

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SAN FRANCISCO
3 UNLIMITED JURISDICTION

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5 ELIEZER WILLIAMS, et al.,)
6 vs.) Case No.
7 STATE OF CALIFORNIA, et al.,) 312236
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VOLUME III - DEPOSITION OF
ROBERT CORLEY
FEBRUARY 12, 2003
SAN FRANCISCO, CALIFORNIA

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16 Volume III - deposition of ROBERT CORLEY
17 taken on behalf of the Defendants, at 275 Battery,,
18 San Francisco, California, commencing at 9:00 a.m.,
19 Wednesday, February 12, 2003, before Jan W. Serra, CSR
20 8207.

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16 WITNESS INSTRUCTED NOT TO ANSWER:
17 (None)
18 INFORMATION TO BE SUPPLIED:
19 (None)
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1 ROBERT CORLEY,
2 Having first been continued under oath,
3 was examined and testified as follows:
4
5

6 EXAMINATION
7

8 BY MR. SEFARIAN:

9 Q Do you realize you're still under oath?

10 A Yes.

11 Q Have you reviewed any documents since we
12 broke the deposition last night approximately 5 p.m.?

13 A I re-read portions of my expert report.
14 But that was all.

15 Q Do you recall what portions of your expert
16 report you reviewed?

17 A I just skimmed through the whole thing. I
18 did look through some portions concerning the
19 Los Angeles Unified just to refresh my memory.

20 Q MR. SEFERIAN: I would like to ask you to
21 refer to pages 56 of your report, Exhibit 1.

22 A (Complying)

23 Q In the last paragraph on the page, in the
24 second sentence, you say "These payments have
25 decreased as the loans were paid off and now the

1 amount of the deferred maintenance appropriations
2 should be increased by a certain amount?

3 A I don't mean to imply anything here other
4 than the statement of fact that because now the
5 majority of money comes through the very political
6 budget appropriations cycle, the entire funding base
7 of the Deferred Maintenance Program is now subject to
8 the decisions made in the legislative process and in
9 the Governor's budget request. So instead previously
10 with the lease/purchase excess repayments there was a
11 steady predictable flow of funds coming in that the
12 legislature couldn't mess with, the Governor really
13 couldn't mess with.

14 Every year you have to ask for money, and
15 it gets ranked along with everything else in the
16 budget. In many ways the Deferred Maintenance Program
17 which this report describes as a very successful
18 program is at the mercy of the overall state budgeting
19 crises, and at a time of crises like we are in right
20 now, it's very very worrisome.

21 Q I would like to ask you to refer to page 58
22 of your report.

23 A Okay.

24 Q In the first sentence on page 58 of your
25 report where you discuss the recommendations for

1 program must rely on annual budget appropriations by
2 the legislature and Governor.

3 Would you agree that the deferred
4 maintenance appropriations have increased each year
5 since 1997?

6 A I'm not clear on your question. Let me
7 respond to what I think you're asking.

8 The legislature has appropriated more
9 General Fund money to the Deferred Maintenance
10 Program. But the overall appropriation is the sum of
11 the accessory payments plus the General Fund
12 re-filling of the amount needed, if you will, has more
13 or less held steady and has grown only with the growth
14 in eligibility for the program as budgets have grown.

15 So while there is more General Fund money
16 being put in, it's simply replacing the decreasing
17 cash flow from the other original funding source.

18 The program has not dramatically expanded
19 over time. In fact, the deficit in the program has
20 expanded over time.

21 Q The next sentence on page 56 of your report
22 where you say, "This change leaves the important
23 Deferred Maintenance Program at the mercy of the
24 annual budget cycle and politicized decision inherent
25 in the legislature," did you mean to suggest that the

1 improving the Deferred Maintenance Program and then
2 you also state, "Although few have been implemented,"
3 which "few" were you referring to in that sentence?

4 A I would have to refer back to the source
5 document again. This is the 1997 recommendation by
6 the Legislative Analyst's office.

7 I believe they, the recommendations that
8 have been implemented were to advise the forms and
9 procedures to try and get the money out earlier in the
10 year.

11 The key recommendations that are listed at
12 the top of page 58, I don't believe they have been
13 implemented as of yet.

14 Q On page 58 of your report, in the second
15 paragraph under the heading number 9 under the middle
16 of the paragraph where you say, "this starts in my
17 experience --"

18 A Okay.

19 Q -- have you conducted any analysis of the
20 types of projects that are actually funded under the
21 deferred maintenance critical hardship funding?

22 A I have not conducted an in-depth study of
23 the projects. I have reviewed the list of projects
24 that are funded on an annual cycle. This information
25 is provided by the State Allocation Board. It's

1 readily available.
2 Q Would you agree that roofing and plumbing
3 are eligible projects under the Deferred Maintenance
4 Critical Hardship Program?

5 A In order to respond to your question I need
6 to first state that the access to the critical
7 hardship funding first requires that there be an
8 unusual unforeseen event occurring. And should you
9 have an unusual or unforeseen failure, plumbing or
10 roofing, truly unforeseen and unusual, then those
11 could be eligible expenditures.

12 The regular deferred maintenance program
13 deals with regular roof replacement and so forth.
14 Critical hardship is just the way it sounds. And it
15 is more typically a catastrophic failure of a septic
16 system or a drinking well, something of that nature,
17 that is far beyond the capability of a local district.

18 This is not a large program. And it is
19 reserved for those truly unusual extraordinary events
20 that would present imminent hazards to the students
21 and teachers at a school.

22 Q You would agree that roofing and plumbing
23 are eligible projects under deferred maintenance
24 critical hardship?

25 MR. ELIASBERG: Objection. Misstates

1 that. The fact is, we don't know.

2 And the essence of this statement on page
3 59 is that we don't know. Simply, districts are free
4 to choose whatever they choose to put on the piece of
5 paper. It is assumed that the highest priority needs
6 are listed. But there is no tracking or monitoring.

7 The argument presented in the section is
8 that there should be a tracking and monitoring system.
9 Because there is no tracking and monitoring system I
10 have no ability to determine one way or the other.

11 Q In your opinion, would the state be in a
12 better position than an individual school district in
13 determining which were the highest need projects for
14 funding under the deferred maintenance program?

15 MR. ELIASBERG: Objection. Incomplete
16 hypothetical.

17 THE WITNESS: I, you're asking whether the
18 state is better equipped than the local district.

19 That really is not the essence of this whole section
20 here. It's that obviously the local district has more
21 information about their particular needs. However,
22 because the state provides no guidance in how they
23 should rank or evaluate or prioritize their needs, it
24 is completely left and abandoned to the local district
25 to complete the form however they choose.

1 previous testimony.

2 THE WITNESS: If the roofing or plumbing
3 needs were to meet the other eligible criteria then
4 they could be met only to remedy the unusual and
5 extraordinary situation that has occurred.

6 Q MR. SEFERIAN: On page 59 of your report,
7 in the last sentence of the first paragraph on that
8 page where you say "No one at the state levels reviews
9 whether the projects chosen represent the local
10 districts highest needs," are you aware of any studies
11 showing that the districts who do apply for deferred
12 maintenance are not selecting the highest need
13 projects?

14 A I'm not aware of any studies that would
15 conclude that districts do or do not.

16 The statement on page 59 says that the
17 state really doesn't track this against any metric of
18 what the district's greatest needs are. It's simply
19 did you apply. If so, they log it as an application
20 received. There is no evaluation or prioritization
21 pro or con.

22 Q What evidence are you aware of that within
23 each district applying for deferred maintenance funds
24 the highest need projects are not being selected?

25 A I have no evidence supporting or denying

1 What this section's talking about is there
2 should be some kind of tracking mechanism to make sure
3 these major needs are being arrested on a regular
4 schedule and that the investment the state has made in
5 the schools are maintained and kept in satisfactory
6 working order to avoid these severe problems that have
7 already been, we have already discussed of how they
8 have accumulated over time.

9 Q On the bottom of page 59 you start to
10 discuss a chart of some school districts that appears
11 on the following page.

12 With regard to that chart and your
13 discussion of the deposit in deferred maintenance
14 account on page 59, was there a specific date that
15 those districts were required to make the deposit in
16 their deferred maintenance account?

17 MR. ELIASBERG: Objection. Vague.

18 THE WITNESS: I am not intimately familiar
19 with the workings of that program and cannot tell you
20 the specific date.

21 The report that did occur to the Allocation
22 Board on April 3rd, 2002 following every, followed
23 whatever the reporting date was because this was a
24 summary of districts that had not made their full
25 deposits. So it was a summary of an earlier date and

1 time. I believe the deadline is actually the close of
2 the fiscal year, June 30th. So the district has all
3 year.

4 Here we are talking about a full prior
5 fiscal year earlier. The 2002 report was referring to
6 the 2000-2001 fiscal year. So you have until the end
7 of the year to make your deposit. After that the
8 books are closed and you have no access to it. So it
9 was an underreporting and the fiscal year ended.

10 Q MR. SEFERIAN: In connection with the
11 preparation of the chart on page 60 of your report,
12 did you have any information about the amount of the
13 backlog of deferred maintenance in Compton, Los
14 Angeles, Lynwood or Marino Valley Unified?

15 A I did not have specific information on
16 that. I do know that in all of the districts there
17 are large unfunded maintenance needs.

18 Not to pick on Los Angeles, but to cite
19 Los Angeles as an example, they went out to the voters
20 later in the year and said we need three billion
21 dollars to fix up our schools. Yet here they are
22 underfunded.

23 Lynwood has severe problems. Marino Valley
24 has been struggling for years. There are many
25 possible reasons why the district didn't do it, but

1 needs to be a better explanation.

2 There may be a perfectly legitimate reason
3 and there have been some very small districts that
4 have a piece of property and done all the repairs they
5 ever needed to do and have been exempted from there.
6 Those circumstances do occur. They are extremely
7 extremely rare. But in terms of making a budget
8 choice, one of the critical factors that has led to
9 the enormous unfunded modernization need in the
10 district -- in the state rather -- that I find it
11 highly suspect if a district were to say they have no
12 need or have the higher priorities than investing in
13 their school facilities. That to me is a candidate
14 for coming in later with acute and severe facility
15 problems.

