

BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA
HOWARD W. COHEN, ADMINISTRATIVE LAW JUDGE

In the Matter of the Calculation of) CASE NO. 2012-0671
Final Compensation of:)
BRUCE MALKENHORST, SR.,) OAH NO. 2013080917
Respondent,)
and)
CITY OF VERNON,)
Respondent.)
_____)

TRANSCRIPT OF PROCEEDINGS
Los Angeles, California
Wednesday, September 3, 2014

Reported by:
BRITTANY SILVA
CSR No. 13940
Job No. :
25860AH

1 BOARD OF ADMINISTRATION

2 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

3 STATE OF CALIFORNIA

4 HOWARD W. COHEN, ADMINISTRATIVE LAW JUDGE

5
6
7 In the Matter of the Calculation of) CASE NO. 2012-0671
Final Compensation of:)
8) OAH NO. 2013080917
BRUCE MALKENHORST, SR.,)
9)
Respondent,)
10)
and)
11)
CITY OF VERNON,)
12)
Respondent.)
13 _____)

14
15 TRANSCRIPT OF PROCEEDINGS, taken at

16 320 West Fourth Street, Suite 630, Los Angeles,

17 California, commencing at 9:00 a.m.

18 on Wednesday, September 3, 2014, heard before

19 HOWARD W. COHEN, Administrative Law Judge,

20 reported by BRITTANY SILVA, CSR No. 13940,

21 a Certified Shorthand Reporter in and for

22 the State of California.
23
24
25

1 APPEARANCES:

2

3 For the DEPARTMENT: STEPTOE & JOHNSON LLP
4 BY: JASON LEVIN
5 633 West Fifth Street
6 Suite 700
7 Los Angeles, California
8 90071

6

7 BY: RENEE SALAZAR
8 Lincoln Plaza North
9 400 Q Street, LPN 3340
10 P.O. Box 942707
11 Sacramento, California
12 94229

10

11 For the RESPONDENT LAW OFFICES OF
12 BRUCE MALKENHORST: JOHN MICHAEL JENSEN
13 BY: JOHN MICHAEL JENSEN
14 11500 West Olympic Boulevard
15 Suite 550
16 Los Angeles, California
17 90064

14

15 For the RESPONDENT BY: JOUNG H. YIM
16 CITY OF VERNON: 6033 West Century Boulevard
17 Fifth Floor
18 Los Angeles, California
19 90045

18

19 Also present: Steve Stueber
20 Bob Adams
21 Bruce Malkenhorst, Sr.
22 Tomi Jimenez

21

22

23

24

25

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RESPONDENT'S Witnesses:	Direct	Cross	Redirect	Recross
Gloria Orosco	14	87	128	
Sharon Duckworth	144	176	188	190

E X H I B I T S

RESPONDENT'S:	Marked for Identification	Received in Evidence
LLL (Unidentified)	172	173
GGGGG (Unidentified)		16
HHHHH (Unidentified)		18
RRRRR (Unidentified)		19
TTTTT (Unidentified)		25

1 Los Angeles, California, Wednesday, September 3, 2014

2 9:00 a.m.

3

4

5 THE COURT: We are on the record in the Matter of
6 the Calculation of Final Compensation of Bruce Malkenhorst,
7 Senior, Respondent, and City of Vernon, Respondent. OAH No.
8 2013080917. This is the fourth day of hearing. It's
9 September 4, 2014 at 9:00 a.m. Before we proceed to
10 Respondent Malkenhorst's next witness -- first of all, let me
11 ask you, Mr. Jensen, who the witnesses will be today.

12 MR. JENSEN: We have subpoenaed a number of
13 witnesses. The first witness that I believe just called me,
14 and she's a little bit late, is Gloria Orosco, and I believe
15 the last name is O-r-o-s-c-o; and then I just wanted to
16 mention right now, your Honor, that our expert witness Bob
17 Adams is in the courtroom and with your permission, I'd like
18 him to stay for the testimony of the witnesses, the Vernon
19 witnesses, in order to be more fully informed about the
20 opinions that he's going to render in this case. If you'd
21 like to have him excluded, that's fine as well.

22 THE COURT: I'll entertain a motion at the
23 appropriate time. Anyone else today?

24 MR. JENSEN: Yes. So the first witness will be
25 Gloria Orosco. We have also subpoenaed David Brearley, but

1 he has not been in contact. So I don't know if he will
2 appear or not and let's see -- we also have requested the
3 appearance of CalPERS witness, Lolita Lueras, from CalPERS
4 previously subpoenaed. I don't know if she's going to appear
5 either and then in the afternoon -- well, in the morning
6 we'll have Sharon Johnson Duckworth who is an employee,
7 former employee of the City of Vernon, and then we will have
8 the testimony of Bob Adams who is the expert witness on
9 senior City management, City administrator, cost accounting,
10 positions and duties. So that's the expected testimony
11 today.

12 THE COURT: Okay. And who are going to put on
13 tomorrow?

14 MR. JENSEN: That sort of depends on who we go
15 through today, but I would also -- we have subpoenaed
16 Terrance Rodgers who is the -- we have attempted to subpoena
17 Terrance Rodgers' co-counsel as an impeachment of
18 Ms. Jimenez, and we have not heard back from Counsel on him,
19 probably continue the testimony of Mr. Adams. We should have
20 the testimony of Mr. Gonzales who is a City council member
21 and I reserve the right to bring on Mr. Malkenhorst as well
22 who is present in the courtroom right -- today with us, and
23 that's who I anticipate calling depending on how many of
24 these subpoenas are honored or people show up.

25 THE COURT: All right. Thank you very much. With

1 respect to CalPERS' motion to admit Exhibit 67 and 68, I'm
2 going to admit them to show what CalPERS relied on in making
3 its determination of Respondent, Malkenhorst's final
4 compensation. They are sufficiently reliable documentation
5 of how ADP allocated Respondent, Malkenhorst's time. They
6 are not admitted for the truth of the entries, that is
7 whether these records accurately establish hours worked by
8 Mr. Malkenhorst in various capacities. To what use the
9 entries may be properly put in determining Mr. Malkenhorst's
10 benefits will be determined by the evidentiary record as a
11 whole and by applicable law. Next --

12 MR. JENSEN: Your Honor, could I just clarify?

13 THE COURT: If you need to make a clarification for
14 the record, I'll allow that.

15 MR. JENSEN: So basically, this is for purposes of
16 administrative hearsay to support another finding if there is
17 a substantial evidence, but it's not sufficient to support a
18 finding in itself.

19 THE COURT: Well, it is sufficient to support a
20 finding of what in fact CalPERS relied on in making its
21 determination.

22 MR. JENSEN: Thank you, your Honor.

23 THE COURT: With respect to Respondent,
24 Malkenhorst's exhibit list, my PHC ordered June 17, 2004,
25 paragraph six requires each party to submit at the beginning

1 of the hearing, a trial exhibit list for my use during the
2 hearing. I got one from CalPERS. I don't have one from you,
3 I believe. There's nothing in the first volume of your 18
4 binders. Perhaps it was inadvertent, and if you have one, I
5 would just love a copy.

6 MR. JENSEN: We have one and I believe we submitted
7 it is my understanding.

8 THE COURT: Is it in one of your binders?

9 MR. JENSEN: It would have been separately --

10 THE COURT: It may have just escaped my attention.
11 I would appreciate another copy.

12 MR. JENSEN: Let me just ask Counsel, did you
13 receive copies of our exhibit list?

14 THE COURT: Your final exhibit list with columns for
15 being marked and being admitted.

16 MR. JENSEN: I believe we have it somewhere.
17 Okay.

18 THE COURT: Okay. You'll get me a copy today?

19 MR. JENSEN: Yes. I will do that.

20 THE COURT: Thank you very much.

21 MR. JENSEN: And Counsel, if you don't have one and
22 would like one, we will send it to you as well.

23 MR. LEVIN: I believe I received one by e-mail.

24 MR. JENSEN: Okay, and your Honor, I apologize.

25 THE COURT: It's quite all right. Let's get to the

1 issue of the subpoenas that were served yesterday. I have
2 read your letters and subpoenas. So let me hear from you,
3 Mr. Levin.

4 MR. LEVIN: Thank you, your Honor. First of all,
5 I'd like to point out that these witnesses that
6 Mr. Malkenhorst would like to call are not in any way, shape,
7 or form rebuttal witnesses. Rebuttal evidence usually
8 describes evidence put on after your case in chief to rebut
9 evidence put on in the case against you. What this is really
10 about is Mr. Malkenhorst's effort to enhance his case in
11 chief and the question is whether there would be good cause
12 for adding witnesses to his witness list many months after
13 the court's deadline for naming witnesses. Our position is
14 that there is not.

15 The reported grounds for adding these witnesses is
16 to explain or discuss a number of e-mail. These are the same
17 e-mail that were discussed with Ms. Jimenez when she was on
18 the stand. These are the same e-mail that Mr. Malkenhorst
19 and his counsel have had in their possession for many, many,
20 many months. So the identities of Mr. Rodgers, of
21 Ms. Lueras, and the other CalPERS witnesses -- this is no
22 surprise. This is not a case where there is surprise
23 evidence given and the other side has not had an opportunity
24 to identify and produce evidence in their case to challenge
25 that evidence. So on a substantiative basis, we'd say

1 there's not a good cause for adding to Mr. Malkenhorst's case
2 in chief.

3 On a procedural issue, there is a question about the
4 service of the subpoenas. If the Court is going to allow
5 Mr. Malkenhorst to extend hearing, extend their case, then we
6 can talk about how those subpoenas can be served, but I did
7 want to address Mr. Malkenhorst's contention that there is
8 somehow implied service upon me of subpoenas to CalPERS. So
9 these were subpoenas that were sent to me, I believe, as a
10 courtesy copy many months ago, and they designated a number
11 of CalPERS' witnesses as custodians of record and the records
12 being certain written policies and procedures that CalPERS
13 has stated time and time again did not exist.

14 So on one hand, it was our position that those
15 subpoenas were annuity because they were just sent to me as a
16 courtesy and they were not served on CalPERS as required, and
17 I never said I could or would accept the subpoenas, but more
18 importantly the reason why they didn't get into a back and
19 forth with Mr. Malkenhorst on the issue is because those
20 CalPERS's witnesses were not put on their witness list, and
21 in fact Mr. Malkenhorst followed up on the exchange of those
22 subpoenas by serving public records act requests on CalPERS
23 seeking the written policies and procedures at issue. So
24 ultimately that issue withered on the vine until recently
25 there was no further follow up and until -- until recently,

1 I didn't think that was an issue. So to sum up, we have got
2 the substantive issues as to whether the court will permit
3 Mr. Malkenhorst to expand his case in chief, and the lesser,
4 procedural issue that I think, the resolution depends on the
5 court's rule.

6 MR. JENSEN: And your Honor, if I could just briefly --

7 THE COURT: I don't need further argument. There is
8 some merit, Mr. Levin, to your substantive argument, but I
9 don't believe that it's of sufficient merit and comprehensive
10 enough to leave me to exclude the testimony that Mr. Jensen
11 is seeking or at least to exclude the witnesses that he hopes
12 will testify the way he would like. Procedurally, of course,
13 I understand from all of your correspondents that I have
14 reviewed that you never did accept service of the subpoenas
15 and that they have not been properly served on these
16 witnesses at least not before yesterday, and serving the
17 subpoenas yesterday, regardless of to whom they were served
18 doesn't give anybody any time to appear at trial today or
19 tomorrow.

20 I am inclined if -- if those witnesses can appear
21 and fit in -- in fact, if those witnesses can appear today or
22 tomorrow, I will hear them and if it becomes necessary to
23 schedule another half day or even a full day depending, to
24 hear some of the witnesses that Mr. Jensen identified earlier
25 today that he has scheduled for today and tomorrow. At a

1 later date, I will work with OAH calendar clerks and see what
2 we can do about scheduling another half day or if absolutely
3 necessary another day. Do you have, Mr. Levin, any
4 understanding as to whether either of these witnesses can
5 appear today or tomorrow?

6 MR. LEVIN: I don't, your Honor, but if we can take
7 a recess, I can confer with my client and look into it.

8 THE COURT: Why don't we do that at the morning
9 break?

10 MR. LEVIN: Yes, your Honor.

11 THE COURT: Thank you very much. Okay. Mr. Jensen,
12 your first witness.

13 MR. JENSEN: Let me just see if she's here. She has
14 been in phone contact and said she is --

15 THE COURT: Let's go off the record.

16 (Recess)

17 THE COURT: Back on the record. Mr. Jensen, you may
18 call your next witness.

19 MR. JENSEN: Thank you, your Honor. Mr. Malkenhorst
20 calls Gloria Orosco.

21 MR. LEVIN: Your Honor, before the witness proceeds,
22 I move to exclude other witnesses from the courtroom.

23 THE COURT: All right. Mr. Jensen?

24 MR. JENSEN: Your Honor, my client has a right to be
25 present and the expert witness, who is proposed to be the

1 expert witness later today, Mr. Bob Adams, is not a
2 percipient witness and he would only learn more about the way
3 the City works through the testimony of Ms. Orosco.

4 THE COURT: Of course Respondent Malkenhorst may
5 remain. I'm going to exclude the expert and any other
6 witness who is present.

7 MR. JENSEN: I think that's the only one. So I'm
8 just going to show Mr. Adams -- I'm just going to briefly
9 discuss it with him and be right back.

10 THE COURT: Thank you. Let's go off the record.

11 (Recess)

12 THE COURT: Ms. Orosco, please rise.

13

14 GLORIA OROSCO,
15 called as a witness, and having been first duly sworn by
16 the Court, was examined and testified as follows:

17 THE COURT: Have a seat. Please state and spell
18 your name, and please speak loud enough for our court
19 reporter to hear you.

20 THE WITNESS: My name is Gloria Orosco. Orosco is
21 spelled O-r-o-s, as in Sam, -c, as in Charlie, -o.

22 THE COURT: Thank you very much. Go ahead, Mr. Jensen.

23 ///

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MR. JENSEN:

3 Q Good morning, Ms. Orosco. When did you start
4 working at the City of Vernon?

5 A In 1981.

6 Q And in which position did you begin your employment
7 at the City of Vernon?

8 A I believe I was hired as a personnel secretary.

9 Q And let me turn your attention to Exhibit 17?

10 MR. JENSEN: Your Honor, may I approach the
11 witness?

12 THE COURT: You may.

13 BY MR. JENSEN:

14 Q Ms. Orosco, may I approach?

15 A Yes.

16 Q I'm going to show you an exhibit -- so Exhibit 17,
17 page 36. So there's a couple of different binders here.

18 A Okay.

19 Q The ones that have the green labels are alphabetical
20 and the ones with the -- are numerical. So I'm going to
21 direct your attention to Exhibit 17. I believe it was page
22 36 -- page 36. Ms. Orosco, do you recognize this document?

23 A Yeah. I recognize the form of it, yes.

24 Q And do you see the position on this sheet that you
25 took?

1 A Yes.

2 Q And what is the name of that position?

3 A This says secretary to City administrator.

4 Q And who was the City administrator at that time?

5 A Mr. Malkenhorst.

6 Q And so can you -- just background, tell us a little
7 bit about the City of Vernon?

8 MR. JENSEN: And actually, your Honor, with your
9 permission, I've shown these documents, which are background
10 documents, to Counsel and I would just like to show them to
11 you before I show them to the witness. These are sort of a
12 brief background to the City of Vernon.

13 THE COURT: Are you asking to have those marked and
14 admitted?

15 MR. JENSEN: Yes. I would like to mark them. They
16 will be -- I forgot what number we what left -- what letter
17 we left off as. I think it was --

18 THE COURT: We marked 5Qs, but they were not
19 admitted and your notebook -- let's go off the record.

20 (Recess)

21 THE COURT: Let's go back on the record. All right.
22 There's a document you would like me to mark as 5Gs.

23 MR. JENSEN: Yes.

24 THE COURT: And you have shown it to Mr. Levin?

25 MR. JENSEN: I have previously shown it to Counsel,

1 and I have marked it with 5Gs in the upper right hand corner.

2 THE COURT: Let me take a look. All right.

3 Mr. Levin, any objection to Counsel showing this to the
4 witness?

5 MR. LEVIN: No objection.

6 THE COURT: Go ahead.

7 MR. JENSEN: And your Honor, just for these purposes,
8 there's a number of these just background documents.

9 BY MR. JENSEN:

10 Q So Ms. Orosco, is that a map that contains the
11 physical location of the City of Vernon?

12 A Yeah. Yes.

13 Q And do you know on that map where the City of
14 Vernon is located approximately?

15 A Approximately, yes.

16 MR. JENSEN: And your Honor, I would like to -- we
17 have marked 5Gs for identification. I would like to move
18 5Gs into evidence.

19 THE COURT: Any objection?

20 MR. LEVIN: No objection.

21 THE COURT: Exhibit 5Gs is admitted.

22 (Respondent's Exhibit GGGGG is received in
23 evidence by the Court.)

24 MR. JENSEN: Your Honor, I would like to -- I have
25 previously shown this document to Counsel. I would like to

1 mark it for identification as 5Hs.

2 THE COURT: Okay. Mr. Levin, have you seen this?

3 MR. LEVIN: Yes, your Honor.

4 THE COURT: Any objection to showing it to the
5 witness?

6 MR. LEVIN: No objection.

7 THE COURT: Okay. Go ahead.

8 MR. JENSEN: Thank you, your Honor.

9 BY MR. JENSEN:

10 Q Ms. Orosco, I am giving you a document that is
11 marked as 5Hs on the top. Do you know what that document
12 is or represents?

13 A A map of the south east area it looks like.

14 Q And on that map, there's a white dotted line.
15 Do you see that?

16 A Uh-huh.

17 THE COURT: Is that a "yes"?

18 THE WITNESS: Yes. Excuse me.

19 BY MR. JENSEN:

20 Q And I'm going to ask the witness to answer audibly
21 with yes or no for the purposes of the court reporter
22 recording it. Does that white dotted line represent,
23 approximately or to the best of your knowledge, the city
24 boundaries of the City of Vernon?

25 A I'd say approximately, yes.

1 MR. JENSEN: Your Honor, I'd like to move 5Hs into
2 evidence.

3 THE COURT: Any objection?

4 MR. LEVIN: No objection.

5 THE COURT: 5H is admitted.

6 (Respondent's Exhibit HHHHH was received
7 in evidence by the Court.)

8 MR. JENSEN: Your Honor, I'd like to mark for
9 identification a document that's -- I guess we're now at 5Rs.

10 THE COURT: 5Rs.

11 MR. JENSEN: This is just a picture of part of the
12 City of Vernon previously been shown to approximate. May I
13 approach, your Honor?

14 THE COURT: You may. All right. Any objection,
15 Mr. Levin, of showing this to the witness?

16 MR. LEVIN: No objection.

17 BY MR. JENSEN:

18 Q Mr. Orosco, do you recognize this document or what
19 this represents?

20 A Yes.

21 Q And what is that a picture of?

22 A It's a water tower.

23 Q And where is that water tower located?

24 A That's a good question. I can see it, but I
25 couldn't really tell you.

1 Q Have you seen that --

2 Yes. It's in the City of Vernon, that I can tell
3 you.

4 MR. JENSEN: Great. Your Honor, I'd like to move
5 5Rs into evidence.

6 THE COURT: Any objection.

7 MR. LEVIN: No objection.

8 THE COURT: All right. 5Rs is admitted.

9 (Respondent's Exhibit RRRRR was received
10 in evidence by the Court.)

11 MR. JENSEN: Your Honor, I'd like to mark for
12 identification 5Ss previously been shown to Counsel.

13 THE COURT: Okay.

14 MR. JENSEN: May I approach?

15 THE COURT: You may. Any objection to showing this
16 to the witness?

17 MR. JENSEN: No objection.

18 THE COURT: Go ahead, Mr. Jensen.

19 BY MR. JENSEN:

20 Q Ms. Orosco, I'm showing a document that has 5Ss in
21 the upper right hand corner. Do you recognize what this is a
22 picture of?

23 A That's the LA river.

24 Q Is that located in the City of Vernon?

25 A It goes through the City of Vernon, yes.

1 Q Is -- do you -- have you seen that part of the City
2 of Vernon?

3 A I can't tell specifically where -- what part of the
4 river that is, but I have seen the river within the City of
5 Vernon.

6 MR. JENSEN: And your Honor, I'd like to move 5Ss
7 into evidence.

8 THE COURT: Any objection?

9 MR. LEVIN: Yes, your Honor. It lacks
10 authentication and lacks foundation for relevance.

11 MR. JENSEN: These are just background documents.

12 THE COURT: She couldn't identify them going through
13 Vernon. The objection is sustained.

14 MR. JENSEN: Okay. So I withdraw 5Ss.

15 BY MR. JENSEN:

16 Q So Ms. Orosco, are you familiar with the ordinances
17 of the City of Vernon?

18 A Yes, fairly.

19 Q I'm going to turn your attention to Exhibit 9.

20 MR. JENSEN: Your Honor, may I approach?

21 THE COURT: You may.

22 BY MR. JENSEN:

23 Q Ms. Orosco, may I approach?

24 A Yes.

25 Q I'm going to turn your attention to page seven of

1 Exhibit 9. Have you seen this ordinance before?

2 A I am not sure which ordinance it is.

3 Q Can I ask you to turn to the first page of Exhibit
4 9?

5 A I'm sure I have seen it before, but I wouldn't say
6 yeah. I had my hands on this at one time.

7 Q Okay. So I'm going to ask you some just general
8 questions about what you did in your position as secretary to
9 the City administrator when you started work there, and so
10 can you just give me an idea of what your work relationship
11 was with the City administrator at that time?

12 A When I first began working with the City?

13 Q Yes.

14 A Again, I was hired as a personnel secretary. I
15 worked along side Mr. Malkenhorst. I handled filing tasks.
16 Personnel was part of his office at the time. So I handled
17 filing and I handled agendas for personnel meetings and
18 minutes for personnel meetings, and then I submitted all the
19 paperwork and filed it, and if he needed something in
20 addition or aside from that, such as letters or what have you
21 then I did those. I answered his phone calls. I answered
22 questions that came in from managers. That sort of thing.

23 Q And what was your -- what was your typical work
24 schedule?

25 A My work schedule? My hours?

1 Q Or your -- yes. What were your typical hours?

2 A 7:00 to 5:30.

3 Q And was Mr. Malkenhorst -- what were his hours that
4 you recall?

5 MR. LEVIN: Objection. Lacks foundation.

6 THE COURT: Sustained.

7 BY MR. JENSEN:

8 Q Were you aware of when Mr. Malkenhorst came to
9 work?

10 A Yes.

11 Q And how were you aware of that?

12 A Because he had to walk past me to get to his
13 office.

14 MR. JENSEN: Your Honor, may I use the white board
15 or the diagram board?

16 THE COURT: If you need to.

17 MR. JENSEN: Yes. So I've withdrawn that 5Ss. So I
18 would like to mark it as 5Ts, if I may?

19 THE COURT: You may?

20 BY MR. JENSEN:

21 Q Ms. Orosco, can I ask you to -- on this board here,
22 can I ask you to write a diagram of the office and where you
23 worked and sat and where Mr. Malkenhorst sat?

24 A When I first started?

25 Q Yes. When you first started and maybe you can

1 label it 1981.

2 A Good grief. Okay. That was it.

3 Q And where would the doors --

4 A I can't draw a door, but here's a door.

5 Q And were there any other doors?

6 A This is the door to his office.

7 Q And were there any doors from Mr. Malkenhorst's
8 office to the outside?

9 A This was another office over here. There was a
10 door here.

11 Q And did that have a door out to the outside?

12 A No. This was another office over here, a big
13 office, finance.

14 MR. JENSEN: Your Honor, may I approach the witness
15 just to clarify?

16 THE COURT: You may.

17 BY MR. JENSEN:

18 Q Ms. Orosco, was there any doors here?

19 A No. Here's a door.

20 Q Was there any door out of here?

21 A There's a door here. It doesn't look like a "D,"
22 but that's a "D" and this is the door to go out, I guess,
23 right here.

24 Q And approximately how large would you say this space
25 is with reference to this courtroom, which I would guess is

1 approximately 45 feet by 45 feet?

