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

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ELIEZER WILLIAMS, a minor, by )  
Sweetie Williams, his guardian ad )  
litem, et al., )  
 )  
Plaintiffs, )

vs. ) No. 312236

STATE OF CALIFORNIA; DELAINE )  
EASTIN, State Superintendent of )  
Public Instruction; STATE )  
DEPARTMENT OF EDUCATION; STATE )  
Board of Education, )  
 )  
Defendants. )

-----)

DEPOSITION OF  
LILI MALABED

-----

Volume I  
(Pages 1 through 222)  
November 1, 2001

REPORTED BY: JOHNNA FORD CSR 11268 JOB 5-113049

I N D E X

I N D E X

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MORRISON & FOERSTER LLP, 2000 Pennsylvania Avenue, NW, Washington, D.C. 20006-1888, represented by LOIS K. PERRIN, Attorney at Law, appeared as counsel on behalf of the Plaintiffs.

O'MELVENY & MYERS LLP, 400 South Hope Street, Los Angeles, California 90071-2899, represented by MICHAEL ROSENTHAL, Attorney at Law, appeared as counsel on behalf of the Defendant, State of California.

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EXAMINATION BY MR. ROSENTHAL

MR. ROSENTHAL: Q. Good morning, Ms. Malabed. My name is Michael Rosenthal and I represent the State of California in this litigation.

Can you please state and spell your name for the record.

A. Uh-huh; my name is Lili Malabed and that is spelled L-i-l-i, last name is M-a-l-a-b-e-d.

Q. Great. Thank you. Have you ever had your deposition taken before?

A. No.

Q. Okay. I'm going to go over a few ground rules and if you have any questions about any of them, feel free to let me know. First of all, this is a

I N T H E S U P E R I O R C O U R T O F T H E S T A T E O F C A L I F O R N I A  
I N A N D F O R T H E C O U N T Y O F S A N F R A N C I S C O

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--o0o--

BE IT REMEMBERED that, pursuant to notice and on Thursday, November 1, 2001, commencing at 9:37 a.m. at O'Melveny & Myers LLP, 275 Battery Street, Conference Room 26 West, San Francisco, California, before me, JOHNNA FORD, a Certified Shorthand Reporter, personally appeared

LILI MALABED

called as a witness by the Defendant State of California, who, having been first duly sworn, was examined and testified as follows:

process in which I ask you a number of questions and you give me answers. And sitting next to us, we have a court reporter who is transcribing everything that is said in the room today, so it is helpful that only one of us speak at a time so we get a clear record on the transcript and at the end of the process, you'll have an opportunity to review the transcript and make any changes that you feel are necessary. Do you understand that?

A. Yes, I do.

Q. Great. And if you make any changes to the transcript, any attorney in this case will have the opportunity to comment on any changes you've made. Do you understand that?

A. My attorney or you?

Q. Either one.

A. Okay. Yes, I understand.

Q. So therefore it is important that you answer all my questions as fully and completely as you can. Do you understand that?

A. Uh-huh; I do.

Q. Great. And you understand you've just taken an oath and that the testimony you are giving here today, even though we're sitting in an informal setting, is just like you are testifying in a court of

1 law?

2 A. Yes.

3 Q. Great. Thanks. And also because we have a  
4 court reporter trying to transcribe everything that is  
5 said, it is helpful if you can give verbal responses.  
6 Things like shaking your head and nodding your head are  
7 difficult to transcribe. To the extent you can give  
8 verbal answers, that is helpful.

9 A. Okay.

10 Q. Great. If for any reason you don't  
11 understand a question I ask, just let me know and I can  
12 possibly try to rephrase it. Do you understand that?

13 A. I'll do that, yeah.

14 Q. And if you don't tell me that you don't  
15 understand a question or that you would like me to  
16 rephrase it, I'll assume you understood the question;  
17 is that fair?

18 A. That is fair.

19 Q. Also, if I ask you a question that you don't  
20 know the answer to, I don't want you to guess, but if  
21 you can give me your best estimate, that would be  
22 helpful. Do you understand that?

23 A. Yes.

24 Q. And we'll probably go for about an hour or  
25 so before we take breaks or as long as you want and

1 Q. Would that have --

2 A. No.

3 Q. -- any effect on your ability to testify  
4 here today?

5 A. No, no effect.

6 Q. Won't affect your memory at all?

7 A. No.

8 Q. Great. I would assume you are not -- you  
9 haven't had any alcohol in the recent past?

10 A. No.

11 Q. Great. Do you suffer from any kind of  
12 disability that would affect your ability to remember  
13 things?

14 A. No.

15 Q. Great.

16 MS. PERRIN: Can I just add one clarifying  
17 comment?

18 MR. ROSENTHAL: Sure.

19 MS. PERRIN: Throughout the day, I will be  
20 posing objections which are for the record. Unless I  
21 instruct you not to answer, you are free to answer the  
22 questions to the extent you understand them. I just  
23 wanted to let you know.

24 THE WITNESS: Okay. Thanks.

25 MR. ROSENTHAL: Q. Ms. Malabed, are you

1 when you need to take a break, to use the restroom, to  
2 get a drink, if we're desperately short of tissues or  
3 something, just let me know and we can take a break at  
4 any time.

5 A. Yeah, I'll let you know.

6 Q. Great. We'll be covering a fair amount of  
7 areas during today's deposition and I don't expect you  
8 to remember absolutely everything at the moment I ask  
9 you a question, so if at some point later in the  
10 deposition you remember something that would have been  
11 responsive to a question I asked you earlier, just let  
12 me know and we can go back to that area and try to get  
13 that information at that time; is that fair?

14 A. Uh-huh; yes.

15 Q. Do you have any questions about any of these  
16 ground rules?

17 A. No.

18 Q. Do you understand them all?

19 A. I think I do.

20 Q. Great. Is there any reason why you wouldn't  
21 be able to give your best testimony today?

22 A. No.

23 Q. Are you taking any medication?

24 A. I took some Aleve this morning for a  
25 headache.

1 represented by counsel at today's deposition?

2 A. Yes.

3 Q. Can you tell me the name of your counsel?

4 A. Lois Perrin.

5 Q. Do you have an understanding as to when that  
6 representation began?

7 A. I signed -- yes.

8 Q. Can you tell me when that is?

9 A. Late spring or early summer of this year.

10 Q. Do you recall what month the representation  
11 began?

12 A. I don't remember.

13 Q. Okay. Is there a document that will reflect  
14 the date of the start of your representation?

15 A. Yeah, there is.

16 Q. All right. Is that a contract you signed  
17 with Ms. Perrin? A contract of some kind?

18 MS. PERRIN: You can answer the question  
19 "yes" or "no," but don't disclose the contents of the  
20 actual document.

21 THE WITNESS: No.

22 MR. ROSENTHAL: Q. When you said that there  
23 is a document that would reflect the date at which Ms.  
24 Perrin began representing you in this case, can you  
25 tell me what that document is.

1 MS. PERRIN: Why don't I make a statement  
2 for the record. There is a retainer agreement that has  
3 been executed. The ACLU was the originating party of  
4 that. There are agreements among co-counsels.

5 MR. ROSENTHAL: Q. Just so the record is  
6 clear, the agreement wasn't with Ms. Perrin. It was  
7 with the ACLU?

8 A. Yes.

9 MS. PERRIN: Of Southern California.

10 MR. ROSENTHAL: Q. Prior to the signing of  
11 the retainer agreement with the ACLU Southern  
12 California, has any attorney -- have you been  
13 represented by any attorney in connection with this  
14 matter?

15 A. No.

16 Q. Can you tell me what you did to prepare for  
17 today's deposition?

18 MS. PERRIN: And, again, you can answer in  
19 your own words, but don't disclose the particular  
20 contents of any communications that you may have had  
21 with me or Catherine.

22 THE WITNESS: Uh-huh; I glanced over my  
23 declaration that I made a long time ago. I don't  
24 remember the date of it. It was a long time ago and I  
25 had breakfast this morning with Lois and I had dinner

1 A. I don't remember.

2 Q. Do you remember how many pages the document  
3 was?

4 A. Not at all. It was last summer, so it has  
5 been months since I've seen it.

6 Q. So aside from the documents you've  
7 identified so far today, were there any other documents  
8 you reviewed in connection for preparing today?

9 A. Not that I recall.

10 Q. Okay. You said that you met with Ms. Perrin  
11 this morning; is that right?

12 A. Uh-huh.

13 Q. Can you tell me for how long you met?

14 A. About an hour; maybe an hour.

15 Q. Was anybody else present at that meeting?

16 A. No.

17 Q. Were you shown any documents at that  
18 meeting?

19 A. No.

20 Q. You also said you had dinner with, you said,  
21 Catherine Lhamon and Ms. Perrin?

22 A. Yes.

23 Q. Did you -- was that in connection with  
24 preparing for today's deposition?

25 A. It was in preparation for a previously

1 with Lois and Catherine last summer.

2 MR. ROSENTHAL: Q. Aside from looking at  
3 your declaration, did you review any other documents in  
4 connection with preparing for today's deposition?

5 A. I didn't -- review means something  
6 particular to me. I glanced at the declarations of  
7 Carlos and Richey Ramirez and I saw, but didn't read  
8 thoroughly, the declarations of some of my coworkers  
9 from Bryant.

10 Q. Do you remember which declarations of your  
11 coworkers you glanced at?

12 A. I saw the declarations for Jean Hoffer, Judy  
13 Chow, and Jeannette Mau. Those are the only ones that  
14 I recall.

15 Q. So aside from glancing at your declaration  
16 and these additional five declarations that you've  
17 mentioned, did you review any other documents or glance  
18 at any other documents in connection for preparing for  
19 today?

20 A. I -- I don't have a copy of, but I have seen  
21 something that had to do with Larry Alegre. I don't  
22 remember if it was a declaration or if it was -- I  
23 don't remember what it was.

24 Q. Do you know if it was a deposition  
25 transcript?

1 scheduled deposition which was then cancelled and  
2 rescheduled for today.

3 Q. Do you remember how long you met with Ms.  
4 Lhamon and Ms. Perrin on that occasion?

5 A. Maybe two hours, hour and a half, two hours.

6 Q. And do you remember when that took place?

7 A. I think it was last summer, summer of 2001  
8 sometime.

9 Q. Do you remember which month?

10 A. I don't.

11 Q. Okay. Do you remember being shown any  
12 documents at that meeting?

13 A. We didn't --

14 MS. PERRIN: You can answer "yes" or "no,"  
15 but don't go over specific contents.

16 THE WITNESS: Okay. Yes.

17 MR. ROSENTHAL: Q. Did any of the documents  
18 that you reviewed at that meeting refresh your  
19 recollection?

20 MS. PERRIN: Objection. Vague as to  
21 "Refresh your recollection."

22 THE WITNESS: Of -- I'm not sure --  
23 recollection of? I'm not sure what you mean by that.  
24 At the meeting in the summer?

25 MR. ROSENTHAL: Right.

1 THE WITNESS: Did any of the documents I saw  
2 at the summer meeting refresh my recollection of?

3 MR. ROSENTHAL: As to anything.

4 THE WITNESS: I don't think so. My  
5 recollection is my experience of what I -- what I knew  
6 and saw and dealt with as a teacher, so the only thing  
7 that would refresh my recollection would be my own  
8 declaration and I didn't see anything there that  
9 refreshed my recollection.

10 MR. ROSENTHAL: Q. Do you recall reviewing  
11 or seeing or glancing at the complaint in this action  
12 at any of your meetings with counsel in connection for  
13 preparing for this deposition?

14 A. Not at my meetings with counsel. I don't  
15 remember that.

16 Q. Do you remember ever seeing the complaint in  
17 this action?

18 A. Yes.

19 MS. PERRIN: Michael, just for the record,  
20 were you referring to the first amended complaint, the  
21 original complaint, or both?

22 MR. ROSENTHAL: I guess I can try to clarify  
23 that.

24 Q. Do you remember which version of the  
25 complaint you saw?

1 same after a while. We'll come back to some of that  
2 information.

3 Q. Now, in addition to meeting with Ms. Perrin  
4 this morning and having a meeting sometime during the  
5 summer over dinner with Ms. Lhamon and Ms. Perrin, did  
6 you have any other meetings with counsel in connection  
7 for preparing for your deposition today?

8 A. No.

9 Q. Did you have any other communications with  
10 counsel in connection for preparing for today's  
11 deposition?

12 MS. PERRIN: Again, you can answer "yes" or  
13 "no," but don't disclose the particulars.

14 THE WITNESS: You know, I want to be really  
15 precise about this in saying in preparation for the  
16 deposition, I don't -- I don't think I can recall the  
17 exact nature of the conversations to say whether or not  
18 they were related to the deposition or not.

19 MR. ROSENTHAL: Q. Perhaps my question was  
20 maybe a little too precise. I'm just trying to get the  
21 sense of the communications you had with your counsel  
22 in connection with getting ready for or arranging for  
23 today's deposition.

24 A. We've talked on the phone in addition to the  
25 in-person meetings.

1 A. I've seen all the versions of the complaint.  
2 Well, I've seen two versions of the complaint. I've  
3 seen the original and I saw an amended one related to  
4 textbooks.

5 Q. When you say you saw an amended one related  
6 to textbooks, can you tell me what you mean?

7 A. There was a press conference where we talked  
8 about -- specifically about missing textbooks and I  
9 believe that -- my memory is that there was a separate  
10 document addressing just the textbook issue and that is  
11 what I think I'm calling the amended. I'm not sure.

12 MS. PERRIN: Do you want me to clarify for  
13 the record?

14 MR. ROSENTHAL: That would be great.

15 MS. PERRIN: She is referring to a motion to  
16 appoint a court -- a neutral court-appointed survey  
17 expert for textbooks which was filed, I believe, last  
18 September 2000.

19 THE WITNESS: Is that an amendment?

20 MS. PERRIN: No, it is a different legal  
21 document. It gets confusing. They look the same on  
22 the front.

23 THE WITNESS: Maybe I didn't see the  
24 amendment.

25 MR. ROSENTHAL: They all start to look the

1 Q. And did those calls involve anything more  
2 than discussing the logistics of when and where the  
3 deposition would take place and things like that?

4 MS. PERRIN: Again, you can answer "yes" or  
5 "no," but don't disclose any specific communications.

6 THE WITNESS: I don't think so. I don't  
7 think so.

8 MR. ROSENTHAL: Q. So, in your mind, those  
9 weren't communications you had to assist you in  
10 preparing for today's deposition?

11 A. No.

12 Q. Did you meet with any other attorneys, let's  
13 start with in connection for preparing for today's  
14 deposition other than Ms. Lhamon?

15 A. No.

16 Q. And Ms. Perrin, nobody else?

17 A. No.

18 Q. Have you met with any other attorneys at all  
19 representing the plaintiffs in connection with this  
20 case?

21 MS. PERRIN: Vague as to time.

22 MR. ROSENTHAL: At any time.

23 THE WITNESS: I met other attorneys around  
24 the time that I was giving my declaration back in  
25 2000 -- in 2000, yeah.

1 MR. ROSENTHAL: Q. Do you remember which  
2 attorneys?  
3 A. Peter Eliasberg.  
4 Q. Anybody else you recall?  
5 A. No.  
6 Q. Other than meeting or speaking with your  
7 counsel, did you -- have you spoken to anybody else  
8 about your giving testimony here today?  
9 A. My husband.  
10 Q. Anybody else besides him?  
11 A. My boss, and my assistant, my best friend,  
12 my sister.  
13 Q. Have you spoken to any other current or  
14 former staff members at Bryant Elementary?  
15 MS. PERRIN: About today's deposition?  
16 MR. ROSENTHAL: About today's deposition.  
17 THE WITNESS: No.  
18 MR. ROSENTHAL: Q. Have you spoken to any  
19 students at Bryant about giving testimony here today?  
20 A. No.  
21 Q. Any administration at Bryant?  
22 A. No.  
23 Q. You testified just a moment ago that one of  
24 the individuals you spoke with about giving testimony  
25 here today was your boss. Can you tell me your boss's

1 Q. You also said that you had a conversation  
2 with your assistant about testifying here today. Can  
3 you tell me your assistant's name?  
4 A. Her naming is Nancy Spangler,  
5 S-p-a-n-g-l-e-r.  
6 Q. And do you recall the substance of that  
7 conversation?  
8 A. I told her I would have a substitute in my  
9 room because I had to give a deposition.  
10 Q. And did Ms. Spangler have any response to  
11 that?  
12 A. Okay.  
13 Q. Nothing else was discussed?  
14 MS. PERRIN: About the deposition?  
15 MR. ROSENTHAL: Right.  
16 THE WITNESS: No; huh-uh.  
17 MR. ROSENTHAL: Q. In any of your  
18 conversations with any of the individuals you  
19 identified, did you discuss the substance of what you  
20 would be testifying about here today?  
21 A. Can you repeat your question?  
22 Q. Sure. You gave me a list of five  
23 individuals with whom you spoke to about coming here  
24 today to give your deposition. In any of your  
25 communications with those five individuals, did you

1 name?  
2 A. Terry, T-e-r-r-y, Edeli, E-d-e-l-i.  
3 Q. Is that male or female?  
4 A. Male.  
5 Q. Do you remember the substance of your  
6 conversation with Mr. Edeli?  
7 A. Yes.  
8 Q. Can you tell me what that substance is?  
9 A. I told him that I would have a substitute in  
10 my classroom today because I was giving a deposition  
11 for a case between the ACLU and the State of  
12 California.  
13 Q. And did Mr. Edeli have any response?  
14 A. Okay.  
15 Q. And was that the extent of your conversation  
16 with him?  
17 A. Pretty much, yeah.  
18 Q. And we'll come back to this shortly, but can  
19 you just tell me where you are currently employed?  
20 A. Uh-huh; the San Francisco School.  
21 Q. And is that a public or private school?  
22 A. Private.  
23 Q. Is that an elementary school or is it  
24 broader than that?  
25 A. Pre-K through 8th grade.

1 discuss the substance of what you would be testifying  
2 to here today?  
3 A. Yes.  
4 MS. PERRIN: Objection. Vague as to  
5 "substance," but you can answer.  
6 THE WITNESS: Yes.  
7 MR. ROSENTHAL: Q. Do you remember who you  
8 had such a conversation with?  
9 A. My husband.  
10 Q. Anybody besides your husband?  
11 A. No.  
12 Q. Can you tell me when you first found out  
13 anything about the Williams case, this litigation?  
14 A. I met Peter Eliasberg in December of 1999.  
15 Q. Do you recall how you met Mr. Eliasberg?  
16 A. At a social function.  
17 Q. Was that the first time you had met Mr.  
18 Eliasberg?  
19 A. Uh-huh; yes. And he asked me what my school  
20 was like and I told him and he then gave me some very  
21 brief information about the case and asked me if I  
22 would be interested in talking to him about it.  
23 Q. And do you recall how you responded?  
24 A. Yes. I told him I would.  
25 Q. Do you remember what you told him on that

1 occasion regarding what your school -- and by "Your  
2 school," I assume you are referring to Bryant  
3 Elementary -- do you recall what you told him during  
4 that occasion?

5 A. Yes, I recall two things in particular: One  
6 was that we didn't have enough books and the second was  
7 that our heating and air-conditioning system was  
8 haywire.

9 Q. Do you remember telling him anything else  
10 about Bryant at that time?

11 A. I don't remember anything else.

12 Q. You said that during that conversation, Mr.  
13 Eliasberg gave you some brief information about the  
14 case. Do you recall what information he told you?

15 A. He told me that he was working on a case  
16 that addressed meeting the basic needs of public school  
17 kids and the State's responsibility to ensure that was  
18 happening.

19 Q. Did he tell you at that time that a case  
20 had -- that a complaint had already been filed or had  
21 not been filed or anything along those lines?

22 A. I don't remember.

23 Q. After telling Mr. Eliasberg that you would  
24 be interested in becoming involved in the case, did he  
25 say anything else to you?

1 A. He said he would contact me and we exchanged  
2 phone numbers.

3 Q. Do you remember the next time you were --  
4 you had any communication with Mr. Eliasberg or any  
5 other attorney representing Plaintiffs in this case?

6 A. It was within two or three weeks.

7 Q. And do you recall who that communication was  
8 with?

9 A. Peter Eliasberg.

10 Q. And was that a communication by telephone?

11 A. It was phone or e-mail. I don't remember  
12 which. I think it was phone.

13 Q. And do you recall the substance of that  
14 conversation?

15 A. He reminded me of our first conversation and  
16 asked if I would still like to have a more detailed  
17 conversation about the conditions at Bryant and I said  
18 yes.

19 Q. And did you have a more detailed  
20 conversation about Bryant during that phone call or was  
21 that --

22 A. I don't remember if it was during that phone  
23 call or not or if it was a subsequent phone call.

24 Q. Was anything else discussed during this  
25 particular phone call that you remember?

1 A. Just the conditions of the school.

2 Q. Do you recall what you told Mr. Eliasberg  
3 about the conditions at Bryant during this phone call  
4 or a separate subsequent phone call?

5 A. I told him about the heat problems in my  
6 classroom and the cold problems on the opposite side of  
7 the school. I told him about the lack of textbooks,  
8 the low budget that I had and that the teachers had for  
9 copying materials, how we ran out of paper and pencils,  
10 crayons by spring of every year. I told him about the  
11 quality of the food, the conditions of the bathrooms,  
12 the -- hold on a second -- I told him about the quality  
13 of the playground and the equipment that the children  
14 had. I also told him about the problem with noise  
15 between classrooms and within the neighborhood. I  
16 think that is it.

17 Q. Did you have an understanding as to why Mr.  
18 Eliasberg wanted this information?

19 A. Yes.

20 Q. Can you tell me what that understanding was?

21 A. At that point, I understood that the ACLU  
22 was considering filing a complaint on behalf of public  
23 school students who were not being provided with the  
24 bare necessities to access their education and that the  
25 conditions at Bryant were somewhat typical of the kinds

1 of -- of the kinds of problems that public school kids  
2 were facing and so Bryant's situation might be -- I  
3 don't want to say eligible, but might fit into the case  
4 because we had so many of those kinds of conditions  
5 present.

6 Q. And just so we're clear, do you know who Mr.  
7 Eliasberg is employed by?

8 A. ACLU Southern California.

9 Q. Okay. Other than what you've testified to,  
10 do you remember anything else being discussed during  
11 that conversation with Mr. Eliasberg that you had  
12 approximately two or three weeks after meeting him?

13 A. Yes. He said that he -- well, he didn't  
14 say, he asked me, did I think there may be other  
15 teachers who had the same assessment of the situation  
16 as did I and did I know of any other teachers that  
17 might be willing to make a declaration. He asked me if  
18 I was willing to make a declaration and I said that I  
19 would be happy to make a declaration and that I would  
20 ask other teachers if they felt they wanted or thought  
21 they ought to participate in this and that I would also  
22 tell my principal about it.

23 Q. Do you recall discussing anything else with  
24 Mr. Eliasberg during that conversation?

25 A. Huh-uh; no.

1 Q. Did you speak to other teachers at Bryant  
2 along the lines that Mr. Eliasberg had laid out during  
3 your conversation with him?

4 A. No, I sent an e-mail to the teachers and  
5 said in the e-mail very briefly that a lawyer from the  
6 ACLU of Southern California had approached me about  
7 conditions in public schools and meeting the needs of  
8 public school kids and if any of the other teachers  
9 thought they would like more information, they should  
10 come see me and talk to me about it.

11 Q. Was that an e-mail you sent to all the  
12 teachers at Bryant?

13 A. Yes.

14 Q. Did you send it to anybody else?

15 A. No.

16 Q. Were any members of the administration at  
17 Bryant included on that e-mail or was it just --

18 A. I think I CC'd Larry Alegre, my principal,  
19 but I told him about my conversations with Peter from  
20 the very beginning. Larry was very supportive.

21 Q. So other than teachers and possibly CC'ing  
22 Mr. Alegre, do you remember anybody else being sent the  
23 e-mail?

24 A. Not that I recall.

25 Q. After sending around your e-mail, did you

1 Sullivan, Mr. Kerry Sullivan, K-e-r-r-y,  
2 S-u-l-l-i-v-a-n. I think that is it.

3 Q. Okay. And just so we're clear, do you  
4 remember having any conversations with any other  
5 teachers at Bryant other than the ones you've  
6 identified here about your e-mail or about your  
7 declaration?

8 A. I don't remember speaking to any other  
9 teachers about it. Bryant is a very small school.  
10 That is almost all the teachers.

11 Q. Do you remember having any conversations  
12 with any other teachers at Bryant about the case  
13 generally?

14 A. Yes, Laura Hernandez, and her last name is  
15 H-e-r-n-a-n-d-e-z, and Laura Riave, R-i-a-v-e, Danielle  
16 Gilbert and I think that is all.

17 Q. Now, you gave me the names of four teachers  
18 who you had communications with soon after sending your  
19 e-mail. Did you communicate with each of those  
20 individuals individually or as a group?

21 A. I don't remember if it was over lunch or if  
22 it was over the copy machine. I don't remember exactly  
23 how the conversations came about.

24 Q. Do you remember the communication you had  
25 with Gina Martinez?

1 have any conversations with any teachers about the  
2 e-mail?

3 A. Several teachers came forward and asked for  
4 more information.

5 Q. Do you remember which teachers those were?

6 A. Yes, Gina Martinez.

7 Q. Can you spell that?

8 A. G-i-n-a, M-a-r-t-i-n-e-z. Judy Chow,  
9 J-u-d-y, C-h-o-w, Jeannette Ma, J-e-a-n-n-e-t-t-e, last  
10 name M-a, Jean Hoffer, J-e-a-n, H-o-f-f-e-r. That is  
11 all I can remember specifically coming up to me and  
12 asking me about it.

13 Q. Do you remember there being more teachers  
14 who came to you and spoke to you about the e-mail?

15 A. Not at that point.

16 Q. And when you say, "Not at that point," do  
17 you mean -- what do you mean by that?

18 A. When I gave my declaration, so did some of  
19 the other teachers on that same day and teachers who  
20 had not talked to me about it began to ask questions.

21 Q. Do you remember which teachers asked you  
22 questions about your declaration?

23 A. Indelisa, I-n-d-e-l-i-s-a, Carrillo,  
24 C-a-r-r-i-l-l-o, Mary ZoBell, last name is Z-o, cap,  
25 B-e-l-l, Tanya, T-a-n-y-a, Oster, O-s-t-e-r, Kerry

1 A. Like I said, I know we talked about it, but  
2 I don't remember exactly where or when.

3 Q. Do you remember the substance of what you  
4 talked about?

5 A. She asked me what the story was behind the  
6 e-mail and I told her what Peter had told me which was  
7 that it was possibly going to be a suit about kids --  
8 public school kids, particularly kids of color, getting  
9 the basics so they -- getting the basics at school so  
10 they could get their education.

11 Q. And do you remember how Ms. Martinez  
12 responded?

13 A. Positively, and by that I mean she said,  
14 "Yes, we have these problems here. We don't have  
15 enough books and my classroom is freezing cold."

16 Q. Do you recall what grade Ms. Martinez  
17 taught?

18 A. At that time she was teaching second grade,  
19 I think.

20 Q. And do you recall -- you don't recall when  
21 that meeting was, right?

22 A. I don't. I think it was January of 2000,  
23 though I'm not sure, early 2000.

24 Q. After Ms. Martinez responded positively to  
25 your communicating to her what Mr. Eliasberg had



1 communicated to you, did you do anything to put her in  
2 contact with Mr. Eliasberg or ask her if she wanted to  
3 become involved or anything along those lines?

4 MS. PERRIN: Objection. Compound. You can  
5 answer the question, but my objection is there is more  
6 than one question.

7 THE WITNESS: Yes, what question should I  
8 answer?

9 MR. ROSENTHAL: Q. Did you do anything  
10 after Ms. Martinez responded positively to what you had  
11 told her?

12 A. On the day I gave my declaration, I saw Gina  
13 in the hall and said, "I'm giving a declaration today.

14 Would you like to speak to somebody?"

15 And she said, "Yes."

16 Q. And after having that conversation with Ms.  
17 Martinez, did you facilitate a communication between  
18 her --

19 A. No, I didn't.

20 Q. -- and any of the attorneys --

21 A. No.

22 Q. -- in this case?

23 A. Huh-uh.

24 Q. Did you ever pass on Ms. Martinez's name to  
25 Mr. Eliasberg or any other attorney representing the

1 know if she gave a declaration.

