Los Angeles, California, Thursday, July 3, 2003
9:03 a.m. - 5:11 a.m.

THOMAS G. DUFFY,

having been previously duly sworn, was examined and testified as follows:

EXAMINATION (Resumed)

BY MR. ELIASBERG:

Q    Good morning, Dr. Duffy.
A    Good morning.
Q    Thank you very much for -- not only for
    agreeing to accommodate us and -- well, I guess we
    accommodated you too.
A    You did.  I thank you very much.
Q    But you were the one who had to get on a plane
    and then turn right around and get on in another
    direction.  I appreciate you being here.
Q    I'm going to focus for most of the day on your
    report.  There are just a couple small things that I
    wanted to talk -- well, small/medium things that I
    wanted to talk about that -- one of them we started to
    talk about on Tuesday.  And you had described on
    Tuesday -- and correct me if I'm wrong.  I'm going to --
    I don't -- if I'm miss-describing what we talked about,
then, obviously, you should tell me.

But you described on Tuesday how AB 1200 provided for supervision by County superintendents over school district budgets; is that right?

A Yes.

Q And I don't want to go over the relationship between the County superintendent and the district with respect to school budgets and school finance again.

What I'm hoping you can help me understand is what role, if any, the State plays in the AB 1200 process beyond the passage of the legislation itself.

MS. DAVIS: Vague and ambiguous.

THE WITNESS: Counties were tasked to be -- maybe you've used this metaphor -- second set of eyes, and one of the reasons that there was a belief that there's expertise there. Counties approve contracts and they perform fiscal services for school districts. But this -- I used the word "continuum" before. This continuum -- or maybe it's really a -- a stacking of oversight emerged because of a problem in California where a district had severe fiscal problems. The County was seen to have had some knowledge of that but didn't really intervene, at least to the extent of stopping the landslide of the problem.

So the State has -- and I've never had this happen, and I've never experienced it, but conceptually, the State has an oversight, where the district's budget, approved by the County office, means the County office, should that should there be a failure of the district, is responsible and accountable in a way that it wasn't before the failure in the district, and the County I mentioned -- and I can't recall -- it was in southern California, but I can't recall the district or the County.

So there is this leveling -- three different levels of responsibility and oversight. Tied in with that is the role of the auditor; that is, the independent auditor, that is required to audit every school district's general fund and other funds and the transactions that occur. And the role of the auditor is to identify anything that may be material that would be a -- the term is a going concern -- a going concern of the auditor -- of the district being able to end the year in the black.

And so the auditor and the County office have a role to assist the district in the event that there is a problem, to identify, notify, document and assist. And if the auditor fails, the auditor can lose the ability to do business in California in the school districts. So it's a -- there's a penalty for this independent, outside, private firm that would be assisting the school district, should it not notify the district, board and superintendent that there's a significant problem.

So those two things, I think -- you go from the district to the County to the State, both with the County office as well as with the auditor. Because the audit that the district has done of its finances and its practices is sunshined and adopted by the board, basically approved by the board, as we understand this document exists, and then that document is filed with the State.

BY MR. ELIASBERG:

Q Does the County superintendent review, not only the district's budget itself, but also the audit document or documents?

A They don't have it -- in my experience and knowledge, they don't have any oversight of the audit. They would have potentially had a document that was filed with the district that the auditor may encounter, and the auditor did see that the County office had an issue. There may be some informal discussions as well.

Q So am I correct in understanding, then, that, in effect, there are almost -- outside of the district itself, there are almost two sets of eyes, to use your metaphor, looking at the district's budget, the auditor and the County superintendent?

A Yes. Yes.

Q Okay. And I believe you -- because you've discussed the AB 1200 analog, I believe you think it's a good idea to have the County set of eyes doing this review; is that correct?

A Yes, I do.

Q Do you also think it's a good idea to have this other set of eyes, the independent auditor?

A Yes. The audit of a school district is a very good management tool to give feedback, to find something that may have been overlooked, either accidentally or on purpose. Frequently there's accidental -- everybody doesn't know every federal law that affects categorical expenditures and, you know, how you deal with categorical income. The auditors become specialists in that. Or should.

Q All right. That's very helpful, because I'm not -- I've never made a budget, even my own household budget. So I certainly don't know how school districts do it.

I'm still not -- that was -- you gave me a lot of information there and it was helpful, but I'm still not entirely clear, though, if there's ever a point -- and it may be a point only in the sort of forced
meltdown, but if there's ever a point where supervision
over the district's budget -- oversight, whatever word
you want to use -- actually goes up to the State level.
A  Oh, it does.
Q  Okay.
A  And in the -- the instance that I can't recall
exactly the district or the county, there was a failure
at the district level. The County had some
knowledge, or should have had some knowledge. The
State, I believe, had to make an emergency
apportionment, which triggered, I think, in some of the
experiences you had with at least -- I guess part of our
conversations here, district in this county with the
State because of that emergency apportionment then said,
we are now in charge of the expenditures in the school
district. And they had a trustee put in place.
So that connection there of district and some
failure there, County, some failure of oversight there,
the State then says, we're the ones looking and the
County's out of this, which would be an embarrassment
for the County superintendent, of course, if that were
to occur. And they -- since AB 1200, anyway, they don't
want to have that happen.
Q  So it's fair to say that probably, in the vast,
vast majority of instances, the oversight really is
of a new computerized financial tracking system,
whatever it may be, the State is there as the -- I guess
the entity that can say, okay, we can step in and we'll
help you make some decisions. It doesn't take over all
the decisions of the district, but with regard to fiscal
issues and expenditures, it's there to assist and
sometimes to say yes or to say no. And with a thousand
school districts in California, there have been not very
many of those, in my knowledge. I can't tell you the
number.
Q  But there have been some number, probably
small, that have -- where the State has actually had to
come in and play a supervisory role?
A  It's the triggering of the emergency
apportionment to make sure the school district is able
to keep running.
Q  Besides -- I think you used a lack of expertise
at the County level, perhaps a failure of the County's
computer monitoring software.
Can you think of any other circumstances where
a State intervention might be appropriate or called
for?
MS. DAVIS: Vague and ambiguous.
BY MR. ELIASBERG:
Q  In the AB 1200 context.
A  No.
Q  I mean, have you ever been aware or do you
think State oversight might be appropriate where -- and
I understand -- I'm talking hypothetically. I'm not
saying this has happened -- where there almost appears
to be a collusive and corrupt relationship between the
County superintendent and the districts or the County's
deliberately laying down on the job?
MS. DAVIS: Vague and ambiguous, incomplete
hypothetical, asked and answered.
THE WITNESS: I believe what was established with
the AB 1200 procedures was put in place to make sure
that kind of thing did not occur.
BY MR. ELIASBERG:
Q  And would it be -- what procedure -- I mean,
I -- since one of the -- one of the two entities that
has initial responsibility to oversee the district
budget, if that entity -- and I -- we're talking
hypothetically here. I'm not saying I have a specific
example.
A  Okay.
Q  But if there's actually a situation where there
is a district and County collusion, you know, a bunch of
corrupt people in both places, what AB 1200 procedure
would prevent that?
A The --
MS. DAVIS: Same objections.
Okay. Go ahead.
THE WITNESS: The independent auditor is there, and
they are serious about their job.
BY MR. ELIASBERG:
Q Is one of the reasons they're serious because,
if they fail to detect this kind of thing, they'll lose
their license or their ability to continue to work as
independent auditors?
A That may be there. My hope in auditors that
I've worked with was that they were highly trained
professionals who were looking out for the district
because that was their job.
Q I wasn't suggesting that their only motivation --
A I know.
Q -- was self-interest.
A I know.
Q But that could be motivation also, right?
A Yes. Yes.
Q Now, the other day I -- you analogized the
proposed County supervisor's oversight of school
facilities issues set forth in Recommendations -- I
believe it's 5-5 -- well, 5-4, 5-5 and 5-6 in the master
plan. And feel free to, you know, check to make sure
that I've got the right numbers.
A What pages?
MS. DAVIS: 44 --
MR. ELIASBERG: Starts at 44 and then -- there's
one each page. So 5-4, 5-5 and 5-6.
MS. DAVIS: I didn't catch the beginning of your --
MR. ELIASBERG: Sure.
MS. DAVIS: Did you finish your question?
MR. ELIASBERG: No, I'd be happy to --
MS. DAVIS: Okay.
MR. ELIASBERG: I'd be happy to -- it's actually a
predicate to a question, but --
MS. DAVIS: Okay.
MR. ELIASBERG: Once Dr. Duffy's had a chance to
look at those rec's, I'll repeat the question.
MS. DAVIS: Okay.
BY MR. ELIASBERG:
Q If you would just look at 5-4, 5-5 and 5-6.
A (Witness reviews documents.)
Oh, yes. Okay.
Q Am I correct that the other day you analogized
the proposed County supervisor's oversight of school
facilities issues -- not talking about budget now, but
school facilities issues set forth in Recommendations
5-4, 5-5 and 5-6 in this facilities master plan document
Q And when you -- I believe you used the phrase
"we" or "we recommend."
A Yes.
Q "We are recommending."
And by that do I understand you to mean that
the members of the facilities and finance working group?
A Yes.
Q But am I also correct that you support that
recommendation?
A Yes. In terms of -- there are some parts of
this that I didn't personally support. The concept of
let's use this model because it's been, not a model, but
a workable practice in assisting, and I do support that
idea.
Q Okay. And just so I'm clear -- because I've
heard that. I just want to make sure that -- is it fair
to say that Recommendations 5-4, 5-5 and 5-6 -- as
opposed to the inventory recommendation or the finance
model that's also set forth in here, that 5-4, 5-5 and
5-6 are kind of the heart of this attempt to replicate
the AB 1200 --
A Yes.
Q -- model?
MS. DAVIS: Vague and ambiguous.
BY MR. ELIASBERG:
Q  All right.  
THE WITNESS:  I'm sorry.  
BY MR. ELIASBERG:  
Q  Now, given that, we talked yesterday in 
detail -- and I don't intend to go over it again -- 
about how in the facilities area, as opposed to the 
budgeting area, you would -- you see County 
superintendents playing a supervisory role, correct?  I 
mean, we discussed that yesterday.  That's all I'm 
asking.  
A  Yeah.  And I see it as a --  
Q  A technical -- actually, let me -- because I 
want to make sure I -- let me step back.  
I understood you -- and I'm not going to go 
through in any detail at all.  I'm barely going to touch 
on what we talked about yesterday.  
But what I understand we talked about yesterday 
was you saw the County superintendents, if your 
recommendations were to be adopted, playing a role of 
supervision, monitoring and providing technical 
assistance; is that correct?  
MS. DAVIS:  I'm going to object to the extent that 
mischaracterizes Dr. Duffy's testimony.  
THE WITNESS:  I would maybe reverse the order of

what you said there.  Providing technical assistance, 
because that's what counties do, in other areas where 
districts, particularly smaller districts, don't have 
the expertise.  Providing that assistance, if they 
could, monitoring, which is part of the heart of the AB 
1200 idea.  
The supervisory part really has to do with are 
you -- are you meeting the test or are you not meeting 
the test with regard to the model of AB 1200.  In 
essence, have you done this -- have you done it -- have 
you met the standards and criteria.  
And since every target is not necessarily going 
to be hit and reached at every moment every time, 
that there's this -- you know, supervisory is not Big 
Brother on the school district.  It's there to make sure 
that the district stays within these parameters set 
forth in AB 1200.  And that's the way I conceptualize 
it.  
So the technical assistance, the monitoring 
that's there, that part of that is support and help, and 
then yes, there is a role that's a hard-and-fast role.  
We don't want to have school districts fail, and that's 
part of the AB 1200 piece.  
Did I answer what you were asking?  
BY MR. ELIASBERG:  
Q  So is it fair to say if they show up and say,

you're asking us for more money, therefore, we want to 
help you make decisions, I think using the kind of model 
of the implementation committee to say how do we best 
make that work would be a way to ferret out that best 
kind of a plan.  
But in the end, the State has to provide 
additional dollars, as it would under the general fund 
failure.  Those additional dollars may have an 
attachment to them which says the State has the ability, 
the authority, to appoint someone like a trustee to 
identify two or three or four or five specialists who 
could come in and make an assessment and help with the 
planning.  So that there be some positive intervention 
the part of the State to help the district get back 
track if it has failed.  
But I'm not sure how all that works out, but as 

Q  Exactly.  And I was not, like, putting those in 
order with technical assistance last.  I wasn't 
suggesting that that was the least important or the last 
step that would be taken.  I just laid all three of them 
out. But I think we're on the same page.  
So as I said, I don't -- I just wanted to make 
sure that I understood what role you saw the County 
playing.  So now I'm going -- and I think I do -- when 
we talked about it yesterday.  
What I want to ask now is:  Under this AB 1200 
analog in the school facilities context, do you think 
that there would ever be a role for the State to play in 
providing technical assistance, supervision and 
monitoring?  
MS. DAVIS:  Vague and ambiguous, calls for 
speculation.  
THE WITNESS:  I believe that there would need to be 
a role.  We did have some discussions of that in the 
master plan committee.  It's something that I've 
probably thought about away from the committee during 
the time when we were working.  I'm not sure how that 
would all fit into this.  
But in that, a trustee is placed in a school 
district, if there is a fiscal failure, because of an 
emergency apportionment, in essence, the State saying
I'm from the Government. I'm here to help you, they should be able to actually help you?

A They should have the credentials to do that, yes.

Q To the extent you've thought about it, have you thought it -- what kind of credentials, what type of credentials or expertise would that person or persons need to have?

MS. DAVIS: Calls for speculation.

BY MR. ELIASBERG:

Q Well, let me ask you this. Have you thought about that question? Have you said to yourself, you know, I -- let me think about what somebody from the State or someone appointed by the State would need to bring to the table if they were to play that role?

MS. DAVIS: Same objection.

THE WITNESS: Well, in the hypothetical of a response to a piece of legislation -- it was two years ago where something was proposed, and in responding to that, because the proposal was a -- something called a construction authority and identifying six or seven people, I identified to the author of the legislation that I thought six or seven roles identified -- or competencies identified there were really wrong, that there should be someone who is highly competent in facility planning, someone's highly competent in making assessments of buildings and designing buildings, someone that understands finance of school facilities and others.

Not politicians, and that was -- that was the bottom line for me with regard to responding to the author of the proposed legislation.

BY MR. ELIASBERG:

Q Do you happen to remember a bill number or a bill author?

A I don't remember. The author was Jackie Goldberg.

Q Do you remember that -- did the bill have specific sort of names of people or did it have -- did it have six or seven positions that would be part of this construction authority?

A City Council members -- I can't remember if there were -- to be board members. But I really read it as those who really were elected and were not necessarily competent to assist in planning and making decisions.

To be elected you don't need credentials. Unless you're running for the County superintendent of schools office, and then you do. That's the only one that I remember in California that you really need any kind of a certification.

To become a City Council person or board of education member, you don't need any certification. You just run, and if you're elected, you're elected. That doesn't give you the mantle of knowledge and experience. And that was part of what I was suggesting needed to be changed under the proposal. The proposal didn't go anywhere, but -- that -- to answer your question, I did give some thought during that time as to what kind of a body, if there was a body, you know, who should be involved in that.

Q Sometimes to get elected, the fewer credentials the better, but you don't need to respond to that, because I know you work with politicians.

A Whom I like and enjoy.

Q Fair enough.

I think you said someone who would be an expert in the assessment of buildings or have expert in the assessment of buildings.

What do you mean by assessment of buildings?

A Structural engineers and architects, in my experience, have the ability to look at buildings and building components and make certain judgments about need.

There are some architects that specialize in dealing with old buildings. I worked with one a number of years ago when I was at the County office, helping school districts out, who were looking at the modernization program. So having the ability to assess what exists and to make a comparison to what is desired and try to bridge that gap with an estimate of cost, and architects can do that.

Structural engineers provide a tremendous resource in being able to look at the safety of a building relative to its age and the seismic forces that may be in and around those buildings and schools and to be able to give, basically, an opinion of what may be needed to maintain the building, and I mean maintain in terms of keep it functioning over time or make assessments of what you should build in an area that may have some soils issues or others.

Q And do you think architects and structural engineers are also people who have expertise in planning facilities?

A Sometimes they do. Architects -- there are some very good planners who -- I mean, very good architects who are planners.

Q But are there also other people who have expertise in planning --

A Yes.
Q -- who are not architects or structural engineers?
A Yes.
MS. DAVIS: Vague and ambiguous.

BY MR. ELIASBERG:
Q Who -- I mean, is there a particular job title or license of -- that someone has in order to have expertise in planning?
MS. DAVIS: Same objection.

By MR. ELIASBERG:
Q I'm talking school facilities particularly.
A Yes.
MS. DAVIS: Same objection.

THE WITNESS: I don't think there's any license, and I don't think there's any credential. Experience that may be gained in doing. There are -- you're probably aware of this. There are some institutions that provide a certificate in facilities planning. I've never gone through any of those. So it's probably a combination of interest, experience and maybe some training.
Learning from those that do, learning from other professionals is what typically happens in education, and I'm sure it happens in other fields.

BY MR. ELIASBERG:

Q Let me just ask one last brief series of questions on this AB 1200 analog.
Am I correct in understanding that -- well -- yeah, am I correct in understanding that it's your position that, in order to design or figure out what the State role should be in a proposed AB 1200 analog, that a group like the implementation committee would be the appropriate body to determine what the State role should be?
MS. DAVIS: Vague and --

THE WITNESS: I believe that the outcome from that kind of deliberation would be one that was geared for success.

BY MR. ELIASBERG:
Q And why is that, that the outcome would be geared for success -- the outcome from deliberation in that body?
A (No audible response)
Q Let me ask the question slightly different.
A Okay.
Q What is it about that body that gives you confidence that the outcome would be a positive one?
MS. DAVIS: Vague and ambiguous.

BY MR. ELIASBERG:
Q If I made my question worse, you can answer the first one. I was trying to be clearer, but --
A The body -- if the question is what about the implementation committee generates that kind of response in me, the recognition that, however it has occurred over time, there is remaining a substantial amount of experience and knowledge and interest when dealing with policy matters that become practical operational procedures if those that are doing it at the local level and those that are involved in -- whether it's assisting by financing and funding or those that are involved in trying to make sure that precious resources are managed.
And sometimes if there's supervision, that when those people meet on the same plain -- it's not top down, but the top down/bottom up kind of deal that I talked about the other day, that sorting through how do we get this done and how do we get it done efficiently and make it work is more likely to happen.
It's my experience that it does happen and it has happened. That body has been in place since October of 1986, and has solved a number of issues and is relied upon by State Allocation Board fairly heavily. But the success there, you know, is what I believe is -- that we can experience.

Q And there's another piece that's important here, and that is the buy-in. If you don't have locals buying into what the State's attempting to do, then they may not be doing what the State is wanting them to do, interpreting State guidelines or directives. May be something that takes them in a different direction at the local level.

When you get the buy-in locally and you get the buy-in from the State that the local's going to make this happen, there's a -- I think there's an energy there and there's a power there. We had this agreement. We did this. You know, at the table. And those kinds of terms are used.

