

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

ELIEZER WILLIAMS, et al.,)

)

Plaintiff,)

)

vs.)

No. 312236

)

STATE OF CALIFORNIA, et al.,)

)

Defendants.)

)

DEPOSITION OF THOMAS G. DUFFY

Los Angeles, California

Monday, June 30, 2003

Volume I

Reported by:

SHERRYL DOBSON, RPR

CSR No. 5713

JOB No. 43693

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 2 FOR THE COUNTY OF SAN FRANCISCO
 3
 4 ELIEZER WILLIAMS, et al.,)
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 5 Plaintiff,)
)
 6 vs.) No. 312236
)
 7 STATE OF CALIFORNIA, et al.,)
)
 8 Defendants.)
)

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 12 Deposition of THOMAS G. DUFFY,
 13 Volume 1, taken on behalf of
 14 Plaintiffs, at 555 West 5th Street,
 15 35th Floor, Los Angeles, California,
 16 beginning at 9:40 a.m. and ending at
 17 5:23 p.m. on Monday, June 30, 2003,
 18 before SHERRYL DOBSON, Certified
 19 Shorthand Reporter No. 5713.
 20
 21
 22
 23
 24
 25

1 APPEARANCES:
 2
 3 For Plaintiffs:
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 -and-
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 13 O'MELVENY & MYERS
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 17 Also Present:
 18 MARIO MATERAZZI
 19
 20
 21
 22
 23
 24
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1 Los Angeles, California, Monday, June 30, 2003
 2 9:40 a.m. - 5:23 p.m.
 3
 4 THOMAS G. DUFFY,
 5 having been first duly sworn, was examined and testified
 6 as follows:
 7
 8 EXAMINATION
 9 BY MR. ELIASBERG:
 10 Q Could you please state your name for the court
 11 reporter.
 12 A My name is Thomas Gerald Duffy.
 13 Q Good morning, Mr. Duffy. I'm Peter Eliasberg
 14 from the ACLU of Southern California, representing the
 15 plaintiffs in the Williams case.
 16 MR. ELIASBERG: First let me just deal with a
 17 scheduling matter, as I mentioned. We received a letter
 18 on June 27th -- well, we. It was addressed to Kevin
 19 DeBorde, and it's from Peter Cho.
 20 And I understand we'd originally -- my
 21 understanding is that we'd originally scheduled
 22 Mr. Duffy for four days of deposition.
 23 MS. DAVIS: Correct.
 24 MR. ELIASBERG: And I understand that there have
 25 been unavoidable scheduling conflicts that Mr. Duffy

1 has, and we don't object to the proposal that the
 2 deposition at least be -- that Mr. Duffy not be here on
 3 Wednesday.
 4 MS. DAVIS: Right.
 5 MR. ELIASBERG: And I do have one concern.
 6 (Telephone interruption.)
 7 (Discussion off the record)
 8 MR. ELIASBERG: So we understand that Mr. Duffy
 9 has a conflict on Wednesday, and we have no problem
 10 with --
 11 MS. DAVIS: Right.
 12 MR. ELIASBERG: -- his -- you know, accommodating
 13 that conflict.
 14 MS. DAVIS: Okay.
 15 MR. ELIASBERG: I'm a little concerned about the --
 16 Mr. Cho's letter, in the following sense. It suggests
 17 that what would happen is that you would offer Mr. Duffy
 18 one more day, and then all of the parties would complete
 19 their questioning. But that's not -- well, it may be
 20 acceptable.
 21 Depending on where I am at the end of today or
 22 tomorrow, I may say, well, I'm done. But our
 23 understanding was that we could have as many -- we may
 24 need as many as four days. So the mere fact of offering
 25 one more day for all the parties to complete their

1 questioning is not -- that's not going to be acceptable.
 2 MS. DAVIS: And my understanding -- and you know,
 3 Peter Cho's the scheduling guru on this -- is that
 4 plaintiffs had asked for two days and intervenors had
 5 asked for two days. So we had scheduled two days for
 6 plaintiffs, two days for intervenors. Intervenors have
 7 a conflict that just came up last week.
 8 So had you requested more than two days of
 9 deposition?
 10 MR. ELIASBERG: My understanding is that we made an
 11 estimate and said that we thought we could be done in
 12 three days. We didn't say that we would only have three
 13 days. And this may be all moot.
 14 MS. DAVIS: Right. Right.
 15 MR. ELIASBERG: This may all go very quickly.
 16 MS. DAVIS: Okay.
 17 MR. ELIASBERG: Because I can't say that we have no
 18 objection to this, because if the position is that we --
 19 at the end of two days, we're done, so the intervenors
 20 get their one day of questioning in which you'll offer
 21 Mr. Duffy, our position is, depending on how things go
 22 and where we are at the end of tomorrow, it may be that
 23 we need to get -- and we need to get days offered. You
 24 know, we don't want to be fighting over what these days
 25 are on August 13th.

1 MS. DAVIS: Yeah. No, no. Of course. That's
 2 fine. And I'll talk to Peter at lunch and --
 3 MR. ELIASBERG: Okay. And it may be --
 4 MS. DAVIS: -- we'll straighten it out.
 5 MR. ELIASBERG: -- that he just needs to deal with
 6 Kevin.
 7 MS. DAVIS: Yeah.
 8 MR. ELIASBERG: It appears they've been doing all
 9 the scheduling issues.
 10 MS. DAVIS: Yes.
 11 MR. ELIASBERG: But I just wanted to make it clear
 12 that this letter -- what this proposal appeared to be
 13 wasn't acceptable to us.
 14 MS. DAVIS: Okay.
 15 MR. ELIASBERG: Okay. Great.
 16 MS. DAVIS: Duly noted.
 17 MR. ELIASBERG: Good. Crossed that bridge. Done
 18 with that.
 19 THE WITNESS: Good morning again.
 20 BY MR. ELIASBERG:
 21 Q Good morning, Mr. Duffy.
 22 Just for the record, what is your address? And
 23 you can give home or business, whatever you're more
 24 comfortable with.
 25 A 1130 K Street, Suite 210, Sacramento,

1 California 95814.
 2 Q And is that the offices of Murdoch, Walrath &
 3 Holmes?
 4 A Yes.
 5 Q Have you ever been deposed before?
 6 A Yes.
 7 Q About how many times?
 8 A Maybe five times.
 9 Q Okay. What types of cases -- they may have
 10 been very different, so let's do -- do you remember what
 11 the first time was?
 12 A Yes.
 13 Q And what kind of case was that? Just generally.
 14 A Special education, parental dissatisfaction
 15 with services to a child.
 16 Q And what was -- why were you called? Were you
 17 called as a witness for the plaintiff? As a witness for
 18 the defense? An expert?
 19 A I was called as a witness for the defense.
 20 Q And how about the second time? What kind of
 21 case was that?
 22 A School construction subcontractor suing the
 23 district.
 24 Q Okay. About how long ago was that?
 25 A 1987, '88.

1 Q So is that when you were working at Moorpark?
 2 A Yes.
 3 Q And the third time?
 4 A Teacher firing, and I was deposed.
 5 Q Okay. Were you also at Moorpark then?
 6 A Yes.
 7 Q Okay. And how about the fourth and fifth times?
 8 A Both representing Oakland Unified, and it was
 9 lawsuits the district had filed against two different
 10 architects.
 11 Q Okay. Were you still employed at Moorpark at
 12 the time you --
 13 A No.
 14 Q Were you at Murdoch at that time?
 15 A Yes.
 16 Q So the last two were relative -- within the
 17 last five years?
 18 A Yes.
 19 Q Okay. So I guess we can call you a veteran or
 20 at least somewhat of a veteran of the deposition game.
 21 You understand that you're under oath?
 22 A Yes.
 23 Q And you understand that I'll be asking you
 24 questions and that the court reporter will be taking
 25 down, not only my questions, but your answers?

1 A Yes.
 2 Q And any objections that Lynne makes, although
 3 she doesn't tend to make any objections but --
 4 A Yes.
 5 Q -- if she does, they'll be taken down.
 6 MS. DAVIS: He's lying.
 7 BY MR. ELIASBERG:
 8 Q Because the court reporter is -- the only
 9 record of this deposition is through the court
 10 reporter's written transcript, we need you to answer yes
 11 or no or verbally, as opposed to with a nod of the head
 12 or even a grunt.
 13 Do you understand?
 14 A Yes.
 15 Q Okay. And also, it makes life very difficult
 16 for the court reporter if we talk over each other. So
 17 to the extent possible, I'll try to make sure that I
 18 don't cut part of your answer off with my next question.
 19 If you could also make an effort to wait -- even if you
 20 know what I'm going to say, just wait till I'm finished
 21 with the question before you answer, so there's no sort
 22 of two people talking at the same time.
 23 Do you understand that?
 24 A Yes.
 25 Q Okay. Because, as I said, your answers are

1 going to be compiled in a written transcript, it's
 2 important that you understand the questions that you
 3 answer. If you don't understand a question -- I'm not
 4 trying to trick you. I really want the questions to be
 5 understandable for you, so that you can answer them. If
 6 you don't understand a question, please ask me to
 7 clarify it.
 8 A I will do that.
 9 Q Okay. Because if you do answer, it will be
 10 assumed that you understood the question and that you
 11 compiled -- excuse me, provided a complete answer to
 12 that question.
 13 Do you understand that?
 14 A Yes.
 15 Q The other thing is, although depositions
 16 oftentimes feel like marathons, the point here is not to
 17 test your endurance. If you need a break at any time,
 18 as long as there's not a question pending, please say
 19 so, and we'll take a break, okay? Do you understand
 20 that?
 21 A Good. I'm comfortable in doing that.
 22 Q Fine.
 23 Is there any reason why you wouldn't be able to
 24 give complete and truthful answers to the questions I
 25 ask today?

1 A No.
 2 Q Okay. All right. Mr. Duffy, how did you first
 3 hear about the case Williams versus California?
 4 A I don't remember exactly. There was some
 5 discussion at a meeting in Sacramento about the lawsuit.
 6 Q Do you remember approximately when that meeting
 7 was?
 8 A It was after I started working in Sacramento.
 9 Q Okay. And you started working at Murdoch
 10 when -- at Murdoch in Sacramento when?
 11 A It was April 1st, 2000.
 12 Q Do you remember what kind of meeting it was?
 13 A No, I don't.
 14 Q All right. Do you remember anything at all
 15 specific about -- you said -- well, let me step back.
 16 You said that there was mention of a lawsuit at
 17 that meeting.
 18 Do you remember anything else that was said at
 19 that meeting about the lawsuit?
 20 A What I recall is that there was a case called
 21 Godinez that was pending, and it was brought up that
 22 there was a second suit involving the State.
 23 Q Anything else beyond that that you recall?
 24 A No.
 25 Q Okay. After you heard about that -- about the

1 case at that first meeting, did you subsequently make
2 any effort in the next, let's say, six months to
3 investigate, find out more about what the case was
4 about?

5 A No effort.

6 Q Okay. When was the first time that you --
7 well, let me ask you this.

8 Have you, since that first meeting, made an
9 effort to find out what this case is about?

10 MS. DAVIS: Vague and ambiguous.

11 THE WITNESS: Without making an effort, people
12 talked about this case, I'd say, several times,
13 probably, just in passing. At some time later, you
14 contacted me and wanted to talk about various issues
15 relative to school finance and construction, and we did
16 talk, and some time after that I had contacts by others
17 who asked me to be involved in this.

18 BY MR. ELIASBERG:

19 Q Okay. Who else contacted you?

20 A Well, David called me and asked if I was
21 interested in providing information relative to this
22 case, and we had a conversation.

23 Q Do you remember -- is David David Herron?

24 A David Herron.

25 Q And do you remember approximately when that

1 did you discuss this case with any of your colleagues at
2 Murdoch, Walrath & Holmes?

3 A I don't remember discussing the case, no.

4 Q Did you discuss it with any of your colleagues
5 or other people who are involved in the C.A.S.H.
6 organization?

7 A People would ask what Williams was about. I
8 don't think there was necessarily a whole lot of
9 knowledge of that.

10 Q And who were -- when you say people would ask
11 you, do you have a specific memory of people who would
12 ask you?

13 A It wasn't necessarily just asking me, but
14 people would say, okay, what's Williams? This would be
15 at a meeting, informal meeting.

16 Q And did you at any of those meetings state
17 anything about what your understanding of Williams was?

18 A I can't recall specifically, but I believe that
19 there was some common recognition that it involved a
20 number of matters, and in certain regard, it maybe had
21 some crossover with Godinez.

22 Q What was your understanding of what the
23 crossover with Godinez might be?

24 A School facility issues.

25 Q In any of these discussions did you express an

1 was, the first time Mr. Herron contacted you?

2 A I don't remember exactly when it would have
3 been, but seems to me it would have been the early part
4 of this year, this calendar year.

5 Q We'll talk about your discussions with
6 Mr. Herron later. Let me just focus on the time
7 between, say, the time that you and I met and the time
8 Mr. Herron contacted you.

9 Let me ask you this. Do you have a memory of
10 when you and I met?

11 A Do you mean time?

12 Q Yeah. Date.

13 A I don't remember the date. Seems to me it was
14 during the Godinez time.

15 Q And what would be -- what's your understanding
16 what the Godinez time is?

17 A That was between when I started working in
18 Sacramento -- so it was early April -- and the latter
19 part of that same year, the year 2000, when the
20 disposition of that took place, which was December 13th.

21 Q The disposition of that, by that you mean
22 Godinez?

23 A Godinez.

24 Q During that period of time between the time I
25 met with you and the time that Mr. Herron contacted you,

1 opinion about the wisdom of the lawsuit?

2 MS. DAVIS: Vague and ambiguous.

3 THE WITNESS: I can't recall expressing an
4 opinion.

5 BY MR. ELIASBERG:

6 Q Do you remember if you had an opinion? And
7 again, I'm focused on the time between when you met me
8 or I met you and David Herron first contacting you.

9 MS. DAVIS: Same objection.

10 THE WITNESS: Seems to me that there was maybe a
11 couple of things. I had understood that depositions
12 were being made of some State officials, and that these
13 were fairly lengthy and fairly intense. And I did have
14 a call from someone in a school district, who indicated
15 that other information may be necessary with regard to
16 this case relative to the State program, relative to
17 facility issues, and had wanted to talk with me about
18 that.

19 BY MR. ELIASBERG:

20 Q Okay. How did you -- you said -- and please, I
21 will follow up oftentimes on your answers, and I don't
22 want to misrepresent what you previously said. So if I
23 do, please say, that's -- you know, that's not what I
24 said. I'm going to do my best to try to, you know, ask
25 you some follow-up questions about this.

1 I think you said you had an understanding that
 2 there had been some depositions of State officials.
 3 Do you know how you gained that understanding?
 4 A By talking to one of those.
 5 Q And who was that?
 6 A Duwayne Brooks.
 7 Q And were you aware that there were depositions
 8 of any other State officials besides Mr. Brooks?
 9 A I believe Bruce Hancock was mentioned as being
 10 involved in depositions. I don't recall others.
 11 Q Did you talk to Bruce about depositions?
 12 A No. No, I don't recall talking to Bruce about
 13 the deposition.
 14 Q What did Mr. Brooks tell you about his
 15 deposition?
 16 A I recall that he said it lasted for several
 17 days, that it was fairly intense, in terms of questions.
 18 Q Did you have an understanding of what he meant
 19 by intense?
 20 MS. DAVIS: Calls for speculation.
 21 THE WITNESS: That the -- that, again, it was
 22 lengthy and there was a lot of questions about the State
 23 program and decisions that were made. I don't recall
 24 anything specific.
 25 BY MR. ELIASBERG:

1 Q Do you remember anything else -- not just
 2 focusing on the issue of intensity, but do you remember
 3 anything else he said about the deposition?
 4 A He mentioned that it went beyond facility
 5 issues, which I think I'd already understood. I
 6 mentioned that a few minutes ago.
 7 Q Did he say what other issues it dealt with?
 8 A Teacher credentialing, availability of
 9 textbooks. There may have been other such issues, but
 10 those two I recall.
 11 Q Just so I'm clear, he said that his deposition
 12 addressed issues of teacher credentialing and
 13 availability of textbooks; is that correct?
 14 A No, I don't -- I don't believe that he
 15 specifically said that that occurred in his deposition,
 16 but just, in its totality, that he believed the
 17 lawsuit --
 18 Q Okay. Thank you.
 19 A -- involved that.
 20 Q I believe you also said that you were contacted
 21 by a school official who said that, in sum or substance,
 22 other information may be necessary with respect to the
 23 State program; is that correct?
 24 A Yes.
 25 Q And who was that school official?

1 A Letty Boggs.
 2 Q Okay. And when did Ms. Boggs contact you?
 3 A It was a number of months ago. I can't tell
 4 you specifically, but it was probably the latter part of
 5 last year.
 6 Q All right. And what is your -- what is your
 7 understanding of what she meant by other information may
 8 be necessary with respect to the school --
 9 MS. DAVIS: Calls for speculation.
 10 BY MR. ELIASBERG:
 11 Q -- facilities program?
 12 MS. DAVIS: Sorry. Calls for speculation.
 13 BY MR. ELIASBERG:
 14 Q I'm just asking if you had an understanding of
 15 what she meant.
 16 A She was expressing concern for accurate
 17 information. I don't know from whence that concern
 18 completely arose, but she expressed concern.
 19 Q And when you say concern for accurate
 20 information, what did you understand her to mean by
 21 that?
 22 A What I understood her to mean is that there was
 23 a need for a larger picture on what was being presented.
 24 Q When you say what was being presented, did you
 25 have an understanding of being presented by whom?

1 A Just in the lawsuit.
 2 Q And did she ask you to take any specific steps
 3 to address that concern?
 4 A No. She asked me if anybody had contacted me
 5 to be involved in this in any way.
 6 Q And what did you say?
 7 A I had said to her, no, not recently. That's
 8 what I recall saying to her.
 9 Q Did you ask her if anyone had contacted her
 10 about the lawsuit?
 11 A No, I assumed that somebody had and that's why
 12 she was talking to me.
 13 Q But did she tell you that anyone had contacted
 14 her?
 15 A No.
 16 Q Who is Letty Boggs?
 17 A Letty Boggs is a woman -- I said that she was a
 18 school official. She may not have been at that time,
 19 because she was transitioning. She was assistant
 20 superintendent for business at Anaheim City Schools.
 21 Q How long have you known Ms. Boggs?
 22 A Maybe ten years.
 23 Q Did any other -- and again, I'm only talking
 24 about the period of time between the time I contacted
 25 you and Mr. Herron contacted you.

1 Did any other school officials -- did you speak
2 with any other school officials -- besides the -- what
3 you've mentioned about there may have been brief
4 discussions in passing -- in meetings about Williams,
5 did you speak with any other school officials about the
6 case?

7 A No.

8 Q Did you speak with any State officials about
9 the case?

10 A Eventually Duwayne Brooks --

11 Q Besides Mr. Brooks.

12 A Well, in this context, it wasn't speaking,
13 necessarily; it was testifying before the joint
14 committee on school facilities, where I referenced both
15 Godinez and Williams as having some focus on school
16 facility issues.

17 Q Okay. What is the joint committee on school
18 facilities?

19 A The joint committee was the committee composed
20 of members of the Senate and the Assembly that agreed
21 upon the components of AB 16, which became the Prop 47
22 bond and the -- the next bond for '04 and a number of
23 program elements in the State school facility program.

24 Q Do you remember when you testified?

25 A I testified several times during a period from

1 July, August, September of 2001 through February -- at
2 least February, maybe even beyond February of 2002.

3 Q Are you able to, in your own mind, distinguish
4 the -- each individual time you testified, or do you
5 have a more sort of general memory of testifying and
6 what you said in that testimony?

7 A They tend to blend.

8 Q Well, then instead of breaking up, we'll just
9 talk generally.

10 Do you remember what you said at any of
11 those -- at any of the times you testified in front of
12 the joint committee, what you said about Williams?

13 A Well, if I mentioned Williams, I mentioned
14 Godinez. And just in general, the thought was the State
15 is being challenged for the programs that it operates
16 that assist districts in dealing with school facility
17 problems, the construction, modernization, repairing old
18 schools, and that we were offering a proposal -- and I
19 say "we" being the C.A.S.H. organization that was
20 addressing, if it was accepted, issues of overcrowding
21 and issues of older buildings.

22 And we specifically offered several proposals
23 to them.

24 Q Did you say anything else about -- well, I'll
25 say did you say anything else about both Williams and

1 Godinez or Williams or Godinez?

2 A No.

3 Q Did you express any opinion as to the accuracy
4 of any of the complaints that plaintiffs were making in
5 Williams concerning facilities?

6 A To the --

7 MS. DAVIS: Vague --

8 THE WITNESS: -- conference committee?

9 MR. ELIASBERG: Yeah.

10 MS. DAVIS: Vague and ambiguous.

11 THE WITNESS: Sorry.

12 Could you ask me again?

13 MR. ELIASBERG: Sure.

14 Actually, could you just read back the
15 question.

16 (Record read)

17 THE WITNESS: No.

18 BY MR. ELIASBERG:

19 Q Did anyone ask you for an opinion on that
20 subject?

21 A No.

22 MR. ELIASBERG: Okay. I'm going to give to the
23 court reporter a document which -- I think we've just
24 been marking with individual names and starting with 1.

25 So it's a document that states at the front on

1 the right side "Expert Witness Declaration Re Dr. Thomas
2 G. Duffy" that we'll mark as Duffy 1, Duffy Exhibit 1.

3 (Plaintiff's Exhibit 1 was marked for
4 identification by the court reporter.)

5 BY MR. ELIASBERG:

6 Q Mr. Duffy, if you would please look through
7 this document.

8 I'll just give you a little explanation. I
9 will ask you a variety of questions about this document
10 over time. I will generally refer you to specific parts
11 of it. Right now if you would just familiarize yourself
12 with the document. I don't expect you to read all of
13 it. Just familiarize yourself to make sure you know
14 what it is.

15 A From the first page to the last page?

16 Q Skim through it. Yeah, I mean, basically, I'm
17 going to ask you if you recognize the document and so
18 on.

19 I will represent to you here that I've done my
20 best to Xerox accurately all -- I don't think it's
21 necessarily a good use of time to read the whole thing
22 word for word, but if you want to do that, you're
23 obviously free to do that. And obviously, down the line
24 if you see something in it -- if I ask a question about
25 a specific section and it looks like it's missing a

1 page, you can point that out then. I'm not going to
 2 consider you to waive that right.
 3 A (Witness reviews documents.)
 4 Q Mr. Duffy, do you recognize this document?
 5 A Yes.
 6 Q And what is it?
 7 A The greater part of the document is the report
 8 that I put together in this matter.
 9 Q Okay. And does it appear -- again, if
 10 something comes up later it's fine, but does it appear
 11 to be the complete version of your report, to --
 12 A I have skimmed --
 13 Q -- the best of your understanding?
 14 A -- through the pages, and it at least appears
 15 to be the complete version of my report.
 16 Q And at the front of the document is there a
 17 resume, your resume?
 18 A There is.
 19 Q Do you know approximately -- is this the most
 20 recent version of the resume that -- of your resume?
 21 A (Witness reviews documents.)
 22 Yes.
 23 Q All right. Let me --
 24 A My office prepares resumes from time to time
 25 for those that request it. So somebody may have

1 prepared a resume and updated it for me in the last
 2 several weeks or months, but it's basically the resume I
 3 use.
 4 Q Okay. Let me take you back -- and I promise
 5 I'm not going to ask you about every day of your life,
 6 but I did want to go through some of your experience
 7 of -- educational and otherwise.
 8 You got a B.A. at Cal State in 1971; is that
 9 correct?
 10 A Yes.
 11 Q And the B.A. was in history?
 12 A Yes.
 13 Q Okay. On the resume here it also says -- and
 14 this is on the bottom of the -- let's see, the third
 15 page of the resume section of the document, under the
 16 section headed "Education."
 17 It also says that you obtained a -- or it lists
 18 standard elementary credential; is that correct?
 19 A Yes.
 20 Q And what is a standard elementary credential?
 21 A At the time the standard elementary credential
 22 empowered me to teach in California for the rest of my
 23 life as an elementary teacher.
 24 Q And was the -- so you took the -- what course
 25 work is involved or was involved in your -- necessary to

1 obtain the standard elementary credential?
 2 A I can't give you a detailed course listing, but
 3 courses that are involved typically include courses on
 4 teaching reading, courses on social studies, child
 5 development courses, psychology of education, child
 6 psychology, goes on from there.
 7 Q And was it your purpose in doing the credential
 8 because you wanted to teach?
 9 A Yes.
 10 Q Okay. Why did you want to teach?
 11 A I learned that I was good at it.
 12 Q How'd you learn that?
 13 A When I was in high school an English teacher
 14 asked me to get involved in a program that was tutoring
 15 students that were having difficulties. I respected
 16 this teacher, and he said, I think you would do well
 17 here. And they need your help.
 18 I was a senior and I was very busy, but I said
 19 okay, and I got involved in a tutorial program, where I
 20 was assigned to a junior high student who had some
 21 special education issues and others, and I was very
 22 effective in turning around his educational experience
 23 in that semester.
 24 Q Then on the resume it says subsequently, from
 25 '72 to '76, you got a credential specialization in Cal

1 State L.A.; is that correct?
 2 A Yes.
 3 Q Can you tell me what a credential
 4 specialization is?
 5 A A credential specialization means that you are
 6 authorized by State of California to do certain kinds of
 7 other work that a credential requires. Mine is in
 8 special education.
 9 Q And so that -- am I correct in understanding
 10 that there are credential specializations in a variety
 11 of different fields or subjects, and special education
 12 being one?
 13 A And in special education there are varieties as
 14 well.
 15 Q Okay. Did you -- was there a specific variety
 16 of special education credential that you got?
 17 A Yes.
 18 Q And what was that?
 19 A To teach the orthopedically handicapped.
 20 Q What is the layman's understanding of --
 21 layman's understanding of the orthopedically
 22 handicapped?
 23 A At the time the term referred to students who
 24 may have a variety of disabilities that included
 25 cerebral palsy and muscular dystrophy, those that would

1 be in wheelchairs, those that would use prosthetic
2 devices, those that may have seizure disorders. It was
3 fairly broad. But the credentialing allowed me to teach
4 in a classroom serving those students.

5 Q Why did you choose that particular credential
6 specialization?

7 A As I mentioned before, I learned that I was
8 fairly good at dealing with students that had
9 impediments to learning and impediments to living.

10 Q When did you start teaching?

11 A 1971.

12 Q So you were actually teaching during the
13 time -- well, did you start teaching after you got your
14 B.A. and your standard elementary credential?

15 A No. I started teaching after I received the
16 B.A. In California, at least at the time, you didn't
17 have to have a complete credential. If you were in
18 progress, you could be placed in a teaching position.

19 Q So just for understanding the resume here, it
20 says 1968 to '71, and you list Cal State Long Beach,
21 history and also standard elementary credential.

22 When did you actually complete the standard
23 elementary credential?

24 A The life credential?

25 Q Well, whatever it is that you're listing as the

1 a smaller percentage of students that would have those
2 disabilities. So it's more economically feasible for
3 the intermediate unit at the County office to offer
4 those programs, pooling students from a variety of
5 districts to serve them.

6 Q So -- and are those students pooled from within
7 a variety of districts within that County, in this case
8 Ventura County?

9 A Typically, yes.

10 Q It says here you were charged with the
11 responsibility of establishing the orthopedic unit at
12 Rio Mesa High School.

13 What is -- what do you mean by establishing the
14 orthopedic -- well, let me break it down.

15 What is an orthopedic unit, as it's used here?

16 A It's the classroom that served the
17 orthopedically-handicapped students.

18 Q Okay. And what did you do to establish the
19 orthopedic unit?

20 A Became an ambassador.

21 Q Okay. And what do you mean by that, became an
22 ambassador?

23 A This was a County program going onto a high
24 school district site. So I got to know the principal.

25 I got to know counselors and others, and moved the class

1 standard elementary credential.

2 A It was sometime in that period. I don't recall
3 exactly, but the course work was complete and I was --
4 there are steps in a credential, so you could have a
5 preliminary, then you could have a partial, and then you
6 can have a -- seems to me there's another step, and then
7 there's the life credential, which means you're
8 authorized for life to teach.

9 Q Now, looking up above a little higher up on
10 this resume, in the section above California
11 credentials, there's a -- between the dates 1971 to 1980
12 it says you were a teacher for

13 orthopedically-handicapped programs for the Ventura
14 County Superintendent of Schools Office.

15 What is the Ventura County Superintendent of
16 Schools Office?

17 A It's the intermediate unit that serves the
18 school districts in Ventura County.

19 Q And how do they serve the school districts?

20 A They provide a variety of services that include
21 fiscal services, and they provide special education
22 programs for what are called low-incidence pupils.

23 Q And what are low-incidence pupils?

24 A That in a population of a hundred thousand
25 students or 10,000 students, some number, there would be

1 physically from a school for the orthopedically
2 handicapped in Ventura to the campus of Rio Mesa High
3 School, which was in Oxnard.

