were there before you began
 23 attending Fremont?
 24 A Not the portables next to the gym, but the
 25 other ones, yes.

1 temporary and not permanent spaces?
 2 A Faculty testimony.
 3 Q When you say faculty testimony, what are you
 4 referring to?
 5 A The principal and -- when we had somebody from
 6 the IIUSP, which stands for Intermediate Intervention
 7 for Under -- I forgot, Performing Schools? No.
 8 MS. LHAMON: Yeah, you are good. Program is
 9 the P.
 10 THE WITNESS: Program, there you go. Schools,
 11 program, okay. And they had some sort of town hall
 12 meeting or community members around Fremont, and all of
 13 those issues were aired and they were explained.
 14 Q (BY MR. ROSENTHAL) And do you remember
 15 somebody specifically saying that the classrooms you are
 16 referring to were supposed to be temporary classrooms at
 17 Fremont and not permanent structures?
 18 A I don't know his name, but he was present at
 19 the meeting.
 20 Q Was it an administrator at Fremont or was it
 21 somebody from the district or a teacher, or can you tell
 22 me who that person was?
 23 A I don't recall seeing that person before.
 24 There was a lot of new people that I saw.
 25 Q Do you know if that person was an employee of

1 Q Also in the second sentence of paragraph three
 2 you say that some of the buildings -- why don't I just
 3 quote this, "Some of the buildings at the school were
 4 supposed to be temporary, but they have been there for
 5 more than five years now and they have fungus growing in
 6 them."
 7 When you say "they have fungus growing in
 8 them," what are you referring to?
 9 A The one that I described, the one that I saw.
 10 Q Are you referring to that one particular
 11 classroom --
 12 A Yes.
 13 Q -- that you testified to about during your
 14 first day of testimony?
 15 A Yes.
 16 Q Were there any other classrooms at Fremont that
 17 had fungus in them that you are aware of?
 18 A Only on the outside part of one of the, I guess
 19 they are portables that are on the very back, which is
 20 on the outside of the classroom, but not inside, but it
 21 was there.
 22 Q So other than that one classroom you testified
 23 there were no more classrooms that you were aware of
 24 that had any fungus growing inside of them?
 25 A Yes, that I know of.

1 Q Look at the third sentence of paragraph three.
2 You say that there was a -- that a math teacher in the
3 3200 building has been complaining about fungus in that
4 room. Can you tell me about that?

5 A That's the teacher that teaches in that room.

6 Q So again it's referring to the portable that
7 you previously testified about?

8 A Yes.

9 Q Why don't take you a look at paragraph four and
10 take a minute to read that paragraph over.

11 A Okay.

12 Q This paragraph, I'm paraphrasing, talks about
13 instances, two instances of you seeing mice in one of
14 your classrooms; is that right?

15 A Yes.

16 Q You testified during your first day about
17 seeing mice during two instances. Are these the same
18 instances as those you've testified about?

19 A The ones in my declaration?

20 Q Right. Are those the same instances of the
21 ones you gave me testimony about two days ago?

22 A Yes.

23 Q In the, if I count right, on the third line of
24 paragraph four you say that it was really, "really
25 disruptive" to see the mice in class. Can you tell me

1 A The second one was a little bit shorter. It
2 just ran from the heater to behind the desk in the back,
3 the computer -- there was some old boxes.

4 Q Was the disruption to the class limited to the
5 amount of time that the mouse was visible?

6 A No, it was a problem for about five minutes or
7 more.

8 Q Can you estimate how long the disruption went
9 on?

10 A The first one five to eight minutes, the second
11 one was a little bit shorter, which was about five to
12 six minutes.

13 Q And other than that time was the sighting of
14 the mice, the mouse in the -- the sightings of the mouse
15 in the classroom disruptive to the class in any other
16 way?

17 A Besides the incidents that were described, I
18 mean earlier, no. It was just talked about constantly
19 by students during class time.

20 Q It was talked about by the students during
21 class time?

22 A Yes. Not in a formal way, just talking to one
23 another.

24 Q Paragraph five is a little bit longer. Why
25 don't you take a minute to read that one over.

1 what you mean by "It was really disruptive"?

2 MS. LHAMON: Objection, the document speaks for
3 itself.

4 THE WITNESS: Okay. What it says right here,
5 okay, that. The girls were screaming, they were jumping
6 on the top of their desk. Everybody, instead of paying
7 attention to the teacher, they were paying attention to
8 the mice, see where it was going, make sure it doesn't
9 go into your stuff, make sure it doesn't go around
10 anybody or bites anybody. It was disruptive because
11 you're just not used to seeing mice in school.
12 Especially inside a classroom. They don't belong there
13 in the first place.

14 Q (BY MR. ROSENTHAL) Do you remember how long
15 the mice were visible? Well, it was only one mouse you
16 saw at a time in this class; is that right?

17 A Yes, only one at a time.

18 Q Do you remember how long the mouse that you saw
19 was visible in the classroom on either of the two
20 occasions?

21 A About a minute-and-a-half. It circulated the
22 whole classroom, went around until it went behind the
23 heater.

24 Q So it was a minute-and-a-half on each occasion
25 that the mouse was sighted?

1 Did you have a chance to review that paragraph?

2 A Yes.

3 Q Are you okay? You want to take a break?

4 A No, it's okay.

5 MS. LHAMON: Can we go off the record for just
6 a second.

7 (Off the record)

8 Q (BY MR. ROSENTHAL) Have you had a chance to
9 review paragraph five of your declaration?

10 A Yes.

11 Q In the first roughly half of this paragraph you
12 refer to your Spanish class which was held in room 1111;
13 is that correct?

14 A Yes.

15 Q And is that the same Spanish class that you
16 gave me testimony about earlier today?

17 A Yes. That class was led by Dr. Abeyta. That's
18 when we had the blinds falling off.

19 Q And when you say later in that paragraph that
20 the teacher brought in his own fan, you are referring to
21 Dr. Abeyta and the fan that he brought in that you
22 previously testified about?

23 A Yes.

24 Q Did you take summer school after the spring
25 semester in 2001?

1 A No, not in summer.

2 Q When you, in the second sentence of paragraph
3 five, you say that you don't know, quote, "I don't know
4 if we're going to have air conditioning this summer or
5 not." Could you please tell me what you were referring
6 to there.

7 A I was referring to because you know how classes
8 extend almost to the beginning of summer, which is late,
9 you know, June, before the school year is over. And,
10 you know, temperatures start rising even before the
11 beginning of summer. So that's what I was referring to.