2 Q. Do you know who she met with?

3 A. No, I don't.

4 Q. Just in the interest of trying to speed this  
5 along, you also said you met with -- well, at least you  
6 had contact with Ms. Chow, Ms. Ma, and Ms. Hoffer after  
7 sending your e-mail. If I asked you the same series of  
8 questions about your communications with them, would  
9 your answers be the same?

10 A. Very similar.

11 Q. Is there anything different in those  
12 communications that you had that you haven't already  
13 identified?

14 A. I know that Judy Chow, Jean Hoffer, and  
15 Jeannette Ma gave declarations because I've seen them.

16 Q. And were you involved in putting those three  
17 individuals in contact with Mr. Eliasberg or any other  
18 attorneys representing the Plaintiffs?

19 A. Peter asked me if he could take my  
20 declaration and I invited him to come to school to meet  
21 me at school so he could see for himself the  
22 conditions. He came with two or three other people and  
23 it was on that afternoon that I gave my declaration,  
24 that Jeannette, Jean, and Judy met with other people  
25 involved in the case and gave their declarations and

1 Plaintiffs?

2 A. I don't think so.

3 Q. Did you ever give Ms. Martinez Mr.  
4 Eliasberg's number or the number of any attorney  
5 representing the Plaintiffs?

6 A. I don't think so.

7 Q. Do you know if Ms. Martinez gave a  
8 declaration in this case?

9 A. I don't know. I haven't seen a declaration.

10 Q. Now, you said that the day you gave your  
11 declaration, other teachers were giving their  
12 declarations as well; is that right?

13 A. Uh-huh; yes.

14 Q. And when you gave your declaration, was it  
15 in some sort of a group meeting?

16 A. I can only speak for myself. I spoke to  
17 Peter Eliasberg and gave a declaration on a particular  
18 day. On that same day, other teachers met with other  
19 people. I don't know if they were lawyers or not and  
20 gave declarations, but they were not in the room --  
21 they were not in a group with me. Peter and I were  
22 sitting at a table by ourselves.

23 Q. Do you know if Ms. Martinez met with anybody  
24 to give her declaration on that day?

25 A. I know she spoke to somebody, but I don't

1 made contacts that day.

2 Q. Do you remember the other individuals that  
3 Mr. Eliasberg came with?

4 A. That was the day I met Lois and I don't  
5 remember the other people that were there. I think  
6 that was the day I met Lois.

7 Q. So Lois was one of the individuals who came  
8 with Mr. Eliasberg?

9 A. Uh-huh.

10 Q. Was Ms. Lhamon one of the other individuals?

11 A. I don't remember if Catherine came that day  
12 or not.

13 Q. In response to your e-mail that you sent  
14 out, the e-mail we've been talking about, did anybody  
15 ever indicate to you that they did not want to become  
16 involved in this case?

17 A. No one made a directly negative statement  
18 about it in terms of "I do not want to become involved  
19 in this," no.

20 Q. Did anybody make any kind of negative  
21 comment about it?

22 A. No.

23 Q. So when you said before nobody made any  
24 directly negative statements, nobody made any  
25 indirectly negative comments either?

1 A. Huh-uh; no.

2 Q. Did Mr. Alegre have any response to the  
3 e-mail? I know you weren't sure if you CC'd him. Do  
4 you remember a response from him?

5 A. I told Mr. Alegre personally about it and he  
6 said something to the effect, "Great. Sounds like good  
7 work."

8 Q. I just want to make sure I have the  
9 chronology right. So you had -- you met Mr. Eliasberg  
10 in December of 1999. A few weeks later, you had a  
11 telephone conversation with him in which you identified  
12 some conditions at Bryant and also discussed the  
13 possibility of you creating a declaration and perhaps  
14 other teachers as well. Did you have any  
15 communications with Mr. Eliasberg or any other  
16 attorneys for the Plaintiffs in between the time that  
17 you had that conversation and the time that you invited  
18 him when he came to the school?

19 A. I think there was another conversation where  
20 I -- so here is how I remember it. I met Mr.  
21 Eliasberg. We had a conversation about the conditions  
22 of the school. I volunteered to send out an e-mail and  
23 I did. I got some e-mail and verbal responses from  
24 teachers saying they wanted more information or they  
25 were interested in participating. I invited Peter to

1 come to the school. He came.

2 Q. In the conversation you had with Mr.  
3 Eliasberg in which you invited him to the school, was  
4 there anything else discussed during that conversation  
5 other than logistics of arranging for him to come to  
6 the school?

7 A. He gave me an idea of what a declaration was  
8 and helped me understand better the process of how it  
9 would work if he were to speak with me and that the  
10 nature of our conversation would be about some  
11 particular conditions, not about everything that was  
12 wrong with public education.

13 Q. Do you recall what he told you with respect  
14 to what a declaration was and how that would be part of  
15 this case?

16 A. I don't really remember.

17 Q. And you also said Mr. Eliasberg told you  
18 that this case would be about some conditions, but not  
19 all --

20 A. Uh-huh.

21 Q. -- conditions. Do you recall him making any  
22 sort of distinction as to --

23 A. Yes.

24 Q. -- what would be included and not be  
25 included?

1 A. Yes.

2 MS. PERRIN: Slightly misstates her  
3 testimony. For the record, she said it would be about  
4 some conditions, but not everything that was wrong with  
5 public education, but go ahead.

6 THE WITNESS: One of the biggest problems  
7 that we wrestle with in the school is the food and  
8 nutrition and he said that was under the province of a  
9 different agency and would not necessarily be a part of  
10 the suit.

11 MR. ROSENTHAL: Q. Anything else you  
12 recall?

13 A. No.

14 Q. Did Mr. Eliasberg tell you what agency was  
15 responsible for food and nutrition that was different  
16 from the agencies that were involved with respect to  
17 other conditions at Bryant?

18 A. He did and I don't remember.

19 Q. Do you recall that being the only reason he  
20 gave as to why the concerns you had about food and  
21 nutrition would not be included in this case?

22 A. Yes.

23 Q. Did that trouble you at all?

24 A. Trouble me? No. No. I dealt -- I took  
25 that information and used it to deal with the nutrition

1 problem in a different way.

2 Q. When you say you dealt with that problem in  
3 a different way, can you tell me what you mean?

4 A. I went to the San Francisco Unified School  
5 District's Nutrition Department directly. He actually  
6 helped me understand a little bit better about who is  
7 in charge of what.

8 Q. And did going to the San Francisco Unified  
9 School District Nutrition Department resolve some of  
10 the concerns you had?

11 A. I'm going to ask a question. I don't think  
12 it has anything -- my understanding, the food doesn't  
13 have anything to do with the case, so it is silly to  
14 talk about it and I know we want to get through this  
15 quickly. It is an ongoing saga and the answer to that  
16 is yes and no and very complicated and I'm not sure we  
17 should talk about it here. I know I'm not the boss of  
18 this conversation, but it just doesn't seem like --

19 Q. I won't spend a lot of time on it.

20 A. Okay.

21 Q. I want to get a sense of -- I think it is  
22 relevant with respect to the methods you took as far as  
23 getting problems resolved at Bryant.

24 A. Okay.

25 Q. So in going there, did you find that you

1 were able to resolve any of your concerns or some of  
2 your concerns?

3 A. No, not -- not -- not resolved to my  
4 satisfaction or the children's satisfaction. It took a  
5 much more unified effort on behalf of parents and  
6 teachers and children before some things began to  
7 change.

8 Q. And until the time you left Bryant, was food  
9 and nutrition still a concern you had? The problem had  
10 still not been entirely resolved?

11 A. When I left Bryant, the food was still  
12 inedible, yes, on some occasions. It was spoiled or  
13 didn't taste good or didn't look good on some  
14 occasions.

15 Q. Okay. And the chronology of your  
16 conversations with Mr. Eliasberg and other attorneys  
17 representing Plaintiffs that were up to an actual  
18 meeting you had with him where he got your declaration,  
19 do you recall how long you met with Mr. Eliasberg on  
20 that occasion?

21 A. Perhaps an hour or so.

22 Q. And you identified a number of problems, a  
23 number of conditions existing at Bryant in your prior  
24 testimony that you spoke to him over the telephone  
25 about. Did you just repeat those conditions for him at

1 Q. Putting aside the issue of your concerns  
2 with food, did Mr. Eliasberg tell you that you should  
3 tell him all of the conditions at Bryant that you  
4 believe were problematic?

5 A. In my job, including public education, the  
6 number of things that are a problem is huge. I  
7 understood that the boundaries of the lawsuit didn't  
8 include incompetent secretaries or illiterate coworkers  
9 and things like that. I didn't talk about everything  
10 that was wrong with public education, particularly  
11 Bryant, but I did talk about things that I understood  
12 to be part of the lawsuit if it were to come about, as  
13 well as ones that were serious problems that ought not  
14 to exist, which is in any basic classroom.

15 Q. So other than the food and nutrition  
16 concerns and the concerns you had about incompetent  
17 secretaries or illiterate coworkers, are there any  
18 other concerns at Bryant that you had that you did not  
19 identify at that meeting with Mr. Eliasberg?

20 A. I am incredibly interested in the whole  
21 process of public education and there are a myriad of  
22 aspects that feed into a quality education that may be  
23 -- can or cannot be addressed in a public education in  
24 California, given how much money is in the budget for  
25 it. I can't discuss all those things with Peter

1 this in-person meeting or was there something else you  
2 haven't told me about?

3 A. I think that on that conversation, his  
4 instructions to me were to tell me -- tell him in my  
5 own words about the conditions at Bryant, which I did,  
6 and so I went into more detail in my declaration and  
7 gave some examples of how it impacted me or impacted  
8 the students to work in those conditions.

9 Q. And he told you to identify the conditions  
10 at Bryant. Did he place any sort of limitation on what  
11 he meant by "Conditions"?

12 A. No, but by that point, I understood food was  
13 not an issue we were really going to discuss, although  
14 I am pretty sure I did tell him about it anyway because  
15 it was a big deal.

16 Q. Was Mr. Eliasberg taking notes during this  
17 meeting?

18 A. Yes.

19 Q. Did he tape-record your meeting?

20 A. I don't think so.

21 Q. Was it your understanding that you were --  
22 was it your understanding that you were to tell Mr.  
23 Eliasberg about the conditions at Bryant that, in your  
24 mind, were problematic?

25 A. Yes.

1 Eliasberg because they didn't seem to be to the point,  
2 but the very most basic things, like books and a  
3 healthy classroom, we talked about those things.

4 Q. Can you just give me a couple of examples of  
5 what you mean by the other issues that you were  
6 concerned about, but did not raise with Mr. Eliasberg  
7 for one reason or another?

8 A. Unsafe neighborhoods, poverty, those are --  
9 those affected an education, but they don't have  
10 anything to do with the basics that the Department of  
11 Education can provide. Those are out of the scope of  
12 the Department of Education's responsibility.

13 Q. Okay.

14 MS. PERRIN: Michael, we've been going for  
15 about an hour. Can we take a quick break?

16 MR. ROSENTHAL: Sure.

17 (Recess taken.)

18 MR. ROSENTHAL: Q. Ms. Malabed, you  
19 understand you are still under oath?

20 A. Yes.

21 Q. You understand after each break we take,  
22 you'll be under oath after we come back here?

23 A. Right.

24 Q. Now, before our break you were talking about  
25 your meeting with Mr. Eliasberg in which you gave him

1 information which then became your declaration. Do you  
2 have an understanding as to who drafted your  
3 declaration?

4 A. You mean typed it?

5 Q. Sure.

6 A. Peter took notes and then it appeared before  
7 me in typed form. I don't know who typed it and I  
8 edited it once or twice or three times. I don't even  
9 remember how many times, but I edited it several times.

10 Q. Do you remember how you received the first  
11 draft of your declaration?

12 A. It came to the school site and I think that  
13 it was delivered by a courier maybe.

14 Q. Do you know who it came from? Did it come  
15 from Mr. Eliasberg?

16 A. You know, it maybe came from Lois at that  
17 time because I met Lois by then, so I don't know.

18 Q. After receiving the first draft of the  
19 declaration, did you review the declaration?

20 A. Yeah, I read it very carefully and I made  
21 changes in language and added details and context to  
22 it, I think, just to flush it out so it really  
23 reflected what I knew.

24 Q. Do you remember any of the changes you made  
25 to your declaration at that time?

1 A. Always.

2 Q. Did you --

3 A. I understood this to be a very serious  
4 statement of my experience and that it had to be  
5 absolutely accurate.

6 Q. And did you make any changes to the revised  
7 draft that you received?

8 A. I remember that I was going to sign my  
9 declaration, I think, on the day of a press conference  
10 and Lois handed me my declaration and I still didn't  
11 agree with all of the details in it and so I called her  
12 secretary -- I think it was your secretary -- and  
13 dictated my changes over the phone and she changed them  
14 and sent it as an e-mail attachment to the ACLU of  
15 Northern California where the press conference was  
16 being held. It was printed out there and then when I  
17 saw that it said what I meant, then I signed it.

18 Q. I want to make sure I have the chronology  
19 right. You received a first draft of the declaration,  
20 which you revised and passed on those changes to  
21 someone by some method?

22 A. Uh-huh.

23 Q. And then you received a second copy of your  
24 declaration, which also arrived at Bryant?

25 A. Uh-huh.

1 A. I don't.

2 Q. After you made the changes -- strike that.

3 Did you make the changes by physically  
4 writing on the document?

5 A. Uh-huh; yes.

6 Q. And what did you do with the document after  
7 you made those changes?

8 A. I either faxed it back or dictated changes  
9 over the phone to somebody and I don't remember who.

10 Q. At some point, did you then receive a  
11 revised copy of your declaration?

12 A. I did.

13 Q. And did you similarly receive that through  
14 the mail somehow?

15 MS. PERRIN: Slightly misstates her  
16 testimony. She said she thought it was by courier.

17 THE WITNESS: I don't know. I think it was  
18 by courier, yeah.

19 MR. ROSENTHAL: Q. When you say, "By  
20 courier," you mean like a hand delivery?

21 A. Not to me, but it would have been delivered  
22 to the front desk of my school and then I would have  
23 picked it up out of my mailbox.

24 Q. And after receiving your revised  
25 declaration, did you review that declaration?

1 Q. And you made changes to that declaration by  
2 calling who you believe was Ms. Lois's secretary or am  
3 I missing something?

4 A. I think you might be missing a piece and I  
5 might be missing a piece. I know there was at least  
6 the original draft that came to me that I made changes  
7 to and then there was a final set of changes that I  
8 made while I was at the ACLU Northern California  
9 offices right before a press conference and I made  
10 those changes. Lois handed me my declaration, a  
11 revised declaration on that day, and I made more  
12 changes over the phone with her secretary. She sent  
13 those as an e-mail attachment, her secretary did, to  
14 ACLU Northern California. It was presented again and I  
15 signed it that day, the day of the press conference.  
16 There may have been another version sandwiched in there  
17 where I made an insertion, but I can't absolutely  
18 remember.

19 Q. And you said it was your understanding that  
20 the declaration need be absolutely accurate?

21 A. From my perspective.

22 Q. Right. That was your understanding?

23 A. Uh-huh.

24 Q. Was there anything contained in the first  
25 draft of your declaration that you believed to be not

1 absolutely accurate?  
 2 A. When Peter was taking notes of my  
 3 statements, he may have used a pronoun incorrectly or  
 4 there was a point where we had only a certain number of  
 5 social studies texts and he may have said not enough  
 6 texts and I knew exactly how many we had and so I  
 7 wanted to be precise.  
 8 Q. And do you recall the changes you made to  
 9 your declaration on the day of the press conference?  
 10 A. I don't, but I remember once it was one  
 11 detail that I knew to be different than what it said.  
 12 I think it was -- I don't remember what it was, though.  
 13 It could've been a spelling issue, honestly, but I'm  
 14 very particular on that kind of stuff.  
 15 Q. You would make a great lawyer, then.  
 16 A. I don't think so.  
 17 Q. And did you actually sign your declaration  
 18 on the day of the press conference?  
 19 A. I did.  
 20 Q. Do you still have copies of the draft  
 21 declarations that you received from --  
 22 A. No.  
 23 Q. -- somebody?  
 24 A. Huh-uh.  
 25 Q. Did you discard those?

1 A. Yes.  
 2 Q. Do you maintain any kind of file in  
 3 connection with this case?  
 4 A. Yes.  
 5 Q. Do you recall when you started that file?  
 6 A. On the day of the press conference, I  
 7 started -- I kept a copy of the contents of the press  
 8 kit and there was an article in one of the local  
 9 newspapers I clipped. My declaration is in there.  
 10 Q. Any other documents you recall being in the  
 11 file you maintain?  
 12 A. Pictures of some of my kids.  
 13 Q. I'm sorry?  
 14 A. Pictures of some of my kids, things like  
 15 that.  
 16 Q. And just so we're clear, do you recall the  
 17 date you signed your declaration?  
 18 A. Maybe. Hold on. Hold on. Spring of 2000,  
 19 it is March, April, or May. I don't remember.  
 20 Q. Does April 10th, 2000 sound about right?  
 21 A. Could be.  
 22 Q. Was that approximately the day you would  
 23 have started your file?  
 24 A. Probably, yeah. It was the day I got the --  
 25 the day of the press conference, I got a press kit. I

1 took it home. It is a little folder and that is where  
 2 I keep my stuff.  
 3 Q. I'm just going to ask you not to discard or  
 4 destroy any of the documents contained in the file as  
 5 it may be subject to discovery at some point in this  
 6 case, so --  
 7 A. Okay.  
 8 Q. Now, we were working our way through your  
 9 communications with Mr. Eliasberg and other attorneys  
 10 representing the Plaintiffs and we pretty much covered  
 11 your meeting with him at Bryant in which you gave him  
 12 information which later became your declaration. Other  
 13 than the communications you had with attorneys in  
 14 connection with the revisions to your declaration, do  
 15 you recall any other communications with the attorneys  
 16 representing the Plaintiffs in between the time that  
 17 you met with Mr. Eliasberg at Bryant and the time of  
 18 the press conference?  
 19 A. By this time before the press conference, I  
 20 had now met Lois and Catherine Lhamon and I do not  
 21 recall any specific conversations, but I know I spoke  
 22 to one or the other of them on the phone sometime  
 23 between the time of my declaration and the press  
 24 conference because that is the only way I could have  
 25 been asked if I would like to participate. I think

1 also that sometime in that spring period, I had several  
 2 students in my class and parents who were interested in  
 3 making declarations and I became a kind of point person  
 4 for giving the names of those people and their phone  
 5 numbers to Catherine or Lois and so in the case of  
 6 Bibiana and her mother Luz Arriola, I spoke to them  
 7 about whether or not they would like to get involved  
 8 and when they said yes, I gave their phone numbers to  
 9 either Lois or Catherine, so we spoke a few times. I  
 10 don't know how many times and I don't know on what  
 11 dates during that time period, so that I could give  
 12 them the information of families that wanted to  
 13 participate.  
 14 Q. Just so our record is clear, can you spell  
 15 those names you just identified?  
 16 A. Yes, B-i-b-i-a-n-a, and she was a fifth  
 17 grader at the time. Her mother Luz is spelled L-u-z  
 18 and their last name is A-r-r-i-o-l-a.  
 19 Q. Thank you. Now, I know you don't recall the  
 20 exact number of communications you had with either  
 21 Catherine or Lois at the time frame we're talking  
 22 about, but aside from discussing your participation in  
 23 the press conference and facilitating connections with  
 24 parents and students, do you recall any other things  
 25 being discussed during those conversations during that

1 time?  
 2 A. No, I don't.  
 3 Q. Do you recall the substance of your  
 4 conversations with either Catherine or Lois about your  
 5 participation at the press conference?  
 6 A. The substance of it? One or both of them  
 7 would have explained to me what the purpose of it was,  
 8 that it was the date the suit was going to be filed,  
 9 and that statements were going to be made to the press  
 10 to explain the suit and one or the other of them asked  
 11 if I would be interested in speaking briefly at the  
 12 press conference to explain orally, in my own words,  
 13 why or how I became a part of giving a declaration and  
 14 if Bibiana would also like to participate as a student  
 15 Plaintiff and explain what her experience was at Bryant  
 16 and they were very clear that we had an invitation to  
 17 participate and that we had no obligation to do so and  
 18 it would only be if we felt comfortable and good about  
 19 coming forward and saying something and both of us did.  
 20 Q. When you say, "Both of us," did you both  
 21 speak at the press conference?  
 22 A. Yeah, both Bibiana and I felt very strongly  
 23 it was the right thing to do.  
 24 Q. You said in this time frame when you had one  
 25 or more conversations with Ms. Perrin and/or Ms.

1 Lhamon, that the subject matter arose of putting them  
 2 in contact with parents and students who might also  
 3 want to be involved in the litigation. Do you remember  
 4 how that topic area arose?  
 5 A. I don't remember the particulars of it. It  
 6 was something to the effect that, "We have some  
 7 declarations of teachers. Are you aware of any  
 8 families who might be interested in talking to us?"  
 9 It was as open-ended as that, not  
 10 necessarily interested in making a declaration or  
 11 becoming a part of the suit, but be interested in  
 12 having a conversation.  
 13 Q. And did you give Ms. Lhamon or Ms. Perrin  
 14 names at that moment?  
 15 A. I thought about which parents complained to  
 16 me specifically and articulately about basic conditions  
 17 and I didn't give them names at that point. I said I  
 18 have some people that I've talked to. I would like to  
 19 talk to them again and I'll let you know, so I did and  
 20 then I actually spoke to several other parents and some  
 21 declined. They are just distrustful of the justice  
 22 system and two parents specifically said they would  
 23 like to have more conversations with Lois or Catherine  
 24 and they were Luz Arriola and Ledy Ramirez.  
 25 Q. Do you recall the total number of parents

1 that you spoke to in this regard?  
 2 A. I can think of for sure those two mothers as  
 3 well as a third mother.  
 4 Q. Can you tell me who the third mother is?  
 5 A. Her name is Kreasha, K-r-e-a-s-h-a, Sherman,  
 6 S-h-e-r-m-a-n.  
 7 Q. And was she one of the parents who declined  
 8 to become involved?  
 9 A. Yes.  
 10 Q. And did she give you a reason?  
 11 A. She says she doesn't like lawyers.  
 12 Q. A very smart woman.  
 13 A. She said, "I don't want to talk to anybody."  
 14 Her daughter wanted to very much. She says,  
 15 "I have a lot of things to say, but my mother prefers I  
 16 don't."  
 17 Q. Do you recall speaking to any other parents  
 18 in this regard?  
 19 A. I don't.  
 20 Q. I don't mean specific names of people, but  
 21 you just, again, generally remember speaking to more  
 22 than three parents about this?  
 23 A. I don't. I -- you know, I think if I had a  
 24 class list in front of me from the class of 2000, I  
 25 would start guessing that I might have wanted to speak

1 to them, but I can't say for certain because there were  
 2 a lot of people that had complaints about basic stuff.  
 3 Q. After speaking with the -- after speaking  
 4 with Ms. Arriola and Ms. Ramirez, did you facilitate  
 5 putting them in contact with either Ms. Lhamon or Ms.  
 6 Perrin?  
 7 A. I gave their home phone numbers to either  
 8 Ms. Lhamon or Ms. Perrin, yeah.  
 9 MS. PERRIN: You can call us Lois and  
 10 Catherine.  
 11 THE WITNESS: Okay. Good. Thanks. That is  
 12 going to be easier for me.  
 13 MR. ROSENTHAL: Q. And do you know if Ms.  
 14 Arriola and Ms. Ramirez submitted declarations in  
 15 connection with this case?  
 16 A. Yes, I think they both did. I'm going to  
 17 back up. I think Ledy did for sure. I don't know  
 18 about Luz.  
 19 Q. How do you know that Ms. Ramirez submitted  
 20 one? Have you seen her declaration?  
 21 A. Uh-huh; yes, I have.  
 22 Q. Okay. In the chronology of communications  
 23 with your attorneys, we're now up to the press  
 24 conference. Do you remember there being any other  
 25 communications you had with any of the attorneys

1 representing the Plaintiffs at that time other than the  
2 ones you've already told me about?

3 A. No.

4 Q. Do you recall having conversations with any  
5 of the attorneys representing the Plaintiffs subsequent  
6 to the press conference and prior to your becoming  
7 represented?

8 A. In the summer of 2000, I got a letter from  
9 Catherine. It was a form letter to people who had  
10 signed declarations in the case just to keep them  
11 posted as to the progress in the case so far. I don't  
12 remember the content of the letter. And then in the  
13 late summer of 2000, I had a conversation with either  
14 Lois or Catherine about the specific topic of are there  
15 enough books in the classroom and one of them let me  
16 know that another press conference was going to take  
17 place to address just that issue alone and I was  
18 invited, again, to participate if I felt comfortable  
19 doing so and I said I would.

20 Q. And did you participate? Did you speak at  
21 that press conference as well?

22 A. I was there. Did I speak? I don't remember  
23 if I spoke.

24 Q. You said sometime during the summer of 2000,  
25 you got a, I think you called it a form letter from Ms.

1 to secure enough school books for every child in the  
2 room and so we were looking at this brand-new school  
3 year now. Are there enough books now? The problem has  
4 been identified and does the problem persist?

5 Q. And do you know what the purpose of the  
6 press conference was?

7 A. My sense is that the purpose was to make  
8 sure that that particular aspect of the suit was  
9 highlighted for the severity of it and that there is  
10 still a lack of textbooks even months after the problem  
11 has become clearly put out there.

12 Q. Moving forward in the chronology of  
13 communications you've had with the attorneys  
14 representing the Plaintiffs, do you recall the next  
15 communication you had after that press conference?

16 MS. PERRIN: About the suit?

17 MR. ROSENTHAL: Yes.

18 THE WITNESS: It was quiet and I got another  
19 update letter from Catherine. I don't know when.  
20 Between the press conference in the fall and the  
21 hopeful scheduling of a deposition in the late spring  
22 of 2001, I don't believe that we actually spoke about  
23 the suit. I did get a letter at some point during that  
24 time letting me and other parties that were involved --  
25 not a form letter again, but basically to those folks

1 Lhamon.

2 A. Yeah.

3 Q. Is that a document you kept in your file  
4 regarding this case?

5 A. I didn't.

6 Q. You discarded that letter as well?

7 A. Recycled.

8 Q. I include recycling in my definition of  
9 discard.

10 A. I don't keep a lot of documents because I  
11 think anything I need to find out, I can find out on  
12 the web if I need it again, so there is not much in my  
13 file, really.

14 Q. You said that sometime during the summer of  
15 2000, you had a conversation with either Ms. Perrin or  
16 Ms. Lhamon, but this conversation was specific to  
17 textbooks. Can you just tell me generally what the  
18 substance of that was?

19 A. In general, it was speaking to the idea that  
20 there had been this complaint filed in the spring that  
21 addressed several basic requirements that a kid needs  
22 to have to just even begin to get an education and it  
23 was looking at whether or not even one of those aspects  
24 had been addressed adequately and that would be whether  
25 or not the State or the school district had been able

1 that were -- it was an update and I recycled that one  
2 as well, but just letting me know what was going on  
3 with the suit and then about -- okay. It had to be in  
4 spring. It had to be in spring because it was right  
5 about that time that we started talking about having a  
6 deposition that Ledy was killed.

7 MR. ROSENTHAL: Q. When you say it had to  
8 be the spring, did you mean that is when you got the  
9 update?

10 A. That is when we spoke personally again, so I  
11 had had a letter sometime between September and maybe  
12 March and then around in March or April, someone called  
13 me and said, "We're starting to schedule depositions  
14 for the case and would you like to have your" -- "give  
15 a deposition?" And Richey and Carlos as well and some  
16 other folks. And that is when Richey and Carlos's mom  
17 was killed, right around that time.

18 Q. Do you recall the total number of updates  
19 you received from Ms. Lhamon or any attorneys  
20 representing the Plaintiffs?

21 A. I know I got at least two letters, possibly  
22 three.

23 Q. In the conversation you had with one of the  
24 attorneys representing the Plaintiffs in approximately  
25 March and April in which it was discussed that

1 depositions were starting to be scheduled, did you  
2 discuss anything else during that conversation?

3 A. I asked for clarification on what was taking  
4 so long; why was it taking so long; what was the  
5 State's response to the suit and how did the ACLU  
6 respond to that. And Lois and Catherine tried to  
7 explain to me how this game is played.

