

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

ELIEZER WILLIAMS, et al., )

)

Plaintiff, )

)

vs. )

No. 312236

)

STATE OF CALIFORNIA, et al., )

)

Defendants. )

)

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DEPOSITION OF THOMAS G. DUFFY

Los Angeles, California

Thursday, July 3, 2003

Volume 3

Reported by:

SHERRYL DOBSON, RPR

CSR No. 5713

JOB No. 43696

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

1 ELIEZER WILLIAMS, et al., )  
2 )  
3 Plaintiff, )  
4 )  
5 vs. ) No. 312236  
6 )  
7 STATE OF CALIFORNIA, et al., )  
8 )  
9 Defendants. )

10  
11  
12 Deposition of THOMAS G. DUFFY,  
13 Volume 3, taken on behalf of  
14 Plaintiffs, at 555 West 5th Street,  
15 35th Floor, Los Angeles, California,  
16 beginning at 9:03 a.m. and ending at  
17 5:11 a.m. on Thursday, July 3, 2003,  
18 before SHERRYL DOBSON, Certified  
19 Shorthand Reporter No. 5713.  
20  
21  
22  
23  
24  
25

1 INDEX  
2 WITNESS: EXAMINATION  
3 THOMAS G. DUFFY  
4 Volume 3

5 BY MR. ELIASBERG 468

6 EXHIBITS  
7 PLAINTIFF PAGE  
8 4 Document titled "Education Lenders Urge 669  
Legislature to Place \$27 Billion School  
Bond on State Ballot"

1 APPEARANCES:

2 For Plaintiffs:

3 ACLU OF SOUTHERN CALIFORNIA  
4 BY: PETER J. ELIASBERG  
5 Managing Attorney  
6 1616 Beverly Boulevard  
7 Los Angeles, California 90026-5752  
8 213-977-9500

9 For Defendant:

10 O'MELVENY & MYERS  
11 BY: LYNNE M. DAVIS  
12 Attorney at Law  
13 400 South Hope Street  
14 Los Angeles, California 90071-2899  
15 213-430-6000

16 Also Present:

17 MARIO MATERAZZI  
18  
19  
20  
21  
22  
23  
24  
25

1 Los Angeles, California, Thursday, July 3, 2003  
2 9:03 a.m. - 5:11 a.m.  
3

4 THOMAS G. DUFFY,  
5 having been previously duly sworn, was examined and  
6 testified as follows:  
7

8 EXAMINATION (Resumed)

9 BY MR. ELIASBERG:

10 Q Good morning, Dr. Duffy.

11 A Good morning.

12 Q Thank you very much for -- not only for  
13 agreeing to accommodate us and -- well, I guess we  
14 accommodated you too.

15 A You did. I thank you very much.

16 Q But you were the one who had to get on a plane  
17 and then turn right around and get on in another  
18 direction. I appreciate you being here.

19 I'm going to focus for most of the day on your  
20 report. There are just a couple small things that I  
21 wanted to talk -- well, small/medium things that I  
22 wanted to talk about that -- one of them we started to  
23 talk about on Tuesday. And you had described on  
24 Tuesday -- and correct me if I'm wrong. I'm going to --  
25 I don't -- if I'm miss-describing what we talked about,

1 then, obviously, you should tell me.

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

5 A Yes.

6 Q And I don't want to go over the relationship  
7 between the County superintendent and the district with  
8 respect to school budgets and school finance again.  
9 What I'm hoping you can help me understand is what role,  
10 if any, the State plays in the AB 1200 process beyond  
11 the passage of the legislation itself.

12 MS. DAVIS: Vague and ambiguous.

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

25 So the State has -- and I've never had this

1 outside, private firm that would be assisting the school  
2 district, should it not notify the district, board and  
3 superintendent that there's a significant problem.

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

12 BY MR. ELIASBERG:

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

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

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

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

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

20 And so the auditor and the County office have a  
21 role to assist the district in the event that there is a  
22 problem, to identify, notify, document and assist. And  
23 if the auditor fails, the auditor can lose the ability  
24 to do business in California in the school districts.  
25 So it's a -- there's a penalty for this independent,

1 and the County superintendent?

2 A Yes. Yes.

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

7 A Yes, I do.

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

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

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

22 I'm still not -- that was -- you gave me a lot  
23 of information there and it was helpful, but I'm still  
24 not entirely clear, though, if there's ever a point --  
25 and it may be a point only in the sort of forced

1 meltdown, but if there's ever a point where supervision  
2 over the district's budget -- oversight, whatever word  
3 you want to use -- actually goes up to the State level.

4 A Oh, it does.

5 Q Okay.

6 A And in the -- the instance that I can't recall  
7 exactly the district or the county, there was a failure  
8 at the district level. The County had had some  
9 knowledge, or should have had some knowledge. The  
10 State, I believe, had to make an emergency  
11 apportionment, which triggered, I think, in some of the  
12 experiences you had with at least -- I guess part of our  
13 conversations here, district in this county with the  
14 State because of that emergency apportionment then said,  
15 we are now in charge of the expenditures in the school  
16 district. And they had a trustee put in place.

17 So that connection there of district and some  
18 failure there, County, some failure of oversight there,  
19 the State then says, we're the ones looking and the  
20 County's out of this, which would be an embarrassment  
21 for the County superintendent, of course, if that were  
22 to occur. And they -- since AB 1200, anyway, they don't  
23 want to have that happen.

24 Q So it's fair to say that probably, in the vast,  
25 vast majority of instances, the oversight really is

1 of a new computerized financial tracking system,  
2 whatever it may be, the State is there as the -- I guess  
3 the entity that can say, okay, we can step in and we'll  
4 help you make some decisions. It doesn't take over all  
5 the decisions of the district, but with regard to fiscal  
6 issues and expenditures, it's there to assist and  
7 sometimes to say yes or to say no. And with a thousand  
8 school districts in California, there have been not very  
9 many of those, in my knowledge. I can't tell you the  
10 number.

11 Q But there have been some number, probably  
12 small, that have -- where the State has actually had to  
13 come in and play a supervisory role?

14 A It's the triggering of the emergency  
15 apportionment to make sure the school district is able  
16 to keep running.

17 Q Besides -- I think you used a lack of expertise  
18 at the County level, perhaps a failure of the County's  
19 computer monitoring software.

20 Can you think of any other circumstances where  
21 a State intervention might be appropriate or called  
22 for?

23 MS. DAVIS: Vague and ambiguous.

24 BY MR. ELIASBERG:

25 Q In the AB 1200 context.

1 State -- I'm sorry, County and independent auditor, but  
2 there are at least contemplated by the statute  
3 circumstances where the State may get involved?

4 A Yes.

5 Q Okay. Now, do you think that that -- I'm going  
6 to -- if I use the phrase "double level of oversight" --  
7 and by that I'm referring to County, then State, in  
8 certain circumstances -- do you think that that double  
9 level of oversight is a good idea?

10 A Yes, I do.

11 Q And why is that?

12 A It goes back to a term we talked about the  
13 other day, and it's accountability. If I'm in a school  
14 district, I'm accountable, but if there is something  
15 that goes wrong, the pupils of that district, because  
16 their education depends on the funding that comes into  
17 it, are going to have someone else that's going to be  
18 there as a backup should I fail, and God forbid that I  
19 do that. But should I do that, there's someone else  
20 that's there to say, look, caution. And that caution  
21 begins informally with a review of a budget that's a  
22 proposed budget from time to time, if there's a concern,  
23 and I think we talked about that the other day.

24 And then should there be a failure at the  
25 County level, say it's a lack of expertise, the failure

1 A No.

2 Q I mean, have you ever been aware or do you  
3 think State oversight might be appropriate where -- and  
4 I understand -- I'm talking hypothetically. I'm not  
5 saying this has happened -- where there almost appears  
6 to be a collusive and corrupt relationship between the  
7 County superintendent and the districts or the County's  
8 deliberately laying down on the job?

9 MS. DAVIS: Vague and ambiguous, incomplete  
10 hypothetical, asked and answered.

11 THE WITNESS: I believe what was established with  
12 the AB 1200 procedures was put in place to make sure  
13 that kind of thing did not occur.

14 BY MR. ELIASBERG:

15 Q And would it be -- what procedure -- I mean,  
16 I -- since one of the -- one of the two entities that  
17 has initial responsibility to oversee the district  
18 budget, if that entity -- and I -- we're talking  
19 hypothetically here. I'm not saying I have a specific  
20 example.

21 A Okay.

22 Q But if there's actually a situation where there  
23 is a district and County collusion, you know, a bunch of  
24 corrupt people in both places, what AB 1200 procedure  
25 would prevent that?

1 A The --  
 2 MS. DAVIS: Same objections.  
 3 Okay. Go ahead.  
 4 THE WITNESS: The independent auditor is there, and  
 5 they are serious about their job.  
 6 BY MR. ELIASBERG:  
 7 Q Is one of the reasons they're serious because,  
 8 if they fail to detect this kind of thing, they'll lose  
 9 their license or their ability to continue to work as  
 10 independent auditors?  
 11 A That may be there. My hope in auditors that  
 12 I've worked with was that they were highly trained  
 13 professionals who were looking out for the district  
 14 because that was their job.  
 15 Q I wasn't suggesting that their only motivation --  
 16 A I know.  
 17 Q -- was self-interest.  
 18 A I know.  
 19 Q But that could be motivation also, right?  
 20 A Yes. Yes.  
 21 Q Now, the other day I -- you analogized the  
 22 proposed County supervisor's oversight of school  
 23 facilities issues set forth in Recommendations -- I  
 24 believe it's 5-5 -- well, 5-4, 5-5 and 5-6 in the master  
 25 plan. And feel free to, you know, check to make sure

1 that I've got the right numbers.  
 2 A What pages?  
 3 MS. DAVIS: 44 --  
 4 MR. ELIASBERG: Starts at 44 and then -- there's  
 5 one each page. So 5-4, 5-5 and 5-6.  
 6 MS. DAVIS: I didn't catch the beginning of your --  
 7 MR. ELIASBERG: Sure.  
 8 MS. DAVIS: Did you finish your question?  
 9 MR. ELIASBERG: No, I'd be happy to --  
 10 MS. DAVIS: Okay.  
 11 MR. ELIASBERG: I'd be happy to -- it's actually a  
 12 predicate to a question, but --  
 13 MS. DAVIS: Okay.  
 14 MR. ELIASBERG: Once Dr. Duffy's had a chance to  
 15 look at those rec's, I'll repeat the question.  
 16 MS. DAVIS: Okay.  
 17 BY MR. ELIASBERG:  
 18 Q If you would just look at 5-4, 5-5 and 5-6.  
 19 A (Witness reviews documents.)  
 20 Oh, yes. Okay.  
 21 Q Am I correct that the other day you analogized  
 22 the proposed County supervisor's oversight of school  
 23 facilities issues -- not talking about budget now, but  
 24 school facilities issues set forth in Recommendations  
 25 5-4, 5-5 and 5-6 in this facilities master plan document

1 to AB 1200? Isn't that right?  
 2 MS. DAVIS: I'm just going to object to the extent  
 3 that would mischaracterize his prior testimony.  
 4 BY MR. ELIASBERG:  
 5 Q I don't want to do that. I want to understand  
 6 your testimony.  
 7 A And you said County supervisor. You mean  
 8 County superintendent.  
 9 Q I meant County superintendent, yes. They're a  
 10 totally different entity.  
 11 A Yes. What I think you're asking me is -- and  
 12 maybe I'm -- maybe I don't have it clear, that these  
 13 three recommendations are built upon an established  
 14 practice that has been successful, which is AB 1200, for  
 15 the general fund of the school district.  
 16 And we're suggesting in these recommendations  
 17 that, since that has worked, practices that work in  
 18 schools at other locations we know can be replicated.  
 19 So we're suggesting a replication of that with regard to  
 20 dealing with school issues -- excuse me, school facility  
 21 issues, because those can be, in the end, brought to at  
 22 least an estimated cost, and AB 1200 is based upon  
 23 revenue and expenditures and managing those. And that's  
 24 why we're suggesting revenues, expenditures managing on  
 25 the facilities side of those.

1 Q And when you -- I believe you used the phrase  
 2 "we" or "we recommend."  
 3 A Yes.  
 4 Q "We are recommending."  
 5 And by that do I understand you to mean that  
 6 the members of the facilities and finance working group?  
 7 A Yes.  
 8 Q But am I also correct that you support that  
 9 recommendation?  
 10 A Yes. In terms of -- there are some parts of  
 11 this that I didn't personally support. The concept of  
 12 let's use this model because it's been, not a model, but  
 13 a workable practice in assisting, and I do support that  
 14 idea.  
 15 Q Okay. And just so I'm clear -- because I've  
 16 heard that. I just want to make sure that -- is it fair  
 17 to say that Recommendations 5-4, 5-5 and 5-6 -- as  
 18 opposed to the inventory recommendation or the finance  
 19 model that's also set forth in here, that 5-4, 5-5 and  
 20 5-6 are kind of the heart of this attempt to replicate  
 21 the AB 1200 --  
 22 A Yes.  
 23 Q -- model?  
 24 MS. DAVIS: Vague and ambiguous.  
 25 BY MR. ELIASBERG:

1 Q All right.

2 THE WITNESS: I'm sorry.

3 MS. DAVIS: That's okay. You're anticipating him.

4 BY MR. ELIASBERG:

5 Q Now, given that, we talked yesterday in  
6 detail -- and I don't intend to go over it again --  
7 about how in the facilities area, as opposed to the  
8 budgeting area, you would -- you see County  
9 superintendents playing a supervisory role, correct? I  
10 mean, we discussed that yesterday. That's all I'm  
11 asking.

12 A Yeah. And I see it as a --

13 Q A technical -- actually, let me -- because I  
14 want to make sure I -- let me step back.

15 I understood you -- and I'm not going to go  
16 through in any detail at all. I'm barely going to touch  
17 on what we talked about yesterday.

18 But what I understand we talked about yesterday  
19 was you saw the County superintendents, if your  
20 recommendations were to be adopted, playing a role of  
21 supervision, monitoring and providing technical  
22 assistance; is that correct?

23 MS. DAVIS: I'm going to object to the extent that  
24 mischaracterizes Dr. Duffy's testimony.

25 THE WITNESS: I would maybe reverse the order of

1 Q Exactly. And I was not, like, putting those in  
2 order with technical assistance last. I wasn't  
3 suggesting that that was the least important or the last  
4 step that would be taken. I just laid all three of them  
5 out. But I think we're on the same page.

6 So as I said, I don't -- I just wanted to make  
7 sure that I understood what role you saw the County  
8 playing. So now I'm going -- and I think I do -- when  
9 we talked about it yesterday.

10 What I want to ask now is: Under this AB 1200  
11 analog in the school facilities context, do you think  
12 that there would ever be a role for the State to play in  
13 providing technical assistance, supervision and  
14 monitoring?

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

17 THE WITNESS: I believe that there would need to be  
18 a role. We did have some discussions of that in the  
19 master plan committee. It's something that I've  
20 probably thought about away from the committee during  
21 the time when we were working. I'm not sure how that  
22 would all fit into this.

23 But in that, a trustee is placed in a school  
24 district, if there is a fiscal failure, because of an  
25 emergency apportionment, in essence, the State saying

1 what you said there. Providing technical assistance,  
2 because that's what counties do, in other areas where  
3 districts, particularly smaller districts, don't have  
4 the expertise. Providing that assistance, if they  
5 could, monitoring, which is part of the heart of the AB  
6 1200 idea.

7 The supervisory part really has to do with are  
8 you -- are you meeting the test or are you not meeting  
9 the test with regard to the model of AB 1200. In  
10 essence, have you done this -- have you done it -- have  
11 you met the standards and criteria.

12 And since every target is not necessarily going  
13 to be hit and reached at every moment at every time,  
14 that there's this -- you know, supervisory is not Big  
15 Brother on the school district. It's there to make sure  
16 that the district stays within these parameters set  
17 forth in AB 1200. And that's the way I conceptualize  
18 it.

19 So the technical assistance, the monitoring  
20 that's there, that part of that is support and help, and  
21 then yes, there is a role that's a hard-and-fast role.  
22 We don't want to have school districts fail, and that's  
23 part of the AB 1200 piece.

24 Did I answer what you were asking?

25 BY MR. ELIASBERG:

1 you're asking us for more money, therefore, we want to  
2 help you make decisions, I think using the kind of model  
3 of the implementation committee to say how do we best  
4 make that work would be a way to ferret out that best  
5 kind of a plan.

6 But in the end, the State has to provide  
7 additional dollars, as it would under the general fund  
8 failure. Those additional dollars may have an  
9 attachment to them which says the State has the ability,  
10 the authority, to appoint someone like a trustee to  
11 identify two or three or four or five specialists who  
12 may come in and make an assessment and help with the  
13 planning. So that there be some positive intervention  
14 on the part of the State to help the district get back  
15 on track if it has failed.

16 But I'm not sure how all that works out, but as  
17 a concept -- again, trying to keep track with what --  
18 replicating something that has worked, the AB 1200  
19 model, that some piece where the State would have an --  
20 an intervention of some kind makes some sense. And I  
21 should qualify that to say that there should be a high  
22 level of expertise on the part of that individual team  
23 that would assist the district.

24 BY MR. ELIASBERG:

25 Q So is it fair to say if they show up and say,

1 I'm from the Government. I'm here to help you, they  
2 should be able to actually help you?

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

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

9 MS. DAVIS: Calls for speculation.

10 BY MR. ELIASBERG:

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

16 MS. DAVIS: Same objection.

17 THE WITNESS: Well, in the hypothetical of a  
18 response to a piece of legislation -- it was two years  
19 ago where something was proposed, and in responding to  
20 that, because the proposal was a -- something called a  
21 construction authority and identifying six or seven  
22 people, I identified to the author of the legislation  
23 that I thought six or seven roles identified -- or  
24 competencies identified there were really wrong, that  
25 there should be someone who is highly competent in

1 kind of a certification.

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

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

15 A Whom I like and enjoy.

16 Q Fair enough.

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

20 What do you mean by assessment of buildings?

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

25 There are some architects that specialize in

1 facility planning, someone's highly competent in making  
2 assessments of buildings and designing buildings,  
3 someone that understands finance of school facilities  
4 and others.

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

8 BY MR. ELIASBERG:

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

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

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

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

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

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

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

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

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

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

25 A Yes.

1 Q -- who are not architects or structural  
2 engineers?

3 A Yes.

4 MS. DAVIS: Vague and ambiguous.

5 BY MR. ELIASBERG:

6 Q Who -- I mean, is there a particular job title  
7 or license of -- that someone has in order to have  
8 expertise in planning?

9 MS. DAVIS: Vague and ambiguous.

10 BY MR. ELIASBERG:

11 Q I'm talking school facilities particularly.

12 A Yes.

13 MS. DAVIS: Same objection.

14 THE WITNESS: I don't think there's any license,  
15 and I don't think there's any credential. Experience  
16 that may be gained in doing. There are -- you're  
17 probably aware of this. There are some institutions  
18 that provide a certificate in facilities planning. I've  
19 never gone through any of those. So it's probably a  
20 combination of interest, experience and maybe some  
21 training.

22 Learning from those that do, learning from  
23 other professionals is what typically happens in  
24 education, and I'm sure it happens in other fields.

25 BY MR. ELIASBERG:

1 BY MR. ELIASBERG:

2 Q If I made my question worse, you can answer the  
3 first one. I was trying to be clearer, but --

4 A The body -- if the question is what about the  
5 implementation committee generates that kind of response  
6 in me, the recognition that, however it has occurred  
7 over time, there is remaining a substantial amount of  
8 experience and knowledge and interest when dealing with  
9 policy matters that become practical operational  
10 procedures if those that are doing it at the local level  
11 and those that are involved in -- whether it's assisting  
12 by financing and funding or those that are involved in  
13 trying to make sure that precious resources are managed.

14 And sometimes if there's supervision, that when  
15 those people meet on the same plain -- it's not top  
16 down, but the top down/bottom up kind of deal that I  
17 talked about the other day, that sorting through how do  
18 we get this done and how do we get it done efficiently  
19 and make it work is more likely to happen.

20 It's my experience that it does happen and it  
21 has happened. That body has been in place since October  
22 of 1986, and has solved a number of issues and is relied  
23 upon by State Allocation Board fairly heavily. But the  
24 success there, you know, is what I believe is -- that we  
25 can experience.

1 Q Let me just ask one last brief series of  
2 questions on this AB 1200 analog.

3 Am I correct in understanding that -- well --  
4 yeah, am I correct in understanding that it's your  
5 position that, in order to design or figure out what the  
6 State role should be in a proposed AB 1200 analog, that  
7 a group like the implementation committee would be the  
8 appropriate body to determine what the State role should  
9 be?

10 MS. DAVIS: Vague and --

11 THE WITNESS: Yes.

12 MS. DAVIS: -- ambiguous.

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

16 BY MR. ELIASBERG:

17 Q And why is that, that the outcome would be  
18 geared for success -- the outcome from deliberation in  
19 that body?

20 A (No audible response)

21 Q Let me ask the question slightly different.

22 A Okay.

23 Q What is it about that body that gives you  
24 confidence that the outcome would be a positive one?

25 MS. DAVIS: Vague and ambiguous.

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

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

14 Q So am I correct in understanding that the  
15 implementation committee includes both local school  
16 facilities -- and by local I mean local districts  
17 school facilities practitioners as well as State  
18 officials?

19 A Yes.

20 Q Any other group of people --

21 A Yes. Yes, indeed, there are.

22 Q And I just -- and I don't -- but we're getting  
23 a little bit of the -- you understand where I'm going,  
24 and so you finish my sentence.

25 A Sorry.



1 Q And it's okay. It just makes it hard for the  
2 court reporter.  
3 A The development community has been interested  
4 in school facilities areas since the late 1970s. Became  
5 ever more interested in the mid '80s and have been  
6 represented on the implementation committee since the  
7 very first time it met in 1986 in October, and they're  
8 still there. That's basically the residential  
9 developers in California.  
10 Q Are there -- let me ask you this. Is the  
11 membership -- is it an elected membership of the  
12 committee or is it appointed or --  
13 A It's -- the committee is a grouping of  
14 representatives of organizations. The organization  
15 appoints a person, who then sits on the committee. So  
16 the California Building Industry Association has  
17 appointed a particular person.  
18 Q What are the other organizations that have  
19 appointed people?  
20 A The C.A.S.H. organization, California  
21 Association of School Business Officials, CASBO, Small  
22 School Districts Association, the County offices, an  
23 international group called the Council of Educational  
24 Facilities Planner, CEFPI. I mentioned CBIA, or it  
25 could actually be another developer group, but I believe

1 it is CBIA.  
2 Q You just -- a minute ago you mentioned Cal --  
3 this is not a second group --  
4 A The same one.  
5 Q Okay.  
6 A CBIA is California Building Industry  
7 Association.  
8 A new appointee is representing organized labor  
9 for the construction trades in California. The  
10 Department of Finance is represented there. The  
11 California Department of Education is represented  
12 there. The offices of State architect, DSA, Division of  
13 State Architect is represented there, and the Office of  
14 Public School Construction and State Allocation Board  
15 are represented there.  
16 Q Who's the CDE -- currently the CDE appointee?  
17 A It's just changing, so I can't tell you. It  
18 was Jim Bush.  
19 Q Is it C.A.S.H.'s practice to appoint a person  
20 who works in facilities at a local school district?  
21 A Yes.  
22 Q No, I'm just trying to understand. Because you  
23 had previously told me that C.A.S.H. has members who  
24 are --  
25 A Oh.

