APPEARANCES:

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Also Present:
MARIO MATERAZZI

Los Angeles, California, Tuesday, July 1, 2003
9:03 a.m. - 3:46 p.m.

THOMAS G. DUFFY, having been previously duly sworn, was examined and testified as follows:

EXAMINATION (Resumed)

BY MR. ELIASBERG:

Q. Dr. Duffy, you understand that you're still under oath?
A. Yes.

Q. Okay. I just wanted to ask a couple quick follow-up questions about where we ended yesterday. I was asking about school districts and whether they were at any of the time that you've been in Murdoch either clients of yours -- and then I'll follow up to ask if they've been clients of anybody else at --
A. Yes.

Q. -- Murdoch, if not you.

In the time you've been there, has Compton Unified School District been one of your clients?
A. No.

Q. And has it been the client of anybody else at Murdoch?
A Not to my knowledge.
Q How about Lynwood Unified?
A Not a client of mine. I don't think it's been a client of the district, no. I mean of Murdoch, Walrath & Holmes, no.
Q How about Inglewood Unified?
A No, not a client, and not a client of the firm, to my knowledge.
Q Okay. And how about any of the -- I know that there are a few in Sacramento. There's Sac City, and I believe there's a high school district.
A But any of the Sacramento school districts?
Q A Not for me, for Sac City or for San Juan or Grant. I don't know if I know all the districts that are up there. I don't have knowledge that they're clients of the district.
Q That's fine. I don't want you to speculate. I mean, if you did know --
A Yeah.
Q -- or had a good reason for --
A I'm trying to think even into the past if there's anything I knew about. None that I can recall.
Q Do you -- and I'll do it first you personally, and then anybody else at the firm, but do you personally represent any building association?
A Building association.
Q Well, my understanding is that there are school building associations or construction associations or authorities. Entities who represent builders and the interests of builders.
A I personally represent -- and we don't refer to them, necessarily, as builders but the relocatable manufacturers association. It's called SMFA, School Facility Manufacturers Association.
Q Okay. Do you also represent any entities that work for the interests of companies that build stick-built buildings, as opposed to relocatables?
A I don't know what that would be.
Q Could you be more specific?
A Okay.
Q If you're not sure what the entities would be, I had thought that there was something along the lines of the school building manufacturers -- not relocatables, but school building builders association or something like that, and I gather there's not an entity like that that you're aware of?
A There is an entity that is an organization of construction managers who work for school districts.
Q They don't work for contractors. And somebody else in my firm does represent them, yes, but they're not builders, per se. I don't know if that's the area of your question.
A Q How long have you represented the relocatable manufacturers?
Q A Three years.
A Q Do you consider them to be a significant client?
Q MS. DAVIS: Vague and ambiguous.
A THE WITNESS: Could you define "significant" for me.
Q BY MR. ELIASBERG:
A Q Well, do you do more than occasional work for them?
Q A Well, assume that you work somewhere between an 80- or a 40-hour week. So over the course of, you know, a year, if you did more than 10 or 15 hours for them, I would consider that more than just somebody you answer a phone call for.
A A Over the course of the year, I'm sure that I spend ten hours or more with them, yes.
Q Well, do you do more than occasional work for them?
A Q Let's take it in any of the years you've been a client?
Q A Yeah.
A Q -- or had a good reason for --
Q A I'm trying to think even into the past if there's anything I knew about. None that I can recall.
Q Do you -- and I'll do it first you personally, and then anybody else at the firm, but do you personally represent any building association?
A Building association.
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Q If you're not sure what the entities would be, I had thought that there was something along the lines of the school building manufacturers -- not relocatables, but school building builders association or something like that, and I gather there's not an entity like that that you're aware of?
A There is an entity that is an organization of construction managers who work for school districts.
Q Any estimate as to what you do spend or even a range of what you do spend for them?
A Q It really varies.
Q A Let's take it in any of the years you've been there.
Q In the first year, how much time would you estimate you work for them?
A Q It's probably meeting times, updates on legislation, and there are probably four meetings a year, maybe five meetings a year, maybe six. They would take a couple of hours each. From time to time there's a piece of legislation that's of import.
Q What kind of legislation are you referring to that either you or they consider to be of import?
A Last year there was a bill proposed by a member of the Assembly to require two doors out of each individual relocatable classroom, and that was something that the relocatable manufacturers didn't feel was necessary, and so we asked for an amendment to the bill to have DSA study it.
Q It was considered to be a safety -- fire and life safety issue, and this was right on the heels of SB 575, which required sprinklers and automatic detectors for fires in schools, prospectively. And said, well, why don't we study this. We proposed an amendment to
BY MR. ELIASBERG:
1 Q  And you were certainly answering around my
2 question, but let me just repeat my previous question.
3 Do you have an estimate of approximately how
4 many hours you -- or range, how many hours you spend --
5 A  In a year.
6 Q  The first year that you were --
7 A  The first year that I was there.
8 Q  Yes.
9 A  The year began in April, to the following
10 April, several meetings. I don't know, 50 hours.
11 That's more a guess than anything else.
12 MS. DAVIS: I'm going to say, clearly he's
13 speculating.
14 THE WITNESS: Yeah.
15 MS. DAVIS: And he's trying to reconstruct
16 something.
17 BY MR. ELIASBERG:
18 Q  Fair enough.
19 What about the second year that you were at
20 Murdoch? Same question, estimate of the number of hours
21 you would have worked for them.
22 MS. DAVIS: Calls for speculation.
23 THE WITNESS: Yeah. I would say it's probably
24 about the same.
25

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

BY MR. ELIASBERG:
1 Q  Then what -- do you have an understanding of
2 why they thought that the -- why they believed that the
3 labor compliance issues might affect them?
4 MS. DAVIS: Calls for speculation.
5 THE WITNESS: Yes.
6 BY MR. ELIASBERG:
7 Q  Okay. What is that understanding? I'm asking
8 only for your understanding, not for some evanescent
9 thought that somebody might have at the School Builders
10 Manufacturers Association.
11 A  The labor compliance programs that were
12 identified that I spoke about yesterday are requiring
13 school districts to monitor and enforce and to penalize
14 with State authority contractors who violate prevailing
15 wage law. The modular manufacturers/relocatable
16 builders, whatever we would call them, do not pay
17 prevailing wage, because it's in-plant production of
18 buildings. It's basically an assembly line making what
19 is considered under the law to be personal property. So
20 they were not considered to be under that umbrella.
21 But the agency that is responsible for State
22 enforcement, DIR, is an agency that has the authority,
23 without legislation, to make what are known as
24 precedential determinations, and those determinations
25 typically identify a worker that should be included
26 under prevailing wage law.
27 On March 4th of this year, the director of the
28 DIR issued two precedential determinations. They
29 weren't specifically about modular builders or modular
30 manufacturing, but because they dealt with sheet metal
31 and they dealt with electrical manufacturing, there was
32 a concern that they would envelope at some point the
33 manufacturers. And that still hasn't been determined.
34 In fact, it was the subject of the hearings that I just
35 mentioned.
36 Q  Yesterday you mentioned Kelvin Lee, and I
37 believe you said, in sum and substance, that he was a
38 person who had -- who was well regarded within the
39 C.A.S.H. organization and the school building community;
40 is that correct?
41 A  I believe I said he's well regarded within the
42 C.A.S.H. organization. I'm sure that he's well regarded
43 in the school building community as well, but I don't
44 think I said that yesterday.
45 Q  Okay. Do you know what -- how Mamie Star is
46 regarded in the school building -- I'm sorry, within the
47 C.A.S.H. organization?
48 A  Can you maybe state a little bit more on the
49 "how" part?
Q. Well, I guess, for example, you stated that, I believe -- and I'm not trying to put words in your mouth. My memory was that you said that Kelvin Lee was considered to be intelligent and thoughtful. Did people consider Mamie Star to be intelligent and thoughtful?

A. Yes.

Q. Did they consider her to be dedicated?

A. Yes.

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

A. Yes.

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

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

MS. DAVIS: Okay.

MR. ELIASBERG: He never previously stated anything --

MS. DAVIS: Okay.

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

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

MS. DAVIS: I didn't either.

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

Q. Do you know Floyd Stork?

A. Yes.

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

MS. DAVIS: Vague and ambiguous.

THE WITNESS: Can you ask me maybe more directly?

BY MR. ELIASBERG:

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

A. Yes.

MS. DAVIS: I didn't either.

Q. Do you think -- let's say within -- how do you regard Floyd Stork? Do you think he's educated? I consider Floyd Stork to be knowledgeable. I consider him to have a very strong interest in school facility issues.

Q. Okay. Do you know Gene Hartline?

A. I do.

Q. And who is Gene Hartline?

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

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

MS. DAVIS: Vague and ambiguous.

BY MR. ELIASBERG:

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

A. What role?

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

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

Q. And is it -- didn't he -- did he previously hold a position within C.A.S.H.?

A. Yes.

Q. What position was that?

A. He was chair of the organization.

Q. Do you know when that -- approximately when that was?

A. He was the first chair of the organization.

Q. So about when would that have been?

A. 1978 to about 1979 or thereabouts.

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

MS. DAVIS: Vague and ambiguous.

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

BY MR. ELIASBERG:

Q. Do you know what districts those were?

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

Q. Do you know any of them?

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

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

A. I'd be guessing.

Q. Fair enough.

BY MR. ELIASBERG:

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

A. Could you define discussions?
Q   Any conversations.
A   I've had conversations.
Q   Okay. Have you talked about school facilities issues with him?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: The specific topics, I'm -- I think your question is after that. I can't recall specific school facility issues in one-on-one conversations with him, as we were having yesterday or I've had with somebody on the telephone last night. He's past chair of the organization, and he attends meetings, and we discuss issues. I can't give you any specifics.

BY MR. ELIASBERG:
Q   But have you heard him discuss school facility -- I guess perhaps you interpret it -- or maybe I gave across the impression that what I meant by conversation was one-on-one or maybe three -- at C.A.S.H. meetings have you heard him discuss the school facilities issues?
A   From time to time he probably has given input. He tends to be quiet.
Q   Do you consider him to be --
(Telephone interruption.)
BY MR. ELIASBERG:
Q   Do you consider him to be knowledgeable about school facilities issues?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: I created school facility issues.

BY MR. ELIASBERG:
Q   Did you also learn about school facilities issues because you were an administrator?
A   I was definitely learning about them, yes.
Q   Do you know Ron Bennett?
A   Yes.
Q   And who is Ron Bennett? What is his role or position within C.A.S.H.?
A   Ron is on the board of directors.
Q   And do you know if he is currently employed at a school district?
A   No. I know that he is not employed at a school district.
Q   Do you know if he's been employed at a school district within the past, oh, five years?
A   May have been before five years.
Q   Do you know what Mr. Bennett does now, if anything, for work?
A   Yes.
Q   And what is that?
A   He's president of school services of California.
Q   Do you consider Mr. Bennett knowledgeable about school facilities issues?
A   Yes.
Q   And what's the basis for that knowledge?
A   Interactions with him in past years, conversations with him about pending legislation over the last three years from time to time.
Q   Do you know Yolanda Mendoza?
A   No.
Q   Do you know -- well, if you don't, then you don't. That's pretty much it.
Yesterday I believe you discussed a paper or a document that Kelvin -- you believe that Kelvin Lee had written concerning multi-track year-round education; is that correct?
A   Yes.
Q   And do you remember -- and I may have asked you this, but I'm sorry, I don't remember approximately when -- and I'm sure you wouldn't have an exact date, but approximately when you were at a meeting in which Mr. Lee read from sections of that paper?
A   I do not recall when it was. I know it was in the last decade. It was in the 1990s.
Q   Okay. Do you know if C.A.S.H. or any subcommittees of C.A.S.H. have put out papers on school facilities issues?
the chair, the chair has the authority to bring --
A Yes.
Q -- a committee together without a vote of the
organization?
A Yes.
Q Okay. And do you know if these subcommittees
ever write papers or white papers or anything else that
goes out with the C.A.S.H. heading on it or makes it
appear that the document is a C.A.S.H. document?
A What do you mean by a white paper?
Q Well, I really -- any paper that discusses
issues or concerns, any document that discusses issues
or concerns that makes recommendations and that has on
it some statement that this is -- a paper's written by
A From time to time, a document may be prepared
that identifies issues that'll have a C.A.S.H. logo or
the C.A.S.H. name on the top. It may be produced by
subcommittee. That may happen from time to time. May
not be exhaustive. It may simply identify issues and
may ask questions.
Q Do you know, if the document actually makes
recommendations, is there any process by which someone
other than the members of the subcommittee have to
approve the dissemination -- the public dissemination of
the document?
A Are you asking whether or not there's a control
gate process about production of a document and whether
or not it's disseminated? Is that the question?
Q I think I know where you're getting at, but I'm
not quite sure what you mean by control gate. So let me
try to rephrase the question.
Is there some process, whether formal or
informal -- let me put it differently.
Does the subcommittee have authority or is
there anything that would prevent a subcommittee --
after they've gotten together on the request of the
chair, the authorization of the chair, written a paper,
can they then publicly disseminate a document with
recommendations in it with C.A.S.H.'s name on the
document without anybody else in the C.A.S.H.
organization looking at that document, reviewing it and
approving it?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: I don't know what all has taken place
in the past, but typically, what I try to do is to make
sure that the C.A.S.H. board has a document that we may
put out that is, say, a working document. We have some
working documents on LCPs, labor compliance programs,
currently. This is very, very new. They're
exploratory. Don't know everything there is to know.

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

BY MR. ELIASBERG:

Q. Okay. Let's -- we'll stick with your experience, and I understand that things may have happened when you weren't president or whatever.

A. Within your experience, have there ever been occasions where a member or some members of the board of directors have said, I'm not really happy with this document or with this portion of the document?

A. Not those words, no.

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

A. No. Typically, people ask for clarifying information, what do you mean? Can we expand on this?

So no, I have not had that experience.

BY MR. ELIASBERG:

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

A. '87 to '89.

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

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

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

BY MR. ELIASBERG:

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

A. I know.

Q. -- special education.

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

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

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

Because I believe we learn from each other.

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

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

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

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

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

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

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

MS. DAVIS: Okay.