8 Q. And do you recall what they told you?

9 A. They told me that the governor had hired a  
10 law firm to countersue the school district. I believe  
11 this is how it works. I have to tell you, I'm not all  
12 that interested in it.

13 Q. I'm just asking for your understanding.

14 A. I know. I'm not really interested in it, so  
15 I don't remember at all that well. I'm not interested  
16 in this aspect of it. The State had hired the firm and  
17 the firm countersued the districts and claimed that the  
18 districts were actually responsible for the lack of  
19 basic necessities in school and that is why the heat  
20 had come down through San Francisco Unified to my  
21 principal to the teachers to find out what it is we  
22 need and what our problems were and they had tried to  
23 address and patch things up, that also a lot of -- I  
24 forget what the word is -- delays had occurred because  
25 of something being filed over and over and over again

1 either Ms. Lhamon or Ms. Perrin or perhaps both that  
2 the case was not proceeding at the pace it was  
3 originally expected to. Did you have an understanding  
4 as to when the case was anticipated to be resolved?

5 A. My sense was that the case would be filed or  
6 -- I guess that is the right word. I'm not sure -- and  
7 that it was possible that it could be settled out of  
8 court. I'm not sure what that means and I got the  
9 impression about this from Peter Eliasberg very, very  
10 early on back in December of '99 or January of 2000, it  
11 could be settled out of court or that -- I did not  
12 anticipate that the State would countersue.

13 Q. You also said during that conversation with  
14 one of the attorneys representing the Plaintiffs  
15 that -- strike that.

16 You testified earlier that it was your  
17 understanding that some heat had come down on the San  
18 Francisco Unified School District as a result of this  
19 lawsuit.

20 A. Yes.

21 Q. Can you explain to me what you meant by  
22 that?

23 MS. PERRIN: Slightly misstates her  
24 testimony. I believe she was referring to the  
25 cross-complaint with respect to the heat coming down to

1 and that was slowing things down and that also, in the  
2 meantime, however, more schools were beginning to  
3 participate because they, too, had the same -- I want  
4 to say immoral conditions -- the same kinds of  
5 conditions that the original schools were enduring and  
6 things were proceeding, but not as originally expected  
7 to.

8 Q. I want to go back to something you were  
9 discussing earlier. Do you remember the substance of  
10 any of the updates that you got from Catherine? I know  
11 you said you didn't get copies of those.

12 A. I think they were things like that the State  
13 has responded by hiring a firm. The firm has  
14 responded -- that firm has filed a something, something  
15 and now it is being overseen by such and such a court,  
16 things like that.

17 You know, just from my perspective, it is  
18 pretty simple: No books, can't teach, can't learn.  
19 And then there is all this stuff that has to happen to  
20 see how that all shakes out. This is the part I'm  
21 interested in: No books, can't teach, can't learn.  
22 Room is too hot, too noisy. When is this going to get  
23 fixed? Who is going to fix it? Who is going to admit  
24 this is happening and say okay, we'll fix it?

25 Q. You said during your conversation with

1 the district which would have been the suit filed by  
2 the State against the school district.

3 THE WITNESS: Right, it was the counter  
4 suit. Arlene Ackerman, the new superintendent of San  
5 Francisco who had taken over after Bill Rojas, was  
6 running the school district when the counter suit was  
7 filed. She -- my understanding from Larry Alegre is  
8 that she sent a memo to the principals of the schools  
9 named in the suit, Bryant being one of them, asking  
10 exactly what were the conditions at the school,  
11 according to the principal, not according to the  
12 teachers and not according to parents, but rather  
13 according to the principal and he responded.

14 It was during the summer of 2000 where I  
15 know that when I came back to school in the end of  
16 August of 2000, I asked to read the transcript or the  
17 papers that he had sent to Arlene Ackerman where he  
18 explained his version of the problem and I noted for  
19 him at that point that some of the statements he made  
20 were not true and he said, "That is what I thought."

21 And I said, "I wish you had called me at  
22 home. I was at home this summer. These are not true  
23 statements. This did not happen and that is not so and  
24 that is not so."

25 And he said, "Well, she is very upset and



1 there is a lot of pressure on me to get this fixed."

2 And I don't remember his exact words, but  
3 basically he was a little anxious about being directly  
4 contacted by San Francisco Unified's Legal Department  
5 and Arlene Ackerman with respect to the suit and  
6 whereas he had been very supportive of all the efforts  
7 and the teachers of the ACLU, he then began to say,  
8 "You could get me fired for this, you know."

9 And I told him that he was not being sued,  
10 that the suit was about making sure we had books,  
11 qualified teachers, paper, and pencils.

12 And he said, "Well, there is a lot of heat  
13 on me."

14 So that is what I meant by "Heat."

15 MR. ROSENTHAL: Q. Okay. Thank you for  
16 clarifying that. You said that you physically read the  
17 documents that he submitted --

18 A. Yes.

19 Q. -- that he submitted to Ms. Ackerman?

20 A. He either submitted it to her or to her via  
21 the Legal Department of San Francisco Unified.

22 Q. He submitted to somebody at San Francisco  
23 Unified School District?

24 A. Uh-huh; yes.

25 Q. It is very easy to get into that. I'll try

1 had to."

2 And I said, "Well, that doesn't take care of  
3 it."

4 He said that we are an open classroom  
5 building with partitions because we were built in the  
6 1970s, so in that statement, I inferred that he admits  
7 that noise is a problem, but declines to address  
8 whether or not anything can be done about it or if  
9 anything is being done about it. He just left it sort  
10 of as that.

11 Let me see, what else was in there. Oh, I  
12 know. We were told by a previous principal when I  
13 first started at the school, Ms. Zita, Z-i-t-a, that we  
14 were -- teachers were to flush the pipes every morning  
15 for 60 seconds because it was determined that there was  
16 some lead in the pipes and since Ms. Zita had left the  
17 school and Mr. Alegre had taken her place, several  
18 teachers had also changed jobs and new teachers had  
19 never been told that they were supposed to flush the  
20 pipes and his statement in there is "Teachers flush the  
21 pipes for 60 seconds every day at the school."

22 And I said, "I know this is not true because  
23 some teachers I just found out didn't even know there  
24 was lead was in the pipes, so not all teachers are  
25 flushing the pipes because they didn't know about it

1 to catch you when you do that, but I'm not always  
2 great.

3 A. Okay. Thank you. I'm going to anticipate  
4 that you are going to ask me what I pointed out for him  
5 that I thought was wrong.

6 Q. I was going to ask that, so if you wanted to  
7 answer that.

8 A. One of the things he addressed on there was,  
9 he talked about -- I think the question from Ackerman  
10 is, "What is the deal on your heating and  
11 air-conditioning?"

12 He responded that technicians and engineers  
13 from Buildings and Maintenance had been to Bryant  
14 school on many, many occasions to try and fix the  
15 air-conditioning and heating problem. I don't think he  
16 ended the statement with, "However, the heating and  
17 air-conditioning are still not fixed at this point."  
18 He just simply said, "They've been here to work on it."

19 And there was a question about textbooks and  
20 he said textbooks had been ordered and I asked him if  
21 he had ordered my social studies textbooks. And he  
22 said, "No."

23 And I said, "Well, then not all the  
24 textbooks have been ordered."

25 He said, "Well, I ordered what I thought I

1 yet because it is not being communicated to them."

2 So he said, "Well" -- "you know, I had to  
3 send the paperwork in two weeks ago and I did the best  
4 I could."

5 I said, "I wished you would have called me  
6 because I could've clarified it for you."

7 Q. Just so I can get a sense of what this  
8 document looked like, it sounded like there were  
9 questions at San Francisco Unified School District to  
10 which he was responding?

11 A. I think he got a memo and it instructed him  
12 to reply with what had been done and the current status  
13 of the conditions named in the suit and so he wrote a  
14 memo back.

15 Q. And do you have copies of either of those  
16 memos?

17 A. No.

18 Q. You said in response to the issue of  
19 air-conditioning and/or heat, that he reported that  
20 technicians had been to Bryant on numerous occasions,  
21 but didn't go on to say that there were ongoing  
22 problems with regard to the air-conditioning and/or  
23 heat?

24 A. You know, he actually -- I have to say, he  
25 may have said something to the effect that it continues

1 to be a problem. The way he fixed the problem was he  
2 would manually walk up onto the roof and go to the  
3 air-conditioning/heating unit and manually turn it on  
4 or off, depending on which teacher was screaming the  
5 loudest. And if he wasn't there that day, it didn't  
6 get done, so one side of the building would be very,  
7 very hot and one side of the building would be very  
8 cold.

9 Q. And was his statement that technicians had  
10 been to Bryant on numerous occasions false?

11 A. It is true. They, in fact, shut the school  
12 down. We had a modified year-round schedule which  
13 meant that we didn't run a regular school year starting  
14 in August and ending at the beginning of June, but  
15 rather we started in August, had a week off in October,  
16 a couple weeks off in April and went to the end of  
17 June, had a couple weeks off and started a summer  
18 session. And that is the way we ran school to make  
19 sure the kids who were learning to speak English and  
20 needed extra time to have teachers would have a full  
21 year-round schedule and one year, the school district  
22 decided they needed to shut Bryant down for the summer  
23 so they could address the heating and air-conditioning  
24 problems, so there were engineers and technicians there  
25 for about two months during the summer. And when the

1 school year started up again in, I think it was the  
2 1999/2000 school year, the heating was not fixed and  
3 the air-conditioning was not fixed, despite the fact  
4 they had been there for that summer. Building and  
5 Grounds would send out -- I don't know if technicians  
6 is even the right word for these people -- would send  
7 people out to check the heating and air-conditioning on  
8 several occasions. They could not find the thermostats  
9 and could not fix the thermostats and on my last day of  
10 school in 2001, June 2001, the heating and  
11 air-conditioning still was not a fixed problem.

12 Q. Just so the record is clear, when you refer  
13 to "Building and Grounds," is that a department?

14 A. That is a department of San Francisco  
15 Unified.

16 Q. And were the technicians or individuals who  
17 were at Bryant during the summer when they were  
18 attempting to repair the heating and air-conditioning,  
19 were they Building and Grounds people from Building and  
20 Grounds or --

21 MS. PERRIN: Objection. Calls for  
22 speculation.

23 THE WITNESS: They may have been. I don't  
24 know.

25 MR. ROSENTHAL: To the extent you know.

1 THE WITNESS: I don't know. I don't know  
2 who they worked for.

3 MR. ROSENTHAL: Q. Now, just in connection  
4 with -- strike that.

5 You said that when some heat had come down  
6 through the San Francisco Unified School District on  
7 Mr. Alegre, that some things had gotten patched up as a  
8 result of that? I think these were your words.

9 A. Uh-huh; yeah, they were. When the suit was  
10 initially filed, Arlene Ackerman wanted to know exactly  
11 what the problems were and she wanted them fixed.

12 Let me see if I can go through some of the  
13 things that might have been fixed.

14 Q. That would be very helpful.

15 A. They were not able to rectify the problem  
16 with noise because we have these hollow paths. I can't  
17 speak to the other schools in San Francisco. I can  
18 only speak about Bryant.

19 They were not able to get the lead out of  
20 the pipes.

21 They couldn't fix the air-conditioning and  
22 heat, though they seem to have tried.

23 The situation with books for some of the  
24 other teachers may or may not have been resolved. I  
25 don't know. I do know that some of the teachers taught

1 a full school year without their teaching curriculum.  
2 They didn't have their teaching manuals and couldn't  
3 get their hands on them, although Larry said he made  
4 phone calls to the appropriate departments to downtown.  
5 "Downtown" in quotes. Downtown could be anywhere in  
6 San Francisco, as far as I was concerned. The specific  
7 textbook shortage that I was dealing with was a social  
8 studies textbook and there was an effort to resolve  
9 that situation in the fall of 2000, but it didn't  
10 resolve and I'll get to that in just a second. I'm  
11 trying to think of some of the other things.

12 Oh, clogged toilets and smelly bathrooms and  
13 stalls missing doors. I think that Larry asked the  
14 janitors to heighten their awareness of cleaning. That  
15 doesn't necessarily solve the problem as far as the  
16 kids are concerned, though when kids go into a bathroom  
17 that smells overwhelmingly of urine and feces, they  
18 still just won't use it sometimes very often.

19 Shortages of paper and pencils, we usually  
20 ran out of paper and pencils, as I said, in the spring  
21 of every year in all of my years at Bryant. And at the  
22 beginning of this new school year after the suit had  
23 been filed, we had a much larger than usual delivery of  
24 school supplies and I was told by Larry that we will  
25 never run out all year long. He never explained why

1 that was, but he said that if we should ever need  
2 anything, we would no longer have to make do on our  
3 own.

4 The next thing that they changed at Bryant  
5 was teachers had been given a budget of copies that  
6 they were allowed to make. My budget was no more than  
7 1,500 to 2000 copies a year and prior to the suit, I  
8 would bankrupt my budget by mid-year because I would  
9 have to make my own curriculum and photocopy that since  
10 we didn't have textbooks. They took off our copy  
11 budget limits, but the copier was broken so often and  
12 we were so often out of toner, that we still couldn't  
13 always get the work done that we needed to get done and  
14 it took a long time for some reason for people to come  
15 in and repair the equipment at school. That is all  
16 that is coming to my head right now.

17 Q. Great. Thank you.

18 A. Oh, the textbook thing, that is what I  
19 wanted to tell you.

20 Q. Okay.

21 A. Larry sent a letter out to all the teachers  
22 at the beginning of the 2000 school year asking if we  
23 had adequate curriculum materials for ESL, language  
24 arts, and math. He told us our math workbooks were on  
25 order.

1 In the 1999 school year, our math workbooks  
2 had not arrived until February of that year, so August,  
3 September, October, November, December, January,  
4 February -- so for seven months in 1999 school year,  
5 the kids didn't have math books. Our math books did  
6 arrive in October of the year after the suit was filed,  
7 so they were only without textbooks for about two  
8 months.

9 When Larry gave me the memo asking did I  
10 have my language arts materials and did I have my ESL  
11 curriculum, I answered, "Yes, I have the language arts  
12 materials that the district ordered." I didn't have  
13 what my classroom needed, but I did have what the  
14 district ordered and I did have the ESL materials.  
15 When I say I didn't have what I needed, I didn't have  
16 books on tape and I didn't have overheads, I had to  
17 make my own. The district wouldn't buy those.

18 He never asked me about the social studies  
19 textbooks.

20 When he found out, because of the press  
21 conference, that I had made a statement that I still  
22 didn't have my social studies textbooks, he became  
23 upset and said, "I specifically asked you if you had  
24 enough books at the beginning of the year."

25 I said, "You specifically asked me about

1 language arts and ESL and math. You did not ask me  
2 about social studies. These are the books I've been  
3 complaining about for three years."

4 Q. Just so our record is clear, when you say  
5 "ESL," can you tell me what that means?

6 A. English as a second language. More than 30  
7 percent of the children in my class don't speak English  
8 as a first language, so having fifth grade language art  
9 books is curriculum that is inaccessible to them. They  
10 can't read the materials. They read generally about  
11 two grade levels below because they are just learning  
12 English.

13 Within a month after Larry found out I  
14 didn't have enough social studies textbooks, he told me  
15 he thought there was somebody who could fix my problem,  
16 somebody from CIPD, which stands for "Curriculum  
17 Improvement and Professional Development," and within a  
18 few weeks after that or a month more, textbooks arrived  
19 in social studies. At that time before the textbooks  
20 arrived, I had 17 social studies textbooks in English  
21 and I had 23 students. The fifth grade next door also  
22 had 22 students, so that makes about 55 kids, 5th  
23 graders who need social studies textbooks and we only  
24 had 17.

25 Q. I think it is 45. 23 and 22?

1 A. 45. I'm sorry. That is why I teach math,  
2 right? Yikes.

3 So we have 45 5th graders and 17 books and  
4 another ten or 12 books arrived, not that many more  
5 arrived, but they did arrive. I was thrilled. Passed  
6 them out to the kids. Asked them to open up to page  
7 649 or something. I don't remember what it was. It  
8 was at the back of the book because we were looking at  
9 maps. Of the books that arrived, some of them were the  
10 same edition of the ones I already had and some of them  
11 weren't and some of them were in Spanish. The ones in  
12 Spanish were unusable. The new editions were unusable.  
13 It brought the total number of usable textbooks up to  
14 about 26 or something like that for 45 students and  
15 that persisted for the whole year, so it really didn't  
16 solve the problem. It still meant we couldn't send the  
17 books home.

18 Q. We'll come back to a lot of these issues  
19 later on. I want to clarify one word you used. You  
20 said the books were "Unusable." Can you just explain  
21 that to me?

22 A. You can't teach a lesson if kids have two  
23 different versions of a textbook in front of them  
24 because when I said go to 649 for the map of time zones  
25 and there is no time zone map on 649 for a lot of kids

1 or it is in Spanish, then I have to go around and flip  
 2 through the book and see if I can find the actual page.  
 3 Because the version I had was ten years old and the new  
 4 one was a brand new one they were considering adopting,  
 5 the actual text was different in some cases. The  
 6 language was different. The headers were different.  
 7 Q. Did you use those books and you just found  
 8 it more difficult to use the two different editions at  
 9 the same time?  
 10 A. You can't use two editions at the same time.  
 11 Q. So you didn't use them at all?  
 12 A. No. You can't use Spanish and English books  
 13 at the same time. I don't speak Spanish and neither do  
 14 my children.  
 15 Q. Just going back to the memo that Mr. Alegre  
 16 submitted to somebody at the San Francisco Unified  
 17 School District. You said in response to the question  
 18 about whether there were enough textbooks, Mr. Alegre's  
 19 response was something along the lines that textbooks  
 20 had been ordered and you pointed out to him -- at that  
 21 point, you asked him if social studies books had been  
 22 ordered and he said they had not been?  
 23 A. Correct.  
 24 Q. Did he tell you why that was the case?  
 25 A. Larry forgets a lot of things and I think

1 what he said was something like, "Oh, okay. Well, we  
 2 should do that, then."  
 3 MR. ROSENTHAL: Why don't we take a quick  
 4 break.  
 5 MS. PERRIN: Sure.  
 6 (Recess taken.)  
 7 MR. ROSENTHAL: Q. Ms. Malabed, we've been  
 8 going through the chronology of your communications  
 9 with the attorneys representing the Plaintiffs and  
 10 other individuals and we had gone through pretty much a  
 11 conversation sometime in the relatively early spring  
 12 you had with either Ms. Lhamon or Ms. Perrin. Were  
 13 there any other communications you had with the  
 14 attorneys for the Plaintiffs in this case subsequent to  
 15 that conversation and prior to you being represented by  
 16 Ms. Perrin and others?  
 17 MS. PERRIN: Are you asking about the case  
 18 specifically? And the reason I ask the question is  
 19 because we had a number of conversations about Carlos  
 20 and Richey Ramirez that were not related to the suit.  
 21 MR. ROSENTHAL: Let's limit it to those  
 22 conversations related to the case.  
 23 MS. PERRIN: Okay.  
 24 THE WITNESS: No, then, we didn't.  
 25 MR. ROSENTHAL: Q. Okay. Are you aware if

1 Carlos Ramirez was deposed in this case?  
 2 A. Yes, I am. And I know that he was.  
 3 Q. And are you aware of whether Richard Ramirez  
 4 was deposed in this case?  
 5 A. I know that he was asked if he would like to  
 6 be deposed and I don't know if he did go through with  
 7 it or not.  
 8 Q. Have you seen any deposition transcripts of  
 9 Carlos or Richard Ramirez?  
 10 A. I've seen something of Carlos's and I don't  
 11 know if it is his declaration or a deposition  
 12 transcript.  
 13 Q. Do you recall the length of the documents  
 14 you saw that related to Carlos Ramirez?  
 15 A. Actually, I can now as I'm thinking closer  
 16 about it. I've seen his declaration. It is a couple  
 17 pages long and I have seen, but not thoroughly read,  
 18 his deposition and I know it was much longer, but I  
 19 haven't really read the whole thing. I skimmed through  
 20 it.  
 21 Q. And how about for Richard Ramirez?  
 22 A. I don't recall that. I did recall seeing  
 23 his declaration. I don't recall seeing his deposition  
 24 if he gave one.  
 25 Q. Do you recall reading or seeing or skimming

1 any other deposition transcripts in connection with  
 2 this case other than Carlos Ramirez's?  
 3 A. I have seen a copy of Larry Alegre's and I  
 4 read -- I flipped through it and read in a couple of  
 5 places things that he said, but I didn't read the whole  
 6 thing.  
 7 Q. Do you have an understanding as to what  
 8 relief is being sought by the Plaintiffs in this case?  
 9 MS. PERRIN: Objection. Vague as to what  
 10 "Relief" is and calls for a legal conclusion.  
 11 MR. ROSENTHAL: You can answer.  
 12 THE WITNESS: Are you asking me why is the  
 13 suit being filed? What do the Plaintiffs hope to get  
 14 out of it if they win?  
 15 MR. ROSENTHAL: Why don't you answer that  
 16 question for me, sure.  
 17 THE WITNESS: If the Plaintiffs win this, I  
 18 believe that they are asking for the State to implement  
 19 some kind of system to determine whether or not every  
 20 school has the basic necessities and maybe it includes  
 21 a system for making sure that those necessities are  
 22 being addressed so that if it is found Bryant  
 23 Elementary doesn't have enough books, there is some way  
 24 of determining that not only do we know this to be the  
 25 case or the situation, but these are the things that

1 are now being done. These are the steps that are being  
2 taken to fix it.

3 MR. ROSENTHAL: Q. Was it your  
4 understanding that the purpose of this lawsuit was to  
5 have the individual conditions at Bryant Elementary  
6 that you believe to be substandard or problematic, to  
7 have them fixed as quickly as possible? Was that part  
8 of the relief that was being sought in this case?

9 A. No. That would be the ideal outcome. The  
10 ideal outcome would be that the system -- that a method  
11 of tracking would give way to a system for fixing  
12 problems in a reasonably quick way, but my  
13 understanding of the suit is that first it is just  
14 asking please, that the State know and take  
15 responsibility for making sure that everybody is  
16 constitutionally getting an education as the  
17 Constitution says they should be able to, the State  
18 Constitution.

19 Q. Were you surprised to find out that this  
20 lawsuit wasn't an attempt to remedy the individual  
21 concerns that you had at Bryant as quickly as possible?

22 A. No. From the very beginning when Peter  
23 talked to me about it, he made it clear that that was  
24 the point of the suit.

25 Q. Did you ever ask him or anybody why the

1 purpose of the suit wasn't to get the problems fixed as  
2 quickly as possible?

3 MS. PERRIN: And you can answer that  
4 question to the extent that it was in a conversation  
5 prior to representation. If it was thereafter, then  
6 don't answer because it would be protected by  
7 privilege.

8 THE WITNESS: Okay. Did I ever ask Peter  
9 why it wasn't about getting things fixed?

10 MR. ROSENTHAL: Peter or any of the other  
11 attorneys representing the Plaintiffs prior to the time  
12 you became represented by them.

13 THE WITNESS: No, I didn't ask him that. In  
14 the way he explained the purpose of the suit to me, I  
15 was satisfied that a strategy for improving public  
16 education would be to first make the State take  
17 responsibility for its Constitutional -- take its  
18 Constitutional responsibility to provide an education,  
19 including the basics. I just believe that the way  
20 Peter explained the purpose of the suit to me, that  
21 that -- it was a satisfactory answer. I don't know how  
22 else to say it.

23 MR. ROSENTHAL: Q. Have you ever heard of  
24 the Uniform Complaint Procedure?

25 A. No.

1 Q. Did anybody ever tell you why San Francisco  
2 Unified School District wasn't being sued by the  
3 Plaintiffs?

4 MS. PERRIN: Again, you can answer that  
5 question to the extent that you know and it was a  
6 result of a conversation prior to your representation.

7 THE WITNESS: San Francisco Unified is being  
8 sued by the governor, but my understanding is that the  
9 Constitution -- why isn't San Francisco being held  
10 accountable is because it is not just San Francisco  
11 Unified that is defaulting on this. It is every  
12 corner, valley, and hilltop in San Francisco that is  
13 impacted -- I mean, in California is impacted in its  
14 public school system by a lack of basic necessities and  
15 that is a more widespread and more global problem  
16 that -- that rests with the State to take care of it to  
17 make sure that the schools in Beverly Hills and  
18 Piedmont have what the schools in East Oakland and  
19 Watts have and that is the basics and right now, that  
20 is not happening and it is not San Francisco's  
21 responsibility to communicate with Beverly Hills or  
22 Watts. That is a bigger -- that is somebody else's job  
23 to oversee that.

24 MR. ROSENTHAL: Q. Perhaps I had limited my  
25 question. I had focused in on San Francisco Unified

1 School District. Since working at Bryant, that was the  
2 district you were working within, but do you have an  
3 understanding as to why Plaintiffs have not sued school  
4 districts, any school districts throughout the State of  
5 California?

6 MS. PERRIN: I believe her last answer  
7 addressed that, but you can answer the question.

8 THE WITNESS: Okay. The Constitution of the  
9 State of California states that it is a student -- it  
10 is a citizen's right, a child's right in California, to  
11 get an education and it is not a City Constitutional  
12 right. It is a State Constitutional right, so the  
13 governor in California, Board of Education have that  
14 responsibility to make that happen and that is why it  
15 is not the individual school districts. The individual  
16 school districts work for the State Board of Education  
17 and they are empowered by the State Board of Education  
18 to do what they do, but they are not -- my  
19 understanding is if the State of California is not  
20 managing its responsibility well and also not further  
21 empowering the local school districts, then the buck  
22 stops up higher rather than down lower.

23 MR. ROSENTHAL: Q. Is it your understanding  
24 that the San Francisco Unified School District and  
25 other school districts are units of State government?

1 MS. PERRIN: Objection. Vague as to  
2 "Units."

3 MR. ROSENTHAL: Q. Do you understand the  
4 question?

5 A. Not really.

6 Q. Do you want me to rephrase it?

7 A. Yes.

8 Q. Do you have an understanding as to whether  
9 the San Francisco Unified School District and other  
10 school districts are part of State government?

11 A. San Francisco Unified is part of the local  
12 San Francisco government, but it does have a  
13 relationship to the Board of Education for California  
14 and in the same way that Bryant is a part of San  
15 Francisco Unified School District, San Francisco  
16 Unified is a part of the California Department of  
17 Education; that there is a line of relationship, not  
18 necessarily a straight line of relationship, but what  
19 Bryant can do is dictated in part by what San Francisco  
20 allows it to do, empowers it to do, and manages for it  
21 and what San Francisco can do is managed by what  
22 California empowers it and makes it responsible for, so  
23 Bryant School has to give standardized tests because  
24 San Francisco says so because they get that from  
25 Sacramento. And likewise, we have certain standards of

1 for. It is called the CLAD Credential which means I  
2 can teach kids who don't speak English as their first  
3 language. I just had it renewed, so it expires in five  
4 years. I think January 2006, maybe. That is my  
5 educational background.

6 Q. When did you first obtain the multi-subject  
7 teaching credential?

8 A. 1997.

9 Q. And where did you obtain that from?

10 A. San Francisco State.

11 Q. And did you receive your CLAD certification  
12 at the same time?

13 A. Yeah.

14 Q. Lowell High School, is that a California  
15 public school?

16 A. Uh-huh.

17 Q. What district?

18 A. San Francisco.

19 Q. Any other teaching credentials that you  
20 hold?

21 A. Huh-uh; no. I can just imagine that Carlos  
22 was like this a lot.

23 MS. PERRIN: He was.

24 MR. ROSENTHAL: Q. Have you taken any sort  
25 of continuing education courses or anything additional

1 education that we have to provide to the kids and  
2 likewise -- you know, the relationship of the Capital,  
3 Sacramento, and the State Board of Education to make  
4 sure we have what we need to teach, it comes from them.  
5 What we need to live up to and what we need to be able  
6 to give the kids so we can live up to that, that all  
7 comes from Sacramento.

8 Q. Okay. I'm going to change gears here a  
9 little bit. I'm going to focus in on your education  
10 and professional background for a few minutes. Why  
11 don't I start with -- why don't you tell me what your  
12 educational background is and we can start either  
13 direction, either with your highest degree you obtained  
14 or we can start with high school and move forward that  
15 way.

16 A. Okay. I graduated from Lowell High School  
17 in 1976.

18 I have an Associate of Science in hotel and  
19 restaurant management from San Francisco City College,  
20 which I got in 1980, I think.