12 Q Do you remember when the last day of school was
13 for that 2000-2002 school year?

14 A I know it was a week after graduation ceremony.

15 Q I could try it this way. Do you remember when
16 the graduation ceremony was?

17 A Yes, it was Thursday, the 18th.

18 Q The 18th of June?

19 A Yes.

20 Q And school went on for another week?

21 A Yes.

22 Q In paragraph five you also say, "It was hot in
23 September, and I'm worried that we're going to have to
24 be hot in that classroom again soon." Was that
25 classroom ever hot after September and prior to the time

1 A Yes.

2 Q Can you tell me what you mean by that?

3 A Well, I think by law all classrooms and
4 structures are supposed to be -- housing humans, are
5 supposed to have insulation. I remember that because I
6 took a construction course. And I don't think in the
7 classroom there should be any piping showing through on
8 the roof. And that's pretty much what I base my
9 statement on.

10 Q So other than the lack of insulation and the
11 exposed piping, was there any other reason that you
12 believe this piping was not supposed to be a classroom?

13 A The fact that every time somebody on the
14 faculty bathroom flushes the toilet we hear the noise,
15 that's kind of disruptive for the class. I don't think
16 they did that on purpose.

17 Q Any other reasons that you believe it's not
18 supposed to be a classroom?

19 A No.

20 Q Do you remember if the room had a number or
21 anything to identify it?

22 A No.

23 MS. LHAMON: Asked and answered.

24 A No, it doesn't have a number that I can
25 remember.

1 you signed this declaration?

2 A It was hot during September, October, part of
3 November, and temperatures started decreasing. Then
4 came March and temperatures started rising again all the
5 way through the rest of the year.

6 Q So the question again, so was it uncomfortably
7 hot in the classroom during 2001 and prior to the time
8 you signed this declaration?

9 MS. LHAMON: Asked and answered in the last
10 series.

11 THE WITNESS: Yes.

12 Q (BY MR. ROSENTHAL) Can you tell me when that
13 occurred?

14 MS. LHAMON: Asked and answered. He just gave
15 you months.

16 Q (BY MR. ROSENTHAL) It was uncomfortably hot in
17 that classroom starting in March?

18 A Yeah.

19 Q The second half of paragraph five you focus on
20 the ROTC room. Is that the same ROTC room you gave me
21 testimony about earlier today?

22 A Yes.

23 Q You say on what's line 26 of your declaration
24 that the ROTC room is not supposed to be a classroom; is
25 that right?

1 Q (BY MR. ROSENTHAL) Did anybody at the school
2 ever tell you that that room was not supposed to be used
3 as a classroom?

4 A No, no one told me that.

5 Q This is also quickly towards the end of
6 paragraph five, you say that, "We're required to take
7 either ROTC or gym at my school." When you say
8 "required," are you referring to the graduation
9 requirements at Fremont?

10 A Yes. You have to take two years of physical
11 education, either gym, either two years of gym or two
12 years of ROTC or one of each.

13 Q Has ROTC always been held in the same
14 classroom?

15 MS. LHAMON: Objection, vague as to time. Are
16 you referring to the four years when Jose Garcia
17 attended Fremont?

18 Q (BY MR. ROSENTHAL) As far as you know has ROTC
19 always been held in the same room?

20 A Yes.

21 Q Did you choose to take ROTC rather than gym?

22 A I didn't pick that class. That class was
23 issued by the counselor. But gym was full, so I decided
24 to stay for the rest of the year.

25 Q Did you want to take gym and you were not able

1 to?

2 A At the beginning I did. And I wanted a
3 transfer, but everybody said it was full. Teacher said
4 it was full. The ROTC instructor said if you want to
5 transfer out of the class you have to do it soon because
6 gym is almost full or it's going to be full. And I
7 didn't want to go through the ordeal of making an
8 appointment or, you know, taking time out of my classes
9 to go see a counselor about changing ROTC to gym.

10 Q Your first choice was to take gym rather than
11 ROTC?

12 A I wasn't aware of the requirements and that I
13 had to take gym or ROTC. It was my ninth grade, it was
14 my freshman year. So I just took it because I thought
15 that was the class I was supposed to be taking.

16 Q Why don't we turn the page, go to page two.
17 Take a minute to read paragraph six, which is also a
18 lengthy paragraph.

19 A Okay.

20 Q During the first day of testimony you gave me,
21 you testified about the condition of the bathrooms at
22 Fremont in detail. In reading this paragraph in your
23 declaration, does it refresh your recollection in any
24 way regarding the conditions of the bathrooms at
25 Fremont?

1 A Well, basically this is almost identical to
2 what I, what I testified on my first day of my
3 declaration -- I mean --

4 Q After reading this paragraph do you recall
5 anything additional regarding the conditions of the
6 bathroom that you haven't already told me about?

7 A No, except that they forgot to mention that two
8 stalls were removed, I mean not stalls, urinals were
9 removed from the 1200 building bathroom.

10 Q And do you remember when that occurred?

11 A During my first semester of my senior year.
12 That's when all the major renovation and repairs began.

13 Q And do you have an understanding as to why the
14 two urinals were removed from that bathroom?

15 A No. No, I don't.

16 Q Was anything added to the bathroom in place of
17 those urinals?

18 A No.

19 Q Were those two urinals broken prior to their
20 being removed?

21 MS. LHAMON: Calls for speculation.

22 THE WITNESS: Not that I can remember. They
23 were functional.

24 Q (BY MR. ROSENTHAL) We covered this during your
25 first day. I just have a couple follow-up questions

1 regarding the bathrooms being closed at Fremont.

2 Did you ever hear that it was school policy to
3 only have one bathroom open at Fremont so that students
4 could be supervised at the school when using the
5 bathrooms?

6 A I don't recall any policy regarding having only
7 one bathroom open. I recall the other policy that after
8 passes to the bathroom during class time were not
9 allowed anymore, they were supposed to lock the
10 bathrooms, all bathrooms during class time. But I'm not
11 sure if that was ever implemented or not.

12 Q Do you remember any other reason being given as
13 to why the bathrooms were closed other than what you
14 have in your declaration or what you told me about
15 earlier, that they're painting or working on the
16 bathrooms?

17 A I don't recall hearing any other excuse or
18 reason for why they were closed.

19 Q Why don't you take a look at paragraph seven
20 and let me know when you've had a chance to read it.

21 A Okay.

22 Q In the second sentence of that paragraph you
23 say, "The overcrowding is the worst at the beginning of
24 every year, before the school starts sending people to
25 other schools." Can you tell me what you mean by the

1 school sending people to other schools?

2 A Okay. What I meant by that is that when school
3 is full and you are around the Fremont area or you want
4 to attend Fremont, they just give you an option of
5 schools that might still have space for you.