4 Q Now, it says your duties included -- or the
5 responsibility of establishing the orthopedic unit
6 included duties of instruction, initiation and
7 supervision.

8 By instruction did you -- did you actually
9 teach the class?

10 A Yes.

11 Q And were you the only teacher for that class?

12 A Yes.

13 Q And then it also said that you -- the duties --
14 included duties of initiation and supervision of the
15 mainstreaming program.

16 What is the mainstreaming program?

17 A It was working to have students leave the
18 shelter of the special education classroom and to go out
19 into the mainstream of the campus. In essence, to go
20 into regular classrooms.

21 Q How did -- what did you do to facilitate
22 mainstreaming of students?

23 A As I said, I became an ambassador. So I worked
24 with the principal, I worked with counselors, I worked
25 with teachers to facilitate the students going into

1 classes that were regular classes, to be involved in
2 regular instruction. And I supported those students in
3 those classrooms from time to time, or my assistant did
4 that.

5 Q How did you support them?

6 A Depended on the need of the student.

7 Q Well, can you give me an example of how you
8 might support a student?

9 A Well, there was a student that had a spinal
10 cord injury that had been a running back, and he was
11 paralyzed. And so I went into the weight training class
12 at the campus that was run by the football coach, and I
13 physically supported him, by lifting him out of the
14 chair, having him supported on a bench, and giving him
15 certain weights to give a lift, which were pretty
16 minimal, at least in the beginning. That kind of
17 support. Could give you other examples.

18 Q No, I think I got the picture.

19 Did you enjoy the work?

20 A I did.

21 Q What do you consider your greatest
22 accomplishment or accomplishments during that period?

23 MS. DAVIS: Vague and ambiguous.

24 THE WITNESS: I don't mind answering the question.
25 There were many high points. When people thought that

1 Was that a different position from what you
2 list here as year 1971 to '80, work as a teacher of
3 orthopedically-handicapped programs?

4 A Yes.

5 Q And what was -- what did that position -- what
6 were your responsibilities as a special education
7 consultant?

8 A It began with responsibility for developing
9 information for parents and for others about special
10 education programs and conducting in-services for
11 parents and for others and tracking legislation that
12 dealt with special education. Then it moved on to more
13 business-related areas specifically in the school
14 facility area.

15 Q Okay. How did it -- how did it come to pass
16 that you took on -- started to take on responsibilities
17 for business and school facilities issues?

18 A I was asked to do so.

19 Q Okay. Who asked you to do so?

20 A The assistant superintendent for business
21 services in Ventura County at the time, whose name was
22 Wilmar Grossbach, asked me to assist him.

23 Q And did he say why he -- did he explain to you
24 why he'd selected you to take on that new work?

25 A He said he'd watched me work, and he thought I

1 our class was part of the school district and received
2 the students easily into the classrooms and went out of
3 their way to work with these students, that was -- that
4 was the key. That's what I was about. I became part of
5 the faculty. I made friends there that I still
6 communicate with today.

7 BY MR. ELIASBERG:

8 Q It appears from your resume that you did this
9 work for approximately nine years; is that correct?

10 A Yes, I think so.

11 Q During that period of time, that nine-year
12 period, did you have any responsibility with school
13 facilities in any of the school districts in Ventura
14 County?

15 MS. DAVIS: Vague and ambiguous.

16 THE WITNESS: The time period you're asking?

17 BY MR. ELIASBERG:

18 Q '71 to '80. During the period that you have
19 listed here as being a teacher for
20 orthopedically-handicapped programs.

21 A Not during that period.

22 Q Now, it says that in 1980 -- this is going on
23 to the -- the page before, the bottom entry on the page
24 before, it says you were a special education consultant,
25 Ventura County Superintendent of Schools Office.

1 could help him.

2 Q Okay. What -- so in 1980 -- it says on the
3 resume here that from 1980 to 1983 you became a
4 facilities -- or you were a facilities consultant and
5 teacher, again, for the Ventura County Superintendent of
6 Schools.

7 What were you teaching?

8 A The same program that I talked about before.

9 Q Okay. So there's overlap for some of your
10 previous jobs, but you've taken on new responsibilities
11 as a facilities consultant; is that correct? Is that
12 basically correct?

13 A That's correct.

14 Q And tell me what kind of things you did as a
15 facilities consultant.

16 A I funded the Dorothy Boswell School in Ventura,
17 which was a special education facility, and five other
18 projects that I recall for the County office in Ventura.

19 Q And when you say funded, what do you mean
20 funded the Dorothy Boswell School and five other
21 projects?

22 A Wilmar Grossbach asked me to be involved in the
23 business side. He said they needed a school.

24 He said, "Can you help us get a school?"

25 And I did that.

1 Q And how did you go about obtaining the funding?

2 A I learned about the Leroy Greene lease-purchase
3 program at the time. County offices were sort of in a
4 gray area, in terms of being eligible for that, but in a
5 short space of time we had received Phase 1 funding and
6 moved on with the site acquisition and built a school.

7 Q And by Phase 1 funding do you mean the
8 planning -- funding for planning the facility; is that
9 correct?

10 A Yes.

11 Q And then is there a Phase 2 and Phase 3
12 under -- or was there a --

13 A Yes.

14 Q -- a Phase 2 and Phase 3 under the Leroy Greene
15 lease-purchase program?

16 A Yes.

17 Q And what was Phase 2?

18 A Site acquisition.

19 Q And what was Phase 3?

20 A Construction funding.

21 Q And I'm really not trying to test your memory
22 here. I just want to see, just for the record -- do you
23 have a recollection of what -- whether the provisions of
24 the Leroy Greene lease-purchase program are codified in
25 the Education Code?

1 A Yes.

2 Q And what are the code sections?

3 A I don't recall.

4 Q Other than the work you did -- I'm not in any
5 way suggesting that wasn't a lot of work, but other than
6 the work you did, in terms of getting the funding for
7 the Boswell school and five other schools, were there
8 other responsibilities you had with respect to
9 facilities during that period of 1980 to 1983 that's
10 listed here as you were a facilities consultant on your
11 resume?

12 A Yes.

13 Q And what were those other responsibilities?

14 A Assisting districts in Ventura County and, as
15 it turned out, a couple of other counties.

16 Q How did you assist those districts?

17 A I assisted them by sharing information. I
18 assisted them by becoming lead for applications for
19 funding for what was then the new rehabilitation or
20 modernization program. Also, new construction funding,
21 for deferred maintenance funding. I served as a
22 resource for them, but I also served as an advocate for
23 them.

24 Q Okay. What did you mean when you said you were
25 a lead for applications? You listed applications for a

1 variety of different programs. I'm just -- I assume
2 that lead -- let me ask you this.

3 When you use the phrase "lead for
4 applications," would that kind of work be the same
5 whether it's an application for deferred maintenance or
6 an application for new construction or modernization
7 funding?

8 A Not necessarily.

9 Q Okay. Tell me what you mean by a lead for
10 application for deferred maintenance funding.

11 A Compiling the information that's necessary to
12 file the document on behalf of the district and to
13 pursue it through funding and even construction,
14 contract signing, work with the board to make sure the
15 board was comfortable with what was happening.

16 Q How do you pursue it through funding or how did
17 you pursue it through funding?

18 A Would you like me to give you an illustration?

19 Q That would be fine.

20 A A very small district that was not in the
21 deferred maintenance program had a septic system that
22 basically exploded on the campus. Small district.
23 District had a superintendent who was also the principal
24 and the teacher. We worked to have the problem fixed
25 very quickly, and then told the district and the board

1 that we could go back and have it funded, sort of after
2 the fact, through critical hardship deferred
3 maintenance -- can't remember if that's exactly the
4 title at the time, but basically, it was an emergency,
5 and we had that done. So it was paid for.

6 So we went from filing the application, working
7 it through the funding, working with the board to make
8 sure that they understood that we were entering into a
9 contract, the district entering into a contract, and
10 paying for it.

11 Q What did you mean when you said the district
12 was not in the deferred maintenance program?

13 A He had no knowledge of the deferred maintenance
14 program at the time.

15 Q What was the -- what district was that?

16 A Mupu.

17 Q How do you spell that?

18 A M-u-p-u.

19 Q Do you know approximately what year this
20 incident with the septic tank took -- or septic system
21 took place?

22 A Would have been '81 or '82.

23 Q How long did the deferred maintenance
24 program -- for how long had the deferred maintenance --
25 when did the deferred maintenance program start?

1 A I believe it was '79.
 2 Q During the period of time that you worked in
 3 the Ventura County Superintendent of Schools Office as a
 4 facilities consultant, did you ever become aware of
 5 other districts that were not in the deferred
 6 maintenance program?
 7 A No, I believe that was the only one.
 8 Q How would you be a lead or how did you act as a
 9 lead for applications for modernization funding? And I
 10 understand -- I think you said it may not have been
 11 called that at the time, but what we know now as
 12 modernization funding; it's a law then.
 13 A I believe it was first called rehabilitation.
 14 The district board would take action to appoint me as
 15 the district representative, so that I would be
 16 signatory on documents that the State required in order
 17 to move the applications through quickly and
 18 efficiently. Because I would go to Sacramento on their
 19 behalf and could sign a document and move the project.
 20 Q Do you have an understanding why the districts
 21 did not use -- or the board did not appoint somebody who
 22 was actually an employee of the district itself to move
 23 the application?
 24 A Well, they would typically do that at some
 25 later point, but I would offer, and they had a need, and

1 or older and a determination of the replacement value of
 2 the school and funding about 25 percent of that
 3 replacement value without structurally altering the
 4 school, so that the original DSA approval remained
 5 intact.
 6 Q Was the 25 percent requirement written into --
 7 well, let me ask you this. I believe we've established
 8 this; I just want to be sure.
 9 The lease-purchase program is statutory; is it
 10 not?
 11 A Yes.
 12 Q Okay. And it's in the Education Code, right?
 13 A Yes.
 14 Q Is that 25-percent figure part written into the
 15 statute?
 16 A I don't recall that it was in the statute or if
 17 it became just an operational policy, but it came from
 18 an agreement amongst State agencies, and it became the
 19 working number.
 20 Q What State agencies agreed on this?
 21 A Office of Public School Construction, which was
 22 called OLA, or the Office of Local Assistance at that
 23 time, DSA and CDE.
 24 Q Do you have an understanding of how they --
 25 those agencies arrived at that number, that percentage?

1 the boss that I had, Wilmar Grossbach, was very much
 2 into serving school districts, and smaller districts in
 3 particular, the ones that I focused on, because they had
 4 a lot of need and not necessarily a lot of personnel.
 5 Q What do you mean by they had a lot of need?
 6 A Well, we were in the post-Prop 13 years, and
 7 their education funding was as it is today, but it was a
 8 different time; in that, school administrators weren't
 9 quite sure how much money would be available, and this
 10 was a new program -- the rehab program was a new
 11 program; it wasn't understood, necessarily. So I think
 12 a combination of factors saw districts requesting the
 13 service if they knew it was there.
 14 Q When you say it was a new program, do you know
 15 when it -- when the program started?
 16 A The rehab program?
 17 Q (No audible response)
 18 A It was funded in the bond of 1982. I believe
 19 that was -- the June bond of '82. So the funding began
 20 shortly thereafter.
 21 Q Briefly explain what the rehabilitation program
 22 was, at least under the -- under the lease-purchase
 23 program.
 24 A Similar to what it is under the school facility
 25 program, but it involved schools that were 30 years old

1 A Not an in-depth understanding, no.
 2 Q What is the understanding that you do have?
 3 A DSA had a concern that if there would be any
 4 structural changes in the school, that they needed to be
 5 recognized by changes in a plan, so that it may be that
 6 the school be reevaluated for adherence to the Field Act
 7 so the structural safety of pupils and credentialed
 8 teachers and others in the school would not be
 9 compromised.
 10 It was identified that anything from lighting
 11 to carpeting to plumbing -- certainly wasn't
 12 structural -- and that those kinds of things would be
 13 addressed. And that's not exhaustive, but recognizing
 14 that modernizing or rehabilitating the schools could
 15 avoid any structural change to the school, so that
 16 leaving the school intact structurally could be done and
 17 that the agencies then could agree that districts could
 18 have a substantial amount of money to go in and
 19 rehabilitate, modernize, repair the school.
 20 Q Help me understand. And perhaps I missed
 21 something, but it seems to me that your answer addressed
 22 the question of why the agencies had agreed that there
 23 would -- not to have structural alteration of the
 24 building, but I'm trying to understand why or how they
 25 came up with 25 percent of the replacement value.

1 A As I said, I don't have an in-depth
2 understanding of that, but there was a belief that if
3 the building would take \$4 million to replace, that
4 spending a million dollars to deal with issues could
5 avoid any structural problem.
6 Q What do you mean by structural problem?
7 A Okay. Avoid creating a structural problem.
8 Q Can you give me an example of what a structural
9 problem would be?
10 A If a district wanted to use the modernization
11 program, rehabilitation program, to go in and remove a
12 load-bearing wall, that may not be considered under the
13 modernization program, that the load-bearing wall would
14 mean recalculating the effect of that removal on the
15 ceiling, and that may require some adherence to the code
16 of 1982 as opposed to the code of 1950 or 1949 or 1945.
17 Q Do you know if any of these -- the agencies
18 that you mentioned -- actually, let me step back.
19 Can we -- I know that there's been a name
20 change. OLA has become OPSC.
21 Are you comfortable if I just refer -- I'll
22 refer to it as OPSC --
23 A Yes.
24 Q -- and we'll understand that at some point that
25 may not have been the actual acronym; it was a different

1 title, but I -- I never remember OLA, and I got OPSC
2 embedded in my brain.
3 Okay. Do you have an understanding of whether
4 anybody -- any of the agencies that you mentioned, OPSC,
5 DSA -- actually, maybe I shouldn't use the acronyms,
6 because there are other people who read this, and they
7 won't know -- the Office of Public School Construction,
8 Division of State Architect or the California Department
9 of Education, were there any of those agencies that did
10 research to attempt to determine what the actual cost or
11 percentage of replacement value was required to
12 modernize the building?
13 A I'm not sure I know what question you're asking
14 me at this point.
15 Could you read it back.
16 (Discussion off the record)
17 BY MR. ELIASBERG:
18 Q Do you know whether any of the agencies that I
19 mentioned or that you previously mentioned, OPSC, DSA,
20 CDE, did any research in an attempt to determine the
21 actual cost or the actual percentage of replacement
22 value necessary to properly modernize a 30-year-old
23 school facility?
24 MS. DAVIS: Vague and ambiguous, calls for
25 speculation.

1 THE WITNESS: I would be speculating. I don't know
2 what really they did.
3 BY MR. ELIASBERG:
4 Q Do you know how the Legislature arrived at or
5 decided that modernization or rehabilitation funding
6 would be available for buildings that were 30 years or
7 older as opposed to some other --
8 MS. DAVIS: Same objections.
9 BY MR. ELIASBERG:
10 Q -- age.
11 MS. DAVIS: Sorry.
12 Same objections.
13 BY MR. ELIASBERG:
14 Q Again, I don't want you to speculate. I'm
15 asking you --
16 A No.
17 Q -- do you have an understanding?
18 A No.
19 Q Have you ever attempted to find out how the
20 30-year-old figure was arrived at?
21 A It's been discussed. We moved it back from 30
22 to 25, as I think you're aware. There may have been
23 some relationship to all of the schools that were built
24 after the end of World War II, starting in 1952, with
25 the '52 law and, 30 years later, we're at '82, and gee,

1 let's cover a lot of that territory. You know, those
2 discussions taking place, but I'm not sure.
3 Q By the '52 law do you mean the -- and I don't
4 know the name of the act, but a State law that provided
5 for funding for districts to build school facilities; is
6 that correct?
7 A Yeah, the school building law of 1952.
8 Can we take a break?
9 Q Yeah, sure. I was actually going to say that.
10 (Brief recess taken.)
11 BY MR. ELIASBERG:
12 Q Mr. Duffy, I don't believe I asked you.
13 You previously testified that when you were
14 working as a facilities consultant for the Ventura
15 County Superintendent of Schools, that you acted as a
16 lead for applications for funding for deferred
17 maintenance, rehabilitation and new construction. I
18 don't think I asked you about what was involved in being
19 a lead for applications for new construction.
20 Could you tell me what you did when you were
21 acting as a lead for applications for new construction?
22 A If I could use Mupu as an example again.
23 Demonstrated to the superintendent and the board that
24 they probably had eligibility for new construction, had
25 them take action to file for that, assisted them in

1 hiring an architect, met with the board on several
2 different occasions, received funding and constructed a
3 building for them.

4 Q Did you go -- well, what I'm trying to figure
5 out is, did someone from Mupu come to you or someone in
6 the County superintendent's office and say, we'd like to
7 build a new building, in sum or substance?

8 A I told them that they had eligibility for a new
9 building, and asked them if they'd like to exercise that.

10 Q When you informed them of that, did they
11 indicate to you in any way that they weren't aware that
12 they had eligibility?

13 MS. DAVIS: You're talking about Mupu?

14 MR. ELIASBERG: Yes.

15 MS. DAVIS: Okay.

16 THE WITNESS: No, they weren't aware that they had
17 eligibility.

18 BY MR. ELIASBERG:

19 Q Did you ever work with any other districts
20 where you informed them that they had eligibility for
21 new construction and they weren't aware of it?

22 A Don't recall any other districts not being
23 aware.

24 Q For how long had the State been providing
25 funding under any program for new school construction?

1 A During that time frame?

2 Q No, I'm just -- in history.

3 A Could you ask --

4 MS. DAVIS: Vague and ambiguous.

5 THE WITNESS: Could you ask again?

6 BY MR. ELIASBERG:

7 Q Yeah.

8 For how long in any time -- not just focused on
9 the time you were facilities consultant, but in any time
10 in California's history when did California -- the State
11 of California start providing funding to school
12 districts for new school construction?

13 MS. DAVIS: Vague and ambiguous.

14 THE WITNESS: The program -- my knowledge of this,
15 the program in the late '40s and early '50s was
16 something that began, because of growth in the state
17 began at that time.

18 BY MR. ELIASBERG:

19 Q When you say began, you mean began to provide
20 funding?

21 A And the State began to provide -- the State
22 program to provide funding for schools.

23 Q Mr. Duffy, are you aware of other -- I'm
24 sorry, Dr. Duffy, are you aware of other County
25 superintendent of schools who had persons working for

1 them as consultants or employees that did similar work
2 to the work you did as a facilities consultant for the
3 Ventura County Superintendent of Schools?

4 A Yes.

5 Q What County superintendents are those?

6 A I believe that there were nine. We used to
7 call the meetings of the -- those persons the nine
8 southern counties meeting, but it included L.A., Orange,
9 San Diego, Riverside, San Bernardino, Ventura County --
10 there was someone from Santa Barbara County at some
11 point, are the ones I'm remembering.

12 Q And did all of those County offices have
13 someone who did a job similar to you?

14 A Yes.

15 Q Were you aware of any counties in California --
16 well, County superintendent's offices that did not have
17 someone who, either as a consultant or an employee, did
18 work similar to what you did as a facilities consultant?

19 A As I said, Santa Barbara had someone. I can't
20 remember when they first got involved, but I know the
21 counties that I worked with, the ones that I mentioned.
22 I don't recall any information that others didn't have.

23 Q Were you aware of any information that others,
24 other than the ones you've listed and the ones you may
25 have worked with in this nine-county group -- do you

1 have any information that others did have that kind of
2 employee or consultant?

3 A No.

4 Q Other than the -- well, you've discussed acting
5 as the lead for applications for deferred maintenance,
6 new school construction and modernization.

7 Can you tell me all the -- any other steps that
8 you took to ensure that special education facilities --
9 I want to start just focused on special education
10 facilities -- the special education facilities in
11 Ventura County were in good condition during that
12 three-year period, 1980 to 1983?

13 A I'm not sure --

14 MS. DAVIS: Vague and ambiguous.

15 THE WITNESS: -- what you're asking.

16 MS. DAVIS: Sorry.

17 Vague and ambiguous.

18 BY MR. ELIASBERG:

19 Q During the period you were facilities
20 consultant for Ventura County Superintendent of Schools,
21 I want to understand all the other steps you took,
22 besides the ones you described about acting as a lead
23 for applications, to ensure the special education
24 facilities, the schools, the classroom that special
25 education students attended, were in good condition.

1 MS. DAVIS: Vague and ambiguous.
 2 THE WITNESS: I'm confused by your question.
 3 BY MR. ELIASBERG:
 4 Q Okay. Maybe I can help -- I can clarify it if
 5 you tell me what your confusion is.
 6 A Are you asking if I looked at special education
 7 classrooms in school districts? Are you asking if I
 8 took actions to make sure there was school facilities
 9 for special education programs within the county
 10 proper?
 11 Q I'm trying to understand any -- both. Any
 12 steps that you took to ensure that classrooms in which
 13 special education students learned or were taught,
 14 whatever you want to use, attended school -- that those
 15 classrooms were in good condition.
 16 MS. DAVIS: Same objection.
 17 THE WITNESS: When Will Grossbach first contacted
 18 me and said they had a need, I studied what was
 19 necessary under the State program, and I went out and
 20 investigated the facilities that existed in order to
 21 make a competent attempt to provide existing facilities,
 22 because that was part of the benchmarking that you did.
 23 So I did look at facilities that the County operated.
 24 MR. ELIASBERG: Can you read back that answer.
 25 (Record read.)

1 BY MR. ELIASBERG:
 2 Q Tell me what you mean by an attempt to -- maybe
 3 I'm going to get this wrong, but an attempt to have
 4 competent existing facilities? Is that what you said?
 5 MS. DAVIS: I don't believe that's what he said,
 6 but if you understand the question.
 7 THE WITNESS: Yeah, I believe I understand the
 8 question.
 9 MS. DAVIS: Okay.
 10 THE WITNESS: County office had programs in
 11 different locations. We were going to build the school
 12 to bring them all under one roof.
 13 BY MR. ELIASBERG:
 14 Q All right. And what did you do to ensure that
 15 that one roof -- and I assume by one roof you mean --
 16 A A school.
 17 Q -- a building, one school -- was in good
 18 condition?
 19 A I was involved in the design, the construction,
 20 the furnishing and, for a period of time, the operation
 21 of that school.
 22 Q And did you think it was important that the
 23 school for these students be in good condition?
 24 A Yes.
 25 Q And why is that?

1 A Because I believe students need to be in safe
 2 and appropriate adequate facilities.
 3 Q What do you mean by -- can you give me some --
 4 a little bit of guidance as to what you mean by an
 5 appropriate facility?
 6 A Students that have physical disabilities or
 7 students that are multiply handicapped have need for
 8 other services besides direct educational services. The
 9 State program at the time -- and still -- allows for
 10 those to be created as part of a new construction
 11 program. They include what are known as medical therapy
 12 units that are staffed by orthopedically -- or
 13 orthopedic -- what do you call -- OTR, orthopedic --
 14 registered orthopedic therapists and occupational
 15 therapists. And they do a variety of kinds of therapy
 16 on students, and sometimes they need a good deal of
 17 space because of equipment.
 18 So those were part of the -- of what the school
 19 became. We planned that into the school.
 20 Q Anything else that, in your opinion,
 21 constitutes an appropriate facility for special
 22 education students?
 23 MS. DAVIS: Vague and ambiguous.
 24 THE WITNESS: Space because of gurneys that --
 25 wheelchairs and parking areas for buses, because the

1 buses that bring these students in take up a good deal
 2 of space around them, because they have lifts on them.
 3 What a standard classroom would have, in terms of case
 4 work for storage, lighting, both carpeting and also tile
 5 because of different activities that you conduct for
 6 such students on the floor. Floor's an important part
 7 of the special ed program. Operations.
 8 BY MR. ELIASBERG:
 9 Q What do you mean by operations?
 10 A If you operate a special education program, if
 11 you're the teacher, you get students off gurneys onto
 12 the floor. You get them out of wheelchairs. You have
 13 spaces for them to, basically, move back and forth in a
 14 classroom in a walker. So that's operating a special
 15 education classroom.
 16 Q I believe you earlier said that it was -- that
 17 you believed it was important for students to have safe
 18 and appropriate facilities.
 19 What'd you mean by safe facilities?
 20 A Well, "safe" is a term that includes the
 21 physical plant, so that -- you were asking about special
 22 education. Door sills and getting over door sills was a
 23 safety issue if you got a student that's in a walker.
 24 So you may look at that detail.
 25 Safety also involves easy transition from

1 carpet to tile. Because of the same kind of a problem,
2 you know, when you have wheeled vehicles that students
3 use, like walkers and wheelchairs, the like.

4 Q Were there other safety issues that you felt
5 were important be addressed in these schools that
6 weren't necessarily peculiar to special -- particularly
7 directed at special education students?

8 A The access to the school, coming in off a
9 street, that there be good visibility for either cars
10 coming in the drive or buses coming in the drive; that
11 the angle of the drive, if it's in a sloped area, be
12 something that would be safe and, if somebody has to go
13 up it in a wheelchair, provides some kind of
14 accessibility. Again, transition points, so that you
15 have curb cuts and markings on curbs to identify where
16 to park and where not to park.

17 Q Do you think it would -- do you consider it an
18 aspect of having a safe facility that the school have
19 adequate ventilation?

20 MS. DAVIS: Vague and ambiguous.

21 THE WITNESS: Air quality in the school's
22 important, yes.

23 BY MR. ELIASBERG:

24 Q Why is it important?

25 A Because we breathe air, and there can be dust,

1 of air quality, yes.

2 BY MR. ELIASBERG:

3 Q What do you mean issues of air quality?

4 A If you have rooms, such as the room that we're
5 in, we need to have air moving through to bring in
6 oxygen and take out what we exhaust, basically, from our
7 lungs, make sure that there's circulation, so that the
8 air quality of the room needs to be changed from time to
9 time. And I guess that happens over the course of an
10 hour or several hours in a day.

11 Q And do you know what might happen or can
12 happen if you don't have that?

13 A You get stale air, and I guess, if you have
14 moisture, you may have a buildup of spores or microbes
15 or something else that may not be good if it continues
16 to build up.

17 Q And what do you mean by it may not be good?

18 A It would -- it would contribute to poor air
19 quality in the room, and the room may begin to have an
20 odor in it.

21 Q Any other consequences besides having an odor?

22 MS. DAVIS: Vague and ambiguous.

23 THE WITNESS: Well, at least in one area that
24 became noteworthy, a modular classroom building -- it's
25 either in Saugus or Castaic, caused people to become

1 there could be microbes, other things that are in the
2 air. So air conditioning -- an air conditioning system,
3 if it exists, should be a maintained system to make sure
4 that the air's good air.

5 Q Do you have an understanding of what -- whether
6 there could be any consequences if the air conditioning
7 system is not well maintained?

8 MS. DAVIS: Vague and ambiguous.

9 THE WITNESS: I can't give you any technical answer.

10 BY MR. ELIASBERG:

11 Q How about a non-technical answer?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: What I know is that moving air within
14 a classroom requires either a mechanical system or
15 requires to have windows that you can open to allow
16 fresh air to come in and go out, and so those systems
17 should exist at -- either an operational air
18 conditioning system and heating system or something as
19 basic as having windows that open.

20 BY MR. ELIASBERG:

21 Q Do you have an understanding of what -- whether
22 there could be any consequences if you don't have an
23 operational ventilation system or windows that open?

24 MS. DAVIS: Vague and ambiguous.

25 THE WITNESS: I understand that there may be issues

1 ill.

2 BY MR. ELIASBERG:

3 Q Do you know what kind of illness that --

4 A I don't.

5 Q What's the basis for your knowledge that a
6 modular classroom caused people to become ill?

7 A It was in the newspaper.

8 Q And is it your understanding that the reason
9 that classroom caused people to become ill because the
10 indoor air quality -- or because the ventilation didn't
11 function properly?

12 A It either didn't function properly or somebody
13 was turning it off.

14 Q Are there any other aspects of -- well, I'm
15 going to go back to your particular use of the word.
16 You said it was important that students have safe and
17 appropriate facilities.

18 Anything else that you think is an important
19 component of a safe facility?

20 MS. DAVIS: Vague and ambiguous.

21 THE WITNESS: It is a wide open question. The
22 control of an access point to a school through a gate
23 certainly lends to safety, that the paths from across
24 the street from a school that would involve crosswalks,
25 something that contribute to safety, and the location of

1 the crosswalks and the gates to the school are something
2 that you want to make sure you coordinate, coordination
3 between a couple of different agencies, typically.

4 In specialty classrooms, where you may have
5 glass beakers or you may have tubes of gas, you want to
6 make sure that those are dealt with, and that's not
7 necessarily a physical issue of what you construct but
8 how a classroom is operated. And those are important
9 issues to consider, in terms of the safety of a
10 classroom. So in a science classroom, proper storage of
11 beakers and the like, making sure you deal with chemical
12 substances in an appropriate way, is important.