1 Q -- developers and others.  
2 A Yes.  
3 Q So I'm trying to understand if it's always a  
4 school district official.  
5 A Yes. Yes, it has been.  
6 Q And does C.A.S.H. have one appointee or more  
7 than one?  
8 A One.  
9 Q Are there ever parent representatives or have  
10 there ever been parent representatives?  
11 A They may all be parents.  
12 Q But I mean -- you know, their qualification is  
13 not being appointed by one of these groups, but --  
14 A No.  
15 Q -- just a parent.  
16 A No.  
17 Q Any representatives of teachers or teachers  
18 unions?  
19 A No.  
20 Q I gather that you don't consider the AB 1200  
21 process to be a top-down governance process; is that  
22 correct?  
23 A Initially I did.  
24 Q And why did you think initially that it was?  
25 A Probably the way it was done, the way it was

1 swept in.  
2 Q And what do you mean by the way it was swept in?  
3 A There was a failure in a county and a school  
4 district that I can't identify for you, but I can recall  
5 and, as sometimes happens in Sacramento, there was a bit  
6 of a stir. And so it appeared to be -- begin as  
7 something that was punitive.  
8 The way that it has worked out, though, the way  
9 that we as practitioners worked the school districts and  
10 County offices, it became something that was not top  
11 down. The State basically stepped back and said -- I'm  
12 assuming they said -- work out the details.  
13 But the standards and criteria that we've  
14 talked about are common. The requirement of the  
15 auditor's there; the requirement that the district,  
16 three times throughout its year, identify whether or not  
17 it will be solvent toward the end, all those things have  
18 worked to be, not top down, but local practices that  
19 have merit.  
20 Q And when you say the standards are common, do  
21 you mean that they apply to all school districts?  
22 A All school districts, basically, use the  
23 standards and criteria as a means of comparison.  
24 Q Were the practices that you talked about -- for  
25 example, district reports three times a year whether

1 it's solvent or not -- is that set forth in statute or  
2 regulation, or is that a practice that's developed?

3 A It's a requirement. I can't remember if it's a  
4 statute or regulation, but it's a requirement. And  
5 there's a time frame for each of those. So it's not you  
6 have to do this on October 15th, but you know, during  
7 this time frame, you make a report to the board, the  
8 board takes an action. So it's -- it's a requirement;  
9 it's not, gee, well, you may do this.

10 Q Is another reason -- well, let me -- I'm  
11 understanding that you do not now consider AB 1200 --  
12 the AB 1200 process to be top down; is that correct?

13 A Yes.

14 Q Is another reason that you don't -- well, are  
15 there other reasons besides the ones you've already  
16 mentioned that you -- that are the basis for your  
17 opinion that it is not now top down?

18 A Well, what I'm recalling is there were a series  
19 of pieces of legislation that -- and that sometimes  
20 happens when there's a perceived crisis or a real crisis  
21 and to create a fix. What became law and the practices  
22 that ensued from that really wasn't top down. It's  
23 let's give you some guidelines and some help, but let  
24 you do your job.

25 And it could have gone in a different

1 direction, but there were enough people that were there  
2 lobbying or doing whatever they were doing at the time  
3 that kept the top down from happening.

4 Q Is the fact that the initial levels of review  
5 and assistance are through the County offices and the  
6 independent auditor as opposed to the State -- is that  
7 another reason why you think that it's not top down?

8 A Well, yes. Because it isn't. The auditor is  
9 there in the district, and the auditor has specialized  
10 knowledge, expertise, and typically they're in a  
11 district for a period of three or four years. There's a  
12 contract; they get to know the district. Districts will  
13 change auditors from time to time, but it's a good idea  
14 to have an auditor there for a while to get to know what  
15 the district's about.

16 State comes in -- I don't have any experience  
17 with the State coming in and doing anything like that,  
18 but you know, here, you got a problem, let me tell you  
19 how to fix it, and they leave. The auditor -- I would  
20 call -- if there was something that I thought was wrong,  
21 I would call the auditor and say, something doesn't  
22 appear to be right. I'd like you to come look at this.  
23 They knew the district. They knew people. If the  
24 auditor walked in, people may say, oh, there may be a  
25 problem here. What's going on?

1 But the auditor was known and, therefore, like,  
2 it's not somebody coming top down, but somebody there to  
3 assist us. I had a practice of saying to the board of  
4 education, the audit is a good thing. It's a management  
5 tool. It helps me understand what's happening in the  
6 district if I miss something, if I don't see something,  
7 or another manager doesn't see something.

8 Q So I certainly see how the presence of the  
9 auditor as an employee or somebody appointed by the  
10 district --

11 A Not an employee, right.

12 Q But somebody hired by the district takes away  
13 any top down -- or would make you conclude that they're  
14 not top down.

15 But there was also supervision by the County;  
16 isn't there?

17 A Yes.

18 Q But is it because -- is the fact that it's the  
19 County rather than the State part of the reason that has  
20 the -- another level of initial review part of the --

21 A No.

22 Q Let me finish my question.

23 MS. DAVIS: Yeah, let him finish.

24 BY MR. ELIASBERG:

25 Q Because I'm not -- and your answer may be no.

1 I'm just -- what I'm trying to understand is --  
2 is it also true that one of the bases for your current  
3 conclusion that this is not top down that the other  
4 initial level of review beyond the auditor is through  
5 the County rather than the State?

6 A No.

7 Q And why is that?

8 MS. DAVIS: Vague and ambiguous.

9 THE WITNESS: Yes, it is another level of  
10 governance, but the County superintendent cannot direct  
11 the district superintendent as to what to do. The  
12 County board has no authority over a district board.  
13 The County superintendent has the ability to say, I have  
14 trouble with this budget that you've prepared that you  
15 are taking to your board, going to adopt. Or I have  
16 trouble with the collective bargaining agreement that  
17 you're proposing to adopt, because I don't think you can  
18 afford this.

19 So they have that ability to say, I have a  
20 concern. But in the end they have the ability to say,  
21 I'm not going to approve that budget, and you may go  
22 above me and seek some other kind of intervention, and I  
23 can't tell you what that would be through the State, but  
24 there may be a practice there.

25 So what I'm saying is that there isn't a

1 control, such as the State has to say, we're going to  
2 shut off a supply of funds or do whatever else we're  
3 going to do to try to get you to get into line. The  
4 County office has the ability to say, I have the ability  
5 to say yes or no to your budget, but before that even  
6 happens, we can discuss all these things.

7 And the County superintendent can't say, by the  
8 way, you can't make that purchase; you can't hire that  
9 teacher; you can't make this expenditure, but they can  
10 say, we do not approve your budget if in the end there  
11 is a lack of agreement, if there had been a problem.

12 So the working relationship, once you're  
13 there -- and I've been there -- is not a top-down  
14 relationship. Counties want districts to succeed, and I  
15 believe that. So they'll work to help them.

16 BY MR. ELIASBERG:

17 Q Appreciate that. I think, though, that maybe  
18 I'm not being clear as to my questions.

19 A Can we take a break?

20 Q We sure can.

21 A Okay.

22 Q Any time you call for a break, you can take  
23 one.

24 (Brief recess taken.)

25 BY MR. ELIASBERG:

1 Let me talk about top down in a broader sense.  
2 I was trying to talk about it in just this AB 1200  
3 concept, but I want to try to see if I can get from you  
4 the components -- or what is your understanding of the  
5 phrase "top-down governance"?

6 A Your phrase earlier, I'm here from the  
7 Government. I'm here to help you. I'm here from the  
8 Government. I'm here to demand this from you. We  
9 haven't considered all the factors in how you operate  
10 your programs or the circumstances. We have an idea and  
11 we're going to impose the idea on you, and you really  
12 don't have anything to say about it, or very little.

13 Q So is it fair to say that it's not simply the  
14 fact that it might be some higher level of government,  
15 in the sense of County above the district or State above  
16 the district, but it's the way that the -- that this  
17 other body of government imposes its will on the lower  
18 level of government? That's what top down is, from your  
19 point of view?

20 MS. DAVIS: I'm going to object to the extent that  
21 mischaracterizes his prior testimony.

22 THE WITNESS: That it's the State, without any  
23 consideration, adopting legislation that requires  
24 certain actions of a school district or other entity,  
25 imposes its will upon them without understanding all of

1 Q Let me come at it a different way, because I  
2 don't think I was being clear before. Let me just ask  
3 you a simple question.

4 What are the consequences, if any, if the  
5 County superintendent says to the district, you know,  
6 we've talked, we've tried to work this out, but I can't  
7 approve this budget, there's a huge problem with it?

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

10 THE WITNESS: What I believe would occur is that  
11 the district superintendent would have to go back and  
12 work through that budget, understanding what the  
13 concerns were of the County superintendent -- County  
14 superintendent typically working through their  
15 businessperson who works on budgets -- and reestablish a  
16 budget for a plan of expenditures and income that it  
17 takes back to the board for reconsideration and  
18 readoption.

19 BY MR. ELIASBERG:

20 Q So although the practice is that the County  
21 superintendent does a lot of informal work working with  
22 the district, they do have at some point some  
23 enforcement authority over the district; don't they?

24 A Yes.

25 Q Okay. That was my confusion.

1 the consequences. That's what I would refer to as top  
2 down.

3 And that may happen within a school district,  
4 from the superintendent level down through a school, or  
5 through programs that may include food service or  
6 maintenance. And I guess at the core is an ignoring of  
7 real circumstances and real impacts that may in fact  
8 intrude upon the mission of the entity. The mission is  
9 then in some way shunted, that the mission is  
10 interrupted because of that top-down action.

11 BY MR. ELIASBERG:

12 Q And I think -- I think I'm fully on board with  
13 you, in the sense of understanding. I just want to make  
14 sure.

15 Is it also fair to say that a process that the  
16 adoption of -- even if they are requirements, if they  
17 are adopted through a process such as used in the  
18 implementation committee, that that is likely to prevent  
19 the top-down problem that you just described?

20 A Yes --

21 MS. DAVIS: Mischaracterizes prior testimony, vague  
22 and ambiguous.

23 BY MR. ELIASBERG:

24 Q Not my intention. I want to understand your  
25 testimony, not mischaracterize it.

1 A Yeah, the -- at the core is what's the mission  
2 and is what this -- whatever is imposed, is that going  
3 to interfere with, interrupt that mission, because  
4 there's no consideration for really what goes on at that  
5 local level.

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

12 A Yes.

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

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

21 THE WITNESS: Yes.

22 BY MR. ELIASBERG:

23 Q Okay. We talked at great detail -- and I don't  
24 see, really, that there's any likelihood that we'll need  
25 to go back through any of the discussion of this AB 1200

1 Q Do you support that goal?

2 A No.

3 Q And why not?

4 A I don't think it's workable.

5 Q And what about the goal is not workable?

6 A The assumption here is that the State's general  
7 fund would be used to provide this annual per-pupil  
8 allocation. A further assumption is that, with the  
9 removal of the annual debt repayments that are within  
10 the general fund, would free up dollars in the future.  
11 So instead of repaying debt and setting aside money in  
12 the general fund to repay that debt, you use those  
13 dollars to apportion to school districts in some  
14 per-pupil manner.

15 The fact that the State's general fund is  
16 dependent upon the economy, that the general fund will  
17 grow or diminish and the impact upon the regular K-12  
18 operational programs -- albeit there is a Proposition 98  
19 guarantee, that guarantee is sort of a qualified  
20 guarantee, you know, with certain slippage back and  
21 forth. This is outside Prop 98. There's no guarantee  
22 here.

23 And this assumes that at some point in time the  
24 State would move away from bond funding and move into  
25 this kind of funding, and I see that as very unwise and

1 analog and the standards and the County models. We  
2 really didn't talk about funding yesterday, and I want  
3 to try to do that, but I'm going to try to do it  
4 relatively briefly.

5 A Okay.

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

11 A Yes.

12 Q Do you see that?

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

18 Do you see that?

19 A I do.

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

24 A (Witness reviews documents.)

25 Okay.

1 basically causing a failure of facility financing at  
2 some time in the future.

3 Q Is the reason you think it's unwise for the  
4 reasons with -- the reasons you sat out above; for  
5 example, that the general fund relies on the economy,  
6 there's no guarantee that this money'll be there because  
7 it's not -- it's not under Prop 98? Those are two of  
8 the reasons that you think it's unwise; is that correct?

9 A Those are two of the reasons.

10 Q And I want to make sure -- are there other  
11 reasons that you think it's unwise?

12 A Yes.

13 Q And what are the others?

14 A That there is no relationship to need within  
15 the school district and an allocation for each district  
16 for each pupil in the district.

17 Q Are there any other reasons you think it's  
18 unwise?

19 A I think probably the three major reasons are  
20 the ones we just talked about.

21 Q Okay. Are there any others, even if they're  
22 less important, that you can think of?

23 A Well, this kind of goes into the fabric of the  
24 recommendation, but this recommendation collapses new  
25 construction funding, modernization funding and ongoing

1 maintenance -- or not ongoing maintenance, ongoing major  
2 maintenance funding. And I think that they could be  
3 separated out, so that the idea of the major maintenance  
4 or minor major maintenance, however we want to separate  
5 that out -- that term out, something that potentially --  
6 there would be a need of providing something that,  
7 should there be a stable source of funds at the State,  
8 that each district could expect to have a certain amount  
9 of money that it could budget for its schools to  
10 maintain their schools over time. Because everybody's  
11 going to have a continuous need to maintain.

12 Everybody will not have a continuous need to  
13 modernize or a continuous need to build. So I think  
14 that this envelopes it all, instead of saying well, why  
15 don't we look at it as maybe one program, two programs,  
16 three programs. One need, second kind of need and a  
17 third kind of need.

18 Q So with respect to the third issue, the last  
19 issue that you talked about, not the previous issues, is  
20 it correct that you might be supportive of this use of  
21 general fund dollars or ensuring the stable source of  
22 general fund dollars if they were sole -- if it were  
23 solely to address the maintenance issues as opposed to  
24 major maintenance or modernization and new  
25 construction?

1 MS. DAVIS: Calls for speculation.

2 THE WITNESS: You've characterized it fairly well.

3 BY MR. ELIASBERG:

4 Q Tell me where I've got it wrong.

5 A Well, it's the -- there's a -- there's some  
6 connection between the ongoing maintenance and major  
7 maintenance, and there may be some middle ground between  
8 the two. Maybe it's simply definition and maybe it's  
9 partly how the -- if those funds were to be there, how  
10 those funds would be managed.

11 But I think -- I think you have a sense of  
12 where my view of these are.

13 Q Okay. In answering the initial question I  
14 asked with respect to this goal, I had a sense that you  
15 were actually asking whether -- you thought that I was  
16 asking whether you supported the recommendations in this  
17 report, and I'm simply asking whether you support the  
18 general goal of providing an adequate, stable and  
19 reliable source of funding that is available when  
20 needed, and that it addresses current and future capital  
21 outlay needs.

22 A I like the idea of adequate and stable, and I  
23 think reliable and stable are probably synonyms there,  
24 but providing something that's adequate and stable.

25 And in my view, bond funding has happened -- at

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

7 Q Let me stop you there -- no, I'm sorry, I  
8 don't -- go ahead.

9 A Well, it's just the -- the latter part of the  
10 sentence, "for future capital outlay needs."

11 If this recommendation were to say, let's put a  
12 program in place that is a sort of a major maintenance  
13 program which is a qualified deferred maintenance and  
14 something else, and let's try to have that goal, let's  
15 see if the general fund can provide that, that's  
16 something that, although I think it would be difficult,  
17 particularly in a year like this year, it's more -- it's  
18 more attainable.

19 I think it's a goal that the people that are in  
20 Sacramento that make the decisions that are in the  
21 Legislature and the governor's office that say, you  
22 know, that's maybe something we -- we're going to have  
23 to make some tough decisions and say no to others, but  
24 we could probably make that part of it work.

25 The other part of it, the large amounts needed

1 for modernization or the large amounts needed for new  
2 construction, no. I don't think that that works.

3 Q Okay. I think you said I support or I think  
4 it's a good idea to have an adequate source of funding.

5 Why is it important to have an adequate source  
6 of funding? Not talking about the details of the  
7 program, just why do you need an adequate source of  
8 funding?

9 MS. DAVIS: Vague and ambiguous.

10 THE WITNESS: I'm a practitioner in a school  
11 district, and I'm trying to plan. Knowing that within  
12 some parameters there's going to be a funding source  
13 guaranteed to me to be able to meet deferred  
14 maintenance, major maintenance kinds of needs, even  
15 recognizing that there is an ebb and flow, sometimes  
16 it's a little higher, sometimes a little lower, I can  
17 plan out over a five-year period, maybe a longer period  
18 of time.

19 BY MR. ELIASBERG:

20 Q And why is it important to be able to --  
21 remember, I'm a layman. I've never run a school  
22 district or a facilities program. So tell me why it's  
23 important to be able to plan ahead.

24 A Well, there are a myriad of reasons, but I  
25 guess at the basic level, that I can take the good

1 people -- working with the good people that are in  
2 maintenance and identify that we have a list of things  
3 we want to get done here, and some of them are more  
4 expensive than others, but what are the most critical,  
5 what are the safety issues. Because we're going to get  
6 those done.

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

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

16 MS. DAVIS: Vague and ambiguous.

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

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

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

17 BY MR. ELIASBERG:

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

21 MS. DAVIS: Vague and ambiguous.

22 THE WITNESS: Yes. That it's not something that  
23 somebody can demand at the bargaining table. It's not  
24 something that a board, because it's under pressure from  
25 a community group, can say we're going to spend that

1 money. And they may do it; they may direct the  
2 superintendent to do it.

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

8 BY MR. ELIASBERG:

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

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

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

25 Q And if the funding source is adequate, it makes

1 it much more -- is inadequate, it makes it much more  
2 difficult to do that planning?

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

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

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

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

17 MS. DAVIS: Is that a question?

18 BY MR. ELIASBERG:

19 Q I'm finishing the question.

20 MS. DAVIS: Okay.

21 BY MR. ELIASBERG:

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

25 MS. DAVIS: Is that a question?

1 MR. ELIASBERG: Yes, it's a question.  
 2 MS. DAVIS: Okay.  
 3 THE WITNESS: Yes. You can plan your work, get the  
 4 work done. And the "enough," I just -- you know, it  
 5 just triggered, the "enough." If you work in a school  
 6 district, there is never enough, because the demands are  
 7 constant. But the enough of -- I've got a lock on these  
 8 funds because they don't have to go to where there isn't  
 9 enough for something else is part of the reason why this  
 10 kind of a proposal exists.  
 11 BY MR. ELIASBERG:  
 12 Q Okay. And just a very quick question, because  
 13 you said something about, as a facility manager or as a  
 14 superintendent, you were very concerned about  
 15 maintenance, to the point that you used funds beyond  
 16 your general fund dollars to do maintenance.  
 17 Am I correct that you stated that, in sum or  
 18 substance?  
 19 A It may have been in the reverse, but trying to  
 20 make sure that there was a -- struggle with general  
 21 funds that are never enough and too many demands, but  
 22 trying to make sure that there were funds identified for  
 23 maintenance, which means people as well as materials and  
 24 getting things done, and if there are other ways to do  
 25 that through other funds, yes. However that may be, but

1 those are very limited.  
 2 Q What were the sources, if any, beyond the  
 3 general fund?  
 4 A People don't always know that there are other  
 5 entities that exist that assist schools, but in  
 6 California you will commonly find that there are joint  
 7 powers agencies, where school districts work in a  
 8 collaborative that is actually other than a separate  
 9 governmental entity, for purposes of liability  
 10 insurance, for purposes of other kind of insurances.  
 11 It's a self-funding mechanism, so that instead  
 12 of giving an insurance company a million dollars to  
 13 insure your buildings, you collaborate with all the  
 14 districts and the County office and you have an entity  
 15 that's the self-funded insurance entity under JPA  
 16 statute, the JPA statute in California, and everybody  
 17 contributes money that is a real pool of money, so  
 18 you're sharing risks. You're not spending premiums, at  
 19 least in this larger amount. You may have premiums for  
 20 what's known as higher levels of insurance or stacking  
 21 of insurance.  
 22 If those funds are not expended because you do  
 23 a good job of maintaining your safety levels at all the  
 24 schools, rebates come back to school districts. Those  
 25 dollars, I made sure, went into facilities.

1 Q Other sources that -- I'm not talking about  
 2 something that may be pie in the sky that --  
 3 A Real.  
 4 Q -- nobody ever -- yeah, other real sources that  
 5 come into the general fund that the school districts  
 6 could use to do maintenance work?  
 7 MS. DAVIS: Vague and ambiguous. Calls for  
 8 speculation also.  
 9 Go ahead.  
 10 THE WITNESS: Okay. I'm remembering a couple  
 11 instances that --  
 12 BY MR. ELIASBERG:  
 13 Q Well, I think that's a valid objection, in the  
 14 sense that -- let me ask you this.  
 15 Are there other sources that you used at any  
 16 time while you were administrator in Moorpark?  
 17 A Yeah, rebate from utility companies when I went  
 18 in to do retrofits for lighting to save energy. At one  
 19 point we had to struggle with the board to keep that  
 20 money going to maintenance, but we said, wait a minute,  
 21 the idea came from maintenance. We want it to go there.  
 22 Q Let me guess. You won the battle; didn't you?  
 23 A Yes, I did.  
 24 Q Any other sources that you ever used in the  
 25 time you were -- besides the ones you already mentioned

1 while you were at Moorpark?  
 2 A Redevelopment agency funds.  
 3 Q And what are redevelopment agency funds?  
 4 A Redevelopment agency is another governmental  
 5 agency that was put in place to try to revitalize  
 6 decaying parts of cities or counties, mainly cities.  
 7 School districts have a diversion of some of  
 8 the local tax dollar when a redevelopment agency is  
 9 formed, because it puts a cap on what happens with the  
 10 local income from the property taxes at a particular  
 11 level. The concept is that the agency spends money in  
 12 that blighted area of the community, and then, above  
 13 this cap level, any increase, any increments in the tax,  
 14 go to the redevelopment agency to repay the bonds or  
 15 other mechanisms that caused them to help to improve  
 16 this area of the community.  
 17 School districts can get involved in that, and  
 18 it's frequently a struggle, but they can have a portion  
 19 of that tax increment come back to the school district  
 20 and use that. It's typically identified for capital  
 21 purposes, but it can be expansive, to include library  
 22 books and other things and -- which I think is  
 23 important, but that was a mechanism that we utilized and  
 24 other districts may be able to utilize.  
 25 Q Any other sources that you used in the time

1 that you were in Moorpark, other than the ones you  
2 mentioned, and not including general funds, in order to  
3 do maintenance?

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

10 District by law can charge their actual cost to  
11 these agencies, or these entities. If there is a  
12 profit-making entity that comes in and wants to use the  
13 school district, say a stadium, the district can charge  
14 them cost, and above that cost. That happened -- not  
15 often. It happened a couple of times.

16 And we can take those funds, and since they  
17 were generated from use of a facility, put those into  
18 maintenance. Sometimes we -- Hollywood comes to town  
19 and they want to use the facilities for making movies.  
20 We had that happen also. And so they're being able to  
21 charge them whatever the cost was plus repairing  
22 anything they destroyed plus an amount over that, then  
23 use that in maintenance as well.

24 Q Okay. I'm worried you know too much,  
25 Dr. Duffy.

1 get down to the foundation of a building and create a  
2 new building on that. But that I think it's a wonderful  
3 program. It's an interest-free loan program, requiring  
4 ten percent of private donation.

5 The Federal renovation program, I kind of  
6 mentioned that earlier. That's newer than the QZAB  
7 program, Federal renovation program. There's caveats to  
8 that and qualifiers. But districts have been able to  
9 tap into that. That's been, really, another wonderful  
10 source of additional revenues.

11 I haven't seen this in a while, but the cities  
12 and, I think, counties have been able to tap into  
13 Federal block grant funds, and those are typically  
14 limited as well, but if school districts work with  
15 another entity, like a City, and they have a cooperative  
16 relationship to use a gym or something through some  
17 joint-use model, those dollars could be used. I didn't  
18 actually do that, but understood that and came -- I  
19 don't know, maybe halfway there in such a program in my  
20 experience.