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

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

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

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

A. (Witness reviews documents.)

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

A. I've reviewed the document.

Q. Actually, before I ask you a couple questions
about that, I want to just -- as I'm getting older I'm
forgetting things. A couple quick questions I wanted to
ask you.
I believe that you testified, in sum or
substance -- correct me if I'm wrong -- that, in your
opinion, Mamie Star was knowledgeable about school
facilities issues; is that correct?
A Yes.
Q Okay. And what's your basis for that opinion?
A I've known Mamie Star for 15 years, maybe
longer, and interacted with her many times, discussed
issues with her.
Q And when you say issues, do you mean school
facilities issues?
A Variety of issues, school related issues,
issues of governance of schools, financing schools and
school facility issues.
Q Are you a member of the board of directors for
C.A.S.H. currently?
A No.
Q Okay. Have you -- I know you were the chair in
the late '80s.
Have you since the late '80s at any time been a
member of the board of directors?
A Yes, as past chair.
And when were -- so as past chair you were a
member of the board of directors.
For what period of time was that?
A From the time I was past chair in the first
year until the time that I went to work for Murdoch,
Walrath & Holmes.
Q And why did you cease being on the board of
directors?
A Basically, I served the board of directors as
the chief lobbyist for C.A.S.H. So I am a past chair of
the organization, but because of the role I play in
serving the board and the organization, I don't sit as a
member of the board.
Q Referring you to the document that you
reviewed, do you recognize this document?
A I don't know that I recognize the document as a
7 document, no.
Q Have you seen this document or any document
that's similar to this document before?
MS. DAVIS: Vague and ambiguous, asked and
answered.
THE WITNESS: No.
BY MR. ELIASBERG:
Q Okay. I don't think we need to attach this as
an exhibit.
A   I don't know.
Q   Do you know what process she used to select you?
MS. DAVIS: Calls for speculation.
THE WITNESS: No.
BY MR. ELIASBERG:
Q   Did you ever ask her --
A   No.
Q   -- why me?
A   No.
Q   Did she ever say, in sum or substance, Tom, let me tell you why I want you to be chairperson?
A   No.
Q   Were there other members of the facilities group besides you?
A   Yes.
Q   Okay.
A   I was not a committee of one.
Q   Those are the best committees.
Do you know who appointed those members?
A   (No audible response)
Q   Let me ask you this: Do you know how they were selected?
A   I know how one member of our group was selected.

Q   Okay. And what member is that?
A   I'm blanking on her name, but she was the teacher that taught at the Davis School District who was knowledgeable of technology, and I wanted her to be on the committee because of her expertise, and therefore, I basically said, by my authority as chairperson, I'm appointing her. I don't know that that -- I had any real authority to do that, but I did that.
Q   Okay. And what was the name of that teacher?
A   I'm going to have to think about that. I can't think right now.
Q   Fair enough.
Do you know -- do you have any knowledge about how any of the other people were selected or appointed?
A   A vague knowledge that there was a request to gather people together who had some interest and some knowledge of school finance and school facilities, because we were a large group that separated into two groups, one smaller and the other medium-sized.
Q   Okay. I want to focus for now just on the facilities --
A   Okay.
Q   -- subgroup, and I believe that's the smaller group --
A   Yes.
Q   -- that you're talking about; is that correct?
I think you said it was requested -- and maybe I'm misstating it, but I thought you said something like it was requested that people be gathered who were knowledgeable about finance and facilities; is that correct?
A   Yes.
Q   And who did that requesting?
A   I believe it would have come through the identified staff to the committee, the joint committee.
Q   Okay. And do you know who was -- what was the staff to that subcommittee? I'm sorry to the committee, what was the staff to the committee or who were the members of the staff to that committee?
A   Stephan Blake, S-t-e-p-h-a-n, first name, Blake, B-l-a-k-e, who was lead for all the committees under the master plan and spent some time with our committee. Mike Ricketts, M-i-k-e, R-i-c-k-e-t-t-s, who was assigned two or more committees under the master plan. There were others, but I can't tell you who they were.
Q   Okay. What position does Mike Ricketts hold besides this position of being a staff member to the --
A   This was a full-time position for Mike Ricketts.
Q   Do you know what Mike Ricketts' previous work was before -- and I don't mean back in time. I mean last job or position before taking this full-time position?
A   I have a -- just a smattering of knowledge.
Q   And what is that knowledge?
A   That he worked in the Department of Finance.
Q   Do you have any other knowledge about how the people on the committee were -- the facilities subcommittee were selected?
A   No. It began as a large group, as I said, and separated into a smaller group. Some of it was directed by interest. So there was an appointment of a group. That group was large and was separated into two groups. Interest on the part of the members did have something to do with their being there.
Q   Why did you agree to become -- well, to be at first -- well, why did you agree to become the chairperson of the committee?
A   I have a lot of regard for Dede Alpert. She asked for assistance, and I offered that. The end goal was at some point in time policy development, and that was of interest to me.
Q   Why was of it interest to you?
A   Because education policy and finance are
something of interest to me.

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

A   Talking to me specifically?

Q   Yeah.

A   No.

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

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

Q   Okay. We can talk about the -- after the
reports had been made a little while later, but when she
first
spoke to the group, at least -- maybe not everybody
present, but most everybody, what did she say that --
about what she understood your role to be, or what she
wanted your role to be?

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

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

A   No.

Q   Were you paid --

A   No.

Q   -- for your work?

Do you know if anybody on the group was paid?

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

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

Do you know how much time you spent on that?

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

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

A   The length in a day?

Q   Yeah. The length of time, yeah.

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

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

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

Q   Okay.

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

I'd also asked for a principal to be there.

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

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

Q   Okay.

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

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

A   I didn't give them an opportunity to refuse. I
basically invited her to attend, and she was accepted
and we gave her a name tag, and nobody made an issue of
Q. Okay. And I understand you wanted to have a teacher and you wanted one who was knowledgeable about technology. What was your -- were there other criteria that led you to select this other woman? I believe you said it was a woman; is that correct?

A. Yes. And I will think of her name. In that, she was close by, there was no issue of paying -- you know, flying her from San Diego or having to have a room and all that. She was willing to come. It was, what, ten, twelve miles from the city of Davis, and you know, there should be no issue. And there really wasn't. Nobody made an issue of it. They seemed to accept her and -- you know, flying her from San Diego or having to have a room and all that. She was willing to come. It was, what, ten, twelve miles from the city of Davis, and you know, there really wasn't. Nobody made an issue of it. They seemed to accept her and -- you know, flying her from San Diego or having to have a room and all that. She was willing to come. It was, what, ten, twelve miles from the city of Davis, and you know, there should be no issue.

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

A. I did.

Q. And you insisted on it?

A. Yes.

Q. Okay. Did you object to the inclusion of anyone who was on the committee?

A. No, I didn't.

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

A. Is there anyone on the committee that you believe is not trustworthy?

MS. DAVIS: Vague and ambiguous.

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

BY MR. ELIASBERG:

Q. Did you ever use the word before?

A. Have I ever used the word before?

Q. (No audible response)

A. Yes.

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

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

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

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

A. Yes.

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

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

Q. Dishonest or would impart confidential information.

A. No.

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

A. Yes.

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

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

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

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

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

A. Yes.

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

A. You mean who wrote the report?

Q. Well, we can start there, sure. Who wrote the report?

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

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

A. Yes.

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

Were there drafts of the facilities piece written?
A Yes.

Q Who wrote those drafts?

A Mike wrote the drafts. People contributed some language from time to time to the drafts, but basically, Mike compiled them.

Q And do you have an understanding of how he compiled the drafts?

A You mean physically how he compiled the drafts?

Q Well, I guess what I'm trying to understand is, the ideas and recommendations that were included in the report, were those Mr. Ricketts' ideas and recommendations?

A No.

Q Okay. Whose ideas and recommendations were they?

A Members of the committee.

Q And did members of the committee -- and let's focus on the -- the facilities portion of the report. That's what I'm going to continue to do unless I say differently.

Q Okay.

Q Did members of the facilities group review the drafts as Mr. Ricketts -- after Mr. Ricketts had written them and I -- well, let me ask you this. Did Mr. Ricketts circulate --

A Yes.

Q -- copies of the drafts after he'd written

A Yes.

Q And did members of the -- did you review drafts?

A Yes.

Q Okay. And did other members -- at least to the extent that you know, did other members review the drafts?

A I believe they did.

Q Okay. And did you make comments on the drafts as Mr. Ricketts circulated them?

A We would comment on the drafts when we would get together in our meeting times and discuss and debate those drafts and concepts. Began rather slowly, but there began to be issues within the committee at some point in time.

Q Did you -- when you said "we" commented, I just want to make sure -- is that just the facilities group, or did the group as a whole make comments?

A Well, it was both. The facilities group had an opportunity every time we met to comment on whatever was written. We would also give a report, a reporting to the entire group to give, basically, like, a progress report, where are we, what have we discussed. And that would happen as well. It wouldn't happen at every meeting, but it would happen.

Q Did -- do you feel that Mr. Ricketts accurately included the comments or suggestions made by the members of the facility -- so Mr. Ricketts -- let me step back.

A Mr. Ricketts circulates one draft, and my understanding is that then the facilities group would talk about that draft, discuss that draft, at one of their meetings; is that correct?

A Yes.

Q Okay. And is it -- do you believe that Mr. Ricketts then accurately put into the next draft the comments and suggestions and proposed changes by the facilities subgroup?

A Yes.

MS. DAVIS: Vague and ambiguous.

THE WITNESS: He would -- he would try to capture what was there, but it wasn't always easy.

BY MR. ELIASBERG:

Q Okay. Did -- were there persons who made presentations on facilities issues, either to the group as a whole or to the facilities subgroup?

A Yes.

Q Okay. Did -- were there persons who made presentations on facilities issues, either to the group as a whole or to the facilities subgroup?

A Yes.

MS. DAVIS: Vague and ambiguous.

THE WITNESS: He would -- he would try to capture what was there, but it wasn't always easy.

BY MR. ELIASBERG:

Q Okay. Who were those people?

A I don't know if I can recall them all.

Q Whom do you recall?

A Marianne O'Malley was one, who then stayed and became a member of the committee, apparently through interest. I'd asked people from various school districts to come and give a presentation, and -- he wouldn't like me forgetting his name. I can't think of his name.

Q Did Duwayne Brooks make a presentation?

A Duwayne was a member of the committee and shared information willingly from time to time. I can't remember a formal presentation, no.

Q And what's Mr. Brooks's position?

A What is Mr. Brooks's position?

Q (No audible response)

A Mr. Brooks is the director of the school facility unit within the California Department of Education.
Q And is that the School Facilities Planning Division?
A Yes.
Q Okay. Did Mr. Brooks focus his attention on the facilities subgroup of the committee as opposed to the finance group?
A He was a member of the facilities subgroup.
Q Do you consider Mr. Brooks to be knowledgeable about school facilities issues?
A Yes.
MS. DAVIS: Vague and ambiguous.
BY MR. ELIASBERG:
Q What's your basis for that?
A I've known Mr. Brooks for 15, 17 years, worked on a number of issues with him over time.
Q Did Kim Rueben make a presentation to either the committee as a whole or the facilities subgroup?
A I don't recall the name.
Q Did Patricia Koch make a presentation?
A She was a member of the committee.
Q And who is Ms. Koch? What is her position, title?
A I don't know her exact title, but I believe that she is in charge of business as an assistant superintendent for business or a similar name. Could be an associate with Huntington Beach High School District, I think.
Q Did John Fairbank made a presentation to the group?
A I don't remember John Fairbank making a presentation to the group. I know John, but I don't recall a presentation to the group.
Q Did you -- are you aware of any -- well, let me put it differently. Did you miss any meetings of either the group as a whole or the facilities subgroup?
A I did for portions of meetings, but I don't think it was many.
Q Did any -- do you remember anyone making a presentation about polling and the likelihood of success, the California's voters' perception of school bonds and likelihood of their passage?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: I've been in a lot of meetings where those kinds of things have been discussed. I'm not recalling that they were part of a presentation to the subgroup or to the whole group. They may have been.
BY MR. ELIASBERG:
Q Do you remember anybody making a presentation about research, having to do with how bond moneys had -- doing a comparison of the distribution of bond moneys in relation to the property tax values of districts?
MS. DAVIS: Same objection.
THE WITNESS: We had a lot of paper and a lot of data that included things of what you're talking about, but I can't tell you specifically what we saw over that period of time.
BY MR. ELIASBERG:
Q Okay. Just so I -- when I talk about presentation, I want to -- I mean, I'm including an oral presentation that may have paper along with it, whether it's -- or what do they call -- Power Point presentation. I'm just trying to understand whether you remember an actual -- somebody coming in and doing an oral presentation which discussed issues of allocations of bond money and comparing districts, based on their property tax wealth and the allocation of bond money.
A As I said, there were a number of times when similar kinds of issues were discussed. I remember John Sonstelie giving us a presentation, where there was a good deal of finance data that was shared. I don't know that it included all of that. It was basically a larger focus of his presentation, as I recall.
Q And what was the focus of his presentation?
A The focus of his presentation -- this was to both groups -- was school finance and is there another model of school finance that we may want to consider in California.
Q And did Mr. Sonstelie talk about specific other models?
A I recall him talking about at least one model that was of strong interest to him.
Q Okay. Who is Mr. Sonstelie besides somebody who made a presentation to the group?
A He is a professor at University of California at Santa Barbara, and he's an economist.
Q Did you know Mr. Sonstelie before he made the presentation?
A I did not know him before the committee came together and he made his first presentation.
Q Had you ever read any of his -- well, making the assumption that he's actually written something, since he is in academia, have you ever read anything that Mr. Sonstelie had written prior to your work on the committee?
A Not prior to the work on the committee.
Q What was the model that Mr. Sonstelie presented?
A I believe it was called the Oregon model.
Q And can you give me the details of what you
believe to be called the Oregon model?

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

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

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

Q  Let me start with that, sure.

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

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

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

Q  Did he in his presentation make any comparisons between the Oregon model and the way California finances school facilities?