2 A This is probably --

3 MR. LEVIN: Objection. Vague as to "this space."

4 MR. JENSEN: Okay.

5 THE COURT: Sustained.

6 MR. JENSEN: Your Honor, may I clarify?

7 THE COURT: You may.

8 BY MR. JENSEN:

9 Q From this to here how far would you guess -- what
10 would you estimate was that distance?

11 THE COURT: Are you asking the combined length of
12 Mr. Malkenhorst's office and the witness's office?

13 MR. JENSEN: Yes.

14 THE COURT: Let me instruct the witness, when I'm
15 speaking, don't speak. The court reporter can only take
16 down one person at a time.

17 THE WITNESS: Got it.

18 THE COURT: Thank you.

19 BY MR. JENSEN:

20 Q So what I will label this as X to Y. This line
21 here, how long approximately do you believe that space --
22 would you estimate that space to be?

23 A Oh, you are asking the wrong person. I couldn't
24 begin to tell you.

25 Q With reference to this courtroom.

1 A To this area here, it might have been maybe to the
2 outside of the hallway.

3 Q Okay, and just let the record reflect that the
4 witness has made various markings on this diagram, BVM, OFF?

5 A Office -- excuse me.

6 Q And what does BVM office stand for?

7 A Bruce V. Malkenhorst.

8 Q And "office my" would reflect --

9 A To me.

10 Q To your office, Gloria Orosco, and could you just
11 write here courtroom plus hall, distance-wise.

12 MR. JENSEN: Your Honor, I'd like to --

13 THE WITNESS: Do you want courtroom also written?

14 BY MR. JENSEN:

15 Q Yeah. Please.

16 MR. JENSEN: Your Honor, I'd like to move 5Ts into
17 evidence.

18 THE COURT: Any objection?

19 MR. LEVIN: No objection.

20 THE COURT: Exhibit 5Ts is admitted.

21 (Respondent's Exhibit TTTTT was received
22 in evidence by the Court.)

23 BY MR. JENSEN:

24 Q Ms. Orosco, can you take your seat again, and so
25 what would be -- did you see typically Mr. Malkenhorst enter

1 through your office to get to his office?

2 A Yes.

3 Q And approximately what time would he arrive in the
4 morning in that period of time 1981?

5 A I'm embarrassed to say this, he was usually there
6 before me.

7 Q And -- and --

8 A Which is seven o'clock.

9 Q What time did you leave the office?

10 A What time did I leave the office?

11 Q Yes.

12 A 5:30ish.

13 Q And do you recall what time Mr. Malkenhorst would
14 leave the office?

15 A It depended. If there was a meeting, he was still
16 there when I left. Sometimes we left at the same time.

17 Q And was there any markings on the exterior of the
18 office? Did it say -- did it have a title on the door of the
19 office?

20 A I don't think so.

21 Q So let me just turn your attention back to the --
22 you said personnel matters. Can I turn your attention to
23 page eight of Exhibit 9? This is under "powers and duties
24 of the city administrator."

25 A Okay.

1 Q Can you briefly just read section C there.

2 THE COURT: You may read it to yourself.

3 MR. JENSEN: Thank you, your Honor.

4 THE WITNESS: Okay.

5 BY MR. JENSEN:

6 Q And so when you mention personnel matters, would
7 it -- would those personnel matters, in your understanding
8 of it, fall into administrator and supervise all personnel
9 testing examination and other departments' heads
10 recommendations relating to dismissal, suspension, and
11 discipline of office employees?

12 MR. LEVIN: Objection. Lacks foundation and
13 personal knowledge of the intent of the ordinance.

14 MR. JENSEN: Your Honor, I wasn't asking for the
15 intent of the ordinance. I was asking for her understanding
16 of what she saw was occurring when she mentioned personnel
17 matters.

18 THE COURT: When she mentioned personnel matters, is
19 it that she attended to or that Mr. Malkenhorst attended to?
20 Why don't you clarify your question.

21 BY MR. JENSEN:

22 Q Okay. So in your capacity did you, in your
23 understanding, handle or work on the same matters as the
24 City administrator did?

25 MR. LEVIN: Objection. Vague.

1 THE COURT: I'll allow it.

2 THE WITNESS: If I'm understanding you correctly,
3 everything that came into the office, I reviewed and I turned
4 in to Mr. Malkenhorst.

5 BY MR. JENSEN:

6 Q So you basically feel like you saw everything that
7 Mr. Malkenhorst saw?

8 A Yes.

9 Q Even before he saw it?

10 A Yes. Unless -- 99 percent of the time, yes.
11 Occasionally a department head or manager would walk in with
12 their paperwork to see him directly, and then leave it with
13 me after they met with him and discussed whatever the issue
14 was.

15 Q So when you mentioned personnel matters that you
16 were working on, those were also matters that you later
17 forwarded to Mr. Malkenhorst?

18 A Yes.

19 Q And you forwarded those in his capacity as City
20 administrator?

21 A Well, director of personnel, City administrator.

22 Q And with respect to this section here where it
23 says -- what are personnel resolutions in your
24 recollection?

25 A Personnel resolutions? Personnel resolutions to my

1 recollection were not separate. All the resolutions were
2 just resolutions and the topic or the subject matter may
3 have pertained to personnel, but they were all part of the
4 City's -- City council's authorizations. So even if there
5 was a resolution for personnel, such as the authority to
6 hire somebody in a capacity or the authorization to create a
7 position for such and such department. It was contained in
8 a resolution and again, it didn't become a personnel
9 resolution, if I'm understanding you correctly. It just
10 became part of the legislative action or history of the
11 City.

12 Q So let me ask you to clarify --

13 A Okay.

14 Q -- what was your understanding of his role with
15 respect -- the City administrator's role with respect to
16 personnel?

17 A As a director of personnel, he was responsible for
18 processing, approving, submittal of personnel matters to the
19 personnel committee.

20 Q And is director of personnel a title?

21 A Well, yeah. It was in my opinion.

22 Q And was there separate -- a job duty statement for
23 director of personnel?

24 MR. LEVIN: Objection. Lacks foundation. Personal
25 knowledge.

1 THE WITNESS: I don't recall --

2 THE COURT: I'm going to allow the question. You
3 may answer if you know.

4 THE WITNESS: I'm sorry. I'm sorry. I don't recall
5 if there was a job description for director of personnel, but
6 again, there was something contained in resolutions and
7 ordinances that authorized or maybe even directed the City
8 administrator to serve as the director of personnel.

9 BY MR. JENSEN:

10 Q So you're saying the City administrator served as
11 the director of personnel?

12 A Correct.

13 Q It wasn't -- in your opinion, was it a separate
14 position?

15 MR. LEVIN: Objection. Lacks foundation.
16 Qualifications to give an opinion.

17 THE COURT: Lay a foundation, Mr. Jensen.

18 BY MR. JENSEN:

19 Q Okay. What personnel matters were you -- were you
20 familiar with, with respect to different duties and
21 responsibilities of the -- of a position?

22 A Of a -- I'm not quite sure I --

23 Q What personnel matters did you -- did you -- were
24 you in charge of any personnel matters in your position as
25 secretary to the City administrator?

1 A Other than support to Mr. Malkenhorst, not
2 specifically, no.

3 Q And so with respect to your understanding of --
4 of -- you said the director of personnel. How did you
5 become -- how did you learn about a title, director of
6 personnel?

7 A I can't recall specifically.

8 Q And is it separate --

9 A It would have been in the documents.

10 Q And is it a separate concept than what is on
11 page eight of Exhibit 9?

12 A I don't believe so.

13 Q So after you review the section, personnel and
14 organization, please let me know if you believe that there
15 was a separate director of personnel other than what is
16 indicated in that section.

17 A I'm not sure I'm understanding your question
18 correctly.

19 Q Let me clarify. If you read this -- please read
20 this section C. It says "personnel and organization."

21 A Right. Correct.

22 Q Did you -- is it your understanding that a director
23 of personnel position is fully and completely described in
24 this subsection C?

25 MR. LEVIN: Objection. Lacks foundation.

1 THE COURT: I'll allow it.

2 THE WITNESS: I would say yes.

3 BY MR. JENSEN:

4 Q Thank you. What other -- let's get back to -- let
5 me show the witness -- let me show Counsel a picture first.

6 MR. JENSEN: I'd like to mark this as 5Us, your
7 Honor.

8 THE COURT: Go ahead.

9 MR. JENSEN: Marked for identification a photo of --
10 that I'm going to show to your Honor.

11 THE COURT: And you've shown it to Mr. Levin?

12 MR. JENSEN: I have shown it to Counsel.

13 THE COURT: Thank you. You may show this to the
14 witness.

15 BY MR. JENSEN:

16 Q Ms. Orosco, do you recognize what that is a photo
17 of?

18 A I think it's City Hall today.

19 Q And when was that constructed about?

20 A Jeez, maybe in the '90s.

21 Q So this is not a picture of the building as they
22 existed in your Exhibit TTTTT?

23 A No.

24 MR. JENSEN: And your Honor, I'll withdraw that
25 right now and I will show it to her later or -- not withdraw

1 it but it's not that building.

2 THE COURT: You're not moving to admit it?

3 MR. JENSEN: I'm not moving to admit it at this
4 point.

5 THE COURT: Okay. You may take this -- actually,
6 why don't you give it to me.

7 BY MR. JENSEN:

8 Q So let's go through the other duties and
9 responsibilities that you performed as secretary. Do you
10 recall other areas that came through your desk, such as
11 budgeting matters?

12 MR. YIM: Objection. Vague as to time.

13 THE COURT: Sustained.

14 BY MR. JENSEN:

15 Q In the period of 1981, do you recall budgeting
16 matters being presented to Mr. Malkenhorst through you?

17 A Yes.

18 Q And can I just turn why attention to Exhibit 9,
19 page nine subparagraph H. Can you take a moment to read the
20 subsection that says "budget" on it.

21 A Uh-huh.

22 Q So was -- how were these budgeting documents
23 presented to Mr. Malkenhorst through you?

24 THE COURT: We're in 1981 now?

25 ///

1 BY MR. JENSEN:

2 Q In 1981.

3 A In preparation of the budget by each department, my
4 recollection is they would normally meet with Mr. Malkenhorst
5 to go over major items that they wanted to include in their
6 budget. 1981 is a long time ago. He would meet with the
7 departments. Then they would come back when they had
8 resolved or came to decisions on what would be included in
9 the budget, what could be just submitted as a possibility, it
10 might be admitted later, and I'm talking about major items.
11 If you're talking about fire department, he might have been
12 talking about trucks. If you were talking about the water
13 department, they may have been talking about resurfacing the
14 streets or laying water lines that had to be changed out
15 because of age or something. So I'm talking about major
16 dollars that they would discuss.

17 Q And so -- so was Mr. Malkenhorst the department
18 head of the electric -- of Light & Power?

19 A Department head, no.

20 Q And so would Mr. Malkenhorst present the budget for
21 Light & Power?

22 A Well, he would present all the budgets to Counsel.

23 Q Well, as a department head, would he -- would he
24 develop the department head budget for the electric
25 department?

1 A No. It was developed by whoever was the director at
2 the time. It could have been Bob Adams or whoever was the
3 director and at that time.

4 Q And when you said that he presented all of the
5 budgets, do you mean that he presented the budgets to the
6 City council?

7 A Correct.

8 Q And were you aware of that process?

9 A Yes. If I'm understanding you correctly, the
10 budgets would also go through the treasurer's office in
11 preparation of submitting a proposed budget to the council.
12 Treasurer's office would prepare the paperwork or however
13 it was presented, in the form it was presented in, and
14 Mr. Malkenhorst would meet with the finance committee and go
15 over if he was discussing fire, that's the budget we were
16 reviewing, the preparation, the proposed budget. He would be
17 down with the finance committee going over the proposed
18 budget which included everything; from -- everything.
19 Personnel matters to just the total cost to run for the next
20 fiscal year.

21 Q And these proposed costs were to be extended in the
22 up coming year; is that correct?

23 A Yes. In the next fiscal year, yes.

24 Q And in your recollection, did the City council
25 approve all the budgets that Mr. Malkenhorst suggested, or

1 was there negotiation about --

2 A Yes.

3 Q -- amounts.

4 THE COURT: Allow him to finish his question before
5 you begin your answer, please.

6 BY MR. JENSEN:

7 Q And were you aware of the type of negotiations or --
8 did the City council make changes to the proposals that
9 Mr. Malkenhorst made?

10 MR. LEVIN: Objection. Lacks foundation.

11 THE COURT: Sustained.

12 BY MR. JENSEN:

13 Q Are you aware of the City council not agreeing to
14 Mr. Malkenhorst's proposals, but making changes to the
15 budget?

16 A Yes.

17 Q And how were you aware of that?

18 A Because he would come back from his meeting and
19 say -- he would either give it to me or he would send it
20 over -- have me send it over to the treasurer's office to
21 make the contact with the department, but there would be
22 something along the lines of, why do we need this truck?
23 Just a hypothetical, but something along the lines of that of
24 just questions that the council or the finance committee had
25 at the time, and it would go back to the department for them

1 to give more justification, further justification, and go
2 from there.

3 Q And would you say that was a fairly common
4 occurrence?

5 A Yes.

6 Q And would you say it was an active oversight by the
7 City council?

8 MR. LEVIN: Objection. Lacks foundation.

9 THE COURT: Sustained.

10 BY MR. JENSEN:

11 Q In your opinion, did the City council review the
12 budget items in detail?

13 MR. LEVIN: Objection. Lacks foundation. Also
14 calls for hearsay. This witness testified earlier as her
15 basis of her knowledge on this issue.

16 THE COURT: Sustained.

17 MR. JENSEN: Just one --

18 THE COURT: You may ask your question, just give me
19 a chance to rule on the objection, Mr. Jensen.

20 BY MR. JENSEN:

21 Q And were you aware of how many times the budget
22 would come back with changes different than what
23 Mr. Malkenhorst had requested?

24 MR. LEVIN: Objection. Hearsay. Lacks foundation.

25 THE COURT: Overruled, but I just want to clear up

1 for the record we are still talking about the witness's
2 memory of 1981.

3 MR. JENSEN: Yes, your Honor.

4 THE COURT: Thank you.

5 MR. JENSEN: And I will extrapolate that off.

6 BY MR. JENSEN:

7 Q Do you recall those events happening where the City
8 council --

9 A I forgot your question at this point.

10 Q The question was whether you recall in that period
11 of 1981 whether the City council would make changes in the
12 proposals of the budgets that were offered to them?

13 A Yes.

14 Q And so I also want to turn your attention just --
15 were there -- was the City administrator in charge of
16 purchasing as well?

17 A Yes.

18 Q Can I just turn your attention to the next page of
19 document nine, page 10? Did you see documents come through
20 your office related to purchasing presented to
21 Mr. Malkenhorst?

22 A Yes.

23 Q And let me just turn your attention to the next
24 page.

25 A Page 11?

1 Q Page 11. It says on subsection P, "full-time
2 duties." Were you under the understanding that
3 Mr. Malkenhorst was working full time in the City
4 administrator position?

5 MR. LEVIN: Objection. Lacks foundation. Calls for
6 hearsay.

7 THE COURT: Sustained.

8 BY MR. JENSEN:

9 Q How -- how would you characterize Mr. Malkenhorst's
10 employment as the City administrator?

11 MR. LEVIN: Objection. Vague.

12 THE COURT: Sustained.

13 BY MR. JENSEN:

14 Q How -- let me ask you this question, are you aware
15 of whether Mr. Malkenhorst was a managerial employee? Did he
16 manage other employees in the City of Vernon?

17 A Yes.

18 Q Was he a supervisory employee? Did he supervise
19 other --

20 A Yes.

21 Q Are you aware of the term exempt employee?

22 A Yes.

23 Q And what is your understanding of what exempt
24 means?

25 A Exempt is you are managerial or mid-management even.

1 You have -- you don't get overtime. You're not paid in
2 addition to your regular salary.

3 Q And in your understanding, how many hours a week did
4 Mr. Malkenhorst work?

5 MR. LEVIN: Objection. Lacks foundation. Calls for
6 speculation.

7 THE COURT: Overruled.

8 BY MR. JENSEN:

9 Q In that period of 1981 to, say, 1980 -- or 1981,
10 how many hours a week did he work?

11 A That would be hard to say. I couldn't even guess.
12 I mean --

13 Q Did you see him arrive in the morning?

14 A Well, yes.

15 Q And did you see him leave during -- at the end of
16 a work day?

17 A If I was still there, yes.

18 Q So do you believe it was more than 32 hours a
19 week?

20 A It could very well have been, yes. Absolutely.

21 Q And were you aware whether Mr. Malkenhorst kept
22 timesheets?

23 A In 1981, not to my knowledge.

24 Q Are you aware of anytime that he kept hours of when
25 he worked?

1 A He kept hours -- not to my knowledge.

2 Q And would you be the person who would be aware if
3 there were hours kept of his actual work?

4 A Perhaps me or payroll could have.

5 Q And did you keep hours of your own work?

6 A No.

7 Q And would you have some reason to believe that
8 Mr. Malkenhorst kept hours of his time at work?

9 A No.

10 Q Was it a policy or procedure of Vernon to keep a
11 timesheet for --

12 A I recall that utility workers did, maintenance
13 personnel did keep a timesheet.

14 Q And how do you recall that?

15 A Because payroll would come through our office also.
16 So I would review payroll.

17 Q And what period did you review payroll?

18 A Almost from the beginning, since 1981.

19 Q So over which period? 1981 until approximately --

20 A When I left.

21 Q When did you leave?

22 A I think I left in two thousand -- I left the
23 administration office in 2004, I believe.

24 Q So from 1981 to 2004, were you aware of any hours
25 that were kept for Mr. Malkenhorst's actual work?

1 A Not to my recollection.

2 Q And would it be your responsibility as payroll
3 person to see whether --

4 A Well, I wasn't the payroll person.

5 Q What was your responsibility with respect to
6 payroll?

7 A I would review the payroll when it came in to be
8 signed off by Mr. Malkenhorst.

9 Q And what do you mean -- can you explain what you
10 mean by "review"?

11 A Checking hours for overtime pay, questions on people
12 that took off but they were giving them 40 hours pay, sending
13 it back to the department, getting that clarified if they
14 couldn't answer it by phone. That's how I became aware of
15 their timesheets, and then they explained to me their time
16 sheets was so that they could allocate the charges for
17 personnel to the department that it should be charged to,
18 water department as opposed to street and maintenance
19 department.

20 Q Can you elaborate on that, please.

21 A You have somebody working for what we refer to as
22 a communicate services department, short term community
23 services department, that included the water department,
24 street department, and public works. Three departments in
25 one. That department head submitted their payroll. If a

1 utility person was working both in the water department and
2 in the street department, if he worked on a water project,
3 they are docking it by the right account number, and if you
4 worked in the street department, they say half a day here,
5 half a day there, they would give it their appropriate
6 account number. So the funds were charged to the correct --
7 or the costs were charged to the correct department.

8 Q And what was your understanding of the costs charged
9 to the correct department of the salaries?

10 A Well, hypothetically, \$1,000 is allowed for wages in
11 the water department, \$1,000 is charged -- is allowed for
12 wages in the street department, and \$1,000 is allowed in
13 public works.

14 MR. JENSEN: Actually, your Honor, can I ask the
15 witness to explain it on the board?

16 THE COURT: I'm following her just fine.

17 MR. JENSEN: Okay. That's fine.

18 THE WITNESS: Don't make me draw.

19 MR. JENSEN: Sorry.

20 BY MR. JENSEN:

21 Q So 1,000 in three departments?

22 A Okay. So one man is working half a day in the water
23 department, whatever his salary is, 50 percent is going to be
24 charged to the water department and funds will be depleted
25 from the water department's budget for personnel salaries.

1 Same thing would apply if he worked some hours in the public
2 works department doing whatever, but if he worked half a day,
3 then four hours are going to be charged to the public works
4 account, that budget, and therefore, the salaries would be
5 reduced by that amount of money --

6 Q And let me just ask you --

7 A -- In different departments.

8 Q Let me just ask you to turn quickly to, I believe,
9 it's Exhibit 17 for a moment just so that we can see which
10 salaries were allocated over different departments. It would
11 be approximately starting -- I would guess about page 11 or
12 12 or 14. Can you quickly -- actually, starting on page 14
13 of Exhibit 17. This is the department of community services
14 salary schedule.

15 A Uh-huh.

16 MR. JENSEN: Your Honor, may I approach just to make
17 sure that we're on the same page?

18 THE COURT: You may.

19 BY MR. JENSEN:

20 Q So if you can identify on this page or any of the
21 following pages, which of those salaries were allocated over
22 different departments in your understanding?

23 A The first one, the director position.

24 Q And do you recall how that was allocated over the
25 different departments?

1 A I'm thinking he was 33 percent or 33 and a third
2 percent for community services, public works building.

3 Q But he was just paid this one salary?

4 A Uh-huh. Correct.

5 Q And any others on this page?

6 A Same thing for the deputy director of community
7 services.

8 Q Okay. Any others on this page?

9 A The foreman would also be -- you could have the
10 foreman over saw -- that was involved in the water department
11 and with the street department.

12 Q Okay. And any others on page 14?

13 A Not that I can recall.

14 Q I'll turn your attention to page 15.

15 A The utility man positions. You have got a two --
16 two and three -- well, one two and three. Those could very
17 well have been allocated to different departments
18 depending --

19 Q And on page 16?

20 A Yes. The same thing with the utility man, and also
21 the secretary for this particular department because she
22 worked for the director and her duties went up to building,
23 community services, street. So it just depended.

24 Q And were these allocations by percentage?

25 A Yes.

1 Q And were they done in -- before the beginning of the
2 fiscal year?

3 A During the process of adopting the budget.

4 Q And were they maintained for the full year until the
5 next budget?

6 A To my recollection, yes.

7 Q And were they associated with actual hours worked by
8 the employee?

9 A I believe so. Well, no. I take that back because
10 we didn't do timesheets for managers. So I couldn't say
11 honestly.

12 Q When -- when these employees who did fill out
13 timesheets, were they instructed to allocate their time
14 across different departments?

15 A Well, they were instructed to put down the time they
16 spent working on different projects. So if one man that was
17 in this particular department worked on something with the
18 water crew or for the water department, he documented how
19 many hours he spent doing that. He didn't do percentages,
20 but I spent three hours helping tie up a water line or
21 something along those lines.

22 Q But in the cases where the actual hours were
23 different than the percentage, which amount was allocated
24 across the different departments?

25 A Okay. With the managers, as in the director as we

1 were talk being earlier, that was strictly percentage. It
2 was different with the utility personnel, the maintenance
3 personnel. I don't know what the term to use.

4 Q And were you aware of whether any of these utilities
5 generated funds for the City enterprise funds?

6 A In this particular case, the water department did.

7 Q And was there -- was it, in your recollection,
8 important to associate the costs -- allocate the costs to
9 that enterprise fund for any rate making purposes?

10 A That question I cannot answer because I do not know
11 that answer.

12 MR. JENSEN: Your Honor, I'm going to try to get
13 through these other issues.

14 BY MR. JENSEN:

15 Q So how -- well, let me ask you -- have you looked at
16 the departments, the department or the accounting codes that
17 were offered and, I believe, it's exhibit 81.

18 MR. JENSEN: If I can just approach?

19 THE COURT: You may.

20 BY MR. JENSEN:

21 Q Ms. Orosco, do you recognize these -- this -- the
22 information listed on this sheet?

23 A Yes. Some of them, quite a number of them, yes.

24 Q And what are they?

25 A They are department codes.

1 Q Now, are each of these a separate department?

2 A Correct.

3 Q So there's a separate department for, for example,
4 6033 hazardous material, fire?

5 A Yes.

6 Q And is there a department head for hazardous
7 material, fire?

8 A No.

9 Q Is there any positions in hazardous material,
10 fire?

11 A That I don't know. There very well may have been,
12 but --

13 Q Is there -- in each of these department listings,
14 is there a position in it to your knowledge?

15 A Oh, Counsel -- this is a relatively new document.
16 So --

17 THE COURT: Mr. Jensen, was this document created
18 after this witness left the employment of the City of Vernon?

19 MR. JENSEN: I believe it was. So would you like me
20 to lay some foundation for it?

21 THE COURT: Please.

22 BY MR. JENSEN:

23 Q So, Ms. Orosco, Are you aware of department codes
24 that Vernon uses?

25 A For each department or for different divisions of

1 each department or --

2 Q Let me ask you, does Vernon code use codes in its
3 accounting for funds?

4 A It did, yes.

5 Q And can you take a look at this list in
6 department -- in Exhibit 81, and tell me if you recognize
7 whether these code numbers were in existence and the same
8 ones when you were working there?