21 Q Any other major programs that you're aware of?

22 A No.

23 Q You may not believe this, but I'm not going to  
24 ask you the details of these programs beyond -- except  
25 with one or two small questions beyond the ones you've

1 Any other sources you used beyond the ones  
2 you've already mentioned, and general fund? And let me  
3 put it a little bit of a limit -- you know, if you got  
4 \$2 from a bake sale once --

5 A No.

6 Q I'm really talking something that was real  
7 money.

8 A Yeah.

9 I probably have exhausted what I was -- have  
10 there. I don't know if there's anything else I can  
11 think of.

12 Q Okay. Are you aware of -- through, let's say,  
13 things that members of C.A.S.H. have told you about  
14 other sources of money -- significant sources of money  
15 that perhaps you weren't able to tap into at Moorpark  
16 but that school districts could use or some school  
17 districts have used for maintenance beyond the sources  
18 you've listed and the general fund?

19 A Well, there's -- it goes beyond maintenance,  
20 but the QZAB program, the Qualified Zone Academy Bond  
21 program -- that's a Federal program. The program is  
22 assumed to provide funds to be used in an existing  
23 facility to bring it up -- you know, to rehabilitate,  
24 modernize, you know, provide maintenance.

25 You can be very creative with that and actually

1 given me.

2 Did the district -- with respect to the --  
3 well, I'll do all the Federal programs, but if it  
4 applies to some and not the others, you can sort of say  
5 yes and no.

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

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

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

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

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

25 Page 42, under the block heading that says,



1 near the bottom, "Allocations and Equity."

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

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

10 A Okay.

11 Q -- stable.

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

15 MS. DAVIS: Vague and ambiguous.

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

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

1 know if I thought of it as an adequate supply of funds  
2 or whether there were funds that I could access in the  
3 time frame that I needed them because of growth.

4 But there were three sources of funds. One I  
5 had very little control over, and that was local bonds.  
6 One I had some control over, but still there were  
7 determinations by others, and those were developer fees,  
8 pulling of permits, depending upon the sale of homes.  
9 The third being the State bond funds.

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

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

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

23 A I was in eastern Ventura County. Eastern  
24 Ventura County's a more conservative part of Ventura  
25 County, not an area where, with the tremendous amount of

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

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

15 BY MR. ELIASBERG:

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

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

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

24 A In the early 1990s, within the school district  
25 where I was the superintendent at that time, I don't

1 residential development going on, people would think  
2 that they would support bonds. Developers needed to  
3 provide schools not -- you know, not those that were  
4 already there. And that didn't go away. That remained  
5 there.

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

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

15 A And they didn't.

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

18 A Yes, '90 was one of them.

19 Q Others?

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

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

25 A Yes.

1 Q -- money; is that correct?

2 Did you feel that the State bond funds were  
3 adequate?

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

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

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

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

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

18 BY MR. ELIASBERG:

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

23 MS. DAVIS: Same objections.

24 THE WITNESS: It's interesting going back trying to  
25 go back into my mind at that time, but -- and I was the

1 context?

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

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

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

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

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

1 chairperson for the '90 bonds, both bonds, statewide  
2 chairperson for both bonds.

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

13 BY MR. ELIASBERG:

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

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

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

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

9 BY MR. ELIASBERG:

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

15 MS. DAVIS: Vague and ambiguous.

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

24 So the concept of the cupboard is bare, woe is  
25 me, as opposed to the cupboard is bare but demonstrating

1 my need means that the supplier is going to come and  
2 restock, you know, the cupboard, that took a little  
3 work. It's part of what I was saying. You need to work  
4 it. You need to make sure that people understand that  
5 in public education, and probably other areas, it's not  
6 simply that something's always going to be there simply  
7 because you have a need. That you need to -- you need  
8 to work it.

9 You need to make sure that you articulate needs  
10 to policy makers that you -- you know, if I'm a board  
11 member and you're a board member, then I'm not letting  
12 you worry about, say, well, let's press those that we  
13 have to press to make sure that they respond to us.  
14 Because who's going to be the voice for the students of  
15 this district if it's not going to be the superintendent  
16 and the boards talking to the other elected officials.

17 So I don't know -- you're looking for a  
18 downside. There was worry on the part of board members  
19 and sometimes superintendents say, oh, jeez, money's all  
20 gone. Well, yeah, that supply is, but you know, we're  
21 going to make sure there's another supply out there.  
22 But you have to help me by applying.

23 Sometimes superintendents and board members are  
24 shortsighted. They don't look beyond today.

25 BY MR. ELIASBERG:

1 risk to seek something and tell the board I'm seeking  
2 something and I fail?

3 And I couldn't really understand that. I mean,  
4 it's hard for me to fathom. You mean you're not?  
5 You're afraid of a personal failure here? It's not a  
6 personal failure. So he didn't want to apply.

7 Q Do you know if in the end the district did  
8 apply?

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

12 Can we take another break?

13 MR. ELIASBERG: Sure.

14 (Brief recess taken.)

15 BY MR. ELIASBERG:

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

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

21 Are there changes that you would make -- and  
22 I'm not talking about an infusion of a hundred billion  
23 dollars, but are there changes that you think are  
24 realistic and workable that you would make to make the  
25 system, either more -- to provide more adequate or more

1 Q Are you aware of either superintendents or  
2 facilities administrators, whoever was in charge of  
3 filing the applications, who in fact ignored your advice  
4 and said well, there's no money, I'm not filing my  
5 application?

6 MS. DAVIS: You're talking in the 1990 context  
7 or --

8 BY MR. ELIASBERG:

9 Q Yeah, in the 1990 --

10 A You made me think of somebody, but it wasn't  
11 1990.

12 Q Yeah. Let me broaden it.

13 I mean in the sense -- are you aware that --  
14 because you've talked about there being a series of  
15 bonds.

16 A Yes.

17 Q So I don't think it makes sense to focus on  
18 1990. I'm looking generally for a concept.

19 Are you aware of any time that you've been  
20 following school facility issues in California where a  
21 district or districts has said, well, I'm not bothering  
22 applying; the cupboard's bare?

23 A Well, you made me think of a superintendent --  
24 I wasn't a superintendent at the time -- that I had a  
25 discussion with, and it was a factor of do I risk? Do I

1 stable funding? Let's just start with adequate and then  
2 we'll move to stable.

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

5 THE WITNESS: Well, we're already talking about the  
6 '06 bond. So -- when I say "we," people within the  
7 organization I represent, C.A.S.H. organization, talking  
8 about the staffers at -- in the Capitol building. So  
9 that we have to look and plan, we have to look forward  
10 and plan.

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

18 So those two things, planning for the -- you  
19 know, not looking beyond '04, but that does exist, and  
20 that's going to be there, but planning for '06 and  
21 recognizing that we have to have districts continue to  
22 talk about what they've done with the 55 percent votes,  
23 kinds of things they've taken care of, kinds of things  
24 they are taking care of, places that hadn't had local  
25 bonds for, you know, decades, having those now be able

1 to match up with State funds, all that, I think goes to  
2 that question.

3 And I don't know, maybe I didn't answer your  
4 question adequately.

5 BY MR. ELIASBERG:

6 Q No, you talked about things that you think --  
7 future-looking things or things that will help in the  
8 future, but are there -- I'm just trying to understand.

9 Are there other -- are there changes to the  
10 system that you would -- that's currently in place that  
11 you think are workable --

12 A State funding system.

13 Q Yes.

14 MS. DAVIS: I'm sorry, vague and ambiguous.

15 BY MR. ELIASBERG:

16 Q The State funding system -- that you think  
17 would make the source of funding more adequate?

18 MS. DAVIS: Same objection.

19 THE WITNESS: There's a tool that's already in  
20 place, and it really hasn't been utilized very much at  
21 all, but depending upon district needs, accessing the  
22 State's loan program. I can't think of the name of that  
23 program. But it's a school facility financing  
24 mechanism, if you borrow from State of California, pay  
25 it back rather than going through some other entity.

1 analog would work would be for -- would County  
2 superintendents letting districts know that this might  
3 be one way to get more funding -- is that the kind of  
4 technical assistance you are thinking of?

5 MS. DAVIS: Vague and ambiguous.

6 THE WITNESS: Yes. That kind of technical  
7 assistance would be one part of it.

8 BY MR. ELIASBERG:

9 Q Okay. Would you take steps to try to perhaps  
10 reconfigure the deferred maintenance program so that  
11 there aren't years when the State's giving the district  
12 12 cents on the dollar in terms of the State match?

13 MS. DAVIS: Calls for speculation.

14 THE WITNESS: I think it goes right back to the  
15 question of the recommendation of that source of funding  
16 for capital and what does all that mean.

17 That if that were a program where a commitment  
18 could be made, that's where I would focus the attention,  
19 on the deferred maintenance program. Let's make sure  
20 that whatever that amount is, let's make sure that  
21 that's there.

22 Now, a caveat is that if I'm in a district and  
23 I have access to Prop 39 bond funds and I have a need,  
24 I'm not going to wait for deferred maintenance. I'm  
25 going to put that need on the list of items that I'm

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

7 BY MR. ELIASBERG:

8 Q I understand you don't know the name of the  
9 entity through which you seek these loans, but --

10 A It's basically through the treasurer's office,  
11 but I'm trying to think of the name of the program  
12 itself.

13 Q Is that a form of conduit financing?

14 A Well, it is a financing. What's it called?  
15 I'll think of it.

16 Q Well, let me ask you this. Is it the concept  
17 that the State, in effect, does the -- somehow works  
18 with the borrower so that the money that the district  
19 ends up getting is tax free and, therefore, they have to  
20 pay -- there's lower rates of repayment on the loan?

21 A It's not -- yeah, they're the -- because it's  
22 a -- it's a pool, I think the rates are lower.

23 Q Okay.

24 A Yes.

25 Q Okay. In your conception of how the AB 1200

1 going to ask the voters to pay for. With the deferred  
2 maintenance dollars that come about, I potentially could  
3 blend them, and so I spend less bond funds, but I would  
4 want to -- I would want to do that kind of thing.

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

10 BY MR. ELIASBERG:

11 Q And that is because the deferred -- the  
12 deferred maintenance funding is not protected by Prop  
13 98? Is that one reason?

14 A It's dependent upon the general fund of the  
15 State, and it's -- it is outside of 98.

16 Q Have you thought at all about how you -- for  
17 example -- let me step back.

18 Has C.A.S.H. lobbied and -- or presented any  
19 proposals to say, here's how we'd like to rework the  
20 deferred maintenance program so we'll -- so we'll be  
21 confident that the money's always there instead of  
22 fluctuating?

23 A Well, we've lobbied to try to increase the  
24 amount of funding that was there, recognizing that it  
25 goes year to year. I did that before I was a lobbyist.

1 I did it as school district superintendent. You know,  
2 in assisting the organization.

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

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

12 MS. DAVIS: Vague and ambiguous.

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

20 Now, saying that, recognizing that it's one of  
21 those things that politically is going to get moved  
22 around just like everything else, just like in a school  
23 district. Is it one of the first things that board  
24 members think about when you present a budget to them?  
25 No. Is it one of the first things that members of the

1 execution of the plans's what gets affected, and you may  
2 need to push the plan out a little further because you  
3 don't have what you need. Or something else comes up  
4 and you have to spend more money on the project than you  
5 thought you did because you discover something you  
6 didn't know existed because of -- just like with  
7 modernization. When buildings are older, you don't  
8 always know what's under the roof or behind the walls.

9 BY MR. ELIASBERG:

10 Q And just stepping back for one second to the  
11 situation you talked about before with the districts  
12 that you encouraged to put themselves in the pipeline  
13 even if the current amount of funding -- I'm sorry, the  
14 funds from the current bond had been depleted -- I was  
15 talking only in the modernization context -- does  
16 that -- the uncertainty as to whether you're actually  
17 going to get money from the current bond or have to wait  
18 to the next one, does that affect the ability of a  
19 district to plan its modernization work?

20 MS. DAVIS: Calls for speculation.

21 THE WITNESS: Well, I would have to speculate, but  
22 I can say also, as a practitioner, it does affect, but  
23 that doesn't necessarily mean it's a negative.  
24 Sometimes it means that there is more careful planning,  
25 that you look at systems and subsystems. And maybe you

1 Legislature do? No. So that's why you have to keep  
2 talking to them about it.

3 BY MR. ELIASBERG:

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

7 A Yes.

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

10 MS. DAVIS: Vague and ambiguous.

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

17 BY MR. ELIASBERG:

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

22 MS. DAVIS: Vague and ambiguous.

23 THE WITNESS: I don't know that it's affected their  
24 ability to plan. I continued to plan, notwithstanding  
25 what I thought the revenues were going to be. The

1 make a decision that, I can't wait to do something  
2 because the need is there right now, and I'll take care  
3 of that through some other means, including making an  
4 argument that I'm going to use some general fund  
5 dollars, because it's a safety issue.

6 BY MR. ELIASBERG:

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

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

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

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

22 I think that that kind of thing goes on. That  
23 there's a -- there's a collegial relationship of people  
24 in districts that go from counties and sometimes to  
25 beyond counties and through organizations like C.A.S.H.

1 and CASBO, where people learn and get assistance, in  
2 terms of planning.

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

7 And that does go on.

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

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

23 BY MR. ELIASBERG:

24 Q Let me turn your attention to Page 42. I told  
25 you before -- I did a bait and switch on you. I said we

1 system, but if you have a need for modernization and you  
2 qualify for modernization, you can demonstrate that need  
3 for a building that's 25 years old or now for a building  
4 that's 50 years old, I think that there needs to be  
5 certain guides to center or make sure that in fact you  
6 fit into the qualifying criteria, the construct,  
7 whatever it be.

8 So we've talked about continuums before. One  
9 end of the continuum is we just take the money and  
10 divide it up by the number of kids without any need.  
11 The other is you have ways to qualify in extreme  
12 circumstances. What I think is important is to have  
13 programs that are identified, and the more we learn, the  
14 more we can change or add to be able to try to meet real  
15 needs of school districts. But they have to be able to  
16 articulate in some way and demonstrate in some way that  
17 they really have that need, so we don't waste money.  
18 And certainly, there was never enough money for me to  
19 waste anyway, if I even thought about wasting money,  
20 because there's always things to do with it.

21 When you have a committee like our committee,  
22 people are always talking about things in sort of like  
23 the blue ribbon committee idea, you know, and  
24 everybody's, you know, egalitarian and all that. And I  
25 had trouble with that, because the realities of

1 were going to look at this a minute ago, and we didn't.  
2 But at the bottom, where there's a heading "Allocations  
3 and Equity."

4 A Yes.

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

8 Do you see that?

9 A Yes, I do.

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

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

22 So I'm not sure what the "equitable" part  
23 means. To some people it means, we just divide it up  
24 by the amount of -- number of kids divided into the  
25 amount of dollars available. The system isn't a perfect

1 education in California aren't -- you know, we're not  
2 going to be able to solve them out here in the thin  
3 air. We got to solve them more closer to the ground.  
4 So that's why I had some difficulty with this.

5 But as best we can, I think we have to be fair  
6 and equitable in how we have those dollars go out.

7 Q Okay. I understand -- sounds to me like you  
8 think there may be a lot of different definitions of  
9 equitable allocation floating around here. So I really  
10 want to focus on -- is there a concept of equitable  
11 allocation that you think that you support?

12 A Well, the current State programs I support. I  
13 think the current State programs, the new construction  
14 program, the modernization program, the critically  
15 overcrowded schools program, I think -- and the COS  
16 program we haven't really seen operated; it's so new.  
17 But I think that there's a sense of -- within each of  
18 those, of trying to allocate funds in some way that's  
19 being fair to each district.

20 Now, the 50-year-old mod program is something  
21 that's new also. That's something that we -- that the  
22 C.A.S.H. organization proposed, and we are further  
23 proposing and, in fact, sought this out for the existing  
24 mod program, to allow a district to go back and mod  
25 again. And under the current law you can't do that.

1 So what we're -- we've articulated is, well,  
2 the old mod program allowed you to do certain things;  
3 the new mod program gives you greater flexibility. So  
4 we couldn't do that here. How can we say this district  
5 shouldn't be able to take this school that's already  
6 been mod'd, it was mod'd in 1982 or '84 or whenever it  
7 was. So we proposed legislation to do that. There's a  
8 bill pending that would allow you to go back and remod  
9 after 15 years.

10 And so there's a sense of what's equitable  
11 there between the old program and the new program or  
12 what's equitable between the existing program and the  
13 50-year-old program, and some of those things we try to  
14 work on session to session as we make progress.

15 Q Has there been any -- or let me ask you this.

16 Do you know where the bill that would change  
17 the rules to allow a school to be modernized even if  
18 it's already been previously modernized with State  
19 dollars -- do you know where that bill is in the State  
20 Legislature?

21 A It moved from the Assembly to the Senate side,  
22 and I'm not sure if it's up next week in Senate  
23 education, but there's a plethora of bills that are, and  
24 it's potentially one of them.

25 Q And could you just explain for me how the

1 school where it's been effectuated at this point in  
2 time. But that was pretty exciting.

3 Q Let me understand. This program would be -- or  
4 district would be eligible for this program if it said,  
5 I have a school that's 50 years old as opposed to 25 or  
6 30 years old --

7 A Yes.

8 Q -- but it's never been modernized before --

9 A That's correct.

10 Q -- with State funds?

11 A That's correct.

12 Q And the -- unlike a district that's applying  
13 with a 25-year-old school building, the 50-year-old --  
14 the district that's applying for mod funds for the  
15 50-year-old building or 50-plus would get just a  
16 per-pupil amount that's larger than the per-pupil amount  
17 for the school that's 25 years old; is that correct?

18 A Not just, but that's true.

19 Q That's one factor.

20 The other factor is that you could even get  
21 every 50-year-old -- let me step back.

22 Every 50-year-old building would get a larger  
23 per-pupil amount than a 25-year-old building?

24 A Yes.

25 Q In addition, you wouldn't automatically get,

1 50-year-old mod program differs from the current mod  
2 program?

3 A The 50-year-old mod program provides additional  
4 resources per student, like the regular mod program  
5 does. It also goes beyond -- and this is one of those  
6 things that I talked about the ability of the  
7 implementation committee to take local and State views  
8 of policy.

9 The implementation committee and the  
10 interpretation of that 50-year-old program interpreted  
11 it in a liberal way -- use that term purposely -- to  
12 allow for additional funds beyond the per-pupil amounts  
13 to take care of site-related utility issues such as old  
14 water lines coming into the school, to be able to  
15 replace those. Abandon those and put in what's new. To  
16 put in a larger water line because of the expansion of  
17 other buildings on the campus when the water line  
18 wasn't, you know, addressed.

19 So that's a very good thing. It's a very  
20 important thing. So site-related -- site-utility  
21 related and some off-site related things, which makes it  
22 more like the new construction program.

23 So we've really come along. We made that mod  
24 program into a much better program. And as I said, it's  
25 so new I'm not sure that we can even go out and see a

1 but you could seek even more money to do -- I think you  
2 said utility-related issues; is that correct?

3 A Yes.

4 Q And then you would -- you would have to -- you  
5 would have to demonstrate that you actually -- or would  
6 you have to demonstrate that you actually needed this  
7 money for, let's say, facilities-related issues?

8 A And I can't -- I haven't done it, so I can't  
9 tell you the mechanisms for that, but the regulations  
10 interpreting the law allow for that. So the  
11 demonstration through the architectural plans produced  
12 by the engineers and all would then be the basis for the  
13 district receiving additional funds.

14 Q Okay. And do you know who has to approve  
15 those, the requests for the additional funds?

16 A And maybe "additional" isn't really the  
17 appropriate term. It would be the funds related to the  
18 site. It's OPSC, the people who would do the  
19 application review at OPSC.

20 Q Do you know, in calculating or estimating the  
21 amount of money needed in the new bond -- I'll include  
22 2002 and 2004, package those together -- when the  
23 estimate was needed -- when an estimate was made as to  
24 the amount needed for modernization, did anyone attempt  
25 to say, let's try to figure out -- at least estimate how

1 many schools are going to be applying for this larger  
2 source of funds, the greater source of funds under the  
3 50-year-old program?

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

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

14 A We could ask Mr. Hancock.

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

17 A Yeah. He probably is.

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

22 MS. DAVIS: Vague and ambiguous.

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

1 related to a problem that many of those districts have.

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

11 BY MR. ELIASBERG:

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

18 MS. DAVIS: Vague and ambiguous.

19 BY MR. ELIASBERG:

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

22 You could have a very clear transparent system  
23 with rules that were clear as day that ended up that  
24 Moorpark got 97 percent of the State's funding and --  
25 you know, and nobody else got any. I'm being facetious,

1 and those involved in legislative process.

2 If we agree upon the need for a program, I  
3 think the rules of that program need to be something  
4 that are understood and that people adhere to, and those  
5 are the local people applying for the funds and the  
6 State people administering those funds, so that people  
7 have a sense of fairness in how they are attempting to  
8 address their local problems or their local needs  
9 compared to another entity's.

10 And you start off with resources, like  
11 buildings, that really aren't necessarily equal, because  
12 some are older than others, some are more well  
13 maintained than others. So you ground it, in my  
14 thinking, in here's the program and be as creative as  
15 you can, but these are the ground rules for that  
16 program. And you qualify, get as much money as you can  
17 under that qualification, and go get the work done.

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

1 but -- but to me that wouldn't be equitable, under your  
2 definition.

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

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

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

20 In the end, even after the bill was signed --  
21 AB 16 was signed by the governor -- that was in, what,  
22 March? In the end -- even in August, that sort was  
23 still being taken -- it was still taking place, because  
24 we were -- we were sorting through those criteria and  
25 then running numbers of who was to be served by this



1 program and who wasn't. And to what extent they were  
2 going to be served.

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

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

20 A Yes.

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

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

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

5 So what would I ask for instead? Give back the  
6 eligibility. Let the district have the opportunity  
7 to -- you know, if there's going to be a balance here,  
8 to then take advantage of construction dollars if  
9 they're available.

10 BY MR. ELIASBERG:

11 Q Okay. That makes sense.

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

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

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

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

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

5 BY MR. ELIASBERG:

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

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

18 A Operational funds.

19 Q Right. Operational funding.

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

25 MS. DAVIS: Same objections.

1 are being here in one school. Now we have two, because  
2 I've just used my newly-regained eligibility to do  
3 that. And that's not perfect either because of time and  
4 planning and all those things. But I think that  
5 relationship is a fair relationship to try to establish  
6 some level of fairness and equity for the -- for those  
7 districts.

8 Q When you said it's not perfect because of time,  
9 do you mean that, at least until you build a new school,  
10 you may not have a place to put the kids?

11 A Yeah, and you may need to transition and things  
12 may be difficult, yes.

13 Q But if -- it is your position, is it not, that  
14 if the State is not going to give the funds -- the  
15 operational grant funds that the districts have come to  
16 expect, it would be fairer to give them back their  
17 eligibility, even if they're getting some -- even if  
18 they're getting some funds?

19 MS. DAVIS: I'm going to just object to the extent  
20 it mischaracterizes his testimony.

21 THE WITNESS: I would think that the district would  
22 have to make a choice. Such as the district that called  
23 me and said, in this instance, what do I do?

24 Operational grants, although they're going to be down,  
25 or do I leave that alone and go after my new

1 construction and risk because of the priority ranking  
2 system.

3 And I listened and said, let the operational  
4 grants go, go after the buildings, go after the  
5 grounds. Because that's something you can then depend  
6 on, because you know that you may get those dollars.

7 So back to the construct that you were just  
8 identifying, is I wouldn't expect the State to  
9 necessarily continue to fund the general fund side of it  
10 without some real discussion and, you know, maybe some  
11 compromises along the way there, but just -- I've given  
12 up eligibility for a child here, and you're not funding  
13 this child to the extent that you should be, based on  
14 what we believed our deal was. Give me back at least  
15 the ability to house that child over here. That's what  
16 I'm saying.