21 I have a Bachelor's in Liberal Studies from  
22 San Francisco State University, 1994.

23 I have a multiple subject teaching  
24 credential with a certification in Cultural Linguistic  
25 Academic Diversity -- wait. I forget what it stands

1 relating to education subsequent to -- let's not limit  
2 it as to time -- at any time other than the course  
3 training you received in connection with getting your  
4 credential?

5 A. Yes, I have, after I got my credential. To  
6 maintain your credential, teachers are required to take  
7 continuing ed and it can come in several different  
8 forms. I fulfilled mine by taking at least 15 units of  
9 college credits after I got my credential and as long  
10 as they relate to professional development or work you  
11 are doing in the classroom, they can qualify for  
12 continuing ed, but I've also taken some seminars in  
13 literacy, teaching poetry, Spanish, things like that.

14 Q. That is the other seminars you are talking  
15 about or were those the credits --

16 A. I've taken credits in Spanish, gardening,  
17 creative writing and I've taken seminars in -- I can't  
18 remember all of them, but the most recent one was in  
19 poetry.

20 Q. Can you tell me where you took those college  
21 credits?

22 A. San Francisco State and City College of San  
23 Francisco.

24 Q. Do you recall who sponsored any of the  
25 seminars you attended?

1 MS. PERRIN: Objection. Assumes somebody  
2 sponsored them.  
3 THE WITNESS: Does "Sponsored" mean who  
4 taught or who paid for it?  
5 MR. ROSENTHAL: Q. Why don't we deal with  
6 them separately. Why don't you tell me, to the extent  
7 you remember, who taught the seminars.  
8 A. The only seminar I can remember right now is  
9 the poetry seminar I took. It was run by Heinemann  
10 Publishers, H-e-i-n-e-m-a-n-n, Publishers. The  
11 instructor's name was Georgia Hurd. It was an online  
12 course that I took and I paid for it.  
13 Teachers have to pay for all their own  
14 continuing ed in San Francisco Unified unless the  
15 school specifically budgets for it, which Bryant did  
16 not.  
17 Q. Did you ever attend any seminars or  
18 continuing education courses either taught by or paid  
19 by San Francisco Unified School District?  
20 A. Yes. I took a class called, "Teaching  
21 Multi-age Classrooms." I don't know the name of the  
22 company who offered it. I took that class at least  
23 four or five years ago and it costs about \$175.  
24 Q. So that seminar was paid by the San  
25 Francisco Unified School District, but not taught by

1 the San Francisco Unified School District?  
2 A. Correct. San Francisco Unified provides  
3 some professional development to teachers, fewer and  
4 fewer days as my tenure with the district continued.  
5 And the first year I was working for the district in  
6 1996, they provided more professional development days  
7 then they did toward the end. They paid for me to take  
8 a training in something called "TRIBES." That is all  
9 upper case. It is a classroom management program and  
10 all the teachers in my school were trained in that and  
11 I was also given some training in strategies for  
12 literacy and those usually happened either at Bryant  
13 School on a teacher workshop day or at another school  
14 site in the district.  
15 Q. Any other seminars or training programs you  
16 recall being either taught by or paid by San Francisco  
17 Unified School District?  
18 A. Nothing that is coming to my head right now.  
19 Q. You said that the number of professional  
20 development days decreased over the time you spent at  
21 Bryant?  
22 A. Yes.  
23 Q. Do you recall how many professional  
24 development days there were when you first started out  
25 at Bryant?

1 A. I know it was more than three.  
2 Q. When you say, "More than three," is that  
3 three per school year?  
4 A. Yes.  
5 Q. And did those take place during the school  
6 year or were they --  
7 A. Uh-huh; students did not attend school that  
8 day and teachers would specifically go to a meeting  
9 that was about curriculum, introducing them to a newly  
10 adopted textbook series or more strategies on how to  
11 teach math, something like that.  
12 Q. Just so I'm clear, that answer you just  
13 gave, is that how you would define professional  
14 development days?  
15 A. That is exactly how I would define it: A  
16 day without students on site where you were supposed to  
17 be learning something to improve the quality of your  
18 teaching.  
19 Q. And do you recall how many professional  
20 development days there were during your last year at  
21 Bryant?  
22 A. My memory tells me -- and it may not be  
23 accurate -- I think they were zero. We either have to  
24 do them after school or come in on the weekend.  
25 And I just wonder, I'm just curious what

1 that has to do with the suit? I don't know if I'm  
2 allowed to ask questions, but I'm just wondering,  
3 knowing what the suit is about, what professional  
4 development days has to do with it?  
5 Q. You can ask questions. I don't always have  
6 to answer them.  
7 A. I know. I noticed that.  
8 Q. Why don't we move on to your work experience  
9 and, again, we can tackle it either way you prefer and  
10 I'm primarily interested in your work experience in the  
11 educational field. I may want to touch on some other  
12 areas as well, but I don't know if it is easier for you  
13 to start going back in time or start going forward. It  
14 is up to you.  
15 A. Oh, my goodness. It is a very difficult  
16 thing to remember anything that happened before I  
17 became a teacher. It's so meaningless to me now.  
18 Q. Did you hold any positions prior to teaching  
19 at Bryant that related in any way to education?  
20 A. Yes. Okay. We can do that.  
21 Q. Why don't we try to focus on those first.  
22 A. Okay. Back in the 1970s, I worked for a  
23 volunteer organization called The Education Project,  
24 which I'm now embarrassed to admit, which is related to  
25 EST.

1 Q. Can you say what that stands for?  
 2 A. Ehrhard Seminars Trainings.  
 3 Q. Can you spell Ehrhard? Sorry.  
 4 A. I think it is E-h-r-h-a-r-d. And my role  
 5 there was to assist the director in developing a  
 6 mailing list to raise the consciousness of society  
 7 about the importance of the education.  
 8 In the mid -- no. I'm not going to be able  
 9 to tell you exactly what year this was. I can tell you  
 10 about how old I was. That is about all I can do right  
 11 now. We can do the math later.  
 12 Q. Can I ask you one question? Are you going  
 13 in roughly chronological order?  
 14 A. Yes. So I was in my 20s at this point. In  
 15 my early to mid-30s, I worked for San Francisco State  
 16 as a teaching assistant to a mathematics professor for  
 17 courses in math programming languages and I helped him  
 18 develop a master's. I was his assistant to help him  
 19 draft documents to create a master's program in  
 20 education.  
 21 In my mid to late 30s, during my last year  
 22 as a teaching credential candidate, while taking  
 23 classes, I worked part time as a writer's workshop  
 24 teacher for the Meadows Livingstone Academy, which is a  
 25 private African American school on Potrero Avenue and I

1 worked with eight through 12-year-olds one day a week  
 2 for one year.  
 3 That summer, I taught for San Mateo Unified  
 4 as a middle school literature teacher and that fall, I  
 5 started at Bryant Elementary in San Francisco Unified  
 6 as a 3rd/4th grade teacher and that would have been  
 7 1996, I think.  
 8 Q. Just to make sure I have the dates correct,  
 9 you said earlier that you got your teaching credential  
 10 in 1997. Does that affect your answer? I'm just --  
 11 A. Yes, it does affect my answer. I want to  
 12 jot something down so I can backtrack my dates.  
 13 Q. Go right ahead.  
 14 A. Let me think, okay. This is 2001/2002 year,  
 15 and I'm at San Francisco School -- that was the year I  
 16 had Carlos --  
 17 MS. PERRIN: Do you want to go off the  
 18 record?  
 19 MR. ROSENTHAL: Off the record.  
 20 (Recess taken.)  
 21 THE WITNESS: Okay.  
 22 MR. ROSENTHAL: Q. Well, do you want to --  
 23 did you want to revise your answer? If you want to  
 24 tell me --  
 25 A. So I'm going to tell you what it is, January

1 '95 was my credential.  
 2 Q. Okay.  
 3 A. And in the -- no, January '96 was my  
 4 credential. January '96 is my credential and was my  
 5 first credential and then I had it renewed last year --  
 6 Q. Okay.  
 7 A. -- in 2001. And in '95 and '96, I taught at  
 8 a private school Meadows Livingstone Academy and in  
 9 '96, I did start at Bryant.  
 10 Q. Okay. So the fall of 1996, you started at  
 11 Bryant and summer of 1996, you were teaching in the San  
 12 Mateo School District?  
 13 A. Correct.  
 14 Q. Okay. And just so we're clear, you worked  
 15 at Bryant until the -- through the spring of 2001; is  
 16 that right?  
 17 A. Yes -- well, June 2001, end of June.  
 18 Q. So is that five full school years at Bryant?  
 19 A. Yes; uh-huh.  
 20 Q. Now, you said during the summer of 1996, you  
 21 were a middle school literature teacher in the San  
 22 Mateo Unified School District. Do you remember what  
 23 school you were teaching at?  
 24 A. It was a middle school in Foster City and I  
 25 don't remember the name of it.

1 Q. Were you teaching summer school?  
 2 A. Yes.  
 3 Q. Or were they on year-round?  
 4 A. Yes, it was a summer school session.  
 5 Q. Do you remember what grade you were  
 6 teaching?  
 7 A. 6, 7, 8.  
 8 Q. Were you credentialed to teach literature to  
 9 middle school students?  
 10 A. The California teaching credential that you  
 11 get, the multiple subject teaching credential, is a K-8  
 12 credential, so yes, I was.  
 13 Q. During your five years at Bryant, you said  
 14 you were a 3rd/4th grade teacher. Were you a 3rd grade  
 15 teacher at some points and a 4th grade at other points  
 16 or was it a mixed class?  
 17 A. The first year I had a 3-4 mixed class. The  
 18 second year I was there, I had a straight 4th grade.  
 19 The last three years, I had a straight 5th grade.  
 20 Q. Just quickly I want to go back to your  
 21 credentialed program at San Francisco State where you  
 22 said you received your credential. You revised your  
 23 testimony. You think you received it in 1996 now?  
 24 A. Yes.  
 25 Q. Did you do any student teaching in



1 connection with the --  
 2 A. Yes.  
 3 Q. -- program you took?  
 4 A. Yes, in fall of 1995, I student taught at  
 5 Clarendon Alternative Elementary in San Francisco for  
 6 seven weeks in a 4th/5th grade mixed classroom. It was  
 7 a Japanese bilingual, bicultural classroom and for  
 8 seven weeks in a 1st grade/2nd grade mixed classroom.  
 9 Q. Is Clarendon Alternative Elementary --  
 10 A. San Francisco public school.  
 11 Q. -- in the San Francisco Unified School  
 12 District?  
 13 A. Yes.  
 14 Q. Did you do any other student teaching aside  
 15 from those 14 weeks?  
 16 A. No, one of them might have been an  
 17 eight-week stint because I think you do 15 weeks all  
 18 together, but it was an entire semester. It was the  
 19 fall semester of 1995.  
 20 Q. So you did a total of 15 weeks of student  
 21 teaching?  
 22 A. Uh-huh; yes.  
 23 Q. Can you describe for me what your  
 24 responsibilities were as a student teacher?  
 25 A. Yes. In the first part of your assignment

1 in a classroom, you are primarily observing the master  
 2 teacher, working with students one on one, and then you  
 3 start working with small groups of students and by  
 4 about the second or third week in that classroom, you  
 5 begin to take over one subject area at a time. So, for  
 6 example, by the third week, I might start taking over  
 7 all the math teaching for that classroom; by the fourth  
 8 week, math and science; and by the fifth week, I would  
 9 add language arts and the next week, social studies, so  
 10 on. By the sixth or seventh week, you are responsible  
 11 for everything and you teach solo in that room. Master  
 12 teacher remains onsite. You work alone with the kids.  
 13 And your final week in the classroom, the master  
 14 teacher returns and you teach together. Solo teaching  
 15 involves preparing and delivering curriculum classroom  
 16 management and all the assessment responsibilities with  
 17 the kids, home communications, everything.  
 18 Q. Okay. I'm going to turn your attention to  
 19 the time you spent at Bryant Elementary and first I  
 20 just want to start off with some basic background  
 21 information about the school. When you started in the  
 22 '96/'97 school year, was Ms. Zita the principal there?  
 23 A. Yes.  
 24 Q. Do you recall how long she remained  
 25 principal?

1 A. She was there for about three years, maybe  
 2 four years.  
 3 Q. Was Mr. Alegre the next principal to come in  
 4 at Bryant?  
 5 A. Yes, he was.  
 6 Q. Do you recall what year he started?  
 7 A. He started in fall of '98.  
 8 Q. So would Ms. Zita -- just to make sure we're  
 9 on the same page -- Ms. Zita would have been the  
 10 principal the first two years you were there?  
 11 A. Yes.  
 12 Q. And Mr. Alegre for the final three years?  
 13 A. Right.  
 14 Q. Are there -- were there any assistant  
 15 principals at Bryant during that time frame?  
 16 A. No.  
 17 Q. Other than the principal, were there any  
 18 other administrators who had responsibilities for the  
 19 operation of Bryant who were onsite?  
 20 A. No.  
 21 Q. Did you have an understanding as to who was  
 22 responsible for dealing with any issues that might  
 23 arise with regard to, let's start with textbooks at  
 24 Bryant?  
 25 A. Principal.

1 Q. How about with respect to any facility  
 2 concerns you had at the school?  
 3 A. Principal.  
 4 Q. Were there any areas of concern that you had  
 5 at Bryant in which the person who was primarily  
 6 responsible at the school site was the principal?  
 7 MS. PERRIN: Was or was not? I'm sorry.  
 8 MR. ROSENTHAL: Let me try to rephrase the  
 9 question.  
 10 Q. Are there any areas in which a concern may  
 11 have arisen at Bryant in which it was your belief that  
 12 the principal was not the person responsible for  
 13 dealing with that instance as far as being the person  
 14 onsite?  
 15 A. Can we assume when you say "Concerns," we're  
 16 talking about the things I talked about in the suit?  
 17 Q. That is fine.  
 18 A. Okay. Let me run this through my head --  
 19 books, heating, water, noise, crumbling staircases,  
 20 clogged toilets, bad food -- it was all the  
 21 principal's -- the principal is the point person for  
 22 all of those things.  
 23 Q. So to the extent you had concerns about  
 24 those issues, the first person you would go to in an  
 25 attempt to address those concerns would be the

1 principal?

2 A. Yes. I may speak to the secretary as his  
3 delegate for it, so, in other words, if the heat was  
4 too hot, I may say anything to the secretary and hope  
5 she can either relay it to him or -- yeah, that would  
6 be it. She would just pass the message on.

7 Q. I'm going to try and deal with the areas of  
8 concern that we've been talking about -- some of which  
9 we've been talking about and some of which we have not  
10 yet covered. I'm going to try to deal with them  
11 subject by subject.

12 A. Okay.

13 Q. I'm going to start with the area of  
14 textbooks and you touched on some of the concerns you  
15 had about textbooks at Bryant, but if you could just  
16 tell me if you've experienced any problems with  
17 textbooks during your five years at Bryant.

18 A. Okay. I want to talk about literacy. I  
19 have to put some context around this first. The kids  
20 that are in my classroom are learning English as a  
21 second language or a third language. Everything  
22 that --

23 Q. Can I interrupt you for one second? Was  
24 that true for all five years?

25 A. Yes. Yes. Everything that happens after

1 evaluations, kids that were getting special ed  
2 evaluations, so teachers could not take their kids out  
3 there. And also because it was open classroom and the  
4 walls were hollow, if you brought a class out there,  
5 they would make so much noise that all the surrounding  
6 classrooms would be disturbed.

7 Anyway, I didn't have any reading books in  
8 my room and from the very first day at Bryant, I  
9 started buying, at garage sales, and secondhand stores,  
10 and wherever, books so the kids would have something to  
11 read. Because they are second language learners, their  
12 reading abilities ranged from kindergarten through 5th  
13 grade. I had a few kids that could read at a 5th grade  
14 level. Had a lots of kids who were reading K, 1st,  
15 2nd, 3rd grade, 4th grade levels and every year I spent  
16 a lot of money buying books for kids, some of it being  
17 things like dictionaries and resources, some of it  
18 being reference books about oceanography if that is  
19 what I was teaching. I often had to buy all the social  
20 studies resource books.

21 Anyway, in terms of textbooks, we didn't  
22 have a language arts program adopted by San Francisco  
23 Unified when I started in '96, so we had no textbooks  
24 for that. I received books in the following school  
25 year, but as I said before, since I had K, 1st, 2nd,

1 about 4th grade for a student, relies on their ability  
2 to read and write and it has to be in English for these  
3 kids because that is the only instruction they are  
4 going to get for the rest of their lives. They are not  
5 in bilingual classrooms. They are not in immersion  
6 classrooms, which means they have to have access to  
7 books, period. For academic needs, they have to have  
8 science books and social studies books and they have to  
9 have learning how to read English books, but they also  
10 have to have learning for pleasure books.

11 When I got to Bryant, there were 12 books in  
12 my classroom and they were -- there was a book about --  
13 I remember there was a book about dirt and worms.  
14 There was a book about -- there were two books about  
15 gardening and the other ten books were miscellaneous  
16 story books. Those were the only books in my room when  
17 I arrived.

18 There is a library at Bryant. It is an open  
19 -- the architecture is open classrooms, so the  
20 peripheral -- the periphery of the second floor is all  
21 classrooms, but the center is open and in the open  
22 center was a library that was unusable because, one,  
23 there was no librarian and, two, the school was so  
24 overcrowded and short of meeting spaces that it was  
25 usually used for tutoring meetings or special ed

1 3rd grade readers, they couldn't read the books. The  
2 district didn't have the money to buy the books on  
3 tape, so the books had to be read to the kids and then  
4 interpreted for them.

5 I had 25 kids. I had a teacher's aide that  
6 came in one hour a day.

7 Q. Just so -- I'm going to come to a lot of  
8 these issues. I want you to focus in on issues  
9 regarding textbooks now. We'll cover some of the other  
10 concerns.

11 A. To me, they seem incredibly related if the  
12 kids can't read the textbooks that are there. There  
13 are strategies recognized -- educational strategies  
14 recognized by researchers and experts in teaching  
15 colleges that the children have to have access to the  
16 materials somehow and there were tapes available by the  
17 publisher, books on tape, which is part of the textbook  
18 program, but they weren't purchased by the school  
19 district and the school didn't have individual monies  
20 to allocate toward that either. The books I focus on  
21 in my declaration were the books that I didn't have for  
22 social studies for 5th grade, which is the last three  
23 years I taught there. And I already spoke to that  
24 issue earlier today, so I don't know if you want me to  
25 go into it again.

1 Q. Let me try to do it this way. I'll try to  
2 take you step by step through the process. In your  
3 first year of teaching at Bryant when you were teaching  
4 a 3rd and 4th grade mixed class, what subjects were you  
5 instructing the class in?

6 A. All subjects. Do you want me to list them?

7 Q. Can you list them for me?

8 A. Math, science, social skills, social  
9 studies, reading, writing, oral language, PE, music,  
10 computer, drama, and I think that is it.

11 Q. Okay. Did you have any textbooks that you  
12 used in connection with teaching any of those subjects?

13 A. Can you list them back to me and I'll tell  
14 you "yes" or "no"?

15 Q. Sure. That is going to test my writing  
16 skill. We'll take them one by one. Math?

17 A. No.

18 Q. Science?

19 A. No.

20 Q. Social skills?

21 A. No.

22 Q. Social studies?

23 A. Some, not enough for the whole class.

24 Q. Reading?

25 A. No.

1 adopted Mathlands or not.

2 Mathlands is a math curriculum that is used  
3 by San Francisco Unified that does not have a student  
4 textbook.

5 Q. How about for science, do you know if a  
6 science textbook had been adopted by the San Francisco  
7 Unified School District during that time?

8 A. There was no textbook that I was aware of.  
9 I don't even know what the science adoption was at that  
10 time.

11 Q. You don't know if one was adopted or not?

12 A. Huh-uh.

13 Q. Was that a "no"?

14 A. No.

15 Q. How about for social skills, was there a  
16 textbook adopted for that?

17 A. The school wanted us to use a program called  
18 TRIBES and Conflict Management and I don't remember who  
19 wrote those, but there were no materials for students,  
20 so we had to create our own. Teachers had to create  
21 their own materials.

22 Q. And was the TRIBES program in use during the  
23 '96/'97 school year?

24 A. Uh-huh; yes.

25 Q. How about for social studies, do you know if

1 Q. Writing?

2 A. No.

3 Q. Oral language?

4 A. No.

5 Q. PE?

6 A. No, don't need them, though.

7 Q. Music?

8 A. No.

9 Q. Computers?

10 A. No.

11 Q. Drama?

12 A. No.

13 Q. Just so we're on the same page, the only  
14 textbooks you had, you had some social studies  
15 textbooks and no other textbooks in that class?

16 A. I did not have any other books in the class  
17 except for social studies textbooks. They weren't in  
18 my class. I found them in a storage closet and I  
19 borrowed them from other teachers.

20 Q. And do you know if a math textbook had been  
21 adopted by the San Francisco Unified School District  
22 for use during -- all these questions are going to be  
23 focused on that one particular school year. By that, I  
24 mean the '96/'97 school year.

25 A. I don't know if that was the year that we

1 a social studies textbook had been adopted by the San  
2 Francisco Unified School District for the '96/'7 school  
3 year?

4 A. Yes, there was one adopted. I think the  
5 publisher is Houghton Mifflin and that is the one I had  
6 some books for.

7 Q. Do you remember how many copies of the books  
8 you had?

9 A. I think I had ten.

10 Q. I think you said earlier you had about 25  
11 kids in your class?

12 A. That was for 5th grade, not when I was in  
13 the 3/4 classes.

14 Q. How many did you have in the '96/'97 school  
15 year?

16 A. About ten.

17 Q. I meant how many students, I'm sorry.

18 A. 25.

19 Q. How about for reading, do you know if there  
20 was a textbook adopted by the San Francisco Unified  
21 School District during that year?

22 A. I think that during that year, they were  
23 reevaluating textbooks and so there should have been an  
24 adoption in effect, but I didn't have the books in my  
25 room.

1 Q. Do you remember the name of the book that --  
 2 A. The following year, in '97/'98, we had an  
 3 adoption for Literacy Place by Scholastic.  
 4 Q. And do you know what book was adopted prior  
 5 to Literacy Place?  
 6 A. I don't.  
 7 Q. Do you know for sure if there was one  
 8 adopted?  
 9 A. There is never supposed to be a gap, so  
 10 textbooks typically are adopted for ten-year periods  
 11 and the adoption for Literacy Place would have gone  
 12 into effect in the eleventh year, then, and whatever  
 13 book was adopted for that previous ten-year slot should  
 14 have been on campus somewhere and there should've been  
 15 teaching materials for it, but I didn't have any.  
 16 Q. Have you ever heard of there being instances  
 17 in which a textbook was not adopted in favor of using  
 18 alternative materials?  
 19 MS. PERRIN: I'm sorry? Adopted by whom?  
 20 MR. ROSENTHAL: By the San Francisco Unified  
 21 School District.  
 22 THE WITNESS: I don't think I understand  
 23 that question and I'm going to answer something that  
 24 maybe isn't what you are asking. Does the school  
 25 district ever officially say, "We're not going to adopt

1 a textbook so use whatever means you have available to  
 2 you"? Is that what you are asking?  
 3 MR. ROSENTHAL: Q. Do they ever do that  
 4 officially or unofficially?  
 5 A. If they did it unofficially, I wouldn't  
 6 know. If they did it officially, I've not heard about  
 7 it.  
 8 Q. Have you ever heard of there being subjects  
 9 in which no textbook had been adopted by the district?  
 10 MS. PERRIN: Do you understand that  
 11 question?  
 12 THE WITNESS: Not really.  
 13 MS. PERRIN: I think what you are getting  
 14 at -- and correct me if I'm wrong -- you said Mathlands  
 15 was a curriculum that didn't use textbooks. Is that  
 16 what you are asking?  
 17 MR. ROSENTHAL: That is an example of rather  
 18 than adopting a particular textbook for use on a  
 19 particular subject, some alternative instructional  
 20 materials were chosen.  
 21 THE WITNESS: Yes, in the case of science,  
 22 they adopted something called FOSS Kits. Those come  
 23 with teacher manuals and student materials. Mathlands  
 24 comes with teacher materials and student -- teachers  
 25 manuals and student materials.

1 (Recess taken.)  
 2 THE WITNESS: Can I just talk for a second  
 3 about the school textbook situation and I'll try to  
 4 stay to a point and that is when I -- when I was  
 5 working at Bryant, I noticed that in the -- in the rush  
 6 to close out every school year, we would resshelf all  
 7 student materials in a centralized place and all  
 8 teacher materials in a centralized place, but that the  
 9 systematic inventorying of what was still there and  
 10 what had disappeared and what hadn't disappeared and  
 11 reordering to make sure we had enough for the upcoming  
 12 year wasn't attended to in any systematic way and I  
 13 belong to a list serve of teachers that are all over  
 14 the United States and I know that it is not just San  
 15 Francisco that has this issue and I know that some  
 16 schools have a really, really tight way of keeping  
 17 track of what is there and what is not and making sure  
 18 the teachers have what they need to teach and kids have  
 19 what they need to learn and San Francisco and many  
 20 other schools in California don't have that system  
 21 down.  
 22 In the cases of these adoptions that we  
 23 would make where you wouldn't have student books, the  
 24 provision to make sure the teachers had access to  
 25 enough copying materials, then, to make materials and

1 create materials for students to use or to take the  
 2 teacher's manual and photocopy what are called  
 3 blackline masters for students, that didn't exist until  
 4 my last year at Bryant when we had unlimited copy  
 5 quotas, but before that, it was assumed that when you  
 6 adopt these materials, that the schools will then be  
 7 able to make photocopies from the blackline masters,  
 8 that the copyright is free for the teachers to make  
 9 copies from it, but we didn't have that.  
 10 MR. ROSENTHAL: Q. Just a quick follow up:  
 11 You said you belong to a list serve. Can you tell me  
 12 what that --  
 13 A. It is an -- it is about 400 teachers all  
 14 over the planet, primarily in North America, who teach  
 15 5th or 6th grade -- 3rd, 4th, 5th or 6th grade, who  
 16 regularly participate in e-mailing strategies,  
 17 concerns, and ideas related to teaching this age of  
 18 kids and over the years, there has been discussions  
 19 about the ebb and flow of budget size and classrooms  
 20 and all kinds of other things.  
 21 Q. Just to follow up on one more thing: You  
 22 said -- so is it your view that the inventory process  
 23 at Bryant was not very good at keeping track of what  
 24 books were at the school and what books were no longer  
 25 there?

1 A. We didn't have the resources, human  
2 resources, or time. We -- and I know this is true of  
3 many, many, many other schools as well based on  
4 conversations to figure out whether or not we had  
5 enough for the kids.

6 Q. Was there any individual at Bryant who is  
7 primarily responsible for keeping track of the  
8 inventory of textbooks and instructional materials at  
9 the school?

10 A. There was no person whose job description  
11 said, "Go in and count." It was up to the principal  
12 every year to assign that responsibility to somebody if  
13 he or she should choose to, I would think. I don't  
14 know that for a fact.

15 Q. Now, we were talking about some of the  
16 individual subject areas that you instructed your class  
17 in during the '96/'97 school year. We're up to the  
18 subject of writing. Do you know if there was any  
19 textbook that had been adopted by the San Francisco  
20 Unified School District for use in that subject?

21 A. Not in '96/'97.

22 Q. Was there one adopted subsequent to that?

23 A. When I say, "Not in '96/'97," that means I  
24 don't know there was one for '96/'97. I know I didn't  
25 have one in my room. Literacy Place in '97/'98 was the

1 adopted writing program.

2 Q. That was the same book that was used in  
3 connection with reading?

4 A. It was a reading/writing program.

5 Q. In the interest of brevity, I guess, can I  
6 refer to reading and writing as one subject or is that  
7 not going to work?

8 A. It is not going to work.

9 Q. How about oral language, was there a  
10 textbook adopted by the district during that year?

11 A. There was. I had nothing in '96/'97 that  
12 addressed oral language. In '97/'98, Literacy Place  
13 had a component that also addressed oral language. In  
14 the year 2000, the school district adopted something  
15 from a publisher called Hampton Brown which addressed  
16 oral language development and other literacy skills for  
17 ESL.