Q So am I correct in understanding that the implementation committee includes both local school facilities -- and by local I mean local districts school facilities practitioners as well as State officials?
A Yes.
Q Any other group of people --
A Yes. Yes, indeed, there are.
Q And I just -- and I don't -- but we're getting a little bit of the -- you understand where I'm going, and so you finish my sentence.
A Sorry.
Q: And it's okay. It just makes it hard for the
court reporter.
A: The development community has been interested
in school facilities areas since the late 1970s. Became
ever more interested in the mid '80s and have been
represented on the implementation committee since the
very first time it met in 1986 in October, and they're
still there. That's basically the residential
developers in California.
Q: Are there -- let me ask you this. Is the
membership -- is it an elected membership of the
committee or is it appointed or --
A: It's -- the committee is a grouping of
representatives of organizations. The organization
appoints a person, who then sits on the committee. So
the California Building Industry Association has
appointed a particular person.
Q: What are the other organizations that have
appointed people?
A: The C.A.S.H. organization, California
Association of School Business Officials, CASBO, Small
School Districts Association, the County offices, an
international group called the Council of Educational
Facilities Planner, CEFPI. I mentioned CBIA, or it
could actually be another developer group, but I believe
it is CBIA.
Q: You just -- a minute ago you mentioned Cal --
this is not a second group --
A: The same one.
Q: Okay.
A: CBIA is California Building Industry
Association.
Q: A new appointee is representing organized labor
for the construction trades in California. The
Department of Finance is represented there. The
California Department of Education is represented
there. The offices of State architect, DSA, Division of
State Architect is represented there, and the Office of
Public School Construction and State Allocation Board
are represented there.
Q: Who's the CDE -- currently the CDE appointee?
A: It's just changing, so I can't tell you. It
was Jim Bush.
Q: Is it C.A.S.H.'s practice to appoint a person
who works in facilities at a local school district?
A: Yes.
Q: No, I'm just trying to understand. Because you
had previously told me that C.A.S.H. has members who
are --
A: Oh.
Q: -- developers and others.
A: Yes.
Q: So I'm trying to understand if it's always a
school district official.
A: Yes. Yes, it has been.
Q: And does C.A.S.H. have one appointee or more
than one?
A: One.
Q: Are there ever parent representatives or have
there ever been parent representatives?
A: They may all be parents.
Q: But I mean -- you know, their qualification is
not being appointed by one of these groups, but --
A: No.
Q: -- just a parent.
A: No.
Q: Any representatives of teachers or teachers
unions?
A: No.
Q: I gather that you don't consider the AB 1200
process to be a top-down governance process; is that
correct?
A: Initially I did.
Q: And why did you think initially that it was?
A: Probably the way it was done, the way it was
swept in.
Q: And what do you mean by the way it was swept in?
A: There was a failure in a county and a school
district that I can't identify for you, but I can recall
and, as sometimes happens in Sacramento, there was a bit
of a stir. And so it appeared to be -- begin as
something that was punitive.
Q: The way that it has worked out, though, the way
that we as practitioners worked the school districts and
County offices, it became something that was not top
down. The State basically stepped back and said -- I'm
assuming they said -- work out the details.
Q: But the standards and criteria that we've
talked about are common. The requirement of the
auditor's there; the requirement that the district,
three times throughout its year, identify whether or not
it will be solvent toward the end, all those things have
worked to be, not top down, but local practices that
have merit.
Q: And when you say the standards are common, do
you mean that they apply to all school districts?
A: All school districts, basically, use the
standards and criteria as a means of comparison.
Q: Were the practices that you talked about -- for
example, district reports three times a year whether
it's solvent or not -- is that set forth in statute or
regulation, or is that a practice that's developed?
A  It's a requirement. I can't remember if it's a
statute or regulation, but it is a requirement. And
there's a time frame for each of those. So it's not you
have to do this on October 15th, but you know, during
this time frame, you make a report to the board, the
board takes an action. So it's -- it's a requirement;
it's not, gee, well, you may do this,
Q  Is another reason -- well, let me -- I'm
understanding that you do not now consider AB 1200 --
the AB 1200 process to be top down; is that correct?
A  Yes.
Q  Is another reason that you don't -- well, are
there other reasons besides the ones you've already
mentioned that you -- that are the basis for your
opinion that it is not now top down?
A  Well, what I'm recalling is there were a series
of pieces of legislation that -- and that sometimes
happens when there's a perceived crisis or a real crisis
and to create a fix. What became law and the practices
that ensued from that really wasn't top down. It's
let's give you some guidelines and some help, but let
you do your job.
A  And it could have gone in a different
direction, but there were enough people that were there
lobbying or doing whatever they were doing at the time
that kept the top down from happening.
Q  Is the fact that the initial levels of review
and assistance are through the County offices and the
independent auditor as opposed to the State -- is that
another reason why you think that it's not top down?
A  Well, yes. Because it isn't. The auditor is
there in the district, and the auditor has specialized
knowledge, expertise, and typically they're in a
district for a period of three or four years. There's a
contract; they get to know the district. Districts will
change auditors from time to time, but it's a good idea
to have an auditor there for a while to get to know what
the district's about.
State comes in -- I don't have any experience
with the State coming in and doing anything like that,
but you know, here, you got a problem, let me tell you
how to fix it, and they leave. The auditor -- I would
call -- if there was something that I thought was wrong,
I would call the auditor and say, something doesn't
appear to be right. I'd like you to come look at this.
They knew the district. They knew people. If the
auditor walked in, people may say, oh, there may be a
problem here. What's going on?
Q  Because I'm not -- and your answer may be no.
THE WITNESS:  Yes, it is another level of
the -- another level of initial review part of the --
A  No.
Q  Let me finish my question.
MS. DAVIS:  Yeah, let him finish.
BY MR. ELIASBERG:
I'm just -- what I'm trying to understand is --
is it also true that one of the bases for your current
conclusion that this is not top down that the other
initial level of review beyond the auditor is through
the County rather than the State?
A  No.
Q  And why is that?
MS. DAVIS:  Vague and ambiguous.
THE WITNESS:  Yes, it is another level of
governance, but the County superintendent cannot direct
the district superintendent as to what to do. The
County board has no authority over a district board.
The County superintendent has the ability to say, I have
trouble with this budget that you've prepared that you
are taking to your board, going to adopt. Or I have
trouble with the collective bargaining agreement that
you're proposing to adopt, because I don't think you can
afford this.
So they have that ability to say, I have a
concern. But in the end they have the ability to say,
I'm not going to approve that budget, and you may go
above me and seek some other kind of intervention, and I
can't tell you what that would be through the State, but
there may be a practice there.
So what I'm saying is that there isn't a
control, such as the State has to say, we're going to
shut off a supply of funds or do whatever else we're
going to do to try to get you to get into line. The
County office has the ability to say, I have the ability
to say yes or no to your budget, but before that even
happens, we can discuss all these things.
And the County superintendent can't say, by the
way, you can't make that purchase; you can't hire that
teacher; you can't make this expenditure, but they can
say, we do not approve your budget if in the end there
is a lack of agreement, if there had been a problem.
So the working relationship, once you're
there -- and I've been there -- is not a top-down
relationship. Counties want districts to succeed, and I
believe that. So they'll work to help them.

BY MR. ELIASBERG:
Q   Appreciate that. I think, though, that maybe
I'm not being clear as to my questions.
A   Can we take a break?
Q   We sure can.
A   Okay.
Q   Any time you call for a break, you can take
one.
(Brief recess taken.)

BY MR. ELIASBERG:
Q   Let me talk about top down in a broader sense.
I was trying to talk about it in just this AB 1200
concept, but I want to try to see if I can get from you
the components -- or what is your understanding of the
phrase "top-down governance"?
A   Your phrase earlier, I'm here from the
Government. I'm here to help you. I'm here from the
Government. I'm here to demand this from you. We
don't have anything to say about it, or very little.
Q   So is it fair to say that it's not simply the
fact that it might be some higher level of government,
in the sense of County above the district or State above
the district, but it's the way that the -- that this
other body of government imposes its will on the lower
level of government? That's what top down is, from your
point of view?
MS. DAVIS:  I'm going to object to the extent that
mischaracterizes his prior testimony.
THE WITNESS:  That's the State, without any
consideration, adopting legislation that requires
certain actions of a school district or other entity,
implores its will upon them without understanding all of

Q   And I think -- I think I'm fully on board with
the consequences. That's what I would refer to as top
down.
And that may happen within a school district,
from the superintendent level down through a school, or
through programs that may include food service or
maintenance. And I guess at the core is an ignoring of
real circumstances and real impacts that may in fact
intrude upon the mission of the entity. The mission is
then in some way shunted, that the mission is
interrupted because of that top-down action.

BY MR. ELIASBERG:
Q   And the top-down problem that you just described?
A   Yes --
MS. DAVIS:  Mischaracterizes prior testimony, vague
and ambiguous.

BY MR. ELIASBERG:
Q   Not my intention. I want to understand your
testimony, not mischaracterize it.
A. Yeah, the -- at the core is what's the mission and is what this -- whatever is imposed, is that going to interfere with, interrupt that mission, because there's no consideration for really what goes on at that local level.

Q. So to just use a little bit more of a specific example from what we've talked about previously, in Recommendation 5.4 there's a discussion about establishing clear, concise and workable standards, characteristic of good facilities -- let's just simplify it.

A. Yes.

Q. Is it fair to say that if that process is done through a partnership or cooperation between local school district officials and State officials, that in your opinion, is -- removes -- is likely to remove the problems associated with top-down governance?

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

THE WITNESS: Yes.

BY MR. ELIASBERG:

Q. Okay. We talked at great detail -- and I don't see, really, that there's any likelihood that we'll need to go back through any of the discussion of this AB 1200 analog and the standards and the County models. We really didn't talk about funding yesterday, and I want to try to do that, but I'm going to try to do it relatively briefly.

A. Okay.

Q. I'm going to -- if we could refer to Page 40 in the master plan report, which I believe is Exhibit 2. And if you could, Dr. Duffy, would you refer -- there's a bold heading that says, "Adequate Funding" quite near -- almost at the top of the page.

A. Yes.

Q. Do you see that?

And then underneath there's a phrase that says -- or some text that says, "Goal: Provide an adequate, stable and reliable source of funding that is available when needed and that addresses current and future capital outlay needs."

Do you see that?

A. I do.

Q. If you'd like to take some time to look at the context of that statement, feel free, and then when you've had your chance to do that, if you would look up, just to let me know that you're done.

A. (Witness reviews documents.)

Okay.
And in my view, bond funding has happened -- at
but providing something that's adequate and stable.
I like the idea of adequate and stable, and I
outlay needs.
needed, and that it addresses current and future capital
reliability.
If this recommendation were to say, let's put a
program in place that is a sort of a major maintenance
program which is a qualified deferred maintenance and
something else, and let's try to have that goal, let's
see if the general fund can provide that, that's
something that, although I think it would be difficult,
particularly in a year like this year, it's more -- it's
more attainable.
I think it's a goal that the people that are in
Sacramento that make the decisions that are in the
Legislature and the governor's office that say, you
know, that's maybe something we -- we're going to have
to make some tough decisions and say no to others, but
we could probably make that part of it work.
The other part of it, the large amounts needed

least one bond in every even-numbered year since 1982,
except one in 1984, sometimes two. And I think that
that -- we've relied on that. And it's not necessarily
been adequate, but boy, we've worked to try to increase
those numbers every time, you know, so it's been
developmental.

Q  Let me stop you there -- no, I'm sorry, I
don't -- go ahead.
A  Well, it's just the -- the latter part of the
sentence, "for future capital outlay needs."

If this recommendation were to say, let's put a
program in place that is a sort of a major maintenance
program which is a qualified deferred maintenance and
something else, and let's try to have that goal, let's
see if the general fund can provide that, that's
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know, that's maybe something we -- we're going to have
to make some tough decisions and say no to others, but
we could probably make that part of it work.
The other part of it, the large amounts needed

MS. DAVIS:  Calls for speculation.
THE WITNESS:  You've characterized it fairly well.

BY MR. ELIASBERG:
Q  Tell me where I've got it wrong.
A  Well, it's the -- there's a -- there's some
connection between the ongoing maintenance and major
maintenance, and there may be some middle ground between
the two. Maybe it's simply definition and maybe it's
partly how the -- if those funds were to be there, how
those funds would be managed.

But I think -- I think you have a sense of
where my view of these are.
Q  Okay. In answering the initial question I
asked with respect to this goal, I had a sense that you
were actually asking whether -- you thought that I was
asking whether you supported the recommendations in this
report, and I'm simply asking whether you support the
general goal of providing an adequate, stable and
reliable source of funding that is available when
needed, and that it addresses current and future capital
outlay needs.
A  I like the idea of adequate and stable, and I
think reliable and stable are probably synonyms there,
but providing something that's adequate and stable.
And in my view, bond funding has happened -- at
people -- working with the good people that are in
maintenance and identify that we have a list of things
we want to get done here, and some of them are more
expensive than others, but what are the most critical,
what are the safety issues. Because we're going to get
those done.

And we map those out and plan for them and
schedule them and that's -- you know, that's the way to
operate any entity, but certainly a school district
that's there to protect the interest of children, safety
interest and health interest and just can we have a
place to make sure school happens.

Q And what's the flip side of that, in the sense
that, if it's difficult to plan, what are the negative
consequences of that, if any?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: Well, the consequences are that
something else does not get done in the school
district. I was a practitioner that focused on
expenditures on the maintenance side within the general
fund and beyond the general fund, because I thought it
was important to maintain buildings and have safe
buildings and to make sure that they were inviting
places, and that's a struggle -- you know, we've talked
about collective bargaining and the other demands.

It's kind of a struggle there, because
buildings have no voice unless it's my voice or somebody
else's that's an advocate for them. Teachers and
classified employees have voices. The athletic parents
boosters have voices. Buildings are assumed to be
there, you know, forever, and somebody has to look out
for those, and they can be forgotten easily.

But if there's a source -- and we know this
is -- and deferred maintenance is a wonderful program
because of that. This is -- we get to spend this money
only on this kind of thing. You can't have it for
salaries; you can't have it for trying to put into a
sinking fund to build some athletic facility that
doesn't need -- I got to maintain what we've got with
these funds. You know, there's a -- there's a lock on
those.

BY MR. ELIASBERG:

Q So is in fact part of adequacy of funding for
facilities the fact that it's not -- it's not free to be
taken away for use on other competing interests?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: Yes. That it's not something that
somebody can demand at the bargaining table. It's not
something that a board, because it's under pressure from
a community group, can say we're going to spend that
money. And they may do it; they may direct the
superintendent to do it.

The superintendent says, you know, the
auditor's going to find this, and I'm going to tell the
auditor that it's there. Well, we still want this to
happen. Some consequence will occur, well, that has to
be rectified in the future.

BY MR. ELIASBERG:

Q Other than the money not being able to be
siphoned off to other competing interests, are there
other components to an adequate source of funding?

A Well, as you said, there are a myriad, but at
the core, if I know that within a certain range, funds
will be here over time, then I can begin to correct
deficiencies, if I walk into a school district and I
find them to exist, and know that over a period of time
it will happen.

So if the rest of this model becomes law, I can
say, yeah, I've got the five years to get it done, which
is really -- you know, there's sort of a linkage here
in -- with these recommendations. That I can find the
problem; I can schedule out resolution of the problem,
because I can schedule, anticipating the resources that
will be there to deal with those problems.

Q And if the funding source is adequate, it makes
it much more -- is inadequate, it makes it much more
difficult to do that planning?

A Yeah, it may take longer. It may mean that I
have to be creative and do some kind of financing over
time. It may mean that I have to seek some Federal
funds that are out there for, you know, better
renovation program, if I'm eligible.

Q And why is it important that there be a
stable -- separate from adequate, why is it important
that there be a stable source of funding for facilities?

A It's for what we're talking about, that we know
that we can rely upon those. It's a source of funds we
know is coming in specifically for these purposes that
are not going to get diverted to something else.

Q And so the two -- that there's enough and that
you know that it's coming is interrelated --

MS. DAVIS: Is that a question?

BY MR. ELIASBERG:

Q I'm finishing the question.

MS. DAVIS: Okay.

BY MR. ELIASBERG:

Q They're interrelated, in the sense that they
allow you to plan your work and then actually get your
work done?

MS. DAVIS: Is that a question?
MR. ELIASBERG: Yes, it's a question.

MS. DAVIS: Okay.

THE WITNESS: Yes. You can plan your work, get the work done. And the "enough," I just -- you know, it just triggered, the "enough." If you work in a school district, there is never enough, because the demands are constant. But the enough of -- I've got a lock on these funds because they don't have to go to where there isn't enough for something else is part of the reason why this kind of a proposal exists.

BY MR. ELIASBERG:

Q Okay. And just a very quick question, because you said something about, as a facility manager or as a superintendent, you were very concerned about maintenance, to the point that you used funds beyond your general fund dollars to do maintenance.

Am I correct that you stated that, in sum or substance?

A It may have been in the reverse, but trying to make sure that there was a -- struggle with general funds that are never enough and too many demands, but trying to make sure that there were funds identified for maintenance, which means people as well as materials and getting things done, and if there are other ways to do that through other funds, yes. However that may be, but...

those are very limited.

Q What were the sources, if any, beyond the general fund?

A People don't always know that there are other entities that exist that assist schools, but in California you will commonly find that there are joint powers agencies, where school districts work in a collaborative that is actually other than a separate governmental entity, for purposes of liability insurance, for purposes of other kind of insurances.

It's a self-funding mechanism, so that instead of giving an insurance company a million dollars to insure your buildings, you collaborate with all the districts and the County office and you have an entity that's the self-funded insurance entity under JPA statute, the JPA statute in California, and everybody contributes money that is a real pool of money, so you're sharing risks. You're not spending premiums, at least in this larger amount. You may have premiums for what's known as higher levels of insurance or stacking of insurance.

If those funds are not expended because you do a good job of maintaining your safety levels at all the schools, rebates come back to school districts. Those dollars, I made sure, went into facilities.

Q Other sources that -- I'm not talking about something that may be pie in the sky that --

A Real.

Q -- nobody ever -- yeah, other real sources that come into the general fund that the school districts could use to do maintenance work?

MS. DAVIS: Vague and ambiguous. Calls for speculation also.

Go ahead.

THE WITNESS: Okay. I'm remembering a couple instances that --

BY MR. ELIASBERG:

Q Well, I think that's a valid objection, in the sense that -- let me ask you this.

Are there other sources that you used at any time while you were administrator in Moorpark?

A Yeah, rebate from utility companies when I went in to do retrofits for lighting to save energy. At one point we had to struggle with the board to keep that money going to maintenance, but we said, wait a minute, the idea came from maintenance. We want it to go there.

Q Let me guess. You won the battle; didn't you?

A Yes, I did.

Q Any other sources that you ever used in the time you were -- besides the ones you already mentioned while you were at Moorpark?

A Redevelopment agency funds.

Q And what are redevelopment agency funds?

A Redevelopment agency is another governmental agency that was put in place to try to revitalize decaying parts of cities or counties, mainly cities. School districts have a diversion of some of the local tax dollar when a redevelopment agency is formed, because it puts a cap on what happens with the local income from the property taxes at a particular level. The concept is that the agency spends money in that blighted area of the community, and then, above this cap level, any increase, any increments in the tax, go to the redevelopment agency to repay the bonds or other mechanisms that caused them to help to improve this area of the community.

School districts can get involved in that, and it's frequently a struggle, but they can have a portion of that tax increment come back to the school district and use that. It's typically identified for capital purposes, but it can be expansive, to include library books and other things and -- which I think is important, but that was a mechanism that we utilized and other districts may be able to utilize.

Q Any other sources that you used in the time
Q    Okay.  I'm worried you know too much, Dr. Duffy.

A    There's something called the Civic Center Act in California, which means that community groups, Boy Scouts, Girl Scouts, PTA, can use facilities after hours when they're not being used for educational purposes. The assumption is that this is a civic center that may be there for the community.

Q    Okay.  If you would turn to -- let me see if it's -- I think it's either the page before or the page after. Let me find the page, if you can give me a second here.

A    There are certain State -- or certain Federal requirements, but I think there is some discretion that the State has. I can't articulate what those are, but I believe that there is certain discretion as to how it gets down to the foundation of a building and create a new building on that. But that I think it's a wonderful program. It's an interest-free loan program, requiring ten percent of private donation.

Q    Is the State merely a conduit, or does it have some ability to say, well, we want to make sure that Moorpark gets more and we actually don't think Elk Grove deserves -- needs it, so we're going to kind of apportion the funding that we get?

A    A Both of these the district applies through the State; the State's the conduit. QZAB as well as the Federal renovation program.

Q    Are these programs that the districts apply for or do they go to the State and then the State goes to the Federal Government on their behalf?

A    A There are certain State -- or certain Federal requirements, but I think there is some discretion that the State has. I can't articulate what those are, but I believe that there is certain discretion as to how it goes out through the state.

Q    If you would turn to -- let me see if it's -- I think it's either the page before or the page after. Let me find the page, if you can give me a second here.

Page 42, under the block heading that says, "Page 522 to 524"
near the bottom, "Allocations and Equity."

Actually, I'm sorry, let me step -- I'm sorry, there's something I've forgotten here.

You've explained to me very thoroughly the benefit or the need -- the reason that it's necessary to have an adequate and a stable source of funding for facilities needs, and I believe you said you thought reliable and stable to be basically the same thing. So we'll just keep it at adequate and --

A Okay.

Q -- stable.

Do you think that the current system by which facilities are funded in the state of California today is adequate and stable?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: If we're talking about today, July the 3rd, 2003, I believe that we have achieved something that exists today that didn't exist before, and that, based upon needs that we talked about the other day, there is an adequate supply of funds and a plan for a future bond to continue the provision of adequate funds for new construction, modernization and for critically overcrowded schools in California.

I think that's something to be really celebrated, because the level of funding and the fact 

that -- you know, we talked about this before, that there are -- two bonds were approved -- never done before by the Legislature -- to make sure that that -- that there was an adequate supply of funds. So yes, yes, on that adequacy side.

Stable, the -- if we were in 1982 and having just passed that first bond, would we say bond funding is stable? There's no experience to say it's stable because it happened once. The fact that it's happened in every even-numbered year and failed only once by a couple of percentage points, I think, is indicative that bond funding is something that's reliable in California. I don't think it's automatic; I think it needs to be worked, but I think that it is reliable.

BY MR. ELIASBERG:

Q What do you mean by you think it needs to be worked?

A I think that we need to continue to demonstrate to policy makers and to the public that a need exists.

Q Is there any period over the last ten years where you've felt that the system of financing school facilities through bond funding did not provide adequate funds?

A In the early 1990s, within the school district where I was the superintendent at that time, I don't know if I thought of it as an adequate supply of funds or whether there were funds that I could access in the time frame that I needed them because of growth.

But there were three sources of funds. One I had very little control over, and that was local bonds.

One I had some control over, but still there were determinations by others, and those were developer fees, pulling of permits, depending upon the sale of homes.

The third being the State bond funds.

And those were the most comfortable -- maybe that's not the right term. Those were the ones that I thought were the most reliable for me as a practitioner working that, is -- there were two bonds in '90, and I believed that they were going to be successful, and they were. They were there. I think there were two in '92 as well.

So in doing the planning I was doing, my sense was those were the most reliable funds to me that would be there. Those are there, I'm ready to take them, they're there. The other two less so.

Q Why did you feel like you had no control or little control over local bonds?

A I was in eastern Ventura County, Eastern Ventura County's a more conservative part of Ventura County, not an area where, with the tremendous amount of residential development going on, people would think that they would support bonds. Developers needed to provide schools not -- you know, not those that were already there. And that didn't go away. That remained there.

It was probably still there when I left, my area. But it was -- there was a sense that -- from City Council through people that I would talk to that, you know, why do we need a bond? We don't need a bond. The developer needs to pay for the schools.

Q So does that sentiment translate into the fact that voters -- or at least there was a concern that voters wouldn't vote for -- or not enough voters would vote for bonds?

A And they didn't.

Q Were there attempts during the time you were at Moorpark to pass bonds that failed?

A Yes, '90 was one of them.

Q Others?

A I'm trying to remember the date. I think it was '97.

Q I believe you said, at least with respect to the State bonds, that that was at least the -- that was the most reliable of the three sources of --

A Yes.
Q -- money; is that correct?

Did you feel that the State bond funds were adequate?

A For the needs that we had and the way the State program had been there, it was really the backbone for us, yes.

Q During that period of time -- and I appreciate your grounding it in your district and your experience, but I think I've gathered that you didn't just keep your nose to the ground at your district.

Did you ever attempt to -- or did you ever have an opinion as to whether -- as to the adequacy of the State bonds for schools across the state of California or school districts across the state of California?

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

THE WITNESS: Did I have a -- I'm not sure --

BY MR. ELIASBERG:

Q I guess I'm trying to understand -- did you feel that the State bonds were adequate for all the schools in California, as opposed to just your district?

MS. DAVIS: Same objections.

THE WITNESS: It's interesting going back trying to go back into my mind at that time, but -- and I was the chairperson for the '90 bonds, both bonds, statewide chairperson for both bonds.

Concern I remember having was was there -- and I can't remember how much was earmarked for mod, for modernization, but concern that we always need to increase the amount of money available for modernization. That seemed to go so quickly. The fact that in 1990 we had two bonds on the -- I think there were two in '88, two in '90 and two in '92, if I'm remembering correctly. I thought that having two kind of remedied that concern that mod money seemed to not be enough, that it went quickly.

BY MR. ELIASBERG:

Q Are you saying that the fact that there were two bonds, I guess, in 1990, that you concluded that in fact there were enough because there were two bonds?

A Well, that it would -- that there would be money that would be there to meet established need and some need that hadn't been established. But I knew that we were not out of the woods, certainly. I knew that there would be future. We'd gotten to the point of recognizing that what we called the pipeline would be established again.