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

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

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

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

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

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

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

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

MS. DAVIS:  Vague and ambiguous.
document request is going to be made, that it's a 
good-faith litigation practice not to destroy that -- 
MS. DAVIS: Well, of course, we're not going to 
have him destroy it. I just have no idea on what basis 
you're going to request these documents, but go ahead.
MR. ELIASBERG: And you're free to make your 
objections at the time. Of course, if you think they're 
not relevant, you can object and you cannot turn them 
over, if that's the position you're going to take, but 
I'm just putting you on notice that we're going to make 
a request for those documents.
MS. DAVIS: Okay.
MR. ELIASBERG: I'm not suggesting that Mr. Duffy 
would destroy them. I'm just putting you on notice that 
I'd like them -- Dr. Duffy, I'd like them to remain if 
they still exist.
I'd like to introduce to you -- actually, let 
me do this, because we're probably well at a time that 
we could take a break and -- but before we take the 
break, let me state something.
I have made copies of what is the finance and 
facilities working group document, despite the fact that 
one can't avoid wasting a lot of paper in litigation.
What I have done is made a copy that includes the 
executive summary and the facilities working group 
section. So it is not a complete document.
I don't intend to refer to the sections that 
are the finance section, because, in fact, that's the 
larger section. If you have no objection, I'd rather 
use that and distribute that.
If you want me to make copies of the full 
document, I can do it, but it seems to me a great waste 
of paper to refer to a portion of the document -- 
obviously, if at some point Dr. Duffy says, I'd really 
like to go to the finance section, we can stop, I'll 
Xerox the whole document, but it's a difference of 
making copies of what's about a 25-page document or 
70-page document.
So I thought I'd throw it out before the break, 
because if you want me to do the full document, I'll 
make copies at the break.
MS. DAVIS: I think Dr. Duffy should have in front 
of him at least the full document, so that when he 
reviews it, he can refresh his memory.
MR. ELIASBERG: Okay.
MS. DAVIS: I'm not saying you have to introduce 
the full document as an exhibit and attach it. I 
probably don't need the full document.
MR. ELIASBERG: Okay. Well, I do -- 
MS. DAVIS: I think, you know, if he wants to flip
through it, he should be able to flip through the entire thing.

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

MS. DAVIS: Okay.

MR. ELIASBERG: All right. It's been an hour and 15 minutes. So why don't we take a break.

(Brief recess taken.)

MR. ELIASBERG: I'd like to give to the court reporter and to Dr. Duffy a copy of a document entitled "Joint Committee to Develop a Master Plan for Education Kindergarten Through University Finance & Facilities Working Group K-12 Education Final Report." As we discussed previously, I'm giving what I believe to be a complete copy of that document to Dr. Duffy, and I'm giving a partial copy to Ms. Davis, and I'm going to give a partial copy -- if we decide to later put the whole copy in, I'll give you -- but for now let's mark it as at least Duffy 2.

(Plaintiff's Exhibit 2 was marked for identification by the court reporter.)

BY MR. ELIASBERG:
Q   Dr. Duffy, you can take whatever time you need to review that document.

MS. DAVIS: All day.

Q   Well, as I said before -- take whatever time you need, but we will talk about specific stuff --

A   Why don't we just go into the document. If I need to stop and go back and review something, maybe that would be more efficient.

Q   That would be fine.

A   I recognize the document.

Q   Okay. And without leafing through every page, what do you believe this document to be?

A   I believe this document to be the final report for the finance and facilities working group, as presented to the joint committee to develop a master plan.

Q   Let me -- just a couple follow-ups before we go into the document. I believe you said that Professor Sonstelie made a presentation to the committee, or at least to the facilities subgroup, and you discussed --

A   No, it was the large group.

Q   Oh, it was the large group? Okay.

A   And you discussed a question that you had asked him.

BY MR. ELIASBERG:
Q   Did any -- at that -- did any of the other members of the group ask questions of Professor Sonstelie?

A   There were other questions.

Q   Do you remember what the -- any of those questions were?

A   (No audible response)

Q   Do you remember who asked any of them?

A   No.

Q   Did any members of the committee at the time Professor Sonstelie was present respond to your question or statement about collective bargaining?

A   Did any other members?

Q   Yeah.

A   It was discussed for a few minutes. I think there were others that commented, but I can't give you the detail on that.

Q   Do you know if in Wyoming there's mandatory collective bargaining for teachers?

A   I don't.

Q   Do you know if there is in Montana?

A   I don't.

Q   Okay. I believe before the break that you said that at least some or -- you believed that some or all of the people had taken notes during the -- during some or all of the meetings of the facilities subgroup; is that correct?

A   From time to time. I don't know if they took them all the time, but people would take notes, yes.

Q   Do you have any recollection of whether Steve Juarez took notes?

A   I don't recall him specifically taking notes.

Q   Do you have any recollection of Kathy Tanner taking notes?

A   I can think of one meeting specifically where I think I saw her writing, yes.

Q   Do you know if Donald Zimring took notes at any of the meetings?

A   No.

Q   You don't -- you know that he didn't or you don't remember?

A   I don't know that he did or did not.

Q   Okay. Let's look at the -- if you would please turn to -- I guess it would be the page right after the cover page.

A   Hmm-hmm.

Q   Well, and we'll probably refer to, actually, the first two pages after the cover page.

A   There's a list of names on that first page that includes your own; is that correct?
A  Would you ask it again, please?
Q  There's a list of names on that first page that includes your own; is that correct?
A  Yes.
Q  Okay. Can you go through that list for me and identify the people who were members of the facilities subgroup, as opposed to being members of the finance subgroup?
A  Besides myself?
Q  Hmm-hmm.
A  Duwayne Brooks, there was Steve Juarez, there was Patricia Koch, there was Janet Meizel, the technology coordinator teacher from Davis Senior High School.
Q  Is that the woman that you -- I'm sorry to just interrupt, but Janet Meizel is that the teacher that you earlier referred to that you had strongly worked to get on the committee?
A  Yes.
Q  Okay.
A  Those are the people that are listed here that were on our committee.
Q  Okay. Let me just make sure -- I just want to make sure that I put check marks in the right place. Besides you it was Mr. Brooks?
A  Duwayne Brooks.
Q  Mr. Juarez?
A  Mr. Juarez.
Q  Ms. Meizel?
A  Yes.
Q  And I'm sorry, did I miss anybody?
A  Patricia Koch.
Q  Patricia Koch, okay.
A  Nicholas Ferguson came from time to time, but I don't recall him being a consistent working member of the committee.
Q  Could you turn to the next page.
A  Yes.
Q  There's a list of some more names there. Are any of the names there people who were members of the -- I would say either occasionally attended or regularly attended the facilities subgroup meetings?
A  Ron Prescott, Kathy Tanner -- and does occasional mean more than one time?
Q  Yeah, I'd say -- let's say two or more.
A  Then I think those two.
Q  Okay. Just out of curiosity, I'm guessing that there was somebody who -- that you remember going to one meeting but not more than one.
A  Who was that?
Q  And by meeting, I mean just the facilities subgroup.
A  Right. I think Don Shelton. I think he came in for one.
Q  And Donald Zimring, to your recollection, did not attend the facilities subgroup meetings?
A  You know, he may have come in for a meeting, but he basically focused on the other group.
Q  Okay. Do you know if there was any sort of record of attendance taken? And I don't mean in some punitive way, but signed in at the beginning of each meeting, just to --
A  No. What I recall is if somebody would miss a meeting and we were going to have another meeting, we tried to make sure that they had whatever was prepared if there were -- if there was additional information, whether they were -- so the only -- we would know, oh, gee, who was there; who wasn't there, in order to make sure that -- we made sure that they had information. If they didn't pick it up at the prior time, you know, tried to e-mail or mail or whatever.
Q  Okay. Did Mr. Ricketts attend all of the meetings of your subgroup?
A  No.
Q  Okay. Do you remember how many meetings he did attend?
A  He was very much stretched, and there was a lot of demand from the other group. So one of the reasons that I asked Patti Herrera to assist was because of recognizing that and wanted to make sure there was some way of having some other help and to assist him with this. Because I was anticipating that things would probably just build up for both groups.
Q  Did Ms. Herrera attend all meetings of the facilities subgroup?
A  After a particular point in time, she did, but in the beginning, no.
Q  Given that Mr. Ricketts wasn't present for all of the meetings of the facilities subgroup, was there anyone else who attempted to circulate a draft of the facilities subgroup report?
A  I think members sometimes tried to do that. Kathy may have done that at one point. But we tried to make sure that we worked through Mike, so that he knew what was going on.
Q  If you could turn to Page 40 of the report.
particular passages in the report, but obviously, take as much time as you need to feel comfortable with the context. And you can either look at it now or I can -- if it's easier for you, I can point you to the particular passage I'm interested in, and then you can take your time to look at the context, however you want to do it.

A (Witness reviews documents.)

Okay.

Q  Do you see the box that surrounds Recommendation 5.1?

A  I do.

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

A  Yes.

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

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

Q  Okay. And what's your understanding of the phrase "package of resources"? And again, I'm not asking generally what that phrase means, but I mean specifically as it's used here.

A  If you know.

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

BY MR. ELIASBERG:

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

A  Not capital supplies, capital and supplies.

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

A  School buildings and dollars to maintain buildings, dollars to expand buildings, convert buildings.

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

A  I think that's one of those difficult terms that may be in the eye of the beholder. But we used such terms to communicate that there should be enough resources to be able to make sure that an adequate education was given to children and to pupils, and that term "adequate" kind of warred with itself and with people.

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

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

A  Yes, I do.

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

A  Personally.

Q  Among others.

A  Yeah.

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

A  Yes.

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

A  I'm a parent.
1. teachers, administrators and other staff have
2. appropriate learning and working environments to provide
3. a high quality education. Assure that standards are met
4. and maintained in each school through appropriate
5. monitoring, assistance and intervention."
6. Do you see that?
7. A I see it.
8. Q What is your understanding of the term "common
9. standards"?
10. A This is one of those things, I think, that we
11. debated for a while. But that there would be something
12. that was sufficiently simple and direct that could be
13. used by school districts and school officials throughout
14. California relative to the standards/conditions of
15. schools.
16. Q And what is your understanding of the phrase
17. "accountability systems"?
18. A From my perspective, both a member of the
19. committee and, I guess, beyond the committee, was to
20. have a basis for comparison to the standards that a
21. school district would utilize and to be able to
22. demonstrate that it was seeking to meet those standards.
23. and identify when it had met those standards.
24. Q What do you mean by "a basis for comparison of
25. the standards"?

A Well, if -- we didn't propose what those
2 standards may be. We sort of gave a -- some highlights
3 as to maybe what should be included, but then we would
4 identify a criteria, and that criteria would be
5 something that all schools would compare themselves to
6 relative to some area of the school facility and say, am
7 I there or am I not there. And if I'm not there, what
8 does it take to have me get there.
9
MR. ELIASBERG: Can you read back the -- not that
10 answer, but the previous answer. Because I think there
11 were two parts of it, and I only caught the first part
12 of it.

(The record was read as follows:

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

BY MR. ELIASBERG:

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

A We had put forth that there is something called

standards and criteria that school districts must use to
2 adopt the general fund budget. These standards and
3 criteria are commonly used throughout California. I
4 believe that's where the term common came from.
5 That each school district does it in a
6 different way, but it uses criteria and standards to
7 offer to the community that it is proposing a budget to
8 the board or is proposing an increase in salaries
9 through a negotiation with teachers or other employees,
10 and that, through these standards and criteria, they
11 show the effect and impact of those decisions.
12 We said, since that is done in another area of
13 school operation and area of policy and concerns by a
14 board of education, by a superintendent, by a community,
15 that having a process that was similar to that,
16 specifically identified for school facilities, would
17 give a board feedback about its district, would allow a
18 superintendent to identify needs and the needs for
19 resources and proposed expenditures, but that this would
20 be used throughout California and, therefore, common.
21 The accountability part of it would be, okay,
22 we've identified what our needs are. We've identified
23 resources or a lack of resources, depending upon what
24 the circumstances are, to try to meet those needs, and
25 we have a plan in place to meet the standards and

Q Does the accountability part also include some
2 review by some other government agency? Not talking
3 about the school districts, superintendent or the board,
4 or the general public, but some other agency.
5 Do you include that as part of the
6 accountability system?

MS. DAVIS: Vague and ambiguous.

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

BY MR. ELIASBERG:

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

A What I was speaking about there is that, with
AB 1200, the requirement that a district adopt its
budget -- general fund budget according to standards and
criteria that are then reviewed by the County Office of
Education. The County Office of Education questions
whether or not there is real compliance there, unless it
has an issue with the general fund assumptions that are
made -- you have to use assumptions in projecting
income, use assumptions in projecting expenditures --
that if it has an issue there, it can come back to the
school district informally, and say, we need to talk
with you about that. Can you explain this a little
further for us? Can you give us more detail?
And if they're satisfied, to say, thank you
very much. If they're not, they may ask informally, can
you go back and review your budget again and can you
make these changes?
If that isn't something that works, then -- and
depending upon the County, they may not even have that
informal step. I don't know. I haven't worked in all
58 counties in California, but the County superintendent
can send a letter to the governing board and the
superintendent to say, I have issues with your budget.
Or not approve that budget.
Q When was AB 1200 adopted? Do you know?
A I forget. It was legislation -- there were a
series of pieces of legislation in the late '80s, early
'90s, and I believe it was early '90s for AB 1200, so --
Q Do you believe the adoption of AB 1200 was a
positive step for the California education system?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: I believe it has become something
that is positive.
BY MR. ELIASBERG:
Q Let me refer back to the same thing -- part
that we were looking at before, the "Goal" section.
A Yes.
Q We talked about common standards and
accountability.
What is your understanding of the meaning of
the phrase "assure that standards are met and
maintained"?
A That those common standards and practices, to
demonstrate adherence to them, and "accountability"
would be something that became part of the regular
process of the district, as the AB 1200 budget adoption
process is and as is the process that is used to notify
the public when a collective bargaining agreement is
being ratified by a board or proposed for ratification;
that, in essence, you can know what it is that we are
proposing to do. This is the basis for our
decision-making, and you can look -- you, public, or
you, County office, or whomever, can understand that
we're adhering to this kind of a standard and this is
how we're intending to meet that standard.
So the assurance comes in a board ratification,
a board adoption, documentation that becomes part of
that, part of a governing board agenda that is on file,
with minutes that anybody can go back to.
Q And the phrase little further down in the same
sentence, "appropriate monitoring," what do you mean by
"appropriate monitoring"? What's your understanding of
that phrase?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: My understanding of the phrase
"appropriate monitoring" is that somebody's paying
attention in the school district. That's the first line
of making sure that students are being served, is at the
school district level, that somebody is taking that
responsibility at the school district.
And if there is a failure there, that
potentially the County Office of Education steps in and
assists. Maybe it's because the district doesn't have
adequate staff or isn't knowledgeable, but somebody's
there to give some backup. And then going beyond that,
if necessary.

series of pieces of legislation in the late '80s, early
'90s, and I believe it was early '90s for AB 1200, so --
Q Okay. And just -- and so I understand a couple
terms, what do you mean by the phrase or the word
"backup"?
A We talked yesterday about County schools and
what County schools can do for school districts. The
appropriate monitoring, if a -- someone in a school
district really doesn't understand -- maybe they're new,
maybe there has been a huge change in the district --
that the County superintendent of schools, which is
there to assist and serve school districts -- that's
part of their function and their role -- would be there
to assist them and offer help.
Q Okay. And how would they -- or how are you
contemplating that they would assist or offer help?
A I think it's wide open. Could be understanding
what these standards and criteria are, how do you
approach a board, how do you develop a budget, how can
you compare from year to year, and if someone is
failing -- if there's an overt failure, to try to
address what's contemplated here. That County Office of
Education has the authority, under AB 1200, to say, as I
told you a few minutes ago, you know, we have trouble
with your budget here.
You could say we have trouble with the plan
that you have because you -- it's identified two years ago you had this problem, and nobody's done anything to fix it. And you may be new here, but we've got to tell you we have a problem with that. So we'll offer resources in personnel or whomever to assist you in that regard.