16 Q The bottom of page 60 you have a heading
17 "Unintended Consequence of Deferred Maintenance
18 Program." You talk about the state creating an
19 unintended incentive for some districts to defer
20 repairs. On the top of page 61 you say that "The
21 practice is widespread across the state."

22 How widespread is the practice of districts
23 deferring repairs until work becomes eligible for
24 partial state funding rather than performing
25 maintenance in a timely manner using only district

1 here was a chance to get state matching money to do
2 the repairs that are clearly needed that were not
3 done.

4 Q At the end of the first paragraph on page
5 60 where you stated, "My opinion, only those districts
6 that show that they do not have deferred maintenance
7 needs should be exempted from full participation in
8 the program," in your opinion are there any
9 circumstances under which a school district could
10 legitimately decide that another expenditure
11 outweighed a deferred maintenance deposit?

12 MR. ELIASBERG: Objection. Vague.

13 THE WITNESS: You're asking hypothetically
14 are there circumstances. I could possibly construct
15 them. But I don't believe that would be inconsistent
16 with this statement.

17 I believe the burden should then be on that
18 district and that governing board that, that set of
19 administrative decision makers to establish why they
20 need to spend the money on some other expenditure
21 rather than investing in the long-term adequacy of
22 their school facilities.

23 We are talking one half of one percent. A
24 very modest amount of money. If they are so bad at
25 budgeting, they can't come up with that, there really

1 funds?

2 A I'm -- let me respond to that by first
3 stating that the only maintenance work being described
4 here which is eligible for deferred maintenance
5 matching funds. This is not all maintenance of all
6 kinds.

7 The practice is close to universal. If
8 your deferred maintenance schedule says you're going
9 to paint in three years, why would you run out and
10 paint today. A hundred cents of the dollar are yours.
11 You wait a little bit and you pay 50 cents of the
12 cost. I believe that close to every single school
13 district in the state at some time has scheduled a
14 project to benefit from the matching grant.

15 As we discussed at length yesterday, good,
16 well managed districts have kept up and don't have
17 facility crises and can paint on a planned anticipated
18 schedule. It's where there have been problems and
19 there is severe deterioration in place that deferring
20 even one or two more years creates a problem.

21 Q You would agree that there are some cases
22 where a specific project under deferred maintenance
23 where a district waits one or two more years to
24 receive the state matching funds would not be
25 considered a problem; is that right?

1 A Correct. Some projects can be scheduled,
2 and again this is not to say -- the effect here is not
3 the cause of the facility crises in California today.
4 This is a small piece of the overall puzzle. And it's
5 just, I have said it's a very small paragraph
6 describing one unanticipated contention of the
7 structure that has been selected by the State of
8 California.

9 Q Would you agree that facility components
10 with a history of continued repairs may be included as
11 eligible items for a deferred maintenance project?

12 A That question is not clear. What do you
13 mean by "history?"

14 Q If a certain facility component in a school
15 has a demonstrated record of having continued repairs,
16 can that component be included as an eligible project
17 for deferred maintenance?

18 A I don't believe you can answer the question
19 the way you posed it.

20 For example, if a classroom had a
21 flickering light fixture which was very distracting to
22 the kids over years, at some point when that comes up
23 on the deferred maintenance schedule, that could be
24 replaced. Others are not subject to replacement that
25 way. They are simply not part of the deferred

1 about the application program. And sometimes
2 districts lack the expertise or time to do the
3 application and actually pay an outside individual or
4 firm to do the paperwork for them. So there are many
5 ways that costs are incurred, and it would depend on
6 the specifics of the individual school district to
7 quantify that further.

8 Q MR. SEFERIAN: In the projects that you
9 have worked on involving modernization, is there a
10 typical, can you give a range of costs that would be
11 required to prepare the modernization application and
12 the work that goes into that as you have described?

13 A If you ask for a ballpark estimate, roughly
14 five percent of the project's cost is front-loaded.
15 And the source of that number is that typically the
16 architect's fee is in the 10 to 14 percent range.
17 About 5 percent of the total project value would be
18 the planning and design phase. The rest of it would
19 be in the actual construction documents and contract
20 administration, closeout and so forth. So again
21 that's a significant amount of money.

22 If you have a million dollars worth of
23 modernization, you're looking at 550 thousand dollars
24 up front cash outlay before you have any hope of
25 seeing any state money. A typical elementary school

1 maintenance program.

2 Q If you would refer to the bottom of page 61
3 of your report in the first sentence of the last
4 paragraph on that page --

5 A (Complying)

6 Q -- is there a typical or average amount of
7 money that it takes to get the application pieces
8 ready as you refer to in that sentence?

9 MR. ELIASBERG: Objection. Vague. There
10 is so many different kinds of applications the
11 question is really unanswerable.

12 THE WITNESS: The sentence you're asking
13 about is in section heading 10 on page 61. Which is
14 describing the state modernization program.

15 The kind of costs that would be incurred by
16 a school district in preparing that application, again
17 you have to have your architectural plans prepared,
18 typically before you get to that point there has been
19 a, some kind of assessment or needs study which may or
20 may not have been part of the architectural
21 assessment. Frequently they are paid for separately
22 and then architects are brought in to do the drawings
23 based on the identified and prioritized needs.

24 Frequently there is participation in
25 workshops by private groups or state groups to learn

1 gets about two million dollars for modernization. And
2 looking for -- and five percent of that amount would
3 be about \$100,000. Developer fees cannot be used for
4 modernization costs. Therefore, many districts lack
5 the cash flow to keep their projects moving in a
6 steady, predictable manner.

7 Q I would like to ask you to look at page 63
8 of your report.

9 A Uh-hum.

10 Q There is a discussion about multi-track
11 year around calendars and the operational grant
12 program.

13 Would you agree that a school district is
14 able to withdraw from the Operational Grant Program
15 and have their construction eligibility restored?

16 A There was a change I believe in 1999. I
17 think it was Mazzoni's bill. Assemblyman Mazzoni's
18 bill, AB 695 as I recall, that allowed, for the first
19 time, a district to get off of the operational grant
20 program. Prior to that time, once you were on open
21 grant, you lost your money forever.

22 And AB 695 change allowed you to not seek
23 state funding and then the following year you would
24 get your eligibility back. So while yes, you can get
25 your eligibility back, the consequence is you give up

1 your money. You give up your money and in a year you
2 get your eligibility next year.

3 Q Overall, do you believe that the bill you
4 mentioned, AB 695, had a positive effect on the school
5 facility program?

6 A AB 695 was a complex bill with many
7 separate elements. I can't really answer your
8 question. It was just, there were too many elements
9 in it. So do you have a more specific question about
10 any components within that bill?

11 Q If you limit it just to the component about
12 restoring school districts' construction eligibility
13 by withdrawing from the Operational Grant Program, do
14 you believe that overall that was a positive step?

15 A Overall it would be a step in the right
16 direction.

17 However, there is a very dark underside to
18 that change. The change is I give up my money now. I
19 get my eligibility back next year. But if it takes
20 two or three, three or four years to build a school
21 I'm forced to continue operating on a multi-track
22 calendar, paying many hundreds of thousands of dollars
23 extra in costs, but I can't get my building until
24 years down the road.

25 So what that does is put an acute financial

1 you speaking about there?

2 A During the development of the legislation
3 there were many parties working in Sacramento to
4 reform this area of the state facilities program. I
5 think everyone agreed that changes were needed, but
6 the specifics of the changes were not so easily agreed
7 upon.

8 The specific data referred to in footnote
9 26 on page 63 were largely prepared by the California
10 Department of Education. And they were used to model
11 the effects of different strategies for ending year
12 round participation. The net outcome of that entire
13 lengthy process was the critically overcrowded schools
14 program. That was included within AB 16.

15 MR. ELIASBERG: Will you re-read that
16 answer.

17 (The record was read as follows:

18 A During the development of the
19 legislation there were many parties
20 working in Sacramento to reform this
21 area of the state facilities program. I
22 think everyone agreed that changes were
23 needed, but the specifics of the changes
24 were not so easily agreed upon. The
25 specific data referred to in footnote 26

1 penalty on schools trying to improve their situation.
2 So while it's a good change in that, you finally had
3 hope of getting off of operational grant, the way it
4 was implemented actually puts a huge penalty on some
5 of the poorest schools in the state. And that doesn't
6 seem right. So there were good parts and there were
7 bad parts.

8 Q Speaking just about that provision of
9 AB 695, in your opinion what should have been done
10 differently to eliminate the bad parts of that
11 provision?

12 A Again, that's an extremely broad question.
13 A quick answer would be to allow districts to end
14 their participation and then phase out funding over
15 the number of years needed to build a replacement
16 facility for the capacity created by the multi-track
17 operations. Taking away my money now for eligibility
18 next year when you have two or three three or four
19 years to build a school is very painful and really
20 punitive on the poorest schools in the state.

21 Q In the footnote on page 63 where you talk
22 about school business, school data was assembled and
23 studies by the Department of Education Legislative
24 Staff and others in developing the legislation which
25 became AB 16 and the 2002 school bond, what data were

1 on page 63 were largely prepared by the
2 California Department of Education. And
3 they were used to model the effects of
4 different strategies for ending year
5 round participation. The net outcome of
6 that entire lengthy process was the
7 critically overcrowded schools program.
8 That was included within AB 16.)

9 Q MR. SEFERIAN: I would like to ask you to
10 refer to page 66 of your report.

11 A (Complying)

12 Q At the top where you say, "Specifically the
13 new bond, while it does nothing to address the
14 following categories of students or will be
15 insufficient to bring those students' schools into
16 acceptable condition," do you see that?

17 A Yes.

18 Q And then you list different categories of
19 students after that.

20 Did the work you performed in this case
21 include compiling a list of the districts or students
22 that would fall into each of the categories listed on
23 pages 66 and 67 of your report?

24 A As I stated yesterday in response to
25 several of your questions and I'll say again here,

1 because the state has never assembled a facilities
2 inventory and does not track the conditions of schools
3 around the state, some of the answers you're seeking
4 are simply unknowable.

5 If the state were to have established that
6 system back in the 1990s we would have those answers
7 today. The state did not do that, so we don't have
8 answers today.

9 I did not do a separate study. But all of
10 these categories we could discuss at great length and
11 shows you that while I don't have a complete inventory
12 of the needs around the state, there are demonstrable
13 numbers of student in each of the categories listed in
14 the bullets on page 66.