9 A I recognize the majority of them, but there are some
10 that I don't.

11 Q And of the ones that you do recognize, over your
12 employment from 1981 to 2004, did those codes ever change?

13 A From the ones I recognize, no. They're the same.

14 Q And you mentioned that the department heads and some
15 of the secretaries and the -- I'm going -- the community
16 services department were allocated over different
17 departments; is that correct?

18 A Yes.

19 Q Do you recognize the codes under which the salaries
20 of those exempt employees would be allocated? Do you
21 recognize the code numbers on this page that the salaries of
22 the community services department would have been
23 allocated?

24 A Some of them, yes.

25 Q And can you identify one or more of them?

1 A Okay. Talking about community services department,
2 you have 1040, administrative engineering and planning, 1041
3 building regulations, 1042 street lighting, 1043 street
4 operations, 1046 garage, 1047 warehouse, 1048 municipal
5 housing, and for that department, that's all.

6 Q And so you -- so is it your testimony that 1040
7 through 1048 are all codes associated with the community
8 services department?

9 A To my recollection.

10 Q And do you recognize codes here which would have
11 been associated with your work in the City administrator's
12 office?

13 A Yes.

14 Q And what are those codes?

15 A 1001, 1002, 1003, 1014, 1022, 1023 and 9000.

16 Q So all of those codes would be associated with,
17 in your opinion, the City administrator's department?

18 A Yes. Did I say 1004?

19 THE COURT: You did not.

20 THE WITNESS: 1004 also.

21 MR. JENSEN: Thank you. Your Honor, I'm just
22 looking at 10:30 break?

23 THE COURT: Yes.

24 MR. JENSEN: Okay. I'm just going to keep moving on
25 this.

1 THE COURT: One moment, yes.

2 THE WITNESS: I also forgot 1015 and 1018 because I
3 think I misunderstood his question.

4 BY MR. JENSEN:

5 Q Can you clarify your understanding of the
6 question?

7 A I'm thinking your asking me what department codes
8 pertained to the office that I was working in.

9 Q Yes.

10 A Okay.

11 Q Thank you.

12 THE COURT: And that office was called by Counsel
13 the City administrator's office?

14 THE WITNESS: City administrator/City clerk's
15 office.

16 THE COURT: Thank you.

17 BY MR. JENSEN:

18 Q And I just have a question. Some of these, such as
19 fiber optics at 1057, are there any employees who work in the
20 fiber optics department?

21 A Yes.

22 Q And are there any of these department codes here
23 that you recognize that there is not an employee who is
24 working in?

25 THE COURT: 1981, remember.

1 MR. JENSEN: Yes. Thank you your Honor.

2 THE WITNESS: Yeah. In 1981, we did not have a
3 1006.

4 THE COURT: Was that your question, Counsel?

5 MR. JENSEN: Yes. I'm sorry, your Honor, and let me
6 just --

7 THE COURT: I'm sorry. I understood your question
8 to be, did any of these codes in 1981 not have any employees
9 working in them, not whether the codes existed and I'm not
10 sure the witness understood that to be the case.

11 THE WITNESS: Okay.

12 BY MR. JENSEN:

13 Q I'm sorry if I failed to clarify. In 1981 and
14 actually, in your experience even through 2004, were there
15 any codes that were represented that the City used that did
16 not have employees in that -- associated with that coding
17 number?

18 A You're going to have to explain that to me one more
19 time.

20 Q Actually, let me just follow up on your question.
21 When you said that 1001 through 1018 and 1021 and 1023 were
22 all in the City administrator's office in 1981, was that the
23 same throughout your tenure to when you retired?

24 THE COURT: There has not been a objection, but that
25 does mischaracterize the witness's testimony. She did not

1 say 1001 through 1018.

2 MR. JENSEN: Right. Okay. So let me clarify.

3 BY MR. JENSEN:

4 Q You have identified codes 1001 through 1004 and
5 1014, 1015, 1018, 1022, and 1023 as associated with the
6 City administrator/City clerk department.

7 THE COURT: And 9000.

8 MR. JENSEN: What's that?

9 THE COURT: And 9000.

10 MR. JENSEN: And 9000. Thank you, your Honor.

11 BY MR. JENSEN:

12 Q In 1981, was that the same through your whole
13 tenure to when you retired?

14 A I think so, yes.

15 Q Thank you. So we referenced some of these pay
16 schedules. Let me just turn your attention to the other
17 exhibit book. Actually, maybe now is a good time.

18 MR. JENSEN: Your Honor, I'd like to again with -- I
19 know you have admitted 67 and 68 for purposes of their
20 reliance on them in making this determination. I'd like to
21 just address -- have the witness address some of those --
22 with the understanding I still reserve all of those
23 objections.

24 THE COURT: Okay. The objections have been ruled
25 on, but you may direct the witness's attention to whatever

1 exhibit you like.

2 MR. JENSEN: Thank you, your Honor. May I approach?

3 THE COURT: You may.

4 MR. JENSEN: I'd like to turn attention to these
5 documents and your Honor, just for the purposes of the
6 record, these documents have been marked by one of the prior
7 witnesses. May I just show you what the markings on them
8 so --

9 THE COURT: Yes, please.

10 MR. LEVIN: I'm sorry. Was there a statement that
11 they had been marked up?

12 THE COURT: Exhibit 60 -- I'm looking at Exhibit 67
13 and there is some handwriting in a portion of the first
14 column that pertains to Mr. Malkenhorst. Please show this
15 to Mr. Levin.

16 MR. JENSEN: Yes. Okay. Mr. Yim.

17 THE COURT: The handwriting reflects percentages.

18 BY MR. JENSEN:

19 Q Just for the record, reflected the percentage is --
20 are listed in the second column under Mr. Malkenhorst. They
21 are respectively 20 percent, 5 percent, 15 percent, 5
22 percent, 5 percent, 20 percent, 10 percent, 20 percent. So
23 Ms. Orosco, I'll turn your attention to this. Have you seen
24 this document before?

25 A No. Not to my recollection anyway.

1 Q Can I have you take a moment to look at it. Do you
2 know what this document is?

3 A It looks like a payroll sheet.

4 Q And are you familiar with Vernon's use of ADP?

5 A Not very much, no.

6 Q When you were overseeing payroll, did you -- did you
7 oversee the ADP?

8 A They came -- when I was looking at it, they came
9 through a different form. It was --

10 THE COURT: It came through a different?

11 THE WITNESS: Format than ADP. It was an in-house
12 program.

13 BY MR. JENSEN:

14 Q Okay.

15 A Similar to this, but it wasn't ADP.

16 Q And tell us what your -- how you remember the
17 payroll when you were reviewing it?

18 A It basically looked like that. It just wasn't --
19 it was the City's program. It wasn't --

20 Q Do you recall whether Mr. Malkenhorst's salary was
21 allocated over different departments?

22 A Yes, it was.

23 Q And how was it allocated?

24 A Percentages.

25 Q Percentages, and did those percentages -- were they

1 based on actual hours worked?

2 A No. There were percentages that were set up in the
3 budget when the budgets were submitted to Counsel.

4 Q And can you tell us a little bit about that process
5 in your recollection?

6 A When the budgets were submitted to Counsel, it
7 also included personnel and salaries. So if we had City
8 administrator, it could say, again, I don't remember the
9 exact numbers so hypothetically, it could say 60 percent,
10 City administrator. It could say personnel, 20 percent. It
11 could say finance, 24 percent, and that's what was allocated
12 to that particular department or part of the salary that was
13 allocated to come from that department.

14 Q And do you have an understanding of why it was
15 allocated across departments?

16 A Because he worked in those departments.

17 Q And you just mentioned that those department codes
18 were included within the City administrator department; is
19 that correct?

20 A Tell me that question one more time.

21 Q You just mentioned that he worked in those
22 departments and how were those departments structured?

23 A He managed those departments if I'm understanding
24 you correctly.

25 Q Within his City administrator position?

1 A Correct.

2 Q And do you recall in your review of the payroll --
3 let me first ask you, over what time period did you review
4 payroll?

5 A Again, from the time I started -- almost from the
6 time I started maybe a couple months after I started until
7 I left.

8 Q In 2004?

9 A Yeah. I believe it was 2004.

10 Q And was Mr. Malkenhorst ever paid any overtime in
11 your recollection?

12 A Not to -- no, not to my recollection.

13 Q Was Mr. Malkenhorst ever paid in any other position
14 other than City administrator/City clerk?

15 MR. LEVIN: Objection. Lacks foundation. Calls for
16 speculation.

17 BY MR. JENSEN:

18 Q In her experience of reviewing the payroll?

19 THE COURT: Limited that way, the objection is
20 overruled. You may answer.

21 BY MR. JENSEN:

22 Q Let me ask the question again. The look that --
23 when you reviewed the payroll in 1981 to 2004, was
24 Mr. Malkenhorst ever paid in any position other than City
25 administrator/City clerk?

1 MR. LEVIN: Lacks foundation.

2 MR. JENSEN: In her review of payroll.

3 THE COURT: Overruled. Go ahead. You may answer.

4 THE WITNESS: No.

5 THE COURT: We're going off the record for a break
6 for 15 minutes.

7 (Recess)

8 THE COURT: Let's go on the record.

9 MR. JENSEN: So Exhibit -- our Exhibit SS is a one
10 page exhibit that is the first page of Exhibit 46, but
11 Exhibit 46 has 46 pages attached to it. So if we could rely
12 on 46 instead of SS and then exhibit -- our Exhibit TT is the
13 same as CalPERS' Exhibit 47. So if we can rely on 47.

14 THE COURT: We have already had testimony about SS
15 and TT, so I'm just going to leave them in and they were
16 moved and admitted.

17 MR. JENSEN: Okay. Great. I just wanted to clarify
18 that they are the same documents, and then Exhibit 48 is the
19 same as our UU and I think that's all the duplications.

20 THE COURT: Thank you very much and before we
21 proceed, Mr. Levin, did you have any luck contacting those
22 two witnesses?

23 MR. LEVIN: We did have luck contacting Ms. Lueras.
24 She was available to come this afternoon and arrive at
25 Burbank Airport about 2:15, get here about 3:00. Mr. Jensen

1 that probably was not sufficient time to complete her within
2 the day and requested instead that she appear tomorrow
3 morning. So I believe we have made that arrangement. We
4 have not yet or at the time that I got back in the courtroom
5 contacted Terrance Rodgers.

6 THE COURT: Okay. Thank you very much. Let's
7 continue with this witness.

8 MR. JENSEN: Thank you, your Honor. May I approach
9 the witness?

10 THE COURT: You may.

11 BY MR. JENSEN:

12 Q I'm going to refer to Exhibit 46. This is 46 and
13 before I ask you about that document, after you were hired
14 in 1981, did you receive any promotions or additional
15 responsibilities in your work at the City of Vernon?

16 A Yes. In -- well, at one point in time, I was
17 secretary to the City administrator.

18 Q Do you remember what date that was?

19 A I don't, I don't. In 1986 I was appointed to the
20 chief deputy City clerk slash secretary to City
21 administrator.

22 Q Why don't we actually before we go -- let's discuss
23 that time period before we get to that other exhibit. I'll
24 try to do this rapidly. This was in 1986, is that correct,
25 that you were appointed to --

1 A Yes. Chief deputy City clerk.

2 Q Can I refer you to Exhibit 22? The first page 36
3 of Exhibit 22.

4 MR. JENSEN: Your Honor, may I approach the witness?

5 THE COURT: You may.

6 BY MR. JENSEN:

7 Q Page 36 of Exhibit 22. Take a moment to review
8 this document. Do you recognize this document?

9 A I have seen -- yes -- actually, I should say I've
10 seen a document quite similar to this.

11 Q And do you see on this page 36 that there was a
12 separate position for chief deputy City clerk and secretary
13 to the City administrator?

14 A Correct. That's what caught my eye.

15 Q And do you recall which of those positions that you
16 held at this time?

17 A Both of them.

18 Q At this time which is actually -- it's -- I believe
19 it is -- this is 1983.

20 A Oh, 1983. Then it would be secretary to the City
21 administrator.

22 Q And which step were you in the secretary to the
23 City administrator?

24 A This is 1985. Gosh. I don't remember.

25 Q Now, let me turn your attention to page -- Exhibit

1 24 of page -- wait. Before I turn your attention -- so is it
2 your recollection there was two separate positions at this
3 time, chief deputy City clerk and secretary to the City
4 administrator?

5 A Yes. That would have to have been. This is 1985.
6 So --

7 Q Was this prior to when you took the position?

8 A (Inaudible response)

9 THE COURT: Is that a yes?

10 THE WITNESS: Yes.

11 BY MR. JENSEN:

12 Q And do you recall whether there was someone okay
13 occupying the position of chief deputy City clerk at this
14 time?

15 A I don't. In 1985, I don't.

16 Q Approximately how many people were employed in the
17 City administrator's department in 1985?

18 A In the City administrator alone or I mean --

19 Q In that department.

20 A Well, it covered a large department because it
21 included finance. So if you're just talking about City
22 administrator's office, then there was just two of us, I
23 think, three.

24 Q And was there a separate location for the City
25 clerk?

1 A The -- well, that was the City administrator.

2 Q Thank you, and at this point in 1985, was the
3 office the same as in TTTTT?

4 A Yeah. I believe so. Yes.

5 Q And over this period of time -- actually, let me
6 just do your whole tenure between 1981 and 1985, was -- was
7 it your -- were you still reviewing all of the documents
8 that would come to the City administrator's office before
9 Mr. Malkenhorst would review them?

10 A Yes. Most of the time, yes.

11 Q And were you aware of Mr. Malkenhorst's work hours
12 over this period of time as well?

13 A Well, I was aware of when he was there and when he
14 was not there. The hours and --

15 Q And would you say within your -- did he spend, in
16 your generalized recollection, more than, say, 30 hours a
17 week in his office in the City administrator's office?

18 A Yes.

19 Q Would you say more than 40 hours a week?

20 A Sometimes.

21 Q And over this period of time, did anyone -- over
22 your whole tenure, again, did anyone keep track of his
23 hours?

24 A Again, I did not.

25 Q And over this time, was it your experience from 1981

1 to 2004, was it your experience that the City council would
2 not always approve the proposals that the City administrator
3 made for budget purposes?

4 A Yes. Originally, a proposed budget that
5 Mr. Malkenhorst took to the finance committee for review and
6 discussion would often come back with some, either questions
7 and or changes.

8 Q And it was in your experience that the City council
9 made the final determinations on the budget?

10 A Yeah. The City council made the final approval of
11 the budget. The finance committee, which was comprised
12 partially of the City council, had the questions and made the
13 requests for more info, information, and then Mr. Malkenhorst
14 would come back and pursue that, and then at another meeting
15 would take the information back to them. After they were in
16 agreement and approval with what was submitted for them for
17 the entire City, it would -- they would then make a
18 recommendation to the City council to approve the budget as
19 it was.

20 Q So it was actually the finance committee that was
21 making the review?

22 A The review of the proposed budget with
23 Mr. Malkenhorst.

24 Q And so would the finance committee be the one that
25 proposed the budget to the City council?

1 A They proposed the final budget to -- they
2 authorize -- let me rephrase that. They authorized the
3 director to submit that to the City council.

4 Q And let me just turn your attention back to this
5 Exhibit 22 again. That one page that had those two different
6 positions on it, and just eyeballing it, what was the sum
7 total of the salaries for both of those positions?

8 THE COURT: Which positions?

9 MR. JENSEN: This would be the chief deputy City
10 clerk and secretary to the City administrator as of June
11 27th, 1985.

12 THE WITNESS: You want the total for both positions?

13 BY MR. JENSEN:

14 Q Yes.

15 A You want me to add those in my head?

16 Q Well, you can just state to the record which step --
17 which position you held.

18 A Secretary to the City administrator.

19 Q And which step were you at?

20 A I couldn't tell you today. I would make an
21 assumption it would be the top, but that would just be a
22 guess.

23 Q And the top salary was 2,815; is that --

24 A Correct.

25 Q And you were not paid as the deputy City -- chief

1 deputy City clerk?

2 A No.

3 Q And the salary schedule on that is 2,163 and 2,982;
4 is that correct?

5 A Correct.

6 Q So let me just turn your attention to Exhibit 25,
7 page -- Exhibit 26, page 43.

8 MR. JENSEN: Your Honor, may I approach?

9 THE COURT: You may.

10 BY MR. JENSEN:

11 Q Do you see -- do you recognize this document?

12 A Yes.

13 Q Do you see your position on this document?

14 A Yes.

15 Q And what was your position on this document?

16 A Chief deputy City clerk/secretary to the City
17 administrator.

18 Q And how much was the -- were you paid in this
19 position?

20 A I don't recall. Do you want me to tell you the what
21 the salary scale is?

22 Q It says somewhere between 2,569 to 3,542; is that
23 correct?

24 A Yes.

25 Q And it's the -- as your recollection of the math,

1 is that a combination of the salaries of the two prior
2 positions?

3 A I don't think so.

4 Q Well, --

5 A It's a higher -- I don't think you can combine
6 them.

7 Q So just for purposes of reference to Exhibit 22,
8 step one of the deputy city clerk was 2,982 and step seven of
9 chief deputy City clerk was 2,569?

10 A Correct.

11 Q So there is -- do you recall which step you entered
12 into?

13 A Not at all.

14 Q And did you assume different duties when you were
15 chief deputy City Clerk/secretary to the City
16 administrator?

17 A I don't think so, but I can't tell you for sure.
18 I do not recall in 85 who the chief deputy City clerk was.

19 Q So when there was a change in position to the chief
20 deputy City Clerk/secretary to the City administrator, did
21 your job change in any significant manner?

22 A I probably either started doing minutes and
23 agendas -- I really can't say.

24 Q And were you doing minutes and agendas prior to that
25 time?

1 A I was for the different committees. I don't think
2 prior to that I was doing agendas or I don't think I was
3 doing minutes, but I believe I was doing agendas for
4 Counsel.

5 Q And did -- was the change in title meaningful to you
6 as far as what your work duties or responsibilities were?

7 A I guess I would say yes because I just had a little
8 more responsibilities. I don't think it changed that much.

9 Q Was it an exempt position?

10 A Yes.

11 Q And were you paid any additional money specifically
12 for assuming this new title of chief deputy City clerk?

13 A Additional as in do you mean did I get an increase
14 in salary or -- is that what --

15 Q I'll ask you broadly, just with respect to assuming
16 this additional title, were you provided additional
17 compensation for assuming that additional title?

18 A I would say yes.

19 Q And how so?

20 A But off the top of my head, I couldn't give you
21 dollars and cents or anything like that.

22 Q Was there -- were you paid the sum total of the two
23 positions that were previously listed for chief deputy City
24 clerk and secretary to the City administrator?

25 A I don't think so.

1 Q And did you assume all of those duties at both of
2 those positions?

3 A Yes.

4 Q And did you assume those duties within one
5 position?

6 A Well, yes. If I'm understanding that correction --
7 that question.

8 Q So was there a new position created that was chief
9 deputy City Clerk/secretary to the City administrator and was
10 it a single position?

11 A Yes. That position was created and the other two
12 were eliminated. Well, yes. They created one position and
13 eliminated the other two classifications that were in the
14 salary resolution.

15 Q And is this the position that you maintained through
16 the rest of your employment with the City of Vernon?

17 A Up until 2004 and when I left to go to another
18 department.

19 Q And over -- from this period of 1986 to 2004, were
20 additional duties or responsibilities added to that
21 position?

22 A I became supervisory. Staff was added to the
23 department. I had a little more responsibilities in the
24 personnel arena at that particular time because we didn't
25 have -- Mr. Malkenhorst was a personnel director, but the

1 City was growing personnel-wise. So we were testing inhouse.
2 Again, it was a small agency so all our tests were done old
3 school, but I began personnel testing for certain -- for all
4 miscellaneous employees I guess I should.

5 Q And did you have a title in that capacity of
6 working --

7 A Secretary to the City administrator.

8 Q Okay, and is that -- so how did Vernon use these
9 titles with slashes in them, such as chief deputy City
10 clerk/secretary to the City administrator? What was the
11 purpose of having those?

12 A One person did more than one specific task for one
13 specific department.

14 Q And was it considered to be one position though?

15 A Well, yes.

16 Q Okay. So let me just -- and did you work full time
17 in doing that position?

18 A Yes.

19 Q And so when did the Vernon office -- City offices
20 change?

21 A Which time?

22 Q What was the next subsequent time after 1981?

23 A I think we moved in -- this was a partial -- you
24 showed that picture.

25 MR. JENSEN: Yes. Your Honor, may I approach?

1 THE COURT: Yes.

2 THE WITNESS: There was a partial --

3 MR. JENSEN: That's probably the last one in it.

4 THE WITNESS: Yeah. This UU -- this 5U thing. This
5 is the most -- this is the latest the way the City stands
6 today, but prior to this, there was a partial expansion.
7 It did not go all the way.

8 MR. JENSEN: And your Honor, I just want to mark for
9 identification purposes these other diagrams, and they have
10 been previously been shown to Counsel and I am trying to
11 find the -- are we on 5Us?

12 THE COURT: That was 5Us.

13 MR. JENSEN: Okay. So I'll mark this as -- can I
14 mark a series of photos all at --

15 THE COURT: Collectively as 5Vs?

16 MR. JENSEN: Yes.

17 THE COURT: Yes.

18 MR. JENSEN: Thank you, your Honor, and these are
19 photos believed to be of the City council. There are six
20 photos collectively marked as 5Vs.

21 THE COURT: Did you say City council or City Hall.

22 MR. JENSEN: I'm sorry. City Hall. I apologize.

23 May I approach, your Honor?

24 THE COURT: You may, and let the record reflect

25 Mr. Levin just looked at them. Do you wish the witness

1 to review these?

2 MR. JENSEN: Yes. If I may, your Honor.

3 BY MR. JENSEN:

4 Q Ms. Orosco, there are six photos here which were
5 taken from Google maps of Vernon City Hall. If -- I'm going
6 to hand these to you, and I'm going to ask you to see if you
7 recognize these photos as representing Vernon City Hall.

8 A No. It's just a street within the City of Vernon.
9 Sorry to say.

10 Q So let's mark that as VV-1.

11 A This is the corner of City Hall at the last
12 expansion. So I think that's Vernon and Pacific.

13 Q We'll mark this as VV, page two. So is this a
14 representation of Vernon City Hall?

15 A Today.

16 Q Yes. Today, and do you recall when this was
17 built?

18 A This had to be -- I think the latter part of the
19 '90s or early 2000s. I'm not sure.

20 Q Let's just try to move through them quickly.

21 A This is behind City Hall, again on Pacific Avenue.

22 Q So that would be VV-3 -- 5Vs-3.

23 A This is what I would refer to as the rear entrance
24 to City Hall. That's again -- well, the rear end on
25 Pacific.

1 Q That's marked as 4.

2 A I'm not sure what this is.

3 Q We'll mark it as 5.

4 A They all look the same, and this could be an aerial
5 view of City Hall, the City housing. So that's an aerial
6 view.

7 MR. JENSEN: And your Honor, could I see the pages
8 that were previously marked for exhibit --

9 THE COURT: Sure. Let me have Exhibit 5Vs.

10 BY MR. JENSEN:

11 Q So in the next remodel of City Hall after 1981 --

12 A Uh-huh.

13 Q -- was it similar set up to the Exhibit marked as
14 5Ts?

15 A A little.

16 Q Could you say -- did Mr. Malkenhorst cross by your
17 desk when --

18 A Yes.

19 Q -- he went into his office?

20 A Yes.

21 Q And did the documents come through you prior to
22 going to Mr. Malkenhorst?

23 A That is correct.

24 Q And that is the same over your whole tenure from
25 1981 to 2004?

1 A Correct. Again, unless a department head wished to
2 directly speak with him with whatever information he had as
3 opposed to going through me and occasionally or often, they
4 would make appointments. They would say I need to see him
5 and tell me what they needed to see him with what regards and
6 balance the day. Okay. Let's get so and so in here, and
7 this is what we're going to talk about. So whoever was
8 coming in to see him, whatever manager, they would bring
9 their documentation with them and take it directly to him to
10 discuss whatever they were discussing. They would leave it
11 with me after they were finished discussing it.