18 Q. Was that a textbook that was adopted or some  
19 other kind of material?

20 A. It was teacher materials and posters and  
21 small sets of reading books for kids.

22 Q. But no specific textbooks?

23 A. Huh-uh.

24 Q. Was there a name to that program, the  
25 Hampton Brown program, that was adopted, just for easy

1 reference?

2 A. I can't remember the name right now. I'll  
3 think about it.

4 Q. I'm trying to think about it as well. Could  
5 it be Into English?

6 A. Yes.

7 Q. I assume for PE, there was no textbook  
8 adopted to the extent you know?

9 A. There was a teacher manual that I found in  
10 my mailbox one day. I don't know if it was the adopted  
11 book or not. I was never trained.

12 Q. Do you recall when you received that teacher  
13 manual, was it during the '96/'97 school year or was it  
14 subsequent?

15 A. No, it was during -- it was for the '99/2000  
16 school year.

17 Q. How about for music, was there any textbook  
18 adopted by the district?

19 A. I'm not aware of the title. I believe there  
20 were -- there was a program that was adopted.

21 Q. Had it been adopted for use during the  
22 '96/'97 school year, to the best your recollection?

23 A. I don't know when it was adopted for. I  
24 found some old music books in a supply room once and  
25 that is why I believe that they had been adopted or

1 else they wouldn't have been there.

2 Q. Did you find those books during '96/'97  
3 school year or was it later?

4 A. No, I found them in 1999 when I started  
5 teaching 5th grade.

6 Q. Okay. How about for computers, do you know  
7 if there was a textbook adopted for that?

8 A. For computers, they adopt software programs  
9 or develop standards and we had some standard software  
10 installed, but we did not have manuals.

11 Q. Was that true for the '96/'97 school year?

12 A. It was true for my entire time at Bryant.

13 Q. So you never had any manuals with regard to  
14 any of this software for the five years you were there?

15 A. Let me think specifically about the programs  
16 I taught my kids, I did not see manuals for  
17 Hyperstudio, Microsoft Word, Microsoft Publisher while  
18 I worked there.

19 Q. Were there manuals for some of the software  
20 programs you used?

21 A. There was a program called Light Span and it  
22 relied on some CD-ROMs, but the technology was  
23 problematic, so I didn't use it, but I think there were  
24 manuals for that, but the program didn't work very  
25 well.

1 Q. Any other manuals that you had?  
 2 A. Access to or saw, no, not that I can recall.  
 3 Q. Do you know if there was a textbook adopted  
 4 to teach drama during the '96/'97 school year?  
 5 A. No, there wasn't. You know what? I want  
 6 add something else I was responsible for.  
 7 Q. Sure; go ahead.  
 8 A. Art.  
 9 Q. Okay.  
 10 A. And health.  
 11 Q. Those are two additional subjects that you  
 12 instructed your class in during the '96/'97 school  
 13 year?  
 14 A. Uh-huh; the adoption for art was teacher  
 15 materials only and that was 1999 and the adoption for  
 16 health was, I had a health -- I had books for health  
 17 for '96/'97 I got in -- sometime in the middle of the  
 18 year, I think.  
 19 Q. Okay. In the interest of trying to move  
 20 things along, I'm going to try to deal with these  
 21 subjects globally with respect to all five of your  
 22 years, but I know we're going to have to make  
 23 distinctions as to time when you found -- when you got  
 24 a hold of certain books when there were adoptions, but  
 25 let's try it this way and see if we can speed things

1 along rather than taking it year by year. We'll try.  
 2 A. Okay.  
 3 Q. You said that you taught -- well, let me lay  
 4 one more question regarding foundation. Did you teach  
 5 all of the subjects you identified for me all five  
 6 years at Bryant or were there some that was not true  
 7 for? Do you want me to read the list again?  
 8 A. No, I taught it all.  
 9 Q. Were there any additional subjects you  
 10 taught in any other year after '96/'97?  
 11 A. No.  
 12 Q. And if you remember it, you can always just  
 13 tell me at some point.  
 14 A. I will.  
 15 Q. Okay. So why don't we first start with  
 16 math. You said that the district had adopted a program  
 17 entitled Mathlands?  
 18 A. Yes.  
 19 Q. Was that the -- were those the math  
 20 materials used during all five years you were teaching  
 21 at Bryant?  
 22 A. The student materials that came with  
 23 Mathlands were used for the five years that I was  
 24 there, but the emphasis in '99 on raising standardized  
 25 test scores forced us to buy an additional math

1 workbook which we then did for the '99/2000 school year  
 2 and those math workbooks arrived in February of that  
 3 year, February of 2000, and we chose to continue using  
 4 math workbooks to augment the Mathlands program. The  
 5 2000/2001 school year, we received our math workbooks  
 6 in October.  
 7 Q. Do you remember the name of the math book  
 8 you used those two years?  
 9 A. No. I want to say Modern Curriculum Press,  
 10 but I don't know if that is it.  
 11 Q. Okay. Do you know if the San Francisco  
 12 Unified School District adopted any math textbook  
 13 during any of the five years that you were teaching at  
 14 Bryant?  
 15 A. I don't know.  
 16 Q. Can you tell me what the -- you touched on  
 17 this, but I want to make sure the record is clear.  
 18 What materials constituted the Mathlands materials that  
 19 you used?  
 20 A. Yes, teacher manual, and what are called  
 21 math manipulatives. They are tubs with objects in them  
 22 like tape measures, dominos, pattern blocks, timers,  
 23 scales -- I don't know what they would call these in  
 24 layperson's language -- rods, flats, and cubes,  
 25 attribute blocks, things like that, geo blocks.

1 Q. Were there any materials that were intended  
 2 to be handed out to each individual student? Do you  
 3 understand my question?  
 4 A. Yes. For their use and consumption? Like I  
 5 distinguish between there are materials that are  
 6 reusable year after year after year. You take them  
 7 out. You teach the lesson. You pack them up. You put  
 8 them on the shelf. And there are also things that came  
 9 with the package called consumables, giant pads of  
 10 graph paper for the kids to be able to make giant  
 11 graphs on. There were consumables that came the very  
 12 first year we had the adoption. Once they were used  
 13 up, they were gone and we didn't get them again, that  
 14 included rolls of adding machine tape so the kids could  
 15 learn how to make time lines and it included big packs  
 16 of graph paper and some things like that and I only saw  
 17 that my first year that we adopted the program.  
 18 Q. When you were talking about the math  
 19 manipulatives, you said it included things like scales?  
 20 A. Like a spring scale.  
 21 Q. Did it include one scale or one scale per  
 22 student?  
 23 A. A set of scales, usually a half dozen or so,  
 24 between six and ten scales.  
 25 Q. Was it true for each manipulatives that

1 there were approximately each number for each one?

2 A. The cubes I'm talking about were probably  
3 this big, so there were probably about a thousand of  
4 those. There were maybe ten measuring tapes, ten  
5 scales. The measuring tools, there would be ten each.  
6 The other materials would be tubs full.

7 Q. Were those materials things that were used  
8 exclusively in class?

9 A. Yes, but sometimes I would make baggies for  
10 them to take home so they could continue practicing  
11 with them or finish their class work or homework, but  
12 they had to bring them back and sometimes they did and  
13 sometimes they didn't.

14 Q. In connection with the Mathlands program,  
15 were there any -- strike that.

16 A. Can I add something about why I had to do  
17 that? Sometimes --

18 Q. Why you had to do what?

19 A. Why I had to send home little baggies.  
20 Sometimes kids had to go home and find ten things in  
21 their house that measured exactly ten centimeters, and  
22 in many households -- I don't know. There is an  
23 assumption that kids have measuring tapes, but the kids  
24 I teach don't have that and so if I didn't give it to  
25 them or make it for them, they had nothing to do work

1 sharing with each other.

2 Q. When you say one of the tubs was missing,  
3 were the Mathlands materials divided by --

4 A. Type.

5 Q. -- individual subject area in math?

6 A. Yes; for example, one tub would be just  
7 measuring tools and one tub would be just geography  
8 blocks and the next tub would be just about teaching  
9 multiplication and division blocks and so you could use  
10 them for different things, but we didn't have enough.  
11 If you didn't have enough for the particular number of  
12 kids in your classroom that year, then you could borrow  
13 them from somebody else or you could lend them to  
14 another teacher. Sometimes that wasn't easy.  
15 Sometimes we would all want to be using the blocks in  
16 the same week and it got a little dicey a couple of  
17 times.

18 Q. You said that during the '98/'99 school  
19 year, one of the tubs was missing from the set you were  
20 using in class?

21 A. Uh-huh.

22 Q. Was that also true for the '99/2000 school  
23 year?

24 A. Forever after.

25 Q. Did you use the same set of materials during

1 with at home and that is why I had to give it to them  
2 or make it for them and that is why they also sometimes  
3 didn't bring it back.

4 Q. Now, each year you were teaching at Bryant,  
5 you continued to use the Mathlands materials to  
6 instruct the class in math?

7 A. Yes, but I began to rely more and more  
8 heavily on the math workbooks in my last two years  
9 there because the pressure to raise standardized test  
10 scores became so strong and the kinds of skills  
11 measured on the standardized tests related more to  
12 equations and algorithms rather than conceptual  
13 understandings of mathematics.

14 Q. In the -- strike that.

15 Was there any year in which you used the  
16 Mathlands materials in which the materials you had were  
17 incomplete?

18 A. When I began teaching 5th grade in 1998, one  
19 of the tubs of materials was missing and so I would  
20 borrow that tub from either the 3rd grade teacher next  
21 door, or the 5th grade teacher on the other side of me.  
22 I lent all of my materials to the special ed teacher  
23 who taught across the hall from me because she didn't  
24 have anything at all, so, yes, at some point, the  
25 materials began to be incomplete and we had to start

1 all five years?

2 A. I used the 3rd grade/4th grade set in my  
3 first year, the 4th grade set when I taught 4th grade,  
4 and the 5th grade set when I taught 5th grade for the  
5 last three years. They are different kinds of sets.

6 Q. Was there one set of materials for use by  
7 each grade level or was it each class?

8 A. Each classroom supposedly had their own set.  
9 The only classroom that didn't have a set at all, never  
10 had a set, was the special ed classroom, so that  
11 teacher had to borrow from everybody else.

12 Q. So during all three years you taught 5th  
13 grade, you were missing one of the tub of materials  
14 from the Mathlands set?

15 A. Yes.

16 Q. Through '96/'7 and '97/'98, did you have the  
17 complete set for those classes?

18 A. I believe I did.

19 MS. PERRIN: Just for the record, was that  
20 line of questions directed to the manipulatives as  
21 opposed to consumables or were you encompassing both?

22 MR. ROSENTHAL: I did not mean --

23 Q. I understand the consumables you had for one  
24 year and you never had them again; is that right?

25 A. Right, they were never reordered.

1 MS. PERRIN: Thank you.

2 THE WITNESS: I don't know if they were  
3 reordered or not.

4 MR. ROSENTHAL: Q. But you never had them  
5 in your classroom?

6 A. Never had them again.

7 Q. Now, you said in the 1999/2000 school year,  
8 a workbook had been adopted for use in connection with  
9 instructing math?

10 A. Adopted is sort of a district-wide kind of  
11 word. It means it is for the whole district. At  
12 Bryant, we made a decision that we had to do something  
13 right away to boost our kids' ability to perform in  
14 math and so the Bryant School teachers decided, with  
15 Larry, to use some money from the budget to buy math  
16 workbooks for all 1st through 5th grade students.

17 Q. Do you remember when this decision was made?

18 A. I think it must have been made very early in  
19 the '99/2000 school year because it would have been  
20 based on us finally seeing the test scores from the  
21 previous year and realizing we had to do something  
22 right away, so the order was placed in the fall and as  
23 I said before, the books didn't arrive until February.  
24 I don't know if the order was placed in the fall. I  
25 know the order was supposed to have been placed in the

1 of the other teachers had, in fact, received a manual  
2 and so I ordered one and received one in October of  
3 2000.

4 Q. So in roughly February of 2000, other  
5 teachers had received teacher manuals, but you did not?

6 A. Some did. I don't know if all did.

7 Q. Now, you said that the math workbooks were  
8 received in October of 2000 for the 2000/2001 school  
9 year?

10 A. Yes.

11 Q. Are you aware of when the order was placed  
12 to order those workbooks?

13 A. No. I do know that when I started back at  
14 school for that school year in August, I had asked  
15 Larry if he had ordered them yet and he said no.

16 Q. As of August 2000, Mr. Alegre told you he  
17 had not yet ordered them?

18 A. Yeah, that he had not done it, but he would  
19 take care of it and he did.

20 Q. When you received the workbooks in October  
21 of 2000, did you again have enough copies for each of  
22 your students?

23 A. Yes.

24 Q. Were they again able to take the workbooks  
25 home with them?

1 fall. I don't know what happened after that.

2 Q. Fair enough. You had never seen the  
3 physical order?

4 A. Huh-uh; no, I never saw the order.

5 Q. When you received the workbooks in roughly  
6 February of 2000, did you receive enough copies of the  
7 workbooks so each student in your class got their own  
8 individual copy?

9 A. I received one copy for every student in my  
10 class. I did not receive the teacher manual.

11 Q. Were students allowed to take their  
12 workbooks home with them?

13 A. It was a consumable book and the students  
14 were allowed to use it.

15 Q. Did you assign them homework from the  
16 workbook?

17 A. Yes.

18 Q. Did you ever receive a teacher manual for  
19 the workbooks during the 1999/2000 school year?

20 A. No.

21 Q. Did you ever receive a teacher manual  
22 subsequent to that?

23 A. In -- I thought none of the teachers got to  
24 have workbooks because I did not get one and I came to  
25 find out at the end of the 2000 school year, that most

1 A. Yes.

2 Q. And you assigned them homework from these  
3 workbooks?

4 A. Yes. I got a new student in October of that  
5 year, though, and he didn't have a book. When the  
6 population ebbs and flows throughout the year, the  
7 student who gets the book takes it home, but new  
8 students -- I remember two of us had to scramble for a  
9 while.

10 Q. Do you know if any extra books were ordered  
11 in connection with the order that was placed?

12 A. One extra book was ordered for the teacher  
13 and I gave that student my book, one extra workbook, so  
14 I just used my manual.

15 Q. So that new student who was added in October  
16 2000 got your extra copy of your student workbook?

17 A. Uh-huh.

18 Q. Was he or she able to take the book home  
19 with him or her?

20 A. Yeah.

21 Q. So the rest of that school year, all the  
22 students had their own copy of the workbook?

23 A. Of the math book, yes.

24 MR. ROSENTHAL: Do you want to try and take  
25 a lunch break?



1 MS. PERRIN: Yes.

2 (Recess taken.)

3 MR. ROSENTHAL: Q. Ms. Malabed, I had a  
4 couple of questions about your education and employment  
5 that I didn't ask you before the break. I just want to  
6 cover those quickly before we pick up where we left  
7 off.

8 A. Sure.

9 Q. In connection with your obtaining your  
10 teaching credential at San Francisco State, was that in  
11 connection with some kind of a program?

12 A. No. I had my BA in Liberal Arts or it is  
13 actually called Liberal Studies at San Francisco State  
14 and then I started my credential program the semester  
15 after I finished my BA.

16 Q. Were you in a master's of education program  
17 or anything like that?

18 A. No. It was a straight credential program  
19 for a multiple subject teaching credential with an  
20 emphasis in CLAD, which is what I said before. I think  
21 it is --

22 Q. If you don't remember. It is fine.

23 A. It is Cross Cultural Language and Academic  
24 Diversity or -- and Language Acquisition or something  
25 like that. It replaced the ESL emphasis.

1 learning differences, health, and computers, and I did  
2 all of that before I finished my credential because I  
3 want to be as ready as I could be when I got out.

4 Q. Was there a period of time when you had your  
5 preliminary credential and then --

6 A. No; huh-uh, I took care of all that stuff  
7 before my teaching credential was --

8 Q. Before the program was completed?

9 A. Right, before while I was doing student  
10 teaching, before I finished student teaching.

11 Q. Now, you said that beginning with the  
12 '96/'97 school year, you began teaching at Bryant. Can  
13 you just tell me how you went about getting that job?

14 A. The principal at Clarendon was at a meeting  
15 with the principal from Bryant and that was Ms. Zita.  
16 And Ms. Zita asked the Clarendon principal if she had  
17 knowledge of any teachers that might be appropriate  
18 matches for Bryant and she -- and the Clarendon  
19 principal recommended me and so Ms. Zita called me for  
20 an interview and we proceeded from there.

21 Q. And did you have an interview with Ms. Zita?

22 A. Uh-huh.

23 Q. Did you interview with anyone else?

24 A. Other schools in San Francisco?

25 Q. Anybody else in connection with applying for

1 Q. Was there any name for the program that you  
2 participated in?

3 A. It was called the CLAD program.

4 Q. I mean as far as getting your teaching  
5 credential.

6 A. Huh-uh; it was the teaching credentialing at  
7 San Francisco State.

8 Q. It wasn't arranged through the San Francisco  
9 Unified School District or anything like that?

10 A. Huh-uh.

11 MS. PERRIN: No?

12 THE WITNESS: No.

13 MR. ROSENTHAL: Q. Upon completing the  
14 teaching credentialing program at San Francisco State,  
15 you had your full teaching credential?

16 A. Uh-huh.

17 Q. You never had an emergency teaching  
18 credential?

19 A. No, I had a clear credential. It is called  
20 my clear credential. This is -- I didn't just have my  
21 -- when you finish your program, you get a preliminary  
22 credential until you finish three additional courses  
23 and then you have what is called the clear credential  
24 and three additional courses are in teaching  
25 exceptional children which means kids that have

1 the job at Bryant?

2 A. It was a panel interview with Ms. Zita, the  
3 special ed teacher, a 5th grade Spanish bilingual  
4 teacher, a first grade Spanish bilingual teacher.

5 Q. Was that the only interview you had in  
6 connection with applying for that job?

7 A. Yes.

8 Q. Did you apply for jobs at other schools in  
9 the San Francisco Unified School District as well?

10 A. I interviewed at other schools.

11 Q. Do you remember which schools you  
12 interviewed at?

13 A. I only pursued a position at one other  
14 elementary school and it was on Sixth and Clement and I  
15 don't remember the name of it. I did interview at  
16 other schools, though. I just didn't pursue. I  
17 interviewed at Grayton Elementary and I can't remember  
18 where else, but I didn't like any of them.

19 Q. Did you apply anywhere outside of the San  
20 Francisco Unified School District?

21 A. No.

22 Q. Did you have any interviews with anybody at  
23 the district?

24 A. I don't think so.

25 Q. Do you recall having to meet with anybody

1 from the district after being offered a position at  
2 Bryant?

3 A. Yes, I met with people in benefits, to sign  
4 up for benefits.

5 Q. Is that the only meeting you recall with  
6 district officials in connection with getting that job?

7 A. Yes. There was an orientation where we  
8 listened to some standard information and then  
9 individually met with people in Benefits and  
10 Retirement, I guess, something like that, but it was  
11 not any kind of screening or anything like that.

12 Q. Can you tell me why you took the position at  
13 Bryant as opposed to another school?

14 A. Yes, I was impressed with the calibre of  
15 questions that Ms. Zita asked me and they told me some  
16 facts about the school and the population there that  
17 sounds like the kinds of kids that I wanted to teach.  
18 I came to find out that some of the stuff they told me  
19 was not true, but at the time, it sounded good and they  
20 gave me a tour of the school and the school has a lot  
21 of bright colors to it. I had a tour at 6 o'clock on a  
22 Friday night, so the school was empty, so it was very  
23 quiet and it seemed like a nice, small school.

24 Q. Did you spend any other time at the school  
25 prior to taking the position or was it just limited to

1 children, it sounds entirely different and it looks  
2 entirely different. I didn't inspect the bathrooms or  
3 the supply room or any of that stuff. I didn't even  
4 know to think about those kinds of things at that point  
5 in my career.

6 Q. So those things did not come up in the  
7 interview process?

8 A. No, not at all. In teacher training, they  
9 train you to ask particular questions and to respond to  
10 particular questions, none of which are the kind that  
11 have come up today.

12 Q. Now, you said that you are currently  
13 teaching at the San Francisco School?

14 A. Yes.

15 Q. Can you tell me what your position is there?

16 A. I'm the head teacher for 4th grade.

17 Q. Can you tell me what that means?

18 A. That means that I am responsible for the  
19 core curriculum for the only 4th grade class there and  
20 that includes all the subjects I listed before for San  
21 Francisco Unified except music, PE, art, Spanish,  
22 drama, and that is it -- and technology, and computers.

23 Q. So are you actually teaching a class at San  
24 Francisco School?

25 A. Yes.

1 that interview and the --

2 A. Just that one interview.

3 Q. You said that some of the stuff they told  
4 you during the interview process was not true. Is  
5 there something particular you had in mind?

6 A. I asked the panel how intact the families  
7 were for the program I was going to be teaching in and  
8 they said that although families were starting to  
9 exhibit some stress, that for the most part, the  
10 families were intact and the parents were involved in  
11 the student's education and that was not true.

12 Q. Was there anything else that you recall not  
13 being true?

14 A. No.

15 Q. When you took the tour of the school during  
16 your -- during the interview process, do you recall  
17 recognizing any problems with the facilities at the  
18 school?

19 A. No, because I had never taught before except  
20 in my student teaching situation, so when I walked  
21 through the open library, what I saw were children's  
22 art work and bright orange and blue walls and when I  
23 walked through the computer lab at 5:30 at night, what  
24 I saw were 25 computers and somebody who was there  
25 working very hard. When the school is full of

1 Q. And just so I'm clear, you are teaching the  
2 only 4th grade class at that school?

3 A. Yes.

4 Q. Can you tell me how many students you have  
5 in your class?

6 A. 21.

7 Q. Can you tell me why you decided to leave  
8 Bryant at the end of the 2000/2001 school year?

9 A. Very flip answer to that is I just couldn't  
10 take it no more. I have wanted to be a teacher most of  
11 my life and I wanted to be a teacher because I was a  
12 student that had learning differences and I felt that  
13 most of my career as a student was a career in prison,  
14 a career criminal just wanting to do anything but be in  
15 school. And as I got older, I swore to myself that I  
16 would do something that would be different than that.  
17 I would take care of kids like me. I would be the kind  
18 of teacher I never got to have.

19 And I'm very interested in teaching and  
20 learning and the process of taking somebody's eager and  
21 excited mind and giving it something to chew on that is  
22 worthwhile.

23 While I was at Bryant, I spent so much  
24 energy trying to compensate for things that were  
25 missing in the system, some things that are just a

1 wheel that never stops turning, the societal things we  
 2 talked about earlier, I referenced earlier, like  
 3 poverty and racism and there were other things that  
 4 seemed to me should have been within the province of  
 5 control of an actual school, like the temperature of  
 6 the room and whether or not the kids had something that  
 7 they could eat so they could stay awake for five hours.  
 8 I became so frustrated with how little I was becoming  
 9 better at my job -- well, I don't want to be just a  
 10 teacher. I want to be a really fine teacher. I want  
 11 to be an exceptional teacher. I want to be the best I  
 12 can be. I felt hemmed in all the time at Bryant  
 13 because I would run out of time. They set the alarm at  
 14 8 o'clock at night. You just can't work past that.  
 15 You get tired after a while and I spent so much time  
 16 writing my own curriculum and modifying the curriculum  
 17 and copying the curriculum and trying to take care of  
 18 kids who were falling apart because the schools just  
 19 couldn't do what they were supposed to be doing for  
 20 them, that I never got all that much better at what I  
 21 really wanted to get better at and that was the craft  
 22 of teaching.

23 And I started to get cynical and bitter.  
 24 And in my last three months there, I knew that if I  
 25 stayed in San Francisco Unified, I would become a mean

1 teacher and I would take it out on my kids and I think  
 2 they are the last people in the world that need one  
 3 more adult scowling at them or being ungenerous with  
 4 them. And so for a bit of peace of mind and a chance  
 5 to work on my own skills as a teacher, I decided to  
 6 take a side step for a while. My heart is in public  
 7 education. It was a very mournful time for me to let  
 8 go of that school. Sorry.

9 Q. It is okay. Do you want to take a little  
 10 break?

11 A. No. It is okay. I was very attached to  
 12 that school and those families, but I didn't think I  
 13 could do for them what I really wanted to do. I  
 14 couldn't teach them in what I believe teaching is and I  
 15 saw they couldn't be learning for what I knew learning  
 16 could be. There were just too many things in the way.

17 Q. And can you tell me when you started --  
 18 well, why don't we try this question: Can you tell me  
 19 when you first became employed by the San Francisco  
 20 School?

21 A. I accepted the position for San Francisco  
 22 School in April of last spring.

23 Q. And at that time, you were still teaching at  
 24 Bryant?

25 A. Yes.

1 Q. You finished out the year teaching at  
 2 Bryant?

3 A. Yes.

4 Q. And when did you actually begin teaching  
 5 physically in the San Francisco School?

6 A. I started preparing my curriculum in June as  
 7 soon as I ended at Bryant and I began to move my  
 8 materials in June and I physically took possession of a  
 9 classroom and started setting it up in August of this  
 10 year.

11 Q. Now, in the few months you've been  
 12 physically at the San Francisco School, have you  
 13 experienced any of the sort of concerns or problems  
 14 that we've been discussing today?

15 A. I don't have a problem with temperature. I  
 16 have a thermostat in my room that I control. I have  
 17 solid walls. I have a water filter in my room. I have  
 18 a \$2,000 classroom budget to buy books and I have all  
 19 the books I need. I have all the supplies I need. I  
 20 don't anticipate running out of them. The noise is not  
 21 a problem. The bathrooms are big and clean and they  
 22 make a hot, home-cooked meal for all the students and  
 23 teachers every day.

24 Q. I'm sorry. Were you done or --

25 A. So everything is different.

1 Q. So none of the problems you've experienced  
 2 at Bryant, you haven't experienced any of those at the  
 3 San Francisco School?

4 A. No.

5 (Recess taken.)

6 MR. ROSENTHAL: Q. Okay. Before our lunch  
 7 break, we had been talking about the textbooks and  
 8 instructional materials that you used to instruct your  
 9 classes and we had pretty much covered instructing your  
 10 class in math. I would like to move now to a different  
 11 subject which is science. Did you ever have a science  
 12 textbook to teach with during any of your five years at  
 13 Bryant?

14 A. No.

15 Q. And do you know if a textbook was adopted by  
 16 the San Francisco Unified School District for any of  
 17 those five years?

18 A. Not that I'm aware of. There is a component  
 19 to the FOSS Kits that, within the teacher's manual,  
 20 there were a series of pages that you could photocopy  
 21 to give to the students so the students could make  
 22 their own little textbooks to go with the unit. Say  
 23 you are doing a unit on water or oceans and the year I  
 24 remember trying to use the FOSS kit one year and the  
 25 kit was empty of the consumables and the teacher manual

1 was missing, so I tried to figure it out on my own, but  
 2 I couldn't really and the experience was so negative  
 3 that I never used a FOSS kit again. Oh, I did once,  
 4 once after that, but the system for getting them  
 5 replenished and refilled was that they were working  
 6 that out and in the last two years I was there, I think  
 7 sometimes it worked; sometimes it didn't, but for me  
 8 personally, it had been too frustrating.

9 Q. So do you remember the years you had used  
 10 the FOSS kit?

11 A. I used it in '97/'98.

12 Q. Just to make sure I'm clear, was that your  
 13 second year?

14 A. Second year and that was it.

15 Q. You said you used it again at some point  
 16 after not using it, unless I misheard you.

17 A. No. I think I misstated it. I only used it  
 18 once -- oh, yes I did. I used part of it in -- I used  
 19 part of it in '99/2000.

20 Q. Okay. You said when you used the -- is  
 21 there some reason you didn't use the FOSS Kits in  
 22 '96/'97, your first year?

23 A. I didn't know about them. Nobody taught me  
 24 about them.

25 When you start working for the Unified

1 A. I must have watched another teacher or seen  
 2 another teacher using them and found out where they  
 3 were and I remember the first time that I looked at  
 4 them, I went through the kits and found an inventory  
 5 sheet which said what is supposed to be inside or there  
 6 is one pasted to the front of the kit, but most of the  
 7 stuff was not in there, so I talked to a couple of my  
 8 colleagues and asked them about them and some of them  
 9 had some positive things to say and some of them said  
 10 they weren't very good to use for the kids we had at  
 11 our school.