15 So I don't know if that's responsive to
16 your whole question but -- maybe there is a follow-up
17 question.

18 Q Referring to the first category of students
19 that's listed on page 66 of your report --

20 A Uh-hum.

21 Q -- would you agree that within the last
22 year approximately 15 districts have withdrawn from
23 the operational grant funding?

24 A I don't have an independent basis to say
25 it's been 15 districts or however many districts. I

1 promises, the districts are simply walking away in
2 disgust.

3 Unfortunately, some districts are trapped
4 on this program and cannot get off and are just slowly
5 struggling to survive. So I don't take it as a matter
6 of pride that 15 districts have walked away from the
7 program. It's really the state broke its promises and
8 the districts just left in disgust.

9 Q What districts were you referring to in
10 your answer where you said the districts cannot get
11 off the program?

12 A Specifically, I'm aware of San Maria Bonita
13 Elementary in San Maria, California. Oxnard, in
14 Oxnard, California. Los Angeles I believe.

15 They have no place to put the kids if they
16 got off multi-track. These are, and other districts
17 are simply trapped on the program.

18 And there are other districts. I have to
19 refer to the list. I think Paramount Unified in
20 Los Angeles County is another one.

21 Q With regard to the second category of
22 students on page 66, do you have any districts in mind
23 where students would fall into that category?

24 A As we have discussed in response to several
25 of your other questions, in order to participate in

1 do know that a number of districts have gotten off the
2 operational grant program.

3 The reason they have gotten off that
4 program is because the state has allowed the program
5 to become a travesty of the promises that was made.

6 The operational grant program said if you
7 give up eligibility, we'll pay a certain amount of
8 money. The state is not paying that amount of money.
9 I think this year on average districts got 21 cents of
10 the dollars promised.

11 So because you're giving up a hundred
12 percent of your eligibility and getting 20 cents on
13 the dollar, these districts are slowly choking to
14 death because of the state's inaction in this respect.
15 That's why they are getting off.

16 The other aspect is year round programs are
17 demonstrably inferior to non-year around programs.
18 That's multi-practice year around programs.

19 So districts are, number one, trying to
20 improve education, they are being shortchanged
21 incredibly. 80 percent deficit funding is just
22 ridiculous.

23 And finally, they really are trying to
24 improve their conditions. They are getting no help
25 from the state. So because the state broke its

1 the state program a district has to provide their 50
2 percent of the funding and has had to front-load all
3 the costs of applying. And we discussed that at
4 length yesterday and the day before.

5 This, I don't have a specific list of
6 districts in mind. But any district that does not
7 have the money, that cannot pass a bond or doesn't
8 meet the financial hardship criteria, it is really
9 trapped between a rock and a hard place. They can't
10 fix their facilities. They can't apply for state
11 money. What do they do?

12 This is a very real category of districts
13 out there. It's not my role within the scope of this
14 expert report to develop that list of districts.

15 Q In footnote 28 on page 66 in the last
16 sentence where you discuss the criteria for matching
17 funds and you mention the criteria of the district
18 having a bond election within four years and receiving
19 at least 50 percent plus one vote, do you have any
20 criticisms of that requirement?

21 A Um, the criticisms of the requirement that
22 they attempt a bond issue? No.

23 Q And that they receive at least 50 percent
24 plus one vote?

25 A No. I believe and have testified for many

1 years that local participation is essential, and a
2 school district needs to position itself to go out and
3 ask its local voters.

4 What is troublesome is that some school
5 districts, due to accidents of history and boundaries
6 have an extremely hard time passing a bond election.

7 I'm reminded of Paris Elementary School
8 District in Riverside County. It's a small rural,
9 relatively poor district that is almost completely
10 surrounded by retirement communities. So the voter
11 block are elderly people living in retirement
12 communities that exclude children. They get to vote
13 on whether the kids in the middle of the district get
14 to have a new school. That's warped.

15 In other communities, California voters
16 have shown their support of their school districts,
17 but there are these unusual circumstances where it's
18 incredibly hard to even get to 35 percent yes because
19 of the demographics and population mix of the
20 communities that happens to fall within the district
21 boundaries.

22 Q In the last category of students on page 66
23 of your report where you say that the school is not
24 eligible for modernization funds because the school
25 has already received modernization funds in the past,

1 districts that will qualify for financial hardship?

2 MR. ELIASBERG: Objection. Vague and
3 ambiguous.

4 THE WITNESS: I'm sorry. We may have a
5 different copy here.

6 The top bullet on page 67 reads as follows:
7 "Again, the discussion is how the new Bond
8 Appropriation 47 will not address certain classes of
9 needs for certain students." And on the top of page
10 67 it says, "students in schools that are in such poor
11 condition that the modernization funds which do not
12 vary based on the actual facilities need at a school
13 will be insufficient to remedy all the serious
14 problems at the school."

15 That has nothing to do with financial
16 hardship. Financial hardship only says whether you
17 can access local funds or not or whether the state
18 needs to provide that half of the balance.

19 In that last answer I misspoke a little
20 bit. I said the local half of the balance. You and I
21 both know it's not half. It's the 40 percent
22 requirement, not 50 percent. So it should be 40
23 percent requirement.

24 Q MR. SEFERIAN: On the bottom of page 67,
25 in the last paragraph, you performed some calculation

1 is it correct that the school could receive
2 modernization funds for particular buildings that had
3 not been previously modernized?

4 A Um, perhaps the statement in bullet four on
5 page 66 is a little ambiguous. Funding is granted
6 building by building. We said the school is
7 modernized if a particular building had never been
8 modernized would be eligible. I think that's a
9 hypothetical construct that may occur.

10 The essence of the message in bullet four
11 is that if the district had received modernization
12 money in the past that school is locked out of the
13 program even if they have demonstrable needs today.

14 And that's the inequity that is being
15 highlighted in bullet four; the fact that it was
16 modernized a decade ago, whatever the period of time,
17 you're now barred from the modernization program
18 whether you have needs or not.

19 So yesterday we talked about a needs-based
20 program. This is an example of a case where there
21 might be very obviously an apparent need but there is
22 no access to state funding.

23 Q In the first category of students listed on
24 the top of page 67 of your report, would you agree
25 that some of the students in that category may attend

1 that we have already talked about involving the school
2 facilities' fingertip facts; correct?

3 A I believe we have talked about various
4 aspects of the fingertip facts document. The
5 calculation here we really haven't gone through in
6 detail. I don't know if you want to do it. There is
7 some conclusion drawn based on a calculation involving
8 that source of data.

9 Q Just in general, what were you conveying
10 with the calculations on page 67 and the top of 68?

11 A The paragraph starting on the bottom of
12 page 67 conveys that using the state's own somewhat
13 conservative estimates of need, the amount of
14 modernization funding is dramatically higher than has
15 been proposed.

16 If you go to the middle of page 68 it says
17 that using the fingertip facts which were a snapshot
18 in time a year ago, there is a 14-and-a-half billion
19 dollar need for modernization. That's just the
20 state's share.

21 We are looking at about seven billion
22 dollars worth of funding between Proposition 1A and
23 Proposition 47. So the conclusion that emerges is
24 that using the state's own conservative estimate,
25 there is at least a seven billion dollar shortfall

1 that no one has a plan to fix yet.
 2 We can quibble whether it's a hundred
 3 million this way or a hundred million that way.
 4 That's not the point. The point is there is a whole
 5 lot of need that has yet to be addressed. Just
 6 staggering amount of need.

7 Q What's the basis of your statement that
 8 it's a conservative estimate?

9 A I characterize the fingertip facts as
 10 conservative in that the Department of Education did
 11 not include allowance for getting students off of
 12 multi-track. It assumes the continuation of the
 13 current practices.

14 It also assumed a continuation of current
 15 level of enrollment in private schools. And otherwise
 16 trying to be as again the projections characterized by
 17 the Department of Education as conservative, we don't
 18 know future immigration patterns we don't know future
 19 economic patterns. They just did a straight line
 20 extrapolation based on Department of Finance
 21 calculations.

22 Q On page 68 of your report, in the first
 23 full paragraph where you begin a sentence "That the
 24 state's share modernization costs for middle school
 25 students in classrooms that are eligible for

1 "This tendency has been dampened somewhat by the
 2 requirements for districts receiving funding under
 3 Proposition 1A," what did you mean?

4 A The Section D that begins on page 62
 5 contains the sentence you're referring to talks about
 6 poor conditions in school are generally related to
 7 budgetary choices made at the local level.

8 The situation has arisen that when local
 9 districts were left all on their own to come up with
 10 an appropriate funding to maintain their schools and
 11 keep them in clean and well functioning condition,
 12 they were failing to do it.

13 Proposition 1A required that a minimum
 14 percentage, three percent, be set-aside for
 15 maintenance costs every year.

16 Three percent of the district's General
 17 Fund budget, that includes the deferred maintenance
 18 match. So this is a step forward by the state to
 19 require stable and ongoing funding to address needs
 20 before they became critical. Just a little
 21 illumination.

22 That was, if you will, a pet peeve of
 23 Senator Leroy Green, and it was one of the demands he
 24 made on the program. He was at the very last year of
 25 his term and he had been trying to get this in too for

1 modernization..."

2 Do you see that sentence?

3 A Yes.

4 Q Would you agree that the classrooms that
 5 are eligible for modernization, some of those
 6 classrooms do not necessarily need modernization?

7 MR. ELIASBERG: Objection. Vague.

8 THE WITNESS: Um, I believe you could
 9 identify a hypothetical case, yes.

10 I have not yet encountered the situation
 11 where a district meets the eligible criteria of having
 12 a 25-year-old classroom and has it in such good shape
 13 that they don't need the money and refuse the money.

14 Again, the fingertip facts are not counting
 15 every single middle school student as potentially
 16 eligible for modernization. They are only looking at
 17 those that attend buildings that the state believes,
 18 based on other calculations, that are eligible.

19 (Recess taken)

20 Q MR. SEFERIAN: If you would refer to page
 21 70 of your report, in the second paragraph on page 70,
 22 what do you mean by that sentence?

23 MR. ELIASBERG: Can you read which sentence
 24 specifically?

25 Q MR. SEFERIAN: On page 70 where you say,

1 years. He basically said he would not support the
 2 bill and would fight it unless they put that in. It
 3 was a personal effort by one legislator as much as any
 4 overall state policy.