6 And regarding the continuation school is that I
7 don't know if it's school policy or something, that if
8 you are 18 years old or above, and you don't have good
9 grades, they send you to continuation school or adult
10 school.

11 Q So is that -- were these two steps things that
12 Fremont did to alleviate the overcrowding at Fremont?

13 A To the extent of my knowledge, yes.

14 Q Take a look at paragraph eight.

15 A Okay.

16 Q Have you had a chance to review that paragraph?

17 A Yep.

18 Q You had given me testimony about an English
19 class that you were in and then you had to undertake a
20 series of moves, including going to the dance class. Is
21 that the same class that you are referring to in this
22 paragraph that you testified to I believe on your first
23 day?

24 A Yes.

25 Q Now in paragraph eight you say that, "Five or

1 six people had to stand every day" when the English
2 class was meeting in the dance class.

3 A Yes.

4 Q Didn't you previously testify on your first day
5 that after two additional seats were obtained in the
6 class there were roughly two people who had to stand in
7 the class?

8 MS. LHAMON: Objection, the record will speak
9 for itself. If you have a different question you should
10 ask it.

11 THE WITNESS: Yes, I was answering the ones in
12 my deposition to the extent of my knowledge, that was an
13 estimate. And this was based on fresh facts, because I
14 was attending Fremont.

15 Q (BY MR. ROSENTHAL) So after reviewing your
16 declaration, specifically paragraph eight, is it -- I'm
17 just trying to get a sense of what testimony is more
18 accurate, were there five or six people standing in that
19 class every day when you were in the dance class?

20 A Yes. Because it was more accurate, because I
21 was still attending Fremont, you know, still to see the
22 people that were there or not.

23 Q And the five or six people who you say had to
24 stand in the class every day, was there no other place
25 for them to sit?

1 sitting on the floor or standing, so, but as far as them
2 asking, I don't know if they did or not.

3 Q (BY MR. ROSENTHAL) Now you testified earlier
4 that the students personally moved the desks in from the
5 class they were originally in into the dance class; is
6 that right?

7 A Yes.

8 Q So you had to carry your own desk, for example,
9 you carried a desk from your original classroom into the
10 dance class?

11 A Yeah. But we carried about -- it wasn't that
12 many people present when we did the -- when we were
13 carrying the desks. So we were just bringing as many as
14 we could, like two or three. Not everybody was there.

15 Q So did some desks get left behind in the
16 original classroom?

17 A We tried to bring as many as possible, but I
18 don't remember leaving any behind. Because I recall
19 there was a couch and somewhere elsewhere students would
20 sit. And there was tables and stools. But we could not
21 bring the couch because it was big.

22 Q In your original classroom before you moved to
23 the dance class was there not enough desks for each
24 student contained in that classroom?

25 A I'm going to say yes, although I didn't see

1 A Oh, well, the dance room, it's just, instead of
2 having a wall it has a bunch of mirrors. And then there
3 is a locker area, and then it's just empty. So we have
4 to bring the desk, like carry them around to inside the
5 class, I mean the dance room. And people will continue
6 to come into class, they realize that there is no more
7 available seats. So there was nowhere else, not a
8 bench, no, or anywhere that they could sit at.

9 Q So did those students stand for the entire
10 class?

11 A They sat on the floor. One of them chose to,
12 because he didn't want to get his pants dirty.

13 Q Did you ever have to stand or sit on the floor
14 in that class, you personally?

15 A No, because my class was closer to the dance
16 classroom, so I'll get there early and get a seat.

17 Q Do you know if there was a shortage in desks at
18 Fremont?

19 A I don't know.

20 Q Did anybody in the class ever ask if additional
21 desks could be brought into that classroom?

22 MS. LHAMON: Calls for speculation as to
23 additional --

24 THE WITNESS: I don't know if anybody asked the
25 teacher or just anybody. But I'm sure they didn't like

1 anybody ever standing up or standing on the floor. But
2 I often saw people sitting on the couch or at the
3 tables.

4 Q Just so I'm clear, were there enough desks in
5 that first classroom for each student or were there not?

6 A I'm going to say yes.

7 Q Yes, there were?

8 A Yes, at the original classroom.

9 Q And do you know why all of the desks from that
10 classroom weren't brought into the dance classroom?

11 MS. LHAMON: Objection, assumes facts not in
12 evidence.

13 THE WITNESS: Yeah, I don't know why they
14 weren't, most of them -- or the teacher said there was
15 some missing that might have been taken by construction
16 workers for them to use during the construction, or into
17 another classroom. I'm not sure what happened to those
18 desks. So we were not supervising the classroom the
19 whole day to see if somebody took desks or not.

20 Q (BY MR. ROSENTHAL) I'm going to ask you to
21 take a look at paragraph nine, which carries over from
22 page two to page three.

23 A Okay.

24 Q Have you had a chance to read that paragraph?

25 A Yes.

1 MR. ROSENTHAL: Counselor, are you done reading
2 it.

3 MS. LHAMON: Yeah, just yawning.

4 MR. ROSENTHAL: Just making sure.

5 Q (BY MR. ROSENTHAL) In the first sentence of
6 paragraph nine you state, "We often don't get a
7 substitute teacher to take over the class." Let me read
8 the full sentence, I'm sorry.

9 "If a teacher is absent, we often don't get a
10 substitute teacher to take over the class."

11 You gave me some testimony earlier about
12 instances where you didn't get a substitute teacher.

13 Were those all the instances that you recall?

14 A That we didn't get substitute, yes.

15 Q Just so I'm clear, would you say that that was
16 often in your mind?

17 A Not for me, but for my friends and other
18 students, they had that quite often. And when I say we,
19 I refer to the whole student body.

20 Q When you had substitute teachers in any class
21 were they generally left a lesson plan by the teacher
22 who was absent to instruct the teacher -- to instruct
23 the class? I'm sorry.

24 MS. LHAMON: Calls for speculation.

25 MR. ROSENTHAL: You threw me there.

1 sometimes classes have to go to the cafeteria for their
2 class period when there is no teacher because of a
3 teacher absence. Has that ever personally happened to
4 you?

5 A Not to me. But every time I pass by the
6 cafeteria there would be a class being supervised by
7 security officers or any other adult. Sometimes the
8 location varies. Sometimes it would be the cafeteria or
9 the auditorium. And while I was volunteering at the
10 library, sometimes the students will be taken there.

11 Q Also on paragraph nine you go on to say that
12 sometimes an alternative measure would be that the
13 students were put into another class. By that do you
14 mean a class without a teacher was combined with a class
15 that did have a teacher?

16 A Yes.

17 Q Did that ever personally happen to you?

18 A Yes.

19 Q Can you tell me approximately how often, if you
20 can estimate during a given semester or month or however
21 you want to do it?