12 Q So if you were to give a percentage to it, how much
13 of a percent do you think that you were aware of the nature
14 of Mr. Malkenhorst's work as City administrator?

15 MR. LEVIN: Objection. Speculation.

16 MR. JENSEN: Based on your experience from 1981 to
17 2004.

18 THE COURT: I'm not sure I understand the question.

19 BY MR. JENSEN:

20 Q So you were knowledgeable about -- were you
21 knowledgeable about the work that Mr. Malkenhorst
22 performed?

23 A Yes. To my knowledge, yes.

24 Q And so you would review most of the matters that
25 were -- that Mr. Malkenhorst worked on?

1 A Correct.

2 Q So you believe -- do you believe you were aware of
3 the work that he performed in his capacity as City
4 administrator?

5 A Yes.

6 Q And how much of his work day was performing duties
7 associated with the City administrator?

8 MR. LEVIN: Objection. Calls for speculation.

9 MR. JENSEN: Based on her experience between 1981
10 and 2004.

11 THE COURT: I'll allow it. You may answer.

12 THE WITNESS: As City administrator, all inclusive?

13 BY MR. JENSEN:

14 Q Yes.

15 A How much was I aware?

16 Q What -- what was his percentage of work in your
17 knowledge between 1981 and 2004 -- what percentage of his
18 work was performed as City administrator?

19 A 100 percent of his work I guess I'd have to say.

20 Q Thank you, and was it a full time position in your
21 understanding of payroll for that period 1981 to 2004?

22 A Yes.

23 Q The answer was yes, and what would be considered
24 his normal working hours as directed by -- what would be
25 considered his normal working hours at the City of Vernon?

1 A They weren't set up to be any different than any
2 employee to my recollection.

3 Q And were you aware of how Mr. Malkenhorst was paid
4 in his position as City administrator?

5 A How he was paid?

6 Q As his salary. Was he paid in cash?

7 A No. He was paid through payroll.

8 Q And were the checks drawn under the general fund?

9 A That I don't know. I would make the assumption, but
10 I don't know.

11 Q And was his -- did you review the salary schedules
12 as part of your deputy City clerk position?

13 A I reviewed -- the salary schedules were all
14 contained in the resolutions so I reviewed all the
15 resolutions. So the answer to that would be yes.

16 Q So I just want to turn your attention to exhibit --

17 A I have 26 and 35 in front of me.

18 Q Yeah. So actually, I want to address these
19 documents that are from 1995. They're actually in Exhibit
20 46, and I apologize for jumping around, but I'm trying to
21 expedite this. So can you take a moment to review Exhibit
22 46?

23 THE COURT: Any particular pages, Counsel?

24 MR. JENSEN: The first page of 46, please.

25 ///

1 BY MR. JENSEN:

2 Q In particular, there's the last sentence in the
3 second paragraph that says, "Mr. Malkenhorst serves as City
4 administrator/City clerk, City treasurer, director of finance
5 and personnel, purchasing agent" --

6 THE COURT: Slow down, please.

7 BY MR. JENSEN:

8 Q "Executive director of Light & Power and executive
9 director of the redevelopment agency." Do you see that?

10 A Uh-huh, yes.

11 Q Did you write this letter?

12 A Well, I signed it and those are my initials so I
13 guess I did.

14 (Interruption in the proceedings)

15 MR. JENSEN: We have a person. I believe that's our
16 exhibit list.

17 THE COURT: Thank you.

18 MR. JENSEN: Thank you. I apologize again.

19 THE COURT: And this does look like your exhibit
20 list. I'll have you check it over the next break. Thank
21 you.

22 BY MR. JENSEN:

23 Q So Ms. Orosco, what did you mean by the sentence
24 that "there's not a closely related management position as
25 he serves in these different titles"?

1 A Well, I am presuming I'm responding to some letter
2 that they wrote, "they" being CalPERS. Again, if they were
3 asking for comparison salaries, I was just telling them that
4 there was no comparison salary.

5 Q And why was there no comparison salary?

6 A Because we didn't have anybody that handled so
7 many responsibilities.

8 Q And when you say he serves as those, what do you
9 mean?

10 A I mean that finance matters, personnel matters,
11 purchasings, all of these things were under his direction,
12 under -- he took action and handled them.

13 THE COURT: I'm sorry. I couldn't hear that.

14 MR. JENSEN: He handled them. I don't know how else
15 to clarify or specify that.

16 BY MR. JENSEN:

17 Q And did these titles have independent significance
18 to you? Okay. So when you list these various titles out,
19 are you listing them out for the purposes of saying that
20 there's not another similar person who has all these
21 different responsibilities?

22 A Correct. Yes.

23 Q And yet, did you enclose these documents that are
24 attached to this Exhibit 46?

25 A Well, since I hardly remember the letter, I don't

1 know. So --

2 Q There are a bunch of resolutions and salary
3 schedules.

4 A I wrote two letters in one day.

5 Q I believe it's the same letter.

6 THE COURT: Which page are we looking at, Counsel?

7 MR. JENSEN: The first and second page of 46. These
8 are in CalPERS binders. It appears that --

9 THE COURT: Yes. I see.

10 BY MR. JENSEN:

11 Q And just with respect to the attachments to page --
12 to Exhibit 46, are any of these positions, City treasurer,
13 director of finance and personnel, purchasing agent, or
14 director of Light & Power listed on the salary schedules as
15 paid positions?

16 A No, I don't believe so.

17 Q And so you were sending salary schedules that only
18 listed a salary for the City administrator/City clerk; is
19 that correct --

20 A Yes.

21 Q -- that were relevant to this case, and was it your
22 understanding that Mr. Malkenhorst was separately paid for
23 taking the position of City treasurer?

24 A Separately paid for it as in addition to or --

25 Q Was it a part-time position?

1 A No.

2 Q Was director of finance and personnel a part-time
3 position?

4 A No.

5 Q Was purchasing agent a part-time position?

6 A No.

7 Q Was executive director of Light & Power a part-time
8 position?

9 A No.

10 Q Was executive director of redevelopment a part-time
11 position?

12 A No.

13 Q Was Mr. Malkenhorst -- were any of these positions
14 other than City administrator/City clerk listed on a salary
15 schedule over the period that is 1990 to 2004?

16 A Not to my recollection, no.

17 Q And so when you listed these positions, you were --
18 were you trying to communicate to CalPERS that he was in a
19 group or class of one or not comparable to other department
20 heads?

21 A That's where I was going with that statement, and
22 I'm assuming because the other isn't attached, that they had
23 asked the question of -- it even said in the letter that they
24 wanted comparable classes of employees.

25 Q So --

1 A So I responded with there were none. This is what
2 he does.

3 Q So when you're sending this letter, did any of the
4 other department heads have various duties and
5 responsibilities that they performed in one position?

6 A Yes. Other than public safety, yes.

7 Q But -- so how is Mr. Malkenhorst different than
8 these other department heads?

9 A Because he handled more than they did.

10 Q And I just want to turn your attention to Exhibit
11 47. I'll give you a moment to look at that. Do you
12 recognize this document?

13 A Not off the top of my head.

14 Q And let me just turn your attention to the last
15 sentence in the first paragraph that says, "however, the
16 other duties for the positions above would be considered
17 overtime."

18 A Okay.

19 Q Was Mr. Malkenhorst ever paid overtime?

20 A No.

21 Q Was his hours in any of these -- for performing any
22 of these responsibilities or duties kept track of?

23 THE COURT: I'm sorry. I couldn't hear that.

24 BY MR. JENSEN:

25 Q Was his hours for performing these duties --

1 separate duties and responsibilities ever kept track of?

2 A Not to my knowledge or recollection.

3 Q And was he, over your whole period of 1981 to 2004,
4 was he ever paid separate compensation for any of those
5 listed positions?

6 MR. LEVIN: Objection. Calls for speculation.
7 Lacks foundation.

8 THE COURT: Sustained.

9 BY MR. LEVIN:

10 Q So let me get to the public availability of the
11 various documents. Were you in charge of hosting -- making
12 publicly available the minutes and resolutions for the City
13 of Vernon?

14 A When I became the chief deputy City clerk, yes

15 Q And over what time period were you responsible for
16 assuring the public availability of Vernon's --

17 A I believe that was in 1986.

18 Q And until what time?

19 A Until I left or transferred.

20 Q In 2004?

21 A Correct.

22 Q And how did you make those documents publicly
23 available?

24 A Well, --

25 Q Let me first ask, what was your process -- are you

1 familiar with the Brown Act?

2 A Yes.

3 Q And does the Brown Act apply to the City of Vernon
4 to the best of your knowledge?

5 A It did when I was there, yes.

6 Q Did you try to comply with the Brown Act?

7 A I did.

8 Q And so tell us your process in complying with the
9 Brown Act with respect to the resolutions of the City of
10 Vernon?

11 A With regards to resolutions, we had no requirement
12 to publicly post a resolution. If anybody -- any person of
13 the general public or business owner or anyone had any
14 interest in a document, they would contact the City clerk's
15 office and say I'm looking for whatever and we would -- I
16 would make a determination or assign someone to make a
17 determination if, in fact, we had such a document, and then
18 advise the person how we go about getting them a copy of
19 that. If it was something that was at our finger tips, you
20 know, we'll say, okay. Well, we can do that for you, and I'm
21 not quite sure if in '86 we were charging it. We may or may
22 not have been charging for copies of documents.

23 I don't recall, but let's make an assumption that we
24 did charge for documents 10 cents per page or something along
25 that line. I would advise them that this document consists

1 of 10 pages, five pages, whatever it is and this is what your
2 cost would be for the document. Again, if it was something I
3 had at my finger tips or we could get it quickly, then they
4 would have it quickly. If it was something that caused a
5 little more research or if I didn't have staff that was
6 available to go get documents, we'd tell them we'll have it
7 for you tomorrow or give them an approximate period of time
8 when they would have it.

9 Q And what documents do you recall were publicly
10 available?

11 A Everything and anything. I mean, well, anything and
12 everything. Resolutions, ordinances, minutes, agendas. The
13 only thing to my recollection that was not publicly available
14 was attorney-client privileged documents.

15 Q And so can you briefly review Exhibit 65?

16 MR. JENSEN: Your Honor, may I approach?

17 THE COURT: You may.

18 BY MR. JENSEN:

19 Q Do you recognize this document?

20 A I am familiar with the format.

21 Q Was -- were these -- what is this document called?

22 A This would be a salary resolution. What we would
23 inhouse refer to as a salary resolution.

24 Q And were salary resolutions publicly available?

25 A Yes.

1 Q And were -- were minutes publicly available?

2 A Yes.

3 Q And were -- was Mr. Malkenhorst's pay rate publicly
4 available?

5 A Yes. If they wanted a copy of the salary
6 resolution, it was there.

7 Q And so what was your process of posting agenda --
8 did you post agendas prior to meetings of the City council?

9 A Yes. Once it became a requirement, yes.

10 Q And tell us your process of posting agendas.

11 A I forget the timeframe that is required by the
12 Brown Act, but since we are closed -- the City was closed
13 on Fridays. I posted or we posted every Thursday evening
14 the -- well, not the close of business, but when we completed
15 agendas, we posted -- which was any time after 5:30 normally.
16 They were adopted by the City council through an ordinance,
17 three publicly -- pre-public places for posting City
18 documents and that's where we posted them.

19 MR. JENSEN: And your Honor, with reference to the
20 exhibits, maybe I can take a look at the map of the City
21 of Vernon?

22 THE COURT: You may.

23 MR. JENSEN: I believe you have that. Thank you.

24 BY MR. JENSEN:

25 Q And if you can mark on this map to the best of

1 your recollection where --

2 A Seriously?

3 Q I mean, to the extent that you can recall where
4 it was posted.

5 A You don't have tiny streets in here, do you?

6 Q This is just a map from Google.

7 MR. JENSEN: And your Honor, I'm handing the witness
8 a blue pen.

9 THE COURT: And which exhibit?

10 THE WITNESS: 5G.

11 MR. JENSEN: 5Gs.

12 THE COURT: And again, one person at a time, please.

13 BY MR. JENSEN:

14 Q And I'll ask the witness to mark on the map the
15 locations where -- where public notices were posted prior to
16 meetings or other requirements to post under the Brown Act.

17 A It's some place around here. Okay. You're going
18 to have to -- this is just an estimate.

19 MR. JENSEN: Your Honor, may I approach?

20 THE COURT: You may.

21 BY MR. JENSEN:

22 Q And you can -- if you remember the street corners
23 or the specific addresses, you can just state them for the
24 record.

25 A Okay. I'm sorry. I do not remember the street

1 addresses. I know one was on Pacific Avenue and there was
2 another one on Santa Fe, north of City Hall and then wherever
3 City Hall is on this map. I don't know. There was one right
4 outside of the City Hall building.

5 Q Okay.

6 A So --

7 Q And can you circle those three marks? Let the
8 record reflect there's three dots with circles on 5G.

9 MR. JENSEN: Your Honor, may I?

10 THE COURT: Thank you.

11 BY MR. JENSEN:

12 Q And so just to clarify your testimony, between
13 1982 and 2004, you were in daily contact with the City
14 administrator?

15 A Yes.

16 Q And basically, over that period of time, you believe
17 you understood all of the -- or most of the work that the
18 City administrator was performing?

19 A Yes.

20 Q And over that period of time, you believed he worked
21 full time in the City administrator's position?

22 A Yes.

23 Q And while he performed different duties and
24 responsibilities within that City administrator position, he
25 was only paid a payroll for his full-time employment in the

1 City administrator position?

2 A Correct.

3 Q And with respect to the pay schedules, it was your
4 job to make sure that those were publicly available to and
5 compliant with the Brown Act?

6 A Correct.

7 Q And that was -- in your experience, those documents
8 were publicly available?

9 A Correct.

10 MR. JENSEN: That's all for my direct.

11 THE COURT: Thank you. Cross-examination, Mr. Levin.

12 MR. LEVIN: Thank you, your Honor.

13

14 CROSS-EXAMINATION

15 BY MR. LEVIN:

16 Q Good morning,

17 A It's still morning? Okay.

18 Q How are you currently employed?

19 A I'm not. I'm retired.

20 Q When did you retire?

21 A In two thousand -- I think in 2008.

22 Q You worked at the City of Vernon until 2004;

23 correct?

24 A No. I worked for the City of Vernon until 2007.

25 Q You had a position as a chief deputy City clerk

1 slash secretary to the City administrator through 2004; is
2 that right?

3 A Correct.

4 Q Then you --

5 A Not through 2004. I left that office on my
6 anniversary date, March, 2004.

7 Q Then you transferred to another position at the
8 City of Vernon?

9 A Correct.

10 Q To what position did you transfer?

11 A I believe I was compliance manager in the Light &
12 Power department, but still, as odd it may sound, under the
13 direction of City administrator.

14 Q For what period of time did you work in doing
15 compliance in the Light & Power department?

16 A Well, until they completed the generating station
17 so I would say until 2006, maybe latter part of 2006.

18 Q For the entire period of time that you worked doing
19 compliance in the Light & Power department, did you report
20 to Bruce Malkenhorst?

21 MR. JENSEN: Objection, your Honor.

22 MR. LEVIN: I'll rephrase the question.

23 THE COURT: Thank you.

24 BY MR. LEVIN:

25 Q Mr. Malkenhorst retired effective July 1st, 2005?

1 THE COURT: I'm sorry?

2 THE WITNESS: It could be. I don't know the exact --
3 when he retired.

4 BY MR. LEVIN:

5 Q Some time in the summer of 2005?

6 A Okay.

7 Q Does that sound right to you?

8 A I know it was after I left the City clerk's office,
9 but two thousand -- I don't know if it was 2005 or 2006. I
10 can't recall.

11 Q When you moved out of the -- your City clerk office
12 in about March of 2004, did you change offices, physical
13 locations?

14 A Yes, I did.

15 Q Where did you move?

16 A They -- they, the City of Vernon, had taken -- not
17 taken over, releasing property on I think Leonis Boulevard.

18 THE COURT: Could you spell that?

19 THE WITNESS: Leonis, L-e-o-n-i-s, and that's where
20 they had staff, both consulting and contract staff housed
21 that was -- that were working on the construction of the
22 generating system, and that's where I was.

23 BY MR. LEVIN:

24 Q When you were working for the Light & Power
25 department, to whom did you report?

1 A Directly I reported to -- I kind of didn't report
2 to anybody, but I would say the most immediate person at that
3 time was Sam Grossman who was, again, a contract employee.

4 Q For any period of time during which you worked in
5 the Light & Power department, did you interact with
6 Mr. Malkenhorst?

7 A Yes.

8 Q For what purpose?

9 A I would have questions with regards to the contracts
10 and the overall -- I don't know how to word this. I had
11 questions on the project itself so I would bring them to
12 Mr. Malkenhorst since I asked him -- I didn't feel there was
13 anybody that had knowledge on how the City was run other than
14 Mr. Malkenhorst. So I would take my questions to him.

15 Q Did you obtain permission from your supervisor to
16 take these questions to Mr. Malkenhorst?

17 A No.

18 Q Is there a reason why you didn't take the questions
19 to your supervisor --

20 A I didn't --

21 Q of Light & Power?

22 THE COURT: One at a time, please.

23 THE WITNESS: Sorry. I didn't really have a
24 supervisor. Again, I was kind of still under the direction
25 of the City administrator. So because I didn't really have a

1 supervisor, in my opinion, then I went to Mr. Malkenhorst. I
2 said I have a question on this. Sometimes I could just send
3 him my questions in an inner office communication or he would
4 make an appointment. I'd make an appointment, well, come on
5 down after lunch or whatever and we'd go over my questions.

6 BY MR. LEVIN:

7 Q Up until the time that Mr. Malkenhorst retired, did
8 you understand that you were working at the Light & Power
9 department under Mr. Malkenhorst's direction?

10 A Yes.

11 Q When you were at the Light & Power department, how
12 frequently did you interact with Mr. Malkenhorst?

13 A I would only say as necessary. So it could be once
14 a week, once a month, once -- you know, just as questions --
15 things that look peculiar or different or unusual came up.

16 Q After you moved to the light and power department,
17 did you have any way of keeping track of Mr. Malkenhorst's
18 work hours?

19 A No.

20 Q Did you have any information as to how
21 Mr. Malkenhorst was being paid during the period of time
22 that you were at the Light & Power department?

23 A No.

24 Q When you were at the Light & Power department, did
25 you maintain access to payroll information of the type that

1 you previously reviewed when you were at the City
2 administrator's office?

3 A No.

4 Q Do you have any firsthand knowledge as to how
5 Mr. Malkenhorst spent his work hours while you were working
6 at the Light & Power department?

7 MR. JENSEN: Objection. Vague as to time.

8 THE COURT: Overruled.

9 THE WITNESS: Repeat that question one more time.

10 BY MR. LEVIN:

11 Q Sure. So my question is limited to the period of
12 time in which you worked in the Light & Power department.
13 For that period of time, do you have any firsthand knowledge
14 as to how Mr. Malkenhorst spent his work hours except for
15 the periods of time he was discussing matters with you?

16 A Other than the requirements that he attended his
17 council meetings and he would prepare for council meeting
18 and that sort of thing, no, I don't.

19 Q Did you see Mr. Malkenhorst prepare for council
20 meetings and attend council meetings?

21 A I went to a few council meetings, yes, and he was
22 in attendance.

23 Q Did you see Mr. Malkenhorst prepare for council
24 meetings?

25 A Physically, no, I did not.

1 Q Is it fair to say that between 1981 and the date
2 of Mr. Malkenhorst's retirement, that you worked under the
3 direction of Mr. Malkenhorst?

4 A Yes.

5 Q Did you become friends with Mr. Malkenhorst?

6 A I guess, yes. He was my boss, yes.

7 Q Did you ever socialize with Mr. Malkenhorst outside
8 of the workplace or work functions?

9 A I knew his family. I mean, I don't know how else.

10 Q Did you go out to dinner or vacations or theaters
11 with his family?

12 A No, no.

13 Q Did you have a social relationship with
14 Mr. Malkenhorst or his family outside of the workplace and
15 work functions?

16 A I don't -- I don't think so. I mean, I saw his
17 family and his children. I have known them -- I mean,
18 they're all adults now, but I knew them when they were tiny.
19 So I would see them at City functions and since it was a City
20 function that was friendly, you know, there was chatting and
21 talking and what have you and I think I still talk to one of
22 his daughters not talk but yeah.

23 Q After Mr. Malkenhorst retired, did you stay in
24 contact with him?

25 A Yes.

1 Q How frequently did you communicate with
2 Mr. Malkenhorst after his retirement?

3 A It would depend. Sometimes once a week. I hate to
4 say this, but sometimes when either one of us was bored, we
5 would pick up the phone. Driving in the car is a perfect way
6 to call somebody when you're bored. So once a week maybe.
7 Once a month maybe. It just depends.

8 Q Do you still have that type of relationship with
9 Mr. Malkenhorst where one or the other is bored --

10 A Yes.

11 Q -- you'll have a call with one another?

12 A Yes.

13 Q Have you ever spoken with Mr. Malkenhorst about his
14 dispute over final compensation with CalPERS?

15 A No. I mean, not in any details. What I read in the
16 paper when I contacted him, that was me. You know, he was
17 unsure of where anything was going, other than they were
18 trying to do this, but I think that's about the gist of it.

19 Q So no detailed conversations?

20 A No.

21 Q When you were at the Light & Power department, you
22 worked there until 2006; correct?

23 A 2007.

24 Q 2007 and then did you move to another position at
25 the City of Vernon?

1 A No. I remained with within the Light & Power
2 department.

3 Q When you retired, your last position at City of
4 Vernon was with the Light & Power department?

5 A Correct.

6 Q And for the entire period between March 2004 and
7 2007, you were doing compliance work?

8 A No. After the generating station was completed and
9 all the final work necessary was done, both with the CPC,
10 et cetera, then we were brought back into City Hall and then
11 I believe I became the contracts administrator or something
12 along those lines and handled contracts for -- I think we
13 were pursuing another generating station. So I was managing
14 contracts prior to getting approval to build the generating
15 station.

16 Q In what year did you move back to City Hall to do
17 contracts administration?

18 A 2006.

19 Q Did you work in that position until your retirement
20 in 2008?

21 A 2007 is when I retired. When I left the City, I
22 left the City in 2007. The City of Vernon.

23 Q Then did you move to another job?

24 A I left and went to another city, and then I retired
25 after that.

1 Q What city did you move to in 2007?

2 A City of Pico Rivera.

3 Q Why did you leave the City of Vernon after so many
4 decades of employment there?

5 A They eliminated my position.

6 Q What position did you hold at the City of Pico
7 Rivera?

8 A What I'm most famous for, City clerk.

9 Q When you moved to the Light & Power department in
10 March of 2004, did somebody take your place as chief deputy
11 City clerk slash secretary to City administrator?

12 MR. JENSEN: Objection. Lacks foundation.

13 THE COURT: You may answer if you know.

14 THE WITNESS: I believe so, yes.

15 BY MR. LEVIN:

16 Q And who is that person?

17 A I believe it was Nelly Giron.

18 THE COURT: Giron?

19 THE WITNESS: Yes. Spelled, G-i-r-o-n.

20 BY MR. LEVIN:

21 Q Did you receive a raise after being transferred or
22 as part of your transfer to the Light & Power department?

23 A Yes.

24 Q Was that transfer something that you wanted to do?

25 A No.

1 Q What was your work schedule when you were at the
2 Light & Power department?

3 A Initially, it was standard, 7:00 to 5:30.

4 Q Those were the same hours that you worked when you
5 were at the City administrator's office?

6 A That's correct.

7 Q In working a 7:00 a 5:30 schedule, were there breaks
8 built into the schedule?

9 A No.

10 Q Did you work from 7:00 a.m. to 5:30 p.m., five days
11 a week?

12 A No, four days a week initially.

13 Q When you say "initially," what time period are you
14 referring to?

15 A Until two thousand and -- gosh. When we came back
16 to City Hall -- probably about the early part of 2006 through
17 September of 2006.