5 Q In your opinion, should the amount required
 6 to be set aside by Proposition 1A be a greater amount
 7 than three percent?

8 A I have no opinion on that answer.

9 I am aware that some school districts are
 10 struggling to be able to fund the three percent
 11 requirement. I would accept it as a reasonable
 12 starting point and let's wait a couple years and
 13 evaluate how it's working.

14 But again, it was selected by other people
 15 and enacted into law and just accepted for what it is,
 16 and I haven't really questioned it.

17 Q If you would turn to page 75 of your
 18 report --

19 A (Complying)

20 Q -- near the end of the first full paragraph
 21 on Page 71 where you say, "It is very unlikely that a
 22 district that does not set aside one-half percent of
 23 its budget for differed maintenance is nevertheless
 24 satisfying the requirement that it satisfy three
 25 percent of its budget for maintenance of its

1 buildings."

2 In your opinion, what should be done to
3 address that situation?

4 A Um, it just seems extremely odd that a
5 district receiving state funding which requires that
6 it put three percent of its money into budget or in
7 maintenance, of which one-half percent can be deferred
8 maintenance match, did not fully fund their program.
9 I don't know the circumstances.

10 I do think, as indicated in that paragraph,
11 it's something that deserves a little further inquiry
12 by somebody at the state, either in the Fiscal Branch,
13 Department of Education or in the Office of Public
14 School Construction.

15 Q At the end of that paragraph you say, "When
16 I raise the issue with staff of the OPSC, they said
17 they would look into it.

18 On Page 71 of your report, how was the
19 issue raised of the staff of the OPSC?

20 A I called the staff member in charge of that
21 and asked him. Known him for many years. He's a very
22 good guy.

23 Q What is his name?

24 A Brian B-r-e-a-k-s.

25 Q Can you describe what was the result of

1 expectancy between 25 and 50 years.

2 So if you're a prudent manager of your
3 facilities you'll be setting aside a significant
4 amount of funding.

5 The three percent requirement refers to
6 school district's operating budget. There is
7 replacement costs of your building inventory, which is
8 a dramatically higher number.

9 And what this report by the National
10 Research Counsel -- again, nationwide, very credible
11 group -- is suggesting, that a proper building
12 management and stewardship program would invest
13 significantly to accumulate the funds over time needed
14 to do maintenance as the need came up, do major
15 maintenance as those periodic needs arose and finally
16 do major overhaul or replacement when the asset was
17 fully depleted.

18 Q Are you aware of any data regarding the
19 amount set aside for periodic repairs by California
20 schools as a percentage of the replacement costs of
21 the buildings?

22 A No, I'm not aware if that calculation has
23 been made. It's an intriguing calculation, and I
24 would love to see the report, but I'm not aware it's
25 been done by anybody.

1 your -- was that a telephone conversation? What was
2 it?

3 A Yes.

4 Q What was the result of your conversation
5 with Mr. Breaks?

6 A He said he hadn't thought about it in that
7 context, but yes, it did seem extremely odd and that
8 he did not have immediate access to the information,
9 but that he would look into it and that we should talk
10 about it the next time we ran into each other.

11 Q Did you discuss that issue with Mr. Breaks
12 at a later date?

13 A I haven't seen him lately. I'll see him at
14 the end of this month.

15 Q In the second full paragraph on Page 71,
16 what did you mean when you said at the end of that
17 paragraph, "a level of support almost never seen in
18 California schools?"

19 A The paragraph you're referring to on page
20 71 is discussing a report prepared by the National
21 Research Counsel that said a prudent building manager
22 would put between two and four percent of the
23 replacement cost in maintenance and basically a
24 sinking fund for replacement of your building. That
25 suggests that a normal public building has a life

1 Q In your opinion, should the state require
2 set asides based upon replacement costs instead of a
3 proportion of the general budget of the school
4 district?

5 A As we discussed at length yesterday, both
6 the joint working group of the master plan for
7 education and the legislative analysts have
8 recommended that there be a significant reform in the
9 way major maintenance and building replacement is
10 funded in California. What you're proposing in your
11 question could be an element of that.

12 What I would have to do is look at the
13 totality of the recommendation. Second of all, just
14 imposing a new major financial commitment on school
15 districts today would require them to lay off
16 teachers, not buy textbooks or do something else.
17 What we are looking for would be a systematic change
18 in the funding flow and the set aside requirements.

19 Right now the state periodically will sell
20 a very large bond measure and then use tax revenue
21 over many years to pay back those bonds. What the
22 legislative analysis is proposing is that that money
23 be allocated on a timely basis rather than always
24 paying off bonds for last year's problem to try and
25 get ahead of this problem. But as we also discussed

1 yesterday, the whole system depends on everybody
2 catching up to an even starting point before you
3 change systems.

4 Q At the bottom of Page 71 you have a heading
5 "State Withholds Facilities Funding to Punish Previous
6 Financial Mismanagement."

7 Then at the end of the second paragraph of
8 that section you state, "Financial misdeeds deserve
9 sanctions. However, the collateral damage here
10 involves innocent children, not the guilty grownups."

11 What is your opinion about the sanctions
12 that should be imposed in the event of financial
13 misdeeds such as you were discussing in that section
14 of your report?

15 A I think the sentence at the bottom of page
16 71 and continuing on 72 kind of speaks for itself.

17 I think it's just really criminal to punish
18 innocent school kids because a former
19 superintendent who is now getting a paycheck from
20 another school district failed to carry out the state
21 law. The burden of the sanction is falling on
22 innocent people, whereas the guilty administrators
23 just apply and get another job somewhere else and keep
24 going.

25 I acknowledge that some form of sanctions

1 clippings, reports by state agencies and other
2 resource documents from the sources and gathered them
3 together for the purpose of preparing your report?

4 A The articles cited here, many of them came
5 from my personal collection. I have far too many
6 papers in my office going back many many years. Some
7 of these were provided by other people. And I would
8 have a difficult time listing some of the resources.
9 Copies of some of these articles were provided by the
10 ACLU office or they gave me a copy of the original
11 article.

12 Q Was there anyone else other than the
13 Plaintiffs' attorneys who provided you with the
14 articles and reports cited in the section of your
15 report that begins on page 72?

16 A I don't believe so.

17 Again, I have a large personal collection
18 of news articles relating to school facilities going
19 back many many years. I have spent several days in
20 the university library going through archives and
21 microfilms. Just the old logs. All the stuff is out
22 there. Fortunately, there are still some good
23 research libraries around.

24 And just to expand on that, the FCMA, the
25 web site, has a button to click on it that lists news

1 probably are appropriate. But the burden here is
2 falling on those who had nothing to do with the
3 problem other than suffering under the consequences.
4 That's the deficiency in the state's response to this
5 unfortunate situation.

6 Q Do you have any opinion about what form the
7 appropriate sanctions should be in that situation?

8 A No, that's a financial management issue.
9 You should better ask people in the Department of
10 Education or some other context.

11 Q If you turn to page 72 of your report
12 please --

13 A (Complying)

14 Q -- that page of your report there is a
15 heading, "Articles, Citations and Discussion of
16 Individual School Districts." And in that section you
17 discuss newspaper clippings, reports by state agencies
18 and other resource documents.

19 In that section of your report did you
20 compile those newspaper clippings reports and other
21 resource documents?

22 A I'm sorry. "Compile?" How do you mean
23 "compile?"

24 Q With regard to that section beginning on
25 page 72, are you the person who obtained the newspaper

1 headlines relating to school facilities. So, and
2 which is something I check almost every day to keep
3 current on facility issues around the state of
4 California.

5 They have another button for people
6 interested in financial issues and another one on
7 personnel issues. So you get to focus your research.

8 Somebody out there at the Department of
9 Education compiles news articles from literally the
10 entire state of California. So it's very easy now in
11 the Internet age to keep up with news from literally
12 the entire state; just one click of the web site,
13 there you are.

14 Q On the bottom of page 72 of your report, in
15 the footnote, you state, "I have not verified the
16 content of all of these newspaper articles."

17 Are you aware of any articles that were
18 cited in this section of your report that begins on
19 page 72 that you did verify the content for?

20 A Again, I would have to look through the
21 list a little more thoroughly. I have driven out and
22 personally observed conditions in some of these
23 schools that are cited here. Just again, it's part of
24 my due diligence.

25 But not all the articles, no, I have not

1 done that. But some of the articles, yes, I have
2 physically visited the site and observed the
3 conditions that are very consistent with those
4 described in the news report, even though in some
5 cases the news report is several years old. The same
6 conditions are obviously apparent from the public
7 streets at the edge of the property.

8 Q As you sit here now, can you recall any
9 specific conditions that you verified for this case
10 that were cited in Section 9 of your report?

11 MR. ELIASBERG: You should take the time to
12 look at the report.

13 THE WITNESS: It's a pretty broad question.
14 But let me hit on a couple of these.

15 I visited Franklin High School in
16 Los Angeles. Again, it's immediately apparent when
17 you pull up to the front door that there is a problem
18 there.

19 Q MR. SEFERIAN: Did you visit that Franklin
20 High School specifically for this case?

21 A Yes, as part of the follow up here just to
22 verify what was going on today, work was in progress
23 at that school. I could see work being done in
24 portions of the campus, but clearly there was a
25 maintenance need at that school.

1 your answer?

2 A Are there other schools? Again, visiting
3 schools is part of my daily work. So as far as
4 schools that are named in this expert report, no.

5 But I continually visit other schools that
6 are operating in the state of California. That is my
7 day-to-day work so -- I'm in schools probably three
8 days a week, if not more.

9 Q Do you recall any other schools you visited
10 apart from your regular work just for the purposes of
11 this case, other than the ones you have just
12 mentioned?

13 A No.

14 Q Over what time period did you visit those
15 schools for the purpose of this case; the schools that
16 you visited for the purpose of this case?

17 A In 2000, late 2000, 2001 and early 2002.
18 Let's say all of 2002. I went by Helms last fall.
19 That's late 2002.

20 Q Regarding the schools that you visited for
21 this case, how many times did you visit each school?

22 A Just once.

23 In the case of Oakland, I had done previous
24 work there and was generally familiar with the school
25 situation. Also, Oakland, a very compact city, it's

1 Bill Boyarsky -- B-o-y-a-r-s-k-y -- is a
2 very well known reporter in Los Angeles, and based on
3 his article I went by both Jefferson and Fremont High
4 School in Los Angeles.