17 BY MR. ELIASBERG:

18 Q Okay. Then -- I hear that.

19 A Am I belaboring this?

20 Q No, not at all. I'm hearing clearly. I guess  
21 I'm a little confused by something you said yesterday,  
22 because my understanding is that's the way the current  
23 system works. If you are getting op. grants, even if  
24 they're ten cents on the dollar of what you thought  
25 you'd be, you give up your eligibility, and if you say,

1 THE WITNESS: I think that that component is an  
2 important component of law.

3 BY MR. ELIASBERG:

4 Q And why is that?

5 A Because of the ability of a district to utilize  
6 those tentative tract maps or whatever we would describe  
7 them, but that's basically what the law provides for,  
8 which will, in the experience that I have, and that many  
9 have had in California, which will yield students, that  
10 the ability to have schools there and ready so we don't  
11 have overcrowded schools once those happen.

12 Now, that was a change in law in '98, where  
13 there was additional -- actually, they -- the change in  
14 law was to identify more clearly and more precisely.  
15 You didn't have quite that same ability but almost under  
16 the prior law. And that was something that I utilized,  
17 because of rapid growth. To have a school there when  
18 kids arrived, as opposed to not having a school there  
19 and overburdening another location.

20 Q Okay. So I think I understand why you think  
21 it's important to be able to have a school ready when  
22 the subdivision is built.

23 Do you think it's fair to treat -- my  
24 understanding is that, from the State's perspective,  
25 your eligibility -- the eligibility that you gain from

1 okay, it's ten cents, but -- and I need the ten cents,  
2 but it's not the dollar that I hoped for, you can give  
3 that up and you get your eligibility back.

4 A Yes, but what I'm talking about is how much  
5 eligibility did I give up the year before and the year  
6 before and the year before. And am I behind. And those  
7 dynamics I can't necessarily describe and articulate,  
8 because I don't know what they all may be.

9 But in the instance that I gave you, it was we  
10 have a certain number of kids that we could trade off if  
11 we give up this eligibility, but this number of kids  
12 going back to the school gives us this eligibility. We  
13 just don't get a general fund amount. The district  
14 wasn't able to walk away from all of its funding. It  
15 walked away from a portion of its funding.

16 Q Okay. I think I'm clear now.

17 Do you think it's equitable that the current  
18 system -- which, as I understand it, you can -- the  
19 State will consider you to have unhoused children on the  
20 basis of subdivision tract maps that you can show.

21 Do you consider that to be equitable, or do you  
22 think it would be more equitable if that eligibility in  
23 the system were changed?

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

1 one student exists in some tentative tract map is  
2 identical to the eligibility of a kid who may be in a  
3 school -- an unhoused child in a school that may have  
4 been overcrowded for ten years.

5 Do you think that treating those students  
6 equally is equitable?

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

9 THE WITNESS: Having been there and dealt with  
10 that, I do. But knowing from whence your question may  
11 come, maybe I can offer something, and that is that  
12 being in the vortex of things and through 2000 and --  
13 being the time I met you, and through 2001 and the time  
14 we came up with AB 16 and seen that tug of war on  
15 overcrowded schools and maybe the suburban schools where  
16 growth was taking place, one of those -- one of those  
17 positives from the conflict that raged there was the COS  
18 program.

19 Because the COS program basically says, if  
20 you've got those overcrowded schools, you don't even  
21 have to meet all the other tests that everybody else has  
22 to meet. You can meet a test that is a much more simple  
23 test, and we will put away millions of dollars to make  
24 sure those kids are housed.

25 That was not an easy feat to get through

1 Legislature. But I think that that -- I don't know that  
2 there was a real imbalance before. Certainly in the  
3 Godinez matter there's a challenge that there was an  
4 imbalance, and the issue you just brought up was in,  
5 you know, that vortex.

6 But the COS program went right at that issue.  
7 Say, oh, if there is a problem here, then maybe we can  
8 fix it with this kind of a program. And what we know is  
9 that the program was over-subscribed, at least in the  
10 part of planning. We'll see what happens in the  
11 execution.

12 BY MR. ELIASBERG:

13 Q What do you mean by over-subscribed?

14 A \$1.7 billion was in the bond. About 2.2, \$2.3  
15 billion was applied for.

16 Q What happens to the applications -- it's a  
17 little tricky, because I understand that a COS  
18 application is not the full package that one would  
19 ordinarily file for eligibility and --

20 A That's what I was saying, it's simple.

21 Q I think it'll be easier to play this out if  
22 you'll assume the following facts.

23 Let's assume that all of the people who apply  
24 down the line come through with their full -- the full  
25 papers necessary. Nobody drops out who's applied or

1 And districts that had a COS potential had the  
2 ability to choose one or the other. So there were  
3 really two access points, and that access point wasn't  
4 lost, should they not be funded. So that's one answer  
5 to that.

6 The other, and I'm -- I talked about a  
7 pipeline. I'm forgetting as to whether or not the  
8 districts that -- if they shouldn't go into the regular  
9 new construction program and they remained there, if  
10 there's an unfunded list that it's funded out of the  
11 next bond. And I can't -- I can't remember that.

12 BY MR. ELIASBERG:

13 Q I understand you don't exactly remember.

14 Are you talking about an unfunded COS list?

15 A Unfunded COS list, yeah.

16 Q Is one of the criteria for qualifying for the  
17 COS program the number of years or the amount of time  
18 that the school or district has been overcrowded?

19 A No.

20 MR. ELIASBERG: Let's take a short break. And I  
21 think is 12:15, 12:30 for lunch.

22 (Brief recess taken.)

23 BY MR. ELIASBERG:

24 Q Dr. Duffy, have you seen any research that's  
25 attempted to look at whether there's a correlation

1 nobody fails to meet the criteria who met them  
2 originally.

3 A They perfect their applications.

4 Q Yes. Okay. Thank you. That's a lot easier  
5 term.

6 What will happen to the approximately half  
7 billion dollars worth of applications that are beyond  
8 the amount that's included in the COS program?

9 MS. DAVIS: Incomplete hypothetical, calls for  
10 speculation.

11 MR. ELIASBERG: I don't think that Dr. Duffy, who  
12 is largely responsible for this program, would be  
13 speculating about what happens to the applications, but  
14 maybe I'm wrong.

15 THE WITNESS: If a district applied and -- and the  
16 Allocation Board, I don't think, has even actually taken  
17 action on those at this point in time. I think they're  
18 still being reviewed.

19 But if a district applied and was not funded --  
20 as ironically, there's a priority ranking system that  
21 was included in that COS program. If the district has  
22 eligibility, it can apply through the regular new  
23 construction plan if it chooses to. Now, it doesn't  
24 have the largess of four to five years, but it certainly  
25 has access.

1 between the property tax wealth of school districts in  
2 California and the amount of funding they get -- State  
3 capital funding for school facilities per capita?

4 A No.

5 MS. DAVIS: Vague and ambiguous.

6 BY MR. ELIASBERG:

7 Q Let me make sure.

8 You have not seen any research like that?

9 A I have not seen any research like that, no.

10 Q Have you heard any discussion about that  
11 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

1 high -- high correlation between the per capita -- the  
2 property tax wealth of the district and the per capita  
3 allocation of State capital funding for new school  
4 construction and modernization, would that affect your  
5 opinion that the State's program currently allocates  
6 funding equitably, at least to the extent that you  
7 describe -- define equitable?

8 MS. DAVIS: Assumes facts not in evidence,  
9 incomplete hypothetical, vague and ambiguous.

10 THE WITNESS: I would want to read and review and  
11 think about that information. I've seen information --  
12 national information making comparisons from great city  
13 schools. I've seen information that has come from other  
14 national groups. Guess I've probably seen various kinds  
15 of comparisons in California, but not in the way that  
16 you've talked about it.

17 I don't know what all the variables would be  
18 there, but I'd want to review it and see what kind of  
19 sense it made.

20 BY MR. ELIASBERG:

21 Q I think you said you'd seen -- you'd seen  
22 comparisons, but not of the type I was talking about  
23 that related specifically to California.

24 What comparisons were those?

25 A I remember seeing a document -- may have been

1 Do you know who prepared the chart?

2 A Well, I'm thinking it may have been a C.A.S.H.  
3 document.

4 Q Do you know who within C.A.S.H.?

5 A No.

6 Q Okay. Do you remember when you saw this, how  
7 long ago this was?

8 A Well, it was several years ago. Somebody else  
9 brought it to my attention, which was kind of  
10 interesting at the time, because it showed how well we  
11 had done as a school district in the State program.

12 Q "We," being Moorpark?

13 A Yes.

14 So we were second or third from the top,  
15 basically, in terms of success within the State  
16 program.

17 Q I don't want to get your competitive juices  
18 flowing, but who was first and/or second, if you weren't  
19 second?

20 A I think Irvine -- and we may have been second.  
21 Irvine, I think, may have been the first.

22 Q Do you remember who -- any of the other top  
23 four or five?

24 A No, I don't.

25 Q Okay. Do you remember any of the districts

1 five or six years ago -- that identified districts in  
2 California, and I think it was only new construction,  
3 but a listing of districts and per-capita amounts per  
4 district. In essence, the size of the district and the  
5 amount of State money that they received and then how  
6 much did that mean per pupil.

7 Q Do you remember -- was it an article or a  
8 research paper? Do you remember what that document was?

9 A It was a chart.

10 Q Do you know who prepared that chart?

11 A It may have been a C.A.S.H. document.

12 Q Do you know what the document -- I understand  
13 you said this is what it looked at, but did it show  
14 that, on a per-capita basis, districts across the state  
15 were getting the same amount of money or different  
16 amounts of money?

17 A No, it showed districts were getting different  
18 amounts of money per capita.

19 Q Did the chart attempt to -- or did the chart  
20 make any explanations as to why that was happening? Why  
21 districts were getting different amounts of money per  
22 capita?

23 A No.

24 Q Did you -- do you know -- oh, I may have asked  
25 you this.

1 that were on the bottom?

2 A The only district that I remember -- I think  
3 this was pointed out as a comparative item by the person  
4 preparing this. There was a comparison of our district,  
5 being at the high level area, and having something on  
6 the order of twice as much money per pupil as L.A.  
7 Unified.

8 Q Do you remember whether L.A. Unified was -- and  
9 let me just divide it into -- what do you call them --  
10 threes.

11 Do you remember if L.A. Unified was in the top  
12 third, middle third or bottom third?

13 A I don't.

14 MS. DAVIS: Vague and ambiguous.

15 BY MR. ELIASBERG:

16 Q So I'm assuming, based on your previous answer,  
17 that you -- well, I'll just ask the question.

18 Do you remember what the difference was between  
19 the districts at the top or even Moorpark second or  
20 third and the districts at the bottom?

21 MS. DAVIS: Vague and ambiguous.

22 THE WITNESS: I think the only thing I can  
23 recall -- and I don't know that L.A. Unified was at the  
24 bottom, but the consultant that prepared this document  
25 for the district made the comparison because of size, as

1 I'm remembering. And we had -- I'm not sure of the  
2 numbers exactly, but we were in the low teens, something  
3 like 12 or \$14,000 per pupil, and I think L.A. was  
4 somewhere in the vicinity of 6 or 7. So we were about  
5 twice as much as L.A.

6 BY MR. ELIASBERG:

7 Q Did you speak with the consultant about the  
8 document, the chart?

9 A We talked. I guess it was one of those things  
10 where I said, oh, you know, I was -- new information to  
11 me. She was pointing out how well the district had  
12 done, and the comparison was to well, here's a huge  
13 district, and this small district that may become a  
14 medium district over time had done very well in that  
15 comparison. That's all I'm recalling.

16 Q Did she -- I'm sorry.

17 A That's all I'm recalling, in terms of the  
18 discussion with this consultant.

19 Q All right. Just so I'm -- I appreciate that  
20 you think that's all you remember, but I just want to  
21 see if there are things that maybe will jog your memory.

22 Did she explain to you why she had prepared  
23 this chart?

24 A We were preparing a document -- the board had  
25 asked for a document, and the -- trying to think of the

1 A I'm sorry, no. No.

2 Q Did she -- just to make sure that I've  
3 exhausted your recollection of the conversation, did she  
4 attempt to explain to you why she thought -- or did she  
5 talk at all about the meaning of the fact that some  
6 districts appeared to be getting very different amounts  
7 of money per capita than others?

8 MS. DAVIS: Vague and ambiguous.

9 THE WITNESS: No.

10 BY MR. ELIASBERG:

11 Q At any time either when you saw the chart or,  
12 really, up to the present, have you ever attempted to  
13 verify whether that information that she put in the  
14 chart was accurate?

15 A No.

16 Q Have you ever tried to look at -- or have you  
17 ever asked yourself why it is that Moorpark and some  
18 districts are getting twice as much money as other  
19 districts per capita through the State?

20 MS. DAVIS: Vague and ambiguous.

21 THE WITNESS: Have I asked myself that?

22 BY MR. ELIASBERG:

23 Q (No audible response)

24 A I don't know if I asked myself the question --  
25 the question as you identified it, but from what I

1 purpose of the document.

2 We had entered into a period of time when we  
3 were doing a strategic plan, and one of the components  
4 of the strategic plan had to do with facilities. And  
5 because I was so much involved with all the aspects of  
6 the district, I was stepping away from certain things  
7 and their -- with the strategic plan you have -- like  
8 with the master plan, you have subgroups. You have  
9 groups that work on different areas.

10 I can't remember exactly how this came about,  
11 but this person was asked to come in and basically do a  
12 read, make a comparison of -- or make an assessment, I  
13 guess, where we were. And the outcome was a document  
14 that identified that we had done extremely well in  
15 dealing with huge amounts of growth and all that over a  
16 period of time.

17 And this document was something that she  
18 apparently had found and I didn't realize existed, or if  
19 I had, I guess I didn't register it. And so she  
20 utilized that, included that information in this report.

21 Q So am I correct in understanding this was a  
22 consultant for Moorpark?

23 A Individual consultant for the district.

24 Q I'm sorry, I had understood it that maybe it  
25 was a consultant for C.A.S.H.

1 recall seeing and just thinking back -- and I can only  
2 remember Irvine and Moorpark being there, but what I  
3 recognized is that we were high growth districts and had  
4 had -- apparently responded to that growth by, you know,  
5 seeking what I had referred to earlier as the backbone,  
6 the State program.

7 Q Do you remember seeing or noticing that there  
8 were other high growth districts on the chart that  
9 appeared to have gotten a lot fewer dollars per capita  
10 than Irvine and Moorpark?

11 A I don't recall.

12 Q During the master plan process -- and by that I  
13 mean the meetings, the preparation of the report and so  
14 on -- was there any discussion about that chart or any  
15 discussion about the amount of per capita funding that  
16 some districts seemed to be getting through the State  
17 program compared to others?

18 A There were all kinds of discussions. After  
19 consultants talked to the groups and then with our  
20 groups talking, full group, smaller group. I don't  
21 remember a discussion of per-capita amounts or even what  
22 you'd initially asked, you know, those --

23 Q You're talking about the correlation between  
24 property tax wealth and amount -- and per capita funding --

25 A Yes.

1 Q -- through the State program?  
 2 A Yeah. There may have been, but I don't recall.  
 3 Q If you were to start from scratch, do you  
 4 know -- is there a methodology you would use to try to  
 5 determine if there is a correlation between property tax  
 6 wealth in California and the per-capita funding per  
 7 pupil?  
 8 A You're asking me --  
 9 MS. DAVIS: Calls for --  
 10 THE WITNESS: -- to be a researcher?  
 11 MS. DAVIS: -- speculation --  
 12 THE WITNESS: I'm sorry.  
 13 MS. DAVIS: Calls for speculation and incomplete  
 14 hypothetical.  
 15 THE WITNESS: My question is -- you're asking me to  
 16 be, at least for the moment, a researcher.  
 17 BY MR. ELIASBERG:  
 18 Q I could at least ask -- you're a Ph.D. or at  
 19 least an Ed.D., so I thought I could ask.  
 20 MS. DAVIS: Same objection.  
 21 THE WITNESS: There is a way of determining -- let  
 22 me ask -- the wealth that you're talking about in the  
 23 district is what kind of wealth? Maybe I wasn't real  
 24 clear on how --  
 25 BY MR. ELIASBERG:

1 Q Well, you're asking me to be really  
 2 knowledgeable about the State's finances, and I'm not.  
 3 What I'm trying to get at --  
 4 A Just given local --  
 5 Q I'm trying to get at the amount of property  
 6 tax --  
 7 A Wealth --  
 8 Q Well, I'd be interested in both kinds of  
 9 wealth.  
 10 Let's start with property tax wealth. So the  
 11 total valuation of property tax in the district.  
 12 A Can I translate what you just said to something  
 13 I can speak to --  
 14 Q Sure.  
 15 A -- at least a bit?  
 16 Level of bonded indebtedness which is related  
 17 to property tax. Level of bonded indebtedness  
 18 information -- I'm trying to be the researcher for you  
 19 here. That kind of information is something that I know  
 20 exists in some locations. You can see the level of  
 21 bonded indebtedness.  
 22 That's important because of a connection with  
 23 the State program; in that, if you've -- you're at a  
 24 particular level of bonded indebtedness, then you can  
 25 qualify for a hardship program, which is at least one

1 way to begin to compare the amount of money supposedly  
 2 behind each child that's available through local  
 3 bonds -- you can translate that, and then there could be  
 4 some comparison as to what districts have gone in  
 5 whatever period of time, three to five years, ten  
 6 years. But of course, the level of bonded indebtedness  
 7 may change during that period of time.  
 8 So trying to get -- you know, how do we say --  
 9 because in research you want to control your variables.  
 10 Is it 2003 and how many -- you know, how well have  
 11 districts done in a particular bond cycle? So I guess  
 12 there are ways to probably try to compare, but we'd have  
 13 to basically define whatever terms we're talking about  
 14 and then control those kinds of variables.  
 15 Q If I ask more questions, you're going to  
 16 further expose the fact that -- the amount I know about  
 17 that. So I think it doesn't make sense to even -- I  
 18 think I understand what you're saying, and that's been  
 19 helpful. I don't think it makes sense for me to sort of  
 20 probe further and try to parse it more finely.  
 21 Do you need back a copy of your report?  
 22 A It's in here; isn't it?  
 23 MS. DAVIS: I think you gave it to him earlier.  
 24 THE WITNESS: Yeah, it's in here.  
 25 BY MR. ELIASBERG:

1 Q If you could turn to Page 6 of your report.  
 2 A Okay.  
 3 Q And if you'd look in the -- well, there's one  
 4 not-full paragraph in the top, and then the first full  
 5 paragraph -- if you'd look in the second full paragraph  
 6 in the middle, there's a sentence that reads, "Because  
 7 State capital outlay dollars were so precious and  
 8 recognizing that MTYRE school districts appeared to  
 9 operate in such a fashion as to provide adequate  
 10 instruction for children, the State, through legislation  
 11 offered by Senator Gary Hart, began to offer," quote,  
 12 "construction avoidance funding," close quote, "for  
 13 districts, which offered the option of running an MTYRE  
 14 program, as opposed to seeking State capital  
 15 construction funding."  
 16 A Yes.  
 17 Q Do you see that?  
 18 A Yes.  
 19 Q What did you mean by "capital outlay dollars  
 20 were so precious"?  
 21 A In this time frame, where the State of  
 22 California had become the funding partner for school  
 23 districts with new construction, first using the tide  
 24 land oil funds in the early '80s, very early '80s and  
 25 then moving on to State bonds.

1 In retrospect -- and probably at the time -- it  
2 was -- I'm sure it was at the time too -- it became  
3 clear that State dollars, because of growth, were in  
4 high demand, and other than the State dollars, developer  
5 fees were about the only thing available there. So  
6 State capital outlay dollars were precious, and the  
7 State was saying, how do we deal with this demand  
8 level. That's what I was meaning by that.

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

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

1 the current program, we'll give you construction  
2 avoidance money, because you're not coming to us for any  
3 State dollars, so we ought to reward you for that and,  
4 by the way, we'll encourage other districts to do the  
5 same thing.

6 Q And so when you talk about -- there's no -- as  
7 far as I can tell, no subject to this statement,  
8 "recognizing that MTYRE school districts appeared to  
9 operate in such a fashion" -- or no specific subject --  
10 are you referring to Senator Gary Hart or others?

11 MS. DAVIS: Vague and ambiguous.

12 THE WITNESS: "Recognizing that MTYRE school  
13 districts appear to be operate in such a fashion as to  
14 provide adequate instruction for children, the State,  
15 through legislation offered by Senator Gary Hart, began  
16 to offer construction avoidance funding for districts  
17 which offered the option of running a MTYRE program" --  
18 BY MR. ELIASBERG:

19 Q I wasn't criticizing your grammar. I'm trying  
20 to understand who it was who recognized that the  
21 districts appeared to operate and provide adequate  
22 instruction.

23 A Well, I think one was Senator Hart, and then,  
24 because the legislation was successful, the Legislature,  
25 saying here's an alternative. And I really believed

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

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

8 MS. DAVIS: Vague and ambiguous.

9 THE WITNESS: At this time?

10 BY MR. ELIASBERG:

11 Q Yeah.

12 MS. DAVIS: Calls for speculation.

13 THE WITNESS: At this time?

14 BY MR. ELIASBERG:

15 Q Yeah.

16 A No.

17 Q You do not know or --

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

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

23 A What I'm remembering are two programs, the one  
24 was about \$25 per ADA. The other was higher, and I  
25 don't know if it was a hundred dollars per ADA, but it

1 was -- it was higher than the 25. Could have been 80.  
2 But there -- it was increased.

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

5 A No, I don't.

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

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

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

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

1 Q All right. Was there any debate or strong  
2 disagreement with the legislation offering construction  
3 avoidance funding?

4 A At that time, no. No. I don't -- I don't  
5 remember debate, conflict or controversy, no.

6 Q In the next paragraph on Page 6, you -- at the  
7 first sentence, there's a discussion of disparity of  
8 developers' fees, and I don't really need you to focus  
9 on the context of this, because it's a term that comes  
10 up a number of times in your report. I just want --  
11 what are developers' fees?

12 A The more complete term would be residential  
13 developer fees, and there's also commercial and  
14 industrial developer fees. But what they are are funds  
15 provided by a residential developer to a school district  
16 or, in the case of elementary and high school district,  
17 to both districts, which divide the fee, as a means of  
18 recognizing that there will be a capital cost to housing  
19 the children that come from the development in  
20 classrooms and other school facilities.

21 What's identified here is a recognition that  
22 new homes will yield new children, who will need space  
23 in schools, and that's translated into a fee that is  
24 paid to a school district by the developer. That is not  
25 a tax. It's a fee which represents payment for a

1 A Not legally, no.

2 Q Are they sometimes used for modernization and  
3 maintenance?

4 A I can't speak to that. The question has arisen  
5 from time to time. I've been asked it before by  
6 attorneys and practitioners.

7 Q Okay. But legally, they're not supposed to use  
8 developers fees --

9 A That's my response, yes.

10 Q Okay. Are there certain kinds of districts  
11 that are more likely to collect developer fees than  
12 others?

13 A Yes.

14 Q What kinds are those?

15 A Districts that have a lot of residential  
16 development or commercial and industrial development.

17 Q Is that -- would those districts be similar to  
18 what you called previously high growth districts?

19 A Yes.

20 Q Can you look down, if you would -- let's see.  
21 Make sure I get the right spot here.

22 On Page 7, the second full paragraph. It talks  
23 about -- "The program enhancement language was found in  
24 Senate Bill 327 and provided for an increase in square  
25 footage for elementary, middle and high school

1 service, and that service being the provision of space  
2 within a school.

3 Q Okay. That concept makes sense. You're  
4 bringing kids in, you have to pay something for it.

5 What commercial and industrial developers fees  
6 have any application to the school context?

7 A It was determined prior to this time by a study  
8 that was done at the State level that in areas where  
9 there is growth -- that is, commercial and industrial  
10 growth -- the demand for housing increases, and that  
11 that demand for housing is -- has a correlation to  
12 workers coming in to take the jobs in these new  
13 developments.

14 And so it was a way of capturing, to a smaller  
15 degree, a fee that would be given to the district to pay  
16 for this in-fill housing of new families that may be  
17 moving into a home that existed before where there was  
18 an empty nester home that now has children in it. So  
19 that the commercial entity -- it's, you know, Rite Aid  
20 or an industrial entity, whatever it may be, will create  
21 jobs, and those jobs will demand more seats in schools.  
22 And so it's not as direct as the residential fee, but  
23 it's something that can be established.