13 BY MR. ELIASBERG:

14 Q Would you consider having a roof that doesn't
15 leak to be an aspect of having a safe school?

16 MS. DAVIS: Vague and ambiguous.

17 THE WITNESS: I don't think a leaky roof is
18 necessarily an unsafe school condition, no.

19 BY MR. ELIASBERG:

20 Q You think a leaky roof can cause accidents if
21 water remains on -- drops on and remains on the floor?

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

24 THE WITNESS: Well, I can speculate that somebody
25 could certainly slip, but slip and falls can happen for

1 Superintendent of Schools?

2 A I was pulled into the office full-time. So I
3 left the classroom where I had been teaching, and then I
4 was also doing work at the County office and assisting
5 districts, and I became a full-time coordinator at the
6 County office and I wasn't teaching any longer.

7 Q Why did you give up teaching?

8 A It wasn't a matter of giving up teaching. I
9 was asked to take on other responsibilities. Will
10 Grossbach became ill. So there was more work to do.
11 And they said, can you do it? And I did.

12 Q Did you consider saying, no, I'd -- in sum or
13 substance, I really don't want to give up my teaching
14 responsibilities and do this full time?

15 A No.

16 Q How did you come to leave the Ventura County
17 Superintendent of Schools Office to go to become the
18 assistant superintendent of business services at
19 Moorpark?

20 A I don't know if there was anything specific,
21 but I was asked if I would meet the superintendent at
22 the district and that they had need of an assistant for
23 business. And I eventually met that person and had a
24 lengthy discussion and then, you know, a follow-up
25 discussion. Then I was asked if I would interview with

1 a variety of reasons.

2 BY MR. ELIASBERG:

3 Q Is one of those reasons water being on the
4 floor?

5 MS. DAVIS: Same objections.

6 THE WITNESS: Of course, water on the floor can
7 cause somebody to slip.

8 BY MR. ELIASBERG:

9 Q Do you consider having windows that aren't
10 broken to be an aspect of having a safe school?

11 MS. DAVIS: Vague and ambiguous.

12 THE WITNESS: Are you asking if having windows that
13 are intact contribute to a safe school?

14 BY MR. ELIASBERG:

15 Q Yeah.

16 A For security reasons during a weekend -- it's a
17 security issue. A broken window could contribute to an
18 unsafe condition if somebody doesn't keep students from
19 getting there until it's repaired.

20 Q Your resume states that from 1983 to 1985 you
21 were the coordinator of school facilities for the
22 Ventura County Superintendent of Schools Office.

23 Did that position -- or how did that position
24 vary in its responsibilities from the responsibilities
25 you described as a facilities consultant for the County

1 the board, and I did, and they offered me the job.

2 Q Who was the superintendent who contacted you?

3 A Michael Slater.

4 Q What were your responsibilities as the
5 assistant superintendent for business services in
6 Moorpark?

7 A I was responsible for all the business
8 functions of the district.

9 Q Can you explain for me what the business
10 functions of the district were?

11 A I was responsible for the general fund budget
12 and other budgets, for monitoring those budgets, for
13 expenditures, for signing off on purchases. I was
14 responsible for overseeing the personnel in the business
15 office, in the maintenance and operations and also in
16 transportation.

17 I was responsible for attending board meetings
18 and presenting items to the board, making
19 recommendations to the superintendent, who made
20 recommendations to the board. I was responsible for
21 negotiations with developers, applying for State funds
22 for school facilities, for interfacing with the City and
23 the County. I was responsible for food services and the
24 personnel aspects of all of those different
25 responsibilities.

1 Q Sounds like a 20-hour-a-week job.
 2 A No.
 3 Q You said you were responsible for maintenance,
 4 operations and transportation.
 5 What do you mean by maintenance?
 6 A Maintenance encompasses everyday work in school
 7 buildings or in the district office buildings and school
 8 plants, basically playgrounds and buildings that are --
 9 not building, but structures, appurtenances outside of
 10 buildings that are grounds and making sure that they're
 11 in good repair.
 12 Q And what is operations?
 13 A Operations means the operation of the custodial
 14 and other ongoing work at schools, how the schools
 15 operate every day, weekly.
 16 Q So am I correct in understanding that you would
 17 consider a part of operations -- or a janitorial
 18 cleaning of the schools considered part of the
 19 operations?
 20 A Yes.
 21 Q And how about, let's say, the cleaning of the
 22 filters in an HVAC system? Would that be considered
 23 operations or maintenance?
 24 MS. DAVIS: Vague and ambiguous.
 25 THE WITNESS: The way that I saw things and the way

1 that we functioned there, it was part of maintenance.
 2 Although it was an ongoing operational thing,
 3 maintenance personnel were identified to be responsible
 4 for air conditioning systems.
 5 BY MR. ELIASBERG:
 6 Q All right. And let's say patching a roof.
 7 Would that be considered maintenance as opposed
 8 to operations?
 9 A Yes.
 10 Q You earlier mentioned that you had
 11 responsibility for the general fund budget; is that
 12 correct?
 13 A Yes.
 14 Q Are maintenance functions paid for out of the
 15 general operations budget?
 16 MS. DAVIS: Are you talking about his job?
 17 MR. ELIASBERG: Yeah, I'm talking about at
 18 Moorpark.
 19 MS. DAVIS: Okay. When he was assistant --
 20 MR. ELIASBERG: Yes.
 21 THE WITNESS: The answer's partially.
 22 BY MR. ELIASBERG:
 23 Q Okay. What part is paid out of the general
 24 fund budget?
 25 A The general fund budget -- I'm talking about

1 the budgets that I was responsible for. I don't know
 2 what time frame we're talking about here, but the
 3 general fund budgets provided contribution to what's
 4 known as the deferred maintenance fund, which is a
 5 separate fund than the general fund. The general fund
 6 budgets also have ongoing maintenance cost plan and then
 7 expended through the general fund.
 8 Q What's the difference between deferred
 9 maintenance and ongoing maintenance?
 10 A There probably isn't a very good solid answer,
 11 depending upon who you're talking to, but deferred
 12 maintenance is typically considered to mean large or
 13 major maintenance issues that have been defined in law
 14 and regulation to include systems like roofing systems,
 15 HVAC systems, other larger expenditures that may take
 16 place at particular points in time rather than be
 17 ongoing.
 18 Q Would I be correct in assuming that the
 19 cleaning of the filters of an HVAC system would be
 20 considered ongoing maintenance?
 21 A Yes.
 22 Q But putting a new motor or doing a major haul
 23 of the motor that drives the HVAC system would be
 24 considered deferred maintenance?
 25 MS. DAVIS: Vague and ambiguous.

1 THE WITNESS: It could be deferred maintenance.
 2 BY MR. ELIASBERG:
 3 Q Well, help me out, then. If you could give me
 4 an example of -- a couple examples of what would be
 5 deferred maintenance items as opposed to ongoing
 6 maintenance items.
 7 A Deferred maintenance is a State program that
 8 has a requirement that a district identify projects and
 9 anticipate expenditure of funds on projects into the
 10 future for five years. The district has the ability to
 11 change those projects as it sees fit, and if there were
 12 units, such as you described, that would burn out, the
 13 district could use -- depending upon the circumstances
 14 and somebody's judgment, they could use deferred
 15 maintenance on replacement of air conditioning systems.
 16 Or they could say, we have one unit here that
 17 was broken down. We can spend operational dollars on
 18 that, even if it's in the deferred maintenance five-year
 19 plan, and three years out they can choose to do that.
 20 That's where I say that there's some overlap.
 21 Q So -- correct me if I'm wrong. My
 22 understanding is that the fact that a certain
 23 expenditure might be eligible, the State says this --
 24 you could use deferred maintenance money for this
 25 doesn't preclude a district from using ongoing

1 maintenance or general fund money for that same work?

2 A Yes. What the district would be careful to be
3 conscious of is that if they're having their own
4 maintenance workers do that, that it's not something
5 that would put them into a situation where they may be
6 challenged by avoiding a bidding law, where someone from
7 an organized union or business agent could say, you
8 haven't put that out to bid. What are you doing, you
9 know, doing this work. That really is something that is
10 larger. It's not just the day-to-day or the ongoing.

11 So that's where I say some judgment sometimes
12 is involved.

13 Q If the district does put the work out for bid,
14 does that -- are they then required to pay for it out of
15 deferred maintenance funds as opposed to their general
16 fund?

17 A No, they could use their general fund.

18 Q Now, are operations paid for out of the general
19 fund?

20 A The operations such as we were describing, yes.

21 Q Yes.

22 And what is the source -- the money that's in a
23 district's general fund budget? Or sources.

24 A The sources are the State per-pupil allocation
25 and the local property tax that comes to the school

1 school. There was also a continuation high school
2 program, a small.

3 Q What's a continuation high school?

4 A It's an alternative education program for
5 students who may have difficulty attending a regular
6 high school program for a variety of reasons. So it's a
7 smaller program, usually less formal.

8 Q Did that continuation high school program have
9 its own dedicated facility, or did it operate out of one
10 of the four facilities that you previously described?

11 A It was in an area between -- it was basically
12 adjacent to the school district office, which was at one
13 end of an elementary campus.

14 Q So -- and I'm not trying to correct what you
15 previously said before, but is it really more accurate
16 to say that there were five schools, if you include the
17 continuation school, or do you still feel like really
18 there were four schools in Moorpark at the time you
19 started?

20 A Well, we thought that there were four school
21 plants. As I said, the district office was at a -- at
22 one end of an older campus, and the continuation high
23 school was in a couple of modular buildings that were
24 really adjacent to the bus barn and the district office.

25 Q So you basically treated the continuation high

1 district that's included in what is referred to as the
2 revenue limit for the district. So it's a per-pupil
3 funding made up of State and local resources.

4 Q Are moneys -- or can a district take moneys
5 that it gets from the State under either the -- for
6 either modernization or new construction and place that
7 in the general fund?

8 A No.

9 Q When you started at -- as assistant
10 superintendent for business services at Moorpark,
11 approximately how many students were there in the
12 district? And that's not a memory test. I just want to
13 get a general sense of the size of the district.

14 A 23, 24, maybe, hundred.

15 Q And to the best of your recollection, how many
16 schools were there in the district?

17 A There were four.

18 Q And how were those schools divided, in terms of
19 elementary school or high school or some combination
20 thereof?

21 A There was a school that served students in
22 kindergarten, first and second grade. There was a
23 school that served students in third, fourth and fifth
24 grade. There was a school that served students in
25 sixth, seventh and eighth grade, and there was a high

1 school as part of the plant that was the district office?

2 A Yes.

3 Q When you started as the assistant
4 superintendent, what was the condition of the "K"
5 through two school?

6 MS. DAVIS: Vague and ambiguous.

7 THE WITNESS: Can you tell me what you mean by
8 condition?

9 BY MR. ELIASBERG:

10 Q Specifically, the facility. I don't mean the
11 morale or the, you know, the teacher population or
12 anything.

13 I mean specifically how -- the building or
14 buildings that made up that school, what was the shape
15 of those buildings?

16 A Good.

17 Q Is it your opinion they'd been well maintained,
18 as --

19 A Yes.

20 Q -- far as you could tell?

21 A Yes.

22 Q Were the roofs sound?

23 A Yes.

24 Q A lot of broken windows?

25 A No.

1 Q AC system -- well, the ventilation system
 2 functioning properly, if there was a ventilation
 3 system?
 4 MS. DAVIS: Vague and ambiguous.
 5 THE WITNESS: There was a ventilation system, and
 6 it was functioning.
 7 BY MR. ELIASBERG:
 8 Q Did it -- was it an air conditioning system or
 9 just a system that circulated air?
 10 A An air conditioning system.
 11 Q Did the school have working heat?
 12 A Yes.
 13 Q And how about the -- were there enough
 14 toilets? And by toilets I mean urinals, the other thing
 15 that one sits on -- so enough toilets for the student in
 16 the school?
 17 MS. DAVIS: Vague and ambiguous.
 18 THE WITNESS: I don't know what you mean by
 19 enough.
 20 BY MR. ELIASBERG:
 21 Q Did you ever get any reports that there were
 22 long lines or complaints that kids tried to go to the
 23 bathroom and they couldn't find a bathroom?
 24 A No.
 25 Q How about the three through five school? What

1 Q When you say "we," you did that, actually,
 2 during the time that --
 3 A Yes.
 4 Q -- you were the assistant superintendent,
 5 rather than the time prior to the time you became
 6 assistant superintendent?
 7 A It may have been there before I arrived,
 8 actually. We did some other toilet work while I was
 9 there, but that one may have been there when I arrived.
 10 Q Do you think it's important that, as a school
 11 grows in size, that the district or whoever's running
 12 the plant ensures that there are sufficient number of
 13 toilets for the students at school?
 14 MS. DAVIS: Vague and ambiguous.
 15 THE WITNESS: If the question is, is it important
 16 that you have enough toilets at the school to allow for
 17 students to be able to use restroom facilities, the
 18 answer is yes.
 19 BY MR. ELIASBERG:
 20 Q And why is that?
 21 A So the students can go to the bathroom.
 22 Q And why is it important that they go to the
 23 bathroom?
 24 A The same reason I'm going to ask for a break in
 25 a minute.

1 was the condition of that school?
 2 A It was good.
 3 Q You felt it was well maintained?
 4 A Yes.
 5 Q Were the roofs sound?
 6 A Yes.
 7 Q Not a significant number of broken windows?
 8 A No.
 9 Q Did it have a ventilation system?
 10 A Some buildings did, some did not.
 11 Q And the ones that did, were the -- did the
 12 ventilation system appear to be working properly?
 13 MS. DAVIS: Vague and ambiguous.
 14 THE WITNESS: In the ones that I recall having
 15 ventilation system, they were working properly.
 16 BY MR. ELIASBERG:
 17 Q Did it have working heat?
 18 A Yes.
 19 Q How about the -- same thing, the issue -- did
 20 you receive -- hear complaints at any time that you were
 21 working there that there weren't enough toilets or
 22 students had a hard time finding a toilet?
 23 A No. We had actually brought a modular toilet
 24 facility onto the campus to accommodate the student
 25 growth that was being experienced.

1 Q Fair enough.
 2 During the time that you were assistant
 3 superintendent, did any of the populations of the
 4 schools grow, such that you had to put in -- you either
 5 bring in modular facilities or expand the bathroom
 6 facilities at the school?
 7 A Yes.
 8 Q The six through eight school, grades six
 9 through eight, I believe you said.
 10 When you arrived, was that facility in good
 11 condition?
 12 A Yes.
 13 Q Did it appear to you that it had been well
 14 maintained through the years?
 15 A Yes.
 16 Q Were the roofs sound?
 17 A Yes.
 18 Q Were there a lot of broken windows in the
 19 school?
 20 A No.
 21 Q Did it have a ventilation system?
 22 A I think there were two buildings that had
 23 ventilation systems.
 24 Q Two buildings at that school, so --
 25 A Yes.

1 Q The buildings that had ventilation systems,
2 were they working properly?
3 MS. DAVIS: Vague and ambiguous.
4 THE WITNESS: I don't recall any problems with the
5 ventilation systems in those buildings.
6 BY MR. ELIASBERG:
7 Q Did the buildings at that school, the sixth
8 through eighth grade school, have working heating?
9 A Yes.
10 Q And how about the high school? Was the high
11 school in good condition?
12 A No.
13 MS. DAVIS: Vague and ambiguous.
14 BY MR. ELIASBERG:
15 Q What about the school -- why do you say that it
16 wasn't in good condition?
17 A There were a number of issues at the high
18 school. It was built on sloped ground, so it had access
19 compliance issues that concerned me. There was a --
20 adjacent to the office -- across from the office there
21 was a building that was no longer acceptable for student
22 use. That was determined before I arrived there. It
23 was referred to as the shop building. It was being used
24 to keep equipment in. It was, like, grounds equipment.
25 The cafeteria was rather small. And some of

1 the classrooms, because of the difference in grades,
2 were distant from the regular part of the campus.
3 Q Anything else that caused you to say that that
4 school was -- that the high school was not in good
5 condition?
6 A From the experience that I had, I just had
7 concerns about the integrity of the school.
8 Q What do you mean by concerns about the
9 integrity of the school?
10 A It was old, and some things appeared to have
11 been taken care of and some things not with regard to
12 buildings.
13 Q What things appeared not to have been taken
14 care of?
15 A Well, as I was talking about the disparity in
16 classrooms. So classrooms were at one level, but as
17 growth took place, they were placed at a different
18 level. Talking about grade differences in the school.
19 Some of it looked in good repair. Some of the building
20 didn't look in good repair.
21 Q What do you mean by good repair?
22 A Paint at the back of the science wing -- which,
23 if you walked out the back door and you walked more than
24 ten feet, you'd fall down a slope. There was a pond
25 that had been created, I assume, to grow frogs or fish

1 or something, and looked like it was something that
2 didn't look healthy to me.
3 Q I'm sorry, I think I may not have fully
4 caught -- the pond didn't look healthy or the paint?
5 A The pond. The pond.
6 Q Did you also suggest that there was a problem
7 with the paint?
8 A There was -- what I'm recalling is that there
9 were some areas of the campus that didn't appear to have
10 been maintained with regard to painting.
11 Q Okay. Anything else that you remember not
12 being in good repair? And I understand we're going back
13 a while. I'm just trying to get a sense of what you
14 remember now as not being in good repair.
15 A Some of the parking areas. Some portions of
16 the parking areas.
17 Q What was the problem with the parking areas?
18 A Bumps. You could see something had grown
19 underneath, roots or something, that caused asphalt to
20 pop up.
21 Q Any of the roofs leak?
22 A I don't recall specifically that there were
23 roof leak problems.
24 Q Do you remember if the school had -- or the
25 buildings in the school had HVAC units?

1 A The modular buildings, the newer buildings in
2 the campus did.
3 Q How many -- I think the phrase is how many
4 non-modular or how many stick-built buildings were there
5 on the campus?
6 A The number of the buildings?
7 Q Yeah. Not counting the modulars, just the
8 permanent structures.
9 MS. DAVIS: We're on the high school still?
10 MR. ELIASBERG: Yeah. All these questions refer to
11 the high school.
12 THE WITNESS: Maybe seven.
13 BY MR. ELIASBERG:
14 Q And to the best of your recollection, none of
15 those had HVAC units?
16 A No.
17 Q Okay. Did those buildings have working heat?
18 A I believe so. I don't recall an issue with
19 heat.
20 Q Any other maintenance issues that you remember
21 with respect to any of the -- besides the ones you've
22 already listed that you remember with respect to the
23 school that led you to tell me that you didn't feel it
24 was in good condition when you started at the district?
25 A No.

1 Q Okay. You talked about a building that was at
2 that time being used for storage, and I believe you said
3 it was no longer acceptable for student use.
4 Remember that?
5 Why wasn't it acceptable for student use?
6 A What I was told is that there was a structural
7 issue with the building.
8 Q Do you remember what that structural issue was?
9 A That it had been determined by someone -- and I
10 don't know who, but it appeared to be an authority, like
11 a structural engineer or DSA, that the building
12 shouldn't be used for student occupation.
13 Q Do you have any more memory of what the
14 particular structural issue was?
15 A It looked pretty horrible, actually.
16 Q In what way did it look horrible?
17 A It looked old and kind of dry and not
18 maintained.
19 Q I believe you also talked about the school
20 being built on a slope, which raised access compliance
21 issues.
22 By access compliance issues, what do you mean?
23 A School was quite old. It had been built at the
24 top of the slope and then had been expanded down
25 slopes. And so paths, paved paths or stairs, were

1 created to allow people to go up and down these slopes.
2 That school wouldn't have been able to have
3 been built at the time that I walked onto the campus for
4 the first time, because the access issues were not legal
5 access issues.
6 Q And by access issues, are you talking about
7 access for disabled persons?
8 A Access for disabled persons.
9 Q Did you -- during the time that you were
10 assistant superintendent, did you take any steps to
11 address the issues that you laid out for me that made
12 you to conclude -- led you to conclude that the building
13 was not -- that the school -- high school was not in
14 good condition?
15 A Yes.
16 MS. DAVIS: Vague and ambiguous.
17 THE WITNESS: Yes.
18 BY MR. ELIASBERG:
19 Q What steps did you take?
20 A Could you ask the question one more time?
21 Q Sure. Well, I'll ask both questions, just sort
22 of -- they go right together.
23 My first question was: Did you take any steps
24 to address the things that you've laid out for me that
25 led you to conclude that the school was not in good

1 condition?
2 MS. DAVIS: Same objection.
3 THE WITNESS: Are you asking me did I take steps
4 to address issues that I identified?
5 BY MR. ELIASBERG:
6 Q Yes.
7 A I did.
8 Q What steps did you take?
9 A Well, what I recall is that there were
10 several. Began to plan for a modernization of the
11 school. Although that had been initiated, it hadn't
12 gone very far. We did some restructuring in one
13 building. I believe we brought a container onto the
14 campus in order to create an area for storage, because
15 there were a number of things that the teachers valued,
16 but there wasn't space for them.
17 I began talking with the principal and the
18 faculty about addressing issues on the campus, making
19 sure that they understood that we were trying to address
20 them. We eventually made a number of changes on the
21 campus, did do some modernization, but eventually, I
22 replaced that school, in, actually, a short space of
23 time, and built a new high school.
24 Q When you started your job as assistant
25 superintendent, when did you -- I mean, how long after

1 you started do you remember actually going to visit the
2 campuses to evaluate their -- the schools to evaluate
3 their condition?
4 A It was right away.
5 Q And did you consider that a priority, figuring
6 out the condition of the schools?
7 MS. DAVIS: Vague and ambiguous.
8 BY MR. ELIASBERG:
9 Q The school facilities, let me focus on that.
10 A In the assessments I made, we were looking at a
11 tremendous amount of growth. I made assessments and
12 started working -- seemed like it was the first week --
13 to begin to address what we considered to be some pretty
14 fundamental changes that were going to be happening in
15 the school district.
16 Q And what do you mean by pretty fundamental
17 changes that were going to be happening?
18 A We had about 23-, 2400 students, and we were
19 looking at one development alone that had, if I remember
20 correctly -- I don't know, 2500 homes. It was some big
21 number. That was one development, one proposed
22 development. And there were others. So that district
23 needed a change.
24 Q With respect to the -- specifically, with
25 respect to the high school, you said you -- that the

1 modernization had started but had not gone very --
 2 A No, the plan for the modernization had started.
 3 Q Did you take steps to move the modernization
 4 beyond the planning stage, actually getting the work?
 5 A Yes.
 6 Q Did you consider that to be a priority?
 7 A Yes.
 8 Q Why was that?
 9 A Because I believed that we needed to bring
 10 about changes at the high school, to make sure that we
 11 could deal with the explosion of growth and taking care
 12 of issues, because it was important to address them.
 13 Q And why was it important to address them?
 14 Let's separate out growth and other issues.
 15 Why was it important to address issues that
 16 didn't have to do with -- well, let me ask you this.
 17 Did you address issues at the high school that
 18 weren't particularly aimed -- or did you take steps that
 19 weren't particularly aimed at addressing an influx of
 20 students?
 21 MS. DAVIS: Vague and ambiguous.
 22 THE WITNESS: Yes. I already mentioned that we did
 23 some restructuring of at least one classroom building,
 24 tried to make sure we cleared some classroom buildings
 25 out because of storage, dealt with -- this high school

1 had an access point off of a road that ended, basically,
 2 at the school, but the school did have an adjacency to a
 3 state highway, and the exiting of buses from the school
 4 onto the highway was a concern, and we looked at trying
 5 to restructure that and that exit point. This was kind
 6 of a tight campus. So that was something that occupied
 7 some of my time, which was a safety issue.
 8 BY MR. ELIASBERG:
 9 Q Did you paint any portion -- I don't mean
 10 literally you, with a paint brush, but did you arrange
 11 to have painted any portion of the school?
 12 A Yes.
 13 Q Why did you do that?
 14 A Because it needed painting.
 15 Q And do you think it's important for a school to
 16 have paint that's in good condition?
 17 MS. DAVIS: Vague and ambiguous.
 18 THE WITNESS: Yeah.
 19 BY MR. ELIASBERG:
 20 Q And why is that?
 21 A Well, I believe it's important that schools
 22 look as nice as they can look, and paint does protect
 23 the undersurfaces, weathering and, you know, the sun and
 24 rain and all. It's important to try to address those
 25 kinds of issues.

1 Q And why is it important to you that schools
 2 look as good as they can look?
 3 A Well, I don't know if there's really one answer
 4 to it, but schools are places that students occupy a
 5 good deal of time of their life, and they need to
 6 recognize, when they're walking up to the school or
 7 being driven up to the school, that it's an inviting
 8 place.
 9 Q And why do you think they need to recognize
 10 that?
 11 A So they want to go there.
 12 Q And do you think that if schools are not --
 13 don't look as good as they can look, that that has an
 14 effect on students?
 15 MS. DAVIS: Vague and ambiguous.
 16 THE WITNESS: I don't know the effect that it may
 17 have on students. And maybe it's a personal belief or
 18 personal perception. But having worked at some schools
 19 that were older schools, if I want them to look nice
 20 because I work there, I would think students would want
 21 them to look nice because they go there. And it may
 22 provide them a sense that it -- if it looks good, then
 23 it's a good place to be and a good place to learn.
 24 BY MR. ELIASBERG:
 25 Q Do you think that having a school that looks as

1 good as it can look -- I'm just using your phrase -- is
 2 important to teachers?
 3 A Oh, I think it's important to teachers, sure.
 4 Q And why is that?
 5 A Well, the same reason that I said that, when I
 6 walked up to the school that I was working at, I'm sure
 7 that I would recognize that somebody cared if I'm
 8 walking in and it's taken care of.
 9 Q And why was that important to you to feel like
 10 somebody cared?
 11 A Well, if somebody cares about buildings, then
 12 they're going to care about the people that are inside
 13 of the buildings. Again, maybe it's a personal belief,
 14 but I think that that's true.
 15 Q Did any -- in any of the time that you've --
 16 actually, really, you actually have a very long career
 17 in education.
 18 At any of the time that you've worked in the
 19 offices that you've worked in, have any of the teachers
 20 expressed to you a similar feeling about the importance
 21 of the condition of school buildings?
 22 MS. DAVIS: Vague and ambiguous.
 23 THE WITNESS: Well, I can recall two differing
 24 statements that I've heard. And one is similar to what
 25 I've said. The other is that buildings aren't as

1 important as other things for the expenditure of funds.
2 And so let's not worry about buildings and let's not
3 worry about facilities, let's spend money on other
4 things.

5 And I heard that before I became a
6 superintendent, but I certainly heard that as an
7 assistant superintendent and as a superintendent.

8 BY MR. ELIASBERG:

9 Q And do you -- were they specific, or did you
10 have an understanding of what these people meant by
11 other things?

12 A Yes. Teacher salaries.

13 Q And do you agree with that opinion --

14 A No.

15 Q -- expressed to you?

16 A No. I think there needs to be a balance.

17 Q And why don't you agree?

18 A I believe that, even if you have an older
19 school and you're in charge -- as I was in charge --
20 that I needed to do whatever I could do to make sure
21 that at least some resources at the district were spent
22 on that school, say the high school that I was talking
23 about.

24 But that wasn't necessarily believed by
25 everyone that I had to work with, including members of

1 A Well, there's, I think, a myriad of answers to
2 that. One of them we were talking about, access
3 compliance. We didn't deal with any lawsuit or
4 liability over that, but that's because we recognized
5 that that could occur and said this is important and
6 we'll deal with access issues.

7 The same thing with something that can
8 contribute to slip and falls. You know, those things do
9 happen. We have a lot of people going into a
10 multi-purpose room or whatever. So if you've got an old
11 facility with some problem with the door or sill, you
12 try to take care of that so that you avoid that kind of
13 liability down the road.

14 And then the simple maintenance of a system.
15 Spend money on a system that appears to -- you know, if
16 it's a roofing system -- you were talking about leaks.
17 If you can go in and take care of it, whether it's
18 through a patching or a repair or planning a full-on
19 roofing, then those are important things. Because if
20 you take care of them now, they're not going to be as
21 expensive as later on. So a myriad of answers to that,
22 I think.

23 I need a break.

24 Q You got it. Please.

25 MS. DAVIS: Me too.

1 the board of education, people who wanted to become
2 members of the board of education, including bargaining
3 unit representatives and just teachers that weren't
4 necessarily on the bargaining team.

5 Q I appreciate that your opinion wasn't
6 necessarily shared by everyone, but I guess what I'm
7 trying to understand is why you felt that it was
8 important that money had to be spent on schools,
9 including the high school that you were talking about.

10 A Well, I used to preach something. I would say,
11 pay me now or pay me later.

12 Have you ever seen the commercial?

13 Q Frahm oil filters.

14 A Yes.

15 So I would say, if I can spend money today in
16 order to avoid the expenditure of money tomorrow, then
17 I'm a prudent manager of resources. Although I may not
18 be able to spend all that I'd like to spend because I
19 have to balance those expenditures and deal with
20 competing interests for those dollars.

21 Q And how is it that spending money now -- and
22 I'm not talking about in a car maintenance/oil filters
23 sense but in the school facilities area.

24 How is it that spending money now can save you
25 money later?

1 MR. ELIASBERG: Any time you feel you need a break,
2 take one.

3 (Brief recess taken.)