22 A It happened personally about five times in my
23 whole four years.

24 Q And when you were -- when your class was
25 combined with another class, where did those students

1 THE WITNESS: I wouldn't be aware of it,
2 because the teacher wouldn't leave it to me. He would
3 leave it to the substitute if there was one to follow.

4 And I don't think the substitute would say, oh, you guys
5 have a lesson plan. So I wouldn't be aware of it.

6 Q (BY MR. ROSENTHAL) When you had a substitute
7 teach in your classes where your regular teacher was
8 absent, were you given work to do relating to the
9 subject that class was for?

10 MS. LHAMON: Are you referring to every
11 instance/.

12 MR. ROSENTHAL: I'm speaking generally.

13 THE WITNESS: Okay. I'd say 95 percent of the
14 times no.

15 Q (BY MR. ROSENTHAL) Five percent of the time
16 yes?

17 A Yes.

18 Q And during the 95 percent of the time when you
19 were not given an assignment relating to the class that
20 subject was held in, what did students typically do
21 during those class periods?

22 A Socialize, some of them would do work for other
23 classes, some would just sit and wait. That's pretty
24 much anything you could do.

25 Q Later on in the paragraph nine you say that

1 sit?

2 A Any available spaces they could find, whether
3 it was the floor, tables, if you're lucky, a desk.

4 Q When the class, in those instances where there
5 was, where there were two classes combined, were the
6 classes that were combined classes in the same subject
7 matter?

8 A It all depended. Because first they would have
9 to look for a teacher who is willing to take the
10 students. And they don't specifically look for a
11 teacher on the same subject.

12 Q So is it -- I'm sorry.

13 A So it never really happened to me that we were
14 taking to another class on the same subject.

15 Q Is it your understanding there was an attempt
16 made to combine the class with another class on the same
17 subject?

18 MS. LHAMON: Calls for speculation.

19 THE WITNESS: It's not my understanding that
20 that was their attempt.

21 Q (BY MR. ROSENTHAL) And just if you look at the
22 last sentence in paragraph nine, I know it's not your
23 understanding, it says, "The kids just have to wait the
24 period out, until their regular teachers come back."
25 Can you just tell me what you are referring to there?

1 A It could be the next day, it could be the next
2 week, until their regular teacher comes back from
3 whatever the absence was.

4 Q Did it happen sometimes on occasion that on one
5 day the class was combined with another class, and then
6 if the teacher was absent on the next day the classes
7 would not be combined, but there would be a substitute
8 teacher for the class where the teacher was absent?

9 MS. LHAMON: Calls for speculation.

10 THE WITNESS: I don't know. But when my
11 English teacher, she had to go to a trip due to family
12 problems, she had to be out in Alabama for a whole week.
13 But that was during my junior year. We had a different
14 substitute every day, but we were not combined. But the
15 class being combined with other class, like regularly,
16 like day after day, I don't know if that ever happened.

17 Q (BY MR. ROSENTHAL) Why don't take you a minute
18 to look at paragraph ten.

19 A Okay.

20 Q Have you had a chance to review that paragraph?

21 A Yes.

22 Q You also discussed some of this during the
23 first day. I just want to make sure that the record is
24 clear. You say that Fremont didn't have a principal for
25 the whole first semester of your senior year?

1 you recall there being an individual who was an interim
2 principal, or do you remember two individuals who filled
3 that position?

4 A I remember two. Because during the meeting
5 that I had with the interim for the superintendent, one
6 of them was present. I don't recall her name. And she
7 was a Caucasian female. She got white hair. She was in
8 the meeting. She explained us the situation.

9 Q When did you come to understand that these two
10 individuals were principals on an interim basis only?

11 A As of that date of the meeting that I had with
12 the interim.

13 Q By that meeting are you referring to a meeting
14 that occurred in roughly January of 2001?

15 A Yes.

16 Q So during the the fall semester of your senior
17 year you didn't know how long the two individuals who
18 were acting as principal would be staying at the school?

19 A Exactly. They never specified. They stayed
20 until they found a person suitable to take the job. So
21 it was pretty much an undetermined period of time.

22 MR. ROSENTHAL: Okay. Why don't we take our
23 last break here.

24 (Recess taken from 5:11 to 5:26)

25 Q (BY MR. ROSENTHAL) Okay. Mr. Garcia, I just

1 A That's correct. I don't count an interim
2 principal as a principal. And it could be a substitute
3 principal, but thing is they make random decisions or
4 don't make decisions. And since they are just interim
5 or just working there for -- they are going to be
6 working there for a little while, so teachers, faculty
7 or students, they don't know who to go to to make, like
8 I say, to make strategies or to make any important
9 decisions, such as budgeting or that type of issues.

10 Q I know I asked during your first day if you
11 knew whether Ms. Jennings was the interim principal.
12 Did you remember that she was the interim principal or
13 did you not remember that?

14 A I don't remember. Because I think there was
15 two people working there part-time, and they'll take
16 turns.

17 Q Do you remember Ms. Jennings being an
18 administrator at Fremont at some point in time?

19 MS. LHAMON: Asked and answered.

20 THE WITNESS: I do recall hearing her name
21 around.

22 Q (BY MR. ROSENTHAL) Do you ever remember
23 meeting her?

24 A No.

25 Q During your first semester of your senior year

1 have a few more minutes of questioning for you.

2 Before we took our break we were discussing
3 paragraph ten of your declaration. In the first
4 sentence of that paragraph you say that your old
5 principal relocated to another school. Just correct me
6 if I'm wrong, the old principal was Mr. McKibben; is
7 that right?

8 A No, he's the new principal, the current
9 principal.

10 Q That's absolutely right. The old principal was
11 Ms. Gaddis; is that right?

12 A Gaddis, I think.

13 Q And you say Ms. Gaddis was relocated. Were you
14 referring to Ms. Gaddis when you say the old principal
15 in the declaration?

16 A Yes, or whoever was in charge. It was
17 clarified that she was relocated to some other school.
18 I don't know where. I don't know if it was in the state
19 of California or in another state.

20 Q So you don't know where she was relocated to?

21 A No.

22 Q Do you know why she was relocated to another
23 school?

24 A No. They don't give that type of information
25 to students.

1 Q Did you ever hear why she was relocated?

2 A No. That matter wasn't really discussed among
3 faculty or students.

4 Q In the third paragraph of, in the third
5 sentence of paragraph ten you say, "The teachers didn't
6 know who to go to for academic strategies, or to decide
7 a question about a school dance, or other issues." When
8 you say earlier in a that paragraph that the faculty was
9 disorganized, is that what you meant by that?