12 When I say the kids we have at our school, I  
 13 mean kids that are poor and don't speak English and  
 14 have learning disabilities and are hungry and come from  
 15 really stressful neighborhoods and things like that.

16 Q. You said that there were pages from the  
 17 teacher manual that could be copied and handed out to  
 18 the individual students in connection with the FOSS  
 19 Kits; is that right?

20 A. Uh-huh; yes.

21 Q. Were there any other materials that were  
 22 intended to be distributed to each individual student  
 23 as part of the FOSS Kits?

24 A. Not that I know of.

25 Q. You said when you used the FOSS Kits during

1 School District, you are sort of just dropped into the  
 2 frying pan and then you are popped out into the fire.  
 3 In other words, no one monitors you and San Francisco  
 4 Unified doesn't provide mentors to new teachers until  
 5 their second year in their job, so I didn't know about  
 6 a lot of materials or where things were in my first  
 7 year. If they existed on campus, I didn't know where  
 8 they were. I didn't know how to find them.

9 Q. Let me follow up on that a little bit.  
 10 Before beginning work at Bryant, did you receive any  
 11 sort of training prior to -- aside from your credential  
 12 training, did you receive any training from either  
 13 Bryant or the District?

14 A. No.

15 Q. Did you have any sort of orientation session  
 16 other than the one you already mentioned?

17 A. No.

18 Q. During '96/'97 school year, did you instruct  
 19 your class in science?

20 A. Yes. I took some information from the  
 21 health materials and modified it so that it was more  
 22 science oriented.

23 Q. And you said that when you -- why don't you  
 24 tell me how you first become aware of the existence of  
 25 FOSS Kits at Bryant.

1 the '97/'98 school year, that it was missing the  
 2 consumables. Can you tell me -- you mentioned it in  
 3 connection with the Mathlands program. I'm wondering  
 4 what kind of consumables were part of the FOSS kits.

5 A. There is one kit called "Mixtures and  
 6 Solutions," and some of the things you would find in  
 7 there would be filters, gravel, sand, salt, mesh wire.  
 8 Some of the kits had dowels, or clay, or cotton balls  
 9 and what teachers would do in trying to make up for the  
 10 lack of science kits that were usable is they would  
 11 make their own and sometimes I think they would go in  
 12 and pilfer the kits and try to put something together  
 13 that they could do on their own. I know I did it.

14 Q. You said after the '97/'98 school year you,  
 15 except for during part of '99/2000, you didn't use the  
 16 FOSS Kits. Was that because you -- can you tell me  
 17 why?

18 A. Well, I used to work 70 hours a week. The  
 19 kids are only in school from 7:40 until -- I had to be  
 20 at school from 7:30 until 3:30 every day, but from 3:30  
 21 until 7:00 at night, I would typically be writing my  
 22 own curriculum to address the range of the needs of the  
 23 actual kids in my room, not the profile of the kids  
 24 that the materials are written for, but the true kids  
 25 that were in my room. That meant I had to write

1 materials that could be understood by kids who could  
 2 read only 1st grade level and had limited English, all  
 3 the way up to materials that could accommodate kids who  
 4 could speak English fluently and who were also at a 4th  
 5 grade/5th grade level, a little ahead of schedule. I  
 6 would be writing, preparing a lot of worksheets. And  
 7 there is something in the ESL technique called realia.  
 8 You had to make a lot of pictures and diagrams. You  
 9 had to make games kids could play so they could  
 10 interact with the academic curriculum in a playful way,  
 11 so I was always developing curriculum.

12 I found with the FOSS kits, the information  
 13 that was in there was too dry and so unaccommodating of  
 14 the kinds of kids that were in my room, I had to  
 15 practically rewrite the stuff and it was easier to  
 16 almost start from scratch rather than to white this out  
 17 and cut this out and photocopy and put it to that, so I  
 18 stopped and started writing my own curriculum.

19 Q. During the remainder of the time you taught  
 20 at Bryant, did you rely primarily on the curriculum you  
 21 put together?

22 A. Uh-huh; yes, I did.

23 Q. Aside from that curriculum that you put  
 24 together and the occasional reliance on the FOSS Kits,  
 25 did you use any other materials to instruct your class

1 A. Yes, and everything in between.

2 Q. And did you think there could have been --  
 3 strike that.

4 Do you think that there is one textbook that  
 5 could have been used by the class that would have been  
 6 appropriate for all the students in the class with  
 7 regard to science?

8 MS. PERRIN: Objection. Calls for expert  
 9 testimony, but, again, you can testify as to your own  
 10 opinion.

11 THE WITNESS: A really good publisher can  
 12 develop materials that have -- and that is -- and I had  
 13 to try to be that really good publisher and try to  
 14 develop materials that can reach the range of all kinds  
 15 of learners, especially as California is asking us to  
 16 mainstream our classrooms. Mainstream means you  
 17 include in the room those children who previously would  
 18 have been in a special ed classroom, so a good  
 19 publisher can do that.

20 MR. ROSENTHAL: Q. Are you aware of any  
 21 books that would be appropriate for students whose  
 22 ability is at the pre-kindergarten level and also  
 23 appropriate for the student at a 7th grade level?

24 MS. PERRIN: Vague as to subject matter.

25 MR. ROSENTHAL: Q. I mean any subject

1 in science?

2 A. One year I had a visit from the Whale  
 3 Mobile. They come in and sort of set up a mini ocean  
 4 exhibit in your room. I took my kids on field trips.

5 In my last year at Bryant, I got a grant  
 6 from the San Francisco Ed Fund and I bought a grow lab  
 7 for my classroom with the money and the school built a  
 8 small garden on the east side of our building and I  
 9 used the garden as an outdoor laboratory. Nothing else  
 10 is coming to mind right now.

11 Q. Okay. You said that in your classes, you  
 12 had a range of -- the students in your classes had a  
 13 range of --

14 A. Learning abilities.

15 Q. -- reading abilities and some read as far up  
 16 as approximately a 5th grade level and others were at a  
 17 much lower level; is that right?

18 A. In all the years that I was teaching, the  
 19 highest level reader was a -- and this is a 5th grade  
 20 class -- the highest level reader -- the biggest  
 21 extreme was I had a year where I had a kid who was  
 22 pre-K as a reader and I had a child who was a 7th grade  
 23 reader, so it spanned eight years of ability.

24 Q. And you had both those students in one  
 25 particular class?

1 matter. I know we're talking about science. I'm  
 2 asking if you know of any book in which that is the  
 3 case.

4 A. I have seen books that do that. Usually  
 5 they are teacher books that write the lessons in a way  
 6 that shows the core of the lesson with what are called  
 7 extensions for the high-end learner and modifications  
 8 for kids that need support. Both Literacy Place -- I  
 9 don't know if Into English does that. Literacy Place  
 10 attempted to do that, although they didn't necessarily  
 11 provide -- San Francisco Unified didn't buy the  
 12 materials for us to actually do that. Like they didn't  
 13 buy us the books on tape and they didn't buy us the  
 14 overhead that go with that, but I have seen that.

15 And then I have also worked -- not worked,  
 16 I've also been paid as a market researcher. You know  
 17 those market research companies where you make your \$50  
 18 to go in and taste cheese? I used to do that, but I  
 19 would look at science textbooks and I remember one time  
 20 looking at one that did have that where they had -- I  
 21 don't know who the publisher is because it is all blind  
 22 -- but they had it set up to address a range of  
 23 learning styles and needs, so I think it is out there.

24 Q. When you say the student was at a  
 25 pre-kindergarten reading level, did they have any

1 reading ability at all at that stage?

2 A. He did. He had been deaf and apparently no  
3 one knew for a long time, so during the years when he  
4 was supposed to be learning phonics, he couldn't  
5 actually hear anybody or he couldn't hear the  
6 distinction in sounds. When they discovered it and  
7 gave him hearing devices, he began to learn how to  
8 read, but they didn't find that out until he was in 4th  
9 grade. He was in my class in 5th grade and he was just  
10 learning letter sounds and had learned letter  
11 recognition. He could write simple one-syllable words.  
12 He was sort of at kindergarten and pre-K in some ways.  
13 He could do 3rd grade math, by the way. It was only  
14 his reading ability that was impaired by the hearing.

15 Q. Okay. I would like to turn your attention  
16 to the subject of social skills and I think you said  
17 that -- and correct me if I'm wrong -- during your five  
18 years at Bryant, they used a program that you called  
19 TRIBES?

20 A. Yes.

21 Q. And was there some other program they used  
22 as well. Does that have a name?

23 A. Yes. I remember who the developer was. It  
24 was the conflict management program developed by  
25 Community Boards. They were a San Francisco group. I

1 have lessons that included giving children language to  
2 talk about their feelings, to talk about what they  
3 needed and wanted, and define ways to work it out.

4 Q. Now, in connection with either the TRIBES  
5 program or the conflict management program, were there  
6 any materials that were intended for student use?

7 A. Both programs had teacher manuals and the  
8 teacher manual for TRIBES had some blackline masters  
9 that you could photocopy.

10 The conflict management book, I developed  
11 most of the curriculum for the three-day training for  
12 kids and previous teachers before me had been  
13 developing and revising that curriculum over time. I  
14 don't think it came with anything for kids, but I don't  
15 know. In the years after I inherited it, the manual  
16 was pretty botched up. It was kind of hard to read  
17 what had happened to all the pages in it. Neither of  
18 those were State adopted. Those were Bryant-specific  
19 curricula.

20 Q. So there were never any textbooks --

21 A. No.

22 Q. -- that had been adopted by Bryant or at a  
23 district level for use in connection with social  
24 skills?

25 A. Yes. The health adoption, the health system

1 don't know where they are located now. I heard they  
2 moved. And the second program trains students how to  
3 dialogue and work through conflict mediation, both on a  
4 one-to-one level and also with the assistance of  
5 trained mediators who were also students and in my last  
6 year at Bryant, I was the trainer for the entire  
7 school, so I had to train 60 kids on how to be conflict  
8 managers.

9 Q. And I think you probably answered this  
10 somewhat in your last answer. Can you just define for  
11 me what you mean by the subject of social skills?

12 A. Uh-huh; I want to give you some background.  
13 In the couple of years before I joined Bryant, a survey  
14 went out to the families in the community and the  
15 students asking them how they felt about their school  
16 and how safe they felt and there was an overwhelming  
17 response that the students didn't feel safe and the  
18 principal, Ms. Zita, determined if a child can't feel  
19 safe, they can't learn. If she is worried someone is  
20 going to steal her things or hit her or scream at her  
21 or has just done so at recess, it makes it very  
22 difficult for her to pay attention and focus during  
23 class. So Ms. Zita decided that the school absolutely  
24 had to address the issue of communication and social  
25 skills with all students and that all teachers had to

1 adoption had some textbooks in it which addressed peer  
2 pressure and stress management and those were  
3 considered also social skills issues and there were  
4 books for kids.

5 Q. I'll come back to that when we discuss the  
6 health subject.

7 Aside from using the health books in  
8 connection with the peer pressure section, were there  
9 any textbooks used in connection with social skills?

10 A. No, I used to buy books that had to do with  
11 themes of friendship, and fairness, and prejudice, and  
12 things, gang awareness, and I would try to make a  
13 literacy lesson out of it as well as a social skills  
14 lesson, trying to get it all in.

15 Q. Why don't we move on to social studies. Do  
16 you recall whether a social studies textbook had been  
17 adopted for use in your classes during the five years  
18 you were teaching at Bryant?

19 A. Yes.

20 Q. Was that true for all five years that there  
21 was a social studies textbook that had been adopted?

22 A. Yes. I think the publisher was Houghton  
23 Mifflin.

24 Q. And were there different books adopted for  
25 the -- I know you taught your first year 3rd and 4th

1 and the fourth year a 4th grade class. Was that  
2 textbook different than the textbook used in the 5th  
3 grade class?

4 A. Yes, the 3rd grade textbook is called From  
5 Sea to Shining Sea. 4th grade is called Oh, California  
6 and the 5th grade is called United We Stand, I think.  
7 I think it is United We Stand. I don't know. I'm  
8 seeing that everywhere these days. Maybe it is not  
9 called that, but I think it was United We Stand.

10 Q. Now, in your mixed 3rd and 4th grade class,  
11 did you use both the 3rd and 4th grade textbooks or did  
12 you use one or the other?

13 A. I used neither.

14 Q. Was there a reason you didn't use them?

15 A. I didn't know what to do because I had half  
16 3rd grade and half 4th grade and most of them could not  
17 even read at a 3rd grade level yet. I spent the entire  
18 year -- it was a very violent class and I had to spend  
19 most of that year just trying to teach them how to talk  
20 to each other, so the social studies curriculum for  
21 that year was mostly social skills and social skills is  
22 actually considered part of social studies, but for  
23 that year, it became all of social studies, racism,  
24 prejudice.

25 Q. Were social studies textbooks available to

1 class.

2 Q. Do you remember approximately how many you  
3 were short?

4 A. No, but I do remember the way I dealt with  
5 it is that I made everybody share, so I'm sure I had at  
6 least 12 in the room just so that no one can say, "Why  
7 does he get his own book and I have to share?" I just  
8 made everyone share with somebody else.

9 Q. You said you shared some of the textbooks  
10 with --

11 A. The other 4th grade class.

12 Q. Right. Do you remember how many books you  
13 shared with them?

14 A. No.

15 Q. Did you always have at least 12 books in  
16 your class?

17 A. I always had at least 12 books when I needed  
18 them. That may mean that I would have to arrange with  
19 her on that morning to get them from her, but I don't  
20 remember completely.

21 Q. Were students allowed to take those  
22 textbooks home with them at any time?

23 A. No.

24 Q. Did you ever assign homework to students in  
25 social studies in which the textbook would have been

1 you during that '96/'97 school year?

2 A. They weren't in my classroom, but I believe  
3 there were some on campus that I could've borrowed from  
4 another teacher like I did in the remaining years, or  
5 shared with another teacher.

6 Q. But, in fact, you didn't do that?

7 A. I didn't.

8 Q. And that was for the reasons you just  
9 described?

10 A. Yeah.

11 Q. How about during '97/'98 when you were  
12 teaching a 4th grade class, did you use the Oh,  
13 California textbook in that class?

14 A. I did. And I think that that year I had  
15 almost enough for my entire 4th grade and shared some  
16 of them with another 4th grade teacher who taught in  
17 the Spanish bilingual classroom, but some of her  
18 Spanish bilingual kids need the English edition because  
19 their Spanish wasn't good enough to read the Spanish  
20 edition.

21 Q. Do you remember how many students you had in  
22 that class, the '97/'98 4th grade class?

23 A. 24.

24 Q. Do you remember how many books you had?

25 A. No, but it was not enough for the whole

1 required for them to have?

2 A. I assigned homework in social studies where  
3 the textbook would have been helpful, but I -- it  
4 wouldn't have been fair to make it required. Sometimes  
5 the lives of these kids are so chaotic, to send  
6 something home with them, it means it may or may not  
7 come back, and I didn't feel like I could risk that  
8 with textbooks because we were so short already.

9 Q. If you had had a full class set of 24  
10 textbooks, would you have allowed your students to take  
11 them home then?

12 A. Yes.

13 Q. And would you have continued to do so if you  
14 had done that and some got lost as a result of that?

15 A. When school books get lost at Bryant, they  
16 don't get replenished. If I had had enough books for  
17 every kid and I knew I could get more the next year so  
18 that, again, all my kids would have books, I would do  
19 that, yes.

20 Q. I'm going to try to deal with your last  
21 three years at Bryant together because I know it was --

22 A. All 5th grade.

23 Q. Right. And you were -- well, did you use a  
24 book which you believe is entitled United We Stand?

25 A. America Will Be. America Will Be, that is

1 it.

2 Q. United We Stand was not a textbook you used  
3 in social studies at Bryant, just so the record is  
4 clear?

5 A. There is a book called United We Stand, but  
6 I don't think -- maybe it is the 7th grade book, but I  
7 think it is America Will Be. I did use it for all  
8 three years that I taught 5th grade. Again, it had to  
9 be shared because I didn't have enough for every  
10 student and I certainly didn't have enough -- we didn't  
11 have enough at Bryant for every 5th grade student  
12 because there was another 5th grade classroom that I  
13 shared them with.

14 Q. Do you remember the total number of copies  
15 of the textbook that you had during that three-year  
16 time period?

17 A. I know that at one point, we were down to 17  
18 for the two classrooms between us.

19 Q. When you say you were down to 17, were there  
20 more at some points?

21 A. I think there were more at some point. I  
22 think that when I first started teaching 5th grade,  
23 there may have been as many as 20. My second year as a  
24 5th grade teacher, I think we were down to 17. In my  
25 third year as a 5th grade teacher is when Larry got

1 you may not remember the exact number, but the best you  
2 can remember.

3 A. Yes, always more than 21 and never more than  
4 25. I think the last two years I had 23 kids each  
5 year. I'm not sure.

6 Q. Just for simplicity, is it fair to say that  
7 you had approximately 23 students each of those three  
8 years?

9 A. Yes.

10 Q. Give or take one or two?

11 A. Uh-huh.

12 Q. Now, you said that the America Will Be  
13 textbooks were shared between two 5th grade classes; is  
14 that right?

15 A. Yes.

16 Q. How did you coordinate with the teachers of  
17 the 5th grade class as to how those textbooks would be  
18 used between the two class?

19 A. Sometimes we did a really good job of having  
20 a conversation on a Thursday or Friday about, "Next  
21 week, I'm doing a huge project about Native Americans.  
22 Do you need the books next week?"

23 "Yes, but I'll need them on such and such a  
24 date."

25 "What time?"

1 somebody to send us more books, but they weren't all  
2 the same edition as I was using already.

3 Q. And those were the approximately, did you  
4 say, 12 books?

5 A. Something like that, yes.

6 Q. And those were the same textbooks -- the  
7 America Will Be textbook, just a different edition of  
8 that book?

9 A. Same title, same publisher, some in Spanish  
10 and some of a newer edition. The teacher's manuals  
11 that came along with Oh, California and America Will  
12 Be, by the way, there was a spiral-bound teacher's  
13 edition, plus sets of maps and posters to supplement  
14 the curriculum. I could find a teacher's edition, but  
15 all of the other stuff seemed to have been lost.

16 Q. So you had the teacher's edition  
17 spiral-bound books, but not the maps and posters that  
18 were supposed to accompany it?

19 A. Right.

20 Q. Did you ever have those during any of your  
21 five years at Bryant?

22 A. No, but I know they exist because I saw them  
23 in another teacher's classroom in another school.

24 Q. Do you remember how many students you had in  
25 each of your 5th grade classes at Bryant? And I know

1 We'd coordinate it and other times I would  
2 be teaching a lesson. Sometimes teaching is so  
3 organic. You'll be telling the kids about the regions  
4 where the plains Indians were and they don't remember  
5 because they did the lesson yesterday and you gave the  
6 books back and I just say, "Run down the hall and ask  
7 Indelisa if she can spare the books right now."

8 And the kids would run next door and say,  
9 "Can we have some books?"

10 And sometimes she would say "Yes," and  
11 sometimes she would say, "I'm using them right now,"  
12 so --

13 Q. Were there instances when all of the 5th  
14 grade social studies textbooks that were at Bryant were  
15 available for your use in your class?

16 A. Yes.

17 Q. And do you remember instances when you were  
18 using all of those textbooks in which you did not have  
19 enough for all of your students?

20 A. Yes.

21 Q. And do you recall approximately how  
22 frequently that happened?

23 A. There are a couple of projects that can span  
24 a number of weeks that are sort of research-based  
25 geography projects and the kids work at their own pace



1 so over a two- or three-week period, as they are doing  
2 some research, they will need to get into the books and  
3 be referencing all kinds of maps and sections that have  
4 atlas kinds of pages to them and if they are all trying  
5 to work on it at the same time, only half the kids will  
6 be able, or 17 out of the 23 in the class will be able  
7 to use the book at a time while they are -- while we're  
8 having social studies and if half the books are with  
9 the other 5th grade classroom, then even fewer, then  
10 only nine out of 23 can use them. And that would  
11 happen over big chunks of time in the fall.

12 Q. Any reason why you point to the fall as  
13 opposed to the spring? Did you just use them more  
14 frequently in the fall?

15 A. I did, yes. I did a big -- I did more  
16 in-depth work around social studies in the fall and  
17 then in the spring, I had designed some of my own  
18 social studies units.

19 Q. How would you deal with the situation in  
20 your classroom when there weren't enough textbooks for  
21 each student to have their own individual copy?

22 A. I would ask kids to share, but sharing was  
23 actually pretty problematic because when kids -- when  
24 you use words like, "Please have the book exactly  
25 between you so you can both see it," kids who come from

1 Q. Did you ever hear it was school or district  
2 policy to have students share textbooks as a positive  
3 teaching environment?

4 A. Policy, no. There is a teaching strategy  
5 called buddy reading where two students share a piece  
6 of text and read together and with each other and it  
7 allegedly helps the students have a pal to help them to  
8 code, someone to have conversation with for  
9 comprehension, and teaches the social skill of sharing  
10 and going back and forth. And my experience at Bryant,  
11 that can work if you are giving kids accessible text,  
12 but just as a reference point, the 5th grade text was  
13 above the reading ability of most of the kids, so I  
14 used it mostly for the graphics, for the maps, the  
15 atlases, the pictures. They had sections in the book  
16 which were source documents or something like that. I  
17 couldn't really use it for the whole chapter. I didn't  
18 use it for that.

19 Q. When you say you didn't use it for the whole  
20 chapter, was that largely because of the wide range of  
21 reading abilities of your students?

22 A. Exactly.

23 Q. Was the buddy reading teaching strategy  
24 something that was generally encouraged at Bryant? And  
25 I'm not limiting it to just social studies. I mean

1 these kinds of backgrounds get very territorial about  
2 stuff and they have a hard time sharing. They want it  
3 right in front of them, so they fight over it or one of  
4 them reads faster than the other, so they want to flip  
5 the pages. The other one doesn't, so they get into  
6 distress about that. These kids are constantly needing  
7 coaching on how not to come to conflict with each  
8 other. It always presented sharing -- sharing always  
9 means I have to deal with the added dimension of  
10 classroom management being a bit more of a nightmare or  
11 a bit more problematic than it would typically be.  
12 Classroom management is very difficult, but when you  
13 are sharing books and materials, it gets more  
14 challenging, so I would ask them to share or I would  
15 try and plan two units to run in one day where I would  
16 have all the kids on one section of the room trying to  
17 use books and the other kids in another section of the  
18 room trying to do some kind of other study that didn't  
19 require the books and this usually led into another  
20 logistical nightmare, which meant if they were trying  
21 to use atlases, it meant they had to use the ones I  
22 had. There had to be enough of them or maps. If they  
23 worked on one side of the room, they were right next to  
24 the wall, which was right next to the room where they  
25 could hear the room.

1 generally.

2 A. As a teaching strategy, it is considered a  
3 lower grade teaching strategy, something you use in the  
4 primary years. That would be kindergarten through 3rd  
5 grade.

6 4th through 6th grade is the transition from  
7 learning to read to reading to learn, so the burden of  
8 the upper grade teacher is you are still teaching kids  
9 to learn how to read and they have to read to learn, so  
10 the kids have to develop better comprehension skills  
11 and at the same time, better decoding skills. Buddy  
12 reading was a strategy that I didn't think took care of  
13 both of those skills efficiently. I did use it, but  
14 not very often.

15 The other thing that happens -- this is a  
16 social development thing -- if you try to get two 5th  
17 graders together to read, if it is a boy and a girl,  
18 they get all giggly or they can't touch each other. If  
19 it is two girls, they start playing with each others'  
20 hair and if it is two boys, they start punching each  
21 other and wrestling, so buddy reading, at that point,  
22 was kind of hard, too, just from a social --

23 Q. I have nephews at that age, so that sounds  
24 familiar.

25 Now, were the students in your 5th grade

1 classes permitted to take home the America Will Be  
2 textbook at any time?

3 A. The truth is I made a public statement that  
4 all the books had to be back in the pile where they  
5 were supposed to be and counted them and made sure they  
6 were there. Occasionally I would have a student who  
7 was very motivated and if I decided they were pretty  
8 trustworthy, if they came to me on the sly and begged  
9 to take the book home, but I made them promise in blood  
10 to bring it back the next day, so very occasionally I  
11 would let a kid take a book home for the night.

12 Q. And did those typically get returned?

13 A. Yes. Although, it is weird. I'm thinking  
14 about how did we go from 20 in one year to 17 the next  
15 year. I don't know, but, yes, I would say typically  
16 they did get returned because I was so tight about it.

17 I had a student who moved to Atlanta for a  
18 few months in the middle of 5th grade and he came back  
19 to visit at Christmas time and what he told the class  
20 was the greatest thing he had at his new school was he  
21 had his own set of books for every subject and the kids  
22 said, "Really?" They thought that was so amazing.

23 Q. Why don't we move on to the subject of  
24 reading. Now, you said that -- I believe you said in  
25 1997/'98 a program called Literacy Place was adopted?

1 Q. I think you said during the '96/'97 school  
2 year, you believe there should have been some kind of a  
3 reading program that had been adopted by the district?

4 A. Uh-huh.

5 Q. Can you tell me what the basis for that is?

6 A. Well, I think that -- I don't think a school  
7 usually likes to leave any gaps in terms of materials  
8 for students. If something new hasn't been adopted,  
9 then the previous adoption should still be in force or  
10 in place, but as I said, when I got there, there were  
11 no reading books in the classroom and there was also a  
12 shift in teaching theory around this time and there  
13 also was a teaching movement called Whole Language  
14 going on and Whole Language encouraged teachers to  
15 abandon primers or reading books that had only excerpts  
16 of stories in them, so it would have had a little  
17 section on Miss Piggle Wiggle and the Henny Penny Box  
18 and maybe a poem, but that was beginning to be  
19 considered unauthentic literature because there were  
20 small bits and pieces of things and we should be giving  
21 children authentic literature and authentic reasons for  
22 writing and reading. Literacy Place was supposedly  
23 going to fulfill that purpose, but until Literacy Place  
24 had been adopted and in place, there should have been  
25 another set of books and manuals for teachers that

1 A. Yes.

2 Q. Do you remember what you used to teach  
3 reading prior to the adoption of that program?

4 A. Yes. I have been collecting children's  
5 books for about 25 years and when I started at Bryant  
6 and I had that 3rd/4th grade classroom, I brought in my  
7 book collection which was probably about 50, 75 books  
8 and I bought a lot of new books -- new to Bryant --  
9 bought books for the classroom and I developed my own  
10 reading program -- couple of units -- a couple of my  
11 own units for a reading program to teach reading that  
12 year.

13 For writing, I used what is called the  
14 writer's workshop approach and I bought some teacher  
15 manuals at a teacher's supply store to teach grammar  
16 and spelling.

17 Q. I don't mean to interrupt. Can we deal with  
18 reading and writing together? Is this an area where we  
19 can do that?

20 A. Yes, because I had to combine it that year.  
21 I don't like to necessarily do that, but I did do that  
22 for this year because it was the cheapest way.

23 Q. '96/'97?

24 A. Yes. And I don't think I taught anything  
25 around oral language that first year. Not much anyway.

1 would have still been in effect, so teachers would have  
2 something to teach with and kids would have something  
3 to read, but I didn't have anything in my room.

4 Q. Did you ever remember hearing what the prior  
5 adoption had been?

6 A. No.

7 Q. Just so the record is clear, when you say  
8 "Whole Language," that is w-h-o-l-e?

9 A. Yes.

10 Q. Now, you said in '97/'98, the Literacy Place  
11 program was adopted. Were there materials that came  
12 along with that program?

13 A. Yes, a teacher's manual, two anthologies of  
14 literature for every student, a kit for assessing  
15 student reading, a small shelf about two feet wide with  
16 chapter books and picture books for students of that  
17 reading level and a couple of other teacher guideline  
18 books, I think one for writing and one for spelling or  
19 something like that, or grammar and usage.