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

Is that different from assistance, to your understanding?

A No, I'm seeing the same thing.

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

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

THE WITNESS: Incomplete hypothetical, calls for speculation.

BY MR. ELIASBERG:

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

MS. DAVIS: Vague and ambiguous.

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

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

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

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

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

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

(The record was read as follows:

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

BY MR. ELIASBERG:

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

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

Q And did you also support the idea that, in some circumstances, there might be the opportunity for some agency outside the district, such as the County board of -- County superintendent's office, to play what you
called a backup role?

A   Yes, I did.

Q   Did other members of the facilities group support this goal?

A   Yes.

Q   Do you remember who they were?

A   I remember first discussing this at a meeting in San Diego. Kathy Tanner was there; Duwayne Brooks was there; Steve Juarez was there for a while. I think Jan Meizel was there. So that was the beginning. But of course, we discussed this later at other meetings.

Q   The first time this idea was discussed, do you remember if Mr. Brooks supported the idea?

A   I believe that he did.

Q   Okay. And do you remember if Ms. Tanner supported the idea?

A   I believe that she did.

Q   And Mr. Juarez?

A   I believe that he did.

Q   And Ms. Meizel?

A   I believe so.

Q   Okay. At any later discussions that the group had -- and we can count, really, any, whether it was in the context of the group as a whole -- by that I mean finance and facilities group -- or the later meetings...

that I understand that you called to just bring the facilities group together or portions of the facilities group together as a subset.

Do you remember other members of the facilities group that you've identified expressing support for this goal?

A   I believe that it was fairly well supported, yes.

Q   Okay. What's the basis for that belief?

A   This wasn't an area where there was tremendous amount of discord and debate, and we had discord and debate.

Q   Did you know Kathy Tanner before this process?

A   I knew Kathy, yes.

Q   And what is her -- I mean, never -- I can never come up with the right word, but what does she do --

A   Professional status?

Q   Yes, professional status.

A   Kathy was administrator with Del Mar School District at this time, and she was responsible for school facility issues and, I believe, other school facility -- you know, in charge of school facility planning and execution. And I think also in the business area.

Q   Okay. Sounds like she had responsibilities at

least somewhat similar to the ones that you had when you were at Moorpark; is that correct?

MS. DAVIS: Assumes facts not in evidence, calls for speculation.

THE WITNESS: Yeah, I don't know the totality of her role, and I -- but smaller district, and I believe there -- that her title was a different title, and I don't think her responsibilities were exactly the responsibilities that I had.

BY MR. ELIASBERG:

Q   Okay. I'm really trying to get more at her responsibilities with respect to facilities.

A   Yes.

Q   Do you understand her to be a person in charge of facilities, understanding that the superintendent is generally in charge of everything, but --

A   Yes.

Q   -- do you understand her to be the person at the district who is charge of facilities?

A   I believe that her role includes, in large measures, facilities for the district.

Q   Do you know about how long she's done that?

A   No.

Q   Have you had opportunities prior to this -- the facilities working group process to discuss school facilities issues with Ms. Tanner?

A   I don't recall doing so. I've known her -- I don't recall discussions of school facilities issues at length, no.

Q   But there were obviously discussions about school facilities issues during this process; is that correct?

A   During this process?

Q   Yes.

A   During the master plan process?

Q   Yes.

A   Yes.

Q   And do you consider Ms. Tanner to be knowledgeable about school facilities issues?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: You've asked me that question about a number of other people today. Her knowledge level is not as comprehensive as many of the people that you mentioned earlier.

BY MR. ELIASBERG:

Q   Okay. Do you consider her to be a layperson with respect to school facilities issues?

A   Not all --

MS. DAVIS: Vague and ambiguous.

THE WITNESS: She's not like a member of the
public.

BY MR. ELIASBERG:

Q   So do you feel that she has specialized knowledge about school facilities that most members of the public don't have?
MS. DAVIS:  Vague and ambiguous.
THE WITNESS:  Yes.

BY MR. ELIASBERG:

Q   Who is Ms. Meizel?  What professional role does she have?
A   Ms. Meizel is -- or at least was a member of the faculty at the Davis Joint High School in Davis, California.
Q   So this is -- sorry, I can't keep all the names straight.  This is the woman who you worked very hard to put on the committee; is that correct?
A   Yes.

BY MR. ELIASBERG:

Q   Did you have any discussions about this case during the break with your counsel?
A   I did.
Q   What did you discuss?
A   Well, I was just interested in your question about the people on this committee.
Q   And did your --
A   Well, I was going to make the comment.
Q   Okay.  Is this the comment that you made during the break?
A   Yes, it is.
Q   Okay.  What was that comment?
A   Basically, if I were asked to put together a committee that represented people knowledgeable about school facilities in California, it wouldn't have been this committee. Because this committee was not a stellar committee with regard to people that knew school facility issues in California.

BY MR. ELIASBERG:

Q   If you were to put together a committee, would you have included yourself?
A   Yes.
Q   Would you have included Duwayne Brooks?
A   Yes.
Q   When you made the comment to your counsel, did she have any response?
A   She said, "Tell him."
Q   Anything else you discussed?
A   No.  Coke.  We discussed Coke.

BY MR. ELIASBERG:

Q   Let me ask you a question about AB 1200. Is it mandatory that districts provide their budgets to the County offices?
A   Yes.
Q   And does the statute contemplate that the County offices will review -- that -- well, does the statute give County offices discretion to review budgets or are they required to review budgets?
A   They're required to review the budget.
Q   Is it your understanding that the process of monitoring that you talked about in the goal here would include mandatory review of the district statements with respect to how they're meeting the standards and what resources they're putting to meet the standards and the timetable they're meeting the standards, that it would be mandatory, that it would be reviewed by the County offices?
A   The concept, in my mind, was that it would eventually get to that.
Q   And why did you want it to be mandatory?  I understand eventually, but why did you think that it should be mandatory?
A   There are a couple reasons for that. One reason that was compelling to me, as a practitioner, is that if there's something that the law compels me to do and the board of education doesn't want to do it for other reasons, I have a very, very large support in the law to say the law is telling us we need to do this.
So that if there is a debate as to whether or not we need to provide sufficient general fund support to the deferred maintenance program or to ongoing maintenance or to an issue that just emerges and there is a challenge because in collective bargaining there are various demands that are being made or maybe demands being made by another community group for something, I can say, this is a prudent thing to do, and they may say, you know, it's a wonderful idea, great. We're going to do this other thing. We're going to make another decision, avoiding the decision you're making. But with something such as this as a support to be able to say, we're being compelled by the law to make sure that we address these kinds of issues, we've identified them in the past, we can't stop now. So you got a tough decision to make as to how we balance things, balance budgets, deal with collective bargaining, deal with other demands, but we want to make sure that we deal with issues that are health and safety issues and regular maintenance issues that need our focus. So that's one. Another is that it's been recognized that there are some districts that have been troubled districts in the past. Maybe there are some that are troubled districts still today. To be able to offer if there's something that works in that district and within the board and its administration and there is inertia in dealing with what continues to be a troubling issue or issues having to do with facilities, to be able to have these standards and criteria for, as you were asking, another entity such as the County office to say, you've failed to focus on this, you've failed to address these issues and you're not planning to address them this year, and we have to ask you to go back and reconsider those. I realize that you may be -- you may not have a board majority willing to go forward on this, but I have to ask you to go back and do it again, because the law compels us to be there as a support to you, and part of that support is to say, rethink your decision-making.

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

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

A Yes.

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

A As I said, eventually to do that.

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

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

Q What do you mean by that, develop expertise?

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

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

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

A Yes.

Q By whom has it been recognized?

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

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

A Well, that was what I was referencing.

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

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

Q And did Mr. Brooks say that the process that
that we've just talked about, that they were -- that at the process of writing this report, including the goal understanding that as the committee was going through.

Q And so as -- when the -- am I correct in it.  But that's where this really began.

BY MR. ELIASBERG:

Q And so as -- when the -- am I correct in understanding that as the committee was going through the process of writing this report, including the goal that we've just talked about, that they were -- that at least you and Mr. Brooks were thinking about what can we do that would be effective to address the problems that Mr. Brooks identified in a district like Compton?

A Yes.

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

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

A Yes.

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

A Yes.

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

Do you see that?

A Yes, I do.

Q What did you mean -- or what is your understanding of "clear, concise and workable standards"?

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

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

BY MR. ELIASBERG:

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

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

Now, just thinking back on what Counsel just identified, a number of these terms were really heavily debated and, you know, who knows what high quality/high performance is. If you asked Jan Meizel, it may have one meaning, and if you ask Kathy you may have another. And if you asked Duwayne, it may have another. But we tried to come together on these recommendations.

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

You know, offering something that isn't going to be achievable is really not what I saw our goal as.

Now, others in the committee differed with me. They said, well, how do you know it's not achievable? Well, I don't know. I've been there, I guess.

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

BY MR. ELIASBERG:

Q Do you believe it's possible to set up a set of facilities standards that are clear, concise and workable?
A No.
Q You just look down a little further on Page 44, and the section that says, "The facilities group recommends the following language be amended to Education Code Section 17251(g) in reference to developing statewide facilities standards," colon, and then it cites to the Education Code and says, "The California Department of Education shall develop standards for use by school districts to evaluate existing school facilities."
A Do you see that?
Q Yes.
A I do.
13 Q Okay. Do you think it's a good idea for the California Department of Education to develop standards for use by school facilities to evaluate existing school facilities?
A I believe if it's done in a manner that much of school facility legislation has been implemented in California in the past, yes.
Q And what -- focusing on the situations where you believe that the facilities legislation has been implemented in a positive way, what would that manner be?
A Using the State Allocation Board's implementation committee or a committee that, if it's tasked with simply this, that is made up like that committee, of practitioners and State-level administrators and, you know, policy writers, where there is an even and open and honest debate.
Q Why would you include those various types of people?
A I think it's been demonstrated that -- I used the term yesterday. If you use top down only, you don't achieve success very easily. If you use bottom up only, depending upon the level of resources, you may or may not. If you have an authority above and you have authorities below that each work together and they articulate solutions that become hammered out as policy, they become effective.
Q And the State Allocation Board's implementation committee is one very effective body that's been in existence since 1986 that has done this, basically.
A So assuming that the standards were developed through a process like the implementation committee or some similar process, you would be in favor of developing those standards; is that correct?
Q It's basically the way I conceived of those standards to be developed.
A Is it your opinion that clear, concise and
workable standards that are characteristic of facilities that provide a high quality -- well, let's just say is it your opinion that a clear, concise and workable standards governing the condition of school facilities currently exists in the state of California?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: I think that there are standards that exist, and there are people that recognize them and that adhere to them. They come through the California Department of Education. But I believe that with the history of what's happened in the state with regard to resources, availability of resources, that districts -- some districts in particular have had difficulty in recognizing and maintaining those standards because of the reality of life in those school districts.

BY MR. ELIASBERG:

Q I think you said that those standards exist through the California Department of --

A I meant in the regulations.

Q Let's -- if you would look down a little further below, there's a sentence, "The standards shall include, but not be limited to, the following categories."

Do you see that?

A Yes.

Q And the first category is "Classrooms, address the adequacy of the number and size of classrooms to deliver the local educational program."

Do you see that?

A Yes.

Q Are there either statutes or regulations that address the adequacy of the number and size of classrooms that deliver the local education program?

MS. DAVIS: Vague and ambiguous.

BY MR. ELIASBERG:

Q There is for the size of classrooms. I can't tell you the -- how the number of classrooms is addressed specifically in the regulation, but the advent of collective bargaining has dealt with that in a number of districts, because class sizes are frequently set in a contract, and those class sizes then dictate how many classrooms are on a campus, so that the State standard, if it's more specific -- and I can tell you what it says, really -- becomes moot, because the collective bargaining agreement is what controls that.

Q I believe you said there is a standard that governs the size of classrooms?

A (No audible response)

Q Let me make sure I understand.

When we talk about size, are we talking here about the number of pupils in the classroom, or are we talking about the --

A Physical size of the classroom.

Q And where is that standard set forth?

A I believe it's in a regulation adopted by the State Board of Education. It was either 2000, 2001. I think the purpose of it was to -- with class size reduction legislation, not limit to small -- too many small classrooms; in essence, to keep classrooms that at least above a particular size.

Q Do you know what that size is, as is set forth in the reg?

A 700 square feet. I'm guessing. I remember there was a range that was being discussed. Normal classrooms are -- regular classrooms are 960 square feet. It was less than that, but it wasn't terribly small.

Q And do you know if that regulation applies to new construction, or does it apply to classrooms of any school building?

A No, it's the -- I believe the intent of it was for newly-constructed classrooms.

Q Do you know whether there's any regulation or statute that governs class size with respect to already-existing buildings as opposed to newly-constructed buildings?

A Well, for -- yes. There is, yes.

Q And where does one find that standard?

A It's -- goes beyond a standard. People have kind of forgotten about this with class size reduction in grades "K" through three, but there are class size penalties for elementary grades -- specifically the primary grades that school districts have both an average class size per grade per school plus looking at individual classes, and if they exceed -- I can't -- it's been a while since I've worked those out, but if you exceed those, you can receive a penalty, which is basically a reduction of a general fund portion of it, because you've had too many children in the class.

Q Let me understand. That's a regulation that governs the number of students in a class.

A I thought that's what we were talking about.

Q No, I'm actually trying to understand whether there's any regulation that governs actual --

A Size.

Q -- physical size of the classroom for a building -- not a newly-constructed building --

A Oh.