Q What was your basis for concluding that there was sufficient money to meet needs in the modernization context?

A Well, I think what I'm saying is that I worried that there wouldn't be enough, that, yes, we had two bonds -- and I can't remember the amount for mod during those times, but believe me, we're going to take care of a lot of mod need here, but we're not out of the woods, as I said. There's going to be need for yet another bond in the future.

And therefore, we said to districts, it doesn't matter if you think you can't access the program this time, apply anyway. Establish the pipeline for the next bond.

Q So when you talk about not out of the woods, are you saying that you understood that there were some districts that would be eligible and that would apply and yet wouldn't get funded even though you had two bonds?

With respect to the '90 bond. I'm not talking about whether they would be funded at some time in the future if there was a future bond. But was it your understanding that there would be some districts that would apply, be eligible and not get funded, at least out of the 1990 bonds?

MS. DAVIS: I'm going to object to the extent that mischaracterizes testimony.

THE WITNESS: What I think I'm saying to you or trying to say to you, if I'm not saying it very well, is that I knew the money would run out at least by the next bond, before the next bond got there, and that we would have a pipeline, because that had been the experience. But that that wasn't a bad thing, necessarily, because we relied upon the pipeline to articulate the need for that next bond.

BY MR. ELIASBERG:

Q Would the possibility of the money running out before the next -- before the next bond -- I understand that you said there was a benefit, in the sense that it gives you a sense of what you need the next time around, but are there any negative consequences to that?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: Well, I don't know how negative this is, depending upon, I guess, how you respond to it. But board members are typically laypeople, and I remember hearing from other districts and talking to board members for other districts, saying there's no State money. You know, what are we going to do? What you need to do is apply for the State program. But there's no money.

So the concept of the cupboard is bare, woe is me, as opposed to the cupboard is bare but demonstrating
Q   Do you know if in the end the district did apply?

A   I don't know if in the end the district actually had a need. Later on they did. But he ended up retiring, which was probably a good thing.

Q   Can we take another break?

BY MR. ELIASBERG:

Q   Just another couple quick questions on adequate and stable funding.

A   I understand that -- I think it's your position that, by and large, the system, at least currently, is adequate and stable, the source of funding.

Q   Are there changes that you would make -- and I'm not talking about an infusion of a hundred billion dollars, but are there changes that you think are realistic and workable that you would make to the system, either more -- to provide more adequate or more stable funding? Let's just start with adequate and then we'll move to stable.

MS. DAVIS: Vague and ambiguous, calls for speculation, assumes facts not in evidence.

THE WITNESS: Well, we're already talking about the '06 bond. So -- when I say "we," people within the organization I represent, C.A.S.H. organization, talking about the staffers at -- in the Capitol building. So that we have to look and plan, we have to look forward and plan.

The additional financing tool that is Prop 39 helps tremendously with this, because the ability to access through the local bond significant revenues to match up with State revenues goes to that adequacy question. Now, the public has responded very positively and the 55 percent vote has been yielding tremendous results.

So those two things, planning for the -- you know, not looking beyond '04, but that does exist, and that's going to be there, but planning for '06 and recognizing that we have to have districts continue to talk about what they've done with the 55 percent votes, kinds of things they've taken care of, kinds of things they are taking care of, places that hadn't had local bonds for, you know, decades, having those now be able to plan for the future, for the long term, when they need the funds. Once the 55 percent is gone, it's a hard gap to make up when you're trying to make similar things happen.

A   I don't know if in the end the district actually had a need. Later on they did. But he ended up retiring, which was probably a good thing.

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THE WITNESS: Well, we're already talking about the '06 bond. So -- when I say "we," people within the organization I represent, C.A.S.H. organization, talking about the staffers at -- in the Capitol building. So that we have to look and plan, we have to look forward and plan.

The additional financing tool that is Prop 39 helps tremendously with this, because the ability to access through the local bond significant revenues to match up with State revenues goes to that adequacy question. Now, the public has responded very positively and the 55 percent vote has been yielding tremendous results.

So those two things, planning for the -- you know, not looking beyond '04, but that does exist, and that's going to be there, but planning for '06 and recognizing that we have to have districts continue to talk about what they've done with the 55 percent votes, kinds of things they've taken care of, kinds of things they are taking care of, places that hadn't had local bonds for, you know, decades, having those now be able to plan for the future, for the long term, when they need the funds. Once the 55 percent is gone, it's a hard gap to make up when you're trying to make similar things happen.

A   I don't know if in the end the district actually had a need. Later on they did. But he ended up retiring, which was probably a good thing.

Q   Can we take another break?

BY MR. ELIASBERG:

Q   Just another couple quick questions on adequate and stable funding.

A   I understand that -- I think it's your position that, by and large, the system, at least currently, is adequate and stable, the source of funding.

Q   Are there changes that you would make -- and I'm not talking about an infusion of a hundred billion dollars, but are there changes that you think are realistic and workable that you would make to the system, either more -- to provide more adequate or more stable funding? Let's just start with adequate and then we'll move to stable.

MS. DAVIS: Vague and ambiguous, calls for speculation, assumes facts not in evidence.

THE WITNESS: Well, we're already talking about the '06 bond. So -- when I say "we," people within the organization I represent, C.A.S.H. organization, talking about the staffers at -- in the Capitol building. So that we have to look and plan, we have to look forward and plan.

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to match up with State funds, all that, I think goes to
that question.
And I don't know, maybe I didn't answer your
question adequately.

BY MR. ELIASBERG:
Q No, you talked about things that you think --
future-looking things or things that will help in the
future, but are there -- I'm just trying to understand.
Are there other -- are there changes to the
system that you would -- that's currently in place that
you think are workable --
A State funding system.
Q Yes.
MS. DAVIS: I'm sorry, vague and ambiguous.

BY MR. ELIASBERG:
Q The State funding system -- that you think
would make the source of funding more adequate?
MS. DAVIS: Same objection.
THE WITNESS: There's a tool that's already in
place, and it really hasn't been utilized very much at
all, but depending upon district needs, accessing the
State's loan program. I can't think of the name of that
program. But it's a school facility financing
mechanism, if you borrow from State of California, pay
it back rather than going through some other entity.

I don't think it's ever been really understood
by many districts. It could be used as bridge loans,
could be -- you know, maybe if that were -- I'll use the
term marketed, if that were marketed, rather than simply
being there as a tool that sort of sits in the shadows,
maybe that would be one.

BY MR. ELIASBERG:
Q I understand you don't know the name of the
entity through which you seek these loans, but --
A It's basically through the treasurer's office,
but I'm trying to think of the name of the program
itself.
Q Is that a form of conduit financing?
A Well, it is a financing. What's it called?
I'll think of it.
Q Well, let me ask you this. Is it the concept
that the State, in effect, does the -- somehow works
with the borrower so that the money that the district
ends up getting is tax free and, therefore, they have to
pay -- there's lower rates of repayment on the loan?
A It's not -- yeah, they're the -- because it's
a -- it's a pool, I think the rates are lower.
Q Okay.
A Yes.
Q Okay. In your conception of how the AB 1200
going to ask the voters to pay for. With the deferred
maintenance dollars that come about, I potentially could
blend them, and so I spend less bond funds, but I would
want to -- I would want to do that kind of thing.

But yeah, I'd love to have the deferred
maintenance program fully funded, whatever that term
really means, year after year after year. But the fact
that it's not goes to the issue of why I was not
supportive of this recommendation.

BY MR. ELIASBERG:
Q And that is because the deferred -- the
delayed maintenance funding is not protected by Prop
98? Is that one reason?
A It's dependent upon the general fund of the
State, and it's -- it is outside of 98.
Q Have you thought at all about how you -- for
example -- let me step back.
Has C.A.S.H. lobbied and -- or presented any
proposals to say, here's how we'd like to rework the
delayed maintenance program so we'll -- so we'll be
confident that the money's always there instead of
fluctuating?
A Well, we've lobbied to try to increase the
amount of funding that was there, recognizing that it
goes year to year. I did that before I was a lobbyist.
I did it as school district superintendent. You know, in assisting the organization.

Q I guess what I'm trying to understand is I -- it makes complete sense that, both when you were working in the district or when you're working in C.A.S.H., you're saying, you know, in this year's budget let's not have it be 12 cents on -- the State's match be 12 cents on the dollar.

I'm talking more -- have you ever lobbied or proposed to rework the system in some way to end that fluctuating delivery of money?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: We had a discussion of the budget analyst office making the proposal, and I told you that we met with them. Actually representing, I believe, at the time CASBO. I was CASBO legislative chair at the time. And we were saying, let's have you help us create a program that would mean that it's there, it's there fully every year, year after year.

Now, saying that, recognizing that it's one of those things that politically is going to get moved around just like everything else, just like in a school district. Is it one of the first things that board members think about when you present a budget to them?

No. Is it one of the first things that members of the Legislature do? No. So that's why you have to keep talking to them about it.

BY MR. ELIASBERG:

Q But in the period of time you're talking about -- which I think was in the mid to late '90s; is that correct?

A Yes.

Q And nothing came of any legislation to reconfigure the deferred maintenance program; did it?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: There were proposals, and I remember -- maybe it was more than one year, but seemed that we were artic -- may have been able to articulate to the appropriate committees the substantial need, and there was a response, but no, there has been no -- not been a substantial change in the program.

BY MR. ELIASBERG:

Q Do you think that the fluctuating nature of the amount of money in the deferred maintenance program from the State's perspective has affected districts' ability to plan their maintenance and repair work?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: I don't know that it's affected their ability to plan. I continued to plan, notwithstanding the execution of the plans's what gets affected, and you may need to push the plan out a little further because you don't have what you need. Or something else comes up and you have to spend more money on the project than you thought you did because you discover something you didn't know existed because of -- just like with modernization. When buildings are older, you don't always know what's under the roof or behind the walls.

BY MR. ELIASBERG:

Q And just stepping back for one second to the situation you talked about before with the districts to the next one, does that affect the ability of a district to plan its modernization work?

MS. DAVIS: Calls for speculation.

THE WITNESS: Well, I would have to speculate, but I can say also, as a practitioner, it does affect, but that doesn't necessarily mean it's a negative. Sometimes it means that there is more careful planning, that you look at systems and subsystems. And maybe you make a decision that, I can't wait to do something because the need is there right now, and I'll take care of that through some other means, including making an argument that I'm going to use some general fund dollars, because it's a safety issue.

BY MR. ELIASBERG:

Q You were clearly a very good planner, facilities manager.

Are you aware of districts where that kind of foresight and ability to make -- to plan for this situation, that capacity might not exist?

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

THE WITNESS: Because I would get calls from other officials in other school districts who sometimes would believe that they didn't know what to do, yes, I -- I've encountered that. The fact that they called, knew that they were asking for help, and if I could give them some advisement and help -- and that did happen pretty frequently -- I could put them in contact with someone else.

I think that that kind of thing goes on. That there's a -- there's a collegial relationship of people in districts that go from counties and sometimes to beyond counties and through organizations like C.A.S.H.
and CASBO, where people learn and get assistance, in terms of planning.

You know, as a superintendent, before I was a superintendent, people, if they thought you were successful with something, they'd say, oh, you know, he or she was involved in that. Let's give them a call. And that does go on.

But unfortunately, people don't come into a school district, as an assistant superintendent or as a school planner or as an assistant school superintendent, with an encyclopedic knowledge of all the things you're going to encounter, which is what makes organizations like C.A.S.H. and the others and the workshops we've talked about important to try to disseminate information, build the knowledge base, develop collegial networks.

I don't know, I probably answered or over-answered your question, and maybe I didn't answer your question, but people don't always know what to do, that's true. And what's good is that they tend to have some contact point where they can seek some assistance from a colleague, from an organization.

BY MR. ELIASBERG:

Q. Let me turn your attention to Page 42. I told you before -- I did a bait and switch on you. I said we were going to look at this a minute ago, and we didn't.

But at the bottom, where there's a heading "Allocations and Equity."

A. Yes.

Q. And then it says, "Goal, facilities funding must be equitably allocated to meet the local needs of school districts throughout the state."

Do you see that?

A. Yes, I do.

Q. Now, in asking -- I'm going to ask you whether you support this goal, but I first want to make it clear that I'm not talking now about the recommendations in this report that ostensibly support this goal; I'm really just asking you if you support this goal of equitable allocation to meet local needs.

A. The trouble I had with it was the trouble of what I discussed about the prior item that we discussed, and that is, you have certain amount of -- here's the cookie dough and you cookie-cutter out, and everybody gets a piece of that cookie, whether or not they had a specific need for that or not.

So I'm not sure what the "equitable" part means. To some people it means, we just divide it up by the amount of -- number of kids divided into the amount of dollars available. The system isn't a perfect system, but if you have a need for modernization and you qualify for modernization, you can demonstrate that need for a building that's 25 years old or now for a building that's 50 years old, I think that there needs to be certain guides to center or make sure that in fact you fit into the qualifying criteria, the construct, whatever it be.

So we've talked about continuums before. One end of the continuum is we just take the money and divide it up by the number of kids without any need. The other is you have ways to qualify in extreme circumstances. What I think is important is to have programs that are identified, and the more we learn, the more we can change or add to be able to try to meet real needs of school districts. But they have to be able to articulate in some way and demonstrate in some way that they really have that need, so we don't waste money.

And certainly, there was never enough money for me to waste anyway, if I even thought about wasting money, because there's always things to do with it.

When you have a committee like our committee, people are always talking about things in sort of like the blue ribbon committee idea, you know, and everybody's, you know, egalitarian and all that. And I had trouble with that, because the realities of...
1 so new I'm not sure that we can even go out and see a
2 program into a much better program. And as I said, it's
3 more like the new construction program.
4
5 And so there's a sense of what's equitable
6 there between the old program and the new program or
7 what's equitable between the existing program and the
8 50-year-old program, and some of those things we try to
9 work on session to session as we make progress.
10 Q Has there been any -- or let me ask you this.
11 Do you know where that bill that would change
12 the rules to allow a school to be modernized even if
13 it's already been previously modernized with State
14 dollars -- do you know where that bill is in the State
15 Legislature?
16 A It moved from the Assembly to the Senate side,
17 and I'm not sure if it's up next week in Senate
18 education, but there's a plethora of bills that are, and
19 it's potentially one of them.
20 Q And could you just explain for me how the
21 50-year-old mod program differs from the current mod
22 program?
23 A The 50-year-old mod program provides additional
24 resources per student, like the regular mod program
25 does. It also goes beyond -- and this is one of those
26 things that I talked about the ability of the
27 implementation committee to take local and State views
28 of policy.
29 The implementation committee and the
30 interpretation of that 50-year-old program interpreted
31 it in a liberal way -- use that term purposely -- to
32 allow for additional funds beyond the per-pupil amounts
33 to take care of site-related utility issues such as old
34 water lines coming into the school, to be able to
35 replace those. Abandon those and put in what's new. To
36 put in a larger water line because of the expansion of
37 other buildings on the campus when the water line
38 wasn't, you know, addressed.
39 So that's a very good thing. It's a very
40 important thing. So site-related -- site-utility
41 related and some off-site related things, which makes it
42 more like the new construction program.
43 So we've really come along. We made that mod
44 program into a much better program. And as I said, it's
45 so new I'm not sure that we can even go out and see a
46 school where it's been effectuated at this point in
47 time. But that was pretty exciting.
48 Q Let me understand. This program would be -- or
49 district would be eligible for this program if it said,
50 I have a school that's 50 years old as opposed to 25 or
51 30 years old --
52 A Yes.
53 Q -- but it's never been modernized before --
54 A That's correct.
55 Q -- with State funds?
56 A That's correct.
57 Q And the -- unlike a district that's applying
58 with a 25-year-old school building, the 50-year-old --
59 the district that's applying for mod funds for the
60 50-year-old building or 50-plus would get just a
61 per-pupil amount that's larger than the per-pupil amount
62 for the school that's 25 years old; is that correct?
63 A Not just, but that's true.
64 Q That's one factor.
65 The other factor is that you could even get
66 every 50-year-old -- let me step back.
67 Every 50-year-old building would get a larger
68 per-pupil amount than a 25-year-old building?
69 A Yes.
70 Q In addition, you wouldn't automatically get,
many schools are going to be applying for this larger source of funds, the greater source of funds under the 50-year-old program?

A It's a very good question, and the answer is, I don't know. There were -- we were seeking to include this in AB 16 at the same time we were seeking higher levels of bond funds, and I don't know. We were aware of the -- we were aware of the dynamic between the two, sometimes not even wanting to address it so as to not cause confusion. So I can't answer the question effectively.

Q Do you know who could answer that question, if anyone?

A We could ask Mr. Hancock.

Q Well, I was going to say, would Bruce be the most likely person to know, if anyone knows?

A Yeah. He probably is.

Q Given your definition -- and I understand you did it partly through example, but given your definition of equitable allocation, why is it important to have equitable allocation?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: School districts don't generate their income. They don't generate the revenues. If we all -- and you talk about being those involved in schools...

and those involved in legislative process.

If we agree upon the need for a program, I think the rules of that program need to be something that are understood and that people adhere to, and those are the local people applying for the funds and the State people administering those funds, so that people have a sense of fairness in how they are attempting to address their local problems or their local needs compared to another entity's. And you start off with resources, like buildings, that really aren't necessarily equal, because some are older than others, some are more well maintained than others. So you ground it, in my thinking, in here's the program and be as creative as you can, but these are the ground rules for that program. And you qualify, get as much money as you can under that qualification, and go get the work done.

So I think that a sense of having certain rules or criteria that people know exist and can understand really is part of the fairness question. Programs have been proposed -- and I'll even use the COS program, since I had a large part in that. Programs have been proposed where people have reacted to them and said, well, that looks like it's sort of narrow. It's only this group or this district. And the answer is no, it's related to a problem that many of those districts have.

So that problem and these criteria are related, but people can know they can go through those criteria to get to the resolution of that problem. I don't know if I articulated that real well, but that the sorting through of criteria and establishing the criteria, agreed-upon criteria, even if there's some flexibility in them, is a way that I think we can make the system bring about some level of equity, although it's not going to be perfect.

BY MR. ELIASBERG:

Q You know, it was extremely articulate, but I think what I got out of that was transparency and clarity is a part, at least, of equity, but my question was: Why is equity important -- why is having an equitable allocation important? What goal does that serve?

MS. DAVIS: Vague and ambiguous.

BY MR. ELIASBERG:

Q Let me just to -- I think this will help illustrate.

You could have a very clear transparent system with rules that were clear as day that ended up that Moorpark got 97 percent of the State's funding and -- you know, and nobody else got any. I'm being facetious, but -- but to me that wouldn't be equitable, under your definition.

A But the process in establishing those criteria would ensure the equity. Because people aren't asleep. They're watching and they're participating in the process. And they're talking about need.

You know, remember, we talked about the other day something that I called the document. You said, what's it called? And I said, I don't know. We called it the document. That was something that was part of that process of how do we know how this money's going to get spent.

And the more questions we asked -- and very open. It was with -- you know, it could be something -- you would have walked into my office, asked me, and I'd say, well, here's -- here's today's sort on that, because it was really a sort. So a Senator or Assemblyperson or somebody from CDE or a school district person would ask, and we'd disseminate that information.

In the end, even after the bill was signed -- AB 16 was signed by the governor -- that was in, what, March? In the end -- even in August, that sort was still being taken -- it was still taking place, because we were -- we were sorting through those criteria and then running numbers of who was to be served by this.
program and who wasn't. And to what extent they were
going to be served.

So I think the process, just like anything that
we do and the kind of governance structures we have in
the United States and in California was such that -- to
use your term, the transparency and the clarity helped
to ensure that. You know, was it due process? I don't
know if we used that term, but everybody that was an
interested party had a chance to be at the table to say,
I object. Not necessarily that any individual could
vet it, but to say, you know, I'm left out. I'm not
there. This doesn't appear to be fair. And that was
really, really listened to.

Q  So is it your position that the process has
worked in such a fashion that it has been sufficiently
transparent and sufficiently clear and there's been
enough participation by the interested parties that the
current State's funding system is equitable, as you
defined what you think equity should be?

A  Yes.

Q  Are there changes that you would make to -- I
mean, I think you said it's equitable, but it is not
perfect.

Are there changes -- workable changes that you
would make to make it -- to get it closer to perfect?

THE WITNESS: So I guess in the end, are you saying
would I think that it would be more fair to do that.
The answer is yes, and it's not going to happen. The
State doesn't have the resources.

Q  But if the State is not going to -- doesn't
have the funding to pay the operational grants, why is
the funding going to be available for the district to
now seek the new construction funds it had previously
forgone?

A  Because of the new funding source, State bond
funds. So one of the districts you mentioned the other
day, if they're not receiving State funds for
operations, they choose to then change their mode, say
we're not going to do this year-round program anymore,
what are they going to do with the kids? We don't have
enough money on the operational side.

Q  Well, you get -- you get more construction
money. Okay, now I know what to do with the kids that

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

THE WITNESS: Which program? The State program in
general? Specific programs?

BY MR. ELIASBERG:

Q  Well, let me give you a couple of examples, and
then maybe we can do it a little bit more openly,
because I don't want to direct your thinking so much.

We talked yesterday about the fact that there
had been -- I think you used the phrase -- a deal, that
if you gave up eligibility, you would -- had an
expectation that the State was going to give you some --
I'm sorry, gave up eligibility -- you were a multi-track
school and you gave up eligibility for your students,
and that the understanding was that the State would give
you a certain amount of funding -- extra funding for
giving up your eligibility for new construction funds.

A  Operational funds.

Q  Right. Operational funding.

Do you think that the current system would be
more equitable if the amounts that the districts
expected were actually being given to them instead of
much -- in numbers that are much less than they'd come
to expect?

MS. DAVIS: Same objections.
1 construction and risk because of the priority ranking system.
2 And I listened and said, let the operational grants go, go after the buildings, go after the grounds. Because that's something you can then depend on, because you know that you may get those dollars.
3 So back to the construct that you were just identifying, is I wouldn't expect the State to necessarily continue to fund the general fund side of it without some real discussion and, you know, maybe some compromises along the way there, but just -- I've given up eligibility for a child here, and you're not funding this child to the extent that you should be, based on what we believed our deal was. Give me back at least the ability to house that child over here. That's what I'm saying.