24 Q Developer fees can't be used for modernization  
25 and maintenance; can they?

1 students," parentheses, "which resulted in the ability  
2 of districts to build larger schools with greater  
3 amenities, and provided for square footage for the  
4 research specialist program," and actually, I won't -- I  
5 don't think we need to finish -- you're welcome to read  
6 it.

7 A Okay.

8 Q I don't need to get the rest of the sentence on  
9 the record.

10 A Go ahead.

11 Q What did you mean provided for an increase in  
12 square footage for elementary, middle and high school  
13 students?

14 A The program that had existed prior to this  
15 time, the lease-purchase program, was a  
16 square-footage-based program. The current program is a  
17 student grant amount program. The square footage  
18 program was in statute, had been in statute since,  
19 apparently, the late '40s and identified 55 square feet  
20 per elementary child, as an example.

21 SB 327 increased that square footage amount to  
22 a higher square footage amount per elementary child.  
23 Same thing occurred for middle and high school. It was,  
24 as I recall, about a seven percent increase. It was  
25 about 59 square feet, I think, for the elementary



1 child.

2 Q So when you said the lease-purchase program was  
3 a square footage program, does that mean that, if you  
4 got State moneys through -- or State loans through the  
5 lease-purchase program, that you could only build a  
6 school that provided for -- and I understand the amount  
7 varied, depending on what grade level the school was,  
8 but you could only build the school where -- put it  
9 different way -- where the amount of square footage was  
10 capped?

11 A No. The amount of square footage for the  
12 school was based upon whatever level of eligibility you  
13 had. You could determine to build a school that was  
14 35,000 square feet or 40,000 square feet or 30,000  
15 square feet, depending upon the number of students and  
16 eligibility that you had. But each one of them, each  
17 K-6 child, represented 55 square feet, or however you  
18 wanted to use that. So you could build a larger school  
19 or a smaller school.

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

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

8 A If you only had a hundred students?

9 Q Yes.

10 A If you only had a hundred students, then you'd  
11 be limited to the hundred students times the 55 or the  
12 59 square feet, whatever it would be. Other than  
13 students that were in special education, and those  
14 students, under the statute, had specific numbers of  
15 square feet for those children.

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

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

1 Q Okay. That was exactly my question.

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

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

7 Q And what's the legend?

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

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

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

22 A No.

23 Q -- square feet proposal?

24 A No.

25 Q Do you know if other states have similar square

1 foot caps per student in their State funding programs?

2 MS. DAVIS: Vague and ambiguous.

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

12 BY MR. ELIASBERG:

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

17 MS. DAVIS: Same objection.

18 THE WITNESS: No.

19 BY MR. ELIASBERG:

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

22 A No, I don't.

23 Q Okay. On Page 8.

24 (Interruption in the proceedings.)

25 MR. ELIASBERG: It's a little after 12:30. Of

1 course, we'll break for lunch.

2 (Lunch recess from 12:39 p.m. to  
3 1:42 p.m.)

4 BY MR. ELIASBERG:

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

6 A Yes.

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

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

17 Do you see that?

18 A Yes, I do.

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

25 A Yes.

1 construction and project funding."

2 A Hmm-hmm.

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

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

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

15 A Yeah.

16 MS. DAVIS: Vague and ambiguous.

17 BY MR. ELIASBERG:

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

19 A Yes.

20 The MTYRE incentive that's here that I'm  
21 talking about here is basically the MTYRE incentive that  
22 had begun with the Gary Hart program that had become a  
23 second program, and there was a move to try to identify  
24 ways to give districts an incentive if they're MTYRE  
25 already or if they think that they can do this, we'll

1 Q Are there other reasons too that the  
2 Legislature and the governor recognized the reliance of  
3 districts on the State building program?

4 A Developer fees existed, but there wasn't really  
5 an ability to rely upon developer fees to provide for  
6 permanent housing of students, because they were, from  
7 the inception, based upon a leasing of facilities. So  
8 they were not sufficient in themselves, even in, you  
9 know, larger developments to be able to provide for what  
10 you would want in permanent housing. So that's another  
11 reason.

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

16 A Let me go back to it here.  
17 (Witness reviews documents.)  
18 Yes.

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

23 It says here, "One was to provide increases in  
24 MTYRE incentives," and then the next sentence says, "A  
25 second was to provide incentives and priority in school

1 give you an incentive. And that incentive would then  
2 relieve the pressure on the State program.

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

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

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

20 A Yes.

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

1 Can you explain what you mean by that?

2 A "A second was to provide incentives and  
3 priority in school construction project funding to  
4 districts that would pay for half the cost of the  
5 project through 50-50 funding"?

6 Q Oh, okay. So this is not an MTYRE incentive;  
7 it's simply saying that you have a priority if you come  
8 up with 50 percent of the funding, as opposed to coming  
9 to the State and asking for a hundred percent of the  
10 funding?

11 A That's correct.

12 Q Okay. Now, correct me if I'm wrong, but during  
13 this point in the late '80s and early '90s, were  
14 districts able -- even if they could get 66 and  
15 two-thirds percent of the vote, able to pass local  
16 bonds, or were they still prohibited from doing that?

17 A The Prop 46 restored the GO bond authority of  
18 school districts, and Prop 46, I think, was in 1986.

19 Q That answers my question.

20 Was there some actual overlap of these two  
21 incentives, in the sense that if you applied for State  
22 funding and you said, I'll not only put up 50 percent,  
23 but I'll also operate the new school that I'm going to  
24 build on MTYRE, that the State's response would be  
25 actually, that makes you the highest priority in our

1 next school and the one beyond that.

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

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

15 BY MR. ELIASBERG:

16 Q Okay. Then that's a nice transition. Tell me  
17 what happened in the early 1990s.

18 A We've talked. There was a continuation of  
19 bonds every even-number year and two bonds in '88, '90  
20 and '92. Continued K-12 population growth, continued  
21 residential growth, although we did have a slowdown  
22 because of a recession.

23 But for whatever reason -- and I really don't  
24 know, legislation was introduced and became law that  
25 created eight different tier levels of priority in

1 eyes?

2 MS. DAVIS: Vague and ambiguous.

3 THE WITNESS: I don't believe that that kind of  
4 prioritization was in place at the time that we're  
5 talking about.

6 BY MR. ELIASBERG:

7 Q Okay. Since I think I know where you're going  
8 with that answer, rather than get into that in the  
9 future, did that kind of prioritization come into place  
10 at some point in the future?

11 A It did.

12 Q And approximately when was that?

13 A It was '91 or '92, in that time frame.

14 Q Okay. In your opinion, did the -- did these  
15 MTYRE incentives actually do what the State had hoped  
16 that they would do; i.e., encourage some schools not to  
17 seek State funding and build new schools, but instead go  
18 on MTYRE?

19 MS. DAVIS: Same objections.

20 THE WITNESS: At the time what I believed, being in  
21 Ventura County and having conversations with the  
22 superintendent in Oxnard -- I believe what it did was to  
23 provide additional funds to districts, like Oxnard, who  
24 are already on MTYRE, but gave them a sense of a choice  
25 of what they wanted to do for the next school and the

1 funding. And the top tier was MTYRE, and then the -- I  
2 think the -- top tier, in fact, I think, was MTYRE  
3 50-50, and then it went MTYRE 50-50 and on down.

4 Q Okay. Other than -- I think you previously  
5 said that your sense was that the State believed that  
6 the incentives were doing what they were supposed to do  
7 because they then increased the incentives a few years  
8 later --

9 A Yes.

10 Q -- is that correct?

11 Do you have any other reason to think that the  
12 incentives were working?

13 A Well, can you help me maybe with what --

14 Q Let me give you an example. Somebody at a  
15 C.A.S.H. meeting says, Tom, you know, I'm not thrilled  
16 about the idea of MTYRE, but -- and I wouldn't go on it  
17 normally, but now the State's offering construction  
18 avoidance funding, and so we in the district -- I,  
19 whoever has the power to make that -- we've decided that  
20 that sweetens the pot, and we're now going to go on  
21 MTYRE, even though our previous plan was not to go on  
22 MTYRE.

23 Any sort of evidence that you were given like  
24 that that would lead you to think, oh, the incentives  
25 are having an effect on some districts?

1 MS. DAVIS: Assumes facts not in evidence,  
2 incomplete hypothetical.

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

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

12 I remember a conversation I had at OPSC, Office  
13 of Public School Construction, which don't know if it  
14 was called that yet, where there seemed to be a sense  
15 of -- and this wasn't -- these weren't OPSC people, but  
16 some others, and I can't remember the meeting. It  
17 wasn't an implementation committee meeting, but there  
18 seemed to be some sense of this makes sense, this is  
19 going to -- this is going to be a help in the long-run.  
20 And I wasn't in favor of this legislation, by the way.  
21 I didn't -- I really didn't like this.

22 And that's where the conversation was --  
23 something, I guess, that I'm recalling, because there  
24 was a positive statement by a woman who was a  
25 consultant -- maybe was she was lobbyist too, and I, of

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

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

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

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

1 course, was not -- I was in the school district, but I  
2 said, I think this is one of the worst pieces of  
3 legislation I've seen in a long time.

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

11 BY MR. ELIASBERG:

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

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

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

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

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

1 have some other means of housing them.

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

6 A You built for a hundred.

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

9 A (No audible response)

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

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

25 So I guess what it caused me to do was to

1 accelerate planning, at least that's what I'm  
2 remembering I was thinking at the time. It also meant  
3 that -- oh, I guess I would try to be more creative in  
4 working with the development community and asking for  
5 more. You know, the law provided they had to give you a  
6 certain level, but you could also ask for more. But  
7 those were basically the rules, and what it did was to  
8 pare back the total eligibility for school districts in  
9 California, so it wasn't just the MTYRE districts.

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

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

19 Q (No audible response)

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

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

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

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

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

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

25 A No.

1 MS. DAVIS: Vague and ambiguous.

2 THE WITNESS: No.

3 BY MR. ELIASBERG:

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

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

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

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

20 MS. DAVIS: Vague and ambiguous.

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

1 remember any research.

2 BY MR. ELIASBERG:

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

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

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

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

1 BY MR. ELIASBERG:

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

6 A "There is no doubt."

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

10 A Where the little mark is on the page?

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

13 A Okay.

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

17 A Okay.

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

21 A (Witness reviews documents.)

22 Okay.

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

1 through things, like larger bond measures, acted, in a  
2 very short space of time, to get a ballot -- or to get  
3 an item on the March ballot for '96. And if I'm  
4 remembering correctly, that was the first time we had a  
5 March primary, and so the Legislature wasn't used to  
6 that.

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

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

25 Q That's helpful.

1 sentence?

2 A (Witness reviews documents.)

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

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

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

20 There was also the failure of the '94 bond,  
21 which was something that we hadn't experienced before.  
22 And left a pipeline of funding that got longer until we  
23 got the March '96 bond. The March '96 bond was sort of  
24 an exercise in political will to behold, because the  
25 Legislature, which frequently takes a long time to get

1 So is it correct that the failure you're --  
2 maybe better said, failures, in the sense that it's the  
3 failure of a lot of districts to pass local bond  
4 measures?

5 A And that it had been frustrating.

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

8 A Large need.

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

13 MS. DAVIS: Vague and ambiguous.

14 THE WITNESS: The consequences were that we were  
15 going to exacerbate the housing crisis or housing --  
16 student housing crisis in California. And what I'm  
17 saying, I think, that that was recognized.

18 And that's why we had one bond measure in '96  
19 where there were counties that -- and we tallied by  
20 counties -- counties that supported the bond measure  
21 that had never really done so before, and that the  
22 places that always supported the bond measures had even  
23 greater support. It was -- there was a change. There  
24 was something dynamic and different there.

25 BY MR. ELIASBERG:

1 Q What did you mean by the student housing crisis?

2 A We had a growing population of students, as  
3 I've said. That was understood. Districts, like my  
4 district and others, were projecting enrollment  
5 increases. If those enrollments continued to increase  
6 and there was no means of providing funds to have  
7 schools -- classrooms and other facilities for them,  
8 then that becomes a crisis. What do you do.

9 And that was articulated and we -- again, we  
10 got the biggest bond up to that point in time in  
11 history, as I said, and support for it. So there was  
12 some change, some dynamic change, politically there.  
13 Not only within the people in Sacramento that sit in the  
14 Assembly and the Senate, but people in homes and  
15 businesses and different parts of California.

16 Q And I appreciate that, and in a question or two  
17 I want to talk about actually that dynamic, but I'm  
18 first trying to understand all of the things that  
19 might --

20 A Failed?

21 Q Well, spurred -- if it's failed or whatever,  
22 but spurred that dynamic.

23 When you say that, you know, the question  
24 arose, what do you do with those students, do you have a  
25 sense of what districts were doing with those students

1 be concerned about.

2 Another option for districts certainly would  
3 have been to turn to MTYRE. Another option for  
4 districts was to work with developers, and developers  
5 sometimes work very creatively with school districts.  
6 They did with mine.

7 Districts needed to be clear in their -- I  
8 mean, clear in anticipating their needs and try to plan  
9 for those needs, believing that at some point in time  
10 there will be some additional State funds, but there  
11 were not, because of the failure of the '94 bond. If  
12 there were districts, like mine, that attempted a  
13 two-thirds bond and didn't have that, didn't have local  
14 bonds, if they were -- if there was residential  
15 development, they relied upon developer fees.

16 And then, you know, something that we did, and  
17 I know others did, is to project developer fees into the  
18 future and borrow against those fees to build the  
19 school, using a mechanism that I know I identify in here  
20 more than one time, and that is a COP. Or some  
21 districts used lease-purchase mechanisms, so that they  
22 could afford to have a new place.

23 Sometimes districts would do what I did, lease  
24 a piece of property from a developer for a dollar a  
25 year, with no negative consequence should there be a

1 when they weren't able to build new schools?

2 A I've said that a backbone for my school  
3 district, and certainly for others, was the State school  
4 building aid program. If that program had no funds  
5 available, the State had another program -- it was then  
6 called the emergency portable program; it's called the  
7 State portable relocatable program today. I don't know  
8 the exact title.

9 But that program had been in place for some  
10 time, and offered a Field Act relocatable building, air  
11 conditioned, with new furniture, brought in at no cost  
12 to the district, set up at no cost to the district, that  
13 the district then paid a below-market rate for leasing  
14 over a period of each year, and that program was one  
15 that districts were able to rely upon.

16 I utilized that program over time during that  
17 period of time and before and after, but that was one  
18 option districts had. And I think there was great  
19 demand for those buildings.

20 Q Is that -- I'm sorry, go ahead.

21 A Well, that was one important option. It meant,  
22 of course, that you were adding relocatables to existing  
23 campuses, and you may need to do that rather carefully,  
24 so as not to intrude on play space, and make sure  
25 there's fire access and all the other things you have to

1 failure, but then a promise to seek State funding when  
2 State funding was available. So trying to use every  
3 option that you could, because that's what you had to  
4 do. Anticipating that there isn't any money, at least  
5 for a two-year period.

6 Q And are you aware -- it sounds like you were  
7 quite successful in getting through this period.

8 Are you aware of districts that, for management  
9 reasons or other reasons, were unable to pass local  
10 bonds or work creatively with developers and were not  
11 able to build new facilities?

12 MS. DAVIS: Calls for speculation.

13 THE WITNESS: I'll have to think. Specific  
14 districts?

15 Well, I know some districts -- and Canejo was  
16 one of them -- had schools that they closed, and they  
17 started reopening schools. That was one. Not sure;  
18 Simi Valley may have done the same thing, but I remember  
19 Canejo doing that. What I remember is people just being  
20 very busy, attempting to plan, and there were people  
21 that were doing what I was trying to do, using multiple  
22 pools.

23 Even during that time Oxnard built a second new  
24 school. When I was at the County office, we worked  
25 together building two schools that basically were side

1 by side. I believe they built another school. And they  
 2 had a successful bond election, two-thirds vote bond.  
 3 So I don't know. I can't remember a lot of specifics  
 4 except people were really busy.

5 Q Are there -- I think you said that, at least in  
 6 general, high growth districts tend to have a lot of  
 7 residential development and, therefore, they have access  
 8 to some developers fees; is that correct?

9 A (No audible response)

10 Q Are you aware of districts that are high growth  
 11 that don't actually get very much residential  
 12 development?

13 MS. DAVIS: Calls for speculation.

14 BY MR. ELIASBERG:

15 Q An example being existing housing stock, but a  
 16 lot more people are going into that existing housing  
 17 stock.

18 A We actually had that happening in the core of  
 19 the Moorpark area, a number of families living in one  
 20 residence. And I know that that was also happening in  
 21 other communities. And they -- they didn't have  
 22 development fees.

23 Q So under those circumstances, you wouldn't have  
 24 that tool of developers fees --

25 A You wouldn't.

1 go through. There became another set of complications  
 2 politically in California to get to that, to get to that  
 3 bond, to get to what was -- what became SB 15.

4 Q And I don't -- I think your report's gone into  
 5 those a lot. I don't -- is the primary one, in terms of  
 6 the complications of the compromises that needed to be  
 7 made, the effort to put some kind of cap on developers  
 8 fees?

9 MS. DAVIS: Vague and ambiguous.

10 THE WITNESS: I wouldn't -- I wouldn't refer to it  
 11 in that way. I would say it differently. It was a way  
 12 to control what, in some areas, was considered to be no  
 13 cap on development fees. Because it wasn't statewide.  
 14 The MIRA ability wasn't something that every district  
 15 had, because it required the cooperation of a City or a  
 16 County. So I think it was only available in certain  
 17 areas of California. But that dynamic was really  
 18 something that was a force, yes.

19 BY MR. ELIASBERG:

20 Q And was that dynamic around developers fees the  
 21 key issue you were talking about the complications  
 22 before you could get to Prop 1A enacted?

23 MS. DAVIS: Vague and ambiguous.

24 THE WITNESS: Well, it was a key issue, yes.

25 BY MR. ELIASBERG:

1 Q -- to try to deal with the new housing  
 2 population?

3 A No. But people were trying to come up with  
 4 ideas; they didn't become law. Such as other kinds of  
 5 taxes and even transfer taxes, what if a home is sold to  
 6 somebody else and, gee, they have children. None of  
 7 those ever really went very far.

8 Q When you talk about the school facility crisis  
 9 in that sentence, how long, in your opinion, did that  
 10 crisis last?

11 A Well, in the early '90s it lasted through  
 12 Proposition 203, which was March 'of 96, but there was  
 13 tremendous amount of relief with the passage of that,  
 14 because that was the biggest bond up to that time, and  
 15 there was a -- as I've said several times, just historic  
 16 support in places where it wasn't -- bonds weren't  
 17 supported before. But it wasn't all done. There was  
 18 still need, and the next two and a half, three years was  
 19 pretty interesting, but it lasted up through Proposition  
 20 1A.

21 But as I was talking in here about this  
 22 harbinger here, it was not only 203, but what happened  
 23 with 1A. There were some political struggles during  
 24 that time, said, we need another bond. There were  
 25 certain things that were asked for to allow that bond to

1 Q And actually, I'm not going to ask you the  
 2 details. I want to make sure I at least ticked off what  
 3 the other principal key issues were.

4 A You want me to tell you what they are?

5 Q Yeah, just list them. Don't need to go into  
 6 detail.

7 A What was referred to as streamlining of the  
 8 State program, creating a grant program where it -- I  
 9 don't even know if this is a word but de-politicized the  
 10 funding of schools. There was a perception that the  
 11 Allocation Board played favorites, and I was at just  
 12 about every Allocation Board meeting and I didn't  
 13 believe that.

14 But there was a perception that there was, so  
 15 let's require the board to act through regulation, which  
 16 was something that the law didn't require before. So  
 17 that was a key item there. There were several balance  
 18 points and a difficult set of policy initiatives that we  
 19 worked to try and balance.

20 Q Did that period of time, where a lot of  
 21 political districts were failing to get bonds passed and  
 22 then the '94 State bond didn't pass -- did that affect  
 23 schools' ability to modernize and maintain their  
 24 facilities also?

25 MS. DAVIS: Vague and ambiguous.



1 THE WITNESS: Modernization, the allocation  
2 demand, I think, continued to grow. I think the  
3 pipeline continued to grow. I'd mentioned the Oakland  
4 litigation before. Item of litigation there was that  
5 there was a failure for Oakland to receive funding for  
6 several projects because two architects didn't move  
7 those projects. So they stayed in the pipeline. There  
8 were others.

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

12 BY MR. ELIASBERG:

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

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

18 THE WITNESS: Well, I would have to speculate. I  
19 would say in -- in some districts, the consequences may  
20 not have been great at all, in terms of impact on the  
21 student population or the getting the job done of  
22 educating children. You know, the school that I  
23 mentioned in testimony -- probably not Tuesday, maybe it  
24 was Monday -- that we'd had funded was, I think, in good  
25 shape. I wanted to improve things there, including for

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

3 A Uh-huh.

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

9 A Okay.

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

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

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

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

23 A I worked with a number of business people  
24 during that time, including the development community,  
25 and it was difficult for them. And maybe going into it,

1 technology, which we were able to do. So it meant we  
2 had to wait for that.

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

11 BY MR. ELIASBERG:

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

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

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

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

1 I really -- I didn't necessarily think about it, but  
2 after -- after the fact and having remembered what had  
3 happened during the period in the 1980s, when there was  
4 a recessionary period -- I think it was around '83-'84,  
5 maybe it was '82-'83. I think that there had to have  
6 been a relationship there.

7 Q And let me ask you also, because I -- I'm not  
8 from California, but I was living in California that  
9 year in '94 -- maybe it was '93.

10 My memory also -- it was a time of pretty bad  
11 budget crisis, at least at some point; isn't that  
12 correct?

13 A I called them the years of the Uncola.

14 Q I think I understand what you mean by that.

15 Is it your opinion that the budget crisis also  
16 contributed to the defeat of the bond?

17 A Sometimes educators can be their own worst  
18 enemy. And they have trouble thinking about separating  
19 bond money from general fund money. So I think even  
20 some of my colleagues and certificated services in  
21 school districts may have voted no on the bond because  
22 of thinking there's some relationship there. So I  
23 think -- yeah, there was -- things were bleak, we don't  
24 want to take any risks.

25 Q In -- and I promise I'm not going to be in the

1 habit of going backwards. Just one sentence.

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

8 Do you see that?

9 A Hmm-hmm.

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

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

25 And I guess part of what I'm saying is the

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

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

4 A Yes.

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

10 A Are they accurate?

11 Q Yes.

12 A Yeah.

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

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

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

22 A Okay.

23 Q And really, on K-12 -- I'm not interested in  
24 higher education, except to the extent that we're going  
25 to need to subtract higher education from -- because I

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

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

10 A I knew you were thinking that.

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

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

17 (Brief recess taken.)

18 BY MR. ELIASBERG:

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

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

24 A I thought maybe you were coming to a  
25 conclusion.

1 want to focus on K-12. So we can look at what the K-12  
2 numbers are.

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

8 A The K-University Bond Act --

9 Q Yeah.

10 A -- Conference Report page, keep that dogeared?

11 Q Yeah.

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

14 Not Page 10 -- Page 11.

15 A Okay.

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

18 A Hmm-hmm.

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

23 A Hmm-hmm.

24 Q Do you see that?

25 When you refer to the two bonds there, do you

1 mean specifically the 2002 and 2004 bond that's part of  
2 AB 13?

3 A Yes.

4 Q And when you say the two bonds equal amounts of  
5 need demonstrated by State agencies and C.A.S.H., how  
6 did the State agencies demonstrate the amount of need  
7 for new construction? By that I mean, what methodology  
8 did they use to demonstrate the need?

9 A They utilized, as I recall, a report that was  
10 given by Mr. Bruce Hancock to the joint committee on  
11 school facilities. They utilized the demonstrated pupil  
12 grant -- pupil grants projected by districts that  
13 applied to the new construction program.

14 Q You're going to have to help me out -- break  
15 that out. You said the demonstrated pupil grants  
16 projected for the new construction program.