Q -- but an existing building.
A: I don't know. I don't know.
Q: You don't know if there is one.
A: No.
Q: Can you look down at Number 2, maintenance. "Address the condition of the building, good repair, painted, roofs in good condition" --
A: Yes.
Q: -- "and inspections occur on an adequate periodic basis."
A: Yes.
Q: Do you know if there's currently a standard that governs the maintenance of school facilities?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: You're talking about a State standard?
BY MR. ELIASBERG:
Q: Hmm-hmm.
A: I can't identify for you any State standard. I don't know that I've ever been worried about a particular State standard. There are guides for school districts that come through organizations like CASBO that make recommendations that districts use in developing budgets on the number of custodians and groundsmen.
Q: I appreciate that, Dr. Duffy, but I'm actually asking just simply about either a State standard or regulation and if one exists.
A: I can't articulate that. I can't point you to one or not.
Q: Okay, thanks. Do you know if there's a standard that governs the maintenance of school facilities? THE WITNESS: You're talking about a State standard?
BY MR. ELIASBERG:
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A: I can't identify for you any State standard. I don't know that I've ever been worried about a particular State standard. There are guides for school districts that come through organizations like CASBO that make recommendations that districts use in developing budgets on the number of custodians and groundsmen.
Q: I appreciate that, Dr. Duffy, but I'm actually asking just simply about either a State standard or regulation and if one exists. I understand that you left Moorpark around the year 2000; is that correct?
A: Yes.
Q: Okay. But during the 15 or so years that you were at Moorpark, were you -- did you consider yourself to be very knowledgeable about the State standards governing school facilities?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: I was knowledgeable.
BY MR. ELIASBERG:
Q: Okay. Were you aware at any time during the period that you worked at Moorpark as to whether there was a standard -- a State standard or regulation regarding the painting of the school facility?
A: I never really concerned myself with a State standard for such things.
Q: And why didn't you concern yourself?
A: Well, I believe that we had well-maintained buildings, and we addressed issues and focused on those.
Q: Are you aware of whether there are any State standards or regulations with respect to the condition of school building roofs?
A: No.
Q: You're not aware?
A: I'm not aware.
Q: Are you aware of whether there are any State standards or regulations concerning inspections occurring on an adequate periodic basis?
A: Inspections of buildings for maintenance purposes?
Q: Yes.
A: No.
Q: You're not aware of a standard?
A: Not aware of a standard.
Q: Assuming that these standards don't exist, do you think it would be a good idea for the State to establish clear, concise and workable standards with respect to issues of repair, painting, condition of roofs and the frequency of inspection?
MS. DAVIS: Assumes facts not in evidence, incomplete hypothetical.
BY MR. ELIASBERG:
Q: I want you to make that assumption. Assuming that those standards don't exist, do you think it would be a good idea for the State to develop those standards?
MS. DAVIS: Same objection. Calls for speculation, vague and ambiguous.
THE WITNESS: I have believed that it's important for the State to encourage school districts to maintain
their buildings, for reasons I articulated a few minutes ago, that sometimes there's a struggle at the superintendent/board level on do we maintain buildings or do we pay employees higher salaries, and I have a belief from my time in education that the maintenance of buildings was forgone because of collective bargaining reasons. And so having a standard that is identified by practitioners and others makes sense to me.

BY MR. ELIASBERG:

Q   If you could just turn to the next page and look at Number 3 there, which says, "Cleanliness, address litter and graffiti, assure clean and adequate food preparation and serving facilities." Do you see that?

A   Yes.

Q   Are you aware of whether there are current State standards or regulations that govern the cleanliness of school facilities?

MS. DAVIS:  Vague and ambiguous.

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

BY MR. ELIASBERG:

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

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

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

A   No.

Q   You don't know?

A   I don't know.

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

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

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

A   Yes.

MS. DAVIS:  Vague and ambiguous.

BY MR. ELIASBERG:

Q   Okay.  Can you look down at Number 4, if you would, where it says, "Safety, address fire hazards, emergency telephone accessibility, air quality and other health issues."

A   Yes.

Q   Do you see that?

A   Yes.

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

A   No.

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

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

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

BY MR. ELIASBERG:

Q   Why is it an area of concern?

A   The reasons we discussed yesterday.  Students are compelled to be in school. They're breathing air in the classroom.  Try to make sure that it's air that's good air that gets exhausted from the classroom, and if there are any other issues having to do with the -- how the air is supplied, that those would be addressed.

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

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

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

BY MR. ELIASBERG:

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

MS. DAVIS:  Vague and ambiguous.

BY MR. ELIASBERG:

Q   Do you personally -- taking this out of the context of the master plan, I'm asking for your
particular beliefs, not what someone else may have expressed at that -- in the master plan group.

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

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

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

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

THE WITNESS: I don't know what --

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

You or your colleagues spent 13 days deposing Jeanne Oakes.

MS. DAVIS: That's irrelevant.

MR. ELIASBERG: It's not appropriate.

MS. DAVIS: Jeanne Oakes had three reports.

MR. ELIASBERG: Jeanne Oakes had three reports.

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

MS. DAVIS: Peter, this --

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

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

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

BY MR. ELIASBERG:

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

A  No.

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

MS. DAVIS: Incomplete hypothetical.

THE WITNESS: Yes.

BY MR. ELIASBERG:

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

A  No.

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

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

MS. DAVIS: Incomplete hypothetical, vague and ambiguous.

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

BY MR. ELIASBERG:

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

A  Yes.

MS. DAVIS: Same objections.

Q  And why is that?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: For the drinking water only?

BY MR. ELIASBERG:

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

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

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

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

A  Yes.

Q  And I believe you also said that there were
1 districts that -- however, that have had difficulty
2 recognizing and maintaining their schools in accordance
3 with those standards; is that correct?
4 A Yes, I believe I said something that was fairly
5 close to what you said, yes.
6 Q Okay. What districts are those?
7 A Well, I mentioned one earlier; Compton is one.
8 Having read the original documents filed in the Godinez
9 lawsuit, L.A. Unified appeared to be another. I can't
10 tell you specifically other districts where I could
11 focus on either what I've experienced through
12 discussions with people like Mr. Brooks or reading court
13 documents, which is what I was -- I assumed were valid
14 because of what they identified school by school. So
15 those two at least.
16 Q Were there other districts besides Compton that
17 Mr. Brooks identified?
18 A I don't recall another district, no.
19 Q Have you read any of the reports put out by
20 FCMAT with respect to Oakland?
21 A No.
22 Q Have you ever visited any of the schools in
23 Ravenswood?
24 A No.
25 Q Have you ever visited any of the schools in
26 west Contra Costa County?
27 A No.
28 Q Do you have any basis to evaluate the
29 conditions of the facilities in Ravenswood?
30 MS. DAVIS: Vague and ambiguous.
31 THE WITNESS: No.
32 BY MR. ELIASBERG:
33 Q Any basis to evaluate the condition of the
34 facilities in west Contra Costa?
35 MS. DAVIS: Same objections.
36 THE WITNESS: No.
37 BY MR. ELIASBERG:
38 Q Any basis to evaluate the condition of the
39 facilities in Oakland?
40 MS. DAVIS: Same objection.
41 THE WITNESS: The only reference point that I would
42 have for Oakland is the documents that I read as an
43 expert witness in the two cases that I identified for
44 you that demonstrated a number of schools seeking
45 modernization funds. I can't recall specific
46 information, though, from those documents relative to
47 Oakland and your question.
48 BY MR. ELIASBERG:
49 Q Do you have any basis to evaluate the
50 facilities conditions in the San Francisco Unified
51 School District or any schools in San Francisco Unified
52 School District?
53 MS. DAVIS: Same objection.
54 THE WITNESS: I represented San Francisco Unified
55 for a short period of time. Met with their facilities
56 people and was in one building there that was being used
57 as the district office but had been either a high
58 school -- must have been a high school. Could have been
59 another kind of school, but was rather large.
60 Q What I recall is scaffolding and other
61 buttresses to allow access for cars into a portion of
62 the building into an interior courtyard the first time I
63 arrived there and just noting the conditions of the --
64 this particular building. I understood why it wasn't
65 being used as a school anymore but, rather, as a
66 district office or a district support facility.
67 And I can't remember the details of the issues
68 that we talked about. They were mainly how to get the
69 new construction money -- no, I don't remember anything
70 more than that particular building I was in, and I was
71 in that more than one time.
72 BY MR. ELIASBERG:
73 Q Okay. Just so -- I want to make sure that I've
74 got your testimony correct.
75 Did you -- other than that building, which I
76 understand had been a school but was not currently being
77 used as a school, did you visit any other buildings that
78 were currently being used as schools in San Francisco?
79 A I visited two other schools that I can recall.
80 One was the Tenderloin School, which was in very good
81 repair, and I was very much impressed with what was
82 happening there.
83 Q What was the other school?
84 A I'm trying to think of the name of the school.
85 Tenderloin School was a school built on a very, very
86 small parcel of land. This other school was also built
87 on a very small parcel of land, multi-storied. But it
88 was also in good repair. I was impressed with what I
89 saw happening at both those schools. I can't remember
90 the other school.
91 Q Did you review any documents in the district
92 office that gave you a basis to evaluate the conditions
93 of any of the other schools besides the two that you
94 visited?
95 MS. DAVIS: Vague and ambiguous.
96 THE WITNESS: No. They were verbal reports. No.
97 BY MR. ELIASBERG:
98 Q Have you ever read a report by Dr. Gary McCord
99 concerning the San Francisco Unified School District?
100 A No. I haven't read it, no.
Q  Do you know what -- do you know anything about it?
A  Only from reading Mr. Corley's statements.
Q  Did you make any attempt to verify whether Mr. Corley's statement about the report were accurate statements?
A  No.

MS. DAVIS:  Vague and ambiguous.

THE WITNESS:  No.

BY MR. ELIASBERG:
Q  And did you make any attempt to verify whether the statements -- my first question really concerned whether Mr. Corley had properly characterized what was in the report.
A  Yes.

Q  Okay. That's all.

MS. DAVIS:  Vague and ambiguous.
THE WITNESS:  No.

BY MR. ELIASBERG:
Q  If you could turn to Page 45 of the document that's Duffy 2. And if you could look at the box entitled "Recommendation 5.5."
A  Yes.

Q  And what is the relationship between olive oil and this case?
MS. DAVIS:  There may be one. You never know.

BY MR. ELIASBERG:
Q  If you could turn to Page 45 of the document that's Duffy 2. And if you could look at the box entitled "Recommendation 5.5."
A  Yes.

Q  If you would look up when you've had a chance to look at that.
THE WITNESS:  I'm sorry. Yes.
Q  No, you can answer looking down. I just want to understand that you've had the chance of looking at it --

A  Yes.

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

1:20 p.m.)

BY MR. ELIASBERG:
Q  You understand you're still under oath, Dr. Duffy?
A  Even with my tie unfastened?
Q  Even with your tie unfastened. Yeah, I know.

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

Do you have any basis of knowledge for evaluating the conditions in the Lynwood Unified School District?
THE WITNESS:  No.

MS. DAVIS:  Vague and ambiguous.

THE WITNESS:  No.

BY MR. ELIASBERG:
Q  How about the Inglewood Unified School District?

A  Yes.

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

THE WITNESS:  What I recall the intent of this to be was an opportunity for school districts to understand that there are State standards that have been adopted in a reasonable period of time, that you haven't gone to those schools and looked at the schools in that school district?
THE WITNESS:  No.

Q  Okay. That's all.

MS. DAVIS:  Vague and ambiguous.

THE WITNESS:  No.

BY MR. ELIASBERG:
Q  And can you just briefly explain to me what you understand a five-year facilities plan to be?

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

THE WITNESS:  How about the Inglewood Unified School District?

MS. DAVIS:  Same objection.

THE WITNESS:  No.

BY MR. ELIASBERG:
Q  When I ask that question and if your answer is no, is it fair to assume that you haven't -- within any
lunch, that under AB 1200 there is the requirement for
table of contents that the district makes the comparisons,
and believing that that's something that has worked,
that that could be applied here.

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

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

BY MR. ELIASBERG:

Q And why do you think that the adoption of
Recommendation 5.5, with -- as the way we've discussed
it, with all the statements you made about how it would
be done and the period of time it would be done -- why
do you think that would be a good idea?
A I think it's a good idea because districts that
are already doing this would be able to demonstrate that
they're accomplishing what needs to be accomplished to
make sure that schools are in good conditions. The

answer?
A Yes.
Q Okay. And do you agree with that understanding
of Recommendation 5.5? Do you agree with that? Do you
think that is a good recommendation?
A I believe it's a good recommendation, with the
caveats that we discussed earlier.
Q Okay. And do you know, did Mr. Brooks at any
time express an opinion as to that recommendation?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: I recall his being part of the
discussions, and I believe he was in support of this.
BY MR. ELIASBERG:

Q Just to make sure I'm clear, do you -- is it
fair to assume that you never heard him express an
objection to Recommendation 5.5; is that right?
A No. Don't recall any objection.
Q Just a quick question about one other -- couple
of words in that recommendation. You talk about
appropriate public review.
What is your understanding of what appropriate
public review would be?
MS. DAVIS: Calls for speculation.
THE WITNESS: Recalling what I do from those
discussions and also what I told you before we broke for

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

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

So that whatever -- if there's a continuum of
districts that are in -- have schools in excellent
condition to districts that have schools in very poor
condition, that they would all be able to use these
standards to continue the excellence or move toward the
excellence, to continue doing a very good job or move
toward doing a very good job, whatever we want to call
those qualifying words, but to move them along the
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continuum over a period of time with the recognition of what those objectives are.
And that they wouldn't -- that they wouldn't be -- we were talking about high achieving and those kinds of things. That they wouldn't be in those areas that are maybe real huge stretches for districts, because there's a comparison of districts that may have had an infusion of resources from, you know, a company that decided to offer computers or the Amgen situation I talked about yesterday. Those are not for that kind of consideration. It's basically adequate school facilities, safe and a place that we would want our children to go to.

BY MR. ELIASBERG:
Q   And do you believe that adoption of this recommendation would further that goal of making sure that all facilities were adequate and safe places for our kids to go?
A   Yes, I believe it would further that goal.
Q   You previously stated -- used the word "continuum," a continuum of school facilities from the excellent to -- I believe you said something along the lines of very poor. Is that --
A   Yes.
Q   Do you believe that continuum exists in

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California today?
A   I believe it exists today.
Q   What's your basis for that belief?
A   Maybe 30 years of public education, having been in schools, not even just recently, but you know, in the past, in the early years of my work in schools, that sometimes schools were not in good condition. Just things that I've read, hearing from people like Mr. Brooks. That's probably it.
Q   Just try to get a little bit more detail on that.
When you said schools that you've seen, I understand that you said that over -- maybe over a relatively long period of time. Do you have particular examples or specific schools that you're thinking of that you've seen that were in very poor condition?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: Yes, I can think of one I could articulate. Not probably very far from where we are.
BY MR. ELIASBERG:
Q   Where was that?
A   It was Carver Junior High School.
Q   And when did you go to -- or when did you see Carver?