5 In Oakland, Simmons Junior High. Jefferson
6 Elementary School. Lazear Elementary School. And
7 Fremont High School in Oakland. Which I visited on
8 several occasions. Garfield Elementary School in
9 Oakland. Stonehurst Elementary School in Oakland.

10 Um, Compton High School in Compton.

11 And San Francisco Malcom X Elementary
12 School.

13 And Redding Elementary School.

14 And then in West Contra Costa Unified
15 School District, Helms Junior High.

16 And there have been others, but I have been
17 busy. I haven't had time to do too many tours, so we
18 will stop there.

19 Q Did you visit all the schools that you just
20 mentioned in your answer specifically in connection
21 with your work in this case?

22 A Yes.

23 Q Are there any other schools that you
24 visited specifically in your work for this case that
25 you can recall now that you did not just mention in

1 not hard to go from school to school to school. They
2 are all fairly close together.

3 Q When you visited schools that you looked at
4 for this case, can you describe what you did at each
5 school generally?

6 A Because the time of day varied so much,
7 it's hard to describe each one. Sometimes it was
8 simply a matter of stopping on the public street
9 adjacent to the school, getting out and looking and
10 observing the general conditions of the campus.

11 I am trying to think in the case of
12 Stonehurst I actually went up to the office and asked
13 if I could look around. And most school personnel
14 want to know who you are and why you are there. But
15 they are used to seeing visitors. But generally it
16 was not to be intrusive or to burden the school. They
17 are very busy people at these schools.

18 Q Regarding the schools that you visited just
19 for this case, approximately how long did you spend at
20 each school?

21 A No more than 30 minutes.

22 Q I would like to ask you to refer back to
23 page 2 of your report --

24 A (Complying)

25 Q -- Section 2, "Listed Scope of Assignment."

1 A Uh-hum.
2 Q Does that section of your report, "Scope of
3 Assignment," state the entire scope of your assignment
4 in this case?

5 A Section 2, beginning on page 2, says the
6 scope of assignment I have been asked by the
7 Plaintiffs in the Williams case to offer opinions on
8 the following subjects, and then it lists two
9 subjects. This report does express the opinions
10 requested.

11 Q Are there any opinions that you formed in
12 this case that are not contained in your report or
13 been discussed in your deposition?

14 A I'm sorry. That's pretty vague.

15 Q I'll rephrase it.

16 Have you formed any opinions in this case
17 that have not been expressed either in your expert
18 report in this case or during your deposition in this
19 case?

20 A I think the expert report contains an
21 accurate representation of my opinions.

22 There are many tangents and extensions we
23 could go on to for days and days and days. But the
24 questioned scope of work and opinions in this case are
25 contained in the expert report and illustrated and

1 (Defendants' Exhibit 5
2 was marked for identification)

3 Q MR. SEFERIAN: Do you recognize the
4 document that is marked as Exhibit 5?

5 A This appears to be the GAO report from
6 1996. I would have to examine each page, but it
7 appears to be the report.

8 Q Is what's been marked as Exhibit 5, does
9 that appear to you to be what was referenced by you on
10 page 6 of your report?

11 A Yes.

12 (Off-the-record discussion)

13 MR. SEFERIAN: We have had a brief
14 discussion off the record. And is it a fair
15 representation of our discussion that the Plaintiffs
16 have agreed to provide a supplemental bibliography of
17 Mr. Corley's report with regard to any of the
18 citations with respect to which the Defendants have a
19 request about the exact document that's being cited.

20 Is that accurate?

21 MR. ELIASBERG: That's a totally accurate
22 representation.

23 I want to make clear that our willingness
24 to do so is not to suggest in any way you cannot read
25 Mr. Corley's report and citations in the report and

1 discussed in this deposition.

2 My entire career involves school
3 facilities, so it's hard to pull out this one little
4 chunk. But know this is a complete statement unless
5 there is another question you have.

6 Q No. I was just trying to make sure that
7 you didn't have any other opinions than what you have
8 written in your expert report and what you have talked
9 about in your deposition in this case.

10 A Not that are relevant to this case.

11 Q Was it within the scope of your assignment
12 in this case to design one or more solutions to
13 unusually poor facilities conditions in California?

14 A No. The scope of work as defined on page 2
15 was to discuss the prevalence and then the
16 circumstances, but not to get into remedy.

17 MR. SEFERIAN: If you would please turn to
18 page 6 of your report --

19 THE WITNESS: Uh-hum.

20 MR. SEFERIAN: -- in the first full
21 paragraph on page 6 you reference "General Accounting
22 Office Report." I would like to show you a document
23 and I'll ask the court reporter to mark that document
24 as the next exhibit in order.

25 ///

1 know exactly what he's relied on and would be able to
2 ensure that we have produced the materials that we
3 were required to produce under the pre-trial order.

4 I'm more than happy to avoid any confusion
5 and supplement the bibliography with those
6 contentions.

7 MR. SEFERIAN: Thank you.

8 MR. ELIASBERG: Mr. Corley may not be so
9 happy to do that. But we will make sure it gets done
10 anyway.

11 Q MR. SEFERIAN: Further down on page 6 of
12 your report you have a quotation from Superintendent
13 of Public Instruction, Delane Easton?

14 A Can you more clear on which citation?

15 Q On page 6 of your report you have a
16 quotation, "We can't have high quality schools if we
17 have crummy, run down facilities housing a third of
18 our students as we have today."

19 Do you see that?

20 A Yes.

21 Q Do you know the context in which that
22 remark was made?

23 MR. ELIASBERG: Objection. Vague.

24 THE WITNESS: I do not know the context in
25 which the reporter heard that.

1 I do -- this quote came from an article
2 that was published prominently in the Sacramento Bee
3 in August 2001. The discussion of which involved
4 school facilities' conditions in California.

5 So my use of this is linked to the news
6 article which was very much on point with this case.
7 I believe the quote speaks for itself.

8 Q MR. SEFERIAN: Referring again to the
9 quote on page 6 of your report --

10 MR. ELIASBERG: The Easton quote?

11 Q MR. SEFERIAN: The quote from the
12 Sacramento Bee on page 6 of your report, do you know
13 what the basis was for the reference to "a third of
14 our students?"

15 MR. ELIASBERG: Objection, to the extent it
16 calls for speculation.

17 THE WITNESS: I'm not positive what
18 Mrs. Easton had in mind. However, as State
19 Superintendent of Public Instruction she was fully
20 aware of how many students are in California schools
21 and is fully aware of the implications of your comment
22 that is quoted here.

23 She was a very experienced legislator, had
24 many years experience on the Education Committee, had
25 years of experience in that job and toured the state

1 what it is.

2 It is clearly a generalized statement. She
3 is not giving a precise percentage or a tenth of a
4 percent or anything like that. About a third of the
5 kids attend schools that are "run down" or "crummy" as
6 she chooses to use those terms.

7 I don't know the exact basis upon which she
8 picked that number. But other data presented in this
9 section seems to bear out that it is a reasonable
10 estimate of the number of schools and kids that are
11 affected by inferior facilities.

12 Q Have you ever spoken to Ms. Easton about
13 the remark cited from the Sacramento Bee on page 6 of
14 your report?

15 A No.

16 Q Do you have any personal knowledge about
17 what Ms. Easton meant by "crummy" in the quote on page
18 6 of your report?

19 A No, I don't have any personal knowledge of
20 that.

21 Q In the last sentence on page 6 of your
22 report you cite the legislative analyst document;
23 isn't that correct?

24 A That's the last sentence in that same
25 paragraph?

1 widely, visiting schools all over the state. I give
2 great credibility to her comments.

3 Q MR. SEFERIAN: Do you have any personal
4 knowledge about what the basis of the statement "a
5 third of our students" was in the quote you've cited
6 on page 6 of your report in the Sacramento Bee?

7 A Again, I believe the quote speaks for
8 itself.

9 Ms. Easton, the State Superintendent of
10 Public Instruction, referring to one-third of all the
11 students in California, which would be approximately
12 two million school children. That's the only
13 implication one can draw from that statement.

14 Q Do you have any personal knowledge about
15 what the basis was in the quote you have cited on page
16 6 of your report in the Sacramento Bee for the part of
17 the quote, "the facilities housing a third of our
18 students." I'm talking about the portion about the
19 number "a third of our students."

20 A Um, I don't have any insight into the
21 workings of Ms Easton's mind. I just am aware that by
22 her position and by her many years of experience in
23 the field and by her personal credibility and her
24 personal integrity, which is widely known throughout
25 the state of California, I accept her statement for

1 Q Yes.

2 A Yes.

3 MR. SEFERIAN: I would like to show you a
4 document which I'm ask the court reporter to mark as
5 the next exhibit.

6 (Defendants' Exhibit 6
7 was marked for identification)

8 Q MR. SEFERIAN: Is the document that has
9 been marked as Exhibit 6 the legislative analyst
10 document that was cited at the end of the first full
11 paragraph on page 6 of your expert report?

12 A Exhibit 6 appears to be the same report,
13 yes.

14 Q Do you know what the basis for the
15 statement was in the legislative analyst's report that
16 you quoted on page 6 of your report?

17 MR. ELIASBERG: Just to the extent it may
18 call for speculation.

19 THE WITNESS: I believe you're referring to
20 the sentence on page 2 that says, "Despite significant
21 sums raised for school construction in recent years,
22 about one in three California students attended an
23 overcrowded school or one in need of significant
24 modernization."

25 I personally don't know how the legislative

1 analysts came up with that piece of information. I'm
2 aware of the schedule and knowledge of the people who
3 work in that office. They have a rigorous editing and
4 quite high quality control on their own conclusions.
5 So I believe that it would be based upon research of
6 some nature, some extent of which I'm not personally
7 familiar.

8 But the legislative analyst has a
9 reputation for integrity and accuracy and
10 impartiality, so I tend to give credibility to the
11 findings and conclusions.

12 There is documentation contained in this
13 report that does support that statement; that
14 conclusory statement.

15 Q Are there any --

16 What documentation are you referring to in
17 that last answer?

18 A The body of the report that I have directed
19 as Exhibit 6.

20 I haven't read this for more than a year.
21 I would have to, we would have to take a break and
22 re-read it to highlight those sections.