17 What are the pupil grants?

18 A The -- in using the kinds of projections that  
19 are allowable under the law with the State's cohort  
20 projection and any augmentation that could be  
21 demonstrated because of growth in a district, such as  
22 the kind of thing we've talked about before, the  
23 tentative tract maps, the district is able to project  
24 out from a given date over a five-year period the amount  
25 of growth that it's anticipating.

1 And each district applying to the State program  
2 for new construction identifies the total amount of  
3 eligibility -- that is, the number of pupils -- which  
4 translate into grant amounts per each project that they  
5 apply for. So that if a district has 10,000 pupils in  
6 projected eligibility, they're projected as unhoused  
7 pupils, that number, times a per-pupil amount, would  
8 equal what that district's eligibility would translate  
9 into at a given point in time.

10 Q And over what -- over what period of time is  
11 this -- well, how many years does this projection look  
12 to?

13 A It's allowable under the law to have a  
14 five-year projection.

15 Q In coming up with this number of pupils --  
16 we'll skip for a minute the multiplication by the grant  
17 amounts, but just coming up with the number of pupils,  
18 are you taking into account districts that have applied  
19 for funding under older programs but have not yet been  
20 funded?

21 A No. If they -- well, let me -- the answer may  
22 be yes. If a district had applied for funding during  
23 the period of time from January 2001 up to the time the  
24 conference committee was meeting, and that district had  
25 received -- didn't have enough priority points --

1 priority points weren't in effect during that time --  
2 didn't have enough priority points and had received  
3 approval but no apportionment, then they were not  
4 included in this number, because they were in what we  
5 have referred to as being the pipeline.

6 If the district had not applied for a specific  
7 project that had been given a zero apportionment, undue  
8 apportionment but had eligibility for a project or  
9 projects, it was pure eligibility -- that district and  
10 all the other districts that had pure eligibility were  
11 then counted toward what the demand was.

12 So what I'm recalling is that if a district  
13 hadn't perfected its eligibility into a particular  
14 project that had gone in for apportionment, then it was  
15 included in the total amount that was projected for  
16 future.

17 Q Beyond, you know, applications that have been  
18 made or applications that are in the pipeline, did  
19 you -- did Bruce -- did Mr. Hancock also rely -- to the  
20 extent that you know -- on just population projections,  
21 or was he only relying on district applications with  
22 cohort projections in it?

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

25 THE WITNESS: What I'm remembering is that he

1 captured what -- he captured district pure eligibility,  
2 you know, what did districts demonstrate that they had  
3 need for that were not in a project that was remaining  
4 unfunded that could be paid for through, you know,  
5 the -- set aside in the bond that we were working  
6 toward. But there was no other means. He didn't use  
7 birth rates; he didn't use some other means, because the  
8 State program doesn't rely on those.

9 So what I'm recalling is that he said what's  
10 in-house, in terms of eligibility, that hasn't been  
11 perfected into a project that has been given a zero  
12 apportionment, and we'll take that number of projected  
13 pupils, K-12, and we'll multiply them by a number that  
14 includes both building costs and land costs that we  
15 average.

16 BY MR. ELIASBERG:

17 Q Where does -- where is that number, or the  
18 combination of the building and the land costs, that  
19 number, obtained --

20 A Well, he'd be the one to tell you the detail of  
21 where he came up with this, but in that elementary,  
22 middle and high have different grant amounts, a number  
23 of assumptions had to be made how many were in each of  
24 the three groupings and let's try to come up with a  
25 composite number. Let's also come up with an inflator

1 to that, thinking it was over a period of time of --  
2 what was it going to be? You know, two years. Let's  
3 also come up with a composite of what it was going to  
4 cost for land and the development of that land.

5 So he did some kind of calculation there and  
6 came up with a number that he multiplied by the pure  
7 eligibility. And he presented that to the conference  
8 committee on school facilities.

9 Q If it had been your task rather than Bruce  
10 Hancock's to try to estimate the amount of need, would  
11 you have used the same methodology, or would you have  
12 approached it in a different way?

13 MS. DAVIS: Calls for speculation.

14 THE WITNESS: I don't know that there would be  
15 another way that I could come up with numbers that I  
16 would take to members of the Legislature, because what  
17 was in that -- I think the genius of the approach was to  
18 say, you have pupils in your school district and they're  
19 in this number. As I went from place to place in the  
20 Capitol, the question was, what about my district? And  
21 I didn't even have to ask the question, because  
22 districts were calling in and talking to their members.

23 And so what was compelling about that was to  
24 identify that there is a real need. It's demonstrated  
25 and documented. We may talk about how we come up with

1 this number, but let's try to use a reasonable number.

2 Our friends in the Legislature have -- there's  
3 a lot of things they think about, but if you can  
4 identify a district and say, you've applied for it, that  
5 number is in this number and, yeah, land costs may be  
6 cheaper in your district or they may be more expensive  
7 in somebody else's district, but we think that this is a  
8 reasonable way to do this.

9 That became more compelling, rather than  
10 saying, by the way, let me just -- let me treat this in  
11 such a way to talk about birth rates, which State  
12 program never does anyway. It was more finite; it was  
13 more real, although there was certainly, in Bruce's  
14 approach to this, some estimates of future costs and  
15 some assumptions made about land costs. I think -- I  
16 think it was a good, fair way to do it.

17 BY MR. ELIASBERG:

18 Q Did the land -- well, let's start with the  
19 construction costs and then look at the land costs.

20 Did the construction cost numbers that he  
21 used -- understand he made some -- I guess inflation  
22 adjustments or adjustments, saying we're going to  
23 project this five years out, but did they start with the  
24 basis the statutory per-student cost set forth in the Ed  
25 Code and adjusted by the SAB under regulation?

1 A Yes. That's what I recall.

2 Q Is there information -- again, I appreciate  
3 that you think that Mr. Hancock's approach was the right  
4 one.

5 Is there information that's not currently  
6 available, but if it were available would make you  
7 think, if we had that information we could do this -- we  
8 could come up with a better estimate than the one he  
9 came up with?

10 MS. DAVIS: Calls for speculation, incomplete  
11 hypothetical.

12 THE WITNESS: I don't know what that would be. I  
13 don't know what that would be for that -- for that  
14 number.

15 BY MR. ELIASBERG:

16 Q Okay. And are you aware of any flaws in the  
17 methodology that Mr. Hancock used?

18 MS. DAVIS: Vague and ambiguous.

19 THE WITNESS: The fact that he's human. Probably,  
20 yes.

21 BY MR. ELIASBERG:

22 Q Well, let's put that one off to the side.

23 A No, I'm not aware of any flaws. What I am  
24 aware of is that it had success in the job he had to do  
25 and the job I had to do, and that -- in that, it was

1 something we could explain and was interpreted by the  
2 policy makers to make some sense.

3 Q Referring back again just to the statement on  
4 11, which says, "In addition, the total of the two bonds  
5 equal the amount of need demonstrated by State  
6 agencies."

7 Just so I'm clear, I understand that  
8 Mr. Hancock did some estimation -- and I guess he would  
9 have done it on behalf of OPSC or SAB; is that correct?

10 A Yes.

11 Q Are there other agencies involved in the  
12 process?

13 A Well, I believe we talked about this the other  
14 day. Maybe we didn't. Maybe I'm thinking we did. That  
15 CDE and OPSC and us during this time frame were having a  
16 lot of conversations. A lot of it was really focused on  
17 what became the COS program, because we were looking at  
18 numbers of kids. But I'm sure that he was having  
19 discussions about other -- you know, the other students  
20 who we're trying to focus in on. And he may have even  
21 talked about DSA about demand levels; I don't know.

22 But we were talking -- C.A.S.H. was talking to  
23 CDE during this time, and I know that Mr. Hancock was  
24 talking to CDE during this time, just because of  
25 discussions that we had.

1 Q You just referred to a second ago to demand  
2 levels.  
3 What did you mean by that?  
4 A DSA -- demand levels on DSA?  
5 Q (No audible response)  
6 A Numbers of projects that were coming in. The  
7 three different agencies -- like, at this point in time  
8 when we're spending mod money here. We're trying to  
9 generate it. We talked to three different agencies on  
10 what's happening. DSA has something that we were  
11 relying upon, that's how much comes in every month to  
12 them for review or how much they are putting out every  
13 month. DSA-approved plans are basically the key to  
14 unlocking State funds under the new construction  
15 program. So that's an important thing to consider.  
16 So looking at future and also looking at what's  
17 in DSA that had not been perfected to an unfunded  
18 apportionment gives -- you know, it's a -- it's a  
19 picture with several different segments to it. And so  
20 that's what I meant by that with DSA.  
21 Q Okay.  
22 A Doesn't always give you the clearest picture,  
23 but it gives you more of the picture. And sometimes you  
24 have to fill in the blanks.  
25 Q Now, I'm understanding that, at least in part,

1 this -- the estimate of the need which ended up in the  
2 bond itself was based on demonstrated eligibility by  
3 districts; is that correct?  
4 A Yes.  
5 Q So this estimate doesn't include the amounts  
6 necessary to build schools -- for example, to build  
7 schools off multi-track if those schools are currently  
8 getting operational grants; isn't that correct?  
9 A Let me step back from your question and say  
10 something that may help me understand if this is what  
11 you're asking, and maybe I'm answering it by what I'm  
12 saying.  
13 We were looking beyond the new construction  
14 needs. We were looking specifically at another set of  
15 factors, and that is, how many schools -- not school  
16 districts, but how many schools in California are  
17 overcrowded at a particular level. Let's say here's the  
18 cross bar, and how many schools are at that level or  
19 beyond.  
20 We were looking at that at the same time, and  
21 that translated into the document we talked about  
22 before, how many schools are overcrowded, and if we --  
23 if we unload those schools -- my term, not a term in  
24 law, I don't think -- but if we unload those schools so  
25 that they are now at a diminished level of

1 overcrowding -- they're not as overcrowded, what's it  
2 going to cost to house these numbers of pupils.  
3 That was inclusive of MTYRE and inclusive of  
4 Concept 6, as we talked about the other day. So that  
5 the 1.7 billion and the 2.24 for the COS program were  
6 numbers that in total were looking at doing the  
7 unloading that I just talked about for schools in  
8 California.  
9 L.A. Unified had a particular interest in that,  
10 because they saw after a while, when we were discussing  
11 it, that this was a program that would assist them. And  
12 so they began looking at it as to what does this do for  
13 us. And how much would we potentially use in the first  
14 bond or could we use from the first bond, could we  
15 access from the first bond or could we access from the  
16 second bond.  
17 I don't know if I've answered your question,  
18 but it's -- there were two parts to trying to put this  
19 together. One was what's the demand level out there for  
20 growth, and if we're creating a new program to unload  
21 schools, those schools would have some level of growth  
22 as well -- or no, that's not a way to say that.  
23 If there's -- if the district has some level of  
24 growth and they have these overcrowded schools, then  
25 what we were saying to them is, because these

1 overcrowded schools are overcrowded, you've got to  
2 unhouse kids, let's give you a new program to use to  
3 access the housing of those unhoused kids that you need  
4 more time to plan for because you're in a -- not only a  
5 crowded campus, but you're in a crowded urban area and  
6 you need time to accumulate properties and assemble  
7 properties.  
8 BY MR. ELIASBERG:  
9 Q I guess what's confusing me, though, is my  
10 understanding, if a district, with respect to a  
11 particular school, is operating that school on  
12 multi-track because they are overcrowded, there're too  
13 many kids in the attendance area go to that school if  
14 you don't operate on multi-track, but if they take the  
15 op. grants, those kids aren't unhoused.  
16 A You're right.  
17 Q And so that --  
18 A Oh, I understand your question now.  
19 Q -- how you're saying that the bond addresses --  
20 the bond estimates look to unload those kids -- I  
21 thought you were saying that the bond looks to unload  
22 those kids who are unhoused, but isn't it true that kids  
23 who are in schools where they're in MTYRE who are  
24 getting op. grants -- those kids aren't considered  
25 unhoused?

1 A You're right. You're right. If you're getting  
2 the op. grants, you aren't considered to be unhoused.  
3 Q Do you know if Mr. Hancock -- whether it was in  
4 this process or separately -- or actually, anybody in  
5 the state -- has made an effort to, regardless of  
6 whether the kids are -- whether the school districts are  
7 getting op. grants for these kids or not, said how much  
8 would it cost to unload the schools that are currently  
9 on MTYRE and get them onto traditional calendars?

10 MS. DAVIS: Calls for speculation.

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

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

23 And how much would it cost if we even used the  
24 numbers that are the standard numbers, not the bigger  
25 numbers that Mr. Hancock came to with the 12,000 or

1 Q -- and unload all kids who are currently on  
2 MTYRE, regardless of whether they are technically  
3 unhoused because of the district's decision to accept  
4 op. grants or not?

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

11 Q Those numbers being what?

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

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

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

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

23 A No, they're not.

24 Q So if there are non-MTYRE districts that apply  
25 for COS funds and qualify them, wouldn't that mean that,

1 whatever the number was that he came to. And so we were  
2 looking at that time, I think, at just pure -- the pure  
3 overload at the 20 percent level or higher.

4 So in answering your question -- I guess it's  
5 sort of a foggy answer, but I'm not sure what he did.  
6 But we did do -- not necessarily scientific  
7 calculations, but we did do some estimates. And those  
8 estimates were something that, as we moved along with  
9 the numbers that are back here on the dogeared page,  
10 were not inconsistent.

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

18 BY MR. ELIASBERG:

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

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

1 assuming that every district said, we want to get off  
2 MTYRE, that then, in fact, there wouldn't be enough in  
3 the bond to deal with all the MTYRE schools and the  
4 schools that qualify that are not MTYRE that also  
5 qualify for COS?

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

8 THE WITNESS: Well, what you're asking gets into  
9 the complexities of what we were discussing at the time  
10 in estimates of numbers and all, and if a district is  
11 overcrowded by 30 kids, based upon the model, will they  
12 apply for that. You know, all of those things were  
13 being discussed.

14 And I don't know completely if I -- I don't  
15 know if I can answer your question completely. We  
16 looked at L.A. and we looked at other districts that  
17 were overcrowded. Some of them were on MTYRE. Some of  
18 them -- one in particular is on MTYRE and double  
19 session.

20 BY MR. ELIASBERG:

21 Q Is that Anaheim?

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

24 And although, certainly, L.A. was at the table  
25 and Anaheim City wasn't, I kept Anaheim City in my head,

1 because it -- you know, how do you operate a school  
2 district that way. You know, and I probably wasn't  
3 aware that they were that way until we really started  
4 discussing it with L.A. and I started looking around.

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

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

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

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

1 that Anaheim City was operating both double session --  
2 i.e., morning sessions and afternoon sessions -- and  
3 MTYRE. And I believe you said how can you operate  
4 schools like that.

5 What did you mean by that?

6 A Well, what I meant was, how do you balance all  
7 of those resources of teachers and all that. It was  
8 sort of a recognition that this is a very difficult  
9 thing to do. And I used that argument for people who  
10 are across the street in the Capitol building to say,  
11 when -- there was really clearly a question, are you  
12 trying to sell ideas just for L.A.? No, we're here to  
13 make sure that we address overcrowded schools. Because  
14 that apparently is something that exists in California.  
15 And by the way, let me tell you about this district  
16 here.

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

25 Q Seems like a good question to me.

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

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

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

10 Am I missing something?

11 A No, that's correct.

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

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

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

25 Q Just referring you back -- I think you said

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

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

8 Q And you referred before to the doc.

9 Do you have a copy of that document?

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

16 Q Okay.

17 A Somebody could obtain it through that agency.  
18 I don't know that I have a copy of the final, final  
19 document.

20 Q Did you use that document in writing this  
21 report?

22 A No. What I used was my memory.

23 Q Are you aware of any effort, formal or even  
24 informal, to try to determine how many districts in  
25 California that are on MTYRE -- have schools on MTYRE

1 currently would like to get off if the funding were  
2 available?

3 MS. DAVIS: Vague and ambiguous.

4 THE WITNESS: No, I'm not.

5 BY MR. ELIASBERG:

6 Q Okay. And are you aware of any estimate like  
7 that with respect to, not just MTYRE broadly, but  
8 Concept 6 specifically?

9 MS. DAVIS: Same objection.

10 THE WITNESS: No, I'm not.

11 BY MR. ELIASBERG:

12 Q Now, previously you talked about the -- I mean,  
13 there sort of seems to be two parts of the equation.  
14 There's how many students do we have to house and then  
15 what does it cause to house them. And I want to shift  
16 to the what does it cause to house them.

17 A What does it cost?

18 Q Cost, I'm sorry.

19 And yesterday we looked at the book School  
20 Facilities Fingertip Facts, and I just want to  
21 reintroduce those. And this, I believe is Duffy Exhibit  
22 3.

23 I just want -- if you could turn to the second  
24 page of that, and look down at Roman VII, basic  
25 construction data.

1 A Hmm-hmm.

2 Q Is it your understanding that the basic  
3 construction data here, which includes -- appears to  
4 include construction costs per student -- I guess an  
5 estimate of students per school, construction costs per  
6 school. Let's just start with those, on the left three.

7 Are those numbers identical to or very close to  
8 the numbers that were used in the estimate that  
9 Mr. Hancock did?

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

12 THE WITNESS: (Reviews documents.)

13 I'm remembering numbers -- a number or numbers  
14 that he used, and I remember other numbers that were  
15 posed during the time frame.

16 I think the numbers are probably close. I  
17 certainly remember 12,000 or 13,000 being discussed. In  
18 fact, I remember him using that number or a number close  
19 to that in one presentation. So they're somewhat  
20 familiar.

21 BY MR. ELIASBERG:

22 Q Okay. And let me tell you now that I'm not  
23 going to -- I'm not holding you to, you know, that it  
24 was exactly. I want to talk more generally about how  
25 the numbers are -- how this construction cost per

1 student is arrived at.

2 A Okay.

3 Q Whether the number that Mr. Hancock used was a  
4 couple hundred thousand dollars different or even a  
5 hundred dollars different one way or the other.

6 Do you know how, at least in the estimate  
7 Mr. Hancock did, the construction cost per student is  
8 arrived at?

9 MS. DAVIS: Objections.

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

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

22 BY MR. ELIASBERG:

23 Q Okay. Have you ever heard complaints from  
24 members of C.A.S.H. that the State's estimates of  
25 construction costs per student are unrealistically low?

1 MS. DAVIS: Vague and ambiguous.

2 THE WITNESS: Not the way that you've said it, no.

3 BY MR. ELIASBERG:

4 Q It struck some bell.

5 So what have you heard?

6 A The grant amounts -- typically this is the way  
7 it's phrased. The grant amounts are low. The statutory  
8 grant amounts are low.

9 Q Okay. From whom have you heard that that you  
10 remember?

11 A I've heard it from architects, from school  
12 district people, from facility planners.

13 Q Have you heard it from -- and I'm not talking  
14 about the guy on the street but even -- not necessarily  
15 limiting it to C.A.S.H. members.

16 Have you heard it from other people who you  
17 consider to be knowledgeable about school facilities in  
18 California?

19 A Yes, I have.

20 Q And who were those people?

21 A Individual names of people?

22 Q If you can think of them, sure. If all you  
23 know is, I remember it was a planner or it was an  
24 architect, that's fine too.

25 A I've heard it from architects, from



1 construction managers. I've heard it from school  
2 district representatives, superintendents of districts,  
3 assistant superintendents, planners. I've heard it  
4 across the board.

5 Q Has C.A.S.H. ever done any investigation or  
6 research or put out a paper looking at the question of  
7 whether the State's construction costs or the State  
8 grant amounts are --

9 A The former but not the latter. We've looked at  
10 it.

11 Q Okay. And do you know if there's even been  
12 any -- well, who looked at it when you say "we've"  
13 looked at it?

14 A I asked a group of people to come together  
15 to -- we call it the grant adequacy committee -- in  
16 order to look at it squarely and without any political  
17 emphasis, without any presuppositions.

18 Q And who's on the grant adequacy committee?

19 A Bruce Hancock -- I don't know if I can remember  
20 them all, but I'll try to remember them all.

21 Q All that you can remember.

22 A Jim Bush, Dave Zian.

23 Q How do you spell Zian?

24 A Z-i-a-n.

25 Dennis Boydston.

1 your head, you can --

2 A While I'm talking, sure. Go ahead.

3 Q But I don't think we -- I know you just spent  
4 ten minutes racking your brain.

5 I know who Mr. Hancock and Mr. Bush are.  
6 Who's Mr. Zian?

7 A Mr. Zian is a manager of fiscal in OPSC.

8 Q And Mr. Boydston?

9 A He's also a senior manager in OPSC.

10 Q Okay. Mr. Dunston?

11 A An architect.

12 Q Mr. Tobata?

13 A He's a construction manager.

14 Q Ms. Koplin?

15 A Architect.

16 Q Mr. Holmes, I think I know.

17 A Yes.

18 Q Of Murdoch, Walrath & Holmes?

19 A Yes.

20 Q And I assume Alex Murdoch is the same.

21 Who selected this group to do the study?

22 A Me.

23 Q And when did you put the committee together?

24 A About November of last year.

25 Q Has that group reached any conclusions?

1 Q How do you spell Boydston? I think I know  
2 but --

3 A B-o-y-d-s-t-o-n, I think.

4 Q Anyone else?

5 A Hmm-hmm. I'm trying to think of them. I got  
6 the pictures of their faces, but I kind of got to walk  
7 around the room.

8 Q I can bring a mug book in.

9 A Say it again?

10 Q I can bring in some mug shots.

11 A Mug shots.

12 Assemble the -- what's the phrase?

13 Q All the usual suspects?

14 A Yeah, the usual suspects.

15 I said Dennis Boydston, right?

16 Q You did. You --

17 A There's also --

18 Q -- said Hancock, Bush, Zian, Boydston.

19 A There's also Dennis Dunston. Arturo Tobata.

20 Q How do you spell the last name?

21 A T-o-b-a-t-a.

22 Joanne Koplin, K-o-p-l-i-n, Paul Holmes, Alex  
23 Murdoch. There's a couple of others. That's probably  
24 sufficient for you, but there are --

25 Q Let's do it this way. If somebody else pops in

1 MS. DAVIS: Vague and ambiguous.

2 THE WITNESS: Well, we haven't convened them again  
3 to come to a conclusion. We did exploration and tore  
4 programs apart, built them back up, created a survey  
5 document, surveyed about 15 school districts with 15  
6 specific projects.

7 BY MR. ELIASBERG:

8 Q Do you know if any -- and again, I'm not asking  
9 you to speculate. I'm asking -- I want, for example --  
10 if someone had said to you, here's my -- Jim Bush had  
11 come up and said, Tom, here's my conclusion.

12 So I'm really only -- what I'm trying to  
13 understand is -- are you aware of whether any of these  
14 people has reached any tentative conclusions?

15 A What I asked for was their cooperation and  
16 their help. I had no political agenda here. I wasn't  
17 trying to build a case to take across the street to the  
18 Legislature singly and by myself or on behalf of  
19 C.A.S.H.

20 But because a number of people, as I described  
21 to you, architects, construction managers, school  
22 district people, you know, represented, in terms of  
23 those kind of entities on this list, had said, gee, we  
24 think the grants are low, I thought it was fair to bring  
25 people together and say, why don't we look at this and

1 see, you know, is there -- are we all looking at this in  
2 the same way.

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

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

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

1 All projects that were basically closed out, so that  
2 they -- we had -- we were comparing --

3 Q Actual data.

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

12 Q You've gotten good at answering the next  
13 question I have before I ask it, but let me ask you  
14 this.

15 Have any -- have the survey documents come in  
16 yet?

17 A We have some of them back.

18 Q Even roughly, do you have a sense of when  
19 you'd like to try to have this group get back together,  
20 look through the information, try to put it together  
21 into some kind of a final position/conclusion?

22 A Well, between now and the end of session. And  
23 you know, I had a very aggressive calendar before. I  
24 hesitate to tell you what that was, because it was, I  
25 guess, very optimistic. But by the end of session. So

1 that if, in fact, there is something that is yielded  
2 here, that we can agree on it.