10 A Yes. And I also meant what I said about
11 dances. Because the Rasta student union always plans
12 these dances for fund-raising, like I said on my first
13 day of my deposition, for scholarships and other
14 programs. So in order for us to have a dance we have to
15 run it through the administration first and write a
16 proposal. And it has to be certified by the current
17 principal.

18 But they delayed the date, okay. It was
19 supposed to be a Halloween dance. But they say they
20 could not approve it until November, so they delayed it.
21 Then they say that since there was two people they say
22 they didn't know who to run it to, so we waited another
23 month. So we didn't have our dance until like, I want
24 to say February, around February, late February, towards
25 the end of February.

1 Q So were the teachers involved in getting the
2 dance approved?

3 A Yes, they were. They are the ones that write
4 and check the proposals and submit it to the
5 administration. The proposal includes like why are we
6 going to need such a security, the location, and the
7 time. So any information that they require to put on
8 the dance.

9 Q Just so I'm clear, so the confusion among the
10 teachers as far as getting the dance approved was not
11 that there was nobody to approve it, but that it was
12 confusing because there were two administrators?

13 A Is that they were going around circles. They
14 were saying they could not approve it, they had to run
15 it through somebody else, or it wasn't approved that
16 they had to delay it to what -- well, actually they
17 didn't give us the reason why it wasn't approved.

18 Q When you say they couldn't approve it, are you
19 referring to the administration in Fremont or are you
20 referring to the teachers?

21 A The administration. Because the teachers
22 they'd just give us like feedback or tell us what was
23 going on. And first of all, we were going to have the
24 dance at the gym, and they say we try to have the gym
25 ready by November. That's the first date that they gave

1 us. But they didn't. So they offered to host the dance
2 at some other place. But then one of the interim
3 administrations or principals says that she wasn't going
4 to approve it. I don't know which one was, which of the
5 two, when she said she wasn't going to approve it. And
6 then we just waited out another month.

7 That's when Mr. McKibben came in to service,
8 and he helped us out in any manner that he could. He
9 give us like budget, he gave us a choice of locations,
10 he tried to help us in any way he could.

11 Q Were these school dances usually held in the
12 gym?

13 A Yes.

14 Q And during your senior year was the, you
15 testified to this, I believe, was the gym being
16 refurbished?

17 A Through the whole year.

18 Q And was that -- do you have an understanding as
19 to whether the refurbishment of the gym was part of the
20 reason for the delay in getting the dance approved?

21 A Yes. They said they'll approve it if it's in
22 an alternate location, which we agreed to. But it was
23 too late, because we had set out the date for the dance.
24 We had run out of flyers and everything and had to take
25 it back. And after they approved it at another

1 location, we had to do everything over, which cost
2 another month delay.

3 Q On page three of your declaration, line six,
4 which is in paragraph ten, you say, "The teachers didn't
5 know who to go to for academic strategies." What is
6 that based on?

7 A Because every Monday while students are not in
8 school yet, like I said on Mondays are minimum days, so
9 students start school at 9:30. And from 8:00 all the
10 way through 9:30 they have teacher planning meetings,
11 like whole faculty meetings every Monday, or every two
12 Mondays. And that's when they discussed strategies,
13 approaches, proposals, and all that type of stuff. But
14 since there was nobody running the meetings, it was kind
15 of chaotic, they didn't know who to go to or how to
16 organize the meetings.

17 Q Did those meetings continue to be held on
18 Mondays from 8:00 to 9:30?

19 A Used to be one meeting where everybody was
20 present. But then now they were having separate
21 meetings. And then after Mr. McKibben started working
22 they started having those collective meetings again.

23 Q But before Mr. McKibben came those meetings
24 continued to occur?

25 A But not in the traditional way, which was the

1 whole faculty meeting.
 2 Q They occurred in smaller groups of faculty?
 3 A I'll say segregated groups of faculty.
 4 Q Do you know if they were segregated by subject
 5 matter or how they were split up?
 6 A I don't know how they were split up.
 7 Q But teacher planning meetings went on just in a
 8 different format?
 9 A I don't know. I wasn't present at the
 10 meetings.
 11 Q How did you know the meetings were conducted in
 12 small groups during this time, smaller groups?
 13 A Because I had an A period, which is from 7:00
 14 to 8:30. So, well, not 8:30, 8:00. There you go, 8:00.
 15 And the teacher would say, okay, class is over because I
 16 have to go to the meetings. And while we were walking
 17 around we see some teachers here, about five or six or
 18 some teachers in other classrooms, or some teachers just
 19 by themselves in their classrooms.
 20 Q Did you ever hear any teachers complain about
 21 how these meetings were being held during this time?
 22 A I don't recall complaining about the format of
 23 the meetings, but complaining about some of the
 24 information that was given in the meetings.
 25 Q What do you remember about that?

1 A That some teachers were making wrong
 2 assumptions, that sort of speculations.
 3 Q When you say some teachers were making wrong
 4 assumptions, can you elaborate on that?
 5 A I don't have any details on that, because that
 6 was teacher, teacher conversation.
 7 Q Towards the end of paragraph ten of your
 8 declaration you say, "The new principal seems cool and
 9 open-minded." Are you referring to Mr. McKibben there?
 10 A Yes.
 11 Q Since Mr. McKibben became the principal at
 12 Fremont would you say Fremont has approved overall?
 13 A Yes.
 14 Q Why don't you take a minute to review paragraph
 15 11 of your declaration.
 16 A Okay.
 17 Q I'm originally a New Yorker so I'm not that
 18 familiar with the geography of California. I hardly
 19 know L.A. let alone Oakland. So can you just tell me
 20 what you are referring to when you say an area that you
 21 are referring to as the hills and the area that you are
 22 referring to as the flatlands.
 23 A The hills is considered just residential area
 24 where people, upper class, live, where upper class
 25 schools are located at, and schools where the

1 differences are visible.
 2 Q Is there some geographic boundary you would say
 3 where the hills begin and flatlands begin, or is there,
 4 you know, a street that divides them? I'm just trying
 5 to get a sense for what --
 6 A It's a term we use to any school which is
 7 located above, well, it's not so much the geography of
 8 Oakland, but the economic boundaries.
 9 Q So when you say the hills, you generally are
 10 referring to the wealthier areas of Oakland?
 11 A Yes, which are located usually at the hill
 12 of -- the Oakland hills.
 13 Q When you are referring to the flatlands, you
 14 are referring to the area of Oakland that you would
 15 call -- well, how would you call it, how would you
 16 classify that area in regard to socio-economic status?
 17 A The urban area of Oakland, the lower middle
 18 class area of Oakland.
 19 Q Now you say in your declaration in paragraph 11
 20 that the -- well, strike that. Can you, when you say
 21 the hill schools, can you give me some examples of what
 22 schools you are referring to?
 23 A Okay. Skyline is a good example. It's located
 24 at the hills. It used to be an old white school because
 25 -- I'm not saying in any discriminatory or in any