23 But I did read this report when it came out
24 and in preparation of this report. I agree with their
25 general findings. Not in every word on every page.

1 quality survey firm, and they do a very high quality
2 analysis of the data from all different angles and
3 perspectives.

4 They cross-tabbed each of the variables,
5 many of the variables, and produced summary table
6 after summary table looking at responses by different
7 factors. It was a very impressive report. It was
8 also extremely dry and tedious to read. But it was
9 impressive of the amount of analysis.

10 Q Were you involved at all in the preparation
11 of the survey by the pollster Louis Harris on page 6
12 of your report?

13 A No.

14 Q In the last paragraph on page 6 of your
15 report you mentioned a question that asked teachers to
16 rate the facility as one of the following. Then you
17 list "excellent, good, fair or poor."

18 Is that question you were referring to
19 contained in the document we have marked as Exhibit 7,
20 and is it contained within question 9 B of Exhibit 7?

21 MR. ELIASBERG: In what question, Tony?

22 Q MR. SEFERIAN: 9 B.

23 A To answer your question I would have to do
24 additional reading and review here. I'm not sure
25 precisely which question in this summary document

1 But the general conclusions are, appear very well
2 researched and documented and supported.

3 Q In the last paragraph on page 6 of your
4 report you refer to -- in the last paragraph on page 6
5 of your report you refer to a survey by pollster Louis
6 Harris, and a number of questions that teachers were
7 asked about their schools.

8 Does Exhibit 7 contain the questions that
9 you were referring to in the first sentence of the
10 last paragraph on page 6 of your report?

11 A In response to your question I have to say
12 that the Harris survey that's referred to on page 6,
13 it was a fairly lengthy survey. I have not looked at
14 it in many months and I would have to actually compare
15 the document you provided as number 7 with the source
16 document I used to write that paragraph. But it
17 appears to be the same and the questions do appear to
18 be the same as I recall from that report.

19 (Defendants' Exhibit 7
20 was marked for identification)

21 Q MR. SEFERIAN: What do you mean when you
22 said "source document?"

23 A Um, I have a copy of the complete report
24 and analysis which is several inches thick. It's a
25 very detailed -- this is a nationally known high

1 links over here.

2 I would simply have to do a little more
3 reading to put two and two together.

4 This is a different format than I used
5 writing this section. So although the data I presume
6 is identical, it's simply presented differently. And
7 you're asking about a specific item, and I would have
8 to take a few minutes and dnd read through it again.

9 Q Would you please take a moment and review
10 that and see if that allows you to answer the
11 question?

12 A Certainly.

13 MR. ELIASBERG: Have you asked him if he's
14 ever seen this before?

15 MR. SEFERIAN: I don't know if I asked him
16 that. I think I asked him if that document was
17 related to the survey cited on page 6.

18 THE WITNESS: Could you please restate the
19 question and we will try again now that I have had a
20 chance to look at the detail.

21 Q MR. SEFERIAN: Let me back up one second.

22 Before today, have you seen the document
23 that's been marked as Exhibit 7?

24 A I have to be completely honest and say I do
25 not recognize this version of the document.

1 The questions in here are familiar and I
2 believe were part of the document that I did refer to.
3 It was probably an expanded version where this appears
4 to be just a summary of the questions.

5 This document may have been contained in
6 the two inches of paper that I went through and I
7 simply don't recall it. My focus was on the
8 conclusions rather than the methodology.

9 Q Where are those documents located now that
10 you referred to with regard to the survey by pollster
11 Louis Harris?

12 A Probably in a file cabinet in my office in
13 Ventura.

14 I was provided a copy and it took quite a
15 while to slog through all the data. It's a very thick
16 report with very tiny little typing on it, but there
17 is a lot of good data in it.

18 As you can see, it's eight pages of
19 questions that were cross-tabbed many different ways.
20 So it was a very thorough and robust analysis.

21 Q Does Exhibit 7 contain the question that
22 you're referring to in the last paragraph on page 6 of
23 your report that asked teachers to rate their
24 facilities as one of the following: excellent, good,
25 only fair or poor."

1 Exhibit 7?

2 A Um, in all candor, Tony, I would have to go
3 back to the original document. Of you have handed me
4 a summary of the questions. And I believe you are
5 correct, but I can't certify one way with all
6 certainty or the other.

7 This appears to be the question. But
8 again, I would have to look at it in the context of
9 the source document. You have handed me a summary of
10 the questions, and I off the top of my head, sitting
11 here today, referring back six months in time, I can't
12 say it's identical.

13 I just -- is there a more specific question
14 that you have?

15 Q My question is: Do you see on Exhibit 7
16 the question that you're referring to in the last
17 paragraph of your report where you -- page 6 of your
18 report where you mentioned a question asked teachers
19 to rate their facilities?

20 Do you see that question somewhere
21 contained in Exhibit 7?

22 MR. ELIASBERG: Asked and answered.

23 THE WITNESS: I believe that the question
24 that led to the statement on the bottom of page 6 of
25 the expert report is the same as the question 9 A1 on

1 A I would have to double check to verify, but
2 it is my belief that question 9, which appears on page
3 4 of Exhibit 7, is the question that led to the
4 summary table you see right here.

5 (Off-the-record discussion)

6 Q MR. SEFERIAN: Is the question that you're
7 referring to from the survey by the pollster
8 Louis Harris in the last paragraph of page 6 of your
9 report the question that's labeled "9 A1/9 B1" on
10 page 4 of Exhibit 7?

11 A Um, it is my understanding from Exhibit 7
12 that question 9 or question 9 A is a description of
13 how teachers felt about the school they are now
14 teaching at.

15 Question 9 B is about their views on future
16 conditions. "5: Are you optimistic or not about the
17 future?" The statement in the expert report refers
18 back to 9 or 9 A. It appears to be labeled
19 differently. And I'm pretty sure it's the question
20 that's shown here in the table as question 9 A, which
21 is "current conditions, how do you rate the conditions
22 in your school now?"

23 Q Is the question that you referred to on
24 page 6 of your report, the question that says, "the
25 adequacy of physical facilities of your school" on

1 page 4 of Exhibit 7 in the seventh row down, which is
2 stated as "an adequacy of physical facilities in your
3 school." But again, I would have to go back and
4 actually look at the printout.

5 Again, I was looking at the results, not
6 the questions. And I just simply don't recall off the
7 top of my head if that precise wording was used in the
8 results section of Lou Harris' report. It's been many
9 months.

10 Q In the time that you have spent just during
11 the deposition, did you see any other question in
12 Exhibit 7 that you thought might also be the reference
13 on page 6 of your report regarding the questions that
14 teachers were asked about their facilities?

15 A You're asking me if any other part of this
16 78-page report you just handed me a few minutes ago
17 could be that. I don't believe so. But I would have
18 to study it in more depth to answer the question.

19 Clearly, this is the same survey. Clearly
20 these are the questions asked. Again, my report was
21 based on the conclusions and results, not the
22 questions. So there may be some vernacular
23 differences. I just can't answer at this point in
24 time. But it does appear to be the same survey.

25 Again, this is the front end, and I use the

1 back end after they had done the survey and tabulate
 2 the results. So I think we are splitting hairs here.
 3 I don't think there is a material difference.
 4 Q What is your general understanding about
 5 how the survey by the pollster Louis Harris referenced
 6 on page 6 of your report was conducted?
 7 MR. ELIASBERG: Objection. Lacks
 8 foundation. Speculation.
 9 MR. SEFERIAN: I will withdraw that.
 10 Q MR. SEFERIAN: Do you have an
 11 understanding about how the survey by the pollster
 12 Louis Harris reference on page 6 of your report was
 13 conducted in preparing to utilize the results of this
 14 survey?
 15 A I did read the introduction and overview of
 16 the Methodology section. The Methodology section is
 17 lengthy and complex and very technical.
 18 I read the lay person friendly overview
 19 part, and that section appeared to represent a fair,
 20 unbiased attempt to reach a large sample of California
 21 teachers and ask them a range of questions and then
 22 see how patterns developed among the responses from
 23 this large group of California teachers.
 24 Q The document you just referred to, did it
 25 have a name, or how do you reference that document or

1 group of documents?
 2 A It's a big thick report. It's the
 3 Methodology part. I can't do much more than that.
 4 It's been a long time.
 5 I do clearly recall reading it and
 6 concluding that it was credible, complete and appeared
 7 to be very professionally done.
 8 As far as did I focus on the intricate
 9 technicalities of how they called people or that, no.
 10 It appeared to be very well done.
 11 MR. SEFERIAN: Peter, has that been
 12 produced; what Mr. Corley just referred to?
 13 MR. ELIASBERG: Yes. There is a, we sent
 14 that stuff to him together. But it's, there is a
 15 bunch of cross-tabs. There is also a shorter report
 16 that lays out the methodology and a summary of some of
 17 the conclusions. Not the big cross-tabs, but yes, it
 18 has been produced.
 19 If you want during break I can call and
 20 give you the Bates numbers or whatever. Yeah, we did
 21 produce it.
 22 Q MR. SEFERIAN: Do you have any information
 23 about how the interviewers in the survey by the
 24 pollster Louis Harris referenced on page 6 of your
 25 report actually conducted the questioning of the

1 teachers?
 2 A It is my recollection upon reviewing the
 3 document that that is described in the Methodology
 4 section. I frankly did not pay a great deal of
 5 attention to it.
 6 Again, the overall recollection I have is
 7 that it was a very professional, well done, unbiased
 8 survey. I can't give you specifics on how it was
 9 actually conducted. I simply, it wasn't relevant to
 10 my section.
 11 The part we are discussing here is a very
 12 small part in a very smaller part of a big thick
 13 document, so I did not focus on the Harris survey. I
 14 did not base my overall conclusions and the essence of
 15 my report on Lou Harris' work. But I did review the
 16 document and I do have a general recollection that it
 17 was a very normal, professionally-conducted survey.
 18 Q Do you have any information about how the
 19 interviewers in the survey by the pollster
 20 Louis Harris conducted the questioning other than
 21 what's described in the Methodology section of the
 22 report you reviewed?
 23 A No.
 24 Q At any time did anyone ever tell you in
 25 connection with the survey by Louis Harris if the

1 interviewers of the teachers gave definitions for the
 2 terms that you've quoted on page 6 of your report;
 3 excellent, good, only fair or poor?
 4 A In direct response to your question, no one
 5 told me that. I believe, as is typical with a survey
 6 of this type, that terms are defined by the
 7 interviewer as you go through the survey.
 8 I have to state for the record, I don't
 9 have familiarity with teacher surveys. Most of my
 10 personal work with surveys of that type has been in
 11 voter preference surveys before school bond elections.
 12 Which have a very similar template and methodology.
 13 Generally, if not always, the interviewer
 14 is directed to define terms, to clarify terms as they
 15 go through. That's how you have a scientifically
 16 credible study.
 17 I was not involved with the Harris survey.
 18 I was not aware of its existence after it had been
 19 completed or published. Was no way contributing
 20 information to the outside of highway work. It was
 21 data after the report had been done.
 22 Q Do you know if the interviewers who
 23 conducted the survey by Louis Harris defined the terms
 24 excellent, good, only fair or poor when they were
 25 questioning the teachers in the survey?