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

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

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

22 What's that mean?

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

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

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

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

17 Q Okay. If the conclusion -- well, let me ask a  
18 bit of foundational question.

19 I assume, since you picked these people, that  
20 you believed that they were -- had the sufficient  
21 expertise to come to an accurate conclusion on this  
22 question; is that correct?

23 A Yes.

24 Q If this group were to come back -- and I'm  
25 doing a hypothetical here. I understand that they

1 haven't reached any conclusion whatsoever, and it sounds  
2 like your mind is very open.

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

8 MS. DAVIS: Incomplete hypothetical, calls for  
9 speculation.

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

12 BY MR. ELIASBERG:

13 Q I'll just go home. You can just say, he's  
14 going to say this next, I'm going to answer.

15 A I've already been there, and -- yeah, they  
16 may -- you know, using the hypothetical, they may be  
17 insufficient.

18 What do we do about that? Well, one of the  
19 thoughts in my mind is, I walk across the street and I  
20 begin doing what I do. And say we can make a change in  
21 the law, and since we've gauged these other two bonds,  
22 maybe we can't make the change to be effective in the  
23 204 bond, but we can with the 206 bond. So now we know,  
24 when districts are complaining, why, and let's fix that  
25 with the '06 bond.

1 study -- and really, it wasn't simply this study; it was  
2 also something that was happening with the State  
3 Allocation Board that caused me to want to satisfy my  
4 curiosity.

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

19 So I -- the experience I have through that --  
20 at least that couple of conversations tells me that  
21 they -- they may not have been supplementing. So I  
22 don't know.

23 Q So you're -- and I appreciate your letting me  
24 know that that might give you an indication, but you  
25 don't know for certain one way or the other, do you, as

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

5 Q Am I correct in understanding, though, that a  
6 district that gets State funding to pay for new  
7 construction under -- I guess it's the financial  
8 hardship program -- would not be able to supplement with  
9 other sources in order to build their new school?

10 A Yes.

11 Q So they would have to build the school on the  
12 State grant amounts and nothing more?

13 A Correct.

14 Q Are you aware of districts like -- Elk Grove  
15 and San Juan Capistrano come to mind -- that, when they  
16 build new schools, substantially supplement the State  
17 grant amounts with money from other sources, such as  
18 developer fees or other sources?

19 A I'm not aware. I know that in -- I'm not aware  
20 to any supplementation. I'm aware that Capistrano works  
21 closely with developers, as I did, and there may be  
22 something that supplemented there.

23 I do know that, in the question of the grant  
24 amounts that we were just talking about, just in  
25 querying some districts on my own when we began this

1 to whether --

2 A No.

3 Q -- they're supplementing?

4 A No, they haven't told me they are or they  
5 aren't. Those conversations, those were telling me they  
6 were being very careful with whatever resources they  
7 have.

8 Q Does the fact of -- well, do you know of  
9 districts that actually were using more grants than they  
10 actually were housing students in order to build the new  
11 school?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: I can't give you a listing of  
14 districts, but yes, there were districts that were doing  
15 that. Up to a particular time.

16 BY MR. ELIASBERG:

17 Q It's now illegal, I understand, but prior to it  
18 being illegal.

19 A Yes.

20 Q Did that suggest to you that if the school  
21 district -- just to use a hypothetical -- says, we're  
22 going to use a thousand 100 grants to build a school  
23 for a thousand students, does that suggest to you that  
24 maybe the grants are too small?

25 MS. DAVIS: Vague and ambiguous, calls for

1 speculation.

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

4 There are other responses to it, including  
5 response that the district wants to put something more  
6 into the project or that the district wants to have what  
7 are known as project savings, that if it has Project 1,  
8 2 and 3, that it has savings from three projects that it  
9 then uses to build -- get an additional project, which  
10 is the concern of a number of State officials who said,  
11 we don't want to do that anymore.

12 BY MR. ELIASBERG:

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

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

21 Under this program, if your grant amount is a  
22 million dollars and your bid on the project comes in at  
23 \$900,000, you get to keep a hundred thousand dollars.  
24 You get to keep that difference. So that if a district  
25 asked for additional grants -- it had asked for a

1 people making that statement are correct or not?

2 MS. DAVIS: Calls for speculation.

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

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

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

18 BY MR. ELIASBERG:

19 Q Okay. And then just to close the loop, because  
20 I want to make sure that I understand that -- you have  
21 not yet directed it to be done; C.A.S.H. hasn't done it.

22 Are you aware of anyone's attempting to do it?

23 A No, I'm not.

24 Q Shifting back to Page 11 in your report -- is  
25 this a good -- are you -- looks like you may be ready

1 million one, some of the State's fears were that they  
2 were having additional savings that had then saved for a  
3 project that was not a State-funded -- that was a  
4 State-funded project but not an approved project.

5 Q I completely understand.

6 Are you aware of any research on the same  
7 question that you were looking at with grant amounts,  
8 but instead of grant amounts for new construction, for  
9 grant amounts for modernization?

10 A No.

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

16 MS. DAVIS: Vague and ambiguous.

17 THE WITNESS: Yes.

18 BY MR. ELIASBERG:

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

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

25 Q Do you have any opinion as to whether the

1 for a brief break. I think we've been going about an  
2 hour. I've lost track of the time.

3 A I have too. Yeah, lets do that.

4 (Brief recess taken.)

5 BY MR. ELIASBERG:

6 Q Dr. Duffy, on Page 11, where it says -- we  
7 previously talked about how the numbers were arrived at,  
8 and I think I'm pretty much done with that, but I just  
9 want to ask you quickly -- you say that the two bonds  
10 equal amount of need demonstrated by State agencies and  
11 C.A.S.H., amounts supported by all education groups.

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

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

20 Q Do you know if UTLA took a position?

21 A No, I don't.

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

25 A Yes.

1 Q I'd like to introduce a document.  
 2 Take as long as you need to familiarize  
 3 yourself with that document.  
 4 (Plaintiff's Exhibit 4 was marked for  
 5 identification by the court reporter.)  
 6 THE WITNESS: (Reviews documents.)  
 7 A lot of familiar names.  
 8 BY MR. ELIASBERG:  
 9 Q I thought you'd know some of the usual  
 10 suspects.  
 11 A Yes.  
 12 (Witness reviews documents.)  
 13 Okay.  
 14 Q Let me just -- before I ask you about this, let  
 15 me refer you back to the dogeared page of your report.  
 16 Just looking at the subtotals for K-12 --  
 17 A Yes.  
 18 Q -- am I correct in understanding that the K-12  
 19 subtotal was 11.4 billion for 2002?  
 20 A That's correct.  
 21 Q And 10 billion for 2004?  
 22 A That's correct.  
 23 Q So in total, am I -- I hope my adding's  
 24 right.  
 25 Is it correct that the total between 2002 and

1 2004, subtracting out higher ed, but just focusing on  
 2 K-12, is 21.4 billion?  
 3 A That's correct.  
 4 Q And it appears from the -- am I correct that it  
 5 appears from this document that the groups who are on  
 6 this letterhead, CTA, CSBA, ACSA, Cal SSD -- I'm not  
 7 sure who that is -- CASBO, CFT, CSEA, LAUSD, MALDEF,  
 8 PTA, and CSIU actually supported a \$24 billion bond  
 9 rather than a 21.4 billion bond?  
 10 A 24 billion for K-12.  
 11 Q Thank you, yes.  
 12 A Yes, that's what this document says.  
 13 Q Had you seen this document before?  
 14 A I don't recall the document, no.  
 15 Q I'm just curious, does this document in any way  
 16 change your statement in your report that the amounts --  
 17 which I assume meant the amounts that are in the bond --  
 18 that are in the current bond, the 21.4 for "K" through  
 19 12, were supported by all the education groups?  
 20 A No, it doesn't change what I wrote there.  
 21 This was in the period of time, actually, the  
 22 very final few days of the legislative session of 2001.  
 23 And there was a flurry of activities. There had been a  
 24 couple of meetings of the facilities conference  
 25 committee and, of course, differing numbers were being

1 used.  
 2 We were anxious to move forward with a March  
 3 bond, and numbers were coming from different people --  
 4 and I can't even tell you what those numbers actually  
 5 were at the time -- but it wasn't going to happen. And  
 6 things were not really set to have a decision being  
 7 made, either by the conference committee or even by the  
 8 governor, relative to what the conference committee were  
 9 offering, and the others.  
 10 What we did between this time and when the  
 11 Legislature came back into session -- because they ended  
 12 their session shortly after this date -- was to do a lot  
 13 of work in refining, and a lot of our discussions this  
 14 afternoon about MTYRE, Concept 6 and others, where we  
 15 began to try to narrow the -- I guess the -- not narrow,  
 16 but try to get closer to numbers.  
 17 And I think the numbers that are reflected  
 18 here, as opposed to the numbers reflected here -- and  
 19 there's a difference, although I think they're still  
 20 close, when you consider the totality and the enormity  
 21 of the need and the estimates of -- estimated amounts of  
 22 need, broken down as they are. That this was -- what's  
 23 on this page in the report that I wrote, the  
 24 K-University Bond Act Conference Report, is something  
 25 that had backup to it.

1 It had -- and certainly, a number of people  
 2 could tease it apart and say, you didn't consider this  
 3 or why didn't you consider that. But instead of  
 4 somebody saying, oh, we have a need and it's this need,  
 5 there was really a deliberate attempt to demonstrate the  
 6 need. As we were discussing earlier, Mr. Hancock's  
 7 presentation before the conference committee, some of  
 8 our assessment of how do we deal with dismantling  
 9 Concept 6 and MTYRE if districts are anxious to do that.  
 10 So when we got here, they were -- people from  
 11 these organizations were not complaining. People on  
 12 the -- you know, on this list were not speaking against  
 13 this. CTA had come up with a \$40 billion number, and I  
 14 heard that number several different times. I don't know  
 15 from whence the number came. But we were able to build  
 16 the case for this amount.  
 17 And what I said to various groups when I talked  
 18 about this before the governor signed it and after the  
 19 governor signed it was that it was the first time that I  
 20 had seen the Legislature take what we offered as actual  
 21 need and not discount it, where whatever bond it was --  
 22 could have been '90; could have been '92. We can't  
 23 afford to go over a billion dollars because we can't get  
 24 that through the Legislature or we can't get it to the  
 25 public.

1 None of that happened here. What happened was  
2 actually Dede Alpert and others, including Jackie  
3 Goldberg and then including the governor's office,  
4 people from finance, willing to increase the -- increase  
5 the numbers. And that actually happened here.

6 So in meetings that we had with members of the  
7 Senate and the Assembly, we said it's -- there's not  
8 enough to make all of this go. We need more money for  
9 COS and we need more money for -- you know, for taking  
10 care of the backlog, the pipeline projects. And when  
11 the pencils and the napkins were -- the actual  
12 estimating documents were brought out, we actually  
13 increased the numbers.

14 Q I believe that you said that you -- CTA had a  
15 \$40 billion number, but you didn't know from whence that  
16 number came.

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

20 A No, I didn't.

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

25 A No. I talked -- I would talk to CSBA, ACSA, I

1 through the early to mid '90s was something that had an  
2 impact on political decision making and bond decision  
3 making. So yes.

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

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

10 A Master plan?

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

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

20 Q Are you aware of any processes in place to take  
21 the recommendations or some of the recommendations that  
22 are in this report -- and let's still do it broadly,  
23 both finance and facilities first, and then I'll narrow  
24 it to facilities -- to take any pieces of any of the  
25 recommendations that are here and turn them into

1 actually was asked to go talk to Cal SSD. I had  
2 contacts with CASBO. Nobody had a particular number  
3 that they said that they were absolutely going to defend  
4 to the death. No.

5 Q And what is Cal SSD?

6 A It's the California Suburban School Districts.

7 Q You made a reference a second ago to a bond  
8 that you -- I think you thought it was around 1990, but  
9 it might not have been the '90 bond but that was your  
10 best memory.

11 Am I correct in understanding that the actual  
12 amount that was in the bond then was not really based on  
13 need but just some statement of this is what we can  
14 afford?

15 A Whenever you deal with the Department of  
16 Finance, it's what can you afford, because it's bond  
17 debt that you're projecting into the future, and that's  
18 always a consideration.

19 There was a -- kind of like the first space  
20 shot, I guess, in sending somebody -- who'd we send up  
21 first? Alan Shepherd? Getting past a billion dollars  
22 was a feat. Yes, it was a feat. Because there was a  
23 belief that the public wouldn't support this. You know,  
24 the tax sensitivity and the fiscal conservancy of the  
25 state of California that was around in the late '80s and

1 legislation, laws, if enacted?

2 A Process? Systematic?

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

5 A Yes, she has.

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

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

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

22 The universal preschool ideas -- and it's not  
23 Dede; it's another author -- universal preschool idea  
24 that came out of the master plan, I know, was in a piece  
25 of legislation. It's not going to move, but somebody

1 did try that. I don't know that there's a systematic  
2 effort of, gee, you're Dede, and you get three concepts,  
3 and I'm -- you know, I'm somebody else, and I get four,  
4 but there has been a resolve to try to move forward with  
5 some of this, yes.

6 Q Okay. The -- I gather that some of the pieces  
7 of that might have fairly large fiscal impacts. It  
8 sounds to me like changing the responsibilities of the  
9 superintendent, reallocating some of those to maybe the  
10 governor's office, whatever is the exact bill -- it  
11 doesn't sound like that's a bill that would have major  
12 fiscal consequences.

13 Am I correct in that assumption?

14 A Well, I would agree, other than -- are you  
15 going to hire somebody to take care of these other  
16 responsibilities that's going to be under the governor's  
17 office, and does the secretary then have a -- you know,  
18 we create a second CDE under the Secretary of Education  
19 as opposed to the State superintendent. Or do you shift  
20 people over there? I guess maybe that's another one.

21 So no, I don't think it's one of those big  
22 fiscal items. Universal preschool would be a big fiscal  
23 item.

24 Q Is it discouraging to you that even an item  
25 that doesn't appear to have a major fiscal impact is not

1 A Other than Dede Alpert, no. And she wasn't as  
2 specific as your question.

3 Q Okay. So am I correct, in that, she said, I'm  
4 going to try to get some master plan legislation up  
5 there, but she didn't tell you whether it was going to  
6 include the facilities recommendations or not?

7 A No. She -- she was talking to the C.A.S.H.  
8 group, and it was at the annual this past February and  
9 said, we need to begin this session, notwithstanding the  
10 fact we have all this -- we need to begin this  
11 session -- and I don't know what all was in her mind,  
12 but she believes that before she is termed out, my sense  
13 of her belief is that she would like to take some of all  
14 of this -- some parts of all the pieces of the master  
15 plan and try to make sure that somebody's carrying some  
16 portion of it. She believes in it. I've been with her  
17 when we've talked to folks in San Diego and some other  
18 locations, and she's -- she's passionate about it.

19 Q What's your understanding of when she's termed  
20 out?

21 A She's got two more -- two more years after this  
22 one, I think.

23 Q And I think we talked quite a bit about this.

24 My understanding, that you are enthusiastic or  
25 supportive of the AB -- the standards and the AB 1200

1 moving and doesn't appear to be likely to move?

2 MS. DAVIS: Vague and ambiguous.

3 THE WITNESS: I'm not easily discouraged. No,  
4 it's not. Especially with what they're dealing with  
5 today. No. It's sometimes difficult to focus on things  
6 when you -- well, does this really -- is this a policy  
7 that isn't -- it's absolutely necessary we deal with  
8 today. So no, I don't -- I don't think so. I'd like to  
9 see a focus on some of the work that's been done there.  
10 Besides the work I was involved in, I think there were  
11 some other -- other good work.

12 BY MR. ELIASBERG:

13 Q And I think I failed to close the loop with  
14 your specific piece of this.

15 Are you aware of any -- I think you -- well,  
16 let me ask you this. If I'm repeating myself, I'm  
17 sorry, but are you aware of any pending legislation with  
18 respect to the facility pieces of this or -- some or all  
19 of the recommendations in the facilities piece of that  
20 document?

21 A Facilities piece of the document. No.

22 Q Okay. Are you aware of -- has anyone -- any  
23 legislator expressed to you, in sum or substance, Tom,  
24 I'm putting together a bill and I've got a plan to put  
25 it on the calendar at some point in the future?

1 type analog in this report, not so enthusiastic about  
2 the inventory piece and at least the mechanisms by which  
3 the financial goals are proposed to be addressed; is  
4 that correct?

5 A Yes.

6 One thing that I think bears saying here,  
7 though, even though you haven't asked me a question, and  
8 that is that on the master plan, the facilities part of  
9 it, one thing that we articulated over and over again is  
10 that we need to have a very large bond to try to deal  
11 with some of the need that's there. And that was coming  
12 out of our group, out of our committee.

13 And because Dede is Dede, she's a really  
14 down-to-earth human being, and she knew we worked, and  
15 she would come and -- came in the beginning and talked  
16 to her when we made the presentation, and I would see  
17 her periodically. I would remind them, Dede and the  
18 others, that part of what we're recommending is, in  
19 order to dive into the facilities piece, we need to have  
20 a large bond. We need -- because we got a big backlog,  
21 and that's key. So before anything else happens, we've  
22 got to begin to meet the demand that's there.

23 And I think the master plan really began to be  
24 implemented with this bond. I think she knew it, she  
25 heard it, and others did. And I think that that helped

1 us, that people said, oh, yeah, there's a master plan  
2 coming together. We've got a group that's saying, we've  
3 got to focus on a number of things.

4 Jackie being who Jackie is, the accountability  
5 parts that you just mentioned, I remember at one  
6 conference -- committee meeting specifically identifying  
7 that that's what we were proposing, that there -- we  
8 need a whole lot of money here but that we had some  
9 accountability pieces we want to put in place. And  
10 although I didn't see her through the corner of my eye,  
11 somebody else said to me Jackie was nodding her head up  
12 and down like crazy, like, yeah, we need that.

13 So I think that the master plan began with this  
14 big bond.

15 Q And is the -- and does your statement that  
16 there's a need for the bond relate to your previous  
17 statement that you don't want to impose standards and  
18 accountability on people who don't have the resources to  
19 meet them?

20 A Yes, that was part of it. Thank you for  
21 connecting those two. That was part of it.

22 Q Okay. If you would turn to Page 13 on your --

23 A Report?

24 Q Yeah. Report.

25 And if you would look at the heading, and then

1 And I guess, as I go on to say, that media  
2 counts, kind of give you a sense that --

3 Q Well, let me stop, because I haven't asked you  
4 a question about that --

5 A Okay.

6 Q -- but I just --

7 A Okay.

8 Q -- keep it focused on what does well managed  
9 mean.

10 A Okay.

11 Q Can I narrow that? What's -- you've given me  
12 a broad definition --

13 A Yes.

14 Q -- to include personnel and a variety of other  
15 things.

16 Focusing on facilities.

17 A Yes.

18 Q What are -- what, to your mind, is the  
19 definition of good management with respect to school  
20 facilities?

21 A Recognizing that facilities -- and grounds  
22 being a big part of them. Facilities are a resource,  
23 and they are a very large capital investment, although  
24 they may have been made a long time ago, and that people  
25 need to be vigilant about trying to keep that resource

1 there's the first full paragraph, and I really want to  
2 look at the text of the second paragraph.

3 And I'm going to focus on the sentence that  
4 begins, "The vast majority of school districts in  
5 California are well managed by caring superintendents  
6 and governed responsibly by elected boards."

7 A Yes.

8 Q Do you see that?

9 A Yes.

10 Q What do you mean by well managed?

11 A That they pay attention to employee issues,  
12 hirings and guiding and, if necessary, disciplining  
13 or -- although it's much more difficult to do than in  
14 the public sector, maybe terminating employment, that  
15 they focus on taking those employees as resources and  
16 try to put together programs, educational programs, and  
17 try and give resources, although they may think that  
18 they're not sufficient to have those programs run, be  
19 they educational programs or maintenance programs or  
20 food service programs, that with the tremendous demand  
21 for schools to pay attention to so many things that  
22 really aren't educationally related but have to do with  
23 caring for pupils and even employees and State law  
24 changing every year, because it does with new demands,  
25 that they try to keep up with that.

1 moving -- not moving, keep that resource -- I guess as a  
2 viable resource.

3 That notwithstanding the difficulty that I've  
4 described, that people do try to maintain facilities,  
5 and there are some people that are very, very proud of  
6 what they do. And I really like maintenance people.  
7 Very comfortable with being around people that like to  
8 make sure that they go out and make sure that  
9 everything's okay in school buildings, and I think that  
10 there are a lot of those.

11 I think there's more expertise in the  
12 management of schools -- in school districts today in  
13 planning for and achieving the construction of new  
14 schools, with the adding of buildings to additional  
15 campuses, and I don't just mean relocatable buildings.

16 There's been a lot -- you know, we deal  
17 with -- or I deal with a couple of decades here of  
18 struggles with developer fees, but I think school  
19 districts have done a good job of making sure that they  
20 could justify the taking of fees. In 1986, '87, '88  
21 there was a good deal of case law, because developers  
22 said, no, you know, we don't owe you these dollars. And  
23 districts defended and said, yeah, you do. And they  
24 continued to do that and use those dollars, I think,  
25 effectively.



1 You have to be multi-tasked to be able to  
2 manage a school district.

3 Q What do you mean by that?

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

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

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

18 Is there a certain amount of expertise involved  
19 in also making sure that you take care of your major  
20 maintenance?

21 MS. DAVIS: Vague and ambiguous.

22 THE WITNESS: Yes, there is. There is. You know,  
23 you had asked me about State standards the other day,  
24 and I started talking to you about CASBO and you  
25 appreciated my comment, but I wasn't being terribly

1 Is taking advantage of State funding for which  
2 you're eligible a hallmark of good management?

3 MS. DAVIS: Vague and ambiguous.

4 BY MR. ELIASBERG:

5 Q Let's say applying for State funding for which  
6 you're eligible, is that a hallmark of good management?

7 A I believe --

8 MS. DAVIS: Same objection.

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

16 BY MR. ELIASBERG:

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

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

1 responsive, I guess, to your question, or at least going  
2 beyond.

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

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

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

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

1 money back under QZAB.

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

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

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

19 MS. DAVIS: Vague and ambiguous.

20 THE WITNESS: Yes.

21 BY MR. ELIASBERG:

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

25 MS. DAVIS: Vague and ambiguous.

1 THE WITNESS: Cleanliness is sometimes an easy  
2 thing to identify and sometimes not. But clean -- clean  
3 school facilities is, yes, an earmark of good  
4 management.

5 BY MR. ELIASBERG:

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

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

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

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

24 A Sorry to keep laughing here.

25 I'm aware of districts that have had some

1 elected official part of it before. So let me try the  
2 question again.

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

5 A Struggling?

6 Q Either poorly managed or poorly governed or  
7 both.

8 A Okay.

9 MS. DAVIS: Compound.

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

14 BY MR. ELIASBERG:

15 Q When was that time?

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

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

1 struggles that -- where management may be part of it,  
2 and governance, through the board of education, may be  
3 part of it. And I separate the two.

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

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

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

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

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

24 Q Well, then that's very helpful to me, because I  
25 hadn't separated out sort of the employee versus the

1 meeting and the meeting was cancelled. Third meeting,  
2 meeting was cancelled. Each time it was cancelled by  
3 the superintendent.

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

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

17 And those cancellations may have been because  
18 of demands from the board. They may have been through  
19 other distractions and demands on the superintendent, I  
20 don't know, but if gathering resources for the district  
21 and if trying to improve the physical environment for  
22 students and those that work with students was  
23 important, something was distracting there. So not a  
24 criticism of anything, but it was a reality. Couldn't  
25 connect the superintendent with the people that we were

1 trying to resolve the issues with. So I was wanting to  
2 be catalytic, and I tried to be, but part of the  
3 equation wasn't there.