4 BY MR. ELIASBERG:

5 Q I want to follow up on a couple things you said
6 before the break.

7 I think you said that -- and this is in the
8 context of the high school that we've been talking
9 about. I think you said you talked with the principal
10 and teachers about addressing issues on campus.

11 Did either the principal or the teachers say
12 that -- tell you that there were issues that they were
13 concerned about that you weren't aware of from just your
14 inspection of the facility?

15 A The only thing I can recall is crowding.

16 Q And what kind of concerns did they express
17 about crowding?

18 A Well, the district had added, as I noted
19 before, some modular facilities onto the campus, and
20 there were, I guess, reports in the newspaper and common
21 discussions of growth, and so they'd already added onto
22 what was a multi-level campus that I would consider to
23 be -- have been too small in the beginning, and so they
24 were talking about, well, where do we go from here.
25 Because of new students coming in.

1 And also, I guess, changes in some of the
2 classrooms that were there. They said we didn't modify
3 a classroom building, at least one -- actually, maybe a
4 modification in another classroom in another building,
5 based upon teacher requests.

6 Q So just so I understand, were they expressing
7 concern about the possibility that there would be
8 overcrowding in the future, or were they also saying
9 that they were concerned that they were overcrowded at
10 the time?

11 A I think the question was, what do we do --
12 because certain steps have already been taken, so where
13 do we go? And there were issues about just the facility
14 there and doing some improvements to assist with the
15 instructional programs.

16 So one of the things I'm recalling is we made
17 changes in the business -- I don't know if it was the
18 business wing, but business classroom offices, to
19 accommodate computers and races for cabling, so the
20 students wouldn't be tripping over those. Tried to
21 bring about a change without any modernization moneys
22 and just trying to solve that problem. This is
23 pre-modernization.

24 Q Do you remember the teachers or the principal
25 expressing any other concerns about how classrooms --

1 the way they were set up or the equipment they had might
2 be interfering with the construction that they were
3 trying to accomplish?

4 A Well, that's what -- I think what we ended up
5 doing in the business wing. So that cabling -- such as,
6 you know, you've got a cable here; somebody could
7 trip -- on trying to funnel those down to a middle
8 raceway -- they have desks on the side -- in a building
9 that was built in 1938. So we effectively made a
10 positive change there.

11 Q I didn't mean to make you repeat that.

12 A Okay.

13 Q Were there any other problems the teachers or
14 the principal told you about how they felt the
15 classrooms -- the way they were set up the way they were
16 equipped -- was interfering with instruction?

17 A No, not that I can recall.

18 Q You previously said that you were -- when you
19 looked at the high school, you were concerned about the
20 store -- the building that was being used for storage,
21 and I believe you said that you had been informed the
22 DSA had said it was structurally unsound and that you'd
23 also said that the building looked horrible, that it was
24 old, looked dry and so on, and looked as if it had not
25 been maintained; is that correct?

1 A Yes.

2 Q Did you take any steps to address those
3 problems?

4 A Well, I made sure no students went into them.
5 Began to try to eliminate use of the building. But I
6 had embarked upon a plan to replace the school, which we
7 were successful with.

8 Q And then one other thing I just want to
9 follow-up, and then I want to talk to you about the new
10 school.

11 I think previously you said, when I was asking
12 you about having enough bathrooms for students -- and I
13 believe I asked you why it was important, and you said
14 for the same reason that --

15 A That I had to take a break.

16 Q Had to take a break.

17 And what did you mean by that?

18 A That students need to have access to a toilet
19 room when they have the physical need to use the
20 bathroom. And bathrooms are planned at schools, and if
21 the school is older and there's growth at the campus,
22 being able to either expand toilet facilities that are
23 there, bring in modular toilet facilities, is important
24 to do.

25 Q And why do you think students need access to a

1 bathroom?

2 A So they can --

3 MS. DAVIS: Asked and answered.

4 THE WITNESS: -- go to the bathroom.

5 BY MR. ELIASBERG:

6 Q And do you think, if they're unable to go to
7 the bathroom, it has any effect on them?

8 A I would think it would be uncomfortable.

9 Q And do you think that being -- do you think
10 that the students being uncomfortable may affect their
11 concentration?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: The concentration of students can be
14 interrupted by a number of things. I think biological
15 functions are, certainly -- we could agree may be one of
16 them.

17 BY MR. ELIASBERG:

18 Q Any other reasons why you think it's important
19 that the students have to be able to go to the bathroom
20 when they need to go to the bathroom?

21 A Washing hands before lunch, especially if
22 you've been involved in some kind of P.E. activity, may
23 be something that students don't think to do, but
24 certainly, I would encourage students to do that.

25 Q Why would you encourage them to do that?

1 A So that they could -- washing your hands is
2 pretty basic to health. You know, there are certain
3 organisms on our bodies and around our bodies. We don't
4 have to introduce other things.

5 Q When you were assistant superintendent -- well,
6 actually, I'm going to spread it out, at least for this
7 question, over the course of your tenure at Moorpark,
8 both as assistant superintendent and superintendent.

9 Did you take any steps to ensure that there
10 were -- that the bathrooms at the schools in the
11 district had soap in the bathrooms?

12 A I used to visit bathrooms, toilet rooms. If I
13 went to a campus, I would go into the toilet rooms to
14 look to see what their condition was. So yes.

15 Q And did you -- and when you went into the
16 toilet rooms did -- what did you look for when you were
17 doing that?

18 A The general condition of the toilet rooms.
19 Toilet rooms take a lot of abuse, especially at the high
20 school level. Middle school level too. Less at the
21 elementary level. But a lot of abuse at the high school
22 level. So basins, wash basins, sometimes are damaged
23 and they're inoperable for a while, you know, it may
24 create a problem. Sometimes toilet facilities are
25 damaged or clogged.

1 Q I assume -- well, you've previously stated it
2 was -- there was a lot of work in the job as assistant
3 superintendent; isn't that correct?

4 A Yes.

5 Q And I assume that was true when you became
6 superintendent also, right?

7 A Yes.

8 Q With all that work, why did you bother to take
9 the time going into bathrooms when you visited schools?

10 A Well, I wanted to see a number of things when I
11 went to campuses, and especially if -- if you're the
12 assistant superintendent, it's a -- you know, it was a
13 noteworthy thing that the assistant superintendent
14 cared, walking onto the campus -- and people knowing you
15 care means a lot in a variety of different ways. If
16 you're the superintendent it even accelerates that.

17 And so walking into classrooms and spending
18 time in the office, not just with the principal, but
19 with others, is something that was important. Talking
20 to groundsmen that are doing work -- and part of it is
21 going into a toilet facility and just seeing what it's
22 like. Is it working.

23 Q And it mattered to you whether it was working
24 or not?

25 A Yes, it did.

1 Q What kind of problem could it create if the
2 basins were damaged, for example?

3 MS. DAVIS: Calls for speculation, vague and
4 ambiguous.

5 THE WITNESS: Well, if you'd like me to give you a
6 situation.

7 BY MR. ELIASBERG:

8 Q Sure.

9 A The boys' bathroom at Moorpark High School --
10 this is the new high school we built. Knowing what I
11 knew about abuses of toilet facilities, we put in a hand
12 washing facility that was not the common sink, but it
13 was a large basin, kind of U-shaped, and it had a number
14 of spouts that came off it so a number of people could
15 wash their hands at the same time. Damage to one of the
16 spouts could cause some flooding. I guess it could be
17 plugged up. If a number of them were damaged, somebody
18 may want to turn off the water in there. So it's the
19 kind of thing that you'd look for.

20 I'd experienced, I guess, at the high school
21 level during my teaching experience that various things
22 can be shoved down toilets by students in order to
23 create the flooding for lack of use or whatever. So one
24 of the things that I took upon myself when I'd visit a
25 campus was to look at toilet rooms.

1 Q And why was that?

2 A Well, if I wanted to use the facility, it would
3 be nice if it were available. But certainly, with -- I
4 guess we started out with 800 students on that campus,
5 and if half of them were boys and half were girls, we
6 wanted to make sure that there were toilet rooms that
7 were there for them when they needed to use them.

8 Q And if you, visiting, came upon a toilet or
9 series of toilets that weren't working, what did you do
10 when you saw that?

11 A I would be polite about it, but I would ask the
12 principal or assistant principal if they were aware and
13 whether or not a work order had been put in place and if
14 somebody was able to go about the task of addressing
15 what was there.

16 Q And if a work order hadn't -- they told you
17 that a work order hadn't been --

18 A I don't recall that they ever told me that.

19 Q What would you have done if you found out there
20 was no --

21 A I would say, please issue this and make it a
22 priority.

23 Q So it was a priority for you if you found a
24 bathroom that was --

25 A Yes.

1 Q -- not working?
 2 A Yes.
 3 Q Let's talk about the new school.
 4 You arrived at Moorpark in -- at least as
 5 assistant superintendent in 1985?
 6 A Yes.
 7 Q What steps did you take to build the new
 8 school? What were the first steps you took to build the
 9 new school?
 10 A Well, there had been a plan or at least desire
 11 for moving forward on a plan to build a new school.
 12 There was no funding for that school. So I began to
 13 explore ways of getting it funded. And the two things
 14 that I recall that were probably significant for moving
 15 it forward, one was identifying that it was through a
 16 certificate of participation issuance, a COP, going to
 17 build a new elementary school.
 18 And that on paper I loaded the high school as
 19 an elementary school, which means that it showed pupils
 20 in -- and I can't remember the grades, if it was K-3,
 21 K-5, but I believe it was K-2. Showed students at the
 22 high school loaded in those classrooms, which created
 23 eligibility for new construction funding for the high
 24 school. And worked with the architect to bring about a
 25 plan that I thought was a workable plan. There had

1 districts that have done that since you did it?
 2 A I think one district sought to do that after I
 3 did it, by a couple of years.
 4 Q I believe you stated that by doing that, the
 5 students at the high school were unhoused on paper.
 6 A Yes.
 7 Q What did you mean by unhoused?
 8 A It meant that on the document, they weren't in
 9 classrooms.
 10 Q But they actually were in classrooms; weren't
 11 they?
 12 A Yes, but elementary students that were
 13 projected were not in classrooms.
 14 Q Were those projections based on the -- at least
 15 in part, on the development that you talked about,
 16 the -- I think it was a 2500-home development?
 17 A They were based on a couple of things. One was
 18 the number of pupils that were in relocatable or modular
 19 classrooms that were being leased -- so those students
 20 were unhoused -- as well as projected enrollments. And
 21 also, something that's known as a house count for slabs
 22 or buildings that are not yet occupied but exist.
 23 Q You talking about residential buildings that
 24 have not yet been built, not school buildings that have
 25 not --

1 been, as I said, a -- sort of a plan before, but no
 2 funding source.
 3 I worked with the developer, who, if I had
 4 needed to at the time, would have leased the property to
 5 me, because we were working on that for an elementary
 6 school, for a dollar a year. But was able to get State
 7 funding to buy the property, because we demonstrated
 8 that these high school students were unhoused. So we
 9 created the funding source for a new school, including
 10 the acquisition of the property.
 11 Q Why -- and if I am misstating you, please
 12 correct me. I think I've written down this correctly.
 13 Why did you want to paper-load the elementary
 14 school as the high school?
 15 A Because then I didn't have the high school.
 16 Q But you did have a high school; didn't you?
 17 A Not on paper, I didn't. So the resources of
 18 the district that existed, I reorganized in order to
 19 create a high school that was a planned high school for
 20 the future.
 21 Q How did you know to do that?
 22 A I thought of it.
 23 Q Had you ever seen any other district do that?
 24 A No.
 25 Q Are you aware of -- are you aware of other

1 A Yes.
 2 Q -- been built?
 3 A Yes.
 4 Q If the -- at the time that you were planning
 5 this new building, if the modular classrooms at the high
 6 school had been modular classrooms that Moorpark owned
 7 as opposed to was leasing -- well, let me step back.
 8 From whom were you leasing those modular
 9 classrooms?
 10 A I don't recall.
 11 Q If Moorpark had owned those modulars as opposed
 12 to leasing them, would those students have been
 13 considered to be unhoused?
 14 A No.
 15 Q Why is that?
 16 A It was the way the State program was
 17 administered at the time.
 18 Q When you took these steps -- well, let me --
 19 there's one other question on this thing you said
 20 previously.
 21 You said that when you arrived, there had been
 22 a plan to build the building but there was no funding?
 23 A Yes.
 24 Q Why was there no funding?
 25 MS. DAVIS: Vague and ambiguous, calls for

1 speculation.

2 THE WITNESS: People in school districts and, I
3 guess, other public agencies have -- see needs and there
4 may not be resources to meet those needs. Someone saw
5 that there was going to be a need for a new high
6 school. Somebody else who saw there was a need for a
7 bridge in that community, and there had been discussions
8 about trying to provide both. And there -- but there
9 wasn't a funding source, apparently, for either one.
10 Those were issues when I arrived there.

11 BY MR. ELIASBERG:

12 Q Had the district attempted to raise funds
13 through putting a bond measure on the ballot?

14 A No.

15 MS. DAVIS: Calls for speculation.

16 THE WITNESS: My understanding was that they had
17 not had a bond in a number of years.

18 BY MR. ELIASBERG:

19 Q Did you talk with anybody about why they hadn't
20 had a bond?

21 A At the time a general obligation bond was
22 illegal. A parcel tax was legal, but a two-thirds vote
23 was considered to be insurmountable. So people really
24 didn't consider it.

25 Q So the -- when you ended up building the

1 A Well, he landscaped the exterior of the
2 campus. So basically, the parkways and the -- not just
3 on district property, but outside the fence line. So it
4 wasn't the inside of the campus. And no, we wouldn't
5 have been able to create as much landscaping as he put
6 in, no.

7 Q And would you have been able to -- would you
8 have had the funds to build the fences that the
9 developer put in?

10 A Not the kind of fences. We would have put in
11 fencing, but not the kind of fences, no. At least on a
12 portion of the campus.

13 Q When you began the process of planning and
14 seeking funding for the -- for a new high school, did
15 you consider attempting to expand the old high school?
16 And let me clarify that. As opposed to building a new
17 high school.

18 A I think that there were discussions among
19 others before I got there and probably after I got
20 there. But I guess my mind was somewhere else. It
21 wasn't -- that wasn't the place that was going to
22 continue to be the high school in the district, in my
23 mind.

24 Q Why was that?

25 A We needed not to continue to have problems to

1 school, was -- what were the sources of funding to build
2 the school?

3 A The lease-purchase program as well as
4 contributions by the developer who assisted in several
5 ways in helping to complete the first phase of the
6 school.

7 Q And when you say contribution by the developer,
8 what do you mean by that?

9 A The developer agreed -- worked very closely
10 with the developer. The developer agreed to build walls
11 and create fencing around the school, to put in
12 landscaping around the school, including trees, and put
13 in the sidewalks, curbs and gutters around the school.

14 Q And was the rest of the -- the rest of the
15 funding for the facility from the -- through the
16 lease-purchase program?

17 A Yes. The developer also made a contribution of
18 some dollars, but I can't recall if that was actually
19 the first phase or later. Because the developer
20 actually did that twice later on in our negotiations
21 with them.

22 Q If you had simply -- if you had been unable to
23 obtain contributions from the developer, would the
24 funding from the lease-purchase program have been
25 sufficient to landscape the campus?

1 solve, and because of the multi-levels there -- you
2 know, this was a site that was first used as a high
3 school in about 1923, something like that. There was
4 a -- it was damaged in the earthquake of '33. There was
5 a rebuilding of the school and an expansion of adding
6 other parcels, and it just -- not really a good location
7 for a high school. So in my mind, we needed to be
8 somewhere else and put our energies toward doing that,
9 making it happen.

10 MR. ELIASBERG: Let's see. It's about 12:30,
11 Lynne. This is probably a good time --

12 MS. DAVIS: Good time to break? Okay.

13 (Lunch recess from 12:30 p.m. to
14 1:46 p.m.)

15 BY MR. ELIASBERG:

16 Q Mr. Duffy, you're still under oath.

17 Before the lunch break we were talking about
18 the new high school that you worked on having built at
19 Moorpark. I previously asked you whether you had
20 considered adding on a wing or whatever to the old
21 campus, and I believe you said that you thought about it
22 but that was not the direction you decided to go.

23 My question now is: Did you consider putting
24 the high school on multi-track year -- well, let me ask
25 you this: Was the high school on a multi-track

1 year-round calendar when you started at Moorpark in '83?

2 A The answer is no.

3 Q Did you consider putting the school on
4 multi-track year-round in order to deal with the growth
5 that you were expecting?

6 A No.

7 Q Why didn't you do that?

8 A I didn't think the community was prepared for
9 anything like that. Later on I explored that with the
10 board, beyond the high school issue, because I thought
11 it was important for the board to consider other
12 options, and it wasn't something that they were
13 interested in pursuing. They believed that the
14 community would have difficulty with that. But at the
15 time, no.

16 Q I believe that you said initially -- and I'm
17 not talking about -- you said later that you'd explored
18 this with the board -- but initially you believed that
19 the community wouldn't be prepared to go on multi-track
20 year-round for the high school; is that correct?

21 A Yes.

22 Q What was the basis for that belief?

23 A The district had just recently unified. There
24 was a high school district and an elementary district.
25 Unification had been painful and difficult. That

1 happened before my arrival, but the aftermath of it was
2 certainly evident. So any change that was proposed
3 needed to have some preparation. And there was a lot of
4 change that was going to happen. So we had to work to
5 prepare. But that certainly would have been, I think, a
6 very difficult thing for the community.

7 Q Why do you think it would have been difficult
8 for the community?

9 A Because there was still a lot of distrust
10 between two agencies that were now formed into one. The
11 same personnel between the two agencies, high school and
12 elementary school, were folded together. People that
13 had had similar positions in two school districts now
14 were in a position of superior and those that had a
15 boss. And there was an issue of elementary thinking to
16 secondary thinking. So building trust was something
17 that was going to be necessary in order to move ahead
18 with other changes.

19 Q Was the community -- was there a distrust with
20 respect to the plan to build a new high school?

21 A No.

22 Q So it sounds like not all changes were changes
23 that would create or exacerbate distrust in the
24 community?

25 A Well, I think in the beginning there really

1 wasn't a belief that the new high school could be built.

2 Q And when it became clear that the new high
3 school could be built, was there a negative reaction
4 within the community?

5 A It was -- negative reaction? When the reality
6 of it occurred, when it was actually there and opening,
7 there were certain reactions, and some of those
8 continued for a while. And those reactions were, how do
9 we get from where we were and are we losing faith from
10 where we were in the past. Including are school colors
11 changing, are the mascots changing, all those kinds of
12 implosions that occur in a community when a lot of
13 change is necessary.

14 Q You said that you also later talked to the
15 board about the possibility of going on multi-track, I
16 guess with respect to some other schools in the
17 district, not the new high school; is that correct?

18 A Well, it was really exploring the concept in
19 the beginning.

20 Q And what was the board's reaction when you
21 introduced that concept to it?

22 A The board's reaction was that they didn't
23 believe that the community would go for that, that
24 the -- their own thinking was that we need to stay
25 traditional.

1 Q Did they state why they thought the
2 community -- or on what basis the community would
3 oppose?

4 A I don't recall. I don't recall, no.

5 Q Did any members of the board express,
6 basically, their own feelings rather than the feeling --
7 what they expected with the community with respect to
8 going on multi-track?

9 MS. DAVIS: Vague and ambiguous.

10 THE WITNESS: I'm not clear on your question.
11 Could you be more clear for me?

12 BY MR. ELIASBERG:

13 Q I guess what I understood you to say was, when
14 you introduced the concept or threw it out there to
15 explore the idea of going on multi-track -- I believe
16 that you stated that the board said they didn't want to
17 do it because they thought the community would be
18 against it.

19 My question is: Did any of the individual
20 board members give their own personal viewpoints? Not,
21 we think this is how the community's going to react, but
22 this is how I react to the idea of being on
23 multi-track?

24 A I think it was prob --

25 MS. DAVIS: Again, vague and ambiguous.

1 Sorry.

2 THE WITNESS: It was probably a blend of both. You
3 know, not something we want to consider. We don't think
4 the community's ready. You know, I think we need to
5 have alternative plans.

6 BY MR. ELIASBERG:

7 Q Other than the community objection, did any
8 board member express other reasons why they were not in
9 favor of going on multi-track?

10 A I don't recall specifically.

11 We did have a multi-track year-round district
12 in Ventura County that's still there. There were
13 sometimes discussions between board members at Ventura
14 County board member dinner and those kind of things.
15 Whatever reason, I don't think it was something that was
16 acceptable.

17 Q You say for whatever reason.

18 Are there any other reasons?

19 MS. DAVIS: Vague and ambiguous.

20 THE WITNESS: I don't recall specific reasons that
21 the board gave me, and from time to time when I would
22 propose something with the superintendent or when I was
23 superintendent, it was maybe this -- you know, we don't
24 really want to consider that right now. Let's move on.
25 And that's pretty much the direction and sense of the

1 later -- and I can't remember exactly when it was -- and
2 I brought a report back to them -- or I believe it was a
3 requirement of State law at the time. So I said, I was
4 compelled to do this. I'm going to share it with you.

5 Q What was the concept of the report?

6 A It was the MTYRE study that each district was
7 required to do to demonstrate that it had explored it in
8 order to continue having access to the State program.

9 Q And was that requirement a requirement of the
10 Education Code?

11 A I believe it was a requirement of the Education
12 Code, yes.

13 Q Okay. Does the code make any specific -- any
14 specifics about what needs to be in that report?

15 MS. DAVIS: Vague and ambiguous.

16 THE WITNESS: I can't recall what the code
17 specifically required, but the translation of what the
18 code required through the California Department of
19 Education had components of program review, the kind of
20 programs that you may consider. I think that there
21 was -- it was called a feasibility study, is what it was
22 called, and the feasibility study included the kind of
23 programs that may be considered and as well, I think, as
24 concept on locations.

25 And I can't remember the other pieces, but it

1 board.

2 Then you realize you're going to run into the
3 brick wall a few more times if you keep coming up with
4 it, so just move on. Until we have to revisit it
5 another time, which sometimes occurred.

6 BY MR. ELIASBERG:

7 Q When you explored the question of
8 multi-tracking with the board, did you ever take a
9 position in favor of putting one or more schools in the
10 school district on multi-track year-round calendars?

11 A As a concept, I did.

12 Q What do you mean as a concept?

13 A Well, I didn't say specifically, let's do this
14 with this school, but say, an alternative calendar as an
15 option for parents and as an option for students and as
16 an option for teachers, it's something we may want to
17 explore, because it may be that we find a time when it's
18 difficult to house students.

19 But alternatives are okay in education, and as
20 I said, there was a district that we could go and study
21 that was in the county, and quite an advocate in their
22 superintendent, and so I said, let's explore.

23 Q Did the board ever ask you to go further in
24 your exploration?

25 A No. But I did go further in the exploration

1 was a report -- it was a study you did and a report you
2 filed, and whether or not you acted upon it was not a
3 requirement. The requirement was to do the study and to
4 demonstrate that you in fact had looked at that
5 possibility.

6 BY MR. ELIASBERG:

7 Q Did you ever attempt to make an estimate or
8 calculation as to whether it would be cheaper, cost less
9 money, to put schools on multi-track as opposed to
10 building new facilities?

11 A No, I don't recall the details of the financial
12 part of the feasibility study, but I think there were
13 some estimates to be made, but I can't remember if there
14 was to be cost avoided or cost incurred. So no.

15 Q Do you have an opinion as to whether it would
16 have been -- based upon sitting here now, looking back
17 at your experience at Moorpark, and the growth I
18 understand the district experienced, do you have an
19 understanding as to whether it would be cheaper to go on
20 multi-track as opposed to building new schools?

21 MS. DAVIS: Calls for speculation.

22 THE WITNESS: Well, I would be speculating, because
23 there's capital costs, there's operational costs. I
24 really -- I can't really offer an opinion on that.

25 Really can't. Operational is something that supposedly

1 districts save some money on, but I don't know that
 2 that's really true. On the capital side, you save
 3 money, but, you know, where do you incur additional
 4 costs. I don't know.
 5 BY MR. ELIASBERG:
 6 Q What is your understanding -- and I heard you
 7 say you weren't certain about this estimate about
 8 operational costs, but what is your understanding as to
 9 why you supposedly save operational costs when you go on
 10 multi-track?
 11 MS. DAVIS: Vague and ambiguous.
 12 THE WITNESS: I guess one thing -- and I'm
 13 certainly not knowledgeable from the inside of running
 14 these programs, but I guess if you're maintaining three
 15 buildings instead of four, costs are less. If you have
 16 a principal there who's going to be there for 220 days
 17 anyway, you save some money there, and if you divide
 18 that out by a few principals, is there a savings.
 19 But there's also a question of how do you
 20 maintain those facilities if kids are in them all the
 21 time. So how does that -- how does that work? Because
 22 you don't have the two and a half months -- or maybe not
 23 even two and a half months. You don't have a month in
 24 the summer, between summer school and the regular
 25 program, to come in and take care of some maintenance

1 issues.
 2 BY MR. ELIASBERG:
 3 Q Do you think it's more difficult to maintain a
 4 school that's -- and I'm -- just maintaining the
 5 facility if it's operating on a MTYRE calendar as
 6 opposed to a traditional calendar?
 7 MS. DAVIS: Vague and ambiguous.
 8 THE WITNESS: Well, what I understand from hearing
 9 from people like the superintendent that was in Oxnard,
 10 they have to have alternative plans, where they have
 11 alternative work schedules for people. So people may
 12 work during the weekend that wouldn't normally work
 13 during the weekend.
 14 So I think that in some matters, they may have
 15 to schedule contracts for major maintenance over
 16 weekends, and it may be more costly to do that because
 17 you're paying overtime to people who you expect
 18 contractors to pay prevailing wage to. So I think
 19 that -- I don't know that there's really a specific
 20 answer on all of that.
 21 BY MR. ELIASBERG:
 22 Q When the study that you referred to earlier,
 23 the feasibility study that was done at Moorpark, what --
 24 did the study make a finding or a conclusion that this
 25 is or is not feasible?

1 MS. DAVIS: Vague and ambiguous.
 2 BY MR. ELIASBERG:
 3 Q By this, I mean going onto multi-track for some
 4 or all of the schools in the district.
 5 A What I recall is that what we filed with the
 6 State was that the district could continue to operate
 7 without going on MTYRE, as planned. That's kind of the
 8 summation of where I think we got to. Which, in
 9 essence, said, okay, we've done the study. We won't be
 10 going MTYRE according to our plan. We've got other
 11 plans.
 12 Q And the other plans -- plans to build new
 13 schools?
 14 A Yes. As well as to expand the schools that we
 15 had.
 16 Q I believe you said when you started at
 17 Moorpark, there were in the neighborhood of 23- or 2400
 18 students; is that correct?
 19 A That's what I said, yes.
 20 Q And that there were four campuses and then a
 21 continuation high school, which you considered to be
 22 part of the facility that was the district buildings.
 23 A Yes.
 24 Q Okay. Over the course of the time that you
 25 were in Moorpark, what was the approximate student

1 population when you left?
 2 A 7500, 7600 students.
 3 Q And when you left how many schools were there?
 4 Let me -- actually, let's make it simpler.
 5 How many elementary schools were there?
 6 A There were five.
 7 Q And were those -- my understanding from your
 8 earlier testimony was that the original -- that the one
 9 elementary school that existed at the time you came was
 10 a K-2 school.
 11 A It was a primary school.
 12 Q Okay. What were the grade configurations for
 13 the five schools that I -- that you responded were
 14 elementary schools when you left?
 15 A The K-2 school I talked about was a K-3 at the
 16 time I left. The 3-5 school that I talked about was, I
 17 believe, 4-5 when I left there. There was another K-3
 18 and another K-3, and then there was a K-5.
 19 Q And -- I'm nervous about labeling, because I
 20 can't always -- there are different configurations.
 21 Leaving aside what -- I know there was a high
 22 school.
 23 Were there other schools -- besides the five
 24 that you just mentioned and the high school and the
 25 continuation high school, were there other schools that

1 dealt with middle grades, as it were?

2 A There was the middle grade school that I talked
3 about before, the 6-8 school. There was a second middle
4 grade school. There was a separate campus and a new
5 facility for continuation high school. And there was
6 the new high school.

7 Q Were the -- were both of the middle schools
8 6-8 --

9 A Yes.

10 Q -- configuration?

11 And then in terms of serving a high school
12 population, you had the new high school that we've
13 talked about previously, a new campus for the
14 continuation program --

15 A Yes.

16 Q What did you do, if anything, with the old high
17 school?

18 A There were a couple of things that were done
19 with the old high school. One is we moved the
20 continuation high school into that campus and used only
21 the upper level while we bought property and built a
22 continuation high school. It became the subject of a
23 lawsuit with the City that eventually went to the
24 Supreme Court.

25 And we maintained control of it and created an

1 last three years that you were at Moorpark.

2 Do you have an understanding of what the racial
3 composition of the student body in the district was?

4 MS. DAVIS: Vague and ambiguous.

5 THE WITNESS: Are you asking me did I know the
6 percentage of ethnicities of the student body in the
7 K-12 population? Is that what you're asking me?