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A   About 1976, '77 period of time.
Q   And what about Carver led you to conclude that it was in very poor condition?
A   Working in that school for a period of about six weeks on a daily basis.
Q   And what particular things did you see that led you to characterize it being in very poor condition?
A   It was dark. I don't know whether it was lack of lights or windows, I can't recall, or clean windows. It wasn't in particularly good repair. There was security issues with some students roaming about the halls and coming in classrooms and seems the doors didn't lock. So I had to be part instructor and coordinator and also security person. Just not a pleasant place to be, at least at that period in time.
Q   Fair to say you wouldn't have wanted to send any of your children to Carver?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: If they were with me when we walked through the door, I would have been okay, because I had to be there with students, and I wanted to make sure they were okay. So if I was there, I would have been fine with it. But if they were to go there by themselves, I would have had concerns.

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Q   What about the school led you to believe that the school was not in particularly good repair? I'm looking for specifics.
A   Well, the broken door locks, the toilet facilities -- I think they were working, but they didn't necessarily -- what I'm recalling is that they were old and not attractive. You know, it wasn't an attractive, appealing place.
Q   Have you at any time since 1976 -- well, what -- I'm sorry, strike the beginning of that.
What district is -- or was Carver Junior High School in?
A   L.A. Unified.
Q   Have you made any effort since 1976 to see whether the conditions are similar or have changed?
A   No.
MS. DAVIS: Vague and ambiguous.
THE WITNESS: No, I've had no opportunity to go back there.
BY MR. ELIASBERG:
Q   Are there other -- you were talking about schools that you've seen that you thought were in poor condition.
A   I described Moorpark High School, the original
Moorpark High School to you, I think, at some length yesterday.

Q And we don't need to --
A Yeah, we don't need to go into that one.
Q -- go into that again.
Any others?
A That I've personally seen and visited?
Q (No audible response)
A Building in -- I have to think.

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

Q I think I understand what you mean, but just to be sure, what do you mean by broke through?
A Somebody fell through the floor.
Q That person was injured?
A The person might have had minor injuries, maybe, of scrapes and a couple splinters. The person was very heavy, and this was really quite old. That was replaced, and it was replaced pretty quickly. Actually was not being used for students at the time, so they --

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

Q I think you also said that -- when we were talking about, just to put it in context, the continuum --
A Yes.
Q -- and I think you said that you believed that there were schools in either -- or have been schools in California that have been in very poor condition, and one of the bases for that is that you read things?
A Yes.
Q Any specific things?
A Well, the Godinez documents, I mentioned those.
Q Hmm-hmm.
A The report I mentioned yesterday that was in the L.A. Times on Concept 6 relative to the L.A. Unified School District.

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

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

Q And when you say a common understanding, among whom? I know you can't identify all 6 million people in the state or whatever, but when you said there was a common understanding, who are the people that you believe share that common understanding?
A Particular people? I don't know that I could identify particular individuals, but having attended numerous State Allocation Board meetings over the years, you will hear districts requesting assistance from time to time, where they will identify facilities that need to be replaced. There are appeals for replacement of facilities under the facility hardship program. I was involved in such a replacement just recently because of termite infestation in a series of school buildings.

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

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

Q Just -- I appreciate that --
A Others.
Q -- I'm basically look for --
A Others. I can't think of others, I'm sorry. I can't think of others specifically. Just over the years I've heard conditions expressed and requests for assistance from the Allocation Board.

Q And what was the -- and this issue with the building or buildings with termite infestation, what is that?
A Filmore Unified.
Q And was that an elementary school or middle school, high school?
A It was part of a high school.
Q And do you know how long the building had been infested with termites?
A I don't know how long it had been infested with termites. The district had been dealing with, apparently, termites in the area and then really started taking apart the building. So about last July they discovered what they thought was significant damage. I suggested to them that they bring in a structural engineer. They did. The buildings are now gone.
Q: And were they able to actually get moneys from the facilities hardship program?

A: Yes, they were.

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

MS. DAVIS: Vague and ambiguous.

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

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

BY MR. ELIASBERG:

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

A: Okay.

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

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

A: (No audible response)

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

A: Any discussion with him at any time.

No.

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

A: Yes, I do.

Q: And have you spoken to Bruce Hancock on occasions?

A: Yes.

Q: Do you ever remember Mr. Hancock talking with you about school facilities that sounded to you at least were not in good condition?
piece. You read my mind, as it were.

But just to understand generally, is it your position that if you are -- if the State were to put in place a program that required districts to have these five-year plans and then put in place a plan to meet those five-year plans and to meet the standards, that it was important that funding be available for them to do so?

A Yes.

Q Okay. And why is that?

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

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

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

But a linkage and a message to the Legislature, if we set standards and we all agree to those standards, you can't meet those standards without having a resource -- I'm belaboring it, I think, but without a resource that would allow you to meet it -- and maybe you can't meet it all in a given year, but over five years and other years you do. It's not the deferred maintenance program all over again, which is a good program, but it's another program that we all agree upon, because they're standards and the program of funding comes from local, State funding that we can all work toward achieving, and some of it, I think, is here with us today in California.

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

A (Witness reviews documents.)

Okay.

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

A Yes.

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

MS. DAVIS: Vague and ambiguous.

THE WITNESS: I supported the concept that's identified here. As I said to you earlier, having been a practitioner where others may have not appeared to have the same level of expertise and yet want to compel, for whatever reason, be they practitioners in schools or maybe sometimes there are laypeople that have other kinds of experience, identifying the technical assistance is important.

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

BY MR. ELIASBERG:

Q Okay. I think I understand it, but let me make sure I do, because you used a couple of phrases here. When you say not a top-down fashion, so I'm sure I understand what you mean, what do you mean by non -- what do you mean by a top-down fashion?

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

Having a State -- a trained State agency person who may be highly experienced and developed competencies in making assessments who would work in a collaborative
way with a school district to meet all of the goals it
has -- because facilities are not simply -- you and I
know that -- their only goal -- to be able to come in
and assist is what I was referring to there.

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

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

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

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

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

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

THE WITNESS: Can you give me a context?

BY MR. ELIASBERG:

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

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

A Agreed-upon standards?

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

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

MS. DAVIS: Same objections.

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

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

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

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

BY MR. ELIASBERG:

Q Is it fair to say that you believe that County
offices of education could put in place some kind of
progressive -- or would be the best thing for them to do
would be to have progressive steps in order to make sure
that the facilities standards are met?

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

BY MR. ELIASBERG:

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

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

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

County superintendent could, I think, under
current law say, here, I'll approve the budget once you
include this kind of proposed project or projects to
deal with an issue that has been lagging and may be a
safety issue. May be a health issue.
Q Okay. I appreciate the analogy to AB 1200, and
I'm sure you know it better than I do. I just want to make sure I understand.
Is it your position, though, that currently County superintendents have the authority to do -- to say to a district, we don't think you've made an appropriate allocation for -- to deal with facilities conditions in your district, and as a result, we're not going to approve your budget?
A I don't think --
MS. DAVIS: Same objection.
THE WITNESS: I don't think it's necessarily in law. It would be a very aggressive move on the part of the County.
What I'm linking is AB 1200 and school -- the general fund budget and basically making ends meet and identifying a problem and saying, if this is such a huge problem, if I'm an aggressive County superintendent, I can maybe make that stretch. Somebody could complain, but what I'm saying is that if it takes a change in law to make it more commonplace, I think that the model is in place with AB 1200. And that's the linkage I was trying to make.
BY MR. ELIASBERG:
Q Okay. So is it fair to say that this is not commonly done by County superintendents today with respect to school facilities issues?
A I believe it is -- I don't know of any instance where it would be done, and it would be very aggressive, I think, if somebody did that. Because I think there are defined parameters, and they are the criteria and standards that I mentioned that are commonly used.
Q Okay. Do you think that County superintendents currently have the capacity -- and I'll define capacity both by fiscal -- enough money and also capacity with technical expertise -- to do that today?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: I don't know if I have the ability to answer your question, based upon the 58 counties and all the roles that they play.
BY MR. ELIASBERG:
Q How would you go -- if I was able to force you to answer my question, how would you go about figuring out whether the County superintendents do have that capacity?
MS. DAVIS: Calls for speculation.
THE WITNESS: I guess I could speculate that if they --
BY MR. ELIASBERG:
Q Well, actually, I don't want you to speculate.
I'm asking you how you would go about answering that question.
MS. DAVIS: Calls for speculation.
THE WITNESS: If a County superintendent of schools office has a person that has a lot of experience in school facility areas -- and sometimes they do. Sometimes they don't have even a person identified for that. If they had a person who had that kind of expertise, they could rely upon that person making an assessment for them, potentially.
Q If they don't, I think there would be no basis for them to even know how to gauge it. Because we haven't said what these standards are. We haven't talked about any kind of criteria. So if I were a researcher and I wanted to say, well, in the first instance, could this work, I would have to say, how many of the 58 counties have somebody that's dedicated to this, that's there to serve school districts, basically, because of having expertise and the time and the resource to do that.
BY MR. ELIASBERG:
Q And if Recommendation 5.6 were translated into law, do you think that an effort should be made to make sure that County offices of education do have the capacity to do the review?
A Yeah, that --
MS. DAVIS: Incomplete hypothetical, calls for speculation.
THE WITNESS: The technical assistance that I'm referencing there includes, in that last sentence -- "Technical assistance, which may be warranted based on such review, shall be available to school districts throughout regional and State agencies."
The regional agencies could be County superintendent of schools offices or they could be something else. There's frequently legislation proposed to do away with County schools and do something else, so there be an intermediate unit that's there. I don't know what County we choose, would say typically the County superintendent and the school district superintendents and others in the County superintendent's office and with related activities in school districts dialogue and thinking that the County unit is -- if the district has consistent difficulties, the County unit's the first place to go, whatever -- whatever that unit may be called, County schools or something different in the future.
THE WITNESS: This was warmly discussed and debated. The question is what's my understanding.

Some of what's in here implies my understanding, because the most critical and basic information -- asking information about school districts' facilities and how they are compiled for some reason -- and I was not a zealot for this, by any means. I was working in schools when the State attempted to inventory in the mid 1980s. It was mid to late but mid 1980s.

School districts were not warm to the request.

There was no compulsion that they fill out the information. They weren't trustful of the information.

School districts have to put together a variety of different reports.

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

Duwayne Brooks supported --

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

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

Do you know if he supported Recommendation 5.6?

MS. DAVIS: Vague and ambiguous.

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

BY MR. ELIASBERG:

Q And do you remember if any member of the facilities group not you, not Dr. Brooks.

Did anybody else object to this recommendation?

MS. DAVIS: Vague and ambiguous.

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

BY MR. ELIASBERG:

Q And do you remember anybody in the larger group, the whole -- the committee as a whole objecting to it?
Now, having said that, I guess if something were to be requested of districts, I don't think there should be any punitive there if districts don't put it all together. You know, there should be. So I -- I don't know that I'll be championing the legislation that implements -- or brings this to the Legislature in any way unless there's something else that's really compelling there. So I don't really know how it helps, but it's one of the recommendations.

BY MR. ELIASBERG:

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

MS. DAVIS:  Vague and ambiguous.

THE WITNESS:  I don't recall.

BY MR. ELIASBERG:

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

A   Yes.

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

A   No.

Q   Did he talk to you about his deposition testimony only in the aspect -- I know you've said that -- I think he did talk to you about it generally, but did he tell you there was some discussion during the deposition about inventory?

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

Q   When you say they reviewed it, do you mean estimates.

So I know that they reviewed it, reflected upon conclusions. In conversations that I had with OPSC about these kinds of things, we talked about new construction/modernization, and there were certain estimates that were needing to be made about modernization, whereas, there was greater existing data for new construction needs. So I know that they reviewed it, reflected upon it, tried to come with -- come together with decent estimates.

BY MR. ELIASBERG:

Q   When you say they reviewed it, do you mean reviewed the question of how much modernization money was needed?
Q. But do you know if they reviewed the actual archived data at DSA or any summary of that archived data?
A. No, I do not.

Q. Who at OPSC was responsible for doing the review to try to determine the appropriate amounts of modernization funding?
A. My contact point was Bruce Hancock.

Q. Do you know how Bruce -- and again, I'm not asking you to speculate; only based on knowledge you have from conversations with Bruce or documents you looked at.
A. Generally, do you know?

Q. Do you know how Bruce went about trying to estimate what modernizations were needed?
A. Specifically, no.

Q. Generally, do you know?
A. There was a recognition -- and I did some of this work myself in working with him. There was a recognition of how much was being demanded -- had been demanded by -- basically, by applying, by school districts applying. And looking at that consistency over a number of months, we projected over the next number of months and projected based upon the average data.

Q. Do you understand the question?
A. Let me repeat it back to you. Am I aware of the next bond passes, when will they -- when will there be a replenishment of the mod money?
A. Assuming the next bond passes -- and remembering there'll be $3 billion available immediately after March 2004, if I'm answering your question.
Q. Well, let me see if I can put the pieces together to make sure we're on the same page.
A. Is it your testimony that the expectation based on how things have gone so far, is that the mod money will run out this summer?
Q. Of 2003?
A. Yes. By at least September.

Q. And your understanding is that there will be -- approximately $3 billion of mod money will become available when?
A. With the passage of the bond, March 2004.

Q. Did anyone else work with you and Bruce Hancock to try to make an estimate of the amount of mod money would be necessary or should be included in the new bond?
A. In terms of trying to get the technical information?
A. Yeah.

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

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

Q. But do you know if any people in any State agencies made an estimate of the number of -- not of applications that you expect, but of the numbers of districts -- sorry, the number of school buildings that are actually eligible for modernization? And by eligible, I'm defining it as are the correct age in order to -- 25 years with respect to permanent buildings -- I hope I'm getting this right -- 20 years with respect to portables?

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

BY MR. ELIASBERG:
Q. Do you understand the question?
A. Let me repeat it back to you. Am I aware of anybody in any State agency that has tried to identify the threshold date for eligibility for schools, both permanent and modular, 20 and -- 25 and 20 years, respectively, in terms of their eligibility. And no.
Q. Okay. I think I was not as clear as I wanted to be. It's slightly different from what you repeated back to me.