4 Q Did that suggest to you that there was a  
5 management or a governance problem?

6 A Well, that's what I'm saying. I'm not sure  
7 what it was, but if something is important and you're  
8 running a school district and you say, this is important  
9 enough to say I'm going to spend some money to hire  
10 somebody like me to come and do it, then why wasn't she  
11 there? I don't know.

12 Q Is "she" Arlene Ackerman?

13 A Yes.

14 Q Have you ever read allegations that, within the  
15 last five years, San Francisco Unified School District  
16 has spent a substantial amount of funds gained -- bond  
17 funds on teachers' salaries and other non-capital  
18 expenditures?

19 A Not on teachers' salaries. I don't know that  
20 I've read that. I know there were allegations of  
21 expenditures on salaries and that part of the question  
22 of the study that I mentioned, the Arthur Andersen  
23 study, was, I think to find that out.

24 Q Do you know whether the Arthur Andersen study  
25 ever reached a conclusion on that question?

1 was anything to the assertions that there was money --  
2 capital funds being spent on non-capital expenditures?

3 A Yes --

4 Q I'm just trying to understand if you have other  
5 bases.

6 A Well, just the San Francisco Chronicle reporter  
7 that used to call. And I can't tell you who that was,  
8 but I used to hear from this woman about three or four  
9 times in that time frame. She would talk about things  
10 like that. She was assembling information. And I know  
11 there were -- there were articles in the newspaper, but  
12 that doesn't mean that they're fact.

13 Q But if I'm remembering correctly, during the  
14 relatively brief time you worked for -- worked with San  
15 Francisco, you didn't do a facilities assessment in  
16 order to try to judge the management of the district;  
17 did you?

18 MS. DAVIS: Vague and ambiguous.

19 THE WITNESS: No. Didn't -- wasn't able to get,  
20 really, that far.

21 BY MR. ELIASBERG:

22 Q Are you aware of other districts that you have  
23 some basis to think might have problems with management  
24 or with governance?

25 MS. DAVIS: Assumes facts not in evidence.

1 A I spent time with an Arthur Andersen  
2 representative, and I read the study. There was nothing  
3 in that study that convinced me the district was doing  
4 anything wrong. Nothing that I read in that study said  
5 this is wrong. There were assertions, not any  
6 supporting evidence that I recall.

7 Q Have you ever made any other efforts besides  
8 reading the Andersen study to determine whether there  
9 was anything to those assertions?

10 A When I first started working with the district,  
11 I wanted to begin somewhere where I could gather  
12 information to make a sense of how to help the  
13 district. There were good people -- at least I had the  
14 sense they were good people -- trying to answer  
15 questions and give me -- you know, give me some sense of  
16 what the realities were there. They weren't there for  
17 very long. They were all gone.

18 So it was hard to see where everything really  
19 was going to take shape where you could make any  
20 judgment. And then after that I was done with the  
21 contract and didn't renegotiate the contract, was doing  
22 other things. So I never saw more after that.  
23 Everything seemed to be rather vague.

24 Q So the Andersen study is really the basis  
25 for -- that you would have to judge as to whether there

1 THE WITNESS: As an attorney, you may call it  
2 hearsay, I don't know, but --

3 BY MR. ELIASBERG:

4 Q Experts are allowed to talk about hearsay.

5 A A couple of people I knew that went to work for  
6 the Compton Unified School District and who I talked to  
7 either during or after their tenure there who described  
8 situations -- not the facilities conditions so much as  
9 to situations of attempting to manage and having  
10 difficulty because of what existed.

11 Q Have you ever made any attempt to evaluate the  
12 management or the governance at Oakland Unified School  
13 District?

14 A No. I had a very focused role with Oakland,  
15 and I was actually employed by the -- or retained by the  
16 attorney firm. So I don't -- I don't even know that  
17 I've been on an Oakland campus, I don't think.

18 Q Okay. And I just -- rather than asking the  
19 same question over and over again, I'm just going to  
20 list a couple of districts.

21 A Okay.

22 Q And put the same question: Do you have a basis  
23 or have you ever attempted to make an evaluation of  
24 their management or governance?

25 West Contra Costa Unified?

1 A No.  
 2 MS. DAVIS: I'll just have a standing objection of  
 3 vague and ambiguous.  
 4 Go ahead.  
 5 THE WITNESS: No.  
 6 BY MR. ELIASBERG:  
 7 Q Ravenswood?  
 8 A No.  
 9 Q Holtville Unified?  
 10 A Yes.  
 11 Q What's your basis for having knowledge about  
 12 Holtville Unified?  
 13 A I've worked in Holtville almost two years, I  
 14 believe.  
 15 Q When was that?  
 16 A I think it was probably this time of year 2001.  
 17 Q What did you do for Holtville?  
 18 A Well, initially, I was called by an interim  
 19 superintendent and asked if I would come and meet with  
 20 her and she could ask me to look at facilities there and  
 21 talk with her about some of the issues that she was  
 22 encountering. And I did that.  
 23 Q And do you remember what facilities you looked  
 24 at?  
 25 A I looked at -- in that particular visit I went

1 to Holtville High School.  
 2 Q Did you end up looking at any others at any  
 3 other visits?  
 4 A I -- yes, it's a small district, and it has a  
 5 junior high school. It has a couple of elementary  
 6 schools. And I was at each of the elementary schools  
 7 and the high school.  
 8 Q So the only school at Holtville that you didn't  
 9 visit was the junior high?  
 10 A Yeah, I don't recall being on that campus.  
 11 Q What was -- at the time that you went -- so I'm  
 12 gathering this is around 2000?  
 13 A 2001.  
 14 Q 2001.  
 15 What was the condition of Holtville High  
 16 School?  
 17 MS. DAVIS: Vague and ambiguous.  
 18 BY MR. ELIASBERG:  
 19 Q The condition of the facility. I'm not asking  
 20 about morale and teacher --  
 21 A Right.  
 22 Q -- vacancies or anything like that.  
 23 A Well, some of the facilities, they were old but  
 24 they were in good shape. But there were a couple of  
 25 buildings there that, as I had learned, the structural

1 engineer had said students shouldn't be in the  
 2 buildings.  
 3 Q So do you know why the structural engineer said  
 4 that?  
 5 A Because there was a structural defect of  
 6 some -- some intrusion into the integrity of the  
 7 structure or structures.  
 8 Q I have a feeling that that phrase, "some  
 9 intrusion into the integrity," means something to you.  
 10 It doesn't mean anything to you.  
 11 What do you mean by that?  
 12 A No, it really doesn't. It's not a technical  
 13 term. What I learned is that the structural engineer  
 14 had found that the structural integrity of several  
 15 buildings was in question, and therefore, had said this  
 16 and students were then not allowed to go into those  
 17 buildings.  
 18 Q Were these stick-built buildings or --  
 19 A Yes --  
 20 Q -- portables?  
 21 A -- they were.  
 22 Q Yes, meaning they were stick-built?  
 23 A Yes, meaning they were stick-built.  
 24 Q Do you remember approximately how many were --  
 25 the structural engineer had thought --

1 A Three.  
 2 Q Was the -- was the school overcrowded as a  
 3 result of kids not being able to use those three  
 4 buildings?  
 5 MS. DAVIS: Vague and ambiguous.  
 6 THE WITNESS: No.  
 7 BY MR. ELIASBERG:  
 8 Q And how did you know that, that it wasn't  
 9 overcrowded?  
 10 A Because they had access to State's relocatable  
 11 program and had students in relocatable buildings.  
 12 Q Do you know if -- what, if anything, they've  
 13 been able to do about the --  
 14 A Yes.  
 15 Q -- buildings?  
 16 A Yes.  
 17 Q What have they done?  
 18 A Well, within short space of time we replaced  
 19 one of the buildings.  
 20 Q Where'd you replace a building?  
 21 A Brand new State-funded facility hardship --  
 22 financial hardship stick-built building.  
 23 Q Did you tear down -- when you say replace it,  
 24 did you tear down that building and put up a new  
 25 building on the same site?

1 A The building that students were in is yet to be  
2 demolished, but it would be demolished.

3 Q Do you know about the other two?

4 A Yes. One was the administration building,  
5 which was kind of yellow tagged off, at least portions  
6 of it, because there were classrooms there. I met with  
7 the structural engineer and the architect, and pressed  
8 the issue and worked with the Division of State  
9 Architect's office that had basically agreed that the  
10 building that we were replacing was in fact defective,  
11 and it couldn't be repaired and so we were able to then  
12 use the State's facility hardship program and replace it  
13 with a new building. Actually did that fairly quickly.

14 Q I'm sorry, that's not the administration  
15 building; is it?

16 A No. No. No.

17 Q All right. So there are two others that were  
18 condemned with --

19 A Yes, and one was the administration building.  
20 But pressing the issue -- trying to capsulize this, I  
21 guess. Pressing the issue with the structural engineer  
22 and assisting DSA's concurrence -- and that is the  
23 appropriate term -- that the structural engineer's  
24 report says this building is defective. What I learned  
25 was that the administration building really wasn't

1 What why did you conclude you wouldn't use it?

2 A Based upon the information that the structural  
3 engineer provided in my conversations with DSA and the  
4 condition of the building. So the building will be  
5 replaced, but it'll be replaced with bond funds from the  
6 district.

7 Q And what was the condition of the building?

8 A It's a very old building. There's seismic  
9 activity in the area. There's a large crack in the  
10 floor which may go through the foundation of the  
11 building; I don't know. There were some alterations of  
12 the building that may have not have been done correctly,  
13 and so my advice to the board is, you haven't used this  
14 building, it's really an old dilapidated building.  
15 Since we are going to the community for a local bond,  
16 which we were successful with, let's include getting rid  
17 of that building in the bond. And that'll happen.

18 (Interruption in the proceedings)

19 (Brief recess taken.)

20 BY MR. ELIASBERG:

21 Q Did you look at the other buildings at  
22 Holtville High School at the time you were there?

23 A I did. I think I went through every building.

24 Q What was the condition of those buildings?

25 A I think the conditions -- as I said, they were

1 defective, and I was disappointed in what I had learned  
2 from the structural engineer, because I said, you've  
3 impacted this school.

4 The other building --

5 Q I'm sorry, help me out.

6 You felt that the structural engineer had  
7 improperly determined that this building was  
8 structurally defective? Am I understanding you  
9 correctly?

10 A Yes. I'm not an engineer, but I know what  
11 compels DSA, in terms of information, at least in terms  
12 of the kinds of information, and DSA didn't concur that  
13 it was a defective building. And the building is in  
14 fact -- I think it was an administration building, but  
15 some student support activity rooms there, classrooms or  
16 others, and it's being used again today.

17 Q What about the third building?

18 A The third building, notwithstanding the fact  
19 that DSA didn't fully concur with the structural  
20 engineer, based upon what I knew, having been in the  
21 building a number of different times, I just said to the  
22 board, I wouldn't use this building.

23 Q And what kind of building was it? Was it --

24 A A classroom building.

25 Q Classroom building.

1 old buildings, but they were in good repair. Their gym  
2 was really a beautiful old gym. They had a  
3 shower/locker area that was in need of substantial  
4 change or upgrading, but they had sought after critical  
5 hardship deferred maintenance for that and were going to  
6 embark on that part of the project.

7 The person that called me was an interim  
8 superintendent who had met me and sought my help, and  
9 then she moved on and a new superintendent was hired,  
10 another woman, who has -- as a matter of fact, I had a  
11 call from her while we were on a break earlier -- who's  
12 embarked upon bringing about change. The board has  
13 embarked upon bringing about change in making sure that  
14 resources were there. Didn't have a bond measure for 50  
15 or 60 years there, and we were successful with a local  
16 bond.

17 So there was -- there was mismanagement that  
18 had gone on there, and that's what caused the interim  
19 superintendent to call me, because of confusion over  
20 some things. And the district's on the right track, I  
21 think, and going in the right direction. But there were  
22 some interesting puzzles we solved there.

23 Q Do you know how long the -- well, let's skip  
24 the building that had been yellow tagged and then was  
25 concluded -- DSA concluded shouldn't have been yellow

1 tagged. But focusing on the two buildings, one has been  
2 replaced and one to be replaced.

3 Do you know how long they had been condemned  
4 before the district called you in?

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

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

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

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

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

1 Q I think you said that you concluded that  
2 mismanagement had gone on?

3 A Yes.

4 Q And what was your basis for concluding that?

5 A Well, some of what I told you, that students  
6 were not in buildings. A technical building like a  
7 science building, there was a -- a plan to replace it,  
8 but there was no assertive action. Nobody was moving  
9 rapidly to bring about a positive change.

10 Also, some of the personnel issues that I  
11 discovered had -- were there before the interim  
12 superintendent who resolved those, indicated  
13 mismanagement to me. The lack of certain documents  
14 being available.

15 Q What kind of documents?

16 A Well, documents that were documents relative to  
17 accessing the State program, and if the district applies  
18 for State funds, it should have copies of documents that  
19 it used to apply for. What if the State loses the  
20 document or has questions about the document. Those  
21 weren't readily available.

22 A bit of spirit of, I guess, gee, can we really  
23 move forward and make progress. You know, good managers  
24 are good leaders and say, yeah, we got some problems,  
25 but we need to -- we need to focus on how to resolve

1 A At the high school?

2 Q Yeah.

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

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

7 A Yes. Science building's been replaced.

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

10 A No. But it was difficult.

11 Q What were they doing?

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

15 Q Were they trying to do labs outside?

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

18 They said, "Can we do that?"

19 And I said, "Yes, you can."

20 The WASC wouldn't have been very positive, but  
21 they can do a WASC now, because they have a -- and I  
22 think they probably have done it already. I guess I  
23 can't remember when that would have been, but you'd see  
24 that it's either coming up -- no, it's coming up, I  
25 guess.

1 those. And I don't think that was happening until this  
2 interim superintendent came in, who did a really nice  
3 job.

4 Q Do you have a sense of how this mismanagement  
5 had gone on before this interim superintendent came in?

6 MS. DAVIS: Calls for speculation.

7 THE WITNESS: Yeah, I really don't know.

8 BY MR. ELIASBERG:

9 Q Do you have any basis to make a judgment from  
10 review of the documents or people you talked to?

11 A No, I think most everybody that was at the  
12 district office was new. So no, I -- I really don't. I  
13 think probably could not have been too, too long,  
14 because of just working with the board and trying to  
15 understand what the board knew, trying to guide them.

16 Q The --

17 A District's on the right track, though, now.

18 Q No, I understood that from you.

19 I believe we've talked about Oakland, San  
20 Francisco, Compton, west Contra Costa, Holtville.

21 Do you have any basis to make a judgment about  
22 the management or governance of Lynwood Unified?

23 A No.

24 Q Inglewood?

25 A No.

1 Q LAUSD?

2 A There's been a change at LAUSD.

3 Q And what has that change been?

4 A I've seen progress.

5 Q Does that progress indicate to you that the

6 district is currently well managed?

7 A It indicates to me that management decisions

8 are being made that are positively affecting the

9 district.

10 Q Do you have an opinion as to whether, within

11 the past ten years, LAUSD has not been well managed?

12 MS. DAVIS: Vague and ambiguous, calls for

13 speculation.

14 THE WITNESS: I don't know if this is management or

15 governance --

16 BY MR. ELIASBERG:

17 Q Let's do both. Well managed or well governed.

18 MS. DAVIS: Same objections.

19 THE WITNESS: The district in the past had -- and I

20 knew this from attending State Allocation Board

21 meetings -- had approval of projects that were rescinded

22 because they weren't moved forward; they weren't

23 perfected. That was a cause of concern for me. Meant

24 that for some reason projects weren't able to move

25 forward, even though there was a need, eligibility. I

1 think that has changed, though. I think it's changed in

2 a big way.

3 BY MR. ELIASBERG:

4 Q Do you know over what course of period of time

5 you were seeing these projects come in and then be

6 rescinded at the SAB from the LAUSD?

7 A The rescissions I was thinking of were probably

8 early '90s.

9 Q Did you see any after the early '90s that you

10 remember?

11 A No.

12 Q Have you ever read any reports by a group that

13 is now called the Little Hoover Commission -- I believe

14 at some point in the past it had a different name, the

15 Milton Marks committee or something like that but now

16 known as Little Hoover Commission -- about management in

17 the Los Angeles Unified School District?

18 A No.

19 Q And have you ever read any documents -- any

20 Little Hoover Commission reports about the Los Angeles

21 Unified School District's school facilities program?

22 A No.

23 Q Other than the districts that I've asked you

24 about and the ones that you've talked about, are you

25 aware of any districts that you believe, either now or

1 within the past ten years -- and if you'd like, I can

2 break it up to current and the past, if that makes it

3 easier -- are or have been either poorly managed or

4 poorly governed?

5 MS. DAVIS: Assumes facts not in evidence, vague

6 and ambiguous.

7 BY MR. ELIASBERG:

8 Q Just so there's no confusion, I want to use the

9 term -- I'm going with your definition --

10 A Sure.

11 Q -- of management and governance.

12 A Sure. No, I'm hearing that.

13 Well, you -- and I don't know what level of

14 knowledge -- you talked about west Contra Costa.

15 Didn't that used to be -- the old district?

16 Q Richmond.

17 A Yes. Never been there, but I certainly watched

18 what was happening during the time that the districts

19 went into receivership. And there were comparisons

20 after that, because no one wanted to be a Richmond, of

21 course. And members of the Legislature didn't want any

22 of their districts to become Richmonds. That's the

23 first one that came to mind, and that was clearly

24 management. You know, governance would have been there

25 somewhere, but it was clearly management from everything

1 that I read.

2 Q Any others?

3 A I'm assuming what you mean by poorly managed is

4 that there was some failure that precipitated some kind

5 of a crisis within the district and difficulty.

6 Q Well, I guess it would depend on one's

7 definition of crisis, but you -- I'm not necessarily

8 looking for, necessarily, the point when you go into

9 receivership.

10 A No.

11 Q You're filing applications and rescinding them

12 because you can't get your act together or you're not

13 filing for -- you're eligible for a lot of State funding

14 and you're not getting any applications filed. That

15 certainly would be -- I would be looking for a district

16 like that. If you knew of districts like that, that

17 would be the kind of district I'd be interested in

18 hearing about from you.

19 A No.

20 Q When you used the term "vast majority" of

21 districts being well managed, did you intend by that

22 term "vast majority" to be making some kind of an

23 estimate, percentage or whatever?

24 A No. There's roughly a thousand school

25 districts in California. I guess I've been sensitive

1 over the number of years where I've seen reactions  
2 because a district has difficulty. Like Richmond. And  
3 the sensitivity of, oh, we don't want to be a Richmond,  
4 and, gee, you know, what kind of legislation can we  
5 impose on everybody because there's been a failure on  
6 one.

7 The vast majority to me means really the --  
8 more than just a simple majority of school districts in  
9 California. There have been a number of cities that  
10 have had fiscal failures. Orange County had a huge  
11 failure, but there seems to be a real pointed response  
12 if there is a failure on the part of a school district.  
13 And I don't think there's been that many.

14 And whether it's the fiscal kind of failure  
15 that was in Richmond or even a school district that --  
16 like L.A., for some reason, had rescissions of  
17 projects. They couldn't move them along for whatever  
18 reason. I think that that's been few.

19 State Allocation Board had a policy on  
20 rescinding. The vestiges are now within the program  
21 today, where you have to spend under a contract within  
22 18 months of an apportionment. I think that very few  
23 districts really had projects rescinded, even when there  
24 was a rather discrete policy in place.

25 Q Do you know if it -- did the State Allocation

1 their needs.

2 Q Specifically with respect to LAUSD -- because  
3 you talked about rescinding projects in the '90s -- do  
4 you know whether somebody from OPSC or SAB actually went  
5 out and tried to investigate and find out why these  
6 projects were not going -- coming to fruition?

7 A I don't know if it was in that time frame or  
8 not, but I do know that there were people from both  
9 agencies that visited L.A., yes.

10 Q Do you think that the AB 1200 analog that  
11 you've talked about here would be another mechanism that  
12 might prevent something like, for example, projects  
13 coming out and then being rescinded?

14 A I think, yes, that there -- the accountability  
15 part there is not something for the management  
16 leadership of the district but also for the board, that  
17 if we can't come to an agreement as to where a school  
18 should be built because I represent Area A and you  
19 represent Area B and Marco represents Area 3 and Lynne  
20 4, then at least before the community, they should be  
21 making a decision, because they've got something there.  
22 Yeah, I think that that works for that too.

23 Q And just help me understand exactly how -- what  
24 part of the accountability pieces that you had talked  
25 about earlier would -- or maybe more than one might

1 Board or OPSC have a policy that where -- if a contract  
2 is rescinded, some effort is made to send somebody out  
3 from the Government to at least say, not I'm here to  
4 help you, but what's going on?

5 A If an apportionment is rescinded?

6 Q Yeah.

7 A You said contract.

8 Q Well, I thought you said a project was  
9 rescinded. I'm trying to --

10 A Yeah.

11 Q -- use the terminology you used.

12 A Contract.

13 I know that they do send people out to school  
14 districts or offer to go out to school districts. I  
15 have knowledge of that. I've heard that from time to  
16 time. There -- in my view, there's a service  
17 orientation that exists there.

18 So I made a call to a person at OPSC the other  
19 day, very busy person, and I said, there's a district  
20 that has some need. Can we get a few people together?  
21 Got a call back yesterday, six people are going to be  
22 assembled to try to deal with one district's problem.  
23 That's not a large district.

24 Q What district is that?

25 A It's Holtville. To try to move forward with

1 resolve that problem.

2 A If in the accountability piece -- within this  
3 five-year need review -- it's a rolling five years --  
4 there's a group of unhoused pupils, and you say we --  
5 what are we going to do? We need to plan a school. And  
6 therefore, we have to find a location for that school.  
7 And there has to be agreement about that location.

8 That would be something that, if it wasn't done  
9 by the next year, would be, well, you know, we're back  
10 at this one again. And if that was the problem that  
11 existed here before, here in L.A. before, then here is a  
12 place where law, regulation and practice would dictate  
13 that somebody has to make a decision.

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

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

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

24 MS. DAVIS: Yeah.

25 MR. ELIASBERG: -- because I think there's a good



1 chance that we'll be able to -- I don't know what they  
2 have in mind, but they're oftentimes well under a day in  
3 their questioning, so it may be -- it doesn't make sense  
4 to have them do half a day and us do a half a day.

5 MS. DAVIS: I agree. We'll try to coordinate.  
6 What is your estimate of how much time you  
7 need?

8 MR. ELIASBERG: Let me look at the outline.  
9 I think the only wild card, really, is the  
10 notes, and that's -- it's very hard for me -- there are  
11 about ten pages of those notes, and maybe it was because  
12 I was tired yesterday, but they were somewhat  
13 hieroglyphic to me. They could almost yield no  
14 questions or they could yield questions. I would say,  
15 the non-note part of this, two hours.

16 MS. DAVIS: Okay.

17 MR. ELIASBERG: It's an estimate. I mean, I can't  
18 promise that, but that's what it looks like. You can  
19 see I've gone through a good chunk of the outline.  
20 Well, well, well under half of it is still to go.

21 MS. DAVIS: Okay.

22 \_\*\*\*\_  
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4 I, the undersigned, a Certified Shorthand  
5 Reporter of the State of California, do hereby certify:  
6 That the foregoing proceedings were taken  
7 before me at the time and place herein set forth; that  
8 any witnesses in the foregoing proceedings, prior to  
9 testifying, were placed under oath; that a verbatim  
10 record of the proceedings was made by me using machine  
11 shorthand, which was thereafter transcribed under my  
12 direction; further, that the foregoing is an accurate  
13 transcription thereof.

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

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

21 Dated: \_\_\_\_\_  
22  
23

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SHERRYL DOBSON  
CSR No. 5713  
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9 I, THOMAS G. DUFFY, do hereby declare under  
10 penalty of perjury that I have read the foregoing  
11 transcript; that I have made such corrections as noted  
12 herein, in ink, initialed by me, or attached hereto;  
13 that my testimony as contained herein, as corrected, is  
14 true and correct.

15 EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_,  
16 \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.  
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THOMAS G. DUFFY  
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