8 BY MR. ELIASBERG:

9 Q Yeah. And I'm more than happy to have an
10 estimate. I'm not looking for it to the .001 or
11 anything, but the general racial makeup of the student
12 body, yes.

13 A We had had a continuous population of students
14 that were Hispanic that ranged -- in the last three
15 years, you're talking about. Probably 27 percent to 30
16 percent. A smaller percentage of other ethnicities, and
17 then the rest being a -- basically, the white
18 population.

19 Q Do you remember what the approximate percentage
20 was that was white?

21 A 65 percent, thereabouts, maybe.

22 Q So the percentage of other racial minorities
23 was relatively small, somewhere between zero and ten
24 percent? Is that about --

25 A Other than Hispanic, you mean?

1 elementary school on that campus after totally regrading
2 it, acquiring property from a developer to the west and
3 making a K-5 school on the campus.

4 Q Okay. Is that -- we had earlier talked about
5 elementary schools, and you had said that one of the
6 schools was a K-5.

7 Is that the school that you earlier -- the K-5
8 you earlier referred to is the school that went --

9 A Yes.

10 Q -- onto this reconfigured old high school
11 campus?

12 A Yes.

13 Q What was the subject of the lawsuit?

14 A The nadir provisions of the Education Code.

15 Q And what are those?

16 A The nadir provisions restate the Government
17 Code, giving priority in the Education Code to a City or
18 park and recreation district to have a portion of a
19 school site that has been surplus as surplus property
20 at 25 percent of its value, and the acquisition would be
21 up to 30 percent of the property at the site,
22 specifically being open space or play space on the site.

23 Q Of the -- well, let me ask you this. In
24 general -- and I guess let's focus on the time -- last
25 couple of years that you were at Moorpark, let's say the

1 Q Yes.

2 A Yes.

3 Q And do you know the approximate percentage of
4 the students in the district who were eligible for free
5 or reduced priced lunches?

6 A It depended upon the school. I think I looked
7 at it more at school rather than -- as generally in the
8 district. I recall we had two schools that would have,
9 combined, been at an average of 35 percent. The others
10 were much lower.

11 Q You've given me the approximate -- or an
12 estimate of the racial composition.

13 Did you have -- for the district as a whole.
14 At least that's what I understood you to be doing.

15 Did you have schools that were -- where the
16 racial composition of a particular school was
17 dramatically different from the racial composition of
18 the district as a whole?

19 MS. DAVIS: Vague and ambiguous.

20 THE WITNESS: From the time that we began to move
21 from the four schools that existed there, four campuses
22 when I started, when all students from all grades, K-2
23 were on one campus, we began to monitor, when we broke
24 out from that model -- and we broke out from that model
25 in 1986, when we opened two schools, '86 or '87. If I

1 think about it I could probably tell you the date.
 2 But we were opening two elementary schools, one
 3 that we'd planned and another that we had to accelerate
 4 the planning for because of what we saw happening. We
 5 began to monitor and plan for a distribution of students
 6 where there would be a balance at those schools. And we
 7 monitored that every year.

8 During the period of time -- it was in the
 9 middle '90s, until we opened the last school that I
 10 mentioned, the K-5 school, we had one school, because of
 11 an attendance boundary, that began to deviate.

12 BY MR. ELIASBERG:

13 Q And how did that school deviate?

14 A The percentage of students that were Hispanic
 15 students began to grow.

16 Q So -- and I won't belabor the obvious, but just
 17 to be sure I'm understanding you correctly.

18 At that school that you just referred to, what
 19 you mean by that is there were a greater percentage of
 20 Hispanic students -- significantly greater than the 20
 21 to 30 that you estimated was the percentage of the
 22 district as a whole?

23 A Began to grow. Over a period of years. And I
 24 can't tell you the percentage levels, but it was
 25 something that we looked at and began to plan for, get

1 choice.

2 People sometimes referred to it as a magnet
 3 school, and I said no, it's really not a magnet school.
 4 It's a school of choice. We're going to offer programs
 5 there that don't exist elsewhere. We did a survey using
 6 a survey research firm and -- I need to take a drink of
 7 water.

8 Q Need to take a one- or two-minute break?

9 A No, I need some water and I ran out of it.

10 Used a survey research firm and surveyed all
 11 the elementary families and said, if we offer these
 12 kinds of programs, would you send your child there. And
 13 had an overwhelming response, and they said yes.

14 And as a controversy was beginning to build in
 15 the community, I took this plan to the board and said,
 16 if we build this school, we'll be able to redraw
 17 boundaries, be able to have a more balanced ethnicity
 18 level at each school, and in the area of town where we
 19 have a higher population of minority families, we'll be
 20 able to encourage other families to bring their children
 21 there. And we did that.

22 Q I thought you just said as the controversy
 23 began to build in the community.

24 What was that controversy?

25 A Boundary change is always a controversy. So it

1 another school to be able to address that.

2 Q Was that an elementary or middle school?

3 A It was an elementary school.

4 Q When you began to notice that deviation, did
 5 you consider redrawing the attendance boundaries in the
 6 district?

7 A We looked at attendance boundaries and changes
 8 several different times, and I can't remember the year,
 9 but brought in a company to do mapping software -- we
 10 had done this ourselves before -- where all kinds of
 11 student data could be put into the database and various
 12 boundaries could be considered.

13 And that was something that we knew would be of
 14 interest to the community, of interest to the board. So
 15 we also started a study of what we would do with this
 16 new school that we would build.

17 Q And did you end up redrawing the attendance
 18 boundaries?

19 A We ended up doing two things. We redrew the
 20 boundaries, and those were the existing boundaries only,
 21 and we had a school, which was the K-5 school, that had
 22 no boundaries at all. But we built it in the area of
 23 the community where there was a large population of
 24 Hispanic families -- basically, was a poorer area of
 25 Moorpark -- and created what we called a school of

1 was the idea of changing boundaries.

2 Q Did you -- was there objection in the community
 3 or from some members of the community as to the
 4 location -- as to choice to locate the school in what
 5 you said was a poorer area of the Moorpark Unified
 6 School District?

7 A I don't think that anybody ever really objected
 8 to the location there.

9 Q Why did you want to balance at least the
 10 elementary schools, in terms of ethnicity?

11 Let me do background, because I don't want to
 12 impute something to you.

13 A Okay.

14 Q Did you want to balance the elementary schools,
 15 in terms of ethnicity?

16 A I wanted to do a couple things. I wanted to
 17 address the balance issue, and I wanted to make sure
 18 that, in the planning of the next school, we tried to
 19 place it in a location where families could -- minority
 20 families, poorer families, could walk to a school for
 21 the primary grades and for preschool.

22 So we had planned a preschool program there
 23 from the very beginning. We had preschool -- in fact, a
 24 preschool center that was closer to the downtown area or
 25 actually mid -- I don't know if midtown. It was in the

1 center of the community. But it would have been several
2 blocks from this area, and you'd have to walk across a
3 set of railroad tracks to get to it.

4 So part of the plan was, we'll build a school
5 in a poorer part of the community, know that we'll fill
6 the school, because we'll survey families and say, if we
7 have these kinds of programs, will you come, and as I
8 said, it was overwhelming, in terms of their response.
9 We'd identified a particular number of students that
10 would attend the school in the beginning, and we
11 predicted a waiting list, which we did have, and that
12 continued.

13 And that school -- and then we didn't really
14 manipulate things at all, but that school balanced
15 itself, both by the families that were nearby, as well
16 as families that would come into the school.

17 Q Why did you want to place the school so that
18 minority families' children would be able to -- well,
19 not just children, children, parents, anybody would be
20 able to walk to the school?

21 A People who have elementary-age children, in
22 particular, like to have schools close by. We were
23 planning not only the preschool. We planned before- and
24 after-school programs, and I wanted to make sure that
25 that was in the that area of the community, because I

1 which we negotiated with the boys and girls club to take
2 over at a phenomenal price, I believe, at the time. And
3 we saved the old theater building, which was then
4 recrafted and redesigned to be used by the new
5 elementary school.

6 Q Why did you bulldoze all of the buildings
7 except for the gym and the --

8 A Because we had a structural engineer come in --
9 in fact, we had two come in and review the buildings,
10 and they were found to be structurally inadequate.

11 Q Any other -- I know that's a good reason, but
12 were there any other reasons?

13 A Well, I mentioned to you, I think more than
14 one time, the difficulties of accessing the different
15 levels. So we basically regraded it and took the top
16 off and graded down to make a larger school site, and
17 get rid of those access issues that existed before.

18 Q So -- and correct me if I'm wrong.

19 My understanding is that, once you did that,
20 once you built this new K-5 school, that in general,
21 there was a fairly good racial balance in the schools
22 throughout the district; is that correct?

23 A It helped in that regard, yes. We changed the
24 boundaries in the district. I'm forgetting the --
25 whether it was the same year we opened the school --

1 knew families didn't necessarily have access to vehicles
2 to travel.

3 We'd also planned to have parent education and
4 family education programs there. So that this was
5 really a comprehensive school that would attract
6 families that would be, say, middle class families as
7 well as be there for families and close by for families
8 that were poorer, that had less resources, and that it
9 could be a place where their children could go to school
10 for two years of preschool, kindergarten through fifth
11 grade -- which we didn't have in the community before
12 that -- and have the assets of play yards and places for
13 evening meetings and all of that close to the school.

14 So we did that in a location that had been, for
15 decades, the old high school.

16 Q Let me be sure I understand it.

17 You actually built the new school on the
18 location of the old high school that you and I talked
19 about before lunch?

20 A And a portion of property that we added that we
21 negotiated with a developer to basically give to us for
22 certain consideration.

23 Q Did you tear down the old storage building when
24 you --

25 A We bulldozed everything but the gym facility,

1 maybe it was the same year we opened that school. And
2 they continued to be monitored. And I don't know -- I
3 can't give you percentages of differences, but there was
4 a redistribution of those percentages.

5 Q But am I also correct in understanding that, at
6 least with respect to SES, the majority of the schools,
7 relatively similar numbers, and then there were a couple
8 schools where there was a significantly -- I shouldn't
9 say SES, significantly higher percentage of schools that
10 were eligible for free or reduced priced lunch; is that
11 correct?

12 A As I said, there were two schools that were --
13 combined, were at the 35-percent-or-higher level, and I
14 remember that because of seeking some QZAB funding, and
15 that was a requirement. That's why I'm remembering
16 that.

17 Q During the time that you were both assistant
18 superintendent and superintendent, did you take steps to
19 ensure that the facilities' conditions at the schools
20 with greater -- higher percentages of students eligible
21 for free and reduced price lunch were as good as the
22 conditions for -- at schools where students were --
23 there were much lower percentage of students eligible
24 for free or reduced price lunch?

25 MS. DAVIS: Vague and ambiguous.

1 THE WITNESS: As I said, we were always conscious
2 of the -- what you refer to as SES, what I would say are
3 the percentage of ethnicities at the different schools.
4 A school that was actually built in 1984, I think, the
5 year before I came to the district, was a school that
6 began to show -- it was a newer school, newer than the
7 other schools in the district, but it began to show some
8 wear and tear. And there were some roof issues, and I
9 recall spending something just shy of a half million
10 dollars on a reroofing system at that school.

11 So wasn't because there were higher percentages
12 of students there that were Hispanic students. It was
13 because we were paying attention to the facilities.
14 School that was right downtown, adjacent to the school
15 district office, was a focus of a modernization
16 program. I don't think that school really stood out, if
17 I recall, in terms of ethnicities, because of the way
18 that the boundaries were drawn, but the focus there was
19 because it was older and had greater need and we
20 accessed mod moneys.

21 The one school of the two middle schools that
22 I'm recalling that had higher percentages of Hispanic
23 students -- and I can't tell you what those differences
24 were, but it was the newer of the two middle schools.
25 So we'd had drawn the boundaries for the middle schools,

1 when we created the second middle school, in such a way
2 to try to balance, but that particular middle school was
3 in the same hemisphere as the school that had the
4 highest difference. There was some relationship there.

5 BY MR. ELIASBERG:

6 Q If it had come to your attention that the
7 schools with the higher percentages of students with --
8 who were eligible for free and reduced price lunches
9 were not in as good condition as other schools in the
10 district, would that have concerned you?

11 MS. DAVIS: Vague and ambiguous.

12 THE WITNESS: Well, I'm sure I would have said,
13 are we needing a focus there. But we really tried to
14 focus on the needs of each of the campuses, and it
15 wasn't simply an issue of free and reduced lunch or
16 ethnicities, it was what are the needs of the campuses.

17 One of the things we did do in order to -- and
18 this was not in any particular school, but in order to
19 not identify students that were on free and reduced
20 lunch, beginning at the high school, a program was put
21 in place that allowed a card to be given to a student
22 that, if you were a parent there, you could buy, you
23 know, ten lunches and get something like a credit card
24 and scan as you go through.

25 Well, the free-and-reduced-lunch student could

1 use that and nobody would know that they were free and
2 reduced. Nobody said, oh, yeah, here's Johnnie. He's
3 on a free and reduced plan.

4 And we did that -- at least part of it was a
5 recognition that students were sometimes embarrassed,
6 when they got to the high school level or when they were
7 older, to identify themselves as free and reduced.

8 BY MR. ELIASBERG:

9 Q Is it fair to say, then, that it was important
10 to you, regardless of the SES or -- socioeconomic status
11 or the ethnicity of the student in the school, that all
12 students have access to good facilities, the school
13 facilities were in good condition?

14 A Yes.

15 Q And why was that?

16 MS. DAVIS: Vague and ambiguous.

17 THE WITNESS: Things that we've talked about
18 earlier. I believe that school facilities have an
19 impact on what people think about when they walk up to
20 the school and when they're in the school. Focusing on
21 need.

22 Now, the roofing job was okay to spend almost
23 half million dollars on one school, because we were
24 doing the right thing there, focusing on expenditure of
25 mod moneys on a school because it was -- the need was

1 okay there. So yeah, it's for all the reasons we talked
2 about before.

3 BY MR. ELIASBERG:

4 Q In any of the time -- during the period of time
5 that you were at Moorpark, do you have -- can you
6 estimate the number of schools that you -- and maybe we
7 can even do it by buildings, because I understand it may
8 not be -- you may not modernize a whole school at a
9 time.

10 Do you have a sense of -- well, let me --
11 strike all of that. Let me start again.

12 During the time that you were at Moorpark
13 either as assistant superintendent or superintendent, do
14 you -- can you estimate how many campuses you did --
15 that modernization work was done on?

16 A Yes.

17 Q And what's that? What's that estimate?

18 A The three oldest schools in the district.

19 Q Okay. And what kind -- let's start with --
20 let's just take them one at a time, and I don't need to
21 know what schools they were, but just the first school
22 that you think of.

23 Do you know what -- do you remember what the
24 primary work you did on modernization -- what the
25 primary work you did on modernization was?

1 A I recall rebuilding toilet facilities,
2 restructuring classrooms, which meant ceilings,
3 lighting, carpeting, cabinetry, moving some
4 non-load-bearing walls to affect classroom size. I
5 remember replacing overhangs -- or maybe they weren't
6 overhangs. Maybe they were covered walkways. And
7 refurbishing cabinets that we kept. They were good
8 cabinets, but needed to be resurfaced.

9 Replacing the fire alarm systems, adding air
10 conditioning, jackhammering out the concrete floors and
11 demo'ing some of the walls in the toilet rooms in order
12 to replace them with more urine-resistant floor
13 coverings and wall coverings. That kind thing. Toilet
14 partitions to put in the more vandal-resistant toilet
15 partitions.

16 Q How old -- at the time -- well, let's try to do
17 it one piece at a time.

18 Do you remember approximately what year you did
19 the modernization on this particular school that you
20 just described?

21 A I just went through three schools, I'm sorry.

22 Q Oh, let's --

23 A I did a summary. That's the way I interpreted
24 your question.

25 Q Fair enough. It was probably ambiguous. Let's

1 A Yeah.

2 Q Why didn't you modernize it in 1990 or 1991, as
3 opposed to 1994?

4 A Well, there were probably a couple of reasons.
5 One was trying to access funds, do that at State level.
6 Those funds, although they were growing, they were still
7 pretty dear. We had attempted a local bond measure in
8 1990. It was not successful.

9 The other thing is that, during that period of
10 time, it was the only middle school, and it was growing
11 rapidly and modernizing it would have been a real feat.

12 Q Any other reasons that you can remember? I'm
13 not suggesting there were. I'm just trying to make sure
14 I understand all of your thinking.

15 A No, those are what I recall. Planning to build
16 the new middle school was something we were doing, and
17 what I recall is that we knew that, once that was
18 accomplished and diminishing the demand on that existing
19 middle school, we'd be able to get after it and having
20 State moneys to do so as well.

21 Q I believe you said earlier that one of the
22 reasons was that you had tried to access State
23 funds, but the State funds were pretty dear, is the
24 phrase you used.

25 What did you mean by the State funds were

1 do it this way.

2 Do you remember what years, approximately, you
3 did the modernization on the three different schools?

4 A First one probably was '86. The second one
5 was -- maybe it was '94, and the last one was underway
6 when I left there.

7 Q The school that was modernized in 1986, when
8 was it built?

9 A It was built in 1938.

10 Q Am I correct in understanding that it would
11 have actually been eligible for
12 rehabilitation/modernization earlier than 1986?

13 A Yes.

14 Q Do you know why it wasn't modernized as soon or
15 shortly after it was eligible?

16 A No.

17 Q Did you ever ask anybody to attempt to find
18 out?

19 A No.

20 Q And the school that -- the 1994 -- school that
21 was modernized in 1994, when was that built?

22 A 1959, '60.

23 Q So that school, under the State code, would
24 have been eligible for modernization approximately 1990;
25 is that correct?

1 pretty dear?

2 A Seeking mod moneys was something that many
3 districts were doing. And in each bond measure we
4 attempted to put more money into the mod program. At
5 that time I sat on the State Allocation Board's
6 implementation committee, and we made recommendations as
7 to what should go into the State bonds and, once the
8 bonds were passed, how -- you know, how we should spend
9 that money.

10 Many of us very sensitive to mod, and I was one
11 of them. Not simply because of our needs, but because
12 of just the need I was recognizing in California.

13 Q When you say that -- and I'm -- this is in
14 reference to the phrase "pretty dear," and I believe you
15 just answered my last question, that lots of districts
16 were seeking mod funds.

17 Am I correct in understanding that there were
18 more districts seeking mod funds than there were mod
19 funds available?

20 A Well, that, I believe, is something that we
21 came to believe somewhere -- especially in the 1990s,
22 especially after the failure of the '94 bond. Because
23 there was a period of time when we were without any
24 money.

25 Q And were you involved in the effort that you

1 referred to a couple questions back -- or couple answers
2 back to pass a local bond?

3 A Yes, I was.

4 Q Do you have any opinions as to why that local
5 bond didn't pass?

6 A It was difficult to get local bonds passed
7 during that time frame throughout California. There
8 were some changes later in the decade. The other, I was
9 told that I was successful at accessing State money, so
10 keep accessing State money.

11 Q Under the rehabilitation/modernization program
12 at around -- well, let's say 1990 to 1994, did the State
13 require a local match in order to get State mod moneys?

14 A No.

15 Q So the purpose of the bond was not to make
16 your -- to make the district eligible for State funding;
17 is that correct?

18 A No.

19 Q The purpose of the bond was to provide all the
20 resources you needed through local funds to do the
21 modernization work; is that right?

22 A To do a variety of projects at various schools,
23 but including, as I recall, the middle school, which was
24 that focus.

25 Q And your understanding is, at least in part,

1 A They were at the time that the modernization
2 was approved, yes.

3 Q And obviously, the building that was built in
4 1938 was eligible to --

5 A Yes.

6 Q -- be modernized?

7 A Yes.

8 Q Do you have an understanding as to why no one
9 had ever sought to modernize --

10 A Oh, I failed to -- I failed something. I
11 forgot about this. A portion of that campus was
12 actually modernized at the same time that the high
13 school buildings were modernized in 1986. There were
14 two projects going on at the same time. I'd forgotten
15 that.

16 Q So was the portion of the campus that was built
17 in 1938 the portion that was modernized at the same time
18 as the '86 modernization in the other school that you
19 talked about?

20 A Yeah, it was the north part of the campus. And
21 then the rest of the campus was -- those buildings
22 became eligible, and that was the second modernization
23 at that same site.

24 Q Do you have any understanding as to why -- just
25 with respect to the building that was built in around

1 the voters felt something along the lines of, you can
2 get mod money from the State, why should we tax
3 ourselves in order to come up with it?

4 A I don't know that that was prevalent. It was
5 certainly something that was said. I think mainly it
6 was it was very difficult to pass local bonds at that
7 time. And that particular area of Ventura County is --
8 the eastern end of Ventura County was very difficult.
9 It took the Canejo Valley School District five elections
10 to pass one. That was immediately adjacent to our
11 district.

12 So that particular area of the county, for
13 whatever reason, was more difficult, at least as it was
14 seen later, than areas like Oxnard and Ventura were.

15 Q The school that was in the process of being
16 modernized when you left -- so in the year 2000 -- when
17 was that school built?

18 A It was built originally in 1938, and then there
19 were additions to the campus. But I can't tell you all
20 the dates, but some would have been late '70s, early
21 '80s.

22 Q When, at least to the extent you're aware of
23 the modernization work that was -- that ended up being
24 done, were the additions that were built in the '70s and
25 '80s eligible to be modernized?

1 1938, why that had not been modernized earlier than
2 1986?

3 A 1986? No.

4 Q Did you ever attempt to find out?

5 A No.

6 Q In doing any of the modernization projects that
7 you discussed -- and let's -- the modernization projects
8 that you discussed before, with respect to any of the
9 schools -- well, let's say -- let's start -- the first
10 school that you talked about that was modernized in
11 1986, I believe you said, was built in 1938.

12 A Yes.

13 Q Do you recall that one?

14 Was all the -- what was the source of -- or
15 sources of the funds that you used to modernize that
16 school?

17 A State program.

18 Q All the money was from the State
19 rehab/rehabilitation program; is that correct?

20 A Yes.

21 Q Was the amount that you received from the
22 State -- was that a per-pupil, per ADA?

23 A No.

24 Q How was the -- how was the amount -- well, let
25 me ask you this.

1 Do you remember -- can you estimate
2 approximately how much money you received through the
3 State rehab/remodeling program?

4 A No, I couldn't give you -- give you an accurate
5 number there.

6 Q Okay. Without knowing the number, do you --
7 can you explain to me how that number -- how the amount
8 that was given was calculated? By that I mean, per ADA?
9 Lump sum? It was the same for every school district or
10 some other means of calculation where they would
11 determine how much the State would give you?

12 A It was using what we had talked about earlier
13 about the 25 percent of replacement value, and then
14 taking that and, using the architect's estimate of the
15 cost of the project that included soft cost as well as
16 the hard costs, coming to determination of total project
17 cost.

18 Q So am I understanding you correctly when I
19 would say that you would -- some -- you or somebody in
20 your office would forward to the State the architect's
21 estimate and also the replacement value of the building
22 that was being modernized; is that correct?

23 A Yes.

24 Q And the State would give you that amount of
25 money -- and by "you," I'm actually talking about how

1 But if the architect estimated that the
2 replacement value of the school is a million dollars,
3 then it's your understanding that you would have been
4 eligible for \$250,000 in mod money?

5 A Yes.

6 MS. DAVIS: Incomplete hypothetical.

7 BY MR. ELIASBERG:

8 Q Was it common practice, at least within your
9 district, that the architect would simply find projects
10 that needed to be done that added up to that \$250,000?

11 A No.

12 Q So did you ever submit estimates for mod
13 money -- for mod funding that were less than 25 percent
14 of the replacement value?

15 A We tried to maximize the program to the benefit
16 of the school.

17 Q What do you mean by that?

18 A To utilize the modernization program and its
19 components in such a way as to effectively have the
20 maximum amount of dollars available to take care of all
21 the parts of the building, the systems at the buildings,
22 in order to glean as much money as we could out of the
23 mod program to be spent on that school.

24 Q With that building that was -- that we're
25 talking about now that was modernized in 1986, were

1 the program works generally, unless there's some
2 difference that you can identify for me, at your school
3 district versus someone else -- that the State would
4 give you the amount of money in the architect's estimate
5 as long as it was 25 percent or less of the replacement
6 value; is that correct?

7 MS. DAVIS: Vague and ambiguous.

8 THE WITNESS: In general, what you have said is how
9 the program worked. The architect may be able to
10 identify a cost that was an important cost or
11 consideration that a plan checker at the Office of
12 Public School Construction would make and evaluate some
13 part of the building and plan change and identify what
14 that cost is.

15 But basically, in general, it was that 25
16 percent replacement value, as estimated by the
17 architect, for the specific work identified on the
18 plans. And those plans and the estimate made by the
19 architect were something that were compared at the State
20 level.

21 BY MR. ELIASBERG:

22 Q But if the architect concluded -- and actually,
23 if you don't mind, I'm going to use a hypothetical. The
24 numbers probably won't bear a lot of relationship to
25 what a school building's actually worth.

1 there -- was there other work that you would have liked
2 to see done to improve the condition of the building
3 that would have taken you above that 25 percent cap?

4 MS. DAVIS: Vague and ambiguous.

5 THE WITNESS: If you're asking would I like to have
6 had more money to spend on other buildings or other
7 systems, yes.

8 Under the mod program that existed at the time,
9 you could distribute the expenditure of funds as you saw
10 the need in the school. And you may have wished that
11 you had more money to spend.

12 BY MR. ELIASBERG:

13 Q Do you have any specific memories of things
14 that you would have liked to be able to rehabilitate,
15 refurbish, repair that you weren't able to do because of
16 the 25 percent cap?

17 A I don't have any specific memory of anything at
18 that first school of 1986 that you mentioned, no.

19 Q Was this -- the school that you modernized in
20 1986, was that one of the schools that you earlier told
21 me was a school that had been well maintained, based on
22 your assessment of the school when you started as
23 assistant superintendent?

24 A No. The school that we've been talking about
25 was the one that had the most issues.

1 Q So that was the 1986 -- this is the old high
2 school?

3 A There were two in 1986. One was part of an
4 elementary, but the first -- and we were talking about
5 this more than any other school -- was the old high
6 school, yes.

7 Q With respect to the school that was modernized
8 in 1994, was there any work -- well, actually, do you
9 remember if the request that you put in for
10 modernization funds was -- and I'm really not talking
11 about a dollar or two here, but significantly below the
12 25 percent estimate of replacement value?

13 A No.

14 Q Were there systems that you would have liked to
15 see upgraded or repaired or other major work that you
16 would have liked to have done in that building that you
17 didn't have the funds for?

18 A Which building --

19 MS. DAVIS: Vague and ambiguous.

20 BY MR. ELIASBERG:

21 Q This is the building you modernized in 1994.

22 A It may have been a different year than '94.

23 Q I understand. I'm not going back to check
24 records and say it was '93. That's not my point.

25 A Well, it may have been even later. But it was

1 Q For modernization?

2 A Yeah.

3 Q Do you remember what it was that the
4 principal -- the additional things that the principal
5 wanted done?

6 A Oh, he had an idea of creating, like, a --
7 what's the term? A -- kind of like a student center
8 that was almost like walking into a malt shop and
9 wanting to recraft a building to allow for that. Kind
10 of a creative guy, and I was trying to support his
11 creativity.

12 Q Wish I had a malt shop in my school.

13 A Never really occurred, but it was a nice dream.

14 Q Well, maybe some day yet.

15 The building that -- the last building that you
16 talked about which was being modernized in and around
17 the year 2000 --

18 A The second phase of that particular school.

19 Q Yeah.

20 A Second mod program at that school.

21 Q Right.

22 At that point, am I correct that the amount of
23 modernization money that you received would have been a
24 per-ADA calculation, as opposed to pegged off an
25 architect's estimate of replacement value and then

1 the -- it was the middle school.

2 You know, what I recall is actually doing some
3 deferred maintenance on that school as well as
4 modernizing it.

5 Q And am I correct in assuming that what you're
6 saying is, between the deferred maintenance funds and
7 the modernization funds, that you felt like you did all
8 the work you wanted to do?

9 MS. DAVIS: Vague and ambiguous.

10 BY MR. ELIASBERG:

11 Q That's question form. I'm not trying to put
12 words in your mouth.

13 A Yeah.

14 Q If that's not right, let me know.

15 A I was good at spending money if I had it to
16 spend. So I'm sure I would have done other things. We
17 did -- we did a sufficient amount of work there.

18 What I'm thinking is there were a couple of
19 things the principal wanted to do that I included in yet
20 another bond proposal that was a local proposal. And I
21 can't remember, if I could have had more bond money, if
22 I could spend it on those buildings if they fell within
23 that time frame; in essence, if they were eligible.

24 Q Sorry, eligible for?

25 A If they were old enough to be eligible.

1 capped out at 25 percent of that?

2 A That's what I recall, yes.

3 Q And do you remember approximately -- remind me
4 again. I know you've told me. But the 2000 school --
5 the school that was being modernized in 2000, at least
6 in part for the second time, was a -- what grade
7 configuration?