BY MR. ELIASBERG:

Q  Okay. Then -- I hear that.
A  Am I belaboring this?
Q  No, not at all. I'm hearing clearly. I guess I'm a little confused by something you said yesterday, because my understanding is that's the way the current system works. If you are getting op. grants, even if they're ten cents on the dollar of what you thought you'd be, you give up your eligibility, and if you say, okay, it's ten cents, but -- and I need the ten cents, but it's not the dollar that I hoped for, you can give that up and you get your eligibility back.
A  Yes, but what I'm talking about is how much eligibility did I give up the year before and the year before and the year before. And am I behind. And those dynamics I can't necessarily describe and articulate, because I don't know what they all may be.
Q  But in the instance that I gave you, it was we have a certain number of kids that we could trade off if we give up this eligibility, but this number of kids going back to the school gives us this eligibility. We just don't get a general fund amount. The district wasn't able to walk away from all of its funding. It walked away from a portion of its funding.
A  Okay. I think I'm clear now.
Q  Do you think it's equitable that the current system -- which, as I understand it, you can -- the State will consider you to have unhoused children on the basis of subdivision tract maps that you can show.
A  Do you consider that to be equitable, or do you think it would be more equitable if that eligibility in the system were changed?

MS. DAVIS:  Vague and ambiguous, assumes facts not in evidence.

THE WITNESS:  Having been there and dealt with that, I do. But knowing from whence your question may come, maybe I can offer something, and that is that being in the vortex of things and through 2000 and -- being the time I met you, and through 2001 and the time we came up with AB 16 and seen that tug of war on overcrowded schools and maybe the suburban schools where growth was taking place, one of those -- one of those positives from the conflict that raged there was the COS program.
Q  Because the COS program basically says, if you've got those overcrowded schools, you don't even have to meet all the other tests that everybody else has to meet. You can meet a test that is a much more simple test, and we will put away millions of dollars to make sure those kids are housed.
A  That was not an easy feat to get through...
1. Legislature. But I think that that -- I don't know that there was a real imbalance before. Certainly in the
2. Godinez matter there's a challenge that there was an
3. imbalance, and the issue you just brought up was in,
4. you know, that vortex.
5. But the COS program went right at that issue.
6. Say, oh, if there is a problem here, then maybe we can
7. fix it with this kind of a program. And what we know is
8. that the program was over-subscribed, at least in the
9. part of planning. We'll see what happens in the
10. execution.

BY MR. ELIASBERG:
11. Q What do you mean by over-subscribed?
12. A $1.7 billion was in the bond. About 2.2, $2.3
13. billion was applied for.
14. Q What happens to the applications -- it's a
15. little tricky, because I understand that a COS
16. application is not the full package that one would
17. ordinarily file for eligibility and --
18. A That's what I was saying, it's simple.
19. Q I think it'll be easier to play this out if
20. you'll assume the following facts.
21. Let's assume that all of the people who apply
22. down the line come through with their full -- the full
23. papers necessary. Nobody drops out who's applied or

nobody fails to meet the criteria who met them
originally.
A They perfect their applications.
Q Yes. Okay. Thank you. That's a lot easier
term.
What will happen to the approximately half
7 billion dollars worth of applications that are beyond
the amount that's included in the COS program?
MS. DAVIS: Incomplete hypothetical, calls for
speculation.
MR. ELIASBERG: I don't think that Dr. Duffy, who
is largely responsible for this program, would be
speculating about what happens to the applications, but
maybe I'm wrong.
THE WITNESS: If a district applied and -- and the
Allocation Board, I don't think, has even actually taken
action on those at this point in time. I think they're
still being reviewed.
But if a district applied and was not funded --
as ironically, there's a priority ranking system that
was included in that COS program. If the district has
elegibility, it can apply through the regular new
construction plan if it chooses to. Now, it doesn't
have the largess of four to five years, but it certainly
has access.

And districts that had a COS potential had the
ability to choose one or the other. So there were
really two access points, and that access point wasn't
lost, should they not be funded. So that's one answer
to that.
The other, and I'm -- I talked about a
pipeline. I'm forgetting as to whether or not the
districts that -- if they shouldn't go into the regular
new construction program and they remained there, if
there's an unfunded list that it's funded out of the
next bond. And I can't -- I can't remember that.

BY MR. ELIASBERG:
13. Q I understand you don't exactly remember.
15. Q Is one of the criteria for qualifying for the
16. COS program the number of years or the amount of time
17. that the school or district has been overcrowded?
18. A No.
19. MR. ELIASBERG: Let's take a short break. And I
20. think is 12:15, 12:30 for lunch.
21. (Brief recess taken.)
22. BY MR. ELIASBERG:
23. Q Dr. Duffy, have you seen any research that's
24. attempted to look at whether there's a correlation
between the property tax wealth of school districts in
California and the amount of funding they get -- State
capital funding for school facilities per capita?
A No.
MS. DAVIS: Vague and ambiguous.

BY MR. ELIASBERG:
7. Q Let me make sure.
8. A I have not seen any research like that, no.
9. Q Have you heard any discussion about that
10. question? Have -- you know, is there a -- or have you
12. heard anyone say, in sum or substance, do you know if
13. there's actually a correlation between the property tax
14. wealth of the district and how much money you get from
15. the State program per capita?
16. MS. DAVIS: Same objection.
17. BY MR. ELIASBERG:
18. Q Per student, I guess I should say.
19. A Under the capital programs of the State, new
20. construction/modernization, that kind of thing, that's
21. what you're a talking about?
22. Q Yeah. Yeah.
23. A No.
24. Q If you saw research that showed that there's
25. actually very high correlation -- I shouldn't say very
Do you know who prepared the chart?
A   Well, I'm thinking it may have been a C.A.S.H.
document.
Q   Do you know who within C.A.S.H.?
A   No.
Q   Okay. Do you remember when you saw this, how
long ago this was?
A   Well, it was several years ago. Somebody else
brought it to my attention, which was kind of
interesting at the time, because it showed how well we
had done as a school district in the State program.
Q   "We," being Moorpark?
A   Yes.
Q   I don't want to get your competitive juices
flowing, but who was first and/or second, if you weren't
second?
A   I think Irvine -- and we may have been second.
Q   Irvine, I think, may have been the first.
A   I think we were second or third from the top,
basically, in terms of success within the State
program.
Q   Do you remember whether L.A. Unified was -- and
Do you remember who -- any of the other top
four or five?
A   No, I don't.
Q   Okay. Do you remember any of the districts
that were on the bottom?
A   Yes.
Q   Do you remember whether L.A. Unified was in the top
third, middle third or bottom third?
A   I don't.
Q   The only district that I remember -- I think
this was pointed out as a comparative item by the person
preparing this. There was a comparison of our district,
being at the highest level area, and having something on
the order of twice as much money per pupil as L.A.
Unified.
Q   Do you remember whether L.A. Unified was -- and
let me just divide it into -- what do you call them --
threes.
A   I don't.
Q   Do you remember if L.A. Unified was in the top
third, middle third or bottom third?
A   I don't.
A   Well, I'm thinking it may have been a C.A.S.H.
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<td>1. I'm remembering. And we had -- I'm not sure of the numbers exactly, but we were in the low teens, something like 12 or $14,000 per pupil, and I think L.A. was somewhere in the vicinity of 6 or 7. So we were about twice as much as L.A.</td>
<td>1. A I'm sorry, no. No.</td>
<td>1. Q Did she -- just to make sure that I've exhausted your recollection of the conversation, did she attempt to explain to you why she thought -- or did she talk at all about the meaning of the fact that some districts appeared to be getting very different amounts of money per capita than others?</td>
<td>1. recall seeing and just thinking back -- and I can only remember Irvine and Moorpark being there, but what I recognized is that we were high growth districts and had had -- apparently responded to that growth by, you know, seeking what I had referred to earlier as the backbone, the State program.</td>
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<td>2. BY MR. ELIASBERG:</td>
<td>2. Q Did she -- just to make sure that I've exhausted your recollection of the conversation, did she attempt to explain to you why she thought -- or did she talk at all about the meaning of the fact that some districts appeared to be getting very different amounts of money per capita than others?</td>
<td>2. MS. DAVIS: Vague and ambiguous.</td>
<td>2. A I don't recall.</td>
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<td>3. Q Did you speak with the consultant about the document, the chart?</td>
<td>3. THE WITNESS: No.</td>
<td>3. THE WITNESS: Have I asked myself that?</td>
<td>3. Q During the master plan process -- and by that I mean the meetings, the preparation of the report and so on -- was there any discussion about that chart or any discussion about the amount of per capita funding that some districts seemed to be getting through the State program compared to others?</td>
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<td>4. A We talked. I guess it was one of those things where I said, oh, you know, I was -- new information to me. She was pointing out how well the district had done, and the comparison was to well, here's a huge district, and this small district that may become a medium district over time had done very well in that comparison. That's all I'm recalling.</td>
<td>4. I don't recall.</td>
<td>4. A I don't recall.</td>
<td>4. A There were all kinds of discussions. After consultants talked to the groups and then with our groups talking, full group, smaller group. I don't remember a discussion of per-capita amounts or even what you'd initially asked, you know, those --</td>
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<td>5. Q Did she -- I'm sorry.</td>
<td>5. Q Have you ever tried to look at -- or have you ever asked yourself why it is that Moorpark and some districts are getting twice as much money as other districts per capita through the State?</td>
<td>5. Q (No audible response)</td>
<td>5. Q You're talking about the correlation between property tax wealth and amount -- and per capita funding --</td>
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<td>6. A That's all I'm recalling, in terms of the discussion with this consultant.</td>
<td>6. THE WITNESS: No.</td>
<td>6. A No.</td>
<td>6. A Yes.</td>
</tr>
<tr>
<td>7. Q All right. Just so I'm -- I appreciate that you think that's all you remember, but I just want to see if there are things that maybe will jog your memory. Did she explain to you why she had prepared this chart?</td>
<td>7. have -- apparently responded to that growth by, you know, seeking what I had referred to earlier as the backbone, the State program.</td>
<td>7. Q Have you ever tried to look at -- or have you ever asked yourself why it is that Moorpark and some districts are getting twice as much money as other districts per capita through the State?</td>
<td>7. Q Do you remember seeing or noticing that there appeared to have gotten a lot fewer dollars per capita than Irvine and Moorpark?</td>
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<td>8. A We were preparing a document -- the board had asked for a document, and the -- trying to think of the purpose of the document. We had entered into a period of time when we were doing a strategic plan, and one of the components of the strategic plan had to do with facilities. And because I was so much involved with all the aspects of the district, I was stepping away from certain things and their -- with the strategic plan you have -- like with the master plan, you have subgroups. You have groups that work on different areas. I can't remember exactly how this came about, but this person was asked to come in and basically do a read, make a comparison of -- or make an assessment, I guess, where we were. And the outcome was a document that identified that we had done extremely well in dealing with huge amounts of growth and all that over a period of time. And this document was something that she apparently had found and I didn't realize existed, or if I had, I guess I didn't register it. And so she utilized that, included that information in this report.</td>
<td>8. Do you remember seeing or noticing that there were other high growth districts on the chart that appeared to have gotten a lot fewer dollars per capita than Irvine and Moorpark?</td>
<td>8. Q (No audible response)</td>
<td>8. Q You're talking about the correlation between property tax wealth and amount -- and per capita funding --</td>
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<td>9. Q So am I correct in understanding this was a consultant for Moorpark?</td>
<td>9. A I don't recall.</td>
<td>9. A There were all kinds of discussions. After consultants talked to the groups and then with our groups talking, full group, smaller group. I don't remember a discussion of per-capita amounts or even what you'd initially asked, you know, those --</td>
<td>9. A Yes.</td>
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<td>10. A Individual consultant for the district.</td>
<td>10. Q During the master plan process -- and by that I mean the meetings, the preparation of the report and so on -- was there any discussion about that chart or any discussion about the amount of per capita funding that some districts seemed to be getting through the State program compared to others?</td>
<td>10. A I don't recall.</td>
<td>10. Q You're talking about the correlation between property tax wealth and amount -- and per capita funding --</td>
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<td>11. Q I'm sorry, I had understood it that maybe it was a consultant for C.A.S.H.</td>
<td>11. A There were all kinds of discussions. After consultants talked to the groups and then with our groups talking, full group, smaller group. I don't remember a discussion of per-capita amounts or even what you'd initially asked, you know, those --</td>
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<td>12.</td>
<td>12. Q During the master plan process -- and by that I mean the meetings, the preparation of the report and so on -- was there any discussion about that chart or any discussion about the amount of per capita funding that some districts seemed to be getting through the State program compared to others?</td>
<td>12. A There were all kinds of discussions. After consultants talked to the groups and then with our groups talking, full group, smaller group. I don't remember a discussion of per-capita amounts or even what you'd initially asked, you know, those --</td>
<td>12. A Yes.</td>
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Q -- through the State program?

A Yeah. There may have been, but I don't recall.

Q If you were to start from scratch, do you know -- is there a methodology you would use to try to determine if there is a correlation between property tax wealth in California and the per-capita funding per pupil?

A You're asking me --

Q -- to be a researcher?

THE WITNESS: -- to be a researcher?

MS. DAVIS: Calls for speculation --

THE WITNESS: -- to be a researcher?

A wealth.

Q I could at least ask -- you're a Ph.D. or at least an Ed.D., so I thought I could ask.

THE WITNESS: There is a way of determining -- let me ask -- the wealth that you're talking about in the district is what kind of wealth? Maybe I wasn't real clear on how --

BY MR. ELIASBERG:

Q Well, you're asking me to be really knowledgeable about the State's finances, and I'm not.

A Just given local --

Q I'm trying to get at --

A Wealth --

Q Yeah, it's in here.

MS. DAVIS: Calls for speculation and incomplete hypothetical.

THE WITNESS: My question is -- you're asking me to be, at least for the moment, a researcher.

BY MR. ELIASBERG:

Q I could at least ask -- you're a Ph.D. or at least an Ed.D., so I thought I could ask.

MS. DAVIS: Same objection.

THE WITNESS: There is a way of determining -- let me ask -- the wealth that you're talking about in the district is what kind of wealth? Maybe I wasn't really clear on how --

BY MR. ELIASBERG:

Q If you could turn to Page 6 of your report.

A Okay.

Q And if you'd look in the -- well, there's one not-full paragraph in the top, and then the first full paragraph -- if you'd look in the second full paragraph in the middle, there's a sentence that reads, "Because State capital outlay dollars were so precious and recognizing that MTYRE school districts appeared to operate in such a fashion as to provide adequate instruction for children, the State, through legislation offered by Senator Gary Hart, began to offer," quote, "construction avoidance funding," close quote, "for districts, which offered the option of running an MTYRE program, as opposed to seeking State capital construction funding."

A Yes.

Q Do you see that?

A Yes.

Q What did you mean by "capital outlay dollars were so precious"?

A In this time frame, where the State of California had become the funding partner for school districts with new construction, first using the tide land oil funds in the early '80s, very early '80s and then moving on to State bonds.
In retrospect -- and probably at the time -- it was clear that State dollars, because of growth, were in high demand, and other than the State dollars, developer fees were about the only thing available there. So State capital outlay dollars were precious, and the State was saying, how do we deal with this demand level. That's what I was meaning by that.

Q And a little further down in the sentence, where it says, "operate in such a fashion as to provide adequate instruction for children," what did you mean by "adequate instruction for children"?

A What I was meaning here was that what I had been told about MTYRE, never having run those programs, and especially during that time frame when the district that was a high profile lead MTYRE district, which was Oxnard Elementary, was running these programs and when somebody like Senator Gary Hart, who represented that area, including me, because I lived in the district, the belief was these are good programs, that they operate well, that they educate children, and that in fact what we ought to do is recognize them and give them some additional money, because they're operating those programs, and we'll give you the additional money, much like the program we were talking about earlier; that is,

that at the time that there were -- the kinds of negatives that you hear from Mr. Firebaugh and Ms. Goldberg and others, you didn't hear at that time.

Q Do you know if anybody in CDE or any other State agency or the Legislature did any research to actually try to determine what the effects of MTYRE instruction were on children's education, if any?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: At this time?

BY MR. ELIASBERG:

Q Yeah.

MS. DAVIS: Calls for speculation.

THE WITNESS: At this time?

BY MR. ELIASBERG:

Q Yeah.

A No.

Q You do not know or --

A I do not know they did any research or did not do any research.

Q How is the amount of construction avoidance funding, as you're describing it there, determined, or how was it determined?

A What I'm remembering are two programs, the one was about $25 per ADA. The other was higher, and I don't know if it was a hundred dollars per ADA, but it was -- it was higher than the 25. Could have been 80.

But there -- it was increased.

Q Do you know how those figures, 25 and some higher figure, were arrived at?

A No, I don't.

Q Is construction avoidance funding the same as operational grant funding?

A I think that this was more of a rudimentary program, as opposed to what the operational grant language and statute -- and I can't remember what was all there, but seemed to me that that was a bit more complicated than this, and this was simply, you don't apply for funds and we'll multiply those number of children times this amount of money and that's how much you get annually from the State.

Q Is it fair to say that the concept is similar, but the amounts might be arrived at at a little bit more sophisticated fashion under the operational grant program?

A Well, the concepts are similar. What wasn't here was the losses of eligibility, the hits we talked about the other day, those complications. This was, as I said, rather rudimentary, rather basic, rather simple. You avoid construction, we'll give you some dollars.

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Q All right. Was there any debate or strong disagreement with the legislation offering construction avoidance funding?
A At that time, no. No. I don't -- I don't remember debate, conflict or controversy, no.
Q In the next paragraph on Page 6, you -- at the first sentence, there's a discussion of disparity of developers' fees, and I don't really need you to focus on the context of this, because it's a term that comes up a number of times in your report. I just want -- what are developers' fees?
A The more complete term would be residential developer fees, and there's also commercial and industrial developer fees. But what they are are funds provided by a residential developer to a school district or, in the case of elementary and high school district, to both districts, which divide the fee, as a means of recognizing that there will be a capital cost to housing the children that come from the development in classrooms and other school facilities. What's identified here is a recognition that new homes will yield new children, who will need space in schools, and that's translated into a fee that is paid to a school district by the developer. That is not a tax. It's a fee which represents payment for a service, and that service being the provision of space within a school.
Q Okay. That concept makes sense. You're bringing kids in, you have to pay something for it. What commercial and industrial developers fees have any application to the school context?
A It was determined prior to this time by a study that was done at the State level that in areas where there is growth -- that is, commercial and industrial growth -- the demand for housing increases, and that demand for housing is -- has a correlation to workers coming in to take the jobs in these new developments. And so it was a way of capturing, to a smaller degree, a fee that would be given to the district to pay for this in-fill housing of new families that may be moving into a home that existed before where there was an empty nester home that now has children in it. So that the commercial entity -- it's, you know, Rite Aid or an industrial entity, whatever it may be, will create jobs, and those jobs will demand more seats in schools. And so it's not as direct as the residential fee, but it's something that can be established.
Q Developer fees can't be used for modernization and maintenance; can they?
A Not legally, no.
Q Are they sometimes used for modernization and maintenance?
A I can't speak to that. The question has arisen from time to time. I've been asked it before by attorneys and practitioners.
Q Okay. But legally, they're not supposed to use developers fees --
A That's my response, yes.
Q Okay. Are there certain kinds of districts that are more likely to collect developer fees than others?
A Yes.
Q What kinds are those?
A Districts that have a lot of residential development or commercial and industrial development.
Q Is that -- would those districts be similar to what you called previously high growth districts?
A Yes.
Q Can you look down, if you would -- let's see. Make sure I get the right spot here.
A Okay. On Page 7, the second full paragraph. It talks about -- "The program enhancement language was found in Senate Bill 327 and provided for an increase in square footage for elementary, middle and high school..."
Q So when you said the lease-purchase program was a square footage program, does that mean that, if you got State moneys through -- or State loans through the lease-purchase program, that you could only build a school that provided for -- and I understand the amount varied, depending on what grade level the school was, but you could only build the school where -- put it different way -- where the amount of square footage was capped?

A No. The amount of square footage for the school was based upon whatever level of eligibility you had. You could determine to build a school that was 35,000 square feet or 40,000 square feet or 30,000 square feet, depending upon the number of students and eligibility that you had. But each one of them, each K-6 child, represented 55 square feet, or however you wanted to use that. So you could build a larger school or a smaller school.

The 55 square feet was translated into classroom space, library space, multi-purpose space, hallway space. You could build hallways. The nurse's office, any administration office. So you multiply the number of children times 55 square feet, and that gave you the size of the facility.

Q I want to make sure I understand. I think my previous question made it sound like there was a -- well -- under that State program, were you limited to how much space you could build for each student, so that if you had a hundred students, you could have a school of a hundred students -- of a hundred times 55 square feet?

A If you only had a hundred students?

Q Yes.

A If you only had a hundred students, then you'd be limited to the hundred students times the 55 or the 59 square feet, whichever it would be. Other than students that were in special education, and those students, under the statute, had specific numbers of square feet for those children.

So we talked about orthopedically-handicapped students that needed medical therapy space and all that. That was all in statute. So you could add that on. You also had other add-ons that included speech therapist area. I can't remember all of them, but there -- for special needs reasons, you then had additional space.

But for just the straight elementary program, you were limited, if that's what your question is, to the number of children in eligibility that you had.

Q Okay. That was exactly my question.

Do you know how that -- the figures, whether it was 55 for the elementary or some higher number for the larger older schools -- or schools with older students, do you know how those were arrived at?

A There's a legend as to how they were arrived at.

Q And what's the legend?

A The legend was that sometime in the late 1940s, there was a proposal taken to either -- I'm assuming it would have been a committee of one house or the other -- let's say it was Senate education/Assembly education, and the proposal was a hundred and ten square feet per child, and someone on the committee said, you know, that's too much. Let's cut it in half. And moved on and became law.

Now, I don't know that that's true, but that's -- I heard that legend 20 or 25 years ago. It was interesting to hear.

Q In the legend that you were told, did the -- did they say, as part of that legend, who had made the hundred and ten --

A No.

Q -- square feet proposal?

A No.

Q Do you know if other states have similar square foot caps per student in their State funding programs?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: There was a time in the early 1990s when we worked at the Federal level, trying to get the State involved -- or the Feds involved in such programs as now exist, the QZAB program. And there were some comparisons, I remember, that were made. I can't remember really how those comparisons were made. It seems that some states had per-square-footage amounts and some states used other things, but I have little recollection of really the detail of it.

BY MR. ELIASBERG:

Q Do you know if anyone's ever attempted to determine the average square foot per child in California schools, compared to whatever square foot per child in schools in other states?

MS. DAVIS: Same objection.

THE WITNESS: No.