1 derogatory way, but only white people lived on the
 2 hills, so it was a white school. The demographics, I
 3 think, 98 percent was white, the other two percent was
 4 black. Over the years more minorities started going to
 5 Skyline, so these people started taking their kids out.
 6 And overall Skyline was a very good school, it had very
 7 good programs, it had a good amount of funding. But as
 8 soon as the people started taking their kids out the
 9 funding, the programs started getting cut off, and it
 10 became just as bad as the schools on the flats.
 11 But there is other schools around Oakland, not
 12 just Oakland, but the Bay Area, such as San Leandro High
 13 or these wealthy schools where programs are offered as
 14 SAT prep, college preparation courses, a huge variety of
 15 classes which are not limited to just the requirements
 16 for graduation. And when I said the difference, when I
 17 say differences, I mean the resources, the standards,
 18 and the conditions of the schools.
 19 Q Are there any schools in the Oakland Unified
 20 School District that you would classify as being what
 21 you call a hills school?
 22 A They are mostly private schools, so they are
 23 not -- I don't think they are in the Oakland Unified
 24 School District, right.
 25 Q You mentioned San Leandro High. Would you

1 consider that to be what you call a hills school?
 2 A I would say it's a fairly wealthy school.
 3 Q Would you call it a hills school? I'm just
 4 trying to use your term here. You referred to something
 5 called the hills school. Is that included in that
 6 category of schools?
 7 A Yes.
 8 MS. LHAMON: I'm going to interpose a late
 9 objection. I think you maybe having some confusion
 10 about the geographic distinction and then the
 11 socio-economic distinction that Jose has been
 12 describing. It's my understanding -- it's Jose's
 13 testimony and your testimony, but I think the limitation
 14 here is geographic limitation, you not having been from
 15 California.
 16 THE WITNESS: I'm sorry it's not clear. What I
 17 meant when I say hills school in my declaration, I meant
 18 with a socio-economic type of --
 19 Q (BY MR. ROSENTHAL) So when -- I'm sorry. So
 20 when you say hills school, you are not referring to
 21 really geography, that's just your term for describing a
 22 school that you would say is a wealthier school, or in
 23 an area that you would say is a wealthier area?
 24 A Yes, that's what we call like -- because
 25 usually in the hills is where all the wealthy people

1 live, it's like where people can afford. That's where
 2 they have their schools at.
 3 Q I just want the get some examples of schools
 4 that you considered to be hills schools.
 5 A Right.
 6 Q Using your definition of hills schools.
 7 A It would be like San Leandro High. I haven't
 8 been around many schools. It's not like I go looking
 9 for them. But through the research, somewhere like
 10 Alameda High and so on. Just to know that there is
 11 only -- I think only East Oakland two high schools,
 12 which is Castlemont and Fremont, and they occupy the
 13 first and second places in ranking regarding academics.
 14 One and two being the lowest and, you know, that's what
 15 I meant.
 16 Q Do you know what district San Leandro High is
 17 in?
 18 A I don't know the district.
 19 Q How about Alameda High. Do you know what
 20 school district that's in?
 21 A I don't know the district.
 22 Q You say in your declaration in paragraph 11
 23 that hill schools have, "better resources and special
 24 classes like SAT prep courses and health services
 25 programs." Can you tell me what's that's based on?

1 A Well, I'm in a group called Youth Together.
 2 Well, I'm not currently working with them, but I was at
 3 the time. And it's a coalition by different schools in
 4 the Bay Area, which is Richmond, Castlemont, Berkeley
 5 and Fremont and Skyline. So we do this type of
 6 research, we compare our schools to other schools, we go
 7 to conferences and other types of stuff. So I'm basing
 8 that on research that I've done, comparisons between
 9 schools, and just personal experience.
 10 Q Do you know what the purpose of the group Youth
 11 Together is?
 12 A Well, it started as a group to create
 13 multicultural understanding between racial groups. And
 14 it started a few years ago during the quote "race riots"
 15 end quote in the Oakland public schools. And it was
 16 just to alleviate the violence around Northern
 17 California schools. And from that we started doing
 18 different work, like how to help our students overcome,
 19 I guess we can call it, traps set by the system, such as
 20 low funding of public schools, and, you know, and just
 21 create awareness between students. It's a youth
 22 empowering youth group.
 23 Q In your declaration in paragraph 11 you
 24 identify SAT prep courses and health services programs
 25 as things that hill schools have that these schools in

1 the flatlands do not. Again I'm using your definition
 2 of those terms.
 3 A Yeah.
 4 Q Are there any other programs or resources that
 5 you can think of that those schools have that flat land
 6 schools do not?
 7 A Okay. When I say that I mean my school,
 8 because I don't go to other schools. But I just some of
 9 the things that I thought of that we didn't have. There
 10 is other stuff such as like teen-age counseling, you
 11 know, there is so much, tutoring after class. Well, it
 12 was offered in our school, but that was like volunteer
 13 by teachers who gave up their own free time because they
 14 care about the students. Gosh. I cannot think of
 15 anything else right now, but I know there is more, but I
 16 just can't think of it.
 17 Q Are there no SAT prep courses offered at
 18 Fremont?
 19 A There weren't --
 20 MS. LHAMON: Objection, speculation.
 21 THE WITNESS: There weren't while I was there.
 22 But then we always get these letters about how it was
 23 available somewhere else, that you can go on Saturdays,
 24 blah, blah, but they charged you. So since they won't,
 25 it was like a special, I guess, offer they give to

1 classes. But recently towards the last week of school I
2 remember seeing one group of students meeting for SAT
3 prep that was towards the end of the school. I think
4 they were preparing to take the SAT during the summer.

5 Q (BY MR. ROSENTHAL) Are you talking about
6 Fremont?

7 A Yes. But that was towards the last week of
8 school that I saw them prepping.

9 Q And are there no health services programs
10 offered at Fremont?

11 A Programs, no. Besides the clinic, no programs.

12 Q Can you tell me what kind of programs were
13 offered at hills schools that were not offered at
14 Fremont? And I'm referring to health services programs.