I want to know whether anybody has -- and maybe your answer will be the same, but whether any State agency has made an effort to estimate how many school buildings are currently eligible for modernization, based on the age of the building, 25 years or older with respect to permanent buildings, 20 years or older with...
Do you see that?
A  Yes.
Q  And looking at -- there're sort of two groups
of data one, towards the left side of the page and one
towards the right side of the page, and I'm interested
particularly in the data that's on the right side that's
started with an italic heading "Number of Public Schools
8,914."
Q  Do you see that?
A  Maybe I don't know where you're looking.
MS. DAVIS:  (Indicates)
THE WITNESS:  Oh, I see. That number's at the
left top. Okay.
BY MR. ELIASBERG:
Q  And then below that there's a box, and then
below that there's some italic writing that says,
"Classrooms over 25 years old," and then to the right of
that in bold there is a number, 204,000, and then in
parentheses, 73 percent.
A  Yes.
Q  Do you have an understanding -- well, let me
ask you this.
A  Maybe I don't know where you're looking.
MS. DAVIS:  (Indicates)
THE WITNESS:  Oh, I see. That number's at the
left top. Okay.
BY MR. ELIASBERG:
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ask you this.
A  Maybe I don't know where you're looking.
MS. DAVIS:  (Indicates)
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BY MR. ELIASBERG:
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below that there's some italic writing that says,
"Classrooms over 25 years old," and then to the right of
that in bold there is a number, 204,000, and then in
parentheses, 73 percent.
A  Yes.
Q  Do you have an understanding -- well, let me
ask you this.
A  Maybe I don't know where you're looking.
whether they had any estimate of the number of classrooms in the state of California that were over 25 years old?

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

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

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

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

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

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

A: That's what I'm remembering. It could have been the whole -- it could have been the whole mod need, but something's kind of triggering that we were trying to identify the -- no, must have been the whole mod need, because this is before -- this is before AB 20.

So it had to be the whole mod need.

Q: Do you have any idea how that figure was arrived at?

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

Q: Dr. Duffy, is it correct that, under Prop 1A, a school district was eligible for modernization funds --

let me try to do it this way.

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

A: Potential.

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

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

A: It's that if somebody knocks on the door, they have entrance because they have that eligibility in their district.

Q: Right.

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

A: Yeah.

Q: -- other processes.

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

A: Yes.

Q: Okay.

A: If it's not been modernized before.

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

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

A: It's current law. So the answer is that it applied under that program, having been modernized under that program, seeking funds under the new program. If those buildings were modernized, then you couldn't have them modernized a second time.

Q: Okay. And does that second redistribution -- i.e., the not for those who have been modernized before -- apply under AB 16?

A: Yes.

Q: Do you -- have you -- let's start with you personally.

Have you made -- attempted to make any estimate of the number of school buildings -- I'm sorry, the number of school classrooms that have been modernized under the lease-purchase program and the current school facilities program?

MS. DAVIS: Compound.

BY MR. ELIASBERG:

Q: I'm trying to get the total -- I don't want to make it compound. I'm trying to understand. There have been different processes or programs by which you get money. I'm trying to understand what's the total number of classrooms starting, I guess, in 1976 or whenever the rehab/remodel program came in.


Q: 1982. The total number of classrooms that have been rehabbed, remodeled or modernized since 1982.

A: Do I know?
BY MR. ELIASBERG:

Q  Okay.  I didn't -- was there a second question?
A  Okay.  And --
Q  And the second program is the school facility
program begun in '98, and the answer to that is no also.
Q  Do you know if anybody in any State -- anybody
at any State agency has compiled data on the question of
how many classrooms have been modernized since 1982?
MS. DAVIS:  Calls for speculation.
THE WITNESS:  The -- what I have seen is a document
that was presented to the State Allocation Board -- it
was, I think, late last year, late in 2002 -- that
identified the expenditure of all the Proposition 1A
moneys for modernization, and I believe there was a
number of schools -- maybe there was a number of
classrooms as well, but I think there was a number of
schools that were identified, in terms of the total
expenditure for mod and how many districts, and I think
schools were identified within that program.
Q  I don't know of anything prior to that for the
old program.

BY MR. ELIASBERG:

Q  Do you have any -- and I understand you
may not be clear on whether it was schools or classrooms
or school buildings, but to the best of your
reccollection, do you remember what that number was and
whether it was schools or classrooms or buildings?
A  Besides the dollar amounts, there were other
descriptors that were there.
Q  Using the dollar amounts that were expended on
modernization, paid to the districts as modernization
funds under Prop 1A, could you estimate the approximate
number of classrooms that have been modernized?
A  I would be hesitant to do that.
Q  Okay.  Do you know if Bruce Hancock or anybody
in any State agency has attempted to do that?
A  Well, I think the document that was shared with
the Allocation Board's probably available.  So how much
mod money was there, how much went out in what time
frame, how much -- you know, and there was none of the
qualifiers, schools, classrooms, school districts,
certainly, but I think -- I believe schools were
modernized.
Q  Could you look at the first page of the school
facilities fingertip facts.  And it would be under Roman
II.  And there's sort of two sections under Roman II or
two tables under Roman II.

Q  Do you see that?
A  Yes.
Q  And one of them is "Modernization, five year
need"?
A  Yes.
Q  And if you could look at the third column, if
you would, please, the heading of that column being
"Classrooms to be modernized 2002-2007."
Q  Do you see that?
A  Yes.
Q  And at the bottom, in sort of the column
that -- the vertical columns, it reads across, does it
not, that the total classrooms to be modernized in
2002-2007 is 40,876?
MS. DAVIS:  The document speaks for itself.
BY MR. ELIASBERG:

Q  Is that correct?  Do you see that?
A  I see that number.
Q  Is that correct?  Do you see that?
A  Yes.
Q  And is it your understanding that that number
is an estimate of the -- how many classrooms can be
modernized between 2002 and 2007 with the -- any
remaining funds that are in Prop 1A and the 1990 -- I'm
sorry, the 2002 bond and the 2004 bond, assuming the
2004 bond passes?
MS. DAVIS:  Using these November 2002 figures?

MR. ELIASBERG:  Yes.
THE WITNESS:  I think what I heard in your question
was that these numbers could be modernized with those
dollars?
BY MR. ELIASBERG:

Q  Yeah.
A  I don't know that that's what this chart is
reflecting.  What I took from what I saw of this chart,
it was the classrooms to be modernized -- well, having
read the statement underneath the bold up at the top,
"New construction mod classroom need," then what you
said does make sense.  That it would be the -- based on
the eligibility documents, the five-year need for new
and mod.  So that does make sense.
Q  Let me make sure I understand you.  Well, I'll
just ask a separate question.
A  I don't know that that's what this chart is
reflecting.  What I took from what I saw of this chart,
it was the classrooms to be modernized -- well, having
read the statement underneath the bold up at the top,
"New construction mod classroom need," then what you
said makes sense.  That it would be the -- based on
the eligibility documents, the five-year need for new
and mod.  So that does make sense.
Q  Did you have -- did you make an estimate -- I'll
start with just did you in your work getting ready for
the new bond.
A  Specifically identifying classrooms, no.
Q  Did you make an estimate on the number of
buildings that could be modernized?
Q   Were you involved in the negotiations and the
A   No.
BY MR. ELIASBERG:
Q   Do you know if anybody in OPSC or any other
State agency made an estimate as to the number of
classrooms that could be modernized using the money in
the 2002 and the 2004 bond?
MS. DAVIS:  Calls for speculation.
THE WITNESS:  What I know is that Bruce Hancock --
and I know he must have been working with others in his
office, could have been working with others from other
agencies -- came up with numbers that were reduced to
per-pupil amounts, at least I'm remembering specifically
for new construction, not necessarily for modernization.
And there was a presentation of information to
the joint committee on school facilities, which he made
and shared information.  Information that he was sharing
was consistent with the estimates we were making, based
upon the demand rate of dollars, which was the measure I
was using.
BY MR. ELIASBERG:
Q   Did you make an estimate of the number of
facilities as a whole that could be modernized?
A   No.
MS. DAVIS:  Vague and ambiguous.
Q   Do you know if anyone in OPSC or any State
agency attempted to figure out how many -- either the
total number or the total dollar amount of new
modernization applications they expected to get above
and beyond the amount that was in Proposition 203, the
backlog from Proposition 203?
BY MR. ELIASBERG:
Q   Do you know if the number of applications
expected to get above and beyond the amount that
was in Proposition 203, the Prop 203 backlog and also provide for new modernization
Q   Okay.  Was it your understanding that the
amount that was set aside for modernization or dedicated
for modernization in Prop 1A was intended to address the
Prop 203 backlog and also provide for new modernization
Q   And did you -- and if I'm asking the question
again, I'm sorry, but I just want to be sure I'm
understanding you.
Q   Do you know if anyone in OPSC or any State
agency made an estimate as to the number of
classrooms that could be modernized using the money in
the 2002 and the 2004 bond?
THE WITNESS:  The term that I've used was the --
MS. DAVIS:  Calls for speculation.
THE WITNESS:  I don't -- I don't know.  Don't
recall.  As I identified for you earlier, that year
there had been information that was put together
estimating mod, new construction, deferred maintenance
and other needs.  It's in a Power Point that I can
recall this one frame.  Was based on information we had,
I believe, gleaned from State agencies.
That's -- and that was a much bigger number
than was actually included in the bond.  So no, I
don't -- I don't recall beyond that.
BY MR. ELIASBERG:
Q   And did the funds that were dedicated for
modernization funding were lower, the same,
or approximately, or higher under Prop 1A than under Prop
203?
Q   And am I correct in understanding that there
were actually two phases to the funding under Prop 1A?
A   Yes, I believe that's what it was to be
structured.
Q   And did you -- and if I'm asking the question
again, I'm sorry, but I just want to be sure I'm
understanding you.
Q   Do you know if anyone in OPSC or any State
agency made an estimate as to the number of
classrooms that could be modernized using the money in
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recall this one frame.  Was based on information we had,
I believe, gleaned from State agencies.
That's -- and that was a much bigger number
than was actually included in the bond.  So no, I
don't -- I don't recall beyond that.
get in line and be ready. The Oakland lawsuits that I
mentioned, that was basically the substance of the
lawsuits, that the district took issue with these two
architects saying, we were ready and yet you didn't help
us get there and we -- you know, we missed out on
funding. I had that experience myself where I would --
people would ask, what do we do? Well, get in line,
because money will be there. We believe it's going to
be there.

So I never saw a diminishment, and if there was
money, there would be more people apply, recognizing
that it was there? There may have been some effect. I
don't know. My experience is that if people were
eligible, they made sure that they -- we were saying
before it got to the door.

MR. ELIASBERG: Okay. It's a little bit before
3:00. Why don't we take a very short break, and then
we'll go for the last shorter session.

MS. DAVIS: Okay.

MR. ELIASBERG: And let you get to the airport.

THE WITNESS: Thanks.

(Brief recess taken.)

MS. DAVIS: Okay.

BY MR. ELIASBERG:

Q. Dr. Duffy, just a couple quick questions here,
and then I want to turn to your report.

If you could turn to Page 46. At the top --
plan and the budgets that the district provided to the County office; is that correct?

A     We had talked about two things. One was looking at the general fund of the district and is that something that’s in law today, and it’s not, but it may be a model. The other would be looking at the five-year plan of -- that’s conceived in this report, and the districts’ response, in terms of a plan that’s a fiscal plan relative to that report, as well as identifying what it would do.

Q     Okay. In your opinion, would it ever be appropriate for someone from the County office to go beyond looking at the documents that we’ve discussed but actually go out to the district and look at the facilities in order to see whether the progress is being made on the condition of the facilities?

MS. DAVIS: Calls for speculation.

THE WITNESS: The issue of technical knowledge to provide the technical assistance is in that area, both in how do we estimate costs and, you know, can I provide that assistance, as well as are you -- can you demonstrate, besides contracts -- which may exist because counties will want to make sure they have a contract before they issue warrants to pay the contractor, so it’s -- that’s a measure, but would -- if_I don’t see it as a direct link to providing for facilities that are what we’ve termed adequate school facilities for students, and if it’s burning resources to do this that could be better served doing something else, I wouldn’t want to do that. There are too many reports, too much demands on school districts today where, instead of having people that focus on serving students, there’s a focus on serving a paper mill. And I’m not an advocate for that.

Q     Are you aware of any states where any school facility inventory has been done where actually someone outside the district actually did the inventory in conjunction with the district but the district wasn’t required to do the paperwork?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: No. I’m not. I have the sense that you could tell me some that may be out there, but no, I don’t know of any.

BY MR. ELIASBERG:

Q     Well, you can think about that one on the plane. You might be right.

A     Okay.

Q     Let me see. I believe -- do you have a copy of the report, or did you give it back to me, your particular report?

MS. DAVIS: I think it’s here.

THE WITNESS: Oh, it’s over on the side.

BY MR. ELIASBERG:

Q     If you’ll give me just a second. I’ll shift gears here.

MS. DAVIS: Of the report itself?

Q     Yes, of the report. Beyond your -- we’re not going back -- at least I don’t plan to go back to your resume.

BY MR. ELIASBERG:

Q     Thanks.

And just with respect to Recommendation 5.7, I believe you said something, in sum and substance, along the lines you would not be a zealous advocate or supporter if legislation was proposed to put this recommendation in place; is that correct?

A     That’s correct.

Now, there may be some people in the C.A.S.H. organization would say, we really want you to do this. Can you go do this for us? And I would, of course, say, yes, let me comply with that request. Or demand, depending upon what it may be.

MS. DAVIS: Which paragraph? I’m sorry.

MR. ELIASBERG: It begins, "The revenue issue emerged first" and ends with a sentence that reads, "The State was directed by the decision to change education finance policies so as to eliminate the disparity between school districts’ level of income per student.”

THE WITNESS: (Reviews documents.)

Okay.

Q     I assume you’re familiar with the Serrano decision; is that correct?
was talking to somebody just about a week or so ago who

people come to California, they're always saying, jeez, you know, what are you guys doing with schools? Because

they finance schools completely differently there.

So it just -- in overall, I don't think in the long-run it was the best for K-12 education in California. And I believe in equity and I believe in conserving children that are poor that may have less resources, but I think the State could have fulfilled that role rather than basically controlling and, maybe in some way, suppressing the amount of money that could go into school districts from the local property tax.