BY MR. ELIASBERG:

Q So I assume that you -- if such work had been done, you wouldn't know how California ranks?

A No, I don't.


(Interruption in the proceedings.)

MR. ELIASBERG: It's a little after 12:30. Of
course, we'll break for lunch.

(Lunch recess from 12:39 p.m. to 1:42 p.m.)

BY MR. ELIASBERG:

Q If you would turn to Page 8 of your report.

A Yes.

Q The third -- what looks like the third full paragraph that begins, "The period of the late '80s through the early 1990s was one of continuing K-12 student population growth."

I want to focus on the next two sentences that read, "During that time the State Legislature and Governor recognized the reliance of districts on the State building program and sought to address this fact through several means. One was to provide an increase in MTYRE incentives."

Do you see that?

A Yes, I do.

Q Am I correct in understanding that the Legislature and the governor recognized the reliances of the districts on the State building programs because of the Prop 13 -- Prop 13 had made it very difficult for districts to raise their own money for capital construction?

A Yes.

Q Okay. And in that sentence where it talks about "sought to address this fact," this fact is the local district reliance on the State building program; is that correct?

A Let me go back to it here.

(Witness reviews documents.)

Yes.

Q And when you say one was to provide MTYRE incentives, just -- I'm going to talk about the MTYRE incentives in a second, but I just want to understand -- well, let me step back.

It says here, "One was to provide increases in MTYRE incentives," and then the next sentence says, "A second was to provide incentives and priority in school construction and project funding."

A Hmm-hmm.

Q Are those two examples -- are those illustrative or are those two main ways -- two ways that the Legislature tried to address the local reliance on the State building program?

A I would say that those are the two main incentives that were provided to districts.

Q And am I correct in understanding that, by increasing MTYRE incentives, the hope was that some districts that might have built new schools would instead not build new schools and house students -- house some of their student growth by going to an MTYRE calendar?

A Yeah.

MS. DAVIS: Vague and ambiguous.

BY MR. ELIASBERG:

Q I'm sorry, I didn't hear your answer.

A Yes.

The MTYRE incentive that's here that I'm talking about here is basically the MTYRE incentive that had begun with the Gary Hart program that had become a second program, and there was a move to try to identify ways to give districts an incentive if they're MTYRE already or if they think that they can do this, we'll give you an incentive. And that incentive would then relieve the pressure on the State program.

Q I think you said that the -- what we talked about earlier that Gary Hart had put together was a second program?

A There was a first and a second, and I didn't utilize those programs, but the first program was, as I recall, about $25 per ADA. The second program was enhancing that. In essence -- and it may have been that the program itself was the same program, but it offered you more money -- or it may have been a second program. I can't recall. But there were two distinct times that Gary Hart offered legislation that provided incentive to districts like Oxnard.

Q Okay. So regardless, whether it was two different legislative proposals or one, the idea was there was a couple of different dollar level incentives to -- that one could get by saying, I'm not going to build a new building; instead I'm going to go on MTYRE?

A Yes.

Q Then -- I don't want to be confusing, because we've just talked about one and two or a first and a second. But the next sentence in the paragraph here you say, "A second was provide incentives and priority in school project funding to districts."

34 (Pages 593 to 596)
Can you explain what you mean by that?
A. "A second was to provide incentives and priority in school construction project funding to districts that would pay for half the cost of the project through 50-50 funding."
Q. Oh, okay. So this is not an MTYRE incentive; it's simply saying that you have a priority if you come up with 50 percent of the funding, as opposed to coming to the State and asking for a hundred percent of the funding?
A. That's correct.
Q. Okay. Now, correct me if I'm wrong, but during this point in the late '80s and early '90s, were districts able -- even if they could get 66 and two-thirds percent of the vote, able to pass local bonds, or were they still prohibited from doing that?
A. The Prop 46 restored the GO bond authority of school districts, and Prop 46, I think, was in 1986.
Q. That answers my question.
A. There was some actual overlap of these two incentives, in the sense that if you applied for State funding and you said, I'll not only put up 50 percent, but I'll also operate the new school that I'm going to build on MTYRE, that the State's response would be actually, that makes you the highest priority in our eyes?

MS. DAVIS: Vague and ambiguous.
THE WITNESS: I don't believe that that kind of prioritization was in place at the time that we're talking about.

BY MR. ELIASBERG:
Q. Okay. Since I think I know where you're going with that answer, rather than get into that in the future, did that kind of prioritization come into place at some point in the future?
A. It did.
Q. And approximately when was that?
A. It was '91 or '92, in that time frame.
Q. Okay. In your opinion, did the -- did these MTYRE incentives actually do what the State had hoped that they would do; i.e., encourage some schools not to seek State funding and build new schools, but instead go on MTYRE?
Ms. Davis: Same objections.
THE WITNESS: At the time what I believed, being in Ventura County and having conversations with the superintendent in Oxnard -- I believe what it did was to provide additional funds to districts, like Oxnard, who are already on MTYRE, but gave them a sense of a choice of what they wanted to do for the next school and the next school and the one beyond that.

And yet part of what I know Oxnard really liked at the time was -- we've got these schools on MTYRE that are already here -- and I forget the mechanism, but because they were on MTYRE and because they weren't applying for State funds, or at least for some period they didn't, they had that incentive.

But your question about did in fact this kind of policy have an effect that was intended, I can't speak to that, in terms of the number of districts or the number of students. I don't know, but the programs were in place, and the sense that I had was that the State felt that they must have been working because of what happened in the early 1990s.

BY MR. ELIASBERG:
Q. Okay. Then that's a nice transition. Tell me what happened in the early 1990s.
A. We've talked. There was a continuation of bonds every even-number year and two bonds in '88, '90, and '92. Continued K-12 population growth, continued residential growth, although we did have a slowdown because of a recession.
But for whatever reason -- and I really don't know, legislation was introduced and became law that created eight different tier levels of priority in funding. And the top tier was MTYRE, and then the -- I think the -- top tier, in fact, I think, was MTYRE 50-50, and then it went MTYRE 50-50 and on down.
Q. Okay. Other than -- I think you previously said that your sense was that the State believed that the incentives were doing what they were supposed to do because they then increased the incentives a few years later --
A. Yes.
Q. -- is that correct?
Do you have any other reason to think that the incentives were working?
A. Well, can you help me maybe with what --
Q. Let me give you an example. Somebody at a C.A.S.H. meeting says, Tom, you know, I'm not thrilled about the idea of MTYRE, but -- and I wouldn't go on it normally, but now the State's offering construction avoidance funding, and so we in the district -- I, whoever has the power to make that -- we've decided that that sweetens the pot, and we're now going to go on MTYRE, even though our previous plan was not to go on MTYRE.
Any sort of evidence that you were given like that would lead you to think, oh, the incentives are having an effect on some districts?
MS. DAVIS: Assumes facts not in evidence, incomplete hypothetical.

THE WITNESS: The kind of conversations I recall, like the ones with the superintendent from Oxnard, and we've -- there were others, were really -- were already there. Here's an opportunity for additional funding.

What I recall is, after the legislation was signed by the governor -- and this was a very difficult piece of legislation to implement, because of trying to find out what -- you know, how do we get this construct of law and make it operational.

I remember a conversation I had at OPSC, Office of Public School Construction, which don't know if it was called that yet, where there seemed to be a sense of -- and this wasn't -- these weren't OPSC people, but some others, and I can't remember the meeting. It wasn't an implementation committee meeting, but there seemed to be some sense of this makes sense, this is going to -- this is going to be a help in the long-run.

And I wasn't in favor of this legislation, by the way. And I wasn't in favor of this legislation, of -- and this wasn't -- these weren't OPSC people, but some others, and I can't remember the meeting. It wasn't an implementation committee meeting, but there seemed to be some sense of this makes sense, this is going to -- this is going to be a help in the long-run.

And I wasn't in favor of this legislation, by the way.

I didn't -- I really didn't like this.

And that's where the conversation was -- something, I guess, that I'm recalling, because there was a positive statement by a woman who was a consultant -- maybe she was lobbyist too, and I, of course, was not -- I was in the school district, but I said, I think this is one of the worst pieces of legislation I've seen in a long time.

And I think she was taken aback by that, because she had worked on this, and there'd been some value that was seen in this prioritization, this structuring of MTYRE half-and-half funding, State and local, you know, on down to hundred percent State funding. I forget the other -- the other tiers in the ranking.

BY MR. ELIASBERG:

Q Why was it one of the worst pieces of legislation you'd ever seen?

A Because it appeared to force districts to making some difficult choices.

Q And just so I'm sure I'm understanding, what were those difficult choices?

A Well, as it turned out with the implementation of the bill -- it didn't become this, but it almost appeared to direct the district to fall in line behind -- a district like mine to fall in behind MTYRE districts, who would get priority funding.

And we fixed that at the implementation committee level after about a year of work to try sort through it.

Q How did you fix it at the implementation committee level?

A We fixed it by -- these were my terms, not necessarily the terms that were used in the regulation or by anybody else, but in that first tier that had this MTYRE component, there was an assumption that you could operate the school with more students than, actually, you could house in the school on any given day. So that there was a 25 percent additional students that would go through that school, that kind of number.

So the only concept that made sense to me and to others was to say, okay, if this in fact is what the law is, then we can take a district like my old school district and on paper overload the school, so that it fit that MTYRE model of it looks like we have this many children going through school during any given year. And in doing that, it meant that those students that you fit into the school that really couldn't fit there were a loss of eligibility.

So in essence, you lost eligibility -- Moorpark lost eligibility by applying for an elementary school under that model, because you gave up this number of children -- and I can't tell you the number exactly; it was a percentage -- that were gone forever, that you -- that were going to be unhoused forever. And you had to

Q So where did you put the other 20? And I think you understand that I'm not -- it's not a literal number; it could be some other number, but where did you put the students who were beyond the capacity of the school?

A Well, since these were now the new rules, you identified your housing needs however you could do so. So you had eligibility for this many classrooms, and that was then reduced. You looked at, if you were MTYRE on paper, and you had funding for a new school. So that was something to be joyous about. But then if you housed the 600 pupils there, then you also were planning for the next school to use some of the -- rest of the eligibility, you had to make sure that you had enough room for the others.

So I guess what it caused me to do was to

have some other means of housing them.

Q In your case in -- so correct me if I'm wrong, but it sounds like what you're saying is we were forced to either house a hundred and 20 pupils in a school that holds --

A You built for a hundred.

Q -- or we had to figure out someplace else to put those 20; is that correct?

A (No audible response)

Q Where did you put the other 20? And I think you understand that I'm not -- it's not a literal number; it could be some other number, but where did you put the students who were beyond the capacity of the school?
accelerate planning, at least that's what I'm remembering I was thinking at the time. It also meant that -- oh, I guess I would try to be more creative in working with the development community and asking for more. You know, the law provided they had to give you a certain level, but you could also ask for more. But those were basically the rules, and what it did was to pare back the total eligibility for school districts in California, so it wasn't just the MTYRE districts.

Q   I understand that you've -- given that situation, you were already focusing ahead on the next school to try to house these kids, but where do you put them prior to building the next school? Where did you put them?

A   Well, remember when you'd asked me before about the tentative tract maps, and I had said that didn't exist under the old law but there was something similar?

Q   (No audible response)

A   If you had a lot of development that was happening, besides the cohort projection means of projecting enrollment, you could augment that with what was at the time, and probably still today, called a house count, where development was coming in and yet there were no children in the houses, so that if there

was a pad, if there was a slab, if there was a house being constructed and it was going up, you could say, you know, I've got these 500 homes that nobody's in yet and they're anywhere from pad to stucco, and you augment your eligibility. And I used that. And that was -- that was extremely useful.

So that helps you get to that next school. That helped you get to more students in the school that you were planning.

Q   So the kids who didn't yet exist helped you house the ones who were unhoused, because you had to say that the school that you were going to operate on multi-track -- because the school that you said was operating on multi-track really wasn't operating on multi-track?

A   And it really wasn't operating on multi-track. It was then that you -- you pared back your eligibility.

Q   Okay. And at the point that you were dealing with this situation at Moorpark, the one you've just described for me, was there debate within the district, with the superintendent and so on, if you were the superintendent, with other people who you worked with in the district, saying I'm having to jump through so many hoops, we'd be better off going on multi-track?

A   No.

MS. DAVIS: Vague and ambiguous.

BY MR. ELIASBERG:

Q   So there wasn't even any debate about it?

A   No. As I'd mentioned to you before, I brought to the board just the idea of studying multi-track, just to say let's even consider offering an alternative. Not so much to say, oh, we're going to get in line and go multi-track like some of the other districts are doing.

No, it's -- it never -- it never came to that, where I felt that we needed to shift our thinking. I think it was always important to keep options open and talk about options and alternatives and giving choices, and we got to some of those points on the positive side, I think, but no.

Q   Have you ever seen any research that attempts to look at the racial or ethnic composition of schools that are on multi-track compared to schools that are on traditional calendars?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: I don't know that I've seen any research. I mentioned to you the Times article that I read that I think had some information like that. I've certainly heard people like Marco Firebaugh talk about that, and I mentioned that before, but no, I don't remember any research.

BY MR. ELIASBERG:

Q   Assuming -- and I am asking you to make an assumption here as part of my question, but assuming what Mr. Firebaugh says is correct about the racial and ethnic composition of the multi-track schools compared to the traditional calendar schools, does that give you -- does that raise concerns for you as to the equitability of the allocation of State funding?

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

THE WITNESS: It does. And although I didn't have any research in front of me, as I said to you before, I believed that Marco believed, and I believe that Jack -- Marco Firebaugh and that Jackie Goldberg believed what they believed. And I believed that there were some issues relative to certain school districts, including the one we're sitting in right now.

So I thought, if there's a problem, let's propose a solution. And we'll see where it goes. But the COS program was part of that response. So yes, I think if there is information that says conditions are significantly different for children, we have to look at those and see what kind of remedies that we can come up with. And that's really what we tried to do.
BY MR. ELIASBERG:

Q. I want you to -- if you would shift to Page 9 in your report. And I'm going to ask you to look at -- what appears to be a full paragraph, but whatever, the first large block of text on the page there.

A. "There is no doubt."

Q. Yeah, it starts with, "There is no doubt." But shifting down -- if you would read at "Efforts over time" --

A. Where the little mark is on the page?

Q. Oh, yeah. Sure enough. I don't know whose mark that is.

A. Okay.

Q. But "Efforts over time" and also, the next sentence, too, which reads, "In other words, failure was a harbinger of success" --

A. Okay.

Q. -- "in ways that made and will make a measurable and extremely positive difference for California school children."

A. (Witness reviews documents.)

Okay.

Q. Okay. I want to be sure -- in the sentence that reads, "In other words, failure was the harbinger of success," what do you mean by "failure" in that sentence?

A. (Witness reviews documents.)

Well, we had a number of different failures, and -- I'm trying to think what was all in my mind there. But the failures that school districts were having, trying to get two-thirds vote, really was fairly consistent. You know, less than half, I think, over time were successful.

So the attempt to go -- to reduce the two-thirds vote to a 50 percent was something that began to take on some speed and some energy, and even some very conservative politicians became involved in that effort.

That failure, during a time when there was tremendous amount of need, and especially when political capital was expended from conservatives -- and I remember hearing from some of those -- is, I think, what I'm referencing there. And that things built up after that time.

There was also the failure of the '94 bond, which was something that we hadn't experienced before. And left a pipeline of funding that got longer until we got the March '96 bond. The March '96 bond was sort of an exercise in political will to behold, because the Legislature, which frequently takes a long time to get through things, like larger bond measures, acted, in a very short space of time, to get a ballot -- or to get an item on the March ballot for '96. And if I'm remembering correctly, that was the first time we had a March primary, and so the Legislature wasn't used to that.

So there was a lot of energy, political energy and energy on the part of others, including people like me, within the C.A.S.H. organization, who said, we have a need and began to have an impact. And the -- that March '96 bond was a bond that was historic; in that, there were places, like Orange County and other locations, that typically did not vote for bonds in -- you know, at all -- in essence, less than 50 percent of the people voted, and these only required 50 percent plus one.

But places that didn't support bonds before supported them. And so something happened there. There was something that -- some, you know, catalytic event that started to change people's minds. I remember in the C.A.S.H. organization during that time, we had focused -- I don't know how much money we had to spend on that campaign, but boy, we had to do it quickly, because it all happened so quickly.

Q. That's helpful.

BY MR. ELIASBERG:

MS. DAVIS: Vague and ambiguous.

THE WITNESS: The consequences were that we were maybe better said, failures, in the sense that it's the failure of a lot of districts to pass local bond measures?

A. And that it had been frustrating.

Q. And then you said combined with -- I believe you said combined with a large need.

A. Large need.

Q. What were the consequences of the failures of the passage of the local bond, the failure of the '94 bond to pass, and the existence of a large amount of need?

A. So is it correct that the failure you're --

Maybe better said, failures, in the sense that it's the failure of a lot of districts to pass local bond measures?

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<td>future and borrow against those fees to build the</td>
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<td>Sometimes districts would do what I did, lease</td>
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<td>And are you aware -- it sounds like you were</td>
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<td>MS. DAVIS: Calls for speculation.</td>
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<td>THE WITNESS: I'll have to think. Specific</td>
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<td>Well, I know some districts -- and Canejo was</td>
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<td>Canejo doing that. What I remember is people just being</td>
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by side. I believe they built another school. And they had a successful bond election, two-thirds vote bond.
So I don't know. I can't remember a lot of specifics except people were really busy.
Q Are there -- I think you said that, at least in general, high growth districts tend to have a lot of residential development and, therefore, they have access to some developers fees; is that correct?
A (No audible response)
Q Are you aware of districts that are high growth that don't actually get very much residential development?
MS. DAVIS: Calls for speculation.
BY MR. ELIASBERG:
Q An example being existing housing stock, but a lot more people are going into that existing housing stock.
A We actually had that happening in the core of the Moorpark area, a number of families living in one residence. And I know that that was also happening in other communities. And they -- they didn't have development fees.
Q So under those circumstances, you wouldn't have that tool of developers fees --
A You wouldn't.

---

Q -- to try to deal with the new housing population?
A No. But people were trying to come up with ideas; they didn't become law. Such as other kinds of taxes and even transfer taxes, what if a home is sold to somebody else and, gee, they have children. None of those ever really went very far.
Q When you talk about the school facility crisis in that sentence, how long, in your opinion, did that crisis last?
A Well, in the early '90s it lasted through Proposition 203, which was March '96, but there was tremendous amount of relief with the passage of that, because that was the biggest bond up to that time, and there was a -- as I've said several times, just historic support in places where it wasn't -- bonds weren't supported before. But it wasn't all done. There was still need, and the next two and a half, three years was pretty interesting, but it lasted up through Proposition 1A.
But as I was talking in here about this harbinger here, it was not only 203, but what happened with 1A. There were some political struggles during that time, said, we need another bond. There were certain things that were asked for to allow that bond to go through. There became another set of complications politically in California to get to that, to get to that bond, to get to what was -- what became SB 15.
Q And I don't -- I think your report's gone into those a lot. I don't -- is the primary one, in terms of the complications of the compromises that needed to be made, the effort to put some kind of cap on developers fees?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: I wouldn't -- I wouldn't refer to it in that way. I would say it differently. It was a way to control what, in some areas, was considered to be no cap on development fees. Because it wasn't statewide.
Q Are there -- I think you said that, at least in those areas of California. But that dynamic was really something that was a force, yes.
BY MR. ELIASBERG:
Q And was that dynamic around developers fees the key issue you were talking about the complications before you could get to Prop 1A enacted?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: Well, it was a key issue, yes.

40 (Pages 617 to 620)
THE WITNESS: Modernization, the allocation demand, I think, continued to grow. I think the pipeline continued to grow. I'd mentioned the Oakland litigation before. Item of litigation there was that there was a failure for Oakland to receive funding for several projects because two architects didn't move those projects. So they stayed in the pipeline. There were others.

So yes, modernization needs continued for some districts, because there wasn't -- wasn't enough money there.

BY MR. ELIASBERG:

Q And what are the consequences of waiting two, three, four years to get modernization funds from the State?

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

THE WITNESS: Well, I would have to speculate. I would say in -- in some districts, the consequences may not have been great at all, in terms of impact on the student population or the getting the job done of educating children. You know, the school that I mentioned in testimony -- probably not Tuesday, maybe it was Monday -- that we'd had funded was, I think, in good shape. I wanted to improve things there, including for technology, which we were able to do. So it meant we had to wait for that.

But I think the school was in good shape. It was an older school, built in '59 or -- opened in '60 maybe. I think other districts probably had the same kind of response. We have to wait. I would have to speculate that there may have been districts where it was a very difficult time for them. But I don't know if I could give you an example. I'd have to think about it.

BY MR. ELIASBERG:

Q I don't want to take all day, but if you could think about it for just a second, I'm curious if you can think of an example.

A Can't give you a specific. I just recall that there -- after 203 there was still a pipeline of modernization. And I really can't tell you how difficult that was for some districts as opposed to others. I don't know.

If districts did what I did, going to the older schools first and using the eligibility first and working through the others, maybe by that time a number had taken care of their more critical cases. I don't know.

Q Let me just -- the next paragraph, you talk --

you say, "By the early '90s California was in the middle of a recession."

A Uh-huh.

Q "Nonetheless, the next year brought yet another State bond to the ballot. In June 1994 the first in a long series of State school construction bonds was defeated." We don't need to talk about that history, because you've already talked about it.

A Okay.

Q I just want to see if I'm understanding you correctly. You talk about there being a recession, and in the next sentence or so later you said that the bond failed.

Do you think that the existence of the recession affected the passage of -- or the failure of that bond to pass?

A I think people believed that, yes. There were people that were kind of concerned that there was -- that the recessionary period was going to have an effect on the bond.

Q Did you have an opinion as to whether the recession had an effect?

A I worked with a number of business people during that time, including the development community, and it was difficult for them. And maybe going into it,
habit of going backwards. Just one sentence.

In the end of the paragraph we were talking about before, which talks about harbingers of success, the last sentence says, "This dramatic change has been achieved through the legally-proscribed political process, in which gains for education in this state occurred."

Do you see that?

Q What do you mean by the "legally-proscribed political process"?

A Getting to the voters and putting bond measures, State and local, and using the -- maybe a little bit more dramatic there than I have to be, but doing a number of things that are identified as options to create opportunities, and we were involved in doing a number of them there. And they were legally-proscribed political process, as opposed to simply just saying, okay, we're going to do one thing, and we'll do some other things locally trying to, you know, get business communities or get the business community and the others involved in supporting schools, that we focused attention on needs and a lack of resources and used the political process to get us there.