8 A It was an elementary school.

9 Q Okay. Do you remember the approximate amount
10 per ADA that Moorpark received for modernization?

11 A I don't.

12 Q Now, under the program would the amount of
13 money that you received vary -- or let's put it this
14 way.

15 It was a flat per-ADA amount, in the sense that
16 it didn't vary, regardless of what you said the
17 condition of the building was; did it?

18 A No.

19 Q In other words, you could have said, gee, my
20 building's really in bad shape. The per-ADA amount that
21 you're -- that's in the program won't do it for me, and
22 that wouldn't have changed the amount that you received?

23 A Not the State allocation, no.

24 Q In that -- was that building -- actually, let
25 me step back a minute. I'm not sure I asked the

1 question.

2 But the building that you modernized in 1994,
3 that was one of the buildings that had been well
4 maintained, in your opinion, at least based on what you
5 saw when you arrived --

6 A Yes.

7 Q -- at the district?

8 A Yes.

9 Q And in your opinion, did you and the people who
10 worked with you continue to maintain it well between
11 1983 and the time it was modernized?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: I wasn't there in '83.

14 BY MR. ELIASBERG:

15 Q I'm sorry, '85.

16 Between '85 and 1994 was it continued to be --
17 that's an awkward -- did Moorpark Unified personnel
18 continue to maintain the building well?

19 MS. DAVIS: Same objection.

20 THE WITNESS: It was a growing campus, and as
21 concerns arose -- and sometimes they arose because I
22 brought them up -- we addressed them.

23 One thing that occurred at that campus, because
24 it was in a central part of the community, is it was
25 heavily used by the community for youth sports, and so

1 Q Assuming that you have two schools in which
2 every -- all the variables that you mentioned were
3 identical except that one had been -- you had active
4 aggressive maintenance policy and the other maintenance
5 had been -- had not been done well, do you think it
6 would be more expensive to modernize one school than the
7 other?

8 MS. DAVIS: Incomplete hypothetical, assumes facts
9 not in evidence, calls for speculation.

10 THE WITNESS: I could speculate that if there were
11 two schools and I could spend, to use your term,
12 aggressively on the one school and the other school had
13 nothing done with it, that there would be differences in
14 how those two plants would look and how they would
15 operate.

16 BY MR. ELIASBERG:

17 Q And would that affect the actual cost to
18 modernize the school when -- after, let's say, 30 years
19 after both of them were built?

20 MS. DAVIS: Same objections.

21 THE WITNESS: In that, I would probably have the
22 same amount of money to spend on each program, based
23 upon the current program, I would have to make up the
24 difference, I guess, with local funds on the one that
25 wasn't very well maintained. But I'd have the same

1 there were competing interest for the fields. And the
2 fields were harder to maintain because they were being
3 used all the time. And there was a deterioration of the
4 fields.

5 So I had to get in and manage that, while
6 maintaining positive relationships with the youth sports
7 program and trying to have money to refloat the fields,
8 to basically make sure that they were filled and level
9 and, therefore, safe. And those kinds of things
10 occupied our attention, as did building issues, if they
11 would emerge. So yeah, we tried to maintain them well.

12 BY MR. ELIASBERG:

13 Q In your opinion, would it be -- would it cost
14 more to modernize a building that has not been well
15 maintained in the past than it would to modernize a
16 building where you kept up with the routine
17 maintenance?

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

20 THE WITNESS: Yeah, I was going to say I'd have to
21 speculate at the kind of construction of the building
22 when it was built, the type of building it was, high
23 school as opposed to an elementary school. All of those
24 things would be factors.

25 BY MR. ELIASBERG:

1 level of State support, based upon the age of the
2 buildings and based upon the number of pupils currently
3 being served, because those are the basic factors.

4 MR. ELIASBERG: You've been a trouper, because
5 we're well, well, well over an hour. So let's take a
6 short break.

7 (Brief recess taken.)

8 BY MR. ELIASBERG:

9 Q Mr. Duffy, when was the -- Dr. Duffy. I'll get
10 that right sometime before -- I know we only have two
11 days. It usually takes me three days to get the names
12 right. The problem is I have notes here, and they say
13 Mr. Duffy.

14 When was the new high school completed in
15 Moorpark Unified School District?

16 A There were several phases to it.

17 Q When was -- well, what were the phases?

18 A The first phase was opened in September 1988.

19 Q And when was the next phase?

20 A The next phase was completed by the following
21 September, '89.

22 Q Am I correct in understanding, by phases, that
23 in the first phase some buildings on the campus opened,
24 and then in the next phase some other buildings opened
25 that hadn't been opened the previous year?

- 1 A That's correct.
 2 Q And how many phases were there?
 3 A When I left there was a -- we had started the
 4 fifth and, I think, the sixth phase at the high school.
 5 Or were -- maybe -- it was planning the sixth phase.
 6 They were together. So it was fifth or fifth and sixth.
 7 Q At the time you left, approximately how many
 8 students attended the high school?
 9 A 25-, 2600.
 10 Q Just from the perspective -- now I'm not
 11 talking about the people who teach there or the students
 12 who go there, but just from the perspective of the
 13 buildings on the school, do you think that it is a good
 14 high school, the buildings are good?
 15 A Yes.
 16 Q And why do you think that?
 17 A We planned carefully. We were deliberate about
 18 what we did. We phased the uses of certain rooms and
 19 certain buildings to be transitioned at a later point.
 20 We planned the site development to be able to expand for
 21 parking and future buildings and athletic fields.
 22 Q Any other things why you say it was a nice
 23 building?
 24 A Comments that were made.
 25 Q What were some of those comments?

- 1 A People couldn't believe we built it under the
 2 State program.
 3 Q And why couldn't they believe you built it
 4 under the State program?
 5 A Because they said it looked so good.
 6 Q Did you respond to any of those comments?
 7 A We had a very good architect who paid attention
 8 to detail. We had people that focused on detail and
 9 student use, the arrangement of buildings to maximize
 10 observation of students for safety purposes, those kind
 11 of things, the access points. We planned it with the
 12 developer.
 13 I talked to you about the landscaping and the
 14 fencing that they put in. We involved them. I think
 15 they probably contributed some ideas. They weren't
 16 educators, but they were, you know, planners and looked
 17 at design, and that happened over multiple phases.
 18 Q Does the school have -- does the high school
 19 have science labs?
 20 A Yes.
 21 Q Did you design and build the science labs --
 22 and again, I use "you." I understand you didn't lay the
 23 brick yourself, but you and the people you work with.
 24 Did you design and build the labs with any
 25 State academic requirements in mind?

- 1 MS. DAVIS: Vague and ambiguous.
 2 THE WITNESS: I don't know that we used State
 3 academic requirements as a guide. I believed in the
 4 people who were in the science department, and we
 5 involved them in planning. So we thought we were doing
 6 the right thing.
 7 BY MR. ELIASBERG:
 8 Q Do you know if they took into account any State
 9 content requirements, anything like that, in suggesting
 10 to you how the -- what kind of labs you should have?
 11 MS. DAVIS: Vague and ambiguous, calls for
 12 speculation.
 13 THE WITNESS: We knew that we wanted to make sure
 14 we could cover all of the areas of science. So we had,
 15 you know, physical sciences, where you could use regular
 16 classroom, going to chemistry and others, where you
 17 needed certain kinds of waste water sources and sinks,
 18 and all that, I believe, was considered. These were, I
 19 think, for the most part, experienced science teachers
 20 or those that knew the program.
 21 BY MR. ELIASBERG:
 22 Q What do you mean by the program?
 23 A Knew the program that they needed to teach.
 24 Q Do you have an opinion as to whether there are
 25 certain areas of science or certain science subjects

- 1 that you can't teach properly without having adequate
 2 labs?
 3 MS. DAVIS: Vague and ambiguous.
 4 THE WITNESS: Chemistry is certainly one of them.
 5 In order to do it effectively, since you're going to be
 6 disposing of certain kinds of product that are created,
 7 you need or should have a sink and waste water system
 8 that would take those kinds of substances, those
 9 chemicals.
 10 BY MR. ELIASBERG:
 11 Q Any other sciences that having appropriate
 12 classrooms or labs would affect your ability to teach
 13 them?
 14 A The way that the labs are laid out, with
 15 peninsulas for students to group. They could either --
 16 teacher could teach a full-on class, looking at everyone
 17 and everyone has space to write, take notes, or for
 18 students to work individually on experiments, and that
 19 was taken into account.
 20 Q After you left the position as assistant
 21 superintendent and became superintendent, did some of
 22 your -- were some of your responsibilities having to do
 23 with the academic program at the schools in your
 24 district?
 25 A Yes.

1 Q Are you generally familiar with State content
2 standards or State academic standards?
3 A I can't recall the last time I read through any
4 specific standards. At the time that I was there, we
5 would discuss from time to time specific standards or
6 changes that would occur, but I don't know that I could
7 articulate much of that for you right now for anything
8 in particular.
9 Q Are you aware as to whether the University of
10 California system has certain academic requirements --
11 A Yes.
12 Q -- for admission?
13 And do you know if any of those academic
14 requirements are in the sciences?
15 A Yes.
16 Q Do you know what those requirements are?
17 A No, I can't talk about them specifically.
18 Q Do you know if any of those requirements are --
19 require that a student, to be admitted, has to take a
20 chemistry class?
21 MS. DAVIS: Calls for speculation.
22 THE WITNESS: I don't recall specifically what the
23 requirements are for the sciences.
24 BY MR. ELIASBERG:
25 Q I gather that during your tenure, the Moorpark

1 students won the -- what was it? -- the academic
2 decathlon at least once; is that correct?
3 A First time, yes.
4 Q What do you mean the first time?
5 A They won it a second time nationally.
6 Q When did they win it the first time?
7 A 1999, I believe it was.
8 Q And they've since won it again?
9 A This year.
10 Q By the time -- at the time you left, had the
11 State's API program been set up?
12 A Yes.
13 Q About how many years had the API been in
14 effect? Or for how many years was the API program in
15 effect that you were superintendent at Moorpark?
16 A Maybe two years. It was toward the end of my
17 tenure there we began to recognize what those
18 requirements and needs were.
19 Q Approximately how large -- I understand that
20 there were about 2600 students at the time you left.
21 About how large would the graduating class be,
22 on average, each year, say for the last four or five
23 years that you were there?
24 A Well, it increased every year. I'd be
25 guessing. I just don't remember specifically, but it

1 was -- the graduating class was several hundred.
2 Q Do you have any -- do you have an estimate as
3 to the percentage of the graduating class, on average,
4 in, let's say, the last four years that you were there
5 that went on to attend four-year college university?
6 A I don't recall the number, no.
7 Q Do you have any estimate at all?
8 A No. What I can tell you is that we had
9 dramatic increases from what was going on in the '80s to
10 what was going on in the '90s.
11 Q And do you have any estimate of either the
12 percentage or the number of students who went into the
13 UC system --
14 MS. DAVIS: Calls for speculation.
15 BY MR. ELIASBERG:
16 Q -- from high school?
17 A I don't recall.
18 Q Is it your opinion that the academic -- that
19 the academic program at Moorpark High School, at least
20 during the time that you were there, was a good one?
21 MS. DAVIS: Vague and ambiguous.
22 THE WITNESS: Yes. It was a good academic
23 program. When we -- you know, WASC is a measure. We
24 had at least two WASCs that gave full -- full reviews,
25 basically, where you're approved and no returns are

1 made, except in a regular cycle; in essence, meaning you
2 met all the requirements, met all the tests.
3 People would come to the high school to see
4 what we were doing frequently. We started academies at
5 the high school, did a number of things. Probably the
6 most dramatic thing was the reduction of the drop-out
7 rate.
8 BY MR. ELIASBERG:
9 Q Are you proud of the role that you played in
10 building a new high school in Moorpark Unified?
11 A Yes.
12 MS. DAVIS: Vague and ambiguous.
13 THE WITNESS: Well, I had a lot of fun. It was --
14 it was satisfying.
15 BY MR. ELIASBERG:
16 Q I've never heard getting money through the
17 State program as fun, but -- do you have an opinion as
18 to whether the school facility, the new school facility
19 and the change from the old school facility to the new
20 school facility, had an effect on reducing the drop-out
21 rate in the high school?
22 MS. DAVIS: Vague and ambiguous, calls for
23 speculation.
24 THE WITNESS: I think there were a number of
25 factors that were involved there. People may have

1 avoided, if they could, sending their children to the
2 school for various reasons, but with growth, we were
3 able to bring in new faculty. There were no AP courses
4 in the district when I got there, not one. So we were
5 able to add AP courses.

6 Select faculty members who brought in new
7 ideas, empower them to do new things. Reviewed the
8 curriculum. When there was a disconnect between middle
9 school and high school, to get people to commit to close
10 the door and talk about specific issues, because of
11 building trust over time.

12 So teachers would say, these are problem
13 teachers. You know, if you're going to fix it, we got
14 to fix -- part of the fix is helping them to be able to
15 teach more effectively in this area, and that, of
16 course, was an important area. So some of that had to
17 do with bring in new people and changing dynamics of the
18 old.

19 So if facility had an impact. Well, putting in
20 a new facility certainly allowed us to expand the
21 curriculum, because there were newer science labs and
22 more science labs, and the music program was able to be
23 expanded, all of that. So certainly, the facility, I
24 think, had some impact, but part of it had to do with
25 growth and being able to select individuals who could go

1 of time, but there was a teacher that had wanted to
2 teach a specialized summer program, genetics, and sought
3 our support for that. That is, district level support.

4 And I recognized that Amgen was willing to make
5 a contribution of materials and equipment that was
6 either on loan or given to the district, and that was
7 done.

8 Q And was that genetics course -- did the teacher
9 end up teaching that genetics course over the summer?

10 A I believe for a summer, yes.

11 Q And do you know if that class involved any
12 laboratory work?

13 A It would have involved lab work, yes.

14 Q Did the high quality of the facility make it
15 easier for you to attract better teachers?

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

18 THE WITNESS: I was -- based on what I heard from
19 people then, yes and no. People say, yeah, we like
20 this. It's really an attractive place to come teach at
21 whatever level it is. But we also lost people who went
22 to Canejo -- that was right next door -- because Canejo
23 had a higher beginning teacher salary and higher
24 salaries overall. So it sometimes made a difference,
25 but the salaries and the draw of that in Canejo made a

1 into the district and make a difference of what they
2 knew and how they could teach.

3 And then having people buy in to the school, in
4 terms of volunteers who -- through the PTA and through
5 other support groups. There's always a tug of war at
6 the high school level on academics and sports and social
7 programs and outside interests that weren't through
8 school, and that's something that needs to be managed,
9 too. And that, you know, you develop a working
10 relationship with people, to try to manage things, and
11 then people recognize that they can make a contribution
12 to the high school, and the business community is going
13 to be -- like Amgen -- that was in the area -- they can
14 make a contribution to the community, to the high
15 school, with people or with equipment to augment new
16 programs, support those programs.

17 BY MR. ELIASBERG:

18 Q And I'm sorry, what was the name of the
19 company?

20 A Amgen.

21 Q Is that a biotech company?

22 A Yes.

23 Q Were there specific contributions that it made
24 to the school?

25 A I think they made contributions over a period

1 difference as well.

2 They were the ones we competed with with regard
3 to, I guess, attracting new innovative people.

4 BY MR. ELIASBERG:

5 Q Let me make sure I understand you.

6 I think I understand you to say that for some
7 teachers, the facility -- the new facility was a draw,
8 but for others higher pay was either a greater draw or
9 the new facility wasn't a draw at all; is that correct?

10 A Yeah, I don't know whether it wasn't a draw at
11 all, but -- at all or if it was the higher salary but
12 we -- Canejo hired some and we didn't.

13 Q But they --

14 A And salary was the difference, as we were told.

15 Q But am I also correct that, in some cases, you
16 got them and Canejo didn't?

17 A I think, in some cases, we got them and Canejo
18 didn't.

19 Q Let me just make sure -- I think that you've
20 already said this, but I just -- I want to make sure
21 that I'm not dreaming it.

22 Was it your opinion that at least part of the
23 improvement in the academics at Moorpark was
24 attributable to being able to bring in newer, more
25 creative teachers?

1 MS. DAVIS: Mischaracterizes prior testimony, vague
2 and ambiguous.

3 BY MR. ELIASBERG:

4 Q That's not what I'm trying to do. If I'm
5 misstating what you said, please correct me.

6 A The fact that we were growing allowed us to
7 bring in new people who had new ideas who were
8 energetic. They were -- the high school faculty that
9 was there when I arrived was, for the most part, there
10 for a long time, and I heard war stories and I didn't
11 want to hear war stories. What I wanted to hear was
12 future stories that were going to create.

13 And we were able to hire new faculty members.
14 And many of the old faculty members remained there, but
15 many of the new faculty members who came in were
16 energied, wanted to do things, were creative. The
17 person that led the academic decathlon team that you
18 mentioned was one of them. So they brought in new
19 energies and new ideas and said, let's mark new
20 territory, let's create.

21 And all that dynamic, I think, helped to
22 improve our high school, along with supporting them,
23 along with the kinds of dialogues that you have.
24 Where, in my view, the district office works closely
25 with -- you know, in a top-down fashion, only with the

1 know, have plans and dreams and make them happen.

2 But when you live in a school district and
3 you're superintendent and you make things happen and you
4 take people on and your children go to the schools,
5 especially at the high school level, there can be
6 negatives. So I thought maybe I'll try something
7 different, where those negatives will be erased for at
8 least the other half of my family. That was part of it.

9 Another was that there was a new opportunity
10 and a new challenge to do something that I'd had some
11 success in before, just from my own district, in being
12 involved in State-level policy determination and
13 lobbying and had had significant offer to do that.

14 Q What is your -- what are your responsibilities
15 at Murdoch, Walrath & Holmes?

16 A Again, a myriad of answers, probably. I'm
17 chief lobbyist for the Coalition for Adequate School
18 Housing, which means that I meet and serve the board of
19 the coalition and work with committees of the coalition
20 that include the legislative advisory committee and some
21 others.

22 I'm responsible for recommending positions on
23 bills, for discussing potential policy changes and
24 offering new legislation, based upon getting agreement
25 on those, at least from the C.A.S.H. board, responsible

1 high school or any other school, you're not going to
2 have successes.

3 If there's a work from the high school level or
4 any school level to the district office, where you're
5 sharing goals and objectives and you're giving
6 opportunities for resource sharing and decision making,
7 you can create dynamics that take you, you know, to new
8 areas. People feel those kinds of freedoms. So I think
9 that dynamic was something that was created there.

10 Q In your job as either assistant superintendent
11 or superintendent, did you comment if a teacher at one
12 of the schools resigned, left the district or whatever,
13 that you would talk to -- have an exit interview or
14 something like that to them?

15 A Sometimes people sought an interview. It may
16 be something that I would do, and I did it. I didn't do
17 it every time. Sometimes you kind of knew why people
18 were leaving, and it was for a reason that wasn't
19 necessarily relative to the school district.

20 Q Why did you give up your position as
21 superintendent?

22 A Probably a multitude of reasons. I'd had
23 opportunities to go other places to do the same job,
24 basically, and didn't take those. It was fulfilling to
25 stay at the helm and continue to move forward and, you

1 for interacting with members of the Legislature, both to
2 understand what they're attempting to do with their
3 bills specifically and to talk to them about changes
4 that we'd like to see in their bills or asking them to
5 sponsor legislation.

6 I talk with school districts who call who have
7 issues. If there's a specific issue that arises that is
8 of particular import that I believe will require input
9 from those at the local level, I'll convene a committee,
10 you know, select people and ask people if they'd be
11 willing to serve and focus on the issue.

12 Monitor the State Allocation Board, what the
13 allocation board does and policy considerations of the
14 allocation board that come through the implementation
15 committee and represent C.A.S.H. at the imp committee,
16 giving input as necessary, address the allocation board
17 from time to time, talk to members of the board from
18 time to time, interface with the State agencies on
19 policy issues such as OPSC, DSA, CDE.

20 Stay abreast of changes that may be out there
21 that impact schools. And certainly, that comes through
22 the Legislature and through State agencies, but it also
23 may come through some other source, and sometimes that
24 may be the Federal Government, sometimes it may be some
25 other body that has some national effect, being

1 conscious and, I guess, vigilant.
 2 Q Do you do any of the work --
 3 A And one big one -- one big one is making sure
 4 we focus on statewide school bonds, and that focus
 5 includes input into the level of the bonds and how that
 6 money needs to be distributed and any new programs that
 7 may need to be offered or suggested.
 8 Q What do you mean any new programs that need to
 9 be offered or suggested?
 10 A From time to time something may emerge that is
 11 a problem or there may be a conflict, and a solution is
 12 necessary. So because we represent school districts and
 13 those that serve school districts, being conscious of
 14 what happens at the local level and getting input from
 15 the local level, we may understand that some change is
 16 needed and some new program is needed, we need to focus
 17 on expanding something that already exists or creating
 18 something that's new.
 19 And that may be something that we want to
 20 include in a bond or in legislation that would be paid
 21 for -- the program would be paid for by a bond or a
 22 future bond.
 23 Q I understand that C.A.S.H. stands for Coalition
 24 for Adequate School Housing, but what is C.A.S.H.?
 25 A It's a nonprofit organization.

1 Q And is it a membership organization?
 2 A Yes.
 3 Q And who are its members?
 4 A School districts, individual members of school
 5 districts, architects, construction management firms,
 6 construction managers, people who do financings, bond
 7 financings and others, manufacturers of furniture,
 8 manufacturers of modular facilities, facility planners,
 9 attorneys like yourself. We've had labor unions. Other
 10 statewide organizations are members.
 11 Q Are all the -- is C.A.S.H. a -- well, let me do
 12 it -- is C.A.S.H. a California -- I don't know
 13 membership organizations.
 14 Are you chartered or some official setup,
 15 something like that?
 16 A It's referred to as California's Coalition for
 17 Adequate School Housing.
 18 Q And so are all the school districts that are
 19 members of C.A.S.H. California school districts?
 20 A Yes.
 21 Q Okay. Are all of the California school
 22 districts members of the C.A.S.H.?
 23 A No.
 24 Q Do you know what percentage of the school
 25 districts are members?

1 A We have about half.
 2 Q Do you have any understanding as to why some
 3 districts choose to join and some choose not to?
 4 MS. DAVIS: Calls for speculation.
 5 THE WITNESS: No.
 6 BY MR. ELIASBERG:
 7 Q Have you ever talked to a district that's not a
 8 member of C.A.S.H. and either asked them or had them
 9 tell you why they weren't a member?
 10 A No.
 11 Q What's C.A.S.H.'s mission?
 12 MS. DAVIS: Vague and ambiguous, assumes facts not
 13 in evidence.
 14 BY MR. ELIASBERG:
 15 Q Does C.A.S.H. have a mission?
 16 A I don't think it's written down anywhere,
 17 necessarily. Maybe it is. But I mentioned a minute ago
 18 one big item. One mission is to make sure that we have
 19 State bonds, and through that mission, to be able to
 20 assist school districts in providing what the name
 21 implies, adequate school facilities for pupils in
 22 California.
 23 Q Are there any other portions of C.A.S.H.'s
 24 mission, as you understand it?
 25 MS. DAVIS: Vague and ambiguous.

1 THE WITNESS: One thing that we undertake is to
 2 make sure that we monitor legislation that involves the
 3 State program. We've worked over the years to try to
 4 expand that program, both the new
 5 construction/modernization program and others. We will
 6 be involved in proposing legislation to those ends and
 7 also working to create regulation to implement those
 8 pieces of legislation that are successful and then
 9 provide feedback about the adequacy of those programs to
 10 the Legislature and others.
 11 And we also have a mission of helping school
 12 districts, by educating school districts about many
 13 things, including the programs themselves, how to be
 14 involved in those programs, how to implement those
 15 programs, how to deal with subcomponents of implementing
 16 those programs, providing information about updates for
 17 legislation and regulation, helping in-service -- I
 18 guess we don't really call it that, but we provide
 19 workshops for school district personnel and for others,
 20 where we bring practitioners together and have them
 21 provide information to those interested on specific
 22 topics that we advertise and provide documentation for
 23 so that they can learn about them.
 24 BY MR. ELIASBERG:
 25 Q Is there anything else that you consider to be

1 a part of C.A.S.H.'s mission?

2 MS. DAVIS: Same objection.

3 THE WITNESS: I guess sort of encompassing
4 everything I've said, our focus is on provision of
5 adequate school facilities in California, and things
6 that fall under that umbrella are things of interest to
7 C.A.S.H. We're the only organization in California that
8 has specifically focused upon school facility issues
9 since 1978. The other statewide organizations are
10 interested, but their focus is not specific to those
11 issues.

12 BY MR. ELIASBERG:

13 Q What's your understanding of the meaning of the
14 term "adequate school facilities"?

15 A It's a term that has been debated, but adequate
16 means that the educational programs, whatever those may
17 be at the elementary, middle or high school level, can
18 be carried out within the facilities, and the
19 educational program is also supported by other adequate
20 facility needs, which may include multi-purpose rooms,
21 libraries, gymnasias, that sometimes you don't find in
22 certain schools, but we believe that they're important.

23 Q Are there other things that you -- other
24 components of an adequate school facility other than the
25 ones you've just mentioned?

1 A That in an elementary school, that you would
2 have space for the teacher to be able to do the things
3 you do at the elementary level, say at first grade,
4 where you have space for learning centers that may be in
5 one location of the classroom as opposed to a small
6 group instruction area that you have in another location
7 of the classroom, as opposed to a quiet reading area
8 that you have in yet a third area of the classroom.

9 So space to divide out the learning
10 opportunities for students. That's personal, from my
11 experience in teaching, teaching at the elementary
12 level, where you use the classroom space in that way.

13 Q Would you consider a school that doesn't have
14 labs and wants to -- where they're trying to teach a
15 laboratory science, would you consider that to be a
16 missing component of an adequate school facility?

17 MS. DAVIS: Vague and ambiguous, calls for
18 speculation, incomplete hypothetical.

19 THE WITNESS: If there's a school that has a
20 science curriculum and the science curriculum involves
21 the need for space to be able to have instruments and
22 that space is not available, then somebody'd have to be
23 creative to make that space available. If you have a
24 room where experiments are going to be done and you
25 don't have at least a couple of sinks, you know, that

1 A Well, the provision of school sites and open
2 space and play space and athletic facilities, and to
3 some degree, those are supported by the State program.
4 We've supported that inclusion.

5 Q Why do you consider open space and play space
6 to be part of an adequate school facility?

7 A Well, we believe that students need to get
8 outside the classroom and be able to move about at
9 playgrounds, although liability issues and challenges to
10 playground apparatus have changed playgrounds over
11 time. Some play space or exercise space, we believe, is
12 necessary.

13 Q Why do you believe that? What's your basis for
14 that opinion?

15 A Well, part of the belief -- my personal belief
16 is -- I've been in a classroom, and I know students need
17 to get outside from time to time, just like we need to
18 get outside this room and walk around a little bit. You
19 know, we're -- we develop energy, and we need to move
20 it. Students, in particular, need that.

21 Q Can you give me -- I believe you said that one
22 of the components of an adequate school facility was a
23 facility where the educational program can be carried
24 out in the facilities.

25 What do you mean by that?

1 will impact what could go on there.

2 So those kinds of things, I think, would be
3 included in adequate space for -- we're talking about
4 elementary, but we mentioned labs. We could go to
5 either middle school or high school level. Those would
6 be something that we would say would be included in the
7 need for adequate facilities.

8 BY MR. ELIASBERG:

9 Q Does C.A.S.H. have any position -- and right
10 now I'm asking sort of the group as a whole, as opposed
11 to your personal opinion, which I'll get to in a minute.

12 But has C.A.S.H. made any estimates or taken a
13 position as to the amount of play or open space that
14 students need -- let's say elementary school students
15 need?

16 A No. We've -- at workshops and conferences over
17 time, we've supported what the California Department of
18 Education has provided as space that is necessary for
19 different grade levels. And I realize that sometimes
20 those are modified in different ways, but we've
21 supported CDE's recommendations.

22 Q And where are those recommendations set forth?

23 A They're set forth in a document -- I'm
24 forgetting the name of the document, but basically,
25 school site -- it's either school site analysis guide --

1 I haven't looked at one for a number of years, but I
2 believe they're set forth there. You probably have a
3 copy of it.

4 Q But is it your understanding those are
5 recommendations as opposed to requirements?

6 A They're recommendations, but having worked with
7 CDE in site selections in the past, they're pretty
8 specific to trying to stay very close to those
9 requirements unless there are other circumstances. And
10 those other circumstances could involve a variety of
11 things.

12 Q And when you say with respect to site
13 selection, are you talking about selection of the site
14 for a new school?

15 A That's what I was meaning, yes.

16 Q Do you know if CDE makes any effort to monitor
17 whether those recommendations are being followed with
18 respect to schools after the site's been selected and
19 the school's been built?