18 Q From 1981 when you first began working for the City
19 of Vernon until 2006, you were working four days a week?

20 A Yes.

21 Q Were there other employees at the City of Vernon
22 that you were aware of that were working four hour weeks?
23 I'm sorry. That were working four days a week.

24 A Yes. The entire City was -- worked a 4/10 work
25 schedule.

1 Q Was it your understanding and belief that
2 Mr. Malkenhorst was on the same four day week work
3 schedule?

4 A More or less.

5 Q Did Mr. Malkenhorst ever describe to you his taking
6 on tasks for the City of Vernon outside of the City Hall
7 workplace? In other words, did he ever work offsite as he
8 described to you?

9 A You mean like in going to meetings some place else
10 or --

11 Q Correct. That would be an example.

12 A Yes. Often.

13 Q Did Mr. Malkenhorst ever describe to you that he was
14 conducting business for the City of Vernon while playing
15 golf?

16 MR. JENSEN: Objection, your Honor. Relevance.

17 THE COURT: I'll allow it.

18 THE WITNESS: If he was golfing with somebody that
19 we were doing business with, yes.

20 BY MR. LEVIN:

21 Q And did that happen from time to time?

22 A To my recollection, yes.

23 Q Did Mr. Malkenhorst ever describe to you that he
24 would sometimes do business for the City of Vernon while at
25 restaurants?

1 A Describe to me? No. Not that I can recall. I
2 mean, he may have met somebody for dinner, but. you know, I
3 didn't get a play-by-play of what went on during dinner.

4 Q Did you ever see -- withdraw that question.

5 You described that when materials were coming to
6 Mr. Malkenhorst for his attention, they would come through
7 you; correct?

8 A Correct.

9 Q You had an inbox of some sort?

10 A Correct.

11 Q Did you also have an outbox?

12 A Me? No. I was the outbox. He had an outbox. I
13 didn't have an outbox.

14 Q So would Mr. Malkenhorst give materials to you to
15 then distribute to other individuals?

16 A Yes. That or just leave them in his outbox.

17 Q You would then go into his office in the outbox,
18 take materials, and distribute them?

19 A Correct.

20 THE COURT: Counsel, it's noon. How many questions
21 or how much time do you have with this witness?

22 MR. LEVIN: Quite a bit, your Honor.

23 THE COURT: Okay. Let's break for lunch. See you
24 at 1:30. Off the record.

25 (Lunch recess)

1 THE COURT: Back on the record. Mr. Jensen, you
2 have handed me a proposed exhibit list. We discussed this
3 at the outside of this morning's hearing. This is a
4 complete list of all of the exhibits in your binders
5 volumes 1 through 18; is that correct?

6 MR. JENSEN: It is exclusive of the exhibits that
7 were offered during the course of the cross-examination and
8 the demonstrative exhibits.

9 THE COURT: Right. Just the ones in binders 1
10 through 18?

11 MR. JENSEN: Yes, your Honor.

12 THE COURT: And it contains an accurate description
13 of the documents behind each of those tabs?

14 MR. JENSEN: Yes, your Honor.

15 THE COURT: Thank you very much. You may continue
16 with your cross-examination.

17 MR. LEVIN: Thank you, your Honor. Before I
18 proceed, if I may, two housekeeping matters?

19 THE COURT: Go ahead.

20 MR. LEVIN: First of all, I have and CalPERS has
21 contacted Mr. Rodgers and Ms. Lueras, again, has made
22 arrangements for both of them to be in court tomorrow
23 morning at 9:00.

24 THE COURT: Okay, and we will see them here. Thank
25 you very much for doing that.

1 MR. LEVIN: Yes, your Honor. For purposes of
2 clarification, will the examination of these CalPERS
3 witnesses be limited to the rebuttal issues that were
4 described in Mr. Malkenhorst's papers?

5 THE COURT: I expect the examination to be no
6 broader than that which was described in the letters
7 accompanying the subpoenas that Mr. Jensen submitted.

8 MR. LEVIN: Yes, your Honor.

9 THE COURT: So they will be done tomorrow morning?

10 MR. JENSEN: Oh, yes, your Honor.

11 THE COURT: Great.

12 MR. LEVIN: Second housekeeping matter, your Honor.
13 There had been a request for judicial notice filed by
14 Mr. Malkenhorst. I don't know if your Honor would like to
15 briefly address that issue now or at another point in time?

16 THE COURT: Refresh my memory.

17 MR. LEVIN: This had to do with CPI, consumer price
18 index, information for particular years.

19 MR. JENSEN: Your Honor, actually, there was three
20 items that we requested judicial notice of. One, I believe
21 was a California government code statute. One was a CPI,
22 and I believe the third one was a definitions of the state
23 government or glossary of terms of the state government
24 director -- personnel board, something of that type.
25 Official publication.

1 THE COURT: Okay. That's all under submission
2 still?

3 MR. LEVIN: That had been filed, your Honor. We
4 have not yet responded. I didn't know if your Honor wanted
5 to respond in writing or orally, but we do have a response
6 to provide.

7 THE COURT: Okay. Do you want to provide it in
8 writing? You don't have to.

9 MR. LEVIN: I would be happy to save time and
10 provide it orally.

11 THE COURT: Okay. Do you want to do that now?

12 MR. LEVIN: I would be happy to.

13 THE COURT: Go right ahead.

14 MR. LEVIN: With respect to the request for judicial
15 notice of the CPI information, we don't object to the court
16 taking judicial notice to the tables that were attached to
17 the request for judicial notice. We do, however, object to
18 the facts as stated and interpreted by Mr. Malkenhorst.
19 We believe that those tables had been misinterpreted.
20 Particularly the numbers referenced referred to a period
21 of time between 1979 and 1980 and 1980 to '81, and not the
22 '80 to '81 and '81 to '82 period that was specified in the
23 document. There is also attached that a request for judicial
24 notice a table that breaks it down by month to month CPI
25 figures and your Honor is fully capable of determining

1 applicable inflation rates from that for the months that were
2 discussed by Ms. Jimenez in her direct testimony so I don't
3 intend to argue that issue further unless your Honor would
4 like me to.

5 THE COURT: No thanks.

6 MR. LEVIN: With respect to the request for judicial
7 notice of government code section, there's no objection. The
8 third request for judicial notice had to do with a -- some
9 definitions that were from some website. We object to that
10 on relevance and foundation grounds. We see nothing
11 suggesting that the definition provided or those definitions
12 provided have anything to do with the issues in this case.

13 THE COURT: All right. I'll give you a last word,
14 Mr. Jensen, if you would like and then I'll take this under
15 submission.

16 MR. JENSEN: Just very briefly. To the extent
17 there's any difference in the -- between what we represented
18 to be the inflation rate and was in the table, I apologize.
19 It should all be fairly clear. If it's not clear, if we
20 misinterpreted information, we'll review it and try to
21 provide it as accurate as possible. With respect to the
22 glossary of terms, there is different definitions of the term
23 exempt, and it is not just related to being exempt under the
24 federal labor standards act, but there's an exempt under the
25 civil service act and the exempt employees in the state of

1 California are bound by the terms -- if they're exempt
2 employees, from civil service those are the managerial
3 employees. So we believe that is relevant and that
4 definition and that's why we supplied it. If you -- if it's
5 necessary for me to provide a declaration for where those
6 those terms were -- those glossary terms were received from,
7 it's the state of California department of personnel website,
8 and I can do that to clarify that foundational matter.

9 THE COURT: That would be fine.

10 MR. JENSEN: Thank you, your Honor.

11 THE COURT: Thank you. Thanks for raising that,
12 Mr. Levin. You may continue with your cross-examination

13 MR. LEVIN: Thank you, your Honor.

14 BY MR. LEVIN:

15 Q Welcome back Ms. Orosco.

16 A Thank you.

17 Q If Mr. Malkenhorst had meetings outside of the
18 office during the period of time that you served as his
19 secretary, was it his practice to inform you of the meetings
20 out of the office?

21 MR. JENSEN: Objection, your Honor. Calls for
22 speculation and that lacks foundation and lacks personal
23 knowledge.

24 THE COURT: She can hardly know whether he didn't
25 inform her if he did a meeting. Sustained.

1 MR. LEVIN: Yes, your Honor.

2 BY MR. LEVIN:

3 Q During the period of time that you were the personal
4 secretary for Mr. Malkenhorst, did he from time to time
5 inform you that he was conducting work outside of the
6 office?

7 MR. JENSEN: Objection. Mischaracterizes the
8 testimony of the witness as far as "personal secretary to
9 Mr. Malkenhorst."

10 THE COURT: Overruled. Do you understand the
11 question?

12 THE WITNESS: I thought you were just asking me if,
13 in fact, I was aware if Mr. Malkenhorst had meetings outside
14 of the office.

15 THE COURT: You may answer.

16 THE WITNESS: Yes.

17 BY MR. LEVIN:

18 Q During the period of time that you were serving as
19 Mr. Malkenhorst's secretary, how frequently did
20 Mr. Malkenhorst advise you of work-related meetings outside
21 of the office?

22 A I'd say always, but to play it safe, let's go with
23 98 percent.

24 Q In a typical week, approximately how many out of
25 office meetings would you be aware of Mr. Malkenhorst having

1 out of the office?

2 A Oh, God. I don't know. Maybe one. Maybe.

3 Q Would it be fair to estimate Mr. Malkenhorst as
4 having on average one out of office meeting a week for the
5 entire period of time you served as his secretary?

6 A I'd be guessing if I said yes. I really --

7 Q Did it just depend on business --

8 A Business was going on in the City at the time,
9 yes.

10 Q Ms. Orosco, could you please turn to Exhibit 81.

11 THE COURT: Mr. Levin, if you want to help the
12 witness, you may approach.

13 MR. LEVIN: Thank you, your Honor.

14 BY MR. LEVIN:

15 Q Ms. Orosco, over the course of your decades of work
16 at the City of Vernon, did you become familiar with the
17 organization of the City of Vernon in various departments?

18 A Yes.

19 Q Did you become generally available as to which
20 employees at the City of Vernon did work in various
21 departments?

22 A In the very beginning probably the first five to 10
23 years, yes.

24 Q Earlier this morning you gave testimony briefly
25 about the concept of a department head. What do you mean by

1 a "department head"?

2 A Somebody that managed a department, an employee who
3 oversaw a department or various departments.

4 Q During the period of time that you worked at the
5 City of Vernon, did you become aware of departments for which
6 you believed that there was not a department head?

7 A No. If I'm understanding you correctly, no.

8 Q Your general understanding was that for each of the
9 various departments listed in Exhibit 81, there would have
10 been a department head at the City of Vernon?

11 A No. A department head would have or in some
12 instances oversaw two or more departments.

13 Q Would it be correct to say that for each of the
14 departments listed in Exhibit 81, there would be at least one
15 department head, a person responsible for that department?

16 A In every one of these?

17 Q Correct.

18 A In each and every one there would be one person
19 responsible, no, if I'm understanding that correctly.

20 Q Was there some departments which there was nobody
21 responsible?

22 A No.

23 Q Were there departments for which there would have
24 been more than one person responsible?

25 A No.

1 Q So would it be correct to say for each department,
2 there would have been one and only one person responsible,
3 the department head?

4 A For each department? So you're saying
5 hypothetically there might be 20 department heads if there's
6 20 people? So I think that's where I'm getting confused.

7 Q Let's see if we can break it down. Let's start with
8 department 1001. There's a department at the City of Vernon
9 called City council?

10 A Correct.

11 Q Would there have been a department head for that
12 department?

13 A The City council as a whole, that's how I would see
14 it or how I saw it.

15 Q So the council would act as department head?

16 A Correct.

17 Q The next department listed on Exhibit 81 is
18 department 1002. There was a department called City
19 administration; correct?

20 A Correct.

21 Q And there was a department head for that department
22 as well; correct?

23 A There was a key person, yes. A department head for
24 lack of another way of putting it.

25 Q And during the time you were secretary for

1 Mr. Malkenhorst, he was the department head for the City
2 administration department; correct?

3 A He was the City administrator.

4 Q Was there a department head?

5 A That would have been him.

6 Q Okay. Let's move to the next one. Department 1003.
7 There is a department called City clerk; correct?

8 A Correct.

9 Q For the period of time that you worked for
10 Mr. Malkenhorst as secretary, Mr. Malkenhorst was the head of
11 that department; correct?

12 A Correct.

13 Q And if I were to go through each of the departments
14 listed on Exhibit 81, --

15 A Uh-huh.

16 Q -- would there have been an individual or group of
17 individuals who acted as department head?

18 A Yes.

19 Q When you first began working for the City of Vernon,
20 do you know whether Mr. Malkenhorst was currently working as
21 department head for the electrical department?

22 A No.

23 Q Was the electrical department at some point in time
24 later referred to as the Light & Power department?

25 A I think it was always the Light & Power

1 department.

2 Q Have you ever referred to it as the electrical
3 department?

4 A Not -- not to my recollection, no. It was Light &
5 Power department slash water department. At one point in
6 time when I first started, those two departments were tied
7 together.

8 Q Some time early in your tenure at the City of
9 Vernon, did you come to understand that Mr. Malkenhorst had
10 become the department head for the Light & Power
11 department?

12 A No.

13 Q Did you ever come to the understanding that
14 Mr. Malkenhorst was the head of the Light & Power
15 department?

16 A Yes.

17 MR. JENSEN: Object --

18 BY MR. LEVIN:

19 Q When did you come to that understanding?

20 A Oh, gosh. I would like to say maybe the late '80s
21 perhaps. A lot of different things started going on with the
22 Light & Power department, energy-wise. So they appointed him
23 executive director to oversee the broader arena.

24 Q My next set of questions will ask you to compare
25 what you saw Mr. Malkenhorst do at the City of Vernon before

1 and after the period in time he started acting as executive
2 director of the Light & Power department. Do you understand
3 that?

4 A Yes.

5 Q After Mr. Malkenhorst became executive director of
6 the Light & Power department, did you begin to notice an
7 increase of Light & Power related activities that
8 Mr. Malkenhorst was required to do?

9 A Yes.

10 Q What types of activities was he required to do?

11 A Again, the time period is mid to early '80s, but
12 definitely after I started. We became -- we joined a group
13 of local electrical agencies and the organization was called
14 the acronym was SCPPA, Southern California Public Power
15 Authority, and various electrical agencies, such as Burbank,
16 Glendale. Riverside, et cetera, were part of this and they
17 met at least monthly if not more often to go over major
18 issues of how we were going to -- how they were going to
19 generate and keep electricity coming to them; and what they
20 could do to get the best for their buck so to speak.

21 Q Apart from those meetings, did you observe
22 Mr. Malkenhorst conduct other City of Vernon activities
23 related to his position as executive director of the Light &
24 Power department immediately after he was appointed to that
25 position?

1 A A continued meeting, I believe with the southern
2 California Edison because there was litigation there, and we
3 had attorneys that were working for the City before before
4 Ferg. So he had to meet with them so that was --

5 Q So before Mr. Malkenhorst was appointed executive
6 director of the Light & Power department, did you observe him
7 do work associated with or for the Light & Power
8 department?

9 A He would meet with the -- at that time, director and
10 there after also, the director of Light & Power on day-to-day
11 operations, and major purchases that had occurred,
12 transformers and other things with managing that department
13 and making sure we're able to keep that department money
14 generating electricity, transmitting electricity.

15 Q Can you approximate how much time Mr. Malkenhorst
16 was spending on Light & Power related activities before he
17 became the executive director of that department?

18 A No.

19 Q Can you approximate the amount of time
20 Mr. Malkenhorst was spending on activities related to the
21 Light & Power department after he became assigned as its
22 executive director?

23 A I can only tell you I know it increased because I
24 was also responsible for filing, and filing just never went
25 away, and it just kept coming. So I just know it increased

1 after that.

2 Q Before Mr. Malkenhorst became the executive director
3 of the Light & Power department, you had the opportunity to
4 observe the number of hours that he was working at the office
5 and talk to him about work he was doing outside of City Hall;
6 correct?

7 A I wouldn't really say we talked about things. He
8 would simply say, perhaps, I'm meeting with so and so at
9 Edison. We're going -- it's going to be in Rosemead or
10 whatever and that was it. I wouldn't really say we discussed
11 the meeting.

12 Q You were aware of the number of hours he was working
13 both onsite and offsite, generally speaking?

14 A I knew when he came and went. When you say "number
15 of hours," it make's it sound like I was keeping track of his
16 hours, and I really wasn't because I had a job to do.

17 Q Did you form the impression that before
18 Mr. Malkenhorst became the executive director of the Light &
19 Power department, that he was working a full-time 40-hour
20 job -- 40-hour week job?

21 A Yes.

22 Q Was it your impression after Mr. Malkenhorst became
23 executive director of the Light & Power department that he
24 had to work in excess of the standard 40-hour work week to
25 get all the work done?

1 MR. JENSEN: Objection. It misstates the testimony
2 so far, and there's a lack of foundation about what a
3 standard work week is.

4 THE COURT: You should rephrase your question,
5 Mr. Levin.

6 BY MR. LEVIN:

7 Q Did you form the impression that Mr. Malkenhorst had
8 to work more than 40 hours a week immediately after he became
9 the executive director of the Light & Power department?

10 A I think he was working more than the 40 hours a week
11 prior to him being the executive director. When there were
12 meetings with the -- some California Public Power Authority
13 they were often on a Friday. So that's where he went which
14 would be in addition to the previous work week which was
15 Monday through Thursday. So it may have escalated depending
16 on the demand of that particular agency, but he was already
17 going above that.

18 Q Are you aware of -- withdraw that question.

19 For the entire period of time that you worked as
20 Mr. Malkenhorst's secretary, was your typical work week
21 Monday through Thursday?

22 A While I was working for Mr. Malkenhorst in the
23 City clerk's office?

24 Q Yes.

25 A Yes, it was.

1 Q Was it your understanding that Mr. Malkenhorst was
2 also on a Monday through Thursday schedule?

3 A I'd say yes because yes, he was there Monday through
4 Thursday, but often there were meetings held depending on the
5 agency or where we were going or what he was doing that
6 required a Friday meeting, sometimes with attorneys and, you
7 know. So..

8 Q What types of work on Friday are you aware of
9 Mr. Malkenhorst doing while you were serving as his
10 secretary?

11 A Meetings -- meeting with maybe perhaps, Southern
12 California Edison perhaps meeting with the attorneys. Just
13 meeting.

14 Q How frequently did Mr. Malkenhorst, to your
15 knowledge, work on days other than Monday through Thursday?

16 MR. JENSEN: Objection. Vague as to time.

17 BY MR. LEVIN:

18 Q At any time you were serving as Mr. Malkenhorst's
19 secretary.

20 A I really couldn't say. I mean, it's a long period.
21 It's a long time ago. So it's a long time since I left the
22 City so -- let alone how far back I worked with him. So I
23 couldn't put a specific on that.

24 Q Are you aware of Mr. Malkenhorst doing work for the
25 City of Vernon on the weekends?

1 MR. JENSEN: Objection. Vague as to time as well.

2 BY MR. LEVIN:

3 Q During the period of time you were Mr. Malkenhorst's
4 secretary.

5 A I can't say that I remember that. It doesn't mean
6 it didn't happen, but I can't say I remember it.

7 Q During the time you were Mr. Malkenhorst's
8 secretary, did you become aware of Mr. Malkenhorst conducting
9 business for the City of Vernon in the evening hours after
10 the 5:30 day?

11 A If we were in council meetings, yes. Sometimes --
12 sometimes if there was, especially during budget sessions at
13 the City, there was a finance meeting that didn't start until
14 late, late. It might have gone past 5:30.

15 Q Did you at any point in time during your tenure at
16 the City of Vernon become aware that Mr. Malkenhorst was
17 serving as the CEO of the gas municipal utility department?

18 A I'm not sure if that came after me or just about the
19 time I was being transferred out. The gas was always -- not
20 always but no. I'm not sure.

21 Q Do you have any recollection of seeing
22 Mr. Malkenhorst do a type of activity or work that was
23 specific to the gas municipal utility department?

24 A We used to meet with the gentleman that came in,
25 and sometimes Mr. Malkenhorst would go to So. California Gas.

1 That, I do recall.

2 Q Did Mr. Malkenhorst do that type of work before he
3 became the CEO of the gas municipal utility department?

4 A I believe so, yes, but I don't remember the exact
5 time he was appointed to CEO of the gas department.

6 Q So would it be difficult for you to say whether
7 Mr. Malkenhorst's appointment as CEO in the gas municipal
8 utility department did or did not increase the work he needed
9 to do?

10 A Correct. It would be difficult for me to be
11 positive and make a response.

12 Q During your tenure at the City of Vernon, did at one
13 point you become aware that Mr. Malkenhorst was working as
14 the executive director, secretary, and treasurer of the
15 industrial development authority?

16 A I recall the executive director of that authority
17 and also secretary. I do not recall -- what was the latter
18 one you mentioned?

19 Q The treasurer.

20 A Yeah. I don't remember the treasurer.

21 Q Did it happen in the early 1990s?

22 A I'm fairly sure it was in the '90s. It was after
23 the redevelopment agency came into play.

24 Q After -- withdraw that.

25 Are you aware of particular work that

1 Mr. Malkenhorst had to take on once he became the executive
2 director and secretary of the industrial development
3 authority?

4 A No. I'm not -- I don't have a clear recollection of
5 that.

6 Q You testified this morning about your role with
7 payroll. Do you recall that?

8 A Uh-huh.

9 Q Could you please explain what your payroll
10 obligations were, generally speaking?

11 A Mr. Malkenhorst signed off on all the payroll that
12 went through to the payroll department or payroll office. I
13 think it was payroll office. Anyway, all the departments
14 submitted their payroll. I reviewed it quickly, and when
15 there were things that looked a little askew or out of the
16 ordinary, then I'd ask questions and send it back to the
17 department to find out, okay. You have so and so here for 40
18 hours, but he had a holiday or a vacation day on this day and
19 why are we paying him for overtime because he worked, like,
20 say, three or four hours, hypothetically speaking of course.
21 So I would shoot it back to the department.

22 Q Did you do that activity for the entire period of
23 time that you were acting as Mr. Malkenhorst's secretary?

24 A Yes.

25 Q Did you ever attend any of the council meetings at

1 which there was a discussion of portioning the budget by
2 department? Do you know what I mean by that?

3 A Yes and no because that would have been discussed,
4 if at all, in the finance committee because they reviewed the
5 budget prior to approving it and forwarding it to City
6 council for final approval.

7 Q Did you play any role -- did you play any role in
8 that process?

9 A If I'm understanding you correctly, I think I would
10 say no. I'm not quite sure I'm clear, but I would say no.

11 Q Did you see that process develop? Were you in on
12 the meetings and discussions, or are you just generally
13 relaying what you heard from other people?

14 A I prepared certain budgets. I was responsible for
15 preparing certain budgets. So I had to allocate funds as in
16 the City clerk's office, the City administrator's office,
17 advise personnel department who was doing their own budget,
18 how much of Mr. Malkenhorst's time would be attributed to
19 personnel. So yes. I had some knowledge and some working
20 information about it.

21 Q Did you observe Mr. Malkenhorst take part in the
22 budgeting of the various departments that he headed?

23 A He reviewed all of the budgets. All of the budgets
24 were submitted to him as a director of personnel, finance,
25 and treasurer, I believe, and again, it was reviewed,

1 questions before they were submitted to the finance
2 committee, questions were asked of the departments if he was
3 unsure. He would sometimes have, I think, in the early years
4 when I was there, sometimes just have a meeting with the
5 department head to go over some of the things that they may
6 have included in their budget. So the police department, the
7 fire department, the health department, he would meet with
8 them and get a general idea and go from there.

9 Q There were some instances where the cost of work had
10 to be divided among the budgets of different departments;
11 correct?