20 Q. When you say there were two anthologies  
21 for --

22 A. Each student.

23 Q. -- each student, are those physical books?

24 A. Uh-huh; yes.

25 Q. And in the '97/'98 school year, did you

- 1 receive a set of Literacy Place materials?  
 2 A. Yes, I did.  
 3 Q. Was it a complete set?  
 4 A. Yes.  
 5 Q. Was it new at that time when you received  
 6 it?  
 7 A. Brand-new.  
 8 Q. And during the 1997/'98 school year, did you  
 9 have enough copies of each of the anthologies for each  
 10 of your students?  
 11 A. Yes, I had two anthologies, Volume I and  
 12 Volume II, for every one of my 25 students and they  
 13 were all 4th grade level and I had maybe two or three  
 14 4th grade readers in my room and everybody else was  
 15 below that.  
 16 Q. Maybe I just didn't hear. Did you say the  
 17 materials were 4th grade level?  
 18 A. Yes, that was the year I was teaching 4th  
 19 grade.  
 20 Q. And you just said there were -- do you  
 21 specifically remember there were 25 students? I think  
 22 earlier you said there were 24. I want to make sure  
 23 the record is clear. Was there roughly 24, 25  
 24 students?  
 25 A. I know for sure I had 25 kids in my first

- 1 year of teaching at Bryant. I thought I had 25 in my  
 2 second year at Bryant, but I maybe did not; maybe I had  
 3 24. I know there was one set of books for each of the  
 4 kids.  
 5 Q. Just so we're clear, during your five years  
 6 at Bryant, did you always have between 21 and 25  
 7 students?  
 8 A. Yes.  
 9 Q. Okay. Now, were the students in your -- let  
 10 me try it this way: During the four years you used the  
 11 Literacy Place materials, did you always have a  
 12 complete set of those materials?  
 13 A. No.  
 14 Q. Can you tell me when you did not?  
 15 A. Uh-huh; yes. In my last year teaching 5th  
 16 grade, I did not have enough 5th grade books.  
 17 Q. And, again, just to make sure I'm clear,  
 18 were the materials used in the 4th grade class  
 19 different than the materials you used in the 5th grade  
 20 class?  
 21 A. Completely different.  
 22 Q. Okay. During the first two years that you  
 23 used the 5th grade level Literacy Place materials, did  
 24 you have complete sets of those?  
 25 A. I had complete sets of 5th grade materials,

- 1 even though the kids in my room were not 5th grade  
 2 readers -- even though not all the kids in my room were  
 3 5th grade readers.  
 4 Q. Did you use those books in teaching your  
 5 class reading?  
 6 A. In some cases I could use the books for  
 7 teaching 5th grade reading -- wait. Let me clarify  
 8 this. In some. I could use the anthologies to teach  
 9 some of 5th grade reading and then when I wasn't using  
 10 the anthologies, I could use some of the -- that  
 11 two-foot-long bookshelf. I could use some of the books  
 12 from there and then we also -- they also provided us  
 13 with a set of books for the kit for kids who were not  
 14 quite at 5th grade and I could use some of those for  
 15 the kids that were 4th grade readers, but for the kid  
 16 who I said was sort of a kindergarten reader, I  
 17 couldn't use any of the books. That is when I had to  
 18 start putting together my own system.  
 19 Again, with kids like that, you go get the  
 20 1st grade book and say, "This is where you are at,"  
 21 they aren't going to want to read about Spot. It is  
 22 too infantile for them.  
 23 Q. In that approximately two-foot shelf of --  
 24 I'll call them supplemental books. Let me know --  
 25 A. They are called trade books.

- 1 Q. Trade, t-r-a-d-e?  
 2 A. Uh-huh.  
 3 Q. Were there books at different reading levels  
 4 contained in that set or were they all at the 5th grade  
 5 level?  
 6 A. They were at 5th grade level, give or take  
 7 maybe half a year. They were primarily 5th grade,  
 8 maybe lower, 6th grade, maybe upper 4th grade, but they  
 9 didn't have a very broad span of ability.  
 10 Q. So during your first two years when teaching  
 11 5th grade, did each of the students in your class  
 12 receive their own copies of the anthology textbooks?  
 13 A. Yes.  
 14 Q. Were they allowed to take those books home  
 15 with them?  
 16 A. Yes. Was that a mistake? Yes. They  
 17 started losing them and they weren't replaced. That is  
 18 why, in my last year, I didn't have enough.  
 19 Q. I feel like I don't need to ask the  
 20 questions.  
 21 A. I know.  
 22 Q. During your last year you were teaching 5th  
 23 grade, do you remember how many books you were short?  
 24 A. Three.  
 25 Q. Was it three each of the anthologies or

1 three total?

2 A. Three of one of them. I can't remember if  
3 it was Volume I or Volume II.

4 Q. Did you have the complete set of the other  
5 volume?

6 A. I think so, yes.

7 Q. So during that final 5th grade year that you  
8 taught, did you not have enough of one of the volumes  
9 for all of your students to have their own copies?

10 A. Correct.

11 Q. And did you ask a couple of students to  
12 share books as a result of that when you were using  
13 that one volume?

14 A. I asked the other 5th grade teacher if I  
15 could use hers during that time.

16 Q. And were you able to do so?

17 A. Yes. I think one more was lost, though,  
18 again.

19 Q. During this final year, did you continue to  
20 allow students to take those books home with them or  
21 did you change your mind?

22 A. I didn't let them take them home anymore, I  
23 don't think.

24 Q. Was that because of your past experience  
25 with them getting lost?

1 prepared for 5th grade work were promoted to the 5th  
2 grade level?

3 A. My understanding, until my last year or so  
4 at Bryant, was that the only person who could really  
5 ask a child to be retained was the parent of that child  
6 and that an overwhelming amount of research that the  
7 administrators in San Francisco were listening to said  
8 that when a child is retained after kindergarten, it is  
9 too socially devastating for them to continue and  
10 function well.

11 Q. Did you ever recommend to a parent or  
12 administrator that any of your students be retained in  
13 a particular grade at the end of the year?

14 A. Yes.

15 Q. And were they ever retained or did they get  
16 promoted?

17 A. I had one student who was accepted to  
18 Catholic school when he left my 5th grade classroom and  
19 he was going to go into the 5th grade again at the  
20 Catholic school. The parents then decided they  
21 couldn't afford the Catholic school so he went back  
22 into the public school system and they put him in the  
23 6th grade, so no.

24 MS. PERRIN: Michael, would this be a good  
25 time for a break?

1 A. Yes. When I let them take them home the  
2 first time when they were brand-new books, I told the  
3 children the books were worth \$25 each. If they lost  
4 them, their families would be responsible for  
5 reimbursing the school so new ones could be bought and  
6 they didn't get -- the families would not pay.

7 Q. Now, in teaching writing and oral language,  
8 let's start with the 5th grade class you had, you used  
9 the same Literacy Place materials?

10 A. The Literacy Place writing program followed  
11 a predictable formula. You read a piece of literature.  
12 The writing component is to imitate the genre or the  
13 style of the author. You learn the spelling based on  
14 vocabulary from the context of the reading, so your  
15 1st, 2nd, 3rd, 4th grade readers who can't really read  
16 the 5th grade literature, someone either has to read it  
17 to them or they have to hear it on tape and read along  
18 and if they don't get the theme or the flavor or the  
19 gist of the story, then they can't imitate the writing.

20 In my first two years teaching 5th grade,  
21 the majority of the kids could not read the materials,  
22 so I had to base my writing program on something else,  
23 on something they could do.

24 Q. Did you ever understand as to why students  
25 who, in your opinion, did not appear to be academically

1 MR. ROSENTHAL: That is fine.  
2 (Recess taken.)

3 MR. ROSENTHAL: Q. Before our break, we had  
4 been spending some time talking about the Literacy  
5 Place materials that you used to teach the classes in  
6 reading, writing, and oral language. You said -- at  
7 some point, I think you said in 2000 that there was  
8 additional materials that were adopted for ESL students  
9 and that was the Into English program; is that right?

10 A. Uh-huh; yes.

11 Q. Prior to the adoption of those materials,  
12 were there any materials that had been adopted for use  
13 with ESL students?

14 MS. PERRIN: By the district?

15 MR. ROSENTHAL: By the district or the  
16 school.

17 THE WITNESS: No.

18 MR. ROSENTHAL: Q. Can you tell me what  
19 materials you used prior to the 2000/2001 school year  
20 to instruct those students in reading, writing, and  
21 oral language?

22 A. I made up my own stuff.

23 Q. Do you recall when you received the Into  
24 English materials? Just so I'm clear, it was during  
25 the 2000/2001 school year you used that?

1 A. I don't remember what semester they arrived  
2 in. I can tell you that we -- well, it must have been  
3 near the beginning of the year because I had attended  
4 an overview by the district on how the program was  
5 developed, although we were never trained on how to use  
6 it.

7 Q. Do you know if those materials were adopted  
8 by the San Francisco Unified School District?

9 A. Yes, they were.

10 Q. And do you recall when that adoption  
11 occurred?

12 A. I don't.

13 Q. When you say that you think you got them  
14 near the beginning of the year, we're talking about the  
15 2000/2001 school year?

16 A. Yes. It was either -- let's see, I actually  
17 don't know. It was either the '99/2000 or the  
18 2000/2001.

19 Q. Okay. But in either case, it was near the  
20 beginning of one of those school years?

21 A. Yes.

22 Q. And can you tell me what the Into English  
23 materials consisted of?

24 A. Teacher manual, mini sets of student books,  
25 for example, six copies of a title and there were maybe

1 it was discussed as to how the materials were adopted  
2 or why they were adopted?

3 A. Yes. There was a meeting at the beginning  
4 of one of the school years in the first half of the day  
5 that was devoted to one topic and I don't remember what  
6 the topic was. It might have been standardized tests  
7 or something like that and another part of the day,  
8 maybe an hour was devoted to explaining the ESL  
9 programs design concept. The author of the materials  
10 was there talking about how he and his team had written  
11 the program.

12 Q. Was this something that all teachers at  
13 Bryant attended?

14 A. I'm not sure. I'm not sure. I didn't sit  
15 with any of my coworkers.

16 Q. Do you know if they were all invited to  
17 attend or required to attend?

18 A. I think they were all invited to attend.  
19 I'm not sure, though.

20 Q. And did you not view that as training in the  
21 Into English program?

22 A. No, not even a stretch. Training -- I think  
23 training for me has to include a close examination of  
24 the teacher's manual, reading the materials, having  
25 someone model how the lesson would be used with

1 six different titles, some posters of chants or poems  
2 that could be used to teach the concept and two audio  
3 cassettes that had songs on them. I think they had  
4 songs on them. And it varied. Each set of ESL  
5 materials were different for each grade level and each  
6 classroom teacher got one set.

7 Q. Now, you only had those materials when you  
8 were teaching 5th grade; is that right?

9 A. Correct.

10 Q. And during the either one or two years that  
11 you had those materials, did you always have a complete  
12 set?

13 A. I always had a complete set, yes.

14 Q. And were the materials in the Into English  
15 instructional materials that were intended to be given  
16 to each individual student?

17 A. No, because they came in mini sets. There  
18 were only six copies of each title, so they were meant  
19 to be taught in a small group environment, I think. I  
20 don't know. I was not trained on how to use the  
21 materials.

22 Q. There was no training offered on the Into  
23 English materials?

24 A. Correct.

25 Q. You said you attended some meeting in which

1 students and the materials. It walks you through the  
2 whole unit. "This is the materials. Here is how you  
3 deliver. Here is how you assess. Here is how you  
4 teach."

5 Q. Were you able to use these materials to  
6 teach your ESL students?

7 A. Some of them, yes. Some of the materials,  
8 yes.

9 Q. You were able to use some of the materials?

10 A. Yes, because --

11 Q. Were you not able to use some of the other  
12 materials?

13 A. Correct, because they are content-specific.  
14 I think they were designed to complement a co-existing  
15 social studies or science curriculum, so the social  
16 studies curriculum books that they provided had to do  
17 with immigration and diversity in America and one of  
18 the topics of the books, for example, the title was  
19 "Chili Peppers" and then there were another set of  
20 books that were specifically about a particular science  
21 unit that was not a science unit I was teaching, so I  
22 couldn't use it and find a way to use those in my  
23 curriculum. One year I did borrow some 4th grade  
24 curriculum because it did match what I was teaching in  
25 my classroom, but the curriculum for San Francisco is

1 not standardized across all 5th grade classrooms, so it  
2 wasn't easy to make all of these different adoptions  
3 dovetail with each other, which is what you hope you  
4 can do to get all your instructional minutes and get  
5 all the topics you are supposed to teach and meet all  
6 the needs of the kids in your room.

7 Q. Were there a certain number of ESL students  
8 in each of your classes that you taught at Bryant?

9 A. Yes, at least 30 percent of the room every  
10 year.

11 Q. Can you tell me what the maximum was any  
12 particular year?

13 A. I would say that probably ten or 12 out of  
14 21 to 25 kids.

15 Q. When you say at least 30 percent, so we're  
16 just trying to tie --

17 A. Minimum of seven or eight kids per class.

18 Q. Up to as many as ten or 12?

19 A. Yes. Now, the way the school district  
20 designates an ESL child is a child who is learning  
21 English as their second language, but the truth is that  
22 limited English proficiency is very evident in the  
23 African American population in the urban child -- just  
24 the urban child population, because they don't speak  
25 standard English. They speak what some people call

1 important books for kids to have, health hits the  
2 bottom. It is the bottom of the pyramid and up there  
3 is math and language arts and social studies.

4 Q. I'm going to try and deal with a bunch of  
5 other subjects you taught together, to the extent we  
6 can, and if there is any problem where I can't, let me  
7 know.

8 A. Yeah.

9 Q. For phys ed, music, art, and drama, do you  
10 know if there were ever any textbooks that were adopted  
11 either by the school or the district for use in  
12 teaching those classes at any point during the five  
13 years you were at Bryant?

14 A. There was an art adoption sometime during, I  
15 think it was 1999. I received some teacher materials,  
16 but no training. And then the materials I received  
17 were stolen from my room and I never saw them again. I  
18 don't know if there were any student materials in  
19 there. I do not know of any textbooks that were  
20 adopted for those other subject areas.

21 Q. In connection with the art adoption, do you  
22 know if there were textbooks that were adopted that  
23 were supposed to be given to each student or was it  
24 just the teacher materials?

25 A. I don't know what was in the packet, but I

1 Ebonics, so they need those materials just as much.  
2 Virtually everyone in your class, no one speaks  
3 standard English.

4 Q. Why don't we talk about health. You said  
5 that you had health books, was that during all five  
6 years you were teaching at Bryant?

7 A. Yes.

8 Q. Were there different books in use for the  
9 different grades or was it the same book?

10 A. Different books for different grades.

11 Q. Do you remember the books by any chance?

12 A. I don't.

13 Q. So did you use three different books over  
14 the course of the five years you were teaching there?

15 A. Yes.

16 Q. Do you recall ever having a shortage of  
17 those books?

18 A. No.

19 Q. By that I mean did you have enough books for  
20 each of your students in each of your classes?

21 A. I think so.

22 Q. Were students allowed to take those books  
23 home with them?

24 A. Yes. In the scheme of things, though -- you  
25 know, if we were making a hierarchy of the most

1 don't think there were any student books. I do not  
2 think there were.

3 Q. Did the packet get stolen before you ever  
4 had a chance to look at it?

5 A. Exactly.

6 Q. And did that ever get replaced?

7 A. No.

8 Q. Did other students have the same teacher  
9 materials for art?

10 A. I think the other 5th grade classroom had it  
11 and I taught art anyway regardless of not having these  
12 materials and because I hadn't been trained and no one  
13 had been trained on how to use the art materials, I  
14 figured it was a moot point anyway. It didn't matter  
15 if I was trained -- didn't matter if I found them. I  
16 wasn't trained to use them anyway. I didn't understand  
17 what was in there, so I would just use what I would  
18 develop on my own.

19 Q. Can you just tell me who the other -- I  
20 think you mentioned her name a couple times -- who the  
21 other 5th grade teacher was?

22 A. Indelisa, I-n-d-e-l-i-s-a, Carrillo,  
23 C-a-r-r-i-l-l-o.

24 Q. It was your understanding that Ms. Carrillo  
25 had the teacher materials for art?

- 1 A. Yes.
- 2 Q. Did you ever look at the materials?
- 3 A. I didn't.
- 4 Q. Did you ever hear that Ms. Carrillo had
- 5 textbooks for art?
- 6 A. No, I didn't. I didn't hear either way. I
- 7 don't know if she ever looked at them either.
- 8 Q. And I left out computers and technology, I
- 9 guess we'll call it. Were there any textbooks adopted
- 10 for that subject during the five years you were
- 11 teaching at Bryant that you were aware of?
- 12 A. No, there weren't, none for students, and as
- 13 I said before, the manuals, I never saw, so that
- 14 teachers couldn't really reference them, but as you
- 15 probably know, software is not written with manuals
- 16 that are very helpful anyway, so the other teacher and
- 17 I, the other computer teacher and I, sort of patched
- 18 together things and I wrote my own materials again for
- 19 the kids.
- 20 Q. Was there a specific computer teacher at
- 21 Bryant Elementary?
- 22 A. Yes, Judy Chow.
- 23 Q. And did she instruct all students at the
- 24 school in computer and tech knowledge?
- 25 A. We co-taught the technology component.

- 1 Q. Did Ms. Chow have her own class as well?
- 2 A. No.
- 3 Q. So it was her sole responsibility teaching
- 4 computer and technology?
- 5 A. Her job was to consult with teachers to help
- 6 integrate technology into their core teaching in any
- 7 way that she could to maintain the computers and the
- 8 servers and to work alongside children and teachers
- 9 while they were in the lab and she performed other
- 10 duties at the school as well, but that was the main
- 11 responsibility for her.
- 12 Q. I think we've covered all the subjects that
- 13 you said you taught your students during your five
- 14 years at Bryant and you've identified a few instances
- 15 where you did not have all the materials. For example,
- 16 you didn't have all the social studies textbooks you
- 17 needed for each of your students to have their own and
- 18 there were some materials missing from the FOSS Kits
- 19 and things like that. Can you just tell me what kind
- 20 of steps you took generally to remedy those shortages?
- 21 A. I don't think you can ever really remedy --
- 22 you know, in the idea -- the word "remedy," to me,
- 23 means fix it or make it so it is unimportant. I don't
- 24 think you can ever really remedy shortages of materials
- 25 completely because what it means is the teacher has to

- 1 either spend money out of her own pocket money to buy
- 2 materials out of pocket, which I did. I bought science
- 3 materials and I bought books and I bought paper and
- 4 things like that. It means the teacher has to spend
- 5 time above and beyond the teaching and the assessment
- 6 part of her job in developing curriculum, which I also
- 7 had to do, and I am not a professional technical writer
- 8 for education, so I did the very best I could to write
- 9 what I thought was developmentally appropriate
- 10 materials for my kids. It meant, though, that I would
- 11 have to photocopy all of the materials that I made and
- 12 that always ate into my copy budget, which was limited
- 13 until my last year at Bryant. For the first four
- 14 years, I had a limited budget of the number of copies
- 15 that I could make, so to recap that, I bought some of
- 16 my own supplies, science supplies. I bought student
- 17 books. I bought teacher manuals so that I could get a
- 18 handle on the subject matter and develop my own
- 19 materials that I could then deliver comfortably. I
- 20 borrowed books from other teachers at my own site as
- 21 well as from my old school, my master teacher's school
- 22 Clarendon, where I would complain that I would be
- 23 missing the materials at my school and she would ship
- 24 it to me interoffice mail without telling anybody and
- 25 she would borrow it from the Clarendon library, if they

- 1 had it. I went to the library and I borrowed books. I
- 2 paid hundreds of dollars in overdue fines to San
- 3 Francisco Library and lost book fines because my
- 4 students had borrowed books and then lost them. So in
- 5 respects, it remedies the situation by providing them
- 6 with some materials, but it creates this other problem
- 7 where it depleted my budget in terms of time and money.
- 8 Those books don't exist in the San Francisco Public
- 9 Library anymore. I don't know where they are. I lost
- 10 hundreds of dollars' worth of books out of my own
- 11 personal library, my own book collection, my special
- 12 collection. My own books disappeared. I was very
- 13 upset about it for a while until another teacher once
- 14 told me, "Be glad that the children have a book at
- 15 home." I think every kid should have books at home to
- 16 read on their bedside, on their shelf, or under their
- 17 bed.
- 18 Just aside, one parent brought me a whole
- 19 bunch of books that he said he found stuffed underneath
- 20 his kid's mattress and underneath the bed because she
- 21 loved to read and they had no books at home.
- 22 All these remedies to provide children with
- 23 books and provide teachers with materials and stuff had
- 24 other costs, but those are some of the things I went
- 25 through.

1 Q. Did you ever take any steps to get the  
2 materials you were missing replaced?  
3 A. Did I tell my principal about it?  
4 Q. That would be possibly one thing.  
5 A. Yeah, to get them replaced, I did tell my  
6 principal about it. I trust that Larry made some phone  
7 calls to try and secure more materials for us. I know  
8 on behalf of the 1st grade teacher at our school, she  
9 taught an entire year without any reading materials and  
10 that is the most critical year for teaching reading and  
11 he told her that he tried several times to get  
12 materials for her, but I know she spent the entire year  
13 without anything to teach reading with.  
14 Q. Was it your understanding that it was Mr.  
15 Alegre's responsibility to put in motion the process of  
16 getting materials replaced that were missing from the  
17 school?  
18 A. Yes.  
19 Q. Did telling Mr. Alegre that you were missing  
20 materials in any particular instance result in you  
21 obtaining those materials?  
22 A. Not until after this lawsuit.  
23 Q. Never prior to the filing of the lawsuit?  
24 A. No, not to my knowledge. I mean, the only  
25 books I ever got were those social studies books and

1 those came -- those came after the suit had been filed.  
2 The only other thing were the books that we  
3 decided as a whole school we had to have, the math  
4 workbooks we decided to buy, and that was a whole  
5 school staff decision and we all made that purchase  
6 together, but those weren't replacing books that had  
7 disappeared. Those were new purchases.  
8 Q. Was the instance you just identified with  
9 regard to the social studies textbooks the only  
10 instance in which you received materials from Mr.  
11 Alegre after you told him you were missing some  
12 materials?  
13 A. Besides the social studies books -- first,  
14 there is this overarching sense that the teachers had  
15 that it really didn't do much good to complain about  
16 anything because the district was so bankrupt and our  
17 budget was cut every single year that I was at Bryant,  
18 it was sort of outrageous and unreasonable to ask for  
19 anything that wasn't outlined specifically in the  
20 budget and replacing books that had been lost was never  
21 a budget item anyway, so not having my language arts  
22 books when I was a first-year teacher, I didn't know to  
23 whom I should complain about that. It just seemed that  
24 that is the way it was and the feeling in San Francisco  
25 Unified and in any other kind of urban district is

1 this is what public education is right now. It is a  
2 disaster. This is what you are going to deal with. If  
3 you take this job, this is the way it is. And when I  
4 first started, that is kind of the way I thought it  
5 was. And I was very idealistic and very motivated and  
6 tried really hard to compensate for all those things  
7 and I couldn't. Elbow grease didn't really pull it  
8 off, but the other things that were missing, like not  
9 having books on tape for the kids to be able to access  
10 the content of the literacy stuff, I was told there  
11 wasn't money in the budget. When we ran out of  
12 materials for paper and pencils later on, which was  
13 sort of an aside, I was told there wasn't money in the  
14 budget. When our copy quotient was at its limit, I was  
15 told there was no money in the budget. The answer was  
16 always, "There is no money in the budget." So when I  
17 complained that the materials that I needed to teach in  
18 the FOSS kit were not there, it was, again, the same  
19 thing: "There is no money in the budget."  
20 Then about a year later, somebody said,  
21 "Well, let's see if we can fix that."  
22 And a year later somebody said, "Of course  
23 those are supposed to be replenished all the time."  
24 Sometimes they were and sometimes they  
25 weren't. There wasn't -- it didn't really make sense.

1 A lot of the stuff just didn't make sense to me. There  
2 didn't seem to be any system in place for knowing what  
3 the heck was going on.  
4 Q. Can you describe for me the steps you would  
5 take at the end of a school year to inventory the  
6 textbooks and instructional materials that you had for  
7 your particular class?  
8 MS. PERRIN: Objection. Assumes there was  
9 an inventory at the end of the year.  
10 THE WITNESS: Exactly.  
11 MR. ROSENTHAL: I can ask that question  
12 first.  
13 Q. Did you take any sort of inventory of the  
14 textbooks and instructional materials you had in your  
15 class towards the end of the school year?  
16 A. Not an inventory, per se, no. I would send  
17 home a letter at the end of the year to all of my  
18 parents and I would talk to my kids about making sure  
19 they got all the materials they might have under their  
20 bed back at school so we could clean the room up and  
21 get everything squared away. And I kept track,  
22 usually, of the language arts books to make sure the  
23 kids had their names in them and I would look and check  
24 and see who had and hadn't returned stuff and the kids  
25 who hadn't returned books claimed they had returned



1 them or that they wouldn't pay for them or couldn't pay  
2 for them and that would be that.

3 And then at the end of the school year,  
4 Larry would send a memo out asking everybody to put all  
5 of their teaching materials and student materials in a  
6 clearly labeled place in their room so he could check  
7 us out for the summer. And that meant that he would  
8 walk in your room and do a visual inspection of where  
9 your materials were should you not be returning the  
10 following year to be a teacher in that classroom and he  
11 asked us to put our language arts and our math  
12 material, including teacher manuals, in a particular  
13 place and return our social studies and science  
14 materials to the teacher supply room, which was a large  
15 room on the first floor of the building. We had a  
16 two-story building. And that is what he would do. But  
17 in terms of counting the number of books there, we did  
18 not do that. And because the size of the class  
19 fluctuated from year to year, you never really knew  
20 until the tenth day after school started -- it is  
21 called the ten-day count -- how many kids you could  
22 probably expect to be in the class that year.

23 Q. Just so, for example, at the end of your --  
24 at the end of any given year you were teaching at  
25 Bryant, you didn't do a physical count of the number of

1 for by the families.

2 Q. Is that the only -- during your five years  
3 at Bryant, is that the only instance you can think of  
4 where not all the books came back by the end of the  
5 school year?

6 A. No, because whereas I had had 20 America  
7 Will Be books one school year and only 17 the next  
8 year, that means three must have disappeared, but  
9 because I was sharing them with Indelisa's class, I  
10 don't know if three books disappeared while I was using  
11 them or three books disappeared while she was using  
12 them, so I don't know what happened.

13 Q. Any other instances besides those two that  
14 you can think of?

15 A. That was Literacy Place books, America Will  
16 Be, my own personal books for reading, that is all I  
17 can think of right now.

18 Q. In a situation with the three Literacy Place  
19 books that did not get returned, did you inform Mr.  
20 Alegre of that situation?

21 A. Yes, informally, not in writing.

22 Q. Did you ask Mr. Alegre to --

23 A. Replace them?

24 Q. -- to replace those books?

25 A. No.

1 textbooks you had at the end of the school year?

2 A. No.

3 Q. And neither did Mr. Alegre?

4 A. No, not to my knowledge.

5 Q. To the best of your knowledge, nobody at the  
6 school did that?

7 A. Nope.

8 Q. Were there occasions where you got to the  
9 end of the school year, the textbooks had been  
10 returned, the textbooks and other materials that  
11 students had been using were returned, and you realized  
12 that not all of them had been returned to you?

13 A. Yes. And the only way I can tell you I know  
14 that is that I keep my bookshelves really packed and  
15 whatever doesn't fit on the bookshelf, I have on a box  
16 which I will put into storage somewhere, and at the end  
17 of the year, the bookshelves were loose, so I knew  
18 books were missing. Those were my personal reading  
19 books. And then in the end of -- in June 2000, that  
20 was the year we came up short. Three Literacy Place  
21 books were lost and I went through and looked at all  
22 the names and talked to the kids whose books seemed to  
23 be missing and they had different reasons why their  
24 books weren't in, but in all three cases, all three of  
25 those books never came back and none of them were paid

1 Q. How about with respect to the social studies  
2 textbooks, you said three books went missing. Did you  
3 ever ask Mr. Alegre to replace those books?

4 A. In the fall of 2000, when -- this is now  
5 after the lawsuit has been filed, those textbooks sort  
6 of became the bone of contention between Mr. Alegre and  
7 me and he -- those were the books that I said  
8 specifically to him, "When you got this memo from  
9 Arlene Ackerman and you told her that all of these  
10 things were taken care of, you don't mention on here  
11 that I still don't have enough social studies books."  
12 And he said, "Oh, well, do you?" He was a  
13 little flustered and a little irritated with me, I  
14 guess. He didn't say, "I'm irritated with you or  
15 flustered with you," but that is my read of how he was  
16 behaving that day.