15 A Well, I know they have service nurses. The
16 case at Skyline they didn't have a nurse for a long
17 time. Fremont, we have a clinic, that was --

18 Q Did Fremont have a nurse during the four years
19 you were there?

20 A There was a nurse, but services were either
21 limited or insufficient, because they didn't have any,
22 how shall we call it -- okay. If there was an emergency
23 or something that wasn't very urgent they had to call in
24 an ambulance because they wouldn't have the means to
25 give appropriate care for the needs of the student. So

1 Q You do know that?

2 A Yes.

3 Q And there was?

4 A Yes.

5 Q And you knew who provided the tutoring services
6 at those schools?

7 A Teachers and sometimes, I don't know how to put
8 this, I don't know if there is a term, but somebody who
9 has a specialty in tutoring. I'm just going to say
10 tutors.

11 Q When you say teachers, do you know if those
12 were teachers who volunteered to tutor?

13 A I don't know this they volunteered, but I know
14 they were available during school hours and after school
15 hours.

16 Q Okay. We're getting really close to the end
17 here, I promise. That's on the record now. I just want
18 to mark this as Exhibit No. 2.

19 (Whereupon, Exhibit No. 2 was
20 marked for identification.)

21 Q (BY MR. ROSENTHAL) Mr. Garcia, have you ever
22 seen the document that's before you?

23 A Yes.

24 Q And have you ever seen that document outside
25 the context of seeing it with your counsel?

1 they would have to call an ambulance even though it
2 wasn't an emergency or something. That's a bill
3 somebody has to pay.

4 Q Was there no teen-age counseling at Fremont?

5 A Not that I was aware of or that was ever, I
6 mean, exposed to the students or divulged in any sort of
7 way, like announced in the PA or announcements in the
8 like newspapers or any announcements.

9 There was student led initiatives such as a
10 group that takes students, I mean that would prevent
11 smoking, like tobacco. There was a group that would
12 meet at some clinic after school outside of Fremont, and
13 then they'll try to provide like counseling or
14 information about STDs. But that wasn't by Fremont.
15 They were coming from outside.

16 Q I think you at least partially testified to
17 this. You said that there was tutoring at hill schools.
18 Was there also tutoring available at Fremont?

19 A Not for all subjects. And it wasn't official.
20 So there would be like a teacher. She'll volunteer to
21 stay in some days. Or if she thought it was necessary
22 for some students.

23 Q Do you know if there was tutoring for all
24 subjects at hill schools?

25 A Yes.

1 A No.

2 Q And is that a document you reviewed in
3 connection with preparing for your deposition today?

4 MS. LHAMON: I instruct you not to answer on
5 the basis of attorney-client privilege.

6 MR. ROSENTHAL: Are you going to follow your
7 attorney's instructions?

8 THE WITNESS: Yes.

9 Q (BY MR. ROSENTHAL) Mr. Garcia, you previously
10 testified that you maintained copies of your report
11 cards from Fremont; is that right?

12 A Yes.

13 Q Did you ever receive any documents relating to
14 your class schedule at Fremont?

15 A What type of documents?

16 Q Like, for example, a written schedule of the
17 classes you would be taking.

18 A Those are issued at the beginning of the year
19 to every student.

20 Q And did you maintain copies, do you have copies
21 of those schedules?

22 A No. I don't keep them, because during the
23 first day of school you have to show it to every teacher
24 in order to verify that you attended the class and that
25 you checked in with the teacher. And at the end of the

1 day you have to give it to your sixth period teacher, he
 2 has to turn them into the office. So I don't have it.
 3 Q Did you receive progress reports at Fremont?
 4 A You mean like report cards?
 5 Q Did you receive any documentation other than
 6 report cards indicating what your performance was at
 7 Fremont?
 8 A You mean like teacher comments, seeing how you
 9 are doing in your class, and that type of stuff?
 10 Q Did you receive other written documentation
 11 other than report cards regarding your performance at
 12 Fremont?
 13 MS. LHAMON: I'm going to object, the question
 14 is vague. He's asked you for clarification.
 15 Q (BY MR. ROSENTHAL) Including any written
 16 teacher comments or other documents.
 17 A Not from teachers. Only from administration.
 18 Only regarding to notifying specific dates such as
 19 graduation date or when there was an exam to be taken or
 20 when there was an open house and it was a letter of
 21 notification to your parents.
 22 Q (BY MR. ROSENTHAL) Do you remember how
 23 frequently you received report cards at Fremont?
 24 A At the end of -- let me see, how about two
 25 weeks after the end of every marking period.

1 Q How many marking periods were there in a
 2 semester?
 3 A Three.
 4 Q So during a typical school year you would
 5 receive six report cards?
 6 A Yes. But in some cases they wouldn't mail it
 7 to your house, you have to pick them up or they wouldn't
 8 send you one until the end of a semester.
 9 Q Do you know how many report cards from Fremont
 10 you have at your home?
 11 A I don't have an exact number. Some of them
 12 didn't get in.
 13 MR. ROSENTHAL: I'm just going to ask that you
 14 not throw out those report cards. I think that they are
 15 responsive to a pending request. And ask that they get
 16 produced by counsel.
 17 MS. LHAMON: You should read your document
 18 request. They are not responsive to it. We can have
 19 this conversation later, but they are absolutely not
 20 responsive.
 21 MR. ROSENTHAL: Is it your position that the
 22 report cards maintained by this witness are not
 23 responsive to the document request?
 24 MS. LHAMON: That is my position.
 25 MR. ROSENTHAL: I disagree with that position

1 and I request that they be produced.
 2 MS. LHAMON: I request that you file a new
 3 document request. We should have this fight off the
 4 record.
 5 MR. ROSENTHAL: That's fine. We don't have to
 6 discuss that now.
 7 Q (BY MR. ROSENTHAL) Just a couple of final
 8 questions about your declaration, Mr. Garcia. First
 9 just for background, did you personally type up your own
 10 declaration?
 11 MS. LHAMON: Asked and answered.
 12 THE WITNESS: I have to answer that question,
 13 right?
 14 MS. LHAMON: Yeah.
 15 THE WITNESS: No, I didn't type it.
 16 Q (BY MR. ROSENTHAL) Do you have any
 17 understanding as to who did?
 18 A Ms. Lhamon did.
 19 Q And was the substance of declaration based on
 20 information you provided to Ms. Lhamon?
 21 MS. LHAMON: Michael, you asked him all these
 22 questions on the first day and he answered them on the
 23 first day.
 24 MR. ROSENTHAL: I don't think I did.
 25 MS. LHAMON: I realize it's been a few days,

1 but --
 2 MR. ROSENTHAL: I understand. I've asked it
 3 with respect to other witnesses. I don't think I went
 4 into it in this level of detail with this witness, but
 5 my notes may not be accurate. Just indulge me for a
 6 couple minutes and we'll be done.
 7 MS. LHAMON: Okay.
 8 Q (BY MR. ROSENTHAL) Was the substance of your
 9 declaration based on information you provided to
 10 Ms. Lhamon?
 11 MS. LHAMON: I instruct you not to answer that
 12 question based on attorney-client privilege.
 13 THE WITNESS: I'll follow my lawyer's
 14 instruction.
 15 Q (BY MR. ROSENTHAL) Do you have an
 16 understanding as to what the purpose of your declaration
 17 was?
 18 MS. LHAMON: I instruct you not to answer that
 19 question to the extent that it calls for attorney-client
 20 communication. But if you have an understanding
 21 separate from communications with counsel you should
 22 answer.
 23 THE WITNESS: I'm going to follow my lawyer's
 24 instruction.
 25 Q (BY MR. ROSENTHAL) Other than from

1 communications with your attorneys, do you have an
2 understanding as to what the purpose of your declaration
3 is?