20 MS. DAVIS: Vague and ambiguous.

21 THE WITNESS: How do you mean?

22 BY MR. ELIASBERG:

23 Q Well, for example, do you know if the CDE would
24 take any steps if a school -- well, let me give you a
25 little bit of a hypothetical.

1 CDE has looked at the site, approved the site.
2 School's been built. Stick-built school's been built.
3 And ten years later the district decides to put 50
4 portables on the campus or some large number of
5 portables on the campus.

6 Does the CDE engage in any oversight of that
7 decision to say, we don't think you are continuing to
8 live up to our recommendations with regard to the amount
9 of playground space?

10 MS. DAVIS: Incomplete hypothetical.

11 THE WITNESS: I have experienced CDE having a
12 concern about that kind of thing happening on a school
13 site.

14 BY MR. ELIASBERG:

15 Q Do you have examples of -- I mean, you said
16 you've experienced that.

17 What would that experience be?

18 A School that I was responsible for building,
19 approximately a ten-acre site with a kindergarten wing
20 some distance from a wall that was probably 15 feet from
21 the sidewalk, which was five feet from the roadway.
22 CDE's concern about the placement of portables being too
23 close to this two-lane road. It was not a State highway
24 but, you know, marked 45 miles per hour.

25 Locating the portables there was a concern.

1 Locating the portables at a different location on the
2 site wasn't as much of a concern. And it was a safety
3 issue. So it's not exactly what you were probably
4 getting at, but there was a CDE concern that was
5 expressed that was taken into consideration.

6 Q How did this situation come to CDE's attention?

7 A Because we worked with CDE. We had CDE in the
8 district from time to time. They're -- you know, they
9 were part of the process of being able to access State
10 funds and -- you know, they're somebody that we value.
11 We valued their opinion.

12 Q Am I understanding you correctly that you
13 actually asked someone from CDE to look at this, to
14 evaluate the placement of -- possible placement of a
15 portable at this location?

16 A They would be in the district from time to
17 time, going to other school sites. So yes, asking -- or
18 going out to something that wasn't a school site yet.
19 So showing what we were doing.

20 You know, we developed working relationships
21 with those people, and we would like them to know what
22 we do, how we think and the fact that we're concerned
23 about school facility issues. They recognize that and
24 respond to that.

25 Q Are you aware that -- and I think you were

1 correct in identifying that was similar to but not quite
2 the same as what I was talking about previously.

3 Are you aware of situations where CDE has
4 expressed concern with a school or school district's
5 choice to place some number of portables on campus -- on
6 the grounds, that they no longer were providing the play
7 space that the school needed or should have?

8 MS. DAVIS: Same objection.

9 THE WITNESS: There's something vaguely familiar
10 about what you said that seems that I've experienced,
11 but it may take a few minutes for me to think about it.
12 But it's not something, I think -- and this is probably
13 your question -- that is necessarily commonly done by
14 CDE.

15 BY MR. ELIASBERG:

16 Q I want to turn just for a second to -- you
17 talked about, I believe, C.A.S.H. -- I think you used
18 the phrase "workshops for school districts."

19 A And others, yes.

20 Q And others.

21 Are these workshops for C.A.S.H. members only,
22 or are they open to anybody?

23 A No. If you're not a C.A.S.H. member and you
24 want to attend, you can attend.

25 Q What are subjects of some of these workshops

1 that's -- let's just say in the last five years.
 2 Can you give me examples of some of the
 3 workshops C.A.S.H. has held?
 4 A Probably one of the most compelling series of
 5 workshops is on the new labor compliance programs, where
 6 we've been the only entity other than, recently, the
 7 State agency DIR really conducting workshops to teach
 8 districts how to do what is pretty technical task,
 9 pretty comprehensive task. And that started back in
 10 December of last year, 2002, continued on with some
 11 workshops that happened in, probably, March and then
 12 also in May.

13 There'll be something coming up -- I think
 14 we've got something planned for August, just on --
 15 specifically on that, because it was a requirement of
 16 law that after April 1st, 2003, that you must have a
 17 labor compliance program in place or you could not
 18 receive a fund release, even if you'd received an
 19 apportionment. So said we need to help districts
 20 understand how to do that.

21 Q And from a layman's perspective, what are the
 22 labor compliance requirements, in brief?

23 A That a school district that is funded for a
 24 project -- modernization or new construction project,
 25 through Prop 47 bonds, monitor both -- give information

1 to any contractor, subcontractor that will be working on
 2 their project, and that they monitor that project by
 3 receiving something they never had to do before,
 4 receiving prevailing wage comparative information to the
 5 certified payroll of the contractors and subcontractors
 6 to be able to see specifically that individual workers
 7 are being paid at the prevailing wage rate.

8 This was something that the Department of
 9 Industrial Relations was responsible for, at least over
 10 time, and now school districts receiving State bond
 11 moneys for those two programs I mentioned must do this.

12 Q What are some of the other subjects that
 13 you've -- C.A.S.H. has held workshops on in the last few
 14 years?

15 A We had a workshop a few months ago -- maybe it
 16 was more than a few months ago, maybe last fall -- on
 17 working with communities that are basically urban
 18 communities, for the most part, where districts are
 19 seeking to build schools in areas where there are
 20 families in homes and bringing districts together that
 21 have done this.

22 So we called it community outreach, but part of
 23 it was saying, this is how you do it, but in the end
 24 what happens if you need to use the power of eminent
 25 domain and, you know, how do you approach that, how can

1 you lead up to that, and then what do you do once you
 2 get there. That was another one.

3 Trying to think. There was one just last week,
 4 but I wasn't involved in it. CEQA has grown and changed
 5 over time, California Environmental Quality Act. So
 6 we've either done a CEQA workshop or planning to.
 7 There's others that get involved in this besides me.
 8 I'm trying to think if there was -- I think there was
 9 one done on the critically overcrowded schools program
 10 too, because that was being implemented.

11 Q Do you know if you've -- if C.A.S.H., in the
 12 last five or -- well, let's make it ten years -- you've
 13 been involved with C.A.S.H. for a long period of time;
 14 have you not?

15 A Yes, I have.

16 Q For how long have you been involved with the
 17 organization?

18 A Since about 1980.

19 Q So let's focus on the last ten years.

20 Has C.A.S.H. given any workshops that are
 21 peculiarly or particularly addressed to schools or
 22 school districts that have operated some or all of their
 23 schools on multi-track year-round calendars?

24 MS. DAVIS: Vague and ambiguous.

25 THE WITNESS: Not since I -- that I can recall, not

1 since I've been working out of Sacramento. But I'm
 2 recalling that there was something that was done before
 3 on MTYRE.

4 BY MR. ELIASBERG:

5 Q Do you remember more specifically what --

6 A No, I don't. It's just kind of vague. No, I
 7 don't.

8 Q Do you know whether C.A.S.H. has a position as
 9 to whether schools that are operating on MTYRE calendars
 10 are -- whether that's considered adequate school
 11 housing?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: We've been cautious with that for a
 14 couple of reasons, I think. There are member districts
 15 that have MTYRE programs that like them and that want to
 16 maintain them, and -- that have been advocates for
 17 MTYRE. We also had a couple of C.A.S.H. members few
 18 years ago that expressed concern about the growing
 19 numbers of MTYRE programs.

20 So when we proposed the critically overcrowded
 21 schools program, which we referred to in the beginning
 22 as the underperforming schools program, and put that
 23 forth, one of the things that we identified was that
 24 this would be aimed directly at if a district chose to
 25 dismantled some MTYRE programs, because of the way we

1 were proposing to structure it.
 2 I had some responses to that that were saying,
 3 be cautious, because there are some people that, you
 4 know, are thinking you're saying bad things about those,
 5 and my response is, well, in some situations they may
 6 not be the best. So that's why we're proposing them.
 7 And there's been some litigation in the past here that
 8 has sort of pointed in that direction.

9 So we're proposing a policy change. And part
 10 of the reason for that policy change was because of the
 11 proliferation of those programs in areas where there
 12 wasn't space to -- supposedly space to put other schools
 13 very quickly.

14 I'm going to need a break, Peter, in a minute.

15 Q Sure. Take it. It's as good a time as any.

16 (Brief recess taken.)

17 BY MR. ELIASBERG:

18 Q Dr. Duffy, I believe you testified before we
 19 took the break that at some point -- I believe it was in
 20 the context of a discussion about the critically
 21 overcrowded schools program and the new bond, that you
 22 said that some districts supported -- or had MTYRE
 23 calendars and liked them.

24 Is that, in some or substance, correct?

25 A Yes.

1 doesn't think that way. And I wasn't trying to be
 2 negative, I was simply trying to identify that it
 3 appeared that the climate was changing in California, in
 4 terms of the acceptability of large numbers of MTYRE
 5 schools in certain districts.

6 And of course, L.A. frequently was mentioned.

7 Q Was -- do you know whether the -- any of the
 8 schools in Elk Grove that operate on a MTYRE calendar
 9 operate on the Concept 6 calendar?

10 A I don't know specifically, no.

11 Q Okay. Do you know whether any of those schools
 12 in -- I believe it was -- in Ventura County but in the
 13 Oxnard Unified School District, whether any of those
 14 operate on a Concept 6 calendar?

15 A It's Oxnard Elementary --

16 Q I'm sorry, Oxnard Elementary.

17 A -- and -- I don't believe that I've heard them
 18 talk about Concept 6.

19 Q Do you know of any districts that -- well, what
 20 districts are you -- if any, are you aware of that
 21 operate on a Concept 6 -- at least some of their
 22 schools, on a Concept 6 multi-track year-round
 23 calendar?

24 MS. DAVIS: As of right now?

25 BY MR. ELIASBERG:

1 Q And what are the districts that you're aware of
 2 that had the programs and liked them?

3 A The context of the programs are, we have MTYRE
 4 programs that are successful programs; in essence,
 5 students are doing well under those programs. One of
 6 them is Elk Grove. Now, there are people -- and I know
 7 that specifically because of hearing from Elk Grove
 8 during the deliberations by the joint committee, the
 9 joint school facility conference committee that I talked
 10 about earlier. But I've been cautioned by others that
 11 MTYRE is not necessarily a negative thing. And that was
 12 not something that was unknown to me.

13 I mentioned before that in Ventura County we
 14 had a district that was at various times almost all
 15 MTYRE or all MTYRE. And that's Oxnard Elementary. The
 16 superintendent, who was a colleague of mine during a
 17 portion of my tenure as the superintendent, was the
 18 president of the national MTYRE society, whatever it's
 19 called, organization, and commonly talked about MTYRE as
 20 a very positive educational operational model.

21 And I've heard -- in the last couple of years
 22 I've heard similar things from others, that I know we --
 23 in essence, be cautious. Don't necessarily be negative
 24 about MTYRE while you're talking to the conference
 25 committee on school facilities, because everybody

1 Q No, let's -- actually, now or at any time that
 2 you're aware of.

3 A There were comments, discussions during the
 4 development of AB 16 when that question came up. What I
 5 recall is that there were a small number of districts
 6 that operated the programs. L.A. Unified was the
 7 largest operator of Concept 6 programs.

8 Q Do you know any other districts beyond --
 9 besides LAUSD that operate Concept 6 programs?

10 A I know other districts were mentioned, but I
 11 don't recall them.

12 Q Do you know if LAUSD is a proponent of
 13 multi-track year-round education?

14 MS. DAVIS: Vague and ambiguous.

15 THE WITNESS: Proponentcy may change from time to
 16 time. I don't -- so I don't think I could actually
 17 answer that question for you. I don't know if they are
 18 an official proponent of such or not.

19 BY MR. ELIASBERG:

20 Q Do you know -- simply within the time frame of
 21 the discussion of leading up to the new bond and the
 22 critically overcrowded schools program, do you know did
 23 anyone from LAUSD take a position in favor of MTYRE in
 24 that context?

25 MS. DAVIS: Vague and ambiguous.

1 THE WITNESS: Say it again and maybe tell me what
2 you mean by the context.
3 BY MR. ELIASBERG:
4 Q Well, my understanding was that you had said
5 that proponentcy can change over time. So I'm --
6 A Yes.
7 Q -- trying to narrow the time frame --
8 A Yes.
9 Q -- in that time period when people started
10 discussing the new bond and put in some program, which I
11 understand later became known as the critically
12 overcrowded schools program.
13 In any of the discussions about the need for
14 the new bond, what the program should look like, what
15 kinds of -- you know, should there be a critically
16 overcrowded schools program or anything like that, did
17 you ever hear anyone from LAUSD take a position in favor
18 of multi-track year-round calendars?
19 MS. DAVIS: Vague and ambiguous.
20 THE WITNESS: I do not recall anyone from the
21 district saying that they were in favor of MTYRE
22 programs, no.
23 BY MR. ELIASBERG:
24 Q At any time during that same period of time,
25 same context, did you hear anybody from the LAUSD saying

1 they actually wanted to take their schools off Concept 6
2 calendars?
3 A In the bond negotiations, they were something
4 that were discussed. I mean, that -- taking schools off
5 Concept 6 were discussed. I can't tell you who, other
6 than me, brought the item to the table, but I know
7 specifically there were two members of the Legislature
8 that had told me that they'd found such programs not
9 acceptable.
10 And so I knew that that was something that I
11 had to keep in mind as I was trying to negotiate this
12 bond. They weren't representatives of the district;
13 they were representatives of the L.A. area in the
14 Legislature.
15 Q What two legislators were there?
16 A Marco Firebaugh and Jackie Goldberg.
17 Q Let's start with Mr. Firebaugh.
18 Did he tell you why he thought Concept 6
19 calendars were -- I think he used the word "acceptable"?
20 A Yes.
21 Q Why was that?
22 A Because he felt that it was a diminished
23 educational program environment. Not his words,
24 necessarily, but that's what I'm recalling.
25 Q In sum or substance, that's what he said. I

1 understand you're not quoting him verbatim.
2 A Yes, that there was a diminished educational
3 environment, diminished educational opportunity.
4 Q Did he explain to you why he thought there was
5 a diminished -- in sum or substance, a diminished
6 educational opportunity?
7 A No. He expressed it as a belief.
8 Q Did you ask him what the basis for his belief
9 was?
10 A No.
11 Q Who was -- I'm sorry, who was the other --
12 A Jackie Goldberg.
13 Q That's an example of me finishing the question
14 before answering, but fair enough. You knew exactly
15 where I was going.
16 Did Ms. Goldberg express to you why she found
17 multi-track -- or I'm sorry, Concept 6 calendars to be
18 unacceptable?
19 A My recollection is that it was a similar belief
20 to Mr. Firebaugh.
21 Q Did you ask her the basis for her belief?
22 A No.
23 Q And did she tell you the basis -- why she felt
24 that they were unacceptable? I'm sorry, why they
25 presented diminished educational opportunities? Again,

1 understanding that's not a verbatim quotation.
2 A I -- there were a number of interactions, but I
3 do recall Jackie either telling me directly or telling
4 the conference committee that Concept 6 had a reduction
5 of required pupil days, and that that was a negative.
6 That was one thing I do remember about her comment.
7 Q Anything else that you remember about her
8 comment?
9 A What I took away from, I think, several
10 interactions was that she believed that we needed to
11 move away from this, and I think she said, "I will
12 introduce legislation to make it illegal after a period
13 of time." And I think she's actually done that.
14 Introduced legislation, that is.
15 Q Are you aware of anyone who's ever done any
16 research as to whether being on a Concept 6 calendar has
17 a negative effect on student academic achievement?
18 MS. DAVIS: Vague and ambiguous.
19 THE WITNESS: I'm not aware of any research. I
20 remember reading what appeared to be a rather lengthy
21 article in the L.A. Times, where several schools were
22 mentioned, and the sense of the article was that Concept
23 6 was something that provided less to students than a
24 regular MTYRE program or a non-MTYRE program.
25 So even comparing it to regular MTYRE, it was

1 considered to be negative. And there was a -- at least
2 once in the article it talked about the diminished
3 number of pupil days and extending the number of minutes
4 per day.

5 BY MR. ELIASBERG:

6 Q Did you agree with the article? Or did you
7 have an opinion about the article when you read it?

8 MS. DAVIS: Calls for speculation, vague and
9 ambiguous.

10 THE WITNESS: I didn't have any basis to make a
11 judgment to say I was in agreement or not. I basically
12 saw it as information, and believed that the information
13 was something I needed to make sure I had in my head as
14 I went about my business, because, at least in the
15 context of that time frame, I had learned that two
16 members of the Legislature had pretty strong beliefs.
17 They represented L.A. And we'd hear about that going
18 across the street.

19 BY MR. ELIASBERG:

20 Q Did Mr. Firebaugh and Ms. Goldberg's belief
21 with respect to Concept 6 affect anything that you did
22 in negotiating the new bond?

23 MS. DAVIS: Vague and ambiguous.

24 THE WITNESS: Yes. I believe that if they believed
25 it -- they were energetic, passionate members of the

1 Legislature, part of the L.A. delegation. That if they
2 believed it, that they would talk to others about that
3 and that that would be something that would be important
4 to at least try to address.

5 BY MR. ELIASBERG:

6 Q And did you try to address it in things that
7 you did in negotiating the new bond?

8 A I believe that we did, that we were
9 cognizant -- people used different numbers as to how
10 much it would cost to do this or to do that. What I had
11 learned during the period of time between the filing of
12 the Godinez lawsuit and the allocation board's
13 determination that they wanted to settle that based upon
14 certain factors was that, if the Legislature saw that
15 there was something that was a problem, that we should
16 take it head on, that we should say, if you're concerned
17 about a perception or a reality, whatever it is, of
18 overcrowded campuses and students that don't have access
19 to the proper educational environments, then let's focus
20 resources and a new program on that.

21 And of course, a big part of what was being
22 discussed was you can't -- you know, the old first-come,
23 first-served thing. Gee, by the time we get there, the
24 money's already gone, because we have to go through
25 lengthy site reviews and analysis and VTSE and

1 everything. And so the proposal was, make a reservation
2 of funds, give them five years or -- I think originally
3 it was even longer than that.

4 Give them five years, seven years, six years to
5 be able to perfect the application, but in that time
6 frame, give them an opportunity, these districts -- not
7 simply L.A., but other districts that are on MTYRE --
8 and one in particular was on MTYRE and double session --
9 to give them, through a new program, an opportunity to
10 plan to resolve those matters and to get the passion
11 that was in the two members that I mentioned behind
12 that. So we talked to them about that, about the
13 concept.

14 Q You mentioned a minute ago the -- that you
15 believe that Jackie Goldberg and -- Ms. Goldberg had
16 introduced some legislation with respect to at some
17 point prohibiting Concept 6 calendars; is that correct?

18 A I remember her saying that she would introduce
19 legislation to do that, yes.

20 Q And do you have an understanding as to whether
21 that legislation was actually introduced?

22 A I believe a bill was authored. I don't know
23 that anything happened with that bill. I think it was
24 to stop MT -- or Concept 6 at a particular date in the
25 future, prospectively. It's just in my head that Jackie

1 made good on her promise.

2 Q Did C.A.S.H. take a position on that bill?

3 A I don't believe that we did.

4 Q Do you recall if there was discussion -- well,
5 let me ask you this. What is the process -- is there a
6 process within C.A.S.H. by which the organization
7 decides whether it's going to take a position on pending
8 legislation?

9 A There are different times when there's
10 different processes. So at the -- toward the end of the
11 session we'll see what we were not able to achieve and
12 what we were able to achieve and try to put together a
13 couple of constructs to be able to go after
14 legislatively. So that's prospective before a session
15 begins.

16 During a session, when authors like Jackie or
17 others propose a bill, we have a legislation committee
18 that we meet with and share with and we make a
19 recommendation to them and we make a recommendation to
20 the C.A.S.H. board and take -- take a position.

21 Q When you say "we" make a recommendation to the
22 legislative committee and the C.A.S.H. board, who is
23 "we"?

24 A Basically, me. But there are other lobbyists
25 that are in the firm that also share some of the

1 responsibilities, and they will work with me.

2 Q So it wasn't the royal "we"? I'm being
3 facetious, but you and other people in Murdoch is the
4 "we" that you're referring to?

5 A Yeah. We have a responsibility to share with
6 them what's happening and say, here are things and, by
7 the way, we make these recommendations and let's -- this
8 is why. Let's discuss them.

9 Q Did you or anyone -- anyone else at Murdoch
10 that you're aware of make a recommendation to either the
11 legislative committee or the C.A.S.H. board with respect
12 to the Goldberg bill?

13 A The one that I'm kind of vaguely remembering?

14 Q Yeah.

15 A No. And I don't believe that I would have made
16 a recommendation.

17 Q Do you know if there was any discussion in the
18 legislative committee about the Goldberg bill?

19 A No.

20 Q You don't know or there wasn't?

21 A I don't remember, but -- a discussion unless --
22 no, I don't remember a discussion.

23 Q And when you say you don't believe that you
24 would have made a recommendation, why is that?

25 A It's one of those areas that we believe we were

1 program?

2 A There were Democrats and Republicans both that
3 had objections to the program as we were beginning to
4 articulate it and as it was originally coming together,
5 yes.

6 Q And what were those objections?

7 A Are we simply taking care of L.A. That's one.
8 Is this -- is this just going to feed L.A. and will L.A.
9 take these dollars and not spend them.

10 And my response was, no, there are other
11 districts -- and Anaheim City is one and Santa Ana is
12 another -- that has these programs. We'd -- you know,
13 we knew Santa Ana's issues; we heard them at an
14 allocation meeting, knew Anaheim City's, and said, here
15 are two districts that both utilize this. And then, of
16 course, there was an analysis that was done about how
17 many -- depending upon how you frame the program, how
18 many districts actually fall into the program. So it
19 wasn't readily accepted immediately.

20 Q In order to be eligible for the critically
21 overcrowded schools program, does a district have to
22 have schools that are operating on Concept 6?

23 A No.

24 Q In order to be eligible do they have to have
25 schools that are operating on MTYRE?

1 cognizant of as being a troubling area, and there are
2 districts -- notably, L.A. -- that it would impact, and
3 we wouldn't necessarily just take the position for
4 reasons of one district.

5 I can't see that we would have any objections
6 to Jackie's bill. You know, she -- if she and the
7 Legislature believe that Concept 6 should be removed as
8 an option for districts and districts are given an
9 opportunity to plan for that -- and she's probably
10 thinking, well, we have this COS program now and maybe
11 this will compel districts to really use the program.

12 During the legislative discussions there were
13 questions from both sides of the aisle, Democrats and
14 Republicans, of will this really work, will it really be
15 used. You know, you want us to support this. I don't
16 know that this is true, but having listened to Jackie
17 talk, she may have said, here's an impetus now, get on
18 the COS program and make it work, because we're going to
19 give you a time frame out here to finish.

20 And I want to see the COS program work. Worked
21 very hard to create a new program and convince people
22 that were unbelievers that this was a good thing to do
23 for California schools.

24 Q Am I understanding you correctly in saying
25 there were people who were not believers in the COS

1 A No.

2 Q I think that a while back you were talking
3 about -- you said, in sum or substance, that some people
4 had said to you, be careful about -- you don't want to
5 suggest that MTYRE's a bad thing, because there were
6 districts that supported it, but I believe you also said
7 that there were districts that opposed it or felt that
8 the proliferation of MTYRE programs in California was a
9 bad thing.

10 A Hmm-hmm.

11 Q Who expressed the opinion that it was -- the
12 proliferation of MTYRE programs was a bad thing?

13 A Well, one person was Kelvin Lee, the
14 superintendent of Dry Creek School District up in the
15 Sacramento area. This goes back a couple of years.

16 Q And in what -- or when did Mr. -- I guess you
17 said a couple years ago Mr. Lee expressed that opinion.

18 Did he express it to you personally, or is it
19 something that you read?

20 A I think he had expressed it personally to me.
21 It was something also that he apparently felt strongly
22 enough to put into writing and something that he shared
23 with at least some members of the C.A.S.H. organization.

24 Q Do you know what that writing was? Was it a
25 memo, an article or what was that writing?

1 A I don't recall that it was a memo, and I don't
 2 recall that it was an article. I think it was basically
 3 like a position paper, a white paper that he put
 4 together, because he was interested in doing so.
 5 Q Do you have a copy of that --
 6 A I don't.
 7 Q -- document?
 8 A I don't.
 9 Q Do you know if anyone at C.A.S.H. has a copy of
 10 that document?
 11 A I don't know for sure that anybody has a copy
 12 of it, but you may be able to find out if he does.
 13 Q Other than Mr. Lee -- if you were going to
 14 Mr. Lee -- if you were trying to -- you tasked yourself
 15 with the job of getting that -- trying to find that
 16 document, how would you go about doing that?
 17 A Other than going to Mr. Lee?
 18 Q Yeah.
 19 A Well, I'd probably go to Mr. Lee.
 20 Q Okay. I guess I was trying -- is there a
 21 file -- you know, some sort of file system at C.A.S.H.
 22 that you might also look at it, or is going to Mr. Lee
 23 the one and only choice?
 24 A I don't necessarily know if it's the one and
 25 only choice. We have library of documents. Thinking

1 you could go on the 'net and look through them. And
 2 that may be one of them.
 3 Q To the best of your recollection, what was --
 4 what did Mr. Lee put in his -- in this document, white
 5 paper, whatever you want to call it, as to reasons why
 6 he felt that the opposition -- or I'm sorry, that he
 7 felt that the proliferation of MTYRE districts in
 8 California was not a good thing?
 9 A Well, the -- I don't recall any real detail,
 10 but the legislation of the early '90s -- and I mentioned
 11 this in my document, I believe -- changed so that there
 12 was a prioritization of who got money first, and MTYRE
 13 was at the top.
 14 As I recall, he was in a fairly high growth
 15 district. He was using MTYRE. I think he had a concern
 16 about future educational programs and where we go with
 17 these. And is there -- should we change course, because
 18 of certain things that he was saying.
 19 And I can't talk intelligently about detail of
 20 that, but knowing Kelvin Lee -- very serious, very
 21 dedicated superintendent -- if he wrote about it, he
 22 cared about it.
 23 Q Do you know what the impetus was for him to
 24 write the program? And by that I mean -- did someone
 25 solicit him and ask him to write a paper on the

1 subject?
 2 MS. DAVIS: Calls for speculation.
 3 BY MR. ELIASBERG:
 4 Q Only to the extent you know.
 5 A You said first write a program, then you said
 6 write a paper.
 7 Q I meant write a paper.
 8 A I don't know, no, what the impetus would be.
 9 Q You don't know if anyone at C.A.S.H. asked him
 10 to do this?
 11 MS. DAVIS: Asked and answered.
 12 THE WITNESS: Yeah, I do not know.
 13 BY MR. ELIASBERG:
 14 Q Do you know, was -- I'm sorry, I believe you
 15 said that the paper was -- and if I'm incorrect, just
 16 please correct me. I'm not trying to misstate what you
 17 said.
 18 But I think you said the paper was circulated
 19 at a C.A.S.H. meeting; is that correct? Or he
 20 circulated the paper at a C.A.S.H. meeting?
 21 A I remember him sharing the information with a
 22 group of us sitting around the table, and it may have
 23 been a C.A.S.H. meeting. It may have been that there
 24 was a group of us sitting around the table. And I don't
 25 remember that he distributed it at the time, but that he

1 shared the information. I remember him reading. He was
 2 down at the end of the table over here and I was, like,
 3 over here, and he read it.
 4 I believe that later he did share it, but I
 5 can't recall the means of how it was being shared.
 6 Q Do you know if the paper -- the right way to
 7 phrase this.
 8 Did C.A.S.H. take any action in response to the
 9 paper that Mr. Lee had written?
 10 MS. DAVIS: Vague and ambiguous.
 11 THE WITNESS: I don't specifically recall any
 12 action that C.A.S.H. took with regard to it.
 13 BY MR. ELIASBERG:
 14 Q Do you remember if there was any discussion
 15 about whether C.A.S.H. should take any -- take any
 16 action with respect to the paper?
 17 A Well, at the time when he first started
 18 speaking about this and then reading and referencing,
 19 everybody sitting at this table would have listened to
 20 Kelvin, because he was highly respected. And so people
 21 would have listened, and there would have been some
 22 discussion that they would have had with him.
 23 And I remember talking about it -- I can't
 24 remember before or after -- I think I did talk to him
 25 after, but he would have been listened to, because he

1 was valued and he was the superintendent, and
2 superintendents have certain influences that people
3 recognize.

4 Q Do you remember who else was present at this --
5 whether it was a meeting or just an informal group
6 get-together?

7 A I recall Jim Murdoch being there.

8 Q And is Jim Murdoch the Murdoch of Murdoch,
9 Walrath & Holmes?

10 A Yes.

11 Q Do you remember anybody else being there?

12 A Not specifically, no. And I remember Jim being
13 there, because Jim and I talked about it later on.

14 Q I'll talk about that in a minute, but in the
15 actual meeting -- get-together, I'll call it, of people,
16 do you remember anybody making any response -- including
17 Mr. Murdoch, did anybody making any responses to what
18 Mr. Lee was saying?

19 A It's pretty vague, but what I remember is that
20 there was some nodding of heads or affirmation of, you
21 know, that sounds, you know, like something that you
22 really feel strongly about, that kind of thing.