17 And then later on that year after I had made  
18 the statement to the press that I still didn't have the  
19 books I needed, he got angry with me. He said, "But I  
20 asked you at the beginning of the year if you had all  
21 your books."

22 I said, "You asked me if I had enough math  
23 and English. You still didn't ask me about the social  
24 studies."

25 I had incorrectly assumed that because I had

1 specifically addressed the social studies books in my  
2 declaration and had spoken to him about them a couple  
3 of times, he would have tried to take care of it and he  
4 hadn't and he didn't until after that last kind of  
5 conversation we had.

6 Q. Prior to that last conversation that you had  
7 which took place after the press conference, do you  
8 ever remember formally requesting that Mr. Alegre order  
9 additional copies of the social studies textbooks?

10 A. After I made my declaration, he said, "Do  
11 you" -- "So you don't have enough social studies  
12 books?"

13 He asked me about the content of my  
14 declaration and this would have been in spring of 2000,  
15 I guess it was. And I said, "No. I don't."

16 And he says, "Well, nobody uses those."

17 And I said, "I use those. Indelisa uses  
18 those."

19 And he said, "I never knew anybody that used  
20 those before."

21 I said, "I do and I could use more."

22 I don't think it is a formal request. I  
23 think it is a statement I wanted them and as the  
24 principal of the school, that is one of the things he  
25 had the power to do something about, I guess, but

1 cut every single year where we were having to lay off  
2 staff and cut other services that were pretty  
3 significant. I was never really a part of detailed  
4 budget conversations, but I don't know that there was  
5 ever really any money out there for textbooks. They  
6 sometimes would pull money out of general supplies or  
7 something like that.

8 Two or three years while I was at Bryant,  
9 twice under Ms. Zita and once under Mr. Alegre, the  
10 teachers were all told they suddenly had \$150 to spend  
11 on books for their classroom or \$200 to spend on books  
12 for their classroom, but they only had two weeks to do  
13 it. It occurred at odd times of the year. Once it  
14 happened in the fall and once it happened in the  
15 spring. It was never money you could count on getting.  
16 It was a surprise when it happened and it was very  
17 short-lived.

18 I asked Ms. Zita once, "Where did the money  
19 come from? Did we know we were going to get it? And  
20 what happened?"

21 And she said, "It is all very complicated."  
22 And waves me away.

23 So it seemed like it was done with smoke and  
24 mirrors and you couldn't really count on it, so that is  
25 kind of the way books appeared and disappeared. There

1 evidently, he didn't have the power to do anything  
2 about that, really.

3 Q. Do you have an understanding as to the book  
4 ordering process at Bryant?

5 A. Some. I have a limited understanding.

6 Q. Can you tell me what you understand?

7 A. Yeah. When a new adoption has taken place  
8 for the school district, a census is taken of the  
9 school and enough books are ordered for each of the  
10 current number of students in a class or the total  
11 number that can enter that class. There is a cap of 20  
12 students up to 3rd grade and a cap of something like 34  
13 students in 4th and 5th grade, so you would never order  
14 less than 20 books for a 3rd grade class and never less  
15 than 34 books for a 4th and 5th grade class. However,  
16 historically, Bryant has never had more than 25 kids in  
17 a 4th and 5th grade class, so that is what they usually  
18 ordered for the 4th and 5th grade class there, about 25  
19 books.

20 After an adoption has taken place and all  
21 materials have been delivered, it is up to each  
22 individual school to take whatever money is given to  
23 them in its budget and distribute that money into  
24 accounts in ways that are best going to serve that  
25 school site. And as I said before, our budgets were

1 wasn't any regular kind of reliable system for it, you  
2 know.

3 Q. And when you got that \$150 or \$200 to spend  
4 on books, did you use that money to buy replacement  
5 textbooks or did you use that money to buy other books?

6 A. Textbooks are really, really, really  
7 expensive. Because the school district was going  
8 through adoption cycles -- ten-year adoption cycles, I  
9 never really messed around with textbooks. I would  
10 usually buy a teacher manual for myself from a teacher  
11 supply store or student novels at their reading level.

12 Q. You said earlier that it was your  
13 understanding that the budget at Bryant was cut. Was  
14 it each of the five years you were there?

15 A. Yes.

16 Q. Can you tell me what the basis for that  
17 understanding is?

18 A. Student enrollment was decreasing. We had  
19 more than 300 students when I started there in 1996 and  
20 I think that we only had 220 when I left in 2001,  
21 partly because of the effort to reduce class sizes  
22 kindergarten through 3rd grade. That was one thing and  
23 another thing was that the district just didn't have  
24 the money anymore and there were a few reasons why we  
25 were told why that was, but I don't know if any of them

1 are true.

2 Q. Do you remember why you were told that?

3 A. Yes. Because the teachers demanded a living  
4 wage, they had to cut into our operating budgets. That  
5 was one reason they told us and another was because of  
6 a fiscal mismanagement at the school district level,  
7 that they had lost millions of dollars and didn't know  
8 where it was.

9 Q. When you said that the total budget for  
10 Bryant had gone down over the five years, do you know  
11 if the budget per student had decreased over those five  
12 years?

13 A. I don't know, but that doesn't sound like it  
14 makes sense to me.

15 Q. What doesn't make sense to you, that that  
16 went down as well or that did not go down?

17 A. No. It doesn't make sense that the  
18 students' -- spending per student amount would have  
19 decreased, but rather that it would be some other  
20 reason.

21 Q. So is it your belief that the spending per  
22 student remained --

23 A. Constant?

24 Q. Right.

25 A. At least -- yeah, I think so.

1 have made a whole lot of noise had that happened, if it  
2 had gone down.

3 Q. Do you know who decides how the budget at  
4 Bryant gets spent?

5 A. It is a -- it is a -- it is a work of art  
6 put together by Larry Alegre and a cadre of advisors  
7 that he takes and his primary advisor is Judy Chow. He  
8 then shows his proposals for the budget to the staff  
9 and to the school site council, which is a group of  
10 parents, teachers, and community representatives and  
11 the school site council and the staff make suggestions  
12 for amendments and when he believes that the school  
13 site council and staff have come to a consensus that  
14 the budget is something we can all live with, he  
15 submits it to the district.

16 Now, that is supposedly what happens, but I  
17 wouldn't be surprised if he fudges the dollars with  
18 Judy at the last minute and then sends something in.

19 Q. Are you aware of whether the district has  
20 any input as to how the money gets spent at Bryant?

21 A. I don't know about that. I think a lot of  
22 every budget is always based on historical data.

23 MR. ROSENTHAL: Can we take a short break?

24 MS. PERRIN: Sure.

25 (Recess taken.)

1 Q. Might it have increased?

2 A. It might have. I don't know. I know that I  
3 can say one thing: When I started teaching at Bryant,  
4 California was 40th in the nation in terms of per-pupil  
5 spending and that had been a bone of contention among  
6 teachers, Board of Education, and the governor had made  
7 some remarks about that when he was running for his  
8 first term.

9 Q. When you say you believe that the spending  
10 per student remained about constant, can you tell me  
11 what the basis for that is?

12 A. What the amount is?

13 Q. Just the basis, where you got that  
14 knowledge.

15 A. Where I thought -- no, I said -- I don't  
16 think I said it did remain constant. I said it is my  
17 belief what makes sense is that it would at least  
18 remain constant.

19 Q. Is that based on conversations you had with  
20 somebody?

21 A. Maybe it is believed on my hope. I don't  
22 know. I don't know, based on hope. I think it must be  
23 conversations because I think had it gone down, people  
24 would have raised hell. I was a representative for the  
25 teacher's union in the last year and that topic would

1 MR. ROSENTHAL: Q. Before our break, we  
2 were talking about the school budget at Bryant. Do you  
3 ever remember there being any entries in the budget for  
4 replacing textbooks?

5 MS. PERRIN: Objection. Assumes she has  
6 actually seen the budget.

7 MR. ROSENTHAL: Let me ask that question  
8 first, then.

9 Q. Do you remember ever seeing -- I take it  
10 you've seen drafts of the budgets Mr. Alegre has  
11 circulated?

12 A. No, he used to make charts with big headings  
13 on it saying, "Personnel, general supplies," something  
14 like that and then he would put monies in there, but he  
15 would really dumb it down for presentations, so I've  
16 never really seen the actual budget.

17 Q. Do you remember there being an entry in  
18 those presentations for textbooks or instructional  
19 materials?

20 A. I don't remember. I don't remember.

21 Q. Did you ever hear of there being any kind of  
22 process at Bryant as far as getting replacement books  
23 ordered that were needed as a result of lost or missing  
24 textbooks?

25 A. I don't remember there ever being any

1 process. You know, there was no standard operating  
2 manual. There was no procedures manual. I do know  
3 that when I was the union rep, I was in contact with  
4 the 1st grade teacher who did not have any of her  
5 reading materials at all and the kindergarten teacher,  
6 I think she was missing her Into English materials for  
7 over a year and they had both, orally and in writing,  
8 asked Larry to get them books and that was the  
9 procedure we all used is you just told your principal  
10 and you would start with a verbal request and then you  
11 sort of escalate to something a little more formal.

12 Q. Did you ever have to submit any kind of  
13 written request to Mr. Alegre to request textbooks?

14 A. That note that he sent to teachers at the  
15 beginning of the 2000 school year, 2000/2001 school  
16 year, asking if we had enough language arts books and  
17 math books and so on, I think was his attempt to  
18 formalize it a little bit and to survey us as to  
19 whether or not we had what we needed, but he did not  
20 include on there all the different kinds of curriculum  
21 we teach with, so I could have, I guess, used that as a  
22 way of saying, "By the way, you didn't ask about social  
23 studies and I don't have enough social studies and I  
24 want more."

25 I do not know if I ever e-mailed Larry about

1 Larry how to be a principal. He was promoted to be an  
2 assistant principal and hired for a principal for  
3 Bryant without any formal training. He has a  
4 credential on how to be an administrator, but that  
5 doesn't train you on the day-to-day operations in any  
6 school and his previous job as an assistant principal  
7 consisted primarily of discipline issues and yard  
8 supervision, so when he came to take over all the  
9 responsibilities that a principal has, a full, full  
10 principal has, there were hundreds of things that he  
11 had no awareness about or he just didn't know how to  
12 do.

13 Q. Did Ms. Zita have a more formal practice as  
14 far as communicating with the staff with regards to the  
15 number of textbooks that teachers had?

16 A. I do not believe that Ms. Zita had forms  
17 that she used, but she was more thorough in terms of  
18 her communications about these kinds of issues. She  
19 was more complete.

20 Q. Can you tell me what you mean by that, by  
21 her being more thorough and more complete?

22 A. She would be more specific. Larry's way of  
23 asking how things were going would be something like  
24 this: He would verbally say, "How are you doing? How  
25 is it going?"

1 it or not. I don't know if e-mail constitutes in  
2 writing. That would be in writing to me. I know we  
3 talked about it on a number of occasions.

4 Q. When Mr. Alegre sent around that note in the  
5 beginning of 2000/2001 school year, was it the first  
6 time he had ever communicated with you regarding the  
7 number of textbooks in your class?

8 A. Yes.

9 Q. Did you have an understanding as to why,  
10 prior to that, there had been no written communications  
11 about the textbook situation at Bryant?

12 MS. PERRIN: From Mr. Alegre?

13 MR. ROSENTHAL: Right, or between Mr. Alegre  
14 and the staff.

15 THE WITNESS: I could only speculate. I  
16 don't know why.

17 MR. ROSENTHAL: Q. Did you ever hear why  
18 that might be the case?

19 A. No, that is why I would only be guessing  
20 based on my intuition.

21 Q. Did you ever hear that because of the  
22 relatively small size of Bryant, that Mr. Alegre didn't  
23 believe a formal process was needed?

24 A. No, never heard that as a reason why. I'm  
25 just going to say what my intuition is, no one trained

1 Ms. Zita would come in and say, "How are you  
2 doing? Do you have the work you need? Are you getting  
3 the assistant teacher support you need? Is she showing  
4 up on time? Do you know where to get blah, blah,  
5 blah?"

6 She would ask very specific and pointed  
7 questions and Larry didn't do that.

8 Q. Do you recall ever making any requests to  
9 Ms. Zita with respect to getting additional textbooks  
10 or instructional materials that you needed?

11 A. So this would be going back to math. As a  
12 new rookie teacher, I made some remarks in my first  
13 year of teaching about the materials that I did not  
14 have in my classroom and one of the senior teachers  
15 came to me and warned me that Ms. Zita thought that I  
16 complained too much and she advised me to shut my mouth  
17 or I wouldn't be back the next year, so I didn't, in my  
18 first year, ask for anything from Ms. Zita because I  
19 was scared to.

20 And in my second year, let's see, that is  
21 when we got the language arts stuff; still had the math  
22 stuff; didn't really have the science stuff. In the  
23 second year, I decided that for my own survival at the  
24 school, I needed to just figure it out on my own and  
25 not ask the principal and I, in fact, found out that

1 she appreciated that.

2 Q. Just so I'm clear, so you don't recall any  
3 specific instances of asking Ms. Zita to get you any  
4 replacement textbooks or replacement instructional  
5 materials that you may have been missing during the  
6 years she was the principal there?

7 A. I don't think I directly came out and said  
8 to her in my first year, "I don't have the reading  
9 materials I need," because, honestly, I hadn't been  
10 trained how to teach kids to read who were nine years  
11 old, but read like a six-year-old. I didn't know how  
12 to address that issue. Even with the teacher training  
13 I got, that wasn't something that they taught us and it  
14 was a huge problem for me my first year, so I alluded  
15 to my need for textbooks by saying, "I think that I  
16 need more books in my room for these kids."

17 And she said something like, "Oh, well.  
18 Maybe you can talk to some of the other teachers about  
19 that."

20 Q. And other than alluding to your need for  
21 additional instructional materials in that manner with  
22 Ms. Zita, did you do it in any other way?

23 A. Not that I remember.

24 Q. We've gone over a number of concerns you  
25 personally had with regard to textbooks and

1 staff meeting addressed the issue of how having the  
2 Literacy Place materials were good, but without having  
3 books on tape or the overheads that came with the  
4 program or some of the other supplementary curriculum,  
5 that it was very difficult to deliver this particular  
6 curriculum to our population because the Plain Vanilla  
7 set, which is what we had at our school, was really  
8 designed for kids that read at grade level and that is  
9 not what we have at Bryant and I know nothing came of  
10 that and it may be because we didn't have the money in  
11 the budget or because Larry didn't deal with it. I  
12 don't know what happened.

13 Q. Are you aware of any other instances, other  
14 than the ones you just identified, where lack of  
15 textbooks or instructional materials was a problem at  
16 Bryant?

17 A. I'm talking mostly about core curriculum,  
18 but we're always drastically short of PE equipment. We  
19 were always short of that. And we were told it was --  
20 we just didn't have money in the budget.

21 I know that for some of the early years that  
22 I was at Bryant, it was very difficult to use the FOSS  
23 Kits because they were depleted of materials and that  
24 we did formally inventory the materials in them at the  
25 end of the 1998 school year.

1 instructional materials. Did you ever hear -- and  
2 we've alluded to some of this -- of other teachers  
3 having similar problems?

4 A. Yes.

5 Q. Can you tell me the instances that you  
6 recall?

7 A. I know most of the teachers were frustrated  
8 for many years at not having adequate materials for  
9 teaching math after Mathlands was adopted and until we  
10 decided to get the workbooks as a staff.

11 I know that the special ed teacher used to  
12 complain to me about how frustrated she was about not  
13 having language arts materials and she had spoken to  
14 the principal about it on a number of occasions, both  
15 to Ms. Zita and Mr. Alegre. And I know that Ms. Zita  
16 told the special ed teacher -- I don't know this. Wait  
17 a second, the special ed teacher told me Ms. Zita said  
18 she could not have books.

19 I know that the 1st grade teacher and the  
20 kindergarten teacher were completely missing a set of  
21 curriculum. One of them was missing language arts  
22 books and one of them was missing Into English and both  
23 of them were frustrated about it and had spoken to  
24 Larry about it on a number of occasions.

25 I know that I and other staff members at a

1 Q. Did anything result from that inventory?  
2 And by that I mean were any steps taken to get those  
3 kits replenished?

4 A. I think that somehow some materials were  
5 ordered, but I do not know. I know that it was not --  
6 that they were not actually placed inside the  
7 appropriate kits for a very long time because there was  
8 no staff to do that. There was some other shortage I'm  
9 trying to remember. I can't remember. I was just  
10 thinking.

11 Q. If you remember at some point, just let me  
12 know.

13 A. Yes.

14 Q. I want to get the names of these teachers.  
15 You said there was a special ed teacher who was missing  
16 language arts materials. Who was that?

17 A. Yvette, Y-v-e-t-t-e, Fagan, F-a-g-a-n, and  
18 her replacement was Cherisse, C-h-e-r-i-s-s-e. I don't  
19 remember Cherisse's last name. She only stayed for one  
20 year.

21 Q. Was there a replacement after her or was  
22 that during your last year?

23 A. No, there were two replacements after that,  
24 but they both had nervous breakdowns during the school  
25 year and I don't remember their names.

1 Q. And do you remember the problem concerning  
2 the language arts materials for the special ed class  
3 existing for each of those teachers?

4 A. Yes, definitely.

5 Q. And you also refer to a 1st grade teacher  
6 and a kindergarten teacher. Do you remember their  
7 names?

8 A. The 1st grade teacher is Jeannette Ma and I  
9 spelled her name earlier in the day. Do you want me to  
10 repeat it?

11 Q. It is okay.

12 A. And the kindergarten teacher is Jean Hoffer.

13 Q. And Ms. Ma and Ms. Hoffer are the same  
14 individuals we spoke about earlier who submitted  
15 declarations in this case?

16 A. Yes.

17 Q. Any other instances that you are aware of in  
18 which there was a problem with there not being enough  
19 textbooks or instructional materials during your five  
20 years at Bryant?

21 A. Yes. The -- there is a another job called  
22 Resource Specialist and the person who had that job was  
23 named Laura Riave, R-i-a-v-e, and her job was to work  
24 with students who were having -- who were identified as  
25 having learning differences, kids who qualified for

1 equipment. Sometimes a bunch of balls would appear and  
2 then they would disappear again. I don't know if Jean  
3 Hoffer or if Jeannette ever received the materials.

4 Q. And is it your belief that the special ed  
5 teachers never received the language arts materials?

6 A. The special ed teachers did not receive the  
7 language arts materials and that classroom was shut  
8 down at the end of 2000. June 2000 was the last year  
9 we had a special ed classroom at Bryant.

10 Q. And how about Ms. Riave, do you remember her  
11 ever getting materials that she was lacking?

12 A. She did receive something called  
13 phonographics -- and I'm not sure how to spell that --  
14 but she was -- that was purchased for her to teach  
15 remedial phonics. In terms of the other materials she  
16 needed to teach these kids, I'm not sure if she ever  
17 got them.

18 Q. Do you recall when she received the  
19 phonographics materials?

20 A. I don't. I think it was in 1998 or '99.

21 MR. ROSENTHAL: Can we go off the record for  
22 a quick second?

23 MS. PERRIN: Sure.

24 (Recess taken.)

25 MR. ROSENTHAL: Q. With respect to all of

1 special ed support and I know that she and I spoke on a  
2 number of occasions about how she had to make up her  
3 own curriculum and that she didn't have access to her  
4 own set of literacy materials.

5 Q. Any other instances of there not being  
6 enough textbooks or instructional materials at Bryant  
7 that you are aware?

8 A. Nothing that is coming to me right now.

9 Q. Do you remember any of the -- you listed --  
10 you gave me several different instances in which that  
11 was a problem. Do you remember any of those instances  
12 being resolved in that additional materials were  
13 obtained?

14 A. I spoke to the science kits getting  
15 refilled, didn't I?

16 Q. Right. Let me just follow up with one quick  
17 question: You said the kits themselves were not  
18 replenished right away. Did that happen at some point?

19 A. I think it did. I think they did get  
20 replenished. I think that Larry talked some parents  
21 into helping out, into doing some volunteer work.

22 Q. And how about the other problems you  
23 identified, do you remember those being resolved in any  
24 way?

25 A. I know that there was an ebb and flow of PE

1 the instances that you've identified where there were  
2 not enough textbooks or instructional materials at  
3 Bryant, is it your belief that the principal at Bryant  
4 was informed in each case of that situation?

5 A. Yes.

6 Q. And you said that one of the reasons that  
7 you were told that the additional textbooks or  
8 materials could not be purchased was because of budget  
9 constraints; is that right?

10 A. That was one reason.

11 Q. Were there any other reasons that were  
12 given?

13 A. At one point when I had asked Larry why it  
14 was so difficult for me to get more social studies  
15 textbooks since it was his thought that nobody used  
16 them anyway, wasn't there another school that would  
17 have them?

18 He says, "I don't think they even exist  
19 anymore."

20 I thought they existed somewhere. It is  
21 just nobody knows where they are. They adopted them  
22 for 75 elementary schools in the City, so they are  
23 somewhere.

24 Q. Any other reasons you ever heard as far as  
25 why additional textbooks or materials could not be

1 obtained?

2 A. None other.

3 Q. Do you have any understanding as to how much  
4 money was spent from Bryant's budget each year on  
5 purchasing textbooks?

6 A. I have no idea and, in fact, I don't know if  
7 it came out of Bryant's budget or if, when a textbook  
8 is adopted, it actually comes out of the Unified School  
9 District budget or what. I don't have any idea how  
10 that works.

11 Q. Did you have any concerns about any of the  
12 textbooks you were using at Bryant being out of date?

13 A. We had reference materials in the library  
14 and although the library wasn't usable, I would sneak  
15 out there sometimes and bring in World Book  
16 Encyclopedias from the 1970s and I have -- I had two  
17 globes in my room and both of them showed Russia. My  
18 maps were out of date.

19 I remember once trying to use some science  
20 books from the library which I would bring in. It was  
21 about chemistry or something. I can't remember what  
22 the topic was, but it was -- there was some science  
23 fact in it that was so out of date -- I wish I could  
24 remember what it was. It was practically like saying  
25 the earth is flat. I don't remember what it was, but

1 also had some selections in them that I didn't think  
2 were culturally relevant to the population I was  
3 teaching, which makes it more difficult for the kids to  
4 connect to the literature, which makes it harder for  
5 them to learn and they already have so many obstacles  
6 as it is.

7 I had some books -- I can't remember if they  
8 were books that I lifted from our general library and  
9 brought into my classroom because no one was using the  
10 library anyway or if they were books from my room that  
11 had cuss words written in them and pages torn.

12 We had a fire in our library and the next  
13 day it rained really hard so a lot of books, they were  
14 moldy and stinky, but in terms of content, that wasn't  
15 so bad. It wasn't so much that for those books.

16 Q. When you say there were cuss words in them,  
17 do you mean they were printed in them or somebody had  
18 written in cuss words?

19 A. Someone had written it in.

20 Q. With respect to the social studies textbook  
21 that you used, do you recall the publication year?

22 MS. PERRIN: The copyright date or the  
23 publication year?

24 THE WITNESS: Copyright date is probably  
25 what you mean. Is that what you mean?

1 there was some stuff out there that was so incredibly  
2 out of date that I just pulled it off the shelf. We  
3 ought not have it out there. It is ridiculous.

4 Q. Did you have any concerns with regard to the  
5 textbooks or instructional materials you were using in  
6 your class for any subject on a day-to-day basis,  
7 putting aside the materials in the library you've  
8 identified?

9 A. Yeah, hold on a second. There were a lot of  
10 items in the social studies textbooks which I didn't  
11 think were culturally precise and in all of the  
12 conversations that teachers and administrators had  
13 about the history and geography being accurate  
14 reflections of all people's experiences, there were  
15 things in there that were very eurocentric. And the  
16 Latino kids in our classroom have a lot of Native  
17 American background, so I didn't think it was  
18 appropriate from that perspective. From the African  
19 American kid's background, it spoke really of black  
20 people as being slaves. I had concerns in that  
21 perspective. I didn't think it was appropriate to  
22 teach these kids about who they were and where they  
23 came from.

24 The literacy and language arts books also  
25 had some selections. The Literacy Place books in them

1 MR. ROSENTHAL: Q. Why don't you give me --  
2 do you remember the copyright date?

3 A. No.

4 Q. Perhaps that was all for nothing.

5 A. But you know what I'm thinking, I'm thinking  
6 that if we were going to be doing a re-evaluation --  
7 I'm going to be making a guess -- it was within the  
8 last ten or 12 years because we're going through a new  
9 adoption right now.

10 Q. You said at some point you received a few  
11 copies of the new edition of that social studies  
12 textbook. Were the concerns that you had about the  
13 older edition alleviated in the newer edition?

14 A. I didn't have a second to spare to even  
15 bother with it. As soon as I saw what having that new  
16 edition in my classroom meant that I was going to have  
17 to deal with kids squealing, "I don't know what page  
18 you are on," immediately those books went into a pile  
19 and I never looked at them again. And thought, "Okay.  
20 This isn't going to work."

21 Q. You don't know either way?

22 A. I have no idea.

23 MR. ROSENTHAL: Okay. I think this is  
24 probably a good stopping point, then.

25 MS. PERRIN: Okay.

1 MR. ROSENTHAL: I ask if you have any  
 2 objection just to marking that as an exhibit, which is  
 3 what she has written there.  
 4 MS. PERRIN: That is fine.  
 5 MR. ROSENTHAL: We can probably make use of  
 6 it during the second day. It seems like it was a  
 7 useful reference today.  
 8 THE WITNESS: I had to write the names of  
 9 the kids in my class so I could flash out the whole  
 10 year and remember the instances. It helped a lot.  
 11 MR. ROSENTHAL: Why don't we mark this, what  
 12 Ms. Malabed has written out to refresh recollection as  
 13 far as what her classes were during her years at  
 14 Bryant.  
 15  
 16 (Whereupon, Defendant's Exhibit 1 was marked  
 17 for identification.)  
 18 MR. ROSENTHAL: Otherwise, I want to put our  
 19 usual closing stipulation on the record.  
 20 MS. PERRIN: Before you do, the only change  
 21 to the stipulation will be that the original transcript  
 22 should actually be delivered to Leecia Welch's  
 23 attention in San Francisco.  
 24 MR. ROSENTHAL: Fair enough.  
 25 Can we stipulate that copies of documents

1 I declare under penalty of perjury that the  
 2 foregoing is true and correct. Subscribed at  
 3 \_\_\_\_\_, California, this \_\_\_\_ day of  
 4 \_\_\_\_\_, 2001.  
 5  
 6  
 7  
 8 \_\_\_\_\_  
 9 LILI MALABED  
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1 attached to deposition may be used as originals; that  
 2 the originals be signed under penalty of perjury; the  
 3 original be delivered to the offices of Morrison &  
 4 Foerster in San Francisco; that the reporter is  
 5 relieved of liability of the original of the deposition  
 6 transcript; that the witness will have 30 days from the  
 7 date of the court reporter's transmittal letter to sign  
 8 and correct the deposition; that Ms. Welch will notify  
 9 all parties in writing of any changes in the  
 10 deposition; that if there are no such changes  
 11 communicated or signature within that time, any  
 12 unsigned and uncorrected copy may be used for all  
 13 purposes as if signed and corrected?  
 14 MS. PERRIN: Yes, we can.  
 15 MR. ROSENTHAL: And we're all set for today  
 16 and we're going to continue at a to-be-determined date.  
 17  
 18  
 19 (Whereupon, the deposition was adjourned  
 20 at 4:59 p.m.)  
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1 CERTIFICATE OF REPORTER  
 2 I, JOHNNA FORD, a Certified Shorthand Reporter,  
 3 hereby certify that the witness in the foregoing  
 4 deposition was by me duly sworn to tell the truth, the  
 5 whole truth and nothing but the truth in the  
 6 within-entitled cause;  
 7 That said deposition was taken down in  
 8 shorthand by me, a disinterested person, at the time  
 9 and place therein stated, and that the testimony of the  
 10 said witness was thereafter reduced to typewriting, by  
 11 computer, under my direction and supervision;  
 12 I further certify that I am not of counsel or  
 13 attorney for either or any of the parties to the said  
 14 deposition nor in any way interested in the event of  
 15 this cause and that I am not related to any of the  
 16 parties thereto.  
 17  
 18 DATED: \_\_\_\_\_, 2001.  
 19  
 20  
 21 \_\_\_\_\_  
 22 JOHNNA FORD, CSR 11268  
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