12 A Uh-huh.

13 THE COURT: Is that a yes?

14 THE WITNESS: Yes, sir. Sorry.

15 BY MR. LEVIN:

16 Q Did -- and then that apportionment became part of
17 the City's budget?

18 A Yes.

19 Q And it was budgeted ahead of time for the future --

20 A For the next fiscal year, correct.

21 Q Did you observe Mr. Malkenhorst play a role in the
22 apportionment of certain work across budgets?

23 MR. JENSEN: Objection. Vague as to "play a role."

24 THE COURT: Overruled.

25 THE WITNESS: If I'm understanding you correctly, I

1 would talk to him and ask him these are the departments we're
2 concerned with, how am I going to forward to finance or to
3 the treasurer whoever is working on our particular budgets,
4 the percentages. What are we going to delegate to finance?
5 What are we going to delegate budget-wise, percentage-wise to
6 City clerk, the city treasurer and those kind of things. So
7 he would give me input and then I would send that information
8 usually to -- I think it was -- I'm not sure if it was the
9 finance office manager early on or the City treasurer that
10 was compiling the budgets of all the departments, and when
11 I say "compiling," I mean providing her the information and
12 she plugged in the holes so to speak, except for the main
13 departments; but she would do that for the treasurer, for the
14 finance. There are certain things that she had at her right
15 hand.

16 BY MR. LEVIN:

17 Q Could you please turn to Exhibit 46? Ms. Orosco,
18 from time to time did you communicate with CalPERS in your
19 role as secretary to Mr. Malkenhorst?

20 A I would say I may have communicated a few times.
21 Time to time would to be an exaggerated amount.

22 Q Is the communication in Exhibit 46 an example of
23 your interaction with CalPERS?

24 A Yes.

25 Q Do you recall having any interaction or

1 communication with CalPERS about City of Vernon business
2 prior to 1995?

3 A I don't recall, no.

4 Q When you were serving as Mr. Malkenhorst's
5 secretary, would you advise him of your communications with
6 CalPERS?

7 A If I had a communication with CalPERS, yes.

8 Q Did you of speak with Mr. Malkenhorst about CalPERS
9 inquiries about Mr. Malkenhorst's various positions?

10 A I don't recall.

11 Q Do you recall communicating with CalPERS about
12 whether Mr. Malkenhorst was working overtime at the City
13 of Vernon?

14 A I would say no. I wouldn't -- no. I would say
15 no.

16 Q Could you please turn to Exhibit 47. Could you
17 please read the last sentence of the first paragraph.
18 Ms. Orosco, does this refresh your recollection as to whether
19 you had communications with CalPERS about Mr. Malkenhorst
20 working overtime?

21 A No.

22 Q When Mr. Malkenhorst became the executive director
23 of the department of Light & Power, there was a director
24 there already; correct?

25 A Yes.

1 Q Do you have any understanding as to why an executive
2 director was needed at the Light & Power department?

3 A I have a vague recollection that the feeling was
4 that the City was getting more -- expanding with the
5 electricity issues. So we needed somebody that could be on
6 to have of those issues solely which had to do with, again,
7 meeting with several other agencies that had their own
8 electrical utility departments and also meeting with Southern
9 California Edison on litigation issues that were going on and
10 also well, as I said earlier, we had attorneys that were
11 working for us and before Ferg and he would meet with them
12 whether it was either teleconferencing or having to go back
13 east to Washington DC, and that was a bigger scope than the
14 director in the daily immediate operations. That was my
15 understanding.

16 Q Are you aware of any other person at the City of
17 Vernon communicating with CalPERS at the time you were
18 serving as Mr. Malkenhorst's secretary? In other words, when
19 CalPERS had issues, did they make communications with you, or
20 are you aware of CalPERS at the City of Vernon who handled
21 CalPERS inquires?

22 MR. JENSEN: Objection, your Honor. It's vague.

23 THE COURT: Sustained. Is this limited to issues
24 with Mr. Malkenhorst?

25 MR. LEVIN: I was going to lay a foundation

1 generally first, but I will be pleased to limit it to
2 Mr. Malkenhorst.

3 MR. JENSEN: And your Honor, CalPERS communicates
4 regularly with all of its members in member reports and all
5 of these other things.

6 THE COURT: Mr. Levin will narrow the question.

7 MR. JENSEN: Thank you.

8 BY MR. LEVIN:

9 Q With respect to City of Vernon business, Ms. Orosco,
10 and as it concerns Mr. Malkenhorst, are you aware of any
11 inquiries to the City of Vernon from CalPERS that came to
12 people other than yourself?

13 A They would have gone to Mr. Malkenhorst.

14 Q Are you aware of anybody else other than yourself
15 and Mr. Malkenhorst to whom inquires about City of Vernon
16 business when Mr. Malkenhorst worked there?

17 A I'm not aware of any.

18 MR. LEVIN: One moment, your Honor.

19 THE COURT: Uh-huh.

20 BY MR. LEVIN:

21 Q Ms. Orosco, have you ever attended a City of Vernon
22 council meeting --

23 A Yes.

24 Q -- where the council --

25 A I'm sorry.

1 Q Have you ever attended a City of Vernon council
2 meeting where the council was debating or discussing the
3 salary to give to particular City of Vernon employees?

4 MR. JENSEN: And objection, your Honor. It's vague
5 and ambiguous as to salary to give to the employees or
6 whatever the last part of his sentence was.

7 THE COURT: Overruled. You may answer.

8 THE WITNESS: I would say no if I understand your
9 question correctly.

10 BY MR. LEVIN:

11 Q Are you aware of any of the City of Vernon's --
12 withdraw that question.

13 Are you aware of any of the deliberations of the
14 city of Vernon City council as to the reasons for providing
15 Mr. Malkenhorst his salary?

16 A Am I aware of the reasons? Is that what you said?

17 Q That's right. Let me see if I can rephrase it.
18 You're aware Mr. Malkenhorst had different salaries at
19 different points of time during the period when you worked
20 for him; correct?

21 A Yes.

22 Q Are you aware of City council's deliberations or
23 reasons for giving Mr. Malkenhorst the salary they gave
24 him?

25 A I would say that -- I'm trying to go back and see

1 how we approached this because it was put either before the
2 personnel committee or the finance committee. I can't
3 remember which body that it was put before one of them with
4 a basic review of what he did then accomplished during the
5 prior year that fell under his responsibilities or what he
6 actually took apart in, and based on that review, then
7 that's where they would go from there.

8 Q This is a review that you participated in?

9 A I may have put together a letter. I may have typed
10 a communication to the committee.

11 Q And the communication to the committee was from
12 Mr. Malkenhorst?

13 A Yes.

14 Q So you were aware through those communications
15 Mr. Malkenhorst's discussions with a committee that would
16 weigh in on his salary?

17 A Uh-huh.

18 Q Is that right?

19 A Correct.

20 Q Were you aware of any discussion between
21 Mr. Malkenhorst and any other person or committee at the
22 City of Vernon along the lines that he should receive more
23 compensation because of the additional work he had taken
24 on beyond the City administrator/City clerk duties?

25 A Can you repeat that, please.

1 Q Sure. Are you aware of any communication between
2 Mr. Malkenhorst and any other person or committee at the City
3 of Vernon along the lines that Mr. Malkenhorst believed that
4 he should get salary increases because of his taking on
5 additional work or duties beyond just City administrator/City
6 clerk?

7 A Other than me mentioning the personnel and finance,
8 somebody was outside of those two committees? Because I did
9 say that in your previous -- that was my answer to your
10 previous question.

11 MR. JENSEN: And your Honor, may I just state an
12 objection to this line of questioning about -- asserting
13 Mr. Malkenhorst was talking on additional duties and
14 responsibilities other than additional duties and
15 responsibilities being put into the City administrator
16 position in which he occupied.

17 THE COURT: Overruled. You may answer. Oh, you did
18 answer. Next question.

19 BY MR. LEVIN:

20 Q Let me try again. You were aware that
21 Mr. Malkenhorst had some communications about his salary
22 with committees; correct?

23 A Yes.

24 Q In any of those communications, did Mr. Malkenhorst
25 state or suggest that he should get a salary that reflects

1 additional work that he had taken on outside his initial City
2 administrator/City clerk duties?

3 A I think -- my recollection is that everything was
4 based on communication that was put together that indicated
5 or clearly stated we have accomplished this much during this
6 past year through my oversight and participation or whatever
7 terminology we used, and thus was requesting a -- you know,
8 whatever salary increase or whatever it was.

9 MR. LEVIN: Thank you very much, Ms. Orosco.
10 Nothing further.

11 THE COURT: Any redirect?

12 MR. JENSEN: Yeah. Just quickly, your Honor.

13

14 REDIRECT EXAMINATION

15 BY MR. JENSEN:

16 Q Ms. Orosco, you mentioned that you --

17 THE COURT: Excuse me and I'm very sorry to
18 interrupt. Did you have any examination for this witness,
19 Mr. Yim?

20 MR. YIM: No, your Honor.

21 THE COURT: Thank you very much. Okay. Go ahead,
22 Mr. Jensen. I didn't mean to cut you off.

23 BY MR. JENSEN:

24 Q Ms. Orosco, you mentioned that at some point you
25 were transferred unwillingly out of City Hall?

1 A I didn't use those choice of words, but okay.

2 Q Is that correct?

3 A I was -- yes. I was transferred.

4 Q And you didn't desire the transfer?

5 A Correct.

6 Q And then you subsequently came back into the
7 City clerk/City administrator office; is that correct?

8 A No.

9 Q What was the position that you returned to at the
10 City?

11 A When we came back to City Hall, I stayed within the
12 Light & Power department, and I became then a contracts
13 manager, I think, or contract administrator, something along
14 those lines.

15 Q So you worked for that period of 2004 or '5, did you
16 have any reason to believe that the policies and procedures
17 at Vernon that had developed from 1981 to 2004 had changed?

18 A Dramatically.

19 Q And how have they changed?

20 A There was no -- well, I shouldn't say no. There
21 was very little oversight on some of the expenditures.

22 Q And the period you're referring to is after
23 Mr. Malkenhorst retired?

24 A Yes.

25 Q And so -- so when you're discussing very little

1 oversight, you're referring to the period where
2 Mr. Malkenhorst was no longer there?

3 A Correct.

4 Q And my question was trying to focus on that one-year
5 period after you left the City clerk's office and by the
6 time -- in the time of Mr. Malkenhorst's retirement, did you
7 have any reason to believe that the policies and procedures
8 that had been in effect since 1981 to 2004 had changed while
9 Mr. Malkenhorst was still there?

10 A Between 2004 and two thousand -- you're telling me
11 he left in 2005. I thought it was '06, but if it was 2005,
12 again, there was lack of oversight outside of his direct
13 review shall we say.

14 Q And let me ask you about when you mentioned that
15 maybe there was one meeting that Mr. Malkenhorst attended
16 outside of the office the period of 1981 to 2003 and -- but
17 what would you estimate his -- would you estimate that his
18 time in the office was more than, say, 35 hours a week?

19 A Probably. I mean there was often he stayed later
20 because meetings were held late in the afternoon. So that
21 made up some of the time.

22 Q And did you recall that in the salary resolutions
23 that Mr. Malkenhorst had -- it said hours as needed?

24 A Correct.

25 Q And what was your understanding of "hours as

1 needed"?

2 A I just thought it meant that he's supposed to be
3 there as long as they need him to be there.

4 Q And that was in the City administrator position?

5 A Correct.

6 Q And you mentioned that some of the meetings where
7 he was out of the office was in SCPPA?

8 A Correct.

9 Q Is SCPPA a separate entity?

10 A It was a separate joint body. I can't think of the
11 terminology, but it was a separate joint body. They have
12 their own by laws and what have you. Again, made of local
13 government agency -- electrical agencies. So City of Burbank
14 is the City of Burbank, but Burbank had its own Light & Power
15 department even -- I'm sorry.

16 Q But SCPPA --

17 A SCPPA was Southern California Public Powers
18 Authority. I believe that is what it stood for, Southern
19 California Public Power Authority.

20 Q SCPPA was not a department of Vernon?

21 A No.

22 Q SCPPA was a separate agency?

23 A Correct.

24 Q Do you know if SCPPA was a CalPERS contracting
25 agency?

1 A That I don't know.

2 Q So Mr. Malkenhorst's time at SCPPA wouldn't have
3 been accounted for on one of these department accounting
4 forms?

5 MR. LEVIN: Objection. Leading. Lacks foundation.
6 Speculation.

7 THE COURT: Sustained.

8 BY MR. JENSEN:

9 Q I just want to clarify a couple issues when you
10 looked at Exhibit 81.

11 MR. JENSEN: Your Honor, may I approach?

12 THE COURT: You may.

13 BY MR. JENSEN:

14 Q There's a listing of separate departments here or
15 separate accounts. Now, did these -- is this listing of
16 information have any significance outside of accounting?

17 A No.

18 Q So these are an accounting construction for Vernon's
19 budgeting process; is that correct?

20 A Correct.

21 Q So there's no room number for example 7100 for
22 customer service?

23 MR. LEVIN: Objection. Leading.

24 THE COURT: Sustained.

25 ///

1 BY MR. JENSEN:

2 Q If I was to go to Vernon City Hall and if there was
3 a seventh floor in the Vernon City Hall, if there was a door
4 marked 7100, would there be a customer service door? So
5 department 7100?

6 MR. LEVIN: Objection. Vague. Speculation.

7 THE COURT: Sustained.

8 BY MR. JENSEN:

9 Q Is there a physical location for any of these
10 departments at the -- for all of these departments at the
11 Vernon City Hall?

12 A I wouldn't say all of them, but probably the
13 majority of them.

14 Q And there was a discussion about department head and
15 previously you testified that the department accounting
16 numbers 1002, 1003, 1004, 1014, 1015, 1018, 1022, 1023, and
17 9000 were all within the City administrator department; is
18 that correct?

19 A They were all associated with the City
20 administrator's department.

21 Q Right. So Mr. Malkenhorst, as City administrator,
22 would be the department head of those various accounting
23 department names; is that correct?

24 A He would oversee these departments, yes.

25 Q Within his capacity as City administrator?

1 A Correct.

2 Q So even if there was a separate account number for
3 City administrator -- City administration, he would still be
4 overseeing the other departments as his work position of City
5 administrator; is that correct?

6 A As necessary, yes.

7 Q So when -- when -- just to clarify, when there was
8 discussion about whether each of these departments had a
9 department head, you were, I think, trying to explain that
10 one person would be responsible for multiple, different
11 department names here in the position of, say, for example,
12 City administrator; is that correct?

13 A Correct.

14 Q And there was some testimony about increased
15 activity in Mr. Malkenhorst's position during a certain time
16 period when there was more activity about the electric
17 department. Was there at that time an external crisis about
18 electricity?

19 A During that time period afterwards, it became,
20 quote, the electrical crisis when I think there was another
21 agency that created by the state of California the ISO that
22 was created something we as the Light & Power department had
23 to participate with and mainly because my recollection was
24 they were talking about the energy shortage. They, the state
25 of California which effected a lot of local -- not a lot, but

1 the local government agencies that had their own utility
2 departments.

3 Q And Vernon was one of them?

4 A And Vernon was one of them.

5 Q So it wasn't as though necessarily -- let me just
6 say -- there was outside pressure regarding energy problems
7 that drove the increased response required of the City; is
8 that correct?

9 MR. LEVIN: Objection. Leading.

10 THE COURT: Sustained.

11 BY MR. JENSEN:

12 Q How would you characterize this time and the
13 City's response?

14 A I think my response earlier was that there were
15 more things that needed to be looked from the City as a
16 whole and the electric department as opposed to just having
17 the department head take over that responsibility and then
18 not manage the daily operations of that department.

19 Q And what I'm asking, did you recall the external
20 circumstances that generated the requirement for additional
21 work?

22 A Again, SCPPA was one of them because these agencies
23 banded together. I'm assuming -- my recollection I should
24 say is banding together to deal with certain other public
25 utilities such as Southern California Edison would help us

1 get better rates, bring electricity or be able to buy
2 electricity at better rates if they were more of a bigger
3 unit as opposed to just the City of Vernon going knocking on
4 somebody's door and fighting and fighting and fighting, there
5 was some way these conglomerate of agencies could band
6 together and fight and do what they can and come up with
7 creative ways to get energy or transmit energy as opposed to
8 doing that alone. So that was part of his responsibility.
9 It became his responsibility as opposed to taking, again, the
10 department head away from the daily operations of operating
11 that department.

12 Q And let me ask you, does Vernon have a city motto?

13 A A city what?

14 Q A city motto or saying?

15 A When I was there, it was exclusively industrial.

16 Q And exclusively industrial, what would you say the
17 City of Vernon is largely made up of?

18 A Industry or it was industry.

19 Q And were you aware whether it was important to the
20 industry to have -- have access to power?

21 A Yes.

22 Q And how did the industries in the City of Vernon get
23 power?

24 A Well, through the City of Vernon.

25 Q And was it an important selling point to industries

1 to have inexpensive power?

2 A Very much so.

3 Q And was it part of the City administrator's job to
4 go and get new businesses to move to the City of Vernon?

5 A That was another -- yes.

6 Q And so it was part of Bruce Malkenhorst's job as
7 City administrator to encourage business to come?

8 A Correct.

9 Q And did -- and in your knowledge, was it a major
10 selling point to have lower power costs?

11 A Absolutely.

12 Q And in your recollection, did the City -- the
13 businesses that chose to reside in the City of Vernon, did
14 they utilize a lot of electricity?

15 A Many of them did.

16 Q And, in fact, wasn't Vernon one of the largest --
17 the City of Vernon was the largest electric user -- power
18 users of electricity in the whole state?

19 A That I couldn't tell you, that I can't tell you.

20 Q But was there a large number of light manufacturing
21 plants in Vernon?

22 A At one particular time, there was a high number of
23 manufacturing plants in the City of Vernon. It seems to
24 begin to dwindle when manufacturing was leading some kind of
25 bout, maybe the mid '80s to '90s for a variety of reasons not

1 specifically Vernon, but because the state of California,
2 there were no laws and regulations regarding manufacturing
3 and painting of furniture and all kinds of stuff and people
4 were just bailing.

5 Q Was it one of the City's goals to be able to
6 attractive to industry?

7 A Correct.

8 Q And in your knowledge, was part of the City's
9 attractiveness is reduced electricity rates?

10 A Yes.

11 Q And did -- did the City of Vernon offer cheaper
12 power costs than surrounding geographic areas?

13 A Well, mostly, you know, our immediate area would be
14 covered by Southern California Edison. So we were much less
15 expensive than Southern California Edison.

16 Q And was that important as a City as a whole?

17 A As a whole.

18 Q And to your knowledge, it's important to the City
19 council?

20 A Yes.

21 Q And so the City council wanted to make sure that
22 the City had access to reduced power rates?

23 A Absolutely. They were proud of the fact that,
24 especially when publications came out, that clearly indicated
25 where Vernon stood as far as electric rates and what other

1 even local agencies were charging and again, some like
2 Southern California Edison.

3 Q And just one last set of questions. Were you in
4 any closed sessions of the City council?

5 A Yes.

6 Q Were you in -- was salary and I'm not asking about
7 the content of the closed session communications, but were
8 you in closed sessions of the City council where salary or
9 finance matters were discussed?

10 A Not normally, no.

11 Q Okay. So if Bruce Malkenhorst's salary or
12 compensation was raised in the closed session, would you
13 have been in that session?

14 A No.

15 Q So -- and you mentioned that the finance and the
16 personnel were two committees that also discussed
17 compensation?

18 A Yes, I did.

19 Q Did those committees have closed sessions?

20 A Yes. I believe they did.

21 Q And were you ever in a closed session of either the
22 finance or the personnel committee where the compensation of
23 Bruce Malkenhorst was discussed?

24 A No, I was not.

25 Q And would you have been aware of discussions about,

1 you know, closed session meetings other than what's in the
2 Brown Act notifications?

3 A I'm not quite sure I understand what you mean.

4 Q If there was a discussion of Mr. Malkenhorst's
5 compensation in the closed session of the personnel or the
6 finance committee, would you have been aware had it
7 occurred?

8 A Yes.

9 Q And why would you have been aware?

10 A Because I did the minutes.

11 Q Okay, and would you have been aware of the substance
12 or the nature of the discussion within the closed session?

13 A Yes.

14 Q So would they have reported -- was there minutes
15 taken at the closed session?

16 A Yes.

17 Q And were those minutes complete of the substance of
18 the closed session?

19 A Yes.

20 MR. JENSEN: I have no further questions, your Honor
21 except that there's -- one last question, actually.

22 BY MR. JENSEN:

23 Q You said you worked at the City of Pico Rivera?

24 A Uh-huh, yes.

25 Q Yes, and what capacity did you work in the City?

1 A Chief deputy City clerk.

2 Q And in the City of Pico Rivera, did they utilize
3 titles that had hyphens or forward slashes in their titles?

4 MR. LEVIN: Objection. Relevance.

5 THE COURT: Sustained.

6 MR. JENSEN: Your Honor, it's about the commonality
7 of the usage of these terms, and I think we had testimony
8 from --

9 THE COURT: In fact, we had a ruling on that, and
10 you may ask your question.

11 MR. JENSEN: Thank you, your Honor.

12 BY MR. JENSEN:

13 Q When you worked with the City of Pico Rivera, did
14 Pico Rivera utilize terms where there was either a hyphenated
15 or a slash in their titles?

16 A I want to say yes. I'm trying to see if I can
17 visualize it though. I was a chief deputy City clerk. The
18 assistant City manager was the City clerk. So she was the
19 assistant City manager slash City clerk.

20 Q Okay. Let me just take my notes, your Honor, and
21 then I think I don't -- I guess here's a sort of final
22 question. Over your tenure of 1981 to 2003, you mentioned
23 you were familiar with Bruce Malkenhorst's hours in the
24 office and were they fairly consistent, not per week, but
25 overall, say, per year the number of hours worked while he

1 was City administrator?

2 A Yes.

3 Q And would you say that was a full-time position?

4 A Yes.

5 MR. JENSEN: I have no further questions, your
6 Honor.

7 THE COURT: Anything else, Mr. Levin?

8 MR. LEVIN: No, your Honor.

9 THE COURT: Mr. Yim?

10 MR. YIM: No questions.

11 THE COURT: You're excused. Thank you very much.

12 MR. JENSEN: Thank you, Ms. Orosco. I know your car
13 won't get towed.

14 THE WITNESS: Yep.

15 MR. JENSEN: And if -- your Honor, if we could just
16 take a break while I get my next witness because she's not
17 onsite. She's two blocks away.

18 THE COURT: How much time do you need?

19 MR. JENSEN: 10 minutes, 15 minutes.

20 THE COURT: Let's take a 15-minute break.

21 (Recess)

22 THE COURT: Before you call your next witness,
23 Mr. Jensen, you said this morning that in addition to the
24 witness who was about to testify and Ms. Orosco who just
25 testified, it was a Mr. Brearley who you subpoenaed and

1 from whom you haven't heard; is that correct?

2 MR. JENSEN: Yes, your Honor.

3 THE COURT: You don't expect to put him on?

4 MR. JENSEN: He's an attorney. I don't expect him
5 to --

6 THE COURT: Okay, and your expert, Mr. Adams, is he
7 going to be starting today?

8 MR. JENSEN: I would like him to. He is available.

9 THE COURT: And then tomorrow morning we'll do the
10 two witnesses from CalPERS whom you subpoenaed, and tomorrow
11 afternoon we'll conclude Mr. Adams; is that correct?

12 MR. JENSEN: Well, your Honor, this is an issue
13 we -- I'd like to offer the testimony of my client
14 potentially, Mr. Malkenhorst, and then there's the City
15 council member, Mr. Gonzales.

16 THE COURT: So you think we need to add some time --

17 MR. JENSEN: I would like --

18 THE COURT: And it's because of the two additional
19 witnesses from CalPERS?

20 MR. JENSEN: And I think a half day would be plenty.
21 I don't think there's -- Mr. Gonzales is an elderly man.
22 So I expect it to be slow going.

23 THE COURT: Okay. If we're going to be adding a
24 half day, I'll ask you to take a look at your calendars.
25 Let's go off the record while we discuss dates.

1 (Recess)

2 THE COURT: We are on the record. Mr. Jensen, you
3 may call your next witness.

4 MR. JENSEN: Thank you, your Honor. I'd like to
5 call Sharon Duckworth-Johnson. I'm not sure -- you can
6 clarify which is your maiden name.