23 Q Do you remember any other reaction?

24 A Nobody got up and left the room. No, I don't
25 recall any other reaction.

1 Q I think you said that you remember discussing
2 Mr. Lee's presentation, if we can call it that, after
3 that get-together with Mr. Murdoch; is that correct?

4 A Yes.

5 Q Do you remember how long after?

6 A No, I don't.

7 Q Do you remember what you and he discussed?

8 A I don't remember specifically what he and I
9 discussed, other than that Kelvin sounded pretty serious
10 and pretty passionate about what he put forth.

11 Q Did he at any time say that he agreed with some
12 or all of what Mr. Lee had said?

13 A No, Jim wouldn't do that. He would say,
14 that's -- you know, Kelvin's somebody we respect. There
15 may be something here. Words to -- you know, not that
16 he said exactly that, but that's the kind of response
17 I'm recalling, that, you know, we haven't heard anybody
18 else talk about this, necessarily.

19 You know, people had kind of complained about
20 the MTYRE program, the hits and all that that you can
21 ask me about if you like, but this was more of a, you
22 know, educational environment kind of set of comments
23 that Kelvin mentioned or talked about.

24 Q Just so I'm -- I may come back to these, but
25 just so I understand, when you talk about the hits, are

1 you talking about the op. grant hit and the so-called
2 six percent hit?

3 A Yes, all of those.

4 Q We'll discuss those later, but -- and what do
5 you mean by educational environment, as opposed to these
6 hits?

7 A Just the feeling/tone of what I remember is
8 that Kelvin was talking about the educational
9 environment. He wasn't talking about program
10 eligibility issues, necessarily. He's -- he and I were
11 superintendents at the same time, and we would sometimes
12 talk about -- end up saying -- sometimes talk about
13 program issues. This was a -- you know, something that
14 I think he felt strongly about sharing.

15 And I'm not sure what compelled him to want to
16 share, but that's what I'm remembering. Just kind of
17 vague but I'm remembering that.

18 Q No, and I appreciate this is a while ago.

19 But help me out. I understand the hits -- some
20 of the technical aspects of them I may not fully
21 understand, but I understand what you -- but I'm not
22 quite sure what you mean by educational environment.

23 A I'm not sure what I mean by it either, other
24 than he saw, maybe, that his district was going to
25 continue to have to grow and to deal with MTYRE, as this

1 is the -- this is the modus operandi, as opposed to we
2 can do something different than that.

3 Q And did you understand him to be saying that --
4 or at least believe -- understand him to believe that
5 that would have a negative effect on the education of
6 children in his district?

7 A I think that part of it was his concern for
8 them, yes.

9 Q Okay. And what was -- was there another part
10 that you were aware of?

11 MS. DAVIS: Vague and ambiguous. Calls for
12 speculation.

13 BY MR. ELIASBERG:

14 Q Okay. Were there other districts -- I
15 understand now, because I brought up earlier, the
16 subject of districts or persons in districts who opposed
17 or who had problems with MTYRE as opposed to being
18 supporters.

19 Besides Mr. Lee, are there any others that you
20 were thinking of? That you're aware of.

21 A No.

22 Q Have you ever spoken with Superintendent Romer
23 about MTYRE?

24 A No.

25 Q Have you ever spoken with superintendent --

1 well, Ex-Superintendent Cortinez about MTYRE? Or
2 Concept 6?

3 A No.

4 Q Okay. And I'm blanking on his name, but you
5 probably remember the -- Mr. Cortinez's predecessor.

6 Did you ever speak with him at any time about
7 MTYRE or Concept 6?

8 A I'm blanking on his name also. I may not be
9 blanking on his face.

10 MR. VILLAGRA: Zacharias.

11 MR. ELIASBERG: Zacharias. Thank you, Hector.

12 THE WITNESS: Oh. No.

13 BY MR. ELIASBERG:

14 Q Have you ever spoken with either the present or
15 previous superintendent at Lodi Unified School District
16 about either Concept 6 or multi-track year-round
17 education?

18 A I don't know who the present one is or who the
19 predecessor was. If you mention names, I may know
20 them. But I don't recall talking to the superintendent
21 or superintendents of Lodi about that, no.

22 Q Do you remember speaking with anybody at -- any
23 other employee/consultant with the district, Lodi
24 Unified School District, about Concept 6 or MTYRE?

25 A Yes.

1 Q And who was that?

2 A Mamie Star.

3 Q And what did you and Mamie Star talk about?

4 A I called her -- if I remember correctly, I
5 called her about the COS program, as proposed, and what
6 it may do for Lodi. And I think it was at that time I
7 learned that they were on Concept 6 for a school; maybe
8 it was more than a school. So I was trying to ascertain
9 what the impacts of the COS program could be and what
10 they would do with this.

11 Q Did she express any opinion about Concept 6 in
12 that conversation with you?

13 MS. DAVIS: Vague and ambiguous.

14 THE WITNESS: We didn't talk about the concept, as
15 is this good or bad, you know. Okay, how will your
16 district fair with the COS program. Because we were
17 then beginning to assemble information, determine how
18 the COS program may affect positively districts that
19 were on MTYRE and Concept 6 that had arisen.

20 BY MR. ELIASBERG:

21 Q Did she tell you during that conversation, in
22 sum or substance, that she was trying to get her schools
23 off or whatever -- some or all of the schools that might
24 have been on Concept 6 off of that calendar?

25 A I don't recall that. It was -- we were

1 speculating as to the impact of this program on her
2 district and what she could do in her district with this
3 program.

4 Q And I think you previously said that you talked
5 to her about how -- how the COS program might affect her
6 district positively with respect to MTYRE or Concept 6.

7 What'd you mean by affect her positive -- or
8 the district positively?

9 A It was, if this program is available under this
10 construct and you want to exercise what this program is
11 about and you fall into this program -- and the
12 assumption is you're going to unload some schools -- was
13 the term that we were using -- what would the effect be,
14 can you look at that.

15 Q And did she -- at any time did she look at
16 that?

17 A I believe that she looked at it, and they
18 were -- there were -- there was a document that was
19 prepared -- it went through a couple of different
20 changes, and I know Lodi was on there, of course, with a
21 lot of other districts, and I believe we had a follow-up
22 conversation as to, yeah, this is -- these kinds of
23 constructs would work if we want to exercise the
24 eligibility under this program.

25 Q Who is Mamie Star? What's her title and

1 position?

2 A Mamie Star is -- I think her title is director
3 of school facilities with Lodi. I may be wrong about
4 the title. She's been with Lodi for some time.

5 Q The document that you referred to a couple of
6 answers ago, is there a title or a name to that
7 document?

8 MS. DAVIS: Vague and ambiguous.

9 BY MR. ELIASBERG:

10 Q I believe you said there were some different
11 incarnations of it, but you talked about a document that
12 reflected, at least in part, how COS might affect Lodi.

13 MS. DAVIS: Same objection.

14 THE WITNESS: Is there a title to the document? Is
15 that what -- I'm sorry --

16 BY MR. ELIASBERG:

17 Q Yeah. Either an official title or something
18 you commonly refer to it as.

19 A I commonly referred to it as the document when
20 we were involved in that. I don't remember a title on
21 it.

22 Q Do you have a copy of that document?

23 A I probably have a copy of it. Haven't referred
24 to it in a while, but more than likely, one exists in
25 the office.

1 MR. ELIASBERG: Okay. I'll request that document,
2 unless -- I mean, I'll go back and I'll talk to Hector,
3 and maybe it's something we've already got, but that's a
4 document we would like to get.

5 THE WITNESS: This is something that went over all
6 of California at one point, so --

7 MS. DAVIS: On what basis are you requesting that
8 document?

9 MR. ELIASBERG: Hector, I -- I don't have to
10 explain my basis. If you have an objection, you can
11 tell us what your objection is. I just want to know --

12 MS. DAVIS: I just want to know if this falls under
13 a document request or --

14 MR. ELIASBERG: I'm just saying I'm --

15 MS. DAVIS: This isn't part of his expert report.

16 MR. ELIASBERG: I'm letting you know that I'm
17 making a request. We'll let you know on paper. I'm
18 just letting you know now.

19 MS. DAVIS: Okay. Appreciate it.

20 BY MR. ELIASBERG:

21 Q Did you ever talk to -- I know we've talked
22 about Mr. Zacharias, Cortinez and Mr. Romer, but did you
23 ever talk to any officials at LAUSD about their opinion
24 on Concept 6?

25 A I thought I had answered that earlier. Maybe

1 just kind of something I came to, that hearing from
2 people that this is something that may be -- nobody's
3 going to really put in the middle of the table and nail
4 it down, but that it was there and it was important to
5 have in the back of my mind as I moved forward with this
6 bond negotiation.

7 Q Did you ever speak with officials or --
8 officials at the Palmdale Unified School District or
9 consultants for Palmdale about MTYRE or Concept 6?

10 MS. DAVIS: Compound.

11 BY MR. ELIASBERG:

12 Q Well, we can start with MTYRE.

13 A Palmdale called -- not related to the bond but
14 related to something else. They called because of a --
15 about a concern about a bill authored by Mr. Runner who
16 was then in the Assembly. So I did have a conversation
17 about the impact of -- it wasn't, again, the bond, but
18 impact of certain proposed legislative changes on
19 Palmdale.

20 But I believe the issue there was the
21 operational grants.

22 Q What was the -- what part -- or what in
23 Mr. Runner's bill did the person from Palmdale -- what
24 was your understanding as to what the person in Palmdale
25 who called you believed was in Mr. Runner's bill that

1 you'd asked it in a qualitative way before.

2 Concept 6 came up at the bond discussions and
3 negotiations, and as I was saying earlier, I remember
4 bringing it up because I was understanding that it was
5 going to be an issue. I had interactions with a number
6 of people from L.A., attorneys, administrators. There
7 were discussions of the number of pupils L.A. had on
8 Concept 6 at one point, as I recall.

9 Q Did you remember any of those persons from
10 LAUSD telling you that they were trying to get schools
11 off of Concept 6 calendars?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: At some point -- I don't recall
14 somebody saying, we are aggressively trying to get --
15 you know, move this along. But I remember at some point
16 believing that this was an important policy
17 consideration and that people in the district would,
18 more than likely, seek to do so under the COS model.

19 BY MR. ELIASBERG:

20 Q Did you ever inquire as to why they were
21 seeking to do so?

22 A No, I -- as I said, it was a belief that I came
23 to. In working with members of the Legislature and
24 working with others, interfacing with the attorneys that
25 were there when we were negotiating the bond, it was

1 would relate to MTYRE?

2 MS. DAVIS: Vague and ambiguous.

3 THE WITNESS: What I recall, the program grants
4 were diminishing, in terms of the dollar amounts.
5 Mr. Runner was attempting to address that. They called
6 me.

7 BY MR. ELIASBERG:

8 Q Did they ask for your help in any way with
9 respect to Mr. Runner's bill?

10 A Yes.

11 Q And what did they ask you to do?

12 A Attend a meeting with Mr. Runner and others.

13 Q And did you attend that meeting?

14 A I did.

15 Q And did you make any recommendations or
16 suggestions to Mr. Runner about the bill?

17 A Did I make any discussions or recommendations
18 to Mr. Runner about the bill.

19 We discussed the bill. What I recall is we had
20 originally taken an "oppose" on the bill, and there was
21 a request for us to discuss it, in order to see if we
22 could support it. We understood his view of the bill
23 and the impact on the district, and although we didn't
24 think it was really going to go anywhere, we said we
25 would change our position on the bill. And the bill

1 didn't really go anywhere that I recall.

2 But the issue was the program grants and we
3 were having conversations about trying to effect those
4 in a different way, in essence, to try to save them.

5 Q When you talk about the program grants, is
6 that -- is program grants the same as the multi-track
7 year-round operational grants?

8 A Yes.

9 Q Do you know why the bill didn't go anywhere?
10 Did it not make it out of committee? It didn't get
11 through -- didn't get to the governor's desk? Was
12 vetoed?

13 A I don't think it got to the governor. It -- I
14 don't recall what happened to the bill exactly. I just
15 remember it just went away.

16 Q In the end did -- well, let me make sure I've
17 got your testimony correct.

18 I believe you said originally that you --
19 C.A.S.H. was taking an "oppose" on the bill; is that
20 correct?

21 A Yes. There was a compromise inherent in the
22 bill that was basically allowing the -- if I'm
23 remembering this correctly -- the State program
24 grants -- you know, the operational grants to be
25 diminished. And we said that shouldn't occur.

1 A Well, I believe the way we articulated it was
2 we had an agreement, legislatively, and if you're going
3 to diminish this part of the agreement, then you have to
4 diminish the negative part that affects school
5 districts, so that if you're going to diminish how much
6 money you give for operation, then you have to give back
7 the eligibility. So take away the negatives of, maybe I
8 should ascend -- you diminish this, you need to increase
9 this.

10 Q When you say "we" had an agreement, who is
11 "we"?

12 A Well, "we" didn't necessarily include me
13 directly at the table at the time, but "we" were the
14 C.A.S.H. organization and others who worked to address
15 that legislation in the early 1990s.

16 Q And am I correct -- is my understanding correct
17 that the agreement was that you -- that a district would
18 get operational grants for pupils in schools that were
19 operating on multi-track year-round calendars and, in
20 exchange for that, some number of students who were in
21 those schools would be considered to be housed as
22 opposed to unhoused?

23 A You could phrase it in that way. You took the
24 grants and, therefore, you didn't take eligibility under
25 the program. That would be then gone.

1 Palmdale said, we want to go along with this,
2 and here -- you know, here is the impact on us. And I
3 guess they could -- they could deal with the
4 diminishment of the grant, but the intent of the
5 legislation, as I remember, is to stop -- stop a
6 reduction of the grant and to do some redefining of who
7 could get into the program and -- yeah, the technical
8 features of the changes, we thought, were going to be
9 negative for other districts, and -- boy, it's
10 interesting. It goes back a couple of years.

11 I don't remember all the details of it, but it
12 was important to Palmdale. Seems to me they said it was
13 important to others. We checked that out. And nothing
14 happened with it.

15 Q Do you know if there's been any subsequent
16 legislation, whose purpose is to stop the diminishment
17 of the operational grants?

18 A I don't recall any, no.

19 Q Okay. In the end did C.A.S.H. -- I understand
20 the bill didn't go anywhere, but did C.A.S.H. take a
21 position in support of the bill?

22 A I believe we did, yes.

23 Q And why was that? Let me put it differently.

24 Do you think it's a good idea to try to stop
25 the diminishment of the operational grants?

1 Q And what was your understanding of what the
2 promise was as -- or was there a particular promise as
3 to the size or the way that the grants would be
4 calculated?

5 A I don't remember the detail of it, and I never
6 was in that program. So as a practitioner, I never had
7 to deal with it. But there was a factor that was
8 identified, in terms of supplements to the general fund
9 of districts that they would receive if they avoided
10 construction, they avoided using their eligibility, and
11 that the deal was this will continue on and districts
12 can rely upon it.

13 And that wasn't happening, because of a variety
14 of issues, and yet the adjustment that I refer to as
15 ascending -- you know, gee, give us back the
16 eligibility -- wasn't happening.

17 Q So is it your position that the State had, in
18 effect, broken the deal by not giving districts the
19 money that they had promised to give them?

20 MS. DAVIS: Vague and ambiguous.

21 THE WITNESS: What we articulated is, you created a
22 policy. Now you've changed the policy, in terms of the
23 operation. You need to change the effect, in terms of
24 the implementation. And we're still after that.

25 BY MR. ELIASBERG:

1 Q And how had they changed the policy, in terms
2 of the operation?

3 A Well, they would have to change law to give
4 back eligibility that was taken away.

5 MR. ELIASBERG: I'm sorry, can you read back the --
6 not that answer but the previous answer.

7 (The record was read as follows:

8 "What we articulated is, you
9 created a policy. Now you've changed
10 the policy, in terms of the operation.
11 You need to change the effect, in terms
12 of the implementation. And we're still
13 after that."

14 BY MR. ELIASBERG:

15 Q I'm sorry, can you explain to me both what
16 the -- change the policy with respect to the operation
17 means and also what change the policy with respect to
18 the implementation would mean.

19 A Okay.

20 MS. DAVIS: Compound.

21 BY MR. ELIASBERG:

22 Q Let's do it one at a time.

23 A Okay. What's the first one?

24 Q Change the policy with respect to the
25 operation.

1 in evidence.

2 THE WITNESS: I believe that there was -- there
3 probably was no violation of statute there, violation of
4 law, but that the funding of the program could be
5 diminished or discounted, and districts had to live with
6 that. And we were saying, we should address that. We
7 should fix it in some way.

8 The Runner bill was, after a discounted fix --
9 originally, we were saying why should there be a
10 discounted fix, but at the same time we were having
11 conversations with members -- staff, saying, you know,
12 with a comprehensive change of law involving a number of
13 things, one could be -- that apportionment or that
14 supplement that was going to districts that included
15 districts like L.A. and like Palmdale would -- if it is
16 to be diminished, that we at least say it's not going to
17 go further, because we put that in revenue limit and it
18 becomes part of that revenue limit for that district,
19 because they've been relying on those funds.

20 BY MR. ELIASBERG:

21 Q When did this change that you described, in
22 terms of the apportionments, occur?

23 A The first time that I became aware that it was
24 occurring was in the -- must have been December of 2000.

25 Q Did you ever attempt to -- well, how did you --

1 What did you mean by that?

2 A These are informal discussions with staff
3 members about what was happening and informal
4 discussions, also, with the school districts who were
5 affected by this.

6 Those discussions related to there's something
7 that's changed here, that there was a State program
8 established by statute that is not functioning the way
9 that it was originally supposed to function. The
10 apportionments that are to be made are now at a lower
11 level. There are percentage losses of general fund
12 income, and so what we'd like to do is to figure out a
13 way to go back and either build in that general fund
14 allocation -- maybe at a discounted level, but build it
15 into the district's revenue limit that has been
16 receiving those and relying upon those, or there should
17 be some combination of things to try to make the
18 district whole.

19 If it receives less of these operational funds,
20 shouldn't it be able to receive back some of the lost
21 eligibility.

22 Q And is it fair to say that, in effect, the
23 districts were receiving less money than they were
24 supposed to receive, as provided by statute?

25 MS. DAVIS: Vague and ambiguous, assumes facts not

1 I'm sorry, let me -- strike the first part of that.

2 How did you become aware of that change in or
3 around December of 2000?

4 A Had a call from a district, asking my advice on
5 what to do to stay within the program and receive less
6 funds than were expected and lose eligibility or risk --
7 even under the newly implemented or would-be implemented
8 priority ranking system for apportionments -- risk
9 taking their eligibility and moving forward on a
10 project.

11 Q Did you, after receiving that call, make any
12 effort to find out whether this change, in terms of
13 the -- with respect to the apportionments had been going
14 on for any period of time prior to December 2000?

15 A I had conversations with that district -- we
16 talked about a call I had from Palmdale, and that was
17 actually later, if I remember correctly. I don't recall
18 asking the question of how long has this been going on,
19 if that's the question.

20 Q And do you know today how long this had been
21 going on?

22 A I don't.

23 Q Okay. You said that the district said, in sum
24 or substance, that they were getting less funds than
25 they were expecting.

1 Do you have any idea what was -- what was their
2 expectation of the funds --

3 A The district that called me in December of
4 2000?

5 Q Yes.

6 What the basis for their expectation was.

7 MS. DAVIS: Calls for speculation.

8 THE WITNESS: They either received information or
9 were monitoring information that was being produced. I
10 believe it was through the Department of Education. I
11 think the funds come through the Department of
12 Education. I think that's how -- they said we need to
13 make a decision what -- how do you advise us, this kind
14 of thing.

15 BY MR. ELIASBERG:

16 Q And was -- what did you advise them to do?

17 A I said, if I were the superintendent of your
18 district, knowing what I know today and knowing your
19 needs, I would forgo the operational grant and go after
20 the new construction money. Your level of growth will
21 get you funded at some point in time, notwithstanding
22 this priority ranking system that's in place.

23 Q What district was this?

24 A Glendale.

25 Q Did -- at any time during that conversation,

1 would also include having to continue working on
2 multi-track year-round calendars?

3 A Their question was with regard to this project,
4 that is a future project, we've -- we need to make a
5 comparison. Basically, is it a good decision to go
6 forward with the project and forgo the grants that are
7 going to be diminished or should I take the grants and
8 recognize that I'm going to lose a project or a portion
9 of a project. And there was evaluation of the two that
10 we discussed.

11 Q Did you understand that the loss of the project
12 or the portion of the project would mean that some
13 school would remain on multi-track year-round that might
14 not be on multi-track year-round if they were able to
15 build the project?

16 A I don't recall the exact details. It ended up
17 being, for the district, a question of what's the best
18 deal for me, how do I best serve students with the
19 resources that are available under this decision or this
20 decision.

21 Q Have you ever -- you said that someone from
22 Palmdale had called you concerning Mr. Runner's bill and
23 so on and that you had, in that context, had some
24 discussion about multi-track year-round.

25 Did you ever have any other discussions with

1 did the person -- well, let me ask you this.

2 Who was the person --

3 A Dick White.

4 Q Dick White.

5 And was he superintendent or --

6 A Assistant superintendent, I believe.

7 Q At any point during that conversation, did he
8 express to you that it would create a hardship for the
9 district to, for some period of time, forgo the
10 operational funds?

11 A It was part of the reason for asking the
12 question that was -- to be a hardship in one place or a
13 hardship in another place, where do I make the decision.

14 Q And did you have an understanding about where
15 the hardship -- what hardship was involved in forgoing
16 the operational grant?

17 A It was a diminishment of a certain level of
18 funding to the district. That's what it was. That's
19 what the hardship was.

20 Q And what was the hardship involved in
21 continuing to take the operational grants?

22 A That there would be a diminishment in funds
23 received from the State, because they were being
24 diminished.

25 Q And was it your understanding that the hardship

1 anybody at Palmdale about multi-track year-round
2 schools?

3 A I think I had two conversations or three, but
4 they were relative to the -- that bill specifically.

5 Q Am I correct in assuming that no one at
6 Palmdale ever told you that -- how they felt about
7 multi-track year-round education?

8 A I don't recall.

9 Q Did you ever ask whether -- let me -- did you
10 ever ask whether they were trying to get off multi-track
11 year-round calendars?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: That wasn't the problem we were
14 trying to address at the time, no.

15 BY MR. ELIASBERG:

16 Q And did you ever ask whether they were trying
17 to get off Concept 6 calendars?

18 A No.

19 Q Have you ever spoken with anybody, either an
20 employee of the Vista Unified School District or
21 consultant to Vista Unified School District, about
22 multi-track year-round education?

23 A Not directly on the issue of multi-track
24 year-round education.

25 Q Did you ever talk to anybody at Vista

1 indirectly about the subject of multi-track year-round
2 education?
3 MS. DAVIS: Vague and ambiguous.
4 THE WITNESS: I've talked to Vista about Vista
5 issues and Vista needs.
6 BY MR. ELIASBERG:
7 Q And what issues were those?
8 A The need to pass a local bond, the issue of
9 charter school in Vista, sharing information about the
10 State program, how the district may use the State
11 program. The context of the conversation really wasn't
12 focused on MTYRE, although that, among a number of
13 things, came up. That I've been there, but it wasn't
14 specifically MTYRE.
15 Q I'm sorry, I missed the last little bit. You
16 said that -- MTYRE came up, did you say?
17 A Well, it was part of the context of we're a
18 district with certain needs.
19 Q And how did multi-track year-round education
20 fit in with their statement that they had certain needs?
21 A Well, it wasn't so much statements as
22 discussions of need. I was asked to attend a meeting of
23 a pilot committee -- community committee that was
24 exploring a bond and trying to gauge support for that by
25 discussing issues that are -- that were important to the

1 community. So I was asked to come in, as an outside
2 person with some expertise, and to interact with this
3 room full of people who sat around hollow square tables
4 and discussed the district issues.
5 So there wasn't a specific focus from anything
6 I shared with them, that I can recall, on MTYRE
7 specifically.
8 Q Do you know who Mike Vale is?
9 A Yes.
10 Q Who is Mike Vale?
11 A Mike works in Vista. He's the director of
12 facilities in Vista.
13 Q And have you ever had any conversations with
14 him about Concept 6?
15 A I don't recall specific discussions with Mike
16 about Concept 6.
17 Q Are you familiar with the similar schools
18 index, as far as the API?
19 A With what?
20 Q The similar schools index?
21 A Oh. Yes.
22 Q What is your understanding of the similar
23 schools index?
24 A That it attempts to compare schools that have
25 similar other indices, ethnicity, geographical,

1 others -- I forget the detail, but to make comparisons
2 among schools.
3 Q And do you know why there are -- I guess you
4 used the word "indices" -- certain indices, such as
5 geography and ethnicity, included in these comparisons?
6 MS. DAVIS: Calls for speculation.
7 THE WITNESS: When I was first learning about these
8 things, what I recall is that there was a desire to have
9 other means of making those comparisons for purposes of
10 having -- instead of one level, look at a school within
11 a district or districts and looking at several different
12 levels; in essence, having different kinds of data to
13 make the comparisons, recognizing that if there's a
14 school that has low SES, to use the term used before,
15 and if there's a belief that there's low SES and the
16 geography, that quite possibly, comparing such schools,
17 one school may be doing better than another and for
18 purposes of sharing.
19 BY MR. ELIASBERG:
20 Q Just ask you one more -- couple of quick
21 questions about --
22 A And then are we going to quit?
23 Q Yeah.
24 A Is it that time?
25 MS. DAVIS: Yeah, we're almost at that time.

1 THE WITNESS: Because I was going to ask for a
2 break if we weren't.
3 BY MR. ELIASBERG:
4 Q And this really will take a couple minutes, and
5 then at the point you want to shut it off, we can shut
6 it off. I may beat you to it.
7 At Murdoch do you do any work with school
8 districts similar to the kind of consulting work that
9 you did at a consultant at Ventura? By that I mean, a
10 specific school district comes to you and says, I'd like
11 help with an application to get some new construction
12 funding or, you know, to get some modernization
13 funding. Can you help me with that?
14 MS. DAVIS: Vague and ambiguous.
15 THE WITNESS: Do I file applications, typically,
16 for school districts? Is that what you're asking?
17 BY MR. ELIASBERG:
18 Q Not just file applications, but help in any
19 way, assist in any way with a specific application or
20 set of applications.
21 A I typically don't deal with the paperwork
22 development of applications, but I advise districts.
23 Q Okay. Do you have individual -- I know that
24 C.A.S.H. is a client of Murdoch's.
25 A Yes.

1 Q Do you have individual school districts,
 2 separate from their association with C.A.S.H., that are
 3 clients of Murdoch?
 4 A Yes.
 5 Q And what school districts are those?
 6 A Filmore Unified, Holtville Unified.
 7 MS. DAVIS: What did you say? Holtville?
 8 THE WITNESS: Holt. Holt.
 9 MS. DAVIS: Okay.
 10 THE WITNESS: Imperial County Office of Education,
 11 Ventura County Office of Education, Lennox, Rancho Santa
 12 Fe, Kernville. I think that is the list.
 13 BY MR. ELIASBERG:
 14 Q Okay. Are those current clients?
 15 A Yes.
 16 Q Are there any school districts that you didn't
 17 list here who have been clients at the -- at any time
 18 since you've been at Murdoch but who you didn't list
 19 because they're not current clients?
 20 A Ocean View, Imperial Unified. That's it.
 21 Q This is the last question. I'm just going to
 22 do this in the phrase of just listing a few, to see
 23 whether it jogs --
 24 A Yes.
 25 Q -- your memory or see whether your memory

1 wasn't complete. I'm just going to list a few school
 2 districts to see if they either are current clients or
 3 have been clients --
 4 A Okay.
 5 Q -- at any time that you've been working at
 6 Murdoch.
 7 LAUSD?
 8 A No.
 9 Q Oakland Unified?
 10 A Say it again?
 11 Q Oakland Unified.
 12 A Through an attorney firm that retained me, I
 13 assisted Oakland.
 14 Q West Contra Costa?
 15 A No.
 16 Q Ravenswood?
 17 A Not me. Not me specifically.
 18 Q Someone else in Murdoch?
 19 A Yeah. I gave some advice, but there's somebody
 20 else that is basically the point person.
 21 Q Alhambra Unified School District?
 22 A Alhambra. Not me, no.
 23 Q But someone else at Murdoch?
 24 A Either now or in the past, yes.
 25 Q I think that's all for now. That's all my

1 questions for today.
 2 A All right.
 3 Q Thank you for your time and patience.
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 9 I, THOMAS G. DUFFY, do hereby declare under
 10 penalty of perjury that I have read the foregoing
 11 transcript; that I have made such corrections as noted
 12 herein, in ink, initialed by me, or attached hereto;
 13 that my testimony as contained herein, as corrected, is
 14 true and correct.
 15 EXECUTED this ____ day of _____,
 16 _____, at _____, _____.
 17
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 19 _____
 20 THOMAS G. DUFFY
 21 Volume 1
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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

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

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

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

Dated: _____

SHERRYL DOBSON
CSR No. 5713