1 MR. ELIASBERG: Asked and answered. He
2 just gave a one-minute answer on that question.

3 THE WITNESS: As stated in my previous
4 answer, no.

5 Q MR. SEFERIAN: Would it make any
6 difference to any of your opinions in this case or
7 your citation to the Louis Harris poll whether or not
8 the interviewers questioning the teachers gave
9 definitions of the terms excellent, good, only fair or
10 poor?

11 A Let me answer that by saying that the
12 survey you're asking questions about, the Lou Harris
13 survey, is not an essential component of my report.
14 If I had any doubts whatsoever about the survey, I
15 would not have used it.

16 I'm familiar with Lou Harris' firm. It's a
17 nationally recognized, absolutely respected firm.
18 Their methodology as described in the report I
19 reviewed seems to be very professional and coherent.
20 If I had any question about this being a biased or
21 unfair survey, I would not have used it.

22 As well as the intricate details by the
23 interviewers of the thousand plus teachers, I don't
24 have personal knowledge of how they conducted it, but
25 the overall survey -- nationally recognized, very

1 longstanding, prominent, professional survey firm.
2 I'm confident he would not risk his firm's reputation
3 on a poorly constructed model of a survey.

4 But no, I did not do any further research
5 into the details you're asking. Nor is this a
6 critical part of my report. It simply backs up at
7 least two other sources of data which indicate a
8 general tendency in the community of thinking about
9 this topic we are discussing.

10 (Recess taken)

11 Q MR. SEFERIAN: If I can ask to you refer
12 to page 7 of your report, the last paragraph on that
13 page --

14 A (Complying)

15 Q -- the last sentence of that paragraph,
16 which is on page 8 of your report, you have a
17 footnote. And in the footnote what were you referring
18 to when you used the term "these problems" in footnote
19 2?

20 A You're asking about the sentence that
21 begins at the extreme bottom of page 7 and continues
22 to the top of page 8. And this sentence is a summary
23 of the preceding conditions, and included in this
24 discussion are lack of access to restrooms, lack of
25 access to food at snack and lunchtimes, malfunctioning

1 classroom lighting, inadequate number of drinking
2 fountains, that is having a physical affect on
3 children. Inadequate numbers of bathrooms. And I
4 think that's pretty comprehensive. So the problems
5 are articulated in the proceeding paragraphs of that
6 section.

7 Q What is the basis for the statement in
8 footnote 2 of your report?

9 A It is my personal observation, based on
10 many years of visiting schools throughout California,
11 that the deteriorated conditions articulated on pages
12 7 and 8 tend to be more prevalent in urban settings
13 and in schools that are serving a minority or English
14 language learner populations. I'm not implying cause
15 as a result but only a description of the frequency of
16 occurrence.

17 Q Is the statement in footnote 2 of your
18 report based on any type of scientific methodology?

19 A The only science would be my personal
20 observations of the schools that I have seen.

21 There was no attempt made to do a statewide
22 survey, as we have mentioned several times, that would
23 be a good use for a comprehensive statewide database
24 which does not exist.

25 Q In the first full paragraph on page 8, in

1 the middle of the paragraph you write, "I believe
2 about one third of schools have one or more
3 non-insignificant facilities needs."

4 What is the basis of that statement?

5 A As described in this and other paragraphs
6 in the section you're referring to, this is a
7 statement of my personal conclusion based on my own
8 observations that about one-third of the schools have
9 some facility need.

10 It can be of different kinds. This is a,
11 and this observation concurs with the observations
12 presented on page 6 of the same report.

13 Q When you use the term "non-insignificant
14 facilities needs" in that sentence on page 8 of your
15 report, does "non-insignificant facilities needs" mean
16 the same as unusually poor condition, or is it a
17 different meaning?

18 A The following sentence on page 8 clarifies
19 that unusually poor is a subset, but is different than
20 the non-insignificant needs.

21 Q What is your definition of
22 "non-insignificant facilities needs" as used in that
23 sentence on page 8 of your report?

24 A The terminology refers to a facilities need
25 that is significant but need not be of crises

1 proportions.

2 It could be hallway light's burned out but

3 classroom lights are working. It's only a problem if

4 students and parents are on campus after dark.

5 It could be one toilet broken but not all

6 toilets broken. So it's an attempt to indicate that

7 the school campus has one or more needs which are

8 non-trivial, but are not threatening to the operation

9 of the entire campus. It's a need that needs to be

10 fixed.

11 Now, a piece of litter in the parking lot,

12 one light bulb burned out would be considered an

13 insignificant problem. That's a very minor

14 occurrence. But a row of lights burned out, many

15 manymany, many lightbulbs burned out, something of

16 that nature, would be different.

17 Q If you would turn to page 9 of your report,

18 what is the basis of the last sentence on page 9 of

19 your report? Is it the same basis that you based

20 footnote 2 on, or is it different?

21 MR. ELIASBERG: Can you just introduce the

22 sentence?

23 Q MR. SEFERIAN: Let me ask it this way.

24 What is the basis of the last sentence that

25 begins on page 9 of your report.

1 What is the basis for that statement?

2 A The statement you're questioning on page 9

3 is based upon my own personal observations of many

4 schools over many years in all parts of the state of

5 California.

6 I think it's unfortunate that the poorest

7 schools tend to be found in areas with the poorest and

8 most needy students. But that is a reality we have to

9 acknowledge in our current situation in California.

10 Q Was it within the scope of your work in

11 this case to estimate the presence of unusually poor

12 conditions among various student populations in

13 California?

14 MR. ELIASBERG: Vague as to "estimate."

15 THE WITNESS: The scope of work which we

16 discussed earlier did not include conducting such a

17 survey. What was part of this report was attempting

18 to determine causes of unusually poor conditions that

19 are observed throughout the state of California.

20 Q MR. SEFERIAN: If you would turn to page

21 11 of your report, and referring to the first full

22 sentence on page 11 of your report, are you familiar

23 with the methodology of the facilities appraisal in

24 the San Francisco Unified School District conducted by

25 Professor Macord? M-a-c-o-r-d.

1 A I am comprehensively familiar with his

2 methodology. His report did outline the manner in

3 which his study was conducted.

4 Q If you would turn to page 13 of your report

5 there is a section entitled "Evidence of Statewide

6 Existence of Health and Safety Problems in Schools."

7 Was it within the scope of your work in

8 this case to make an assessment of the statewide

9 existence of health and safety problems?

10 MR. ELIASBERG: Vague is to assessment of

11 scope.

12 THE WITNESS: The scope of work included an

13 overview of unusually poor conditions. And as defined

14 in this report and as used in this report, health and

15 safety problems are a key component of unusually poor

16 conditions.

17 It's logically impossible to label health

18 or safety threats to children as an acceptable

19 condition. So, therefore, schools experiencing health

20 and safety conditions as described beginning on page

21 13 are affiliated or included within the unusually

22 poor conditions that are described throughout the

23 report.

24 Q MR. SEFERIAN: Did you make any assessment

25 of the existence of just health and safety problems in

1 the public schools, the scope and location of the

2 problems?

3 MR. ELIASBERG: Objection. Compound.

4 THE WITNESS: It was beyond the scope of my

5 report to do a statewide assessment. However, I, in

6 preparing this report I did a little bit of research

7 on publicly available documents including the

8 Department of Health Services report which is

9 referenced on page 13. There was the Air Quality

10 Report. There was a piece of legislation that's, was

11 well researched which is reported in here.

12 So while it was beyond my personal scope of

13 work, other people with greater resources and access

14 to information had done the work, and those results

15 are summarized in my report.

16 Q Did you personally verify any of the

17 information regarding school conditions discussed in

18 pages 13 to 16 of your report?

19 A I did not, that -- I did not personally go

20 out and do it.

21 When the California Department of Health

22 Services determined that 30 some percent of the

23 schools had dangerous lead paint concerns, I didn't

24 feel it necessary to go out and validate their work.

25 Again, they are a credible statewide professional

1 group, and they appeared to have an adequate
2 methodology.

3 I did find the result startling that 31.8
4 percent of the schools tested had very significant
5 amounts of lead-based paints that was in the advanced
6 stages of deterioration. That's startling and
7 indicates that there may be a broader problem out
8 there than even I was ever aware of.

9 Q Would you turn to page 29 of your report.

10 A (Complying)

11 Q The second sentence of the first full
12 paragraph on page 29 you say, "The division of the
13 state architect provides planned review and
14 construction oversight similar to the usual role of a
15 local city or county building department and preempts
16 exercise of these duties by local officials."

17 What did you mean by "preempts exercise?"

18 A A school that is subject to planned review
19 and construction oversight by the division of the
20 state architect is exempt from local regulation on the
21 same issues. So by the education code requirement
22 that schools shall meet the requirements of the
23 division state architect, the logical outcome is that
24 they are exempted from review by local building
25 departments and local governing agencies.

1 Mr. Corley.

2 MR. ELIASBERG: And I had no objections to
3 his preserving whatever objections he wanted to make.

4 MR. SEFERIAN: If there is another day of
5 Mr. Corley's deposition, I would like to be included
6 in the scheduling for that deposition.