7 THE COURT: Ms. Johnson, would you please rise.
8 Raise your right hand.

9

10 SHARON DUCKWORTH,
11 called as a witness, and having been first duly sworn by
12 the Court, was examined and testified as follows:

13 THE WITNESS: Yes.

14 THE COURT: Have a seat. Please state your full
15 name.

16 THE WITNESS: Sharon Lee Duckworth.

17 THE COURT: Sharon Lee Duckworth. Thank you very
18 much.

19

20 DIRECT EXAMINATION

21 BY MR. JENSEN:

22 Q And Ms. Duckworth, I have Johnson on some of my
23 documentation. Is that your maiden name?

24 A No. Duckworth was my maiden name.

25 Q Oh, okay. So you're --

1 A I still have my -- I was married to Johnson. I got
2 divorced, changed my name to Duckworth. I got remarried to
3 Johnson, but I didn't change my name.

4 Q So I just want to clarify.

5 A Okay. Yeah.

6 Q And so should I refer you to Ms. Duckworth?

7 A That's fine.

8 Q Ms. Duckworth, when did you first become employed
9 with the City of Vernon?

10 A February 1st, 1979.

11 Q And how many years did you work for the City of
12 Vernon?

13 A Just over 31 years.

14 Q 31 years, and what was your position when you began
15 in February 1st, 1979?

16 A Payroll clerk.

17 Q And I'm going to refer to some exhibits and there's
18 exhibits in the books in front of you, and I'll assist you
19 with finding them once I find them myself. So in your
20 position as payroll clerk, what were your duties and
21 responsibilities?

22 A For payroll clerk, I processed the payroll. I got
23 paid every two weeks. I entered the timesheets from the
24 different departments, the hours, and charged out the labor
25 distribution to the different departments and processed all

1 of the reports that were involved with payroll.

2 Q And did the City of Vernon have a recognized
3 practice for payroll in 1979?

4 A Yes. We -- yes.

5 Q And before we get to that, let me just turn your
6 attention to, I believe, it's Exhibit 16. Actually, sorry.
7 It's not Exhibit 16. It is Exhibit 11. Let's look at
8 Exhibit 11. I'm going to look at it.

9 THE COURT: You may approach.

10 MR. JENSEN: Thank you, your Honor.

11 THE COURT: Off the record.

12 (Recess)

13 THE COURT: Let's go back on the record.

14 BY MR. JENSEN:

15 Q Do you recognize Exhibit 11?

16 A Yes.

17 Q What is that?

18 A It's a resolution of the City council of the City
19 of Vernon regarding compensation for certain employees as
20 of March 1st, 1979.

21 Q And I believe if you look at either page six or
22 seven, you can direct me to whether there's your job
23 description or your job title is listed on maybe page six.

24 MR. LEVIN: Your Honor, may I approach?

25 THE COURT: You may.

1 THE WITNESS: Oh, right. Yes. Payroll clerk.

2 BY MR. JENSEN:

3 Q And there's a strike through in some of that
4 language. Do you recognize why that would be there?

5 A I don't remember that part.

6 MR. LEVIN: Sorry. Are we on page six?

7 THE COURT: Counsel?

8 MR. JENSEN: Sorry. It's page 12 internally listed
9 as page six.

10 THE COURT: Okay. We are looking at page 12 of
11 Exhibit 11; is that correct?

12 MR. JENSEN: Yes, your Honor.

13 THE COURT: Thank you.

14 MR. JENSEN: And it says on the top "miscellaneous
15 department salary schedule."

16 THE COURT: Go ahead.

17 BY MR. JENSEN:

18 Q And do you see on that -- on this listing the
19 pay in the position that you started in?

20 A I see the scale, yes. The salary schedule.

21 Q And which position did you start at the City of
22 Vernon?

23 A Well, I started February 1st. This was effective
24 March 1st. So I believe on February 1st, it was \$951 a
25 month, step five or step six. I'm sorry.

1 Q So it was \$4 less?

2 A Well, I -- yes. It was \$4 less. I don't know what
3 it became as of March 1st. I know it wasn't 955. I know
4 that.

5 Q So do you recall having seen this before?

6 A No. Actually, this one at that time, no. I just
7 recognize what it is, but no. I don't recall seeing this
8 particular one at that time.

9 Q I just want to point your attention to this
10 accountant two. It says "charge half to City clerk
11 administration, a quarter to water department, and a quarter
12 to Light & Power." Do you see that?

13 A Yes, yes.

14 Q And do you know what the meaning of that was?

15 MR. LEVIN: Lacks foundation. Personal knowledge.

16 THE COURT: Let's see if she says she knows.

17 THE WITNESS: Yes.

18 BY MR. JENSEN:

19 Q And what is the meaning of that?

20 A This position on this accountant, like it says, half
21 of their salary was charged to the City clerk and then
22 half -- I mean, a quarter was charged to the water department
23 and a quarter to the Light & Power. So they did accounting
24 work or bookkeeping type of work for the utilities and also
25 for the City clerk.

1 Q And has this -- was this type of practice allocating
2 salaries across different departments a recognized practice
3 when you began at the City of Vernon?

4 A Yes.

5 Q And can you explain what your understanding of that
6 was when you started?

7 A Okay. Let me explain, not necessarily do I remember
8 being on the actual salary resolution at that time, but,
9 like, when I did the payroll, there were a lot of people
10 saying the public works department or the building department
11 and their labor would be charged to various different
12 departments within that department, but, say, they had the
13 building department, the planning, engineering, street
14 department, things like that, but I don't remember -- like I
15 said, I didn't see this necessarily at that time, but that's
16 the way the labor distribution was done.

17 Q And was it done to other salaries other than just
18 the accountant two? Maybe I can turn your attention to the
19 next -- do you see that?

20 A So we had a -- she was called switchboard operator
21 at the time. So her time was allocated to different
22 departments also.

23 Q And so tell me again what your -- not again, but
24 tell me what your job was as payroll clerk in 1979.

25 A I received the -- the payroll certifications is what

1 they called it from various departments, fire, health, City
2 clerk's office, community services, and it would have a
3 listing of all of the employees and how many hours and then
4 they would have exceptions, like, say, if someone was out on
5 vacation, and it would list their name and what date they
6 were out on a vacation day or a sick day or something like
7 that. So based on that, I would -- I would enter the
8 information back then at that time, it was the ADP system.

9 Q In 1979 it was ADP?

10 A Yes.

11 Q Okay.

12 A So then I would enter how much pay the person was
13 supposed to get, but then also -- I had to also see if they
14 had 80 hours -- 80 hours pay, regular pay. Then I would also
15 have to allocate that 80 hours to the -- to whatever
16 department they happened to work in that week. Most people
17 it was, you know, the same all the time, but like I said,
18 community services or other people that were allocated
19 differently, then they would have more than one department
20 that I would charge the 80 hours to.

21 Q And are you familiar with the term exempt
22 employee?

23 A Yes. That means they don't get overtime. Is that
24 what you mean?

25 Q Yes. Is that the --

1 A That's what I think.

2 Q Were there hours or timesheets kept for the
3 department heads?

4 A No. Not that I am aware of, no. Like I said, I
5 wouldn't get a timesheet for each person at that time. It
6 was just, like, a listing and they would -- and then on
7 another page it would have the exceptions, if they were out
8 like I said, sick or take a vacation day, time off. Yeah,
9 but I didn't have -- at that time, I didn't have anything
10 specifically for each person. It was just a listing.

11 Q And were you aware of whether some employees at the
12 City of Vernon had to keep timesheets and others did not?

13 A I don't recall that anyone had to keep a timesheet
14 at that time that I recall.

15 Q And so how would -- how would their hours be
16 recorded?

17 A The different departments would prepare that payroll
18 certification. So I don't know what kind of records they
19 had. I know I got the payroll certification.

20 Q And so if someone was working full time, how would
21 it appear on the payroll certification?

22 A That's been 35 years ago.

23 Q I'm sorry.

24 A So I can't really for sure tell you.

25 Q So and how long were you payroll clerk?

1 A I believe it was -- actually, it was only about --
2 at that time, yeah. It was like six or eight months because
3 then they hired someone else in July or August.

4 Q And what position was your next position?

5 A Accountant -- Light & Power accountant.

6 Q And with reference to this salary schedule in front
7 of us on page 12 of Exhibit 11, can you identify the
8 accountant that was the position you held?

9 A That would have been under the July 1st resolution
10 that was effective July 1st because it wasn't until August,
11 I believe, that I changed positions. So I'm not sure if
12 it's the same one that's on here.

13 Q Let's look at Exhibit 12 on maybe page 22 or 23.

14 A Okay.

15 Q Did you find the position you occupied?

16 A Accountant.

17 THE COURT: That's on page 22?

18 THE WITNESS: 12-22. It happened to be the same
19 page.

20 BY MR. JENSEN:

21 Q And what were the duties of the accountant?

22 A I recorded all the transactions for the electric
23 department at that time. It was actually working for the
24 Light & Power fund basically.

25 Q And did you continue to do payroll accounting at

1 that time?

2 A Not at that time.

3 Q And then what was your -- did you have a subsequent
4 position at the City of Vernon?

5 A Yes. Then I was supervising accountant.

6 Q What year was that?

7 A I don't recall.

8 Q And then --

9 A I would say a couple of years or so later, maybe.

10 Q And did you have another further position after
11 supervising accountant?

12 A Yes. Then I became finance office manager, finance
13 department office manager.

14 Q And what were your job duties in the finance
15 department?

16 A I supervised the personnel in the finance
17 department.

18 Q And did you review payroll over -- or payroll
19 records in that capacity?

20 A I was supervisor over the person that handled the
21 payroll.

22 Q And did you have any direct oversight over the
23 payroll?

24 A Not normally. It wasn't necessary. The person that
25 took care of the payroll, took care of the payroll, and I was

1 her boss, her supervisor. I wouldn't say boss. Supervisor.
2 So I don't know if you mean directly. I don't know what you
3 mean.

4 Q Was that an exempt position?

5 A Yes.

6 Q Were you paid overtime in that position?

7 A No.

8 Q So what were some of the duties of the finance
9 department -- can you say the title to me again?

10 A Finance office manager, but it was for the finance
11 department.

12 Q And did you oversee the allocation of costs over
13 different departments in that capacity?

14 A I'm not sure what you mean by "oversee the
15 allocation."

16 Q Did you have any -- take any part in allocating
17 costs over different departments as the finance office
18 manager?

19 A Well, I was finance office manager. I was also
20 still involved in the accounting, and so I don't remember
21 what year I started being involved, like, in the salary
22 resolutions and the budget, but at that time, then I would be
23 involved with the budget on every July, every fiscal year.
24 The beginning of the fiscal year we had a new budget and a
25 new salary resolution, and I would get the budgets from the

1 different departments and then I would prepare the budgets
2 for the accounts for the finance committee to approve the
3 budgets and the salary resolutions. So I don't know if that
4 means oversee, but I was involved.

5 Q I'm just asking -- go ahead.

6 A Go ahead.

7 Q So can you describe your involvement in that part
8 of the process of budgeting?

9 A Okay. Like I said, the departments would submit
10 their budgets -- their different budgets -- different
11 department budgets to me, and then I would prepare them.
12 Back then we weren't necessarily computerized. So we would
13 type up the budgets, you know, so we would have all the
14 different people in the different departments listed on a
15 second page which was the personnel page and it would have
16 their name, their title, and it would have their yearly
17 salary and it would have a biweekly amount. And then the
18 last column would say what percentage of their budget -- of
19 their salary -- I'm sorry -- should be charged to that
20 department because we had several people that their salary
21 was allocated to different departments under the same
22 title.

23 Q Can you tell me more about that those several
24 people?

25 A Well, we know Mr. Malkenhorst was charged to

1 different departments. His salary was allocated to different
2 departments within -- according to the budget and then we had
3 our director of community services was also allocated to
4 different departments. His title was director of community
5 services, but he had -- he had duties, say, director -- like,
6 he was in charge of the water department. He was in charge
7 of -- I can't remember the names of these different
8 departments, but he had some of his time was allocated --
9 I don't know what the percentages of it, but a portion was
10 charged to the water department which is not the general
11 fund. So the community services department would be to the
12 general fund and then the water would be to a different
13 fund -- charged to a different fund and -- but then on the
14 resolution, his title would be in here one -- one salary for
15 his title of director of community services.

16 Q And the director of community service, was he paid
17 one salary for his one position?

18 A Yes. He had one salary.

19 Q And was he paid with checks drawn off the general
20 fund?

21 A Yes.

22 Q And so this allocation of costs to separate funds
23 or departments was not related to his salary?

24 MR. LEVIN: Objection. Leading.

25 THE COURT: Sustained.

1 BY MR. JENSEN:

2 Q So since he was paid from the general fund, why
3 was part of his cost allocated to the water fund?

4 A Because they had responsibilities in that -- in
5 that area also. We want to charge part of his salary to
6 that fund. It's in the enterprise fund also. So it's
7 totally different from the general fund. You want to
8 have the expenses, you know, in the right -- allocated
9 to wherever they might be working at, you know, that --
10 let me back up. Can I back up?

11 Q Please.

12 A July 1st we would set the budget. All right? So
13 that particular person, director of community services, say,
14 the budget said 75 percent to community services and also,
15 not just the water department, he had, like, within the
16 building department, he had like five or six department --
17 departments that his salary was allocated to, community
18 services, street department, building and engineering, I
19 think were together. So he had several say -- he was -- he
20 had the one title, director of human resources, but he had
21 other duties that he was responsible for, but he had one
22 salary.

23 Q And was any of his salary directly paid from the
24 water fund?

25 A Directly?

1 Q Directly.

2 A Okay. I'm not sure -- okay. If you have one
3 check; right? So that's the payroll account, the bank --
4 the general fund bank. Okay? The bank for the general fund.
5 Okay, but so you have the pay is one -- one part of it, but
6 then like I said, you have the distribution, the labor
7 distribution. So that's where the different funds come in
8 just on the labor distribution. We didn't issue a check from
9 the water department directly, but we charged -- his time was
10 charged to the water fund but it wasn't paid out -- like a
11 check wasn't issued out of that fund. It's one check.

12 Q And so how many people in the City of Vernon had a
13 position in which they were charged for performing duties
14 that were allocated to different departments?

15 A Do you want me to think of them right now?

16 Q If you can just name as you go.

17 THE COURT: And can we have a timeframe, Counsel?

18 BY MR. JENSEN:

19 Q Yes. Actually, we're talking about approximately
20 1985 to 2004.

21 A Okay. I would say the director of community
22 services, the City administrator, the chief deputy City
23 clerk, the finance office manager, the director of
24 environmental health. I don't know the titles. There were
25 some -- there was some personnel in the water department that

1 were charged to water department and the electrical
2 department, the Light & Power fund, but I can't remember what
3 the titles were. They were like utility or something.

4 Q Okay. Great, and I'm going to refer -- your -- let
5 me actually ask you. Do you remember whether when you became
6 finance office manager whether Vernon still used ADP at that
7 point?

8 A We did not.

9 Q And was there any reason for not using ADP that you
10 know of?

11 A We -- I believe it was around 1982 or '3 or
12 something like that, we went to an outside company. We
13 weren't computerized yet inhouse. So we -- we bought the
14 computer, and we hired this company to do -- to give us the
15 programs for accounting and also they had a program for
16 payroll, and we went with them for everything that we did for
17 accounting and payroll and billing, I believe, at the time.

18 Q And when you spoke about these allocations across
19 different departments, these positions, outside of the
20 utility workers, were all of those exempt employees that were
21 allocated?

22 A I -- oh, outside the utility man, yes. I would say
23 so, yes.

24 Q And so how was that allocation -- what was the
25 manner in which it was allocated in? Is it by percentage?

1 A Back then? In that time period that you're talking
2 about?

3 Q We're talking about 1985 to 2004.

4 A The budget -- when the budget was prepared, it was
5 for each person, each title -- each person and we listed
6 their title, right, and then we would say what percentage of
7 their salary should be charged to that particular
8 department.

9 Q And was that prospective over the next coming fiscal
10 year?

11 A That was what we based our allocation of time on for
12 that fiscal year in July 1st to June 30th of the next year.

13 Q And was it based on actual hours?

14 A No. Not for the people that were exempt. There was
15 a set allocation.

16 Q And do you know whether that set allocation was
17 based on expected hours to be worked in the future?

18 A I'm not sure if it was based on exactly hours, but
19 it was -- okay. This is no, no, no.

20 Q Okay. Please say if you don't know, please --

21 A I want to speak don't want to --

22 THE COURT: One at a time, please. Go ahead.

23 BY MR. JENSEN:

24 Q So was this the same budget process of allocating
25 percentages to different departments from 1985 to 2004?

1 A Yes.

2 Q And did -- during that period, were aware of whether
3 there was ever a change in allocation within a fiscal year
4 based on the number of hours worked by an individual?

5 A I was aware -- I was aware that the allocations
6 changed because every July 1st I would -- according to the
7 budget, then I would have to give the information to the
8 payroll department for the different exempt people who ever
9 they were at the time. Okay. Starting July 1st you need to
10 charge this position, this person this way now. It may have
11 changed a little bit from the prior year's budget.

12 MR. JENSEN: And your Honor, I'd like to approach,
13 and I'm going to show you some ADP documents and I reassert
14 my challenges. I know that those have been ruled on.

15 THE COURT: You may approach.

16 MR. JENSEN: So I'm going to show you two documents.
17 There's some handwritten delineations. It's percentages.

18 THE COURT: Which document are we looking at?

19 MR. JENSEN: They are written on page 1 of document
20 67.

21 BY MR. JENSEN:

22 Q Ms. Duckworth, can you take a moment to familiarize
23 yourself with this document? Tell me when you had a chance
24 to review it.

25 A Okay.

1 Q I've shown you these documents before, haven't I?

2 A Yes.

3 Q And I have asked you questions about them?

4 A Yes.

5 Q And can you explain to me what your understanding
6 of the break out of this salary over different codes refers
7 to?

8 A You want me to tell you what the departments are?

9 Q What's your understanding of why this was broken
10 out in the way it was?

11 A Okay. Like I said, every July we would have a new
12 budget, and also a new salary resolution and the budget and
13 then we would break out for Mr. Malkenhorst his allocation
14 of his time to different departments. So in the budget, it
15 would have percentages, but then when the payroll
16 department -- when they entered it into ADP, ADP you couldn't
17 say 20 percent or 5 percent. You had to -- what's the word?
18 Translate -- I don't know if that's the word. Translate it
19 to hours. It doesn't mean -- we budgeted it by percentages
20 not by number of hours. So like here, it says 16 hours to
21 department 102, but then if that compared to 80 hours would
22 be 20 percent.

23 Q So --

24 A So the resolution -- the salary budget resolution
25 would say 20 percent for that department, but in order for

1 the payroll -- to interpret the payroll, you would have to
2 say 16 hours.

3 Q So would it be correct to say that Mr. Malkenhorst
4 works 16 hours doing any particular task in that
5 department?

6 A There's no way for me to know that.

7 Q But can you -- is that -- is that a correct way
8 of interpreting that document focusing on the hours?

9 MR. LEVIN: Objection. Vague.

10 THE WITNESS: No.

11 THE COURT: Overruled.

12 BY MR. JENSEN:

13 Q And, Ms. Duckworth, you told me an important piece
14 of information about how these ADP reports are laid out by
15 department.

16 A Right.

17 Q Can you explain that to me?

18 A All right. Although under Mr. Malkenhorst's name he
19 has charges to different departments -- Okay. He is -- he is
20 included in one department's payroll. I don't know how to
21 explain it very well.

22 Q Would it be fair to say that ADP --

23 A ADP --

24 THE COURT: One moment, please. One at a time.

25 THE WITNESS: Sorry.

1 THE COURT: Our poor court reporter only has two
2 hands.

3 THE WITNESS: He's in our home department 1002, and
4 that's why that one is listed first because this is -- that's
5 his home department, and then all of these other ones are
6 afterwards according to the budget, the way the budget was
7 allocated for his salary.

8 BY MR. JENSEN:

9 Q So what does home department mean?

10 A That's where his salary was listed and his salary
11 resolution. It was combined. The City administrator/City
12 clerk and finance department were all listed in the same
13 salary resolution section and 1002 is City administrator.

14 Q So is it a fair inference to that draw that's the
15 department that he worked in?

16 A Yes.

17 Q And so can you describe -- maybe I'll describe and
18 tell me if this is accurate, the ADP reports break out
19 employees by departments in which they work in, and
20 Mr. Malkenhorst was always listed in the City administrator
21 department exclusively; is that correct?

22 MR. LEVIN: Objection. Leading.

23 THE COURT: Overruled.

24 THE WITNESS: I'm not sure -- I want to make sure I
25 understand what your asking.

1 BY MR. JENSEN:

2 Q Maybe you can paraphrase it. I'm just trying to
3 help.

4 A You mean in this section of the report, the same
5 section, the City administrator section?

6 Q In a -- sorry. See if it's something --

7 THE COURT: Sorry. We're on the record. Are you
8 speaking to the witness?

9 MR. JENSEN: I wasn't. I'm sorry. I will --

10 THE COURT: If you need to go off the record, just
11 make a request.

12 BY MR. JENSEN:

13 Q And I think -- let me make this sort of clear. How
14 many pages are in a typical ADP report?

15 A I don't remember.

16 Q Would it -- is an ADP monthly report include all of
17 the employees at the City of Vernon?

18 A It's not a monthly report. It's a biweekly report.

19 Q In the biweekly --

20 A It would include all of the employees.

21 Q And how would the employees be grouped within one
22 ADP report?

23 A They would be grouped in their home department.

24 Q And what is the meaning of them being grouped in a
25 department?

1 A That was their -- where their title was and their
2 salary resolution. That was their home department, their job
3 title from their salary resolution.

4 Q And from looking at these ADP reports, can you tell
5 us which home department Mr. Malkenhorst was listed in?

6 A City administrator, 1002.

7 Q And is it fair to say that the numbers listed
8 underneath that are related to cost accounting or overhead
9 spread across different departments?

10 A Could you repeat that?

11 Q Is it fair to say that the break out of the salary
12 over different departments listed below Mr. Malkenhorst is
13 not related to his hours, but to cost accounting in the
14 fiscal budget?

15 A Yes.

16 Q And I'd like you to take a look at the allocation
17 of costs in department 67 -- I mean in Exhibit 67 and then I
18 want to turn your attention to Exhibit 68, and did the
19 allocation of the costs over different departments change
20 significantly in the new fiscal year?

21 A Yes, they did.

22 Q And can you tell me, and take a moment, what the
23 percentage change was from one fiscal year to another?

24 A Can I look at the next exhibit to see if it was the
25 same as 68?

1 Q Sure.

2 A Because I don't -- there's -- it's not the same.

3 Q There are some additional pages of this --

4 A But let me look at this date.

5 THE COURT: You're comparing 67 and 68?

6 THE WITNESS: Yeah. I want to see what dates. Oh,
7 okay. That was in fiscal 0304 and this was 0405. I was
8 just trying to see what the comparison dates were -- was.
9 Actually --

10 THE COURT: I'm sorry. You're going -- if you're
11 speaking, please speak loud enough for the court reporter
12 to --

13 THE WITNESS: I'm sorry.

14 THE COURT: -- hear and wait until I finish before
15 you say anything. Thank you.

16 THE WITNESS: I'm a little confused on this second
17 exhibit, Exhibit 68.

18 MR. JENSEN: May I approach, your Honor?

19 THE COURT: You may.

20 BY MR. JENSEN:

21 Q What is your confusion?

22 A Okay. It's a period of 12/25. So that's Christmas
23 Day. So Christmas Day would have been a holiday, and that's
24 what we have here. We have some holiday pay. So that --
25 that's what is throwing us off a little bit as far as

1 me looking at --

2 Q Let's turn to the next page.

3 A Okay.

4 Q Is that more helpful?

5 A Okay.

6 Q I'm turning to the second page of 68 for the week
7 January 1st -- January 8th, 2005 biweekly to January 20th,
8 2005. Does that help clarify taking out the holiday?