Q Is it your opinion that the situation that existed as you describe it prior to Serrano, where districts, such as Baldwin Park, had much lower resources available to them than districts such as Beverly Hills -- did you think that that situation was a good one?

A No.

BY MR. ELIASBERG:

Q And why is that?

A Maybe not by itself, but just with all the changes that occurred, the dramatic changes in the 1970s and how school finance became a function of State finance and governance. But I think that the decision in the long-run wasn't the best for California.

Q Okay. And why was that?

A Because it basically identified in the end that the State had to be the intervenor and take away a very, very stable source of income that has now been gone, the property tax. Notwithstanding what happened with Proposition 13 in controlling taxes. So that school districts lost their control of income and the ability to depend upon that income to continue to serve students.

I think that there would have been, with a different decision -- the issues of disparities could have been addressed legislatively, where the State would have used a different mechanism to fill the differences between districts.

Q Is it your opinion that the decision itself was not a positive one or that the legislative response to the decision was not a positive one?

A Well, I think it's probably a blend. With the high court saying we're not going to depend on property tax base for schools any longer and the subsequent legislation which -- was it SB 90? -- which brought about the issues of revenue limits and caps and all and then, of course, the furtherance of what happened after 13, all just turned education finance on its head.

And we see that in other states -- we always get compared to New York and New Jersey and others. I was talking to somebody just about a week or so ago who

The bands of income that were talked about in Serrano and the other Serranos, those kinds of bands could have been identified and used without disturbing what was a very longstanding way of financing schools in California.

BY MR. ELIASBERG:

Q Prior to the Serrano case, are you aware of steps that the State had taken to effect the equalization that you were talking about?

A Just vaguely from school finance. There were -- I have taken school finance courses in the past and finding them very interesting at the time. There were a number of different models. In fact, they continued on through the -- at least proposed through the 1970s. But I can't articulate what all those differences would have been.

Power of equalization was one term that I think had to do with taking money from richer districts and distributing them to poorer districts. I think Texas did that, didn't necessarily succeed. I think it became law, but I think they changed the law after a couple of years. But no, I can't recall what positive or negative steps took place before Serrano, in terms of statutory proposals.

Q I understand that, at least in broad strokes,
BY MR. ELIASBERG:

Q   Well, if you were tasking yourself to answer that question, as an attempt to answer whether it would have happened, is there any methodology you would use to try to answer that question?

A   Well, if I'd been there in the role I'm in now or having been involved in school districts, I would have been a zealot for saying stay away and let me take care of the business of running the schools. We're doing fine. We're taking care of our own revenues. Or if I'm in a district that needed some, I would be there saying, make up the difference because I don't have as much as the guy next door.

Q   Are you aware if districts such as Baldwin Park had ever gone to the Legislature and attempted to make those arguments?

A   Yes.

Q   Do you have an understanding as to whether -- well, since you don't know whether the arguments were made, I guess you can't say whether they succeeded or not.

A   Okay. A little further down on Page 2, you make a reference to the Rodda Act.

Q   Yes. Rodda.

A   Rodda, I'm sorry.

Q   And I'm particularly interested in -- there's a paragraph that begins, "As the Legislature took action."

A   Hmm-hmm.

Q   But I want to focus on the sentence that's sort of halfway down that begins -- or a couple of sentences, "The advent of the collective bargaining statute brought with it tension and conflict emanating from the demands of labor for higher salaries and benefits and the demand to negotiate working conditions such as class size limits, which, when granted, increased expenditures or shifted expenditures from other competing needs within the school district such as maintenance and building and grounds repair accounts."

Q   Do you see that?

A   Yes.

Q   Are you aware of particular districts or any research that looked at how the advent of collective bargaining had shifted resources away, at least in some districts, from maintenance, building and ground repair accounts?

A   At the time I may be able to think of a district or two, but at the time that Rodda came about -- it was implemented over a two-year period -- I was in a master's program. People in such programs are typically in -- doing different jobs in school districts, teachers, administrators and others.

Q   There was a lot of discussion and debate about what was happening. I continued to be in graduate-level classes, including a doctoral program, in the '80s, where there were practitioners, so there were people besides me who were there talking about what was happening in schools. There, of course, were reports in newspapers, professional articles and others.

A   Right. And when I was on the campus of Rio Mesa High School, as I described to you, I was a County employee, but I was there, and there was tension in the district. I was concerned about what would occur, because I would have been the only teacher on that campus, should there have been a strike, and there was the potential of a strike.

Q   These were good people, but the constructs of, gee, you're a bad guy because you're the superintendent, you don't want to give us money, and the construct of, no, you're the union person and you're making demands that are unacceptable demands. You know, if you represent somebody, you got to try to do some work for them.

A   I appreciate that. I want to try to focus, not
there were facilities that were wanting because dollars hadn't been spent there.

So the district went to the community -- sophisticated district, too, with a good superintendent, good person in the business office, and I worked with them, who was at the County office at the time, I think. But they had to go to the voters to say -- and they were successful the second time because they made the case. But they hadn't done things because they didn't put money into maintenance, and they had to go back and backfill.

BY MR. ELIASBERG:

Q And you may have said, but tell me -- you said the second time, so when was -- the bond passed the second time they attempted that?

A Yeah, and I can't remember whether it was a March or a June, November, but it may have been, like, a June and then a November, because districts could do that. If they failed, there was enough time to get it back on the ballot.

Q And approximately when was this? What year?

A '84, maybe -- so it would have been a parcel tax, then, if it was '84 -- because the general obligation bond didn't come back into effect until '86.

I guess it could have been '86, but it was in that time frame.

Q And was it your understanding that the district had not done maintenance that it felt that it should have done for about ten years prior to the passage of that bond?

A Yes.

Q And at least one of the reasons that it hadn't been able to do that maintenance was because there was competing demands for higher teacher salaries?

A Yes.

Q Are there any other examples that you can think of that illustrate the point that you made here?

A Well, doing the work that I did for the County office, where I was assisting school districts, they never seemed to have money available for maintenance.

Ojai Unified asked me to come out for a visit and to bring a State agent down, and I did that. They had severely deteriorated playgrounds and such that, if you were playing basketball and you tried to stop to do a jump shot, you could continue to slide because the gravel was there, and the rest of the asphalt was gone. So we visited.

It was at more than one school. And it had just not been done. And commonly districts will do slurry sealing on those kinds of outdoor facilities and on parking areas on a cycle of every, you know, three or four years.

This was so bad that my recommendation was they didn't let anybody play on it, because you'd end up with kids falling, and if they're in shorts, embedding gravel in their knees and, you know, their bottoms and everywhere else. So eventually we were able to get them -- I think we went after some critical hardship, deferred maintenance monies to let them go in and take care of a number of schools to get that done. So there's another one that I saw.

In working with some of the smaller districts -- I can't remember the details of it, but Rio was a little district, and there was a business guy there named Charles Turk, who was kind of an interesting guy. Was really anxious to get money to use on maintaining the schools and didn't have dollars to maintain. And -- what I kept hearing was, you know, we're -- it's going away. It's at the bargaining table.

So, you know, I believe in high teachers' salaries, and I worked to try to do that in Moorpark. I took a proposal to teachers that surprised them one day, because they said, we want to benchmark ourself to Canejo, the district we mentioned yesterday.

But I think there needs to be a balance, and I...
think that the tables were tilted, and districts had
tremendous difficulty during that time. And I don't
think we've really gotten back on track.

Q With respect -- just to step back just a
second, with respect to Simi Valley, did the people you
talked with in that district tell you -- let me step
back,

I believe you said that they were of the
opinion that there was maintenance that they should have
done over the course of ten years that they hadn't done.

Did they talk to you about the actual
consequences of, you know, particular conditions that
they wanted to address that hadn't been addressed?

A I remember seeing some of the listing, you
know, you have a bond measure and -- whatever it is,
 parcel tax, you have a listing. I can't tell you what
they were. I don't -- I don't remember the details.

The superintendent was somebody I respected,
and the assistant or associate superintendent for
business, who was responsible for putting this all
together, was somebody who was very good and very
detailed, and I remember her talking about those needs.
But I'm sorry, I can't remember a lot of them. But they
involved a number of different schools. There were many
schools in that district. It's a big district.

Q Am I correct in understanding that the
teachers' salaries -- whether they're low or high or
increased, that money would come out of the district's
general fund budget; is that correct?

A Yes.

Q So the -- any competition with teachers'
salaries would be with -- would be with routine
maintenance and operations as opposed to capital
expenditures; is that correct?

A Yes. The relationship there is routine
maintenance left to itself, then the kind of
deterioration we've talked about, whether it's the paint
or something else, you know, the pay-me-now,
pay-me-later scenario, you end up paying more later on,
because things become so dilapidated or they're just --
they don't work.

Q And let me just -- I'm just going to use a
hypothetical to make sure I understand this.
A district in that scenario that you've laid
out, there's been a competition between teachers'
salaries and maintenance and operations. They haven't
paid now with respect to maintenance and operations, and
then the facilities have therefore deteriorated.

That's -- understand that scenario?

A Yes.
Q: Do you remember approximately when that was? I know you say may not have been '97. Do you remember when you met with the LAO?
A: It was somewhere mid '90s.

Q: Do you remember if the LAO actually came out with a report of serious recommendations?
A: Yes, there was a report, and there were recommendations.

Q: Did you read that report?
A: I at least read the executive summary of the report. I may have read part or -- the report in whole or in part because of interest, yes.

Q: Do you -- I'm sorry.
A: Yes. I'm trying to remember back on this. I do remember the report.

Q: Do you remember if the LAO incorporated any of the recommendations you made to them?
A: I believe they did in a different way. I think they didn't quite go in the direction that we had hoped they would. But at least it was a proposed change that was positive. They had listened. You could tell that they had listened to what we said.

Q: Do you know if the Legislature ever implemented any of those recommendations?
A: I don't believe so. There was a bill, and I can't tell you the number that was offered and that happened.

Q: If you could look down towards the bottom on Page 4 -- and I'm aware that we're getting close and I --
A: Okay.
program there was some State oversight of it, at least,
you know, plan review, but that with the districts
contributing more money -- and that seemed to be
compelling to the policy makers and those that served
them -- that the districts are going to be really
careful about what they're doing with that money,
because they're largely going to the voters to come up
with that difference.
So that their -- that is a more focused
approach, more deliberative planning approach, than the
approach before, jeez, how much money can I get and what
can I do with it, you know, I have various needs, such
as we were discussing, you know, yesterday.
Was there a concern that with the 80-20 match,
some districts had actually not spent their money wisely
because the vast, vast majority was the State's money?
There was a belief that with the 80-20
approach, that the State's 80 got spent and there was no
district 20.
Were there -- you know, whether this would be
bookkeeping or some -- was there oversight in place that
was designed to prevent that spending of the State's 80
and ignoring the district's 20?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: The only oversight that I think would
have believed was in place at the time, and still is in
place now, is the audit that may be done at the end of a
project.
Now, it could be that a district says, I
promise to put in 20 percent, spends the State's 80
percent now, and next year, through a variety of
means -- and maybe it's a little bit of general fund
money and some federal money or some borrowing -- that
they make up that additional difference, and that would
be okay. But there was a sense, and it was articulated
back to us, that districts were fudging.

BY MR. ELIASBERG:
Q Did you ever attempt to see whether this
concern actually reflected a reality of what was going
on on the street?
A I mentioned it from time to time when I would
interact with people from districts, but I took no
proactive role to go out and say, by the way, are you
fudging? No, I didn't do that. But it's my experience
that if policy makers or those that serve policy makers
believe that something like that is occurring, then it's
going to affect how they come down on whatever the new
policy may be.
So what I argued is we're going to have to come
up with more.
Q. So sometimes, in making policy, the perception is as important as the reality, perception of the policy-makers?

MS. DAVIS: I'm not sure if that characterizes his testimony properly.

BY MR. ELIASBERG:

Q. I'm not trying to mischaracterize. I'm trying to understand if I'm accurately capturing your point.

A. What I was saying is if there's a belief from one or more instances -- and sometimes, unfortunately, it may be one instance; it may be a big one, but one -- that will color policy making. And so what I have to do is I have to turn up the horsepower to say what can I show you to let you know that what we're doing is the right thing.

Here I said, let me demonstrate to you that we believe -- because I'll commit to you, on behalf of C.A.S.H., that we'll support this. This was considered the proposal of ours. And what it's going to mean is districts are really going to have to show you 40 percent worth of work, as opposed to, gee, we're going to get 20 percent down later on.

MS. DAVIS: I think we're getting close.

MR. ELIASBERG: Okay. There's no point --

MS. DAVIS: Should we just state our understanding that we're reconvening Thursday at 9:00?

MR. ELIASBERG: That's fine.

MS. DAVIS: My understanding is that plaintiffs plan to finish their questioning of Dr. Duffy; is that correct?

MR. ELIASBERG: That's our hope, but as my understanding of the practice on the depositions has been, nobody's been willing to commit because of the way depositions work. I can promise that we'll finish. We'll assure you of that. I'll certainly make every effort --

MS. DAVIS: You'll finish?

MR. ELIASBERG: No, I said I will make every effort to do that. I respect Dr. Duffy's time, and -- that's my hope.

MS. DAVIS: Okay. And I'll just say I think three days is probably sufficient for a 25-page report, but I know that is your hope and your plan.

MR. ELIASBERG: And just so I -- I don't want to be making representations or appearing to speak for LAUSD. I assume that there are discussions going on with LAUSD that -- let me just say this. I haven't, you know -- any amount of time that I take is not really -- I haven't said I'm going to take this and you don't get any or anything. I'm not speaking with LAUSD.

MS. DAVIS: No, they have a conflict on Thursday.

MR. ELIASBERG: I understood that.

MS. DAVIS: So they're not showing up. So you want to take all day Thursday, that's fine.

MR. ELIASBERG: Okay. I guess I was only referring, just to make sure that we're clear, that I had not accepted what appeared to be Peter Cho's proposal, which was that it was going to be three days for everybody, including LAUSD.

MS. DAVIS: Yeah, I think we've straightened -- my understanding is that Peter and Kevin DeBorde have spoken.

Okay. So the bottom line is we'll be here at 9:00 on Thursday.

MR. ELIASBERG: That sounds good.

I, THOMAS G. DUFFY, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made such corrections as noted herein, in ink, initialed by me, or attached hereto: that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this _____ day of _____________, _____________.

_______________________________

THOMAS G. DUFFY

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand, which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: __________________________

________________________

SHERRYL DOBSON
CSR No. 5713