And I guess part of what I'm saying is the backdrop of what happened in the 1970s, where I think the taxpayers in California, no more and not out of my pocket, and it was an uphill battle. And maybe when it got to this point, if we were going up a steep slope, we got to a landing. We said, oh, man, we used everything we could to finally get here, and now we've had some successes.

Q So you -- I was just curious as to whether there was some illegally, non-proscribed --

A I knew you were thinking that.

Q -- I was trying to figure what was the opposite.

MR. ELIASBERG: You know, we've been going about an hour -- we don't need to take long breaks, but I think it's best for people to have bathroom breaks, just five minutes.

(Brief recess taken.)

BY MR. ELIASBERG:

Q Dr. Duffy, if I could refer you to the back of your report.

Don't get too excited; we're not going to skip all of the pages, but we are going to skip -- we are skipping some.

A I thought maybe you were coming to a conclusion.

Q We're moving. We're moving through.

But if you would look at the section that's entitled "K-University Bond Act Conference Report."

A Yes.

Q Are the numbers set forth here, to your understanding, an accurate reflection of the amounts that are actually provided for in the 2002 bond and what will be -- well, regardless of whether it passes or not, what's proposed for the 2004 bound?

A Are they accurate?

Q Yes.

A Yeah.

Q What I meant is -- it said here something about the conference report. I wanted to make sure I didn't think the numbers had changed or --

A No, the numbers that are here, I believe, are accurate for the '02, and then I believe they're accurate for 2004 as well.

Q And I'm really going to focus, I think, on perhaps the COS numbers, but primarily in the new construction/modernization numbers.

A Okay.

Q And really, on K-12 -- I'm not interested in higher education, except to the extent that we're going to need to subtract higher education from -- because I want to focus on K-12. So we can look at what the K-12 numbers are.

Q Can you explain to me how the estimate was made as to -- well, actually, let me start it here. Let's -- probably should keep this page dogeared, because we're going to have to sort of flip back and forth. But I want to look at your report itself.

A The K-University Bond Act --

Q Yeah.

A -- Conference Report page, keep that dogeared?

Q Yeah.

And let's go back to Page -- let's see. I want to make sure I'm on the right page here.

Not Page 10 -- Page 11.

A Okay.

Q The paragraph that begins, "It is important to note that."

A Hmm-hmm.

Q If you'd go down to the sentence that reads, "In addition, the total of the two bonds equal amounts of need demonstrated by State agencies and C.A.S.H., amounts supported by all education groups."

A Hmm-hmm.

Q Do you see that?

When you refer to the two bonds there, do you
mean specifically the 2002 and 2004 bond that's part of
AB 13?
A Yes.
Q And when you say the two bonds equal amounts of
need demonstrated by State agencies and C.A.S.H., how
did the State agencies demonstrate the amount of need
for new construction? By that I mean, what methodology
did they use to demonstrate the need?
A They utilized, as I recall, a report that was
given by Mr. Bruce Hancock to the joint committee on
school facilities. They utilized the demonstrated pupil
grant -- pupil grants projected by districts that
applied to the new construction program.
Q You're going to have to help me out -- break
that out. You said the demonstrated pupil grants
projected by districts that
apportioned into a project that had gone in for apportionment, then it was
included in the total amount that was projected for
future.
Q Beyond, you know, applications that have been
made or applications that are in the pipeline, did
you -- did Bruce -- did Mr. Hancock also rely -- to the
extent that you know -- on just population projections,
or was he only relying on district applications with
cohort projections in it?
MS. DAVIS: Calls for speculation, vague and
ambiguous.
THE WITNESS: What I'm remembering is that he
captured what -- he captured district pure eligibility,
you know, what did districts demonstrate that they had
need for that were not in a project that was remaining
unfunded that could be paid for through, you know,
the -- set aside in the bond that we were working
toward. But there was no other means. He didn't use
birth rates; he didn't use some other means, because the
State program doesn't rely on those.
Q So what I'm recalling is that he said what's
in-house, in terms of eligibility, that hasn't been
perfected into a project that has been given a zero
apportionment, and we'll take that number of projected
pupils, K-12, and we'll multiply them by a number that
includes both building costs and land costs that we
average.
BY MR. ELIASBERG:
Q Where does -- where is that number, or the
combination of the building and the land costs, that
number, obtained --
A Well, he'd be the one to tell you the detail of
where he came up with this, but in that elementary,
middle and high have different grant amounts, a number
of assumptions had to be made how many were in each of
the three groupings and let's try to come up with a
composite number. Let's also come up with an inflator
to that, thinking it was over a period of time of --
what was it going to be? You know, two years. Let's
also come up with a composite of what it was going to
cost for land and the development of that land.
So he did some kind of calculation there and
came up with a number that he multiplied by the pure
eligibility. And he presented that to the conference
committee on school facilities.
Q If it had been your task rather than Bruce
Hancock's to try to estimate the amount of need, would
you have used the same methodology, or would you have
approached it in a different way?
MS. DAVIS: Calls for speculation.
THE WITNESS: I don't know that there would be
another way that I could come up with numbers that I
would take to members of the Legislature, because what
was in that -- I think the genius of the approach was to
say, you have pupils in your school district and they're
in this number. As I went from place to place in the
Capitol, the question was, what about my district? And
I didn't even have to ask the question, because
districts were calling in and talking to their members.
And so what was compelling about that was to
identify that there is a real need. It's demonstrated
and documented. We may talk about how we come up with
this number, but let's try to use a reasonable number.
Our friends in the Legislature have -- there's
a lot of things they think about, but if you can
identify a district and say, you've applied for it, that
number is in this number and, yeah, land costs may be
cheaper in your district or they may be more expensive
in somebody else's district, but we think that this is a
reasonable way to do this.
That became more compelling, rather than
saying, by the way, let me just -- let me treat this in
such a way to talk about birth rates, which State
program never does anyway. It was more finite; it was
more real, although there was certainly, in Bruce's
approach to this, some estimates of future costs and
some assumptions made about land costs. I think -- I
think it was a good, fair way to do it.
BY MR. ELIASBERG:
Q Did the land -- well, let's start with the
construction costs and then look at the land costs.
Did the construction cost numbers that he
used -- understand he made some -- I guess inflation
adjustments or adjustments, saying we're going to
project this five years out, but did they start with the
basis the statutory per-student cost set forth in the Ed
Code and adjusted by the SAB under regulation?
A Yes. That's what I recall.
Q Is there information -- again, I appreciate
that you think that Mr. Hancock's approach was the right
one.
Is there information that's not currently
available, but if it were available would make you
think, if we had that information we could do this -- we
could come up with a better estimate than the one he
came up with?
MS. DAVIS: Calls for speculation, incomplete
hypothetical.
THE WITNESS: I don't know what that would be. I
don't know what that would be for that -- for that
number.
BY MR. ELIASBERG:
Q Okay. And are you aware of any flaws in the
methodology that Mr. Hancock used?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: The fact that he's human. Probably,
yes.
BY MR. ELIASBERG:
Q Well, let's put that one off to the side.
A No, I'm not aware of any flaws. What I am
aware of is that it had success in the job he had to do
and the job I had to do, and that -- in that, it was
something we could explain and was interpreted by the
policy makers to make some sense.
Q Referring back again just to the statement on
11, which says, "In addition, the total of the two bonds
equal the amount of need demonstrated by State
agencies."
Just so I'm clear, I understand that
Mr. Hancock did some estimation -- and I guess he would
have done it on behalf of OPSC or SAB; is that correct?
A Yes.
Q Are there other agencies involved in the
process?
A Well, I believe we talked about this the other
day. Maybe we didn't. Maybe I'm thinking we did. That
CDE and OPSC and us during this time frame were having a
lot of conversations. A lot of it was really focused on
what became the COS program, because we were looking at
numbers of kids. But I'm sure that he was having
discussions about other -- you know, the other students
who we're trying to focus in on. And he may have even
talked about DSA about demand levels; I don't know.
But we were talking -- C.A.S.H. was talking to
CDE during this time, and I know that Mr. Hancock was
talking to CDE during this time, just because of
discussions that we had.
Q. You just referred to a second ago to demand levels.
A. What did you mean by that?
Q. DSA -- demand levels on DSA?
A. Numbers of projects that were coming in. The three different agencies -- like, at this point in time when we're spending mod money here. We're trying to generate it. We talked to three different agencies on what's happening. DSA has something that we were relying upon, that's how much comes in every month to them for review or how much they are putting out every month. DSA-approved plans are basically the key to unlocking State funds under the new construction program. So that's an important thing to consider.
Q. Okay.
A. Doesn't always give you the clearest picture, but it gives you more of the picture. And sometimes you have to fill in the blanks.
Q. Now, I'm understanding that, at least in part, this -- the estimate of the need which ended up in the bond itself was based on demonstrated eligibility by districts; is that correct?
A. Yes.
Q. So this estimate doesn't include the amounts necessary to build schools -- for example, to build schools off multi-track if those schools are currently getting operational grants; isn't that correct?
A. Let me step back from your question and say something that may help me understand if this is what you're asking, and maybe I'm answering it by what I'm saying.
We were looking beyond the new construction needs. We were looking specifically at another set of factors, and that is, how many schools -- not school districts, but how many schools in California are overcrowded at a particular level. Let's say here's the cross bar, and how many schools are at that level or beyond.
We were looking at that at the same time, and that translated into the document we talked about before, how many schools are overcrowded, and if we -- if we unload those schools -- my term, not a term in law, I don't think -- but if we unload those schools so that they are now at a diminished level of overcrowding -- they're not as overcrowded, what's it going to cost to house these numbers of pupils.
That was inclusive of MTTYRE and inclusive of Concept 6, as we talked about the other day. So that the 1.7 billion and the 2.24 for the COS program were numbers that in total were looking at doing the unloading that I just talked about for schools in California.
L.A. Unified had a particular interest in that, because they saw after a while, when we were discussing it, that this was a program that would assist them. And so they began looking at it as to what does this do for us. And how much would we potentially use in the first bond or could we use from the first bond, could we access from the first bond or could we access from the second bond.
I don't know if I've answered your question, but it's -- there were two parts to trying to put this together. One was what's the demand level out there for growth, and if we're creating a new program to unload schools, those schools would have some level of growth as well -- or no, that's not a way to say that.
If there's -- if the district has some level of growth and they have these overcrowded schools, then what we were saying to them is, because these overcrowded schools are overcrowded, you've got to unhouse kids, let's give you a new program to use to access the housing of those unhoused kids that you need more time to plan for because you're in a -- not only a crowded campus, but you're in a crowded urban area and you need time to accumulate properties and assemble properties.

BY MR. ELIASBERG:
Q. I guess what's confusing me, though, is my understanding, if a district, with respect to a particular school, is operating that school on multi-track because they are overcrowded, there're too many kids in the attendance area go to that school if you don't operate on multi-track, but if they take the op. grants, those kids aren't unhoused.
A. You're right.
Q. And so that --
A. Oh, I understand your question now.
Q. -- how you're saying that the bond addresses -- the bond estimates look to unload those kids -- I thought you were saying that the bond looks to unload those kids who are unhoused, but isn't it true that kids who are in schools where they're in MTTYRE who are getting op. grants -- those kids aren't considered unhoused?
Q -- and unload all kids who are currently on MTYRE, regardless of whether they are technically unhoused because of the district's decision to accept op. grants or not?

A I don't know that the numbers are identical, but the numbers that I was discussing with the representatives from L.A. -- and we were making estimates of what it would take to allow them to begin to dismantle their programs. These numbers included those numbers.

Q Those numbers being what?

A The numbers that the representative from L.A. were using as -- when they said, you know, we have this kind of need, and basically the 1.7 or the 2.24 was a number that included their needs, based upon what they knew at that time.

Q Did it also include also districts in the state --

A Yes, it did. That's why I'm saying they were included on that number.

Q I think I'm almost there, but it's correct, isn't it, that the COS funds are not reserved for districts on MTYRE?

A No, they're not.

Q So if there are non-MTYRE districts that apply for COS funds and qualify them, wouldn't that mean that, assuming that every district said, we want to get off MTYRE, that then, in fact, there wouldn't be enough in the bond to deal with all the MTYRE schools and the schools that qualify that are not MTYRE that also qualify for COS?

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

THE WITNESS: Well, what you're asking gets into the complexities of what we were discussing at the time in estimates of numbers and all, and if a district is overcrowded by 30 kids, based upon the model, will they know if I can answer your question completely. We looked at L.A. and we looked at other districts that were overcrowded. Some of them were on MTYRE. Some of them -- one in particular is on MTYRE and double session.

BY MR. ELIASBERG:

Q Is that Anaheim?

A Anaheim City. Which is really the poster child for this program.

And although, certainly, L.A. was at the table and Anaheim City wasn't, I kept Anaheim City in my head, whatever the number was that he came to. And so we were looking at that time, I think, at just pure -- the pure overload at the 20 percent level or higher.

So in answering your question -- I guess it's sort of a foggy answer, but I'm not sure what he did.

But we did do -- not necessarily scientific calculations, but we did do some estimates. And those estimates were something that, as we moved along with the numbers that are back here on the dogeared page, were not inconsistent.

In essence, we thought we were providing enough money under the COS program to allow districts -- I don't know if this was conscious effort on the part of a whole lot of other people, but to allow districts that option, to try to retreat from op. grants, if they chose, to believing, if they unload, the op. grants are going to be gone, you know, at some point in time.

BY MR. ELIASBERG:

Q So just so I'm clear, it's your understanding that this -- that the amount in this bond and the amount in the 2004 bond would be sufficient to not only meet the growth needs -- I'm sorry, to satisfy the projected number of unhoused students over the next five years --

A That were in-house during that period of time, which was about February of 2002, therabouts.

A You're right. You're right. If you're getting the op. grants, you aren't considered to be unhoused.

Q Do you know if Mr. Hancock -- whether it was in this process or separately -- or actually, anybody in the state -- has made an effort to, regardless of whether the kids are -- whether the school districts are getting op. grants for these kids or not, said how much it would cost to unload the schools that are currently on MTYRE and get them onto traditional calendars?

MS. DAVIS: Calls for speculation.

THE WITNESS: Well, he may very well have looked at that by himself. I remember asking for numbers -- this is even before we got into creating of the document that -- really, I didn't create; it was really CDE, I believe.

But even before that I began asking questions, not including or not separating kids out who were maybe considered to be housed because of op. grants, but how many students are on MTYRE, how many are on Concept 6 in L.A. I remember asking that question. Can we come up with a number. And then projecting out a number to say how do we -- how do we address that.

And how much would it cost if we even used the numbers that are the standard numbers, not the bigger numbers that Mr. Hancock came to with the 12,000 or numbers that Mr. Hancock came to with the 12,000 or
because it -- you know, how do you operate a school district that way. You know, and I probably wasn't aware that they were that way until we really started discussing it with L.A. and I started looking around.

But it wasn't -- and I don't think we could have sold it across the street as simply being an MTYRE buy-out program. But MTYRE was a big part of what was embedded in this. Overcrowded schools elsewhere needing to have an option, if they chose, with something that was clearly in all the different analyses that were done.

But in the end the numbers that we came to -- and we had to satisfy some key members of that committee. Remember, it's a six-member committee. And one of the members was somebody that really didn't like Concept 6 and didn't like MTYRE and is very much an advocate for L.A. schools.

The numbers included allowing L.A. to begin to back out of programs, based upon the L.A. representatives, not simply me, because they were sitting on the other side of the table, just as you are. And other districts, whether they're on MTYRE or not.

But was it dollar for dollar? No, there were a lot of estimates that were there.

Q   One word you used, though -- I think you said that the numbers weren't enough to allow L.A. to begin to back off some programs. I just --

A   To begin to dismantle their Concept 6 programs and other MTYRE programs or overcrowded schools that they chose to focus upon.

Q   Correct me if I'm wrong, but the way I hear begin to do that would mean that they won't be able to do it completely through the new bond.

Am I missing something?

A   No, that's correct.

Q   And why -- is it because there's not enough money for them to do the whole thing, to dismantle all of those MTYRE programs?

A   Well, the term that I used frequently with them is the longest journey begins with the first step. So let's establish the program. Let's allow L.A. and others to get involved in the program -- this can't be an all-L.A. program. It's got to be inclusive of others.

Can you -- do you have the capacity to begin to dismantle all these programs now? No. Okay, then what we do is we'll build in more in the next bond. And that was a real live conversation many times.

Q   Just referring you back -- I think you said that Anaheim City was operating both double session --

i.e., morning sessions and afternoon sessions -- and MTYRE. And I believe you said how can you operate schools like that.

What did you mean by that?

A   Well, what I meant was, how do you balance all of those resources of teachers and all that. It was sort of a recognition that this is a very difficult thing to do. And I used that argument for people who are across the street in the Capitol building to say, when -- there was really clearly a question, are you trying to sell ideas just for L.A.? No, we're here to make sure that we address overcrowded schools. Because that apparently is something that exists in California.

And by the way, let me tell you about this district here.

And the question with me -- well, how do you operate a school that way? Well, let's go down to Anaheim together, and we can see it. I haven't been there yet. I just -- I believe that it's true. I've, you know, heard the stories. But it's happening. So the -- you know, the -- it's not a hypothetical; it's a reality. But the question, was how do you operate schools that way?

Q   Seems like a good question to me.

So I'm assuming that when you talked about C.A.S.H. and the State agencies agreeing on the amount that the need demonstrated, C.A.S.H. used the same methodology or similar methodology to the Hancock methodology that you were talking about?

A   Well, we converged. We converged. There was agreement at a particular point, and we agreed.

Q   And you referred before to the doc. Do you have a copy of that document?

A   I don't know if I have a copy of the document or not. And it went through a number of different permutations. But there was a document that went to the implementation committee and then, I believe, went to the State Allocation Board probably August or September of last year. So I think you could probably obtain it.

Q   Okay.

A   Somebody could obtain it through that agency.

I don't know that I have a copy of the final, final document.

Q   Did you use that document in writing this report?

A   No. What I used was my memory.

Q   Are you aware of any effort, formal or even informal, to try to determine how many districts in California that are on MTYRE -- have schools on MTYRE
Q  Whether the number that Mr. Hancock used was a
couple hundred thousand dollars different or even a
hundred dollars different one way or the other.
A  Do you know how, at least in the estimate
Mr. Hancock did, the construction cost per student is
arrived at?

MS. DAVIS:  Objections.
THE WITNESS:  It's -- this is really general, but
the statutory amounts you talked about a little while
ago, I believe he took -- he took some average or some
figure of an estimate of land cost and land development
cost.  And I think he may have added in some of the
other add-ons that you can receive out of the State
program, maybe, that had been utilized in other State
programs, such as small site size, you know, geographic
and all those to put in this.

But I remember specifically hearing him talk
about the student grant amount and land -- and land
development costs.

BY MR. ELIASBERG:
Q  Okay.  Have you ever heard complaints from
members of C.A.S.H. that the State's estimates of
construction costs per student are unrealistically low?
A  I've heard it from architects, from school
district people, from facility planners.
Q  Have you heard it from -- and I'm not talking
about the guy on the street but even -- not necessarily
limiting it to C.A.S.H. members.
A  Have you heard it from other people who you
consider to be knowledgeable about school facilities in
California?
Q  Yes, I have.
A  Individual names of people?
Q  If you can think of them, sure.  If all you
know is, I remember it was a planner or it was an
architect, that's fine too.
A  I've heard it from architects, from
construction managers. I’ve heard it from school
district representatives, superintendents of districts,
assistant superintendents, planners. I’ve heard it
across the board.
Q Has C.A.S.H. ever done any investigation or
research or put out a paper looking at the question of
whether the State’s construction costs or the State
grant amounts are --
A The former but not the latter. We've looked at
it.
Q Okay. And do you know if there’s even been
any -- well, who looked at it when you say "we've"
looked at it?
A I asked a group of people to come together
to -- we call it the grant adequacy committee -- in
order to look at it squarely and without any political
emphasis, without any presuppositions.
Q And who's on the grant adequacy committee?
A Bruce Hancock -- I don't know if I can remember
them all, but I'll try to remember them all.
Q All that you can remember.
A Jim Bush, Dave Zian.
Q How do you spell Zian?
A Z-i-a-n.
Dennis Boydston.
Q How do you spell Boydston? I think I know
but --
A B-o-y-d-s-t-o-n, I think.
Q Anyone else?
A Hmm-hmm. I'm trying to think of them. I got
the pictures of their faces, but I kind of got to walk
around the room.
Q I can bring a mug book in.
A Say it again?
Q I can bring in some mug shots.
A Mug shots.
Assemble the -- what’s the phrase?
Q All the usual suspects?
A Yeah, the usual suspects.
I said Dennis Boydston, right?
Q You did. You --
A There's also --
Q -- said Hancock, Bush, Zian, Boydston.
A There's also Dennis Dunston. Arturo Tobata.
Q How do you spell the last name?
A T-o-b-a-t-a.
Joanne Koplin, K-o-p-l-i-n, Paul Holmes, Alex
Murdoch. There's a couple of others. That's probably
sufficient for you, but there are --
Q Let's do it this way. If somebody else pops in
your head, you can --
A While I'm talking, sure. Go ahead.
Q But I don't think we -- I know you just spent
ten minutes racking your brain.
I know who Mr. Hancock and Mr. Bush are.
Who's Mr. Zian?
A Mr. Zian is a manager of fiscal in OPSC.
Q And Mr. Boydston?
A He's also a senior manager in OPSC.
Q Okay. Mr. Dunston?
A An architect.
Q Mr. Tobata?
A He's a construction manager.
Q Ms. Koplin?
A Architect.
Q Mr. Holmes, I think I know.
A Yes.
Q Of Murdoch, Walrath & Holmes?
A Yes.
Q And I assume Alex Murdoch is the same.
Who selected this group to do the study?
A Me.
Q And when did you put the committee together?
A About November of last year.
Q Has that group reached any conclusions?
see, you know, is there -- are we all looking at this in
the same way.

And clearly, everybody wasn't looking at it in
the same way. So we tried to create a way of looking at
it together. And in doing that, having an agreement
that what we were going to do is look at this purely and
accurate, and to try to do, within the amount of time and energy and
all that we had over a few months, to do research on
this. Create a survey document, and to try to create it
in such a way as to mine the people that were
responsible for these projects' memories and data and
facts and all and tell us some basic things, such as did
you use the State's educational specifications,
recommendation brought forth by Mr. Bush that we
included in the survey document.