9 A No because this one has a holiday too for
10 New Year's Day. So we'll go to the next one.

11 Q Okay, and is that page three of Exhibit 68?

12 A Yes.

13 Q Does that help clarify the percentage change?

14 A I don't know why it's different from the previous
15 ones, why it was changed at that time.

16 THE COURT: When you say you don't know why it's
17 changed, you don't know why the figures are different from
18 Exhibit 67?

19 THE WITNESS: Right. The allocation.

20 THE COURT: The allocation from the prior year?

21 THE WITNESS: From the prior fiscal year.

22 THE COURT: Thank you.

23 BY MR. JENSEN:

24 Q And let me just refer you to -- this is in April,
25 2004?

1 A Uh-huh.

2 Q And then this would be 2005?

3 A Right.

4 Q So then the proceeding -- the subsequent fiscal
5 year and there's a change in the allocation over
6 departments; is that correct?

7 A Yes.

8 Q And you're saying you don't understand why it would
9 change?

10 A Well, I can understand -- oh, okay. Now, this year
11 I take that back. This year I believe is when we were -- the
12 City was working on the power plant that they were building.
13 So since most of his time is being charged to Light & Power,
14 it was probably in July that we budgeted according to that
15 because he knew there was going to be a lot more hours, of
16 information going on regarding the power plant that he would
17 be involved in, but he still listed in the home department of
18 1002 as his main department.

19 Q And let me just -- so when you mean it's still
20 listed in 1002 that is the City administrator?

21 A Correct.

22 Q And let me just turn your attention to Exhibit 14.
23 Here, and in particular --

24 THE COURT: We're going to take a 10-minute break.
25 Let's go off the record.

1 (Recess)

2 THE COURT: You may continue.

3 BY MR. JENSEN:

4 Q Ms. Duckworth, I would just like you to clarify
5 right before the break you were discussing that there was a
6 change in -- the percentage change in the allocation of work
7 that was expected to be formed in the next fiscal year; is
8 that correct?

9 A Yes.

10 Q And so at this period, were you involved in the
11 budget process for that --

12 A Yes.

13 Q -- period?

14 THE COURT: And please wait until he --

15 THE WITNESS: Oh, I'm sorry.

16 THE COURT: finishes, and please don't say you're
17 sorry while I'm talking. Thank you.

18 BY MR. JENSEN:

19 Q Were you -- do you recall being involved in the
20 budget process for the allocating City administrator's salary
21 over different departments in that period?

22 A Yes.

23 Q Do you recall the specific reasons for the change in
24 percentage allocation?

25 A No.

1 Q And when this salary is allocated over -- the cost
2 of the salary is allocated over different departments, does
3 that mean that the person is performing different positions
4 in each of those departments over which its allocated?

5 A Could you repeat that?

6 Q When the salary is allocated over different
7 departments, does that mean that the person is performing
8 different jobs or positions in each one of the departments
9 over which that salary is allocated?

10 A I would say it means they have duties in addition
11 to what they're doing, responsible for some other department.

12 Q And so you -- you -- there's -- is it correct that
13 there's a difference in your mind between duties and
14 responsibilities in a position or -- let me phrase it
15 differently.

16 Can a job, one job, have many multiple duties or
17 responsibilities?

18 A Yes.

19 Q And is this allocation of salary intended to reflect
20 the allocation of those duties and responsibilities over
21 different departments?

22 A Yes.

23 Q Is it intended to indicate that the individual is
24 performing a part-time job in each of the different
25 departments over which the salary is allocated?

1 A I don't believe so. I'm not sure.

2 Q I am going to turn your exhibit triple L.

3 MR. JENSEN: Your Honor, may I approach?

4 THE COURT: You may.

5 BY MR. JENSEN:

6 Q And did you work with the external auditors of
7 the City of Vernon?

8 A Yes.

9 Q And were you involved in the preparation of
10 financial reports by the City of Vernon?

11 A Yes. Different capacities and in different years.

12 Q And it would be in this book.

13 MR. LEVIN: Counsel, can you please identify --

14 MR. JENSEN: Triple L.

15 MR. LEVIN: The number of the notebook?

16 MR. JENSEN: Yeah. I'm about to identify. It's
17 exhibit book three. Do you recognize this document?

18 THE COURT: Let's let Counsel catch up to us here.

19 Do you wish to have this marked?

20 MR. JENSEN: Yes, your Honor. May I mark the
21 document behind Exhibit tab triple A?

22 THE COURT: It's so marked.

23 (Department's Exhibit LLL was marked for
24 identification by the Court.)

25 MR. JENSEN: Thank you.

1 BY MR. JENSEN:

2 Q Do you recognize this document?

3 A Yes.

4 Q Did you participate in providing information for
5 this document?

6 A Yes.

7 Q And is it -- to the best of your knowledge, is
8 this a true and complete copy of Vernon's financial
9 statement for the year ending June 30th, 2002?

10 A To my knowledge, yes.

11 MR. JENSEN: Your Honor, I'd like to offer into
12 evidence Exhibit triple L.

13 THE COURT: Any objection?

14 MR. LEVIN: No objection.

15 THE COURT: Okay. It's admitted.

16 (Department's Exhibit LLL was received in
17 evidence by the Court.)

18 BY MR. JENSEN:

19 Q In exhibit book 18, I'd like to turn your
20 attention to 4Fs.

21 MR. JENSEN: Your Honor, may I approach?

22 THE COURT: You may. Which exhibit binder?

23 MR. JENSEN: This is exhibit binder 18.

24 THE COURT: There are no 4Fs in 18. There's 5Fs.

25 MR. JENSEN: I'm sorry. It's 5F. With your

1 permission, I'd like to mark the document behind Exhibit
2 tab 5Fs.

3 THE COURT: It's been marked and admitted.

4 MR. JENSEN: Oh, it's already admitted?

5 THE COURT: Yes.

6 BY MR. JENSEN:

7 Q And Ms. Duckworth, do you recognize this document?

8 A Yes.

9 Q And did you -- were you involved in the preparation
10 of this document?

11 A No.

12 Q And what is this document?

13 A This is the payroll listing for people that were
14 paid during a particular payroll period that we submitted
15 to CalPERS to record the individual's salaries, pay.

16 Q And is this any indication on here of the
17 full-time work of the individual?

18 A Well, where is that?

19 Q Perhaps work schedule code.

20 A We didn't have any part-time people really. So
21 they were all full time.

22 Q All the employees at City of Vernon were full
23 time?

24 A 99.9 I would say percent at least.

25 Q I'll turn your attention to Exhibit 72. Now, I

1 have previously shown this document to you, have I not?

2 A Yes.

3 Q And do you recall how you described it to me?

4 A This is the organization chart.

5 Q Now, when we discussed it before, you differentiated
6 between organization and reporting chart. I was wondering if
7 you could clarify your previous answer.

8 A Oh, okay. Well, as you can see on the diagram, the
9 top is City council.

10 Q Uh-huh.

11 A So everything goes up to them as far as
12 reporting-wise, and then under them was directly the City
13 administrator and all these other -- and then the City
14 attorney as well with these other titles for -- the City
15 administrator. They all funneled into -- his main title
16 was City administrator, but he also held these other titles.

17 Q And as far as your recollection, was this a document
18 that was established by an employees to inform the employees
19 of who to -- who their supervisor was?

20 A I don't know if the employees --

21 Q So what was the use of this document?

22 A I believe it was internal, but also I believe it
23 was used when we did bond financings, because they wanted to
24 know what the structure of the City was.

25 Q And when we say or -- how would you describe the

1 City administrator's performing different duties and tasks
2 with the information in this chart?

3 MR. LEVIN: Objection. Vague. Lacks foundation.

4 THE COURT: Sustained, and also I'll caution you,
5 Counsel, we're getting low on time here --

6 MR. JENSEN: I know.

7 THE COURT: And Mr. Levin is entitled to
8 cross-examine your witness.

9 MR. JENSEN: So I have no further questions then.

10 THE COURT: Thank you. Cross-examination.

11 MR. LEVIN: Thank you, your Honor.

12

13

CROSS-EXAMINATION

14 BY MR. LEVIN:

15 Q Ms. Duckworth, from 1985 to 2004 you were the
16 finance office manager?

17 A No. I changed jobs. I believe it was in 2002. I
18 might not have the right -- right date. The gentleman that
19 used to be the assistant finance director, he passed away.
20 So they made someone else finance office manager, and I was
21 the City treasurer but also the budget auditor -- I'm sorry.
22 The deputy City treasurer and the budget auditor.

23 Q And that was from 2002 until what year?

24 A I would say until the middle of 2005, I believe.

25 Q And then you held another position at the City of

1 Vernon?

2 A Yes.

3 Q And what was that?

4 A City treasurer.

5 Q Did you take over the City treasurer position from
6 Mr. Malkenhorst?

7 A Yes.

8 Q At the time you held the City treasurer positions,
9 did you hold any other positions at the City of Vernon?

10 A I don't really recall exactly, but I was --
11 sometimes we had City treasurer and then still the budget
12 auditor, but I don't recall for sure. I was still involved
13 in the budget.

14 Q Was your position as City treasurer full time?

15 A Yes.

16 Q So you worked 40 hours a week as City treasurer?

17 A Yes.

18 Q What were the duties of City treasurer that kept
19 you busy for 40 hours a week?

20 A Well, every morning I would -- excuse me. Every
21 morning I would get the balances from the different bank
22 accounts that we had, and then decide if we would -- we would
23 do over night investments, decide what -- figure out what
24 receipts we had that day, and what checks were going out or
25 whatever and try to -- the excess funds and then I would

1 reconcile the bank statements. Sometimes the bank
2 statements -- and record the journal entries for the
3 different investment transactions and prepare the
4 treasurer's report every month.

5 Q Was it your understanding that Mr. Malkenhorst had
6 done those same duties when he was City treasurer?

7 A No.

8 Q Did you -- what was your understanding as to who had
9 performed those duties when Mr. Malkenhorst was City
10 treasurer?

11 A When you say performed duties, actual -- did the
12 actual work you're saying; right?

13 Q Yes.

14 A I did. I was deputy City treasurer at the time.

15 Q So you had a change of title from deputy City to
16 City treasurer, but you did the same duties?

17 A Pretty much.

18 Q Did you have additional duties you performed as
19 City treasurer that you did not perform as deputy City
20 treasurer?

21 A I'm not sure. I can't -- I can't think right now.
22 I mean, I can't recall right now what the difference would
23 have been, you know, necessarily. There were a lot of
24 changes going on at the time. So I was still -- like I said,
25 I was still involved. I was at -- also still supervising the

1 people that did, like, the accounting and the general --
2 like, the accounts payable or the GL.

3 Q When you were deputy City treasurer, Mr. Malkenhorst
4 was the treasurer; correct?

5 A Correct.

6 Q Did you work with Mr. Malkenhorst on a day-to-day
7 basis in connection with your treasury activities?

8 A Yes. We had conversations. I don't know if it was
9 daily, but if there was something we were trying to invest
10 in, than I had to -- I had to talk to him and get approval.

11 Q When you were deputy City treasurer, did you become
12 familiar with the duties that Mr. Malkenhorst had undertaken
13 and carried out as City treasurer?

14 A I'm not sure -- I'm not sure how to answer that to
15 tell you --

16 Q Did you know what Mr. Malkenhorst was doing in the
17 capacity of City treasurer when you were the deputy?

18 A He was responsible for what I did. The buck stopped
19 with him and he made the ultimate decision. You know, I
20 would bring -- I would say oh, we can do this with this money
21 or whatever, and then he would make the decision. So he was
22 involved in the decision making, but not in the day-to-day,
23 you know, work.

24 Q Who was your predecessor as deputy City treasurer?

25 A I'm not sure if she had the same title, but there

1 was a Lois Hilton that used to do the daily investments
2 before I did. She was also the deputy City clerk, I
3 believe.

4 Q Is this, at the City of Vernon, a duty statement
5 for the position of City treasurer?

6 A I remember making up a jobs duties list for that
7 position, yes.

8 Q Did you make up that list when you became City
9 treasurer?

10 A I don't remember when.

11 Q Was there a -- a duty description for the City
12 treasurer position when you were a deputy City treasurer?

13 A I don't remember.

14 Q Was there a duty list for deputy City treasurer?

15 A Oh, I thought that was what your last question was.
16 I'm sorry. I don't remember.

17 Q When you were the deputy City treasurer, were you
18 aware of a duty list for City treasurer?

19 A No.

20 Q Could you please turn to Exhibit 67. 67, the very
21 first page, please. We're looking at the ADP pay register
22 for the period ending April 17th, 2004; correct?

23 A Yes.

24 Q And at the time that this payroll register is being
25 prepared, there's a City of Vernon budget in place that

1 allocates Mr. Malkenhorst's time across various departments;
2 correct?

3 A Yes. Excuse me. Not necessarily his time. I guess
4 it depends on how you interpret it. Not necessarily his time
5 but his salary. So I guess it's the same thing depends on
6 what you --

7 Q Okay.

8 A Because his time was not -- he didn't say, you know,
9 five hours. Okay. So we're going to charge five hours. So
10 it was an allocation of his salary. I'm not sure exactly
11 what you mean.

12 Q You answered the question.

13 A Okay.

14 Q Now, on the first page of Exhibit 67, if you were
15 to add up all of the hours under the entries from
16 Mr. Malkenhorst, you would get 80 hours; correct?

17 A Yes.

18 Q 16 of those hours were attributable for purposes
19 of allocation to department 9000 which is the Light & Power
20 department; correct?

21 A Yes.

22 Q So if you do the quick math, 16 out of 80, is --
23 that's 20 percent; correct?

24 A Right.

25 Q Is it your understanding that there would have been

1 written in the City of Vernon budget at the time that 20
2 percent of Mr. Malkenhorst's salary was attributable to work
3 in the Light & Power department?

4 A I would say it was allocated. I don't know if that
5 word means the same thing as attributable. I'm not sure.
6 It is allocated. So I guess it's the same word. Sorry.

7 Q Do you have any personal knowledge or information as
8 to why 20 percent of Mr. Malkenhorst's salary in this time
9 period was allocated to the Light & Power department as
10 opposed to 10, 15, 30 or some other number?

11 A No.

12 Q Which persons or positions were involved in the
13 decision to allocate 20 percent of Mr. Malkenhorst's salary
14 to the Light & Power department?

15 A The way I remember it, each July 1st -- not July
16 1st, but say around June, middle, beginning to middle of
17 June, I would either get the percentages for next year's
18 budget from Gloria which was his secretary and she was also
19 the City clerk -- chief deputy City clerk or from
20 Mr. Malkenhorst, either one.

21 Q Do you know what persons or groups came up with the
22 numbers? Who were the people who said this is going to be
23 the number? Do you know one way or the other?

24 A I don't know for sure because I wasn't there when
25 they -- I just got the information, but I wasn't there when

1 they decided.

2 Q If you could please turn to Exhibit 68-3. This is
3 an ADP payroll register for the period ending January 22nd,
4 2005; correct?

5 A Yes.

6 Q You see the entries for Mr. Malkenhorst on this
7 page?

8 A Yes.

9 Q Again, the hours stated here if added all together
10 would be 80 hours for a two-week period; correct?

11 A Yes.

12 Q The hours allocated to department 9000, the Light &
13 Power department, are 52; correct?

14 A Yes.

15 Q 52 out of 80, that's 65 percent or so. Agreed?

16 A Uh-huh.

17 Q Is that yes?

18 A Yes. I'm sorry.

19 Q So would you agree that these numbers reflect the
20 existence of a City of Vernon budget at this time in which
21 65 percent of Mr. Malkenhorst's salary is allocated to his
22 work in the Light & Power department?

23 MR. JENSEN: Objection with reference to work in the
24 department.

25 THE COURT: Overruled.

1 THE WITNESS: Could you repeat that, please?

2 BY MR. LEVIN:

3 Q Would you agree that the numbers stated on this
4 payroll register indicate the existence of a City of Vernon
5 budget in January, 2005, indicating that 65 percent of
6 Mr. Malkenhorst's salary be allocated to the Light & Power
7 department?

8 A I wouldn't want to answer that without looking at
9 the resolution. I mean, the budget resolution. I don't
10 recall -- I don't recall -- I don't recall these percentages,
11 but that doesn't mean I'm right.

12 Q Are you aware of any method or procedure within the
13 City of Vernon by which 65 percent of the hours on
14 Mr. Malkenhorst's payroll register would be allocated to a
15 department without the same allocation being in a budget?

16 A Not necessarily.

17 Q So are you aware of a way for a 65 percent
18 allocation to be stated in a payroll register in the absence
19 of that allocation being stated in a budget?

20 A I'm not aware.

21 Q So based on everything you know, would it be your
22 understanding that there would have been a City of Vernon
23 budget in January, 2005, that allocated 65 percent of
24 Mr. Malkenhorst's salary to the Light & Power department?

25 A That's a possibility, yes.

1 Q Would you agree that to know why 65 percent of
2 Mr. Malkenhorst's salary was allocated to the Light & Power
3 department, you would need to ask the people who came up
4 with that allocation and put it in the budget?

5 A Yeah. I wouldn't know off -- from my own knowledge
6 without asking.

7 Q Is it your understanding that Mr. Malkenhorst,
8 as the head of several departments, participated in the
9 allocation of his salary to the various departments listed
10 in the payroll register?

11 MR. JENSEN: Objection. Misstates the testimony.
12 The head of several departments?

13 THE COURT: Overruled. You may answer.

14 THE WITNESS: You're going to have to repeat it.
15 I'm sorry.

16 BY MR. LEVIN:

17 Q Sure. Is it your understanding of Mr. Malkenhorst,
18 as the head of several of the departments listed in the
19 payroll register, played a role in the allocation of his
20 salary across the departments listed in the payroll
21 register?

22 A Can you just repeat that first part? Is it to my
23 knowledge, or what did you say?

24 Q Is it your knowledge or understanding that he
25 participated in that?

1 A Like I said before, I'm not sure if he was the one
2 that decided. I know I either got the information from
3 Gloria or from him, most of the time from Gloria, but, you
4 know, sometimes it was from him. So I don't know for that
5 year who gave me the information.

6 Q Do you know a general understanding or information
7 about the role that department heads played in setting the
8 budget for their departments?

9 A Could you be more specific? I'm not sure exactly
10 what you're asking.

11 Q There's various departments at the City of Vernon?

12 A Yes.

13 Q And there are heads for each of these departments?

14 A Yes.

15 Q Do you know whether the heads of the various
16 departments participated in the creation of the budget for
17 their departments?

18 A Yes.

19 Q Do you have a general understanding that the heads
20 of the various departments in concert with the City council
21 helped set the budget for their departments?

22 A Well, they would -- they would -- they would -- I
23 can't find the right word. They would make their budget.
24 That's not the right word, but they would prepare their
25 budget according to what, you know they thought was right,

1 but they wouldn't -- at that point they wouldn't consult with
2 the City council. Okay. So then the budget would come to
3 me. I would prepare it for the finance committee, and then
4 they would have budget hearings to go through each
5 department. So that's when the City council would be aware
6 of it.

7 Q Did you attend any of the budget hearings?

8 A Not at that time.

9 Q Was there a time when you attended budget
10 hearings?

11 A Yes.

12 Q And what period of time?

13 A I believe it was -- it could have been starting
14 in maybe 2008, 2009, 2007, maybe.

15 Q At that time, did department heads participate in
16 the budget hearings?

17 THE WITNESS: Yes.

18 MR. JENSEN: Objection, your Honor. Irrelevant as
19 to time.

20 THE COURT: I'll allow the answer. What was the
21 answer?

22 THE WITNESS: Yes.

23 THE COURT: Thank you.

24 BY MR. LEVIN:

25 Q Do you have any understanding or information as to

1 whether at earlier times during your tenure at the City of
2 Vernon, budget heads participated in the budget hearings?

3 A No. I wasn't there.

4 MR. LEVIN: I have no further questions. Thank you.

5 THE COURT: Mr. Yim?

6 MR. YIM: No questions.

7 THE COURT: Anything? You have five minutes for
8 redirect if you would like it.

9 MR. JENSEN: Yes. Just very, very quickly.

10

11 REDIRECT EXAMINATION

12 BY MR. JENSEN:

13 Q After the budgets were proposed to the finance
14 department -- to the finance committee, did the finance
15 committee sometimes change the budgets that were proposed by
16 the department -- by the budgets that you sent them?

17 A Yes. I would say every year there was -- there were
18 different things, like, they wanted to delete out of the
19 budget, like, for say, on different capital items, for the
20 items like fire, police, things were deleted so that I would
21 make the changes and give them the new totals.

22 Q And then after the finance committee made changes,
23 did the department heads have power to override the changes
24 made by the finance committee?

25 A No.

1 Q And then after the changes by the finance committee
2 were made, who subsequently controlled whether the budget was
3 approved?

4 A The City council approved the budget.

5 Q And did City council sometimes make changes after
6 the finance committee had their approval?

7 A I don't recall any of that happening. The finance
8 committee was three -- three people from the City council
9 that were on the finance committee. So the finance committee
10 is the one that went through all the details and saw the
11 whole budget, and then it was submitted to City council for
12 approval.

13 Q So in your understanding, the finance committee had
14 final say of determining all the items in the budget?

15 A Well, the final approval was City council. So up
16 until that point, the City council -- if they wanted to
17 change something, they would be the ones to change something,
18 not the finance. I mean after the finance approved whatever
19 they wanted approved, they went to the City council. So the
20 City council was the final approval.

21 Q And in your experience in later years, was the City
22 council either -- was the finance committee very involved in
23 overseeing the budget?

24 A Yes.

25 Q And did they always accept whatever the department

1 head said?

2 A No.

3 MR. JENSEN: No further questions.

4 THE COURT: Thank you very much. Anything else? Go
5 ahead, Mr. Levin.

6

7

RECROSS-EXAMINATION

8 BY MR. LEVIN:

9 Q Do you know whether Mr. Malkenhorst was ever on the
10 finance committee?

11 MR. JENSEN: Just objection as to specific time.

12 THE COURT: Or ever.

13 THE WITNESS: On the finance committee?

14 THE COURT: That was the question.

15 THE WITNESS: Yes. Not that I -- technically -- he
16 was the finance director. He attended the finance committee
17 meetings. So I don't know if he was -- I don't believe he
18 was considered to be a member of the finance committee.

19 BY MR. LEVIN:

20 Q During what period of time did Mr. Malkenhorst
21 attend finance committee meetings?

22 A From my knowledge would be ever since I was there
23 until he left.

24 Q When you say ever since you were there --

25 A 1979. That's what I know.

1 MR. LEVIN: No further questions.

2 MR. JENSEN: And just one further question.

3 BY MR. JENSEN:

4 Q Are you aware of who is a voting member of the
5 finance committee?

6 A Just the finance committee members which would be
7 the three councilmen.

8 Q Three City council members?

9 A City council members that were also on the finance
10 committee. They were the voting -- voters.

11 MR. JENSEN: Thank you. No further questions.

12 THE COURT: Thank you very much. You're excused.

13 MR. JENSEN: And thank you.

14 THE COURT: Let's go off the record.

15 (Recess)

16 THE COURT: All right. Back on the record. We will
17 be reconvening tomorrow at 9:00 a.m. We have Mr. Adams.
18 We have Mr. Malkenhorst, and that's it for tomorrow;
19 is that right?

20 MR. JENSEN: No, your Honor. We're calling --

21 THE COURT: Oh, I'm sorry. In the morning of course
22 the two CalPERS witnesses.

23 MR. JENSEN: And actually the witnesses that I
24 intend to call tomorrow are the two CalPERS witnesses,
25 Mr. Adams, because he's from out of town, and Mr. Gonzales.

1 If I'm possibly able to rearrange that because he's an
2 older man.

3 THE COURT: Okay.

4 MR. JENSEN: So it would not be -- most likely would
5 not be time for Mr. Malkenhorst. I may have to have
6 Mr. Adams come back. I'm just juggling.

7 THE COURT: All right. I understand and then we
8 finish at 4:30 tomorrow, and then the last day of hearing
9 will commence on November 7 at 1:30, and we'll conclude at
10 4:30 on November 7th. All right. With that, thank you very
11 much. See you in the morning.

12 Let's go off the record.

13 (Hearing adjourned at 4:30 p.m.)

14

15

16

17

18

19

20

21

22

23

24

25