4 A Yes.

5 Q Can you tell me what that understanding is?

6 A That this is recollection of facts that my
7 counsel recollected from me and that I signed it, which
8 means I certified that all of this is true and it was
9 said by me.

10 Q Is your understanding that in your declaration
11 you were supposed to report on all of your experiences
12 at Fremont, or were you supposed to report only on your
13 negative or bad experiences at Fremont?

14 MS. LHAMON: I instruct you not to answer that
15 question on the basis of attorney-client privilege. The
16 witness has already testified that he had -- this
17 information was gathered through conversation with
18 counsel, and there is absolutely no way an answer to
19 that question would not invade the attorney-client
20 privilege.

21 Q (BY MR. ROSENTHAL) Did you have any positive
22 experiences at Fremont High School?

23 A Yes.

24 Q Can you give me one or two examples?

25 A Interaction with other people who were in the

1 A Yes.

2 Q And is the reason you did not, in your opinion
3 is the reason you did not receive a good education in
4 the courses you've identified the conditions that you've
5 testified to over these two days?

6 MS. LHAMON: Objection, calls for expert
7 testimony and calls for speculation.

8 THE WITNESS: There were some instances in
9 which it wasn't the teacher's fault or the student's
10 fault which were situations beyond our control. But not
11 all of them. Sometimes it was the teacher's
12 incompetence, such as my US history class. So the
13 question is a little bit abstract.

14 Q (BY MR. ROSENTHAL) Was part of the reason you
15 didn't get a, what you call, a good education in some of
16 these courses, were you personally responsible for not
17 getting a good education in these courses to any extent?

18 MS. LHAMON: Calls for speculation, calls for
19 expert testimony.

20 THE WITNESS: In the areas that I mentioned
21 before, no.

22 MR. ROSENTHAL: Okay. I have nothing further.

23 MS. LHAMON: I actually do have just one area
24 that I thought was unclear.

25 /////

1 same situation as me, interaction with some of the
2 teachers who were very dedicated. In another positive
3 experience, I guess you could call it that, is that I
4 learned to endure and to be patient about things.

5 Q Can you tell me what was the best aspect in
6 your mind of Fremont High School?

7 A The people.

8 Q By the people, who are you referring to?

9 A The staff and the students that I interacted
10 with.

11 Q By the staff you are referring to teachers,
12 administrators or both?

13 A Teachers, administration and student body.

14 Q Do you think you received a good education in
15 Fremont?

16 A In some areas, yes.

17 Q Were there some areas where you didn't receive
18 a good education in Fremont?

19 A Yes.

20 Q Can you just tell me what areas those are?

21 A World culture, American history, supposedly
22 ELD, chemistry. That's all I can think of right now.

23 Q So as you sit here today you can't think of any
24 other areas, any other subject areas in which it's your
25 view you did not receive a good education in Fremont?

1 EXAMINATION

2 BY MS. LHAMON:

3 Q Earlier today, Jose, you testified about some
4 difficulties you were having taking art in your senior
5 year. Could you explain to me what the reasons for
6 those difficulties were, what happened that year?

7 A Well, I couldn't take it during the first
8 semester because of schedule conflict, because I was
9 taking all six classes already. Plus I was taking Latin
10 in the morning and English 1 A in the afternoon. So
11 there was no time during school hours that I could take
12 art. So I was aiming to try to take independent art,
13 but I wasn't able to get ahold of somebody who was
14 providing that service.

15 MS. LHAMON: Okay. Thank you.

16 MR. ROSENTHAL: Thank you very much.

17 MR. ROSENTHAL: Can we stipulate that copies of
18 documents attached to this deposition may be used as
19 originals, and that the original of this deposition be
20 signed under penalty of perjury, that the reporter is
21 relieved of her responsibilities for maintaining the
22 original deposition transcript, have the original be
23 delivered to the offices of Ms. Lhamon, that the witness
24 will have 30 days from the date of the court reporter's
25 transmittal letter to sign and make any corrections he

1 deems necessary to the transcript, and that Ms. Lhamon,
2 or somebody from her office, will notify all parties in
3 writing of any changes in the deposition transcript, and
4 that if there are no such changes communicated within
5 that time frame, that any unsigned and uncorrected copy
6 of the transcript may be used for all purposes in this
7 litigation as if signed by the deponent?

8 MS. LHAMON: So stipulated.

9 MR. ROSENTHAL: And with that we're all
10 finished. Thank you very much.

11 (Whereupon, the deposition adjourned at 6:04 p.m.)
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 STATE OF CALIFORNIA)
2) ss.

3 COUNTY OF SAN FRANCISCO)

4 I do hereby certify that the witness in the
5 foregoing deposition was duly sworn to testify the
6 truth, the whole truth, and nothing but the truth in the
7 within-entitled cause; that said deposition was taken at
8 the time and place herein named; that the deposition is
9 a true record of the witness's testimony as reported by
10 me, a duly Certified Shorthand Reporter and a
11 disinterested person, and was thereafter transcribed
12 into typewriting by computer.

13 I further certify that I am not interested in
14 the outcome of the said action, nor connected with, nor
15 related to any of the parties in said action, nor to
16 their respective counsel.

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand this 19th day of October, 2001.
19

20 _____
21 DIANE M. WINTER, CSR No. 3186
22 CERTIFIED SHORTHAND REPORTER
23
24
25

1 CERTIFICATE OF WITNESS
2
3

4 I, the undersigned, declare under penalty of
5 perjury that I have read the foregoing transcript, and I
6 have made any corrections, additions, or deletions that
7 I was desirous of making, that the foregoing is a true
8 and correct transcript of my testimony contained
9 therein.
10
11
12
13

14 EXECUTED THIS _____ day of _____,
15 2001, at _____, _____.
16
17
18
19
20

21 _____
22 Signature of Witness
23
24
25