If you didn't, did you leave something off
because you didn't have enough money. Did you add
something but you added something and it cost you more.
Or you've got the basics there, but you had to go beyond
your State amount and the matching amount, so that then,
instead of 50-50, it was 50-55 or 50-60 on the local
side of it.

So we put together a survey document, sent it out to -- and these are all under the school facility
program, which is the new program, not the old program.

All projects that were basically closed out, so that
they -- we had -- we were comparing --
Q Actual data.
A Actual data that was at the end of the project,
and our next step is -- it was not all easy getting all
those things back, and we didn't get them all back. But
our next step is to bring everybody together, say, here
it is, let's go back around as to where we were when we
began, where we came to. That's basically happening
now. I don't have a date for the next meeting, but
it'll be something we'll try to do this summer.

Q You've gotten good at answering the next
question I have before I ask it, but let me ask you
this.
Have any -- have the survey documents come in
yet?
A We have some of them back.
Q Even roughly, do you have a sense of when
you'd like to have this group get back together, look
through the information, try to put it together
into some kind of a final position/conclusion?
A Well, between now and the end of session. And
you know, I had a very aggressive calendar before. I
hesitate to tell you what that was, because it was, I
guess, very optimistic. But by the end of session. So

that, in fact, there is something that is yielded
here, that we can agree on it.
And really, this was something -- because I
asked for State agency folks here to be involved -- that
we want to be pure about this. If we come up with
nothing, then we're not doing anything about it. But if
we come up with something that we think has merit to it,
then we can both go across the street -- that is, the
State agencies, like Mr. Hancock and Mr. Bush or others,
plus me -- and we can say, we agree on this number. We
need to increase the grant.

But getting to this, working with this group of
diverse people and diverse viewpoints, we learned a few
things, and one of them is everybody has to take the
State grant amount and understand that all the pieces,
except for land development and land costs, are in that
grant amount.

Q I'm sorry, I don't understand your last point.
Not everybody takes the State grant amount -- not
everyone understood that all the pieces are in the State
grant amount.

What's that mean?
A The perception that every -- let me state it
this way. There's a flat amount per student. And
remember how we talked about the 55 square feet times

the number of children? Now it's not square feet; it's
dollar amounts.

But in those dollar amounts are the cost for
the building, the cost for the general site, which are
the trees and the grass and the sidewalk, the cost for
the furniture and equipment, the cost for the architect,
the cost for the inspector. If you have a construction
manager, the cost for the construction manager, the cost
for testing and inspection. Things that, under the old
program, you broke out separately from the building
cost.

So now here's this totality of dollars, but for
every dollar there, you have to separate how much is
going to go for each of those. And districts have to be
savvy to understand that they have to budget and plan
for them.

Q Okay. If the conclusion -- well, let me ask a
bit of foundational question.
I assume, since you picked these people, that
you believed that they were -- had the sufficient
expertise to come to an accurate conclusion on this
question; is that correct?
A Yes.
Q If this group were to come back -- and I'm
doing a hypothetical here. I understand that they
haven't reached any conclusion whatsoever, and it sounds
like your mind is very open.

But if this group were to come back and say, in
sum and substance, these State grant amounts are
significantly too low, would that affect your opinion as
to whether the 202 and 204 bond amounts are actually
sufficient to meet the need that's out there?

MS. DAVIS: Incomplete hypothetical, calls for
speculation.

THE WITNESS: Well, anticipating your question
before you asked it, I guess --

BY MR. ELIASBERG:

Q I'll just go home. You can just say, he's
going to say this next, I'm going to answer.
A I've already been there, and -- yeah, they
may -- you know, using the hypothetical, they may be
insufficient.

What do we do about that? Well, one of the
thoughts in my mind is, I walk across the street and I
begin doing what I do. And say we can make a change in
the law, and since we've gauged these other two bonds,
maybe we can't make the change to be effective in the
204 bond, but we can with the 206 bond. So now we know,
when districts are complaining, why, and let's fix that
with the '06 bond.

And districts have hopefully been able to make
things up and -- through local bonds, other means,
careful managing. But I'm glad we've done what we've
done, and I'm anxious to get to the end.

Q Am I correct in understanding, though, that a
district that gets State funding to pay for new
construction under -- I guess it's the financial
hardship program -- would not be able to supplement with
other sources in order to build their new school?
A Yes.
Q So they would have to build the school on the
State grant amounts and nothing more?
A Correct.
Q Are you aware of districts like -- Elk Grove
and San Juan Capistrano come to mind -- that, when they
build new schools, substantially supplement the State
grant amounts with money from other sources, such as
developer fees or other sources?
A I'm not aware. I know that in -- I'm not aware
to any supplementation. I'm aware that Capistrano works
closely with developers, as I did, and there may be
something that supplemented there.
I do know that, in the question of the grant
amounts that we were just talking about, just in
querying some districts on my own when we began this
study -- and really, it wasn't simply this study; it was
also something that was happening with the State
Allocation Board that caused me to want to satisfy my
curiosity.

I talked to Elk Grove, and what I found from
Elk Grove is that they carefully monitor how many grants
they ask for, because they have so much demand. There's
so much need, and they have to plan for so much. There
was a policy the State Allocation Board had in place
that allowed districts to use more grants than the
number of children they were going to house at a school
site for planning. And Elk Grove told me that they have
to be very -- they had to be very careful about any use
of additional grants -- and this was permissible; it's
no longer permissible, except in very limited
circumstances. But they said we have to be very
careful, because we've got other schools we have to
build.

So I -- the experience I have through that --
at least that couple of conversations tells me that
they -- they may not have been supplementing. So I
don't know.
Q So you're -- and I appreciate your letting me
know that that might give you an indication, but you
don't know for certain one way or the other, do you, as

By the way, I'm glad we've done what we've
careful managing. But I'm glad we've done what we've
done, and I'm anxious to get to the end.

Q And I've always been there, and -- yeah, they
may -- you know, using the hypothetical, they may be
insufficient.

What do we do about that? Well, one of the
thoughts in my mind is, I walk across the street and I
begin doing what I do. And say we can make a change in
the law, and since we've gauged these other two bonds,
maybe we can't make the change to be effective in the
204 bond, but we can with the 206 bond. So now we know,
when districts are complaining, why, and let's fix that
with the '06 bond.

And districts have hopefully been able to make
things up and -- through local bonds, other means,
careful managing. But I'm glad we've done what we've
done, and I'm anxious to get to the end.

Q Am I correct in understanding, though, that a
district that gets State funding to pay for new
construction under -- I guess it's the financial
hardship program -- would not be able to supplement with
other sources in order to build their new school?
A Yes.
Q So they would have to build the school on the
State grant amounts and nothing more?
A Correct.
Q Are you aware of districts like -- Elk Grove
and San Juan Capistrano come to mind -- that, when they
build new schools, substantially supplement the State
grant amounts with money from other sources, such as
developer fees or other sources?
A I'm not aware. I know that in -- I'm not aware
to any supplementation. I'm aware that Capistrano works
closely with developers, as I did, and there may be
something that supplemented there.
I do know that, in the question of the grant
amounts that we were just talking about, just in
querying some districts on my own when we began this
study -- and really, it wasn't simply this study; it was
also something that was happening with the State
Allocation Board that caused me to want to satisfy my
curiosity.

I talked to Elk Grove, and what I found from
Elk Grove is that they carefully monitor how many grants
they ask for, because they have so much demand. There's
so much need, and they have to plan for so much. There
was a policy the State Allocation Board had in place
that allowed districts to use more grants than the
number of children they were going to house at a school
site for planning. And Elk Grove told me that they have
to be very -- they had to be very careful about any use
of additional grants -- and this was permissible; it's
no longer permissible, except in very limited
circumstances. But they said we have to be very
careful, because we've got other schools we have to
build.

So I -- the experience I have through that --
at least that couple of conversations tells me that
they -- they may not have been supplementing. So I
don't know.
Q So you're -- and I appreciate your letting me
know that that might give you an indication, but you
don't know for certain one way or the other, do you, as

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maybe we can't make the change to be effective in the
204 bond, but we can with the 206 bond. So now we know,
when districts are complaining, why, and let's fix that
with the '06 bond.
speculation.

THE WITNESS: Well, that question's been asked. And that's why I asked the question of Elk Grove.

There are other responses to it, including response that the district wants to put something more into the project or that the district wants to have what are known as project savings, that if it has Project 1, 2 and 3, that it has savings from three projects that it then uses to build -- get an additional project, which is the concern of a number of State officials who said, we don't want to do that anymore.

BY MR. ELIASBERG:

Q Help me out for a second. I don't understand how using more grants than you actually are going to house students in school would yield project savings.

A Under the old program, the lease-purchase program, if you had eligibility for, let's say, a project that was a million dollar project and you bid the project and it came in at $900,000, the State would only give you $900,000.

Under this program, if your grant amount is a million dollars and your bid on the project comes in at $900,000, you get to keep a hundred thousand dollars.

You get to keep that difference. So that if a district asked for additional grants -- it had asked for a million one, some of the State's fears were that they were having additional savings that had then saved for a project that was not a State-funded -- that was a State-funded project but not an approved project.

Q I completely understand.

A Yes.

Q Have you ever heard from members of C.A.S.H. or other people in the facilities community whom you consider knowledgeable say that State grants for modernization just aren't enough to do the job, in sum and substance?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: Yes.

BY MR. ELIASBERG:

Q Do you remember who -- however many people it was, you remember saying something like that?

A Fewer than had talked about new construction, and I can't even give you an occupation. I just -- I've heard it, that it's been said, but fewer than new construction.

Q Do you have any opinion as to whether the people making that statement are correct or not?

MS. DAVIS: Calls for speculation.

THE WITNESS: What can I tell you is that the new construction program today is funded as a percentage of the funding -- I'm sorry, the modernization program is a percentage of the new construction amount. There is some relationship there, whether it's when it gets concentrated into a project, if it shows that it's very low; I don't have anything -- any basis to make a judgment upon.

But I have been asked, well, when you finish this new construction adequacy review, can you now then move on and do a modernization review?

And I said, well, we may end up getting to that, but first things first. I want to take care of this new construction amount first, because it's really been the larger question.

BY MR. ELIASBERG:

Q Okay. And then just to close the loop, because previously talked about how the numbers were arrived at, and I think I'm pretty much done with that, but I just want to ask you quickly -- you say that the two bonds equal amount of need demonstrated by State agencies and C.A.S.H., amounts supported by all education groups.

What do you mean by "supported by all education groups"?

A CSBA, CASBO, ACSA all supported these numbers. CTA also supported the numbers. They actually -- I don't know if they were actually in the conference committee hearings, but all the education groups were in support of this, were delighted with the outcome of what the committee put forth. So nobody said, this is wrong.

Q Do you know if UTLA took a position?

A No, I don't.

Q And when you say, "supported these numbers," do you mean to say that they said -- they supported the actual size of the bond?

A Yes.
2004, subtracting out higher ed, but just focusing on K-12, is 21.4 billion?
A That's correct.
Q And it appears from the -- am I correct that it appears from this document that the groups who are on this letterhead, CTA, CSBA, ACSA, Cal SSD -- I'm not sure who that is -- CASBO, CFT, CSEA, LAUSD, MALDEF, PTA, and CSIU actually supported a $24 billion bond rather than a 21.4 billion bond?
A 24 billion for K-12.
Q Thank you, yes.
A Yes, that's what this document says.
Q Had you seen this document before?
A I don't recall the document, no.
Q I'm just curious, does this document in any way change your statement in your report that the amounts -- which I assume meant the amounts that are in the bond -- that are in the current bond, the 21.4 for "K" through 12, were supported by all the education groups?
A No, it doesn't change what I wrote there.

This was in the period of time, actually, the very final few days of the legislative session of 2001. And there was a flurry of activities. There had been a couple of meetings of the facilities conference committee and, of course, differing numbers were being used.

We were anxious to move forward with a March bond, and numbers were coming from different people -- and I can't even tell you what those numbers actually were at the time -- but it wasn't going to happen. And things were not really set to have a decision being made, either by the conference committee or even by the governor, relative to what the conference committee were offering, and the others.

What we did between this time and when the Legislature came back into session -- because they ended their session shortly after this date -- was to do a lot of work in refining, and a lot of our discussions this afternoon about MTYRE, Concept 6 and others, where we began to try to narrow the -- I guess the -- not narrow, but try to get closer to numbers.

And I think the numbers that are reflected here, as opposed to the numbers reflected here -- and there's a difference, although I think they're still close, when you consider the totality and the enormity of the need and the estimates of -- estimated amounts of need, broken down as they are. That this was -- what's on this page in the report that I wrote, the K-University Bond Act Conference Report, is something that had backup to it.

It had -- and certainly, a number of people could tease it apart and say, you didn't consider this or why didn't you consider that. But instead of somebody saying, oh, we have a need and it's this need, there was really a deliberate attempt to demonstrate the need. As we were discussing earlier, Mr. Hancock's presentation before the conference committee, some of our assessment of how do we deal with dismantling Concept 6 and MTYRE if districts are anxious to do that.

So when we got here, they were -- people from these organizations were not complaining. People on the -- you know, on this list were not speaking against this. CTA had come up with a $40 billion number, and I heard that number several different times. I don't know from whence the number came. But we were able to build the case for this amount.

And what I said to various groups when I talked about this before the governor signed it and after the governor signed it was that it was the first time that I had seen the Legislature take what we offered as actual need and not discount it, where whatever bond it was -- could have been '90; could have been '92. We can't afford to go over a billion dollars because we can't get that through the Legislature or we can't get it to the public.
None of that happened here. What happened was actually Dede Alpert and others, including Jackie Goldberg and then including the governor's office, people from finance, willing to increase the -- increase the numbers. And that actually happened here. So in meetings that we had with members of the Senate and the Assembly, we said it's -- there's not enough to make all of this go. We need more money for COS and we need more money for -- you know, for taking care of the backlog, the pipeline projects. And when the pencils and the napkins were -- the actual estimating documents were brought out, we actually increased the numbers.

Q I believe that you said that you -- CTA had a $40 billion number, but you didn't know from whence that number came.

A Did you ever ask them what was the analysis that -- what analysis, if any, they had that supported that $40 billion number?

Q A No, I didn't.

A Q Did you ever speak to the groups that are on this list here -- that are on the side of Duffy 4 and ask them what the basis of their analysis, if any, was for their request for a $24 billion K-12 bond?

Q A No. I talked -- I would talk to CSBA, ACSA, I through the early to mid '90s was something that had an impact on political decision making and bond decision making. So yes.

Q Are you aware of -- just shift gears for a minute.

A Yes.

Q Are you aware of any legislation that's currently pending that attempts to codify proposals that are embodied -- and I don't want to narrow it just to the finance and facilities piece, but any --

A Master plan?

Q -- parts of the master plan, yes. Broadly, let's do the whole master plan.

Q Yeah. Not this, not the recommendations from the finance and facilities folks, except for one. And that's the 55 percent for the parcel tax, which is -- I think it's SCA 4. Hasn't -- it's not going to happen this next go-round. It's gone for this session, but it was -- it was an Assembly Constitutional amendment to bring about the 55 percent parcel tax.

Q Are you aware of any processes in place to take the recommendations or some of the recommendations that are in this report -- and let's still do it broadly, both finance and facilities first, and then I'll narrow it to facilities -- to take any pieces of any of the recommendations that are here and turn them into legislation, laws, if enacted?

A Process? Systematic?

Q I mean in the sense of -- has Dede Alpert said to you, Tom, I'm carrying a bill --

Q A process? Systematic?

Q Yes. She has.

Q -- but it's going to be next term, and that's when I'm going to deal with finance and facilities?

A No, she really -- and I think I even identify this in the report, that she basically said at the C.A.S.H. conference, this is a horrible time to try to implement a master plan because, you know, you don't know how things -- how bad things really are going to be, but we have to begin. We have to begin sometime.

Q So she -- she authored a bill that did a couple of things, including, on the governance side of it, changed the role and responsibilities of the State Superintendent of Public Instruction. So she actually did that. I can't tell you the bill number but -- maybe I can. Maybe it's SB -- SB 14. I'm not sure. But she authored that. I don't think it's going anywhere, but she did move forward with that.

A The universal preschool ideas -- and it's not Dede; it's another author -- universal preschool idea that came out of the master plan, I know, was in a piece of legislation. It's not going to move, but somebody
did try that. I don't know that there's a systematic
effort of, gee, you're Dede, and you get three concepts,
and I'm -- you know, I'm somebody else, and I get four,
but there has been a resolve to try to move forward with
some of this, yes.
Q   Okay. The -- I gather that some of the pieces
of that might have fairly large fiscal impacts. It
sounds to me like changing the responsibilities of the
superintendent, reallocating some of those to maybe the
governor's office, whatever is the exact bill -- it
doesn't sound like that's a bill that would have major
governmental consequences.

Am I correct in that assumption?
A   Well, I would agree, other than -- are you
going to hire somebody to take care of these other
responsibilities that's going to be under the governor's
office, and does the secretary then have a -- you know,
we create a second CDE under the Secretary of Education
as opposed to the State superintendent. Or do you shift
people over there? I guess maybe that's another one.
So no, I don't think it's one of those big
governmental fiscal items. Universal preschool would be a big fiscal
item.
Q   Is it discouraging to you that even an item
that doesn't appear to have a major fiscal impact is not
moving and doesn't appear to be likely to move?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: I'm not easily discouraged. No,
it's not. Especially with what they're dealing with
today. No. It's sometimes difficult to focus on things
when you -- well, does this really -- is this a policy
that isn't -- it's absolutely necessary we deal with
today. So no, I don't -- I don't think so. I'd like to
see a focus on some of the work that's been done there.
Besides the work I was involved in, I think there were
some other -- other good work.

BY MR. ELIASBERG:
Q   And I think I failed to close the loop with
your specific piece of this.

Are you aware of any -- I think you -- well,
let me ask you this. If I'm repeating myself, I'm
sorry, but are you aware of any pending legislation with
respect to the facility pieces of this or -- some or all
of the recommendations in the facilities piece of that
document?
A   Facilities piece of the document. No.
Q   Okay. Are you aware of -- has anyone -- any
legislator expressed to you, in sum or substance, Tom,
I'm putting together a bill and I've got a plan to put
it on the calendar at some point in the future?

A Other than Dede Alpert, no. And she wasn't as
specific as your question.
Q   Okay. So am I correct, in that, she said, I'm
going to try to get some master plan legislation up
there, but she didn't tell you whether it was going to
include the facilities recommendations or not?
A   No. She -- she was talking to the C.A.S.H.
group, and it was at the annual this past February and
said, we need to begin this session, notwithstanding the
fact we have all this -- we need to begin this
session -- and I don't know what all was in her mind,
but she believes that before she is termed out, my sense
of her belief is that she would like to take some of all
of this -- some parts of all the pieces of the master
plan and try to make sure that somebody's carrying some
portion of it. She believes in it. I've been with her
when we've talked to folks in San Diego and some other
locations, and she's -- she's passionate about it.
Q   What's your understanding of when she's termed
out?
A   She's got two more -- two more years after this
one, I think.
Q   And I think we talked quite a bit about this.
My understanding, that you are enthusiastic or
supportive of the AB -- the standards and the AB 1200
us, that people said, oh, yeah, there's a master plan
coming together. We've got a group that's saying, we've
got to focus on a number of things.
Jackie being who Jackie is, the accountability
parts that you just mentioned, I remember at one
conference -- committee meeting specifically identifying
that what we were proposing, that there -- we
need a whole lot of money here but that we had some
accountability pieces we want to put in place. And
although I didn't see her through the corner of my eye,
somebody else said to me Jackie was nodding her head up
down like crazy, like, yeah, we need that.
So I think that the master plan began with this
big bond.
Q And is the -- and does your statement that
there's a need for the bond relate to your previous
statement that you don't want to impose standards and
accountability on people who don't have the resources to
meet them?
A Yes, that was part of it. Thank you for
connecting those two. That was part of it.
Q Okay. If you would turn to Page 13 on your --
A Report?
Q Yeah. Report.
And if you would look at the heading, and then
there's the first full paragraph, and I really want to
look at the text of the second paragraph.
And I'm going to focus on the sentence that
begins, "The vast majority of school districts in
California are well managed by caring superintendents
and governed responsibly by elected boards."
A Yes.
Q Do you see that?
A Yes.
Q What do you mean by well managed?
A That they pay attention to employee issues,
hirings and guiding and, if necessary, disciplining
or -- although it's much more difficult to do than in
the public sector, maybe terminating employment, that
they focus on taking those employees as resources and
try to put together programs, educational programs, and
try and give resources, although they may think that
they're not sufficient to have those programs run, be
they educational programs or maintenance programs or
food service programs, that with the tremendous demand
for schools to pay attention to so many things that
really aren't educationally related but have to do with
caring for pupils and even employees and State law
changing every year, because it does with new demands,
that they try to keep up with that.

And I guess, as I go on to say, that media
counts, kind of give you a sense that --
Q Well, let me stop, because I haven't asked you
a question about that --
A Okay.
Q -- but I just --
A Okay.
Q -- keep it focused on what does well managed
mean.
A Okay.
Q Can I narrow that? What's -- you've given me
a broad definition --
A Yes.
Q -- to include personnel and a variety of other
things.
A Yes.
Q What are -- what, to your mind, is the
definition of good management with respect to school
facilities?
A Recognizing that facilities -- and grounds
being a big part of them. Facilities are a resource,
and they are a very large investment, although
they may have been made a long time ago, and that people
need to be vigilant about trying to keep that resource
moving -- not moving, keep that resource -- I guess as a
viable resource.
That notwithstanding the difficulty that I've
described, that people do try to maintain facilities,
and there are some people that are very, very proud of
what they do. And I really like maintenance people.
Very comfortable with being around people that like to
make sure that they go out and make sure that
everything's okay in school buildings, and I think that
there are a lot of those.
I think there's more expertise in the
management of schools -- in school districts today in
planning for and achieving the construction of new
schools, with the adding of buildings to additional
campuses, and I don't just mean relocatable buildings.
There's been a lot -- you know, we deal
with -- or I deal with a couple of decades here of
struggles with developer fees, but I think school
districts have done a good job of making sure that they
could justify the taking of fees. In 1986, '87, '88
there was a good deal of case law, because developers
said, no, you know, we don't owe you these dollars. And
districts defended and said, yeah, you do. And they
continued to do that and use those dollars, I think,
effectively.
You have to be multi-tasked to be able to manage a school district.

Q: What do you mean by that?

A: Maybe it's a poor term. You have to be capable of multi-tasking. You have to have the ability to conceptualize and act on school facility needs and then on personnel needs, you know, as a superintendent or assistant superintendent.

You have to think about people, have students, materials, risk, liability, and school facilities are only a part of that but a big part of that. So I think I've seen a growth -- the C.A.S.H. organization represents this -- a growth in the capacity of people in schools to deal with school facility issues.

Q: You talked about the complexity -- or I think that was the -- or expertise in planning new construction.

THE WITNESS: Yes, there is. There is. You know, you had asked me about State standards the other day, and I started talking to you about CASBO and you appreciated my comment, but I wasn't being terribly responsive, I guess, to your question, or at least going beyond.

There are people who work in that organization, work in the C.A.S.H. maintenance network, who talked about specific ways about going about maintaining buildings. I can't tell you all the things that they do, but they are -- it's not just that you pull somebody in off the street and say, maintain the facility. You know, there's -- there are people that are very proud of what they do and being able to -- thinking about a couple of people in Moorpark that we had specialized in air conditioning systems, and they kept those systems running. And so they became, or were when they arrived, technically proficient. So I'm getting a little whoozy in the head here, but the --

Q: Well, we can either take a break or -- but I don't want you to answer questions if you're whoozy in the head. None of us has an interest in that. I want your good answers here, not your whoozy answers.

A: Okay. I just thought I was getting a little long-winded on it. But yes, there is -- expertise is needed in the area of maintaining facilities, yes.

Q: Okay. Just a couple other things. I want to see if you consider this to be a part of a district that manages its facilities well.

THE WITNESS: I believe that being aware of resources that may be available to a district is part of good management. And I believe that focusing the attention of the superintendent or someone else, basically identifying the human resource to try to seek whatever funds are available, is a mark of good management as well.

MS. DAVIS: Vague and ambiguous.

BY MR. ELIASBERG:

Q: Sounds like I was too narrow in focusing on State, because you've pointed out that there are other sources --

A: You're anticipating what was going on in my head. Being aware of the program like the QZAB program and others, being able to articulate those or learn about those is -- so you can articulate them to your board and talk about the downsides and upsides, because there may be in some programs. So you have to pay the money back under QZAB.

So yeah, that's important. And having said that, I know that it's difficult many times, because of local distractions. Fractures on the board of education can occupy a superintendent's time 24 hours a day. I know. I've been there and done that. Labor strife can pull you away from that. A crisis that involves something that may happen to a child you know, all those things.

But good management, good leadership -- and I like to use the term "leadership" -- in a school district means you keep your focus on the mission, and the mission is you have safe schools so you can educate kids, and you need resources to do that.

Q: And is simply following through, so that -- for example, making sure that work orders that have been filed are actually completed, is that part of good management of the facilities program?

THE WITNESS: Yes.

MS. DAVIS: Vague and ambiguous.

BY MR. ELIASBERG:

Q: And making sure that the facilities in the district are kept clean, is that part of good facilities management?

MS. DAVIS: Vague and ambiguous.
THE WITNESS: Cleanliness is sometimes an easy thing to identify and sometimes not. But clean -- clean school facilities is, yes, an earmark of good management.

BY MR. ELIASBERG:

Q You say here, "The vast majority of school districts in California are well managed by caring superintendents and governed responsibly by elected boards," and we've talked a lot about what good management is.

What's the basis for your statement that the vast majority of school districts are well managed?

A Just my career in public education has taken me throughout California, to many different districts, and I've had contacts with lots of different superintendents and board members and others, and whether I've been in districts or I've heard their worries and concerns and watched them parade before the State Allocation Board and watch the kind of thing I saw happen yesterday, tells me that there's good caring people out there trying to do the right thing.

Q Are you aware of districts that are currently not well managed?

A Sorry to keep laughing here.

I'm aware of districts that have had some struggling that -- where management may be part of it, and governance, through the board of education, may be part of it. And I separate the two.

Q Actually, then, before -- maybe before you go on in your answer, help me out and explain to me how you're seeing -- we've talked about management, so I think I understand that, what you mean by that.

How is that -- how is governance different from management?

A Because governance is really what the elected officials do. Those elected officials on the board are representatives of the community that are put there to represent the interests of the community in providing public education.

And if you are a manager and you serve a board of education, you're serving a board that has either five or seven members in California, and they may not all agree. They may have differences of view, and it's -- it's difficult to manage a school district when you have a three-two vote, and especially when you have a three-two vote that's pretty well separated.

So governance has a lot to do with what may happen in a struggling school district.

Q Well, then that's very helpful to me, because I hadn't separated out sort of the employee versus the elected official part of it before. So let me try the question again.

Are you aware of districts that -- districts that are currently --

A Struggling?

Q Either poorly managed or poorly governed or both.

A Okay.

MS. DAVIS: Compound.

THE WITNESS: I mentioned either the first day or the second day of deposition that I had represented San Francisco Unified, and I worked in the district for about six months or so with the district.

BY MR. ELIASBERG:

Q When was that time?

A It was midyear 2000. So it may have been, like, June through December 2000 or maybe it was 2001. It was in that time frame.

What I recall -- again, it wasn't for very long that I was working with the district, but what I recall is that I was trying to set up a meeting with the superintendent and a number of State officials in Sacramento. We had identified some needs and a path to try to gather resources for the district. We'd set up a meeting and meeting was cancelled. Set up another meeting and the meeting was cancelled. Third meeting, meeting was cancelled. Each time it was cancelled by the superintendent.

I'm not sure why that occurred, but during this period of time the district was under fire in the press. Arthur Andersen, as I think I mentioned earlier, was either there or coming in to do some review of the district. There were a number of allegations. And we were trying to set out a path to gathering some resources for the district.

And I don't know why those cancellations occurred, but they did. And so we were trying to resolve issues. I was retained to try and help them resolve issues, and it was hard to get a hold of anything to help to resolve those issues, because the cancellations occurred.

And those cancellations may have been because of demands from the board. They may have been through other distractions and demands on the superintendent, I don't know, but if gathering resources for the district and if trying to improve the physical environment for students and those that work with students was important, something was distracting there. So not a criticism of anything, but it was a reality. Couldn't connect the superintendent with the people that we were
trying to resolve the issues with. So I was wanting to
to be catalytic, and I tried to be, but part of the
equation wasn't there.
Q Did that suggest to you that there was a
management or a governance problem?
A Well, that's what I'm saying. I'm not sure
what it was, but if something is important and you're
running a school district and you say, this is important
even though I'm saying I'm going to spend some money to hire
somebody like me to come and do it, then why wasn't she
there? I don't know.
Q Is "she" Arlene Ackerman?
A Yes.
Q Have you ever read allegations that, within the
last five years, San Francisco Unified School District
has spent a substantial amount of funds gained -- bond
funds on teachers' salaries and other non-capital
expenditures?
A Not on teachers' salaries. I don't know that
I've read that. I know there were allegations of
expenditures on salaries and that part of the question
of the study that I mentioned, the Arthur Andersen
study, was, I think to find that out.
Q Do you know whether the Arthur Andersen study
ever reached a conclusion on that question?
A I spent time with an Arthur Andersen
representative, and I read the study. There was nothing
in that study that convinced me the district was doing
anything wrong. Nothing that I read in that study said
this is wrong. There were assertions, not any
supporting evidence that I recall.
Q Have you ever made any other efforts besides
reading the Andersen study to determine whether there
was anything to those assertions?
A When I first started working with the district,
I wanted to begin somewhere where I could gather
information to make a sense of how to help the
district. There were good people -- at least I had the
sense they were good people -- trying to answer
questions and give me -- you know, give me some sense of
what the realities were there. They weren't there for
very long. They were all gone.
So it was hard to see where everything really
was going to take shape where you could make any
judgment. And then after that I was done with the
contract and didn't renegotiate the contract, was doing
other things. So I never saw more after that.
Q So the Andersen study is really the basis
for -- that you would have to judge as to whether there
was anything to the assertions that there was money --
capital funds being spent on non-capital expenditures?
A Yes --
Q I'm just trying to understand if you have other
bases.
A Well, just the San Francisco Chronicle reporter
that used to call. And I can't tell you who that was,
but I used to hear from this woman about three or four
times in that time frame. She would talk about things
like that. She was assembling information. And I know
there were -- there were articles in the newspaper, but
that doesn't mean that they're fact.
Q But if I'm remembering correctly, during the
relatively brief time you worked for -- worked with San
Francisco, you didn't do a facilities assessment in
order to try to judge the management of the district;
did you?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: No. Didn't -- wasn't able to get,
really, that far.
BY MR. ELIASBERG:
Q Are you aware of other districts that you have
list a couple of districts.
THE WITNESS: As an attorney, you may call it
hearsay, I don't know, but --
BY MR. ELIASBERG:
Q Experts are allowed to talk about hearsay.
A A couple of people I knew that went to work for
the Compton Unified School District and who I talked to
either during or after their tenure there who described
situations -- not the facilities conditions so much as
to situations of attempting to manage and having
difficulty because of what existed.
Q Have you ever made any attempt to evaluate the
management or the governance at Oakland Unified School
District?
A No. I had a very focused role with Oakland,
and I was actually employed by the -- or retained by the
attorney firm. So I don't -- I don't even know that
I've been on an Oakland campus, I don't think.
Q Okay. And I just -- rather than asking the
same question over and over again, I'm just going to
list a couple of districts.
A Okay.
Q And put the same question: Do you have a basis
or have you ever attempted to make an evaluation of
their management or governance?
West Contra Costa Unified?
A No.

MS. DAVIS: I'll just have a standing objection of vague and ambiguous.

Go ahead.

THE WITNESS: No.

BY MR. ELIASBERG:

Q Ravenswood?

A No.

Q Holtville Unified?

A Yes.

Q What's your basis for having knowledge about Holtville Unified?

A I've worked in Holtville almost two years, I believe.

Q When was that?

A I think it was probably this time of year 2001.

Q What did you do for Holtville?

A Well, initially, I was called by an interim superintendent and asked if I would come and meet with her and she could ask me to look at facilities there and talk with her about some of the issues that she was encountering. And I did that.

Q And do you remember what facilities you looked at?

A I looked at -- in that particular visit I went to Holtville High School.

Q Did you end up looking at any others at any other visits?

A -- yes, it's a small district, and it has a junior high school. It has a couple of elementary schools. And I was at each of the elementary schools and the high school.

Q So the only school at Holtville that you didn't visit was the junior high?

A Yeah, I don't recall being on that campus.

Q What was -- at the time that you went -- so I'm gathering this is around 2000?


Q 2001.

What was the condition of Holtville High School?

MS. DAVIS: Vague and ambiguous.

BY MR. ELIASBERG:

Q The condition of the facility. I'm not asking about morale and teacher --

A Right.

Q -- vacancies or anything like that.

A Well, some of the facilities, they were old but they were in good shape. But there were a couple of buildings there that, as I had learned, the structural engineer had said students shouldn't be in the buildings.

Q So do you know why the structural engineer said that?

A Because there was a structural defect of some -- some intrusion into the integrity of the structure or structures.

Q I have a feeling that that phrase, "some intrusion into the integrity," means something to you.

A It doesn't mean anything to you.

Q What do you mean by that?

A No, it really doesn't. It's not a technical term. What I learned is that the structural engineer had found that the structural integrity of several buildings was in question, and therefore, had said this and students were then not allowed to go into those buildings.

Q Were these stick-built buildings or --

A Yes --

Q -- portables?

A -- they were.

Q Yes, meaning they were stick-built?

A Yes, meaning they were stick-built.

Q Do you remember approximately how many were --

A Three.

Q Was the -- was the school overcrowded as a result of kids not being able to use those three buildings?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: No.

BY MR. ELIASBERG:

Q And how did you know that, that it wasn't overcrowded?

A Because they had access to State's relocatable program and had students in relocatable buildings.

Q Do you know if -- what, if anything, they've been able to do about the --

A Yes.

Q -- buildings?

A Yes.

Q What have they done?

A Well, within short space of time we replaced one of the buildings.

Q Where'd you replace a building?

A Brand new State-funded facility hardship --

financial hardship stick-built building.

Q Did you tear down -- when you say replace it, did you tear down that building and put up a new building on the same site?
A The building that students were in is yet to be demolished, but it would be demolished.
Q Do you know about the other two?
A Yes. One was the administration building, which was kind of yellow tagged off, at least portions of it, because there were classrooms there. I met with the structural engineer and the architect, and pressed the issue and worked with the Division of State Architect's office that had basically agreed that the building that we were replacing was in fact defective, and it couldn't be repaired and so we were able to then use the State's facility hardship program and replace it with a new building. Actually did that fairly quickly.
Q I'm sorry, that's not the administration building; is it?
A No. No. No.
Q All right. So there are two others that were condemned with --
A Yes, and one was the administration building.
Q But pressing the issue -- trying to capsulize this, I guess. Pressing the issue with the structural engineer and assisting DSA's concurrence -- and that is the appropriate term -- that the structural engineer's report says this building is defective. What I learned was that the administration building really wasn't defective, and I was disappointed in what I had learned from the structural engineer, because I said, you've impacted this school.
Q The other building --
A I'm sorry, help me out.
Q You felt that the structural engineer had improperly determined that this building was structurally defective? Am I understanding you correctly?
A Yes. I'm not an engineer, but I know what compels DSA, in terms of information, at least in terms of the kinds of information, and DSA didn't concur that it was a defective building. And the building is in fact -- I think it was an administration building, but some student support activity rooms there, classrooms or others, and it's been used again today.
Q What about the third building?
A The third building, notwithstanding the fact that DSA didn't fully concur with the structural engineer, based upon what I knew, having been in the building a number of different times, I just said to the board, I wouldn't use this building.
Q And what kind of building was it? Was it --
A A classroom building.
Q Classroom building.
tagged. But focusing on the two buildings, one has been replaced and one to be replaced.

A: Maybe six months, maybe a little longer than that.

Q: Do you know why the district hadn't had a bond for 50, 60 years?

A: I think they may have attempted one a number of years ago, if I’m remembering from conversations. It’s a poor community, it’s an agrarian community. There’s a large -- when you go into communities where there’s large farms and ranches, bond measures are something that impact those farms and ranches because of the owners of those, and those areas apparently had some difficulty. And I’ve encountered it probably in two other locations in California.

The parcel tax, as opposed to a GO bond or even gerrymandering and having one in one, another -- and one in another area is sometimes a solution to that, because there are very large land owners, is -- why do I have to pay this hefty fee based upon the value of land.

Q: Did you see other things that concerned you beyond the substantial upgrading needed in the shower/locker room area?

A: At the high school?

Q: Yeah.

A: Well, building they couldn't use was a science building. So we replaced it with a new science building.

Q: Is that the one that's actually been replaced now?

A: Yes. Science building's been replaced.

Q: How were the -- did they just cancel the science classes?

A: No. But it was difficult.

Q: What were they doing?

A: They were just using a regular classroom, and if they needed more space they would do things like go outside.

Q: Were they trying to do labs outside?

A: Yes. So they were going to have a WASC, and I said, "Call off the WASC."

They said, "Can we do that?"

And I said, "Yes, you can."

The WASC wouldn't have been very positive, but they can do a WASC now, because they have a -- and I think they probably have done it already. I guess I can't remember when that would have been, but you'd see that it's either coming up -- no, it's coming up, I guess.
BY MR. ELIASBERG:
Q   Do you have an opinion as to whether, within the past ten years, LAUSD has not been well managed?
A   No.  There's roughly a thousand school districts in California.  I guess I've been sensitive about and the ones that you've talked about, are you aware of any districts that you believe, either now or in the past, have not been well managed?
Q   When you used the term "vast majority" of districts being well managed, did you intend by that to mean all districts being well managed?
A   No.  I'm going with your definition -- that I read.
Q   Do you know over what course of period of time you were seeing these projects come in and then be rescinded at the SAB from the LAUSD?
A   The rescissions I was thinking of were probably early '90s.
Q   Did you see any after the early '90s that you remember?
A   No.
Q   Have you ever read any reports by a group that is now called the Little Hoover Commission -- I believe at some point in the past it had a different name, the Milton Marks committee or something like that but now known as Little Hoover Commission -- about management in the Los Angeles Unified School District?
A   No.
Q   And have you ever read any documents -- any Little Hoover Commission reports about the Los Angeles Unified School District's school facilities program?
A   No.
Q   Other than the districts that I've asked you about and the ones that you've talked about, are you aware of any districts that you believe, either now or within the past ten years -- and if you'd like, I can break it up to current and the past, if that makes it easier -- are or have been either poorly managed or poorly governed?
MS. DAVIS:  Assumes facts not in evidence, vague and ambiguous.
Q   Are -- of management and governance.
A   No.  I'm hearing that.
Q   Well, you -- and I don't know what level of knowledge -- you talked about west Contra Costa.
A   Didn't that used to be -- the old district?
Q   Richmond.
A   Yes.  Never been there, but I certainly watched what was happening during the time that the districts went into receivership.  And there were comparisons after that, because no one wanted to be a Richmond, of course.  And members of the Legislature didn't want any of their districts to become Richmonds.  That's the first one that came to mind, and that was clearly management.  You know, governance would have been there somewhere, but it was clearly management from everything that has changed, though.  I think it's changed in a big way.
BY MR. ELIASBERG:
Q   Let's do both.  Well managed or well governed.
A   Sure.  No, I'm hearing that.
Q   Just so there's no confusion, I want to use the term "well governed" -- are or have been either poorly managed or poorly governed?
BY MR. ELIASBERG:
Q   What was the point when you go into receivership?
A   I'm assuming what you mean by poorly managed is some failure that precipitated some kind of a crisis within the district and difficulty.
Q   Well, I guess it would depend on one's definition of crisis, but you -- I'm not necessarily looking for, necessarily, the point when you go into receivership.
A   No.
Q   You're filing applications and rescinding them because you can't get your act together or you're not filing for -- you're eligible for a lot of State funding and you're not getting any applications filed.  That certainly would be -- I would be looking for a district like that.  If you knew of districts like that, that would be the kind of district I'd be interested in hearing about from you.
A   No.
Q   When you used the term "vast majority" of districts being well managed, did you intend by that term "vast majority" to be making some kind of an estimate, percentage or whatever?
A   No.  There's roughly a thousand school districts in California.  I guess I've been sensitive.
over the number of years where I've seen reactions
because a district has difficulty. Like Richmond. And
the sensitivity of, oh, we don't want to be a Richmond,
and, gee, you know, what kind of legislation can we
impose on everybody because there's been a failure on
one.

The vast majority to me means really the --
more than just a simple majority of school districts in
California. There have been a number of cities that
had fiscal failures. Orange County had a huge
failure, but there seems to be a real pointed response
if there is a failure on the part of a school district.
And I don't think there's been that many.
And whether it's the fiscal kind of failure
that was in Richmond or even a school district that --
like L.A., for some reason, had rescissions of
projects. They couldn't move them along for whatever
reason. I think that that's been few.

State Allocation Board had a policy on
rescinding. The vestiges are now within the program
today, where you have to spend under a contract within
18 months of an apportionment. I think that very few
districts really had projects rescinded, even when there
was a rather discrete policy in place.

Q Do you know if it -- did the State Allocation
Board or OPSC have a policy that where -- if a contract
is rescinded, some effort is made to send somebody out
from the Government to at least say, not I'm here to
help you, but what's going on?
A If an apportionment is rescinded?
Q Yeah.
A You said contract.
Q Well, I thought you said a project was
rescinded. I'm trying to --
A Yeah.
Q -- use the terminology you used.
A Contract.
I know that they do send people out to school
districts or offer to go out to school districts. I
have knowledge of that. I've heard that from time to
time. There -- in my view, there's a service
orientation that exists there.
So I made a call to a person at OPSC the other
day, very busy person, and I said, there's a district
that has some need. Can we get a few people together?
Got a call back yesterday, six people are going to be
assembled to try to deal with one district's problem.
That's not a large district.

Q What district is that?
A It's Holtville. To try to move forward with

Q Specifically with respect to LAUSD -- because
you talked about rescinding projects in the '90s -- do
you know whether somebody from OPSC or SAB actually went
out and tried to investigate and find out why these
projects were not going -- coming to fruition?
A I don't know if it was in that time frame or
not, but I do know that there were people from both
agencies that visited L.A., yes.

Q Do you think that the AB 1200 analog that
you've talked about here would be another mechanism that
might prevent something like, for example, projects
coming out and then being rescinded?
A I think, yes, that there -- the accountability
part there is not something for the management
leadership of the district but also for the board, that
if we can't come to an agreement as to where a school
should be built because I represent Area A and you
represent Area B and Marco represents Area 3 and Lynne
4, then at least before the community, they should be
making a decision, because they've got something there.
Yeah, I think that that works for that too.
Q And just help me understand exactly how -- what
part of the accountability pieces that you had talked
about earlier would -- or maybe more than one might
resolve that problem.
A If in the accountability piece -- within this
five-year need review -- it's a rolling five years --
there's a group of unhoused pupils, and you say we --
what are we going to do? We need to plan a school. And
therefore, we have to find a location for that school.
And there has to be agreement about that location.
That would be something that, if it wasn't done
by the next year, would be, well, you know, we're back
at this one again. And if that was the problem that
existed here before, here in L.A. before, then here is a
place where law, regulation and practice would dictate
that somebody has to make a decision.

MR. ELIASBERG: You know, you've been very
patient. It's ten after 5:00, and it's a holiday
weekend. I'm not going to finish today, but I really do
hope that I can be relatively brief when we reconvene.

MS. DAVIS: Were we on the record before when we
talked about we're going to reconvene -- we'll get you
some date.

MR. ELIASBERG: Yeah, I would not -- I mean, I can
suggest dates now. It might make sense to coordinate
with LAUSD --

MS. DAVIS: Yeah.

MR. ELIASBERG: -- because I think there's a good
chance that we'll be able to -- I don't know what they
have in mind, but they're oftentimes well under a day in
their questioning, so it may be -- it doesn't make sense
to have them do half a day and us do a half a day.
MS. DAVIS: I agree. We'll try to coordinate.
What is your estimate of how much time you
need?
MR. ELIASBERG: Let me look at the outline.
I think the only wild card, really, is the
notes, and that's -- it's very hard for me -- there are
about ten pages of those notes, and maybe it was because
I was tired yesterday, but they were somewhat
hieroglyphic to me. They could almost yield no
questions or they could yield questions. I would say,
the non-note part of this, two hours.
MS. DAVIS: Okay.

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 _____________,
________________________

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