7 MR. ELIASBERG: I have no objection to
8 that. I certainly hope that we finish by then. But I
9 have no problem with including you on the schedule
10 discussions.

11 Q MR. SEFERIAN: Mr. Corley, will you refer
12 to page 30 of your report.

13 A Certainly.

14 Q Referring to the first sentence in the
15 first full paragraph on page 30 of your report, do you
16 believe that it's generally understood by school
17 districts in California that cleaning and operations
18 are supervised at the local level?

19 MR. ELIASBERG: Objection to the extent it
20 calls for speculation.

21 THE WITNESS: I believe that is the general
22 presumption for school districts in California, yes.

23 Q MR. SEFERIAN: Do you have any opinion
24 regarding whether or not cleaning and operations
25 should be supervised at the local level?

1 Q Do you have any criticism of that
2 preemption that the division of the architect preempts
3 exercise of planned review and construction or
4 oversight via local and city --

5 A I believe the system in California has
6 worked since '93, and in general I don't have
7 criticism of that. It is the latter sections, this
8 section, what you're referring to right now says that
9 the state is heavily and thoroughly involved in
10 planned review and construction. And then basically
11 abandons its role to oversee the operation of the
12 school facilities in which 6 million kids go to school
13 every single day. That's the essence of this report.

14 The fact is there are extensive regulations
15 and practices pre-construction and during
16 construction. It's post-occupancy that the system
17 seems to have a big hole.

18 (Lunch recess taken)

19 MR. HAJELA: Kevin is gone because there
20 was a discussion amongst counsel and it's extremely
21 unlikely that he would be able to do his questioning
22 today. To save him some time and the school district
23 some time, it was agreed that he could leave today and
24 he would have another day that is yet to be scheduled,
25 or half a day or whatever time is necessary to depose

1 A In response to your question, the
2 discussion and the expert report says that cleaning
3 and operations need to occur at the local level but
4 closest to where the job is being done.

5 What is absent in, the deficiency in our
6 current system is that there are no performance
7 standards or other standards by which the local
8 communities and students and teachers can evaluate the
9 work that is being done or any clear requirements as
10 to the adequacy of the work that is done.

11 Q If you'll refer to page three two of your
12 report --

13 A (Complying)

14 Q -- in the second sentence, on page 32, you
15 write, "Other state programs provide funding and
16 guidelines for major repairs and maintenance."

17 Which other state programs were you
18 referring to in that sentence?

19 A Primarily the deferred maintenance program.

20 Q Would you agree that the California
21 Department of Education has published and distributes
22 a guidebook for school districts on maintenance and
23 operation of school facilities?

24 A The Department of Education has produced a
25 book. I'm not sure if it's labeled a guidebook or

1 not.

2 It gives a general overview, but it is
3 deficient in not preparing or providing any standards
4 or practice guidance as to cleaning intervals,
5 cleanliness standards or other operational aspects.

6 Q What other operational aspects are you
7 referring to?

8 A Temperature in rooms, lighting in terms of
9 lumens, ventilation in terms of air changes, odors,
10 periodic testing of water to ensure that it's safe,
11 and related aspects.

12 Q If you'll refer to page 33 of your report,
13 in the second sentence of the second paragraph under
14 Section C, you state, "However, there are two major
15 problems with these standards."

16 Are there any other problems than the two
17 major problems you discuss in that section of your
18 report?

19 A Can you rephrase the question? I'm not
20 clear as to your direction.

21 The second full paragraph the second
22 sentence says, "However there are two major problems."

23 Do you mean in addition to the two that are
24 listed?

25 Q Yes.

1 MR. ELIASBERG: For the record, it might
2 help to make clear that that reference as to
3 regulations is about new construction of facilities.

4 THE WITNESS: You're asking about footnote
5 12 on page 34. Again, the reference here is to the
6 fairly detailed regulations that apply to new school
7 construction. And the text goes on to state that the
8 regulations have no mandatory affect on schools after
9 they are built.

10 I believe in most general terms it would be
11 reasonable to have regulations that would require that
12 the amenities and conditions in a brand new school be
13 continued for the life of the building. In other
14 words, if you have clean, accessible bathrooms the
15 first day the school opens that these bathrooms remain
16 unlocked and regularly cleaned and available to
17 students throughout the life of the school.

18 What's not acceptable is to build the
19 bathrooms and then allow the local officials to
20 padlock them and make them unavailable to students for
21 disciplinary reasons for lack of custodian staffing or
22 any other reason. If they are important enough to
23 require in a new construction setting, they are
24 important enough to require to be available to
25 students during the day.

1 A The reference to which you're asking says
2 that the education code and state regulation contains
3 some standards regarding school buildings. And then
4 there is a discussion of some inadequacies there.

5 I believe the general nature of the
6 discussion with these two items listed on page 33 and
7 the top of page 34 cover most of the area.

8 In addition, deficiency, if I had to
9 provide one, would be in the training and management
10 assistance to school districts.

11 Another one would be a lack of the, current
12 lack of a statewide monitoring and tracking system, in
13 other words, to make sure that they are getting
14 complied with and to evaluate how widespread they are.

15 And then the standards can be finally, I
16 can say the standard can be further refined to respond
17 to the special needs of special populations out there
18 such as kindergarten, students in primary, physically
19 and developmentally handicapped students and other
20 groups, preschool.

21 Q On page 34 of your report in the footnote
22 you refer to "regulations" and you say in part that
23 "the regulations are still deficient in some areas."

24 In what areas are those regulations that
25 you're referring to deficient?

1 Noting of course that reasonable actions to
2 protect students' safety are of course judgmental.
3 They may be locked during class periods and unlocked
4 during passing periods. But they can't be locked up
5 all day or weeks on end or some other effects that are
6 noted elsewhere in this report.

7 Q MR. SEFERIAN: Would you agree that on
8 page 34 of your report are some standards that apply
9 to schools after they have been built?

10 A Yes. Page 34 made an effort to compile the
11 standards that do exist. Some of them are
12 ridiculously vague and some of them are almost
13 unintelligible.

14 I'm baffled by the alternative to Education
15 Code 17576 that says schools shall have flush toilets.
16 I guess the alternative would be outhouses. While
17 it's part of the Education Code, we are attempting to
18 disclose there are some standards. But I'm not aware
19 of any schools, built in the last 25 years at least,
20 that lacked flush toilets. I suppose I could be
21 educated. But --

22 Q On page 34 of your report when you listed
23 selected sections that apply to schools after they
24 have been built, did you intend that to be an
25 exhaustive list of standards that apply to schools

1 after they had been built?

2 A As I have said in previous testimony, I'm
3 not an attorney or a legal scholar and I do not
4 represent that that is an exhaustive list.

5 This is, however, I made a diligent attempt
6 to go to through the facility-related sections in the
7 Education Code, and that is all I could come up with.

8 I do allow there may be other sections that
9 I overlooked. There are other sections that apply
10 exclusively to community colleges in the 80 thousand
11 series that are not listed here but they have no
12 bearing on K-12, but they are contained within the
13 Education Code. I read a lot of pages of the Ed Code,
14 and this is all I could come up with.

15 Q With reference to the first paragraph under
16 Section 2 on page 34 of your report, which goes on to
17 page 35, would you agree that there is a Title V
18 regulation that provides that governing boards,
19 superintendents, principals and teachers are
20 responsible for the sanitary, neat and clean condition
21 of the school premises?

22 A I'm sorry. I'm not sure which reference
23 you're -- which section you're referring to?

24 Q Section 630. I don't believe it's cited in
25 that section of your report.

1 My question is in general would you agree
2 that there is a Title V regulation that provides that
3 governing boards, superintendents, principals and
4 teachers are responsible for the sanitary, neat and
5 clean condition of the school premises?

6 A I'm not personally familiar as I sit here
7 today with that section. I do believe there is
8 wording of that type.

9 I would like to further state that the
10 essence of the entire section of the report is while
11 that may be on the books, the state does not monitor
12 or enforce that in any way. It's, it simply
13 broadcasts that requirement or authority or whatever
14 you want to call it out there and abandons the
15 students in the state to the whims of the local
16 officials. The problem is the lack of state follow
17 through, not the fact that they have words that
18 basically wash their hands of any future problems.

19 Q Would you agree that the actions of the
20 school district are controlled by State Education Code
21 and associated Title V of the California Code of
22 Regulations plus other general laws and requirements
23 which apply to public agencies?

24 MR. ELIASBERG: Objection. Vague and
25 objection to the extent it calls for a legal

1 conclusion.

2 THE WITNESS: Again, you're asking for a
3 legal conclusion. And I can't render a formal opinion
4 on that.

5 However, the Education Code is a permissive
6 code. So unless it's required or prohibited by
7 Education Code, again you're abandoned to the latitude
8 of the local officials.

9 Q MR. SEFERIAN: If you'll turn to page 35
10 of your report, please, on the bottom unit section
11 three A --

12 A (Complying)

13 Q -- and referring to the second sentence in
14 that paragraph, in your opinion should each school
15 district have the authority to identify and adopt its
16 own maintenance policies staffing ratios, budget
17 formulas and cleaning procedures?

18 MR. ELIASBERG: Compound.

19 THE WITNESS: This is very similar to a
20 question you asked a few minutes ago. Let me answer
21 again by saying that the hugely variable nature of
22 schools and communities in California suggests that
23 local control is good.

24 If you go down a couple of sentences it
25 also says that "absent some consistent statewide

1 standards this liberty to the local level allows
2 deficient facility conditions to occur."

3 The state lacks adequate standards, lacks
4 an oversight mechanism and lacks an enforcement
5 mechanism as attested to by both Duwayne Brooks and
6 Delane Easton in their deposition that were included
7 elsewhere in this report. Because of that the state
8 has allowed deficient conditions to persevere.

9 While local control is a good thing absent
10 some standard and parameters, it allows abuses to
11 incur, which ends up impeding the education of
12 students in the California school district. That is
13 the overriding role of the state that is not being
14 performed as of this time.

15 Q MR. SEFERIAN: What do you mean in the
16 last sentence of that same paragraph on page 35 of
17 your report, "The lack of standards from the state
18 level impedes school districts from evaluating
19 performance by staff and effectiveness of its internal
20 operations?"

21 A The vast majority of school superintendents
22 and the assistant superintendents are formal
23 educators. Not former, but former teachers who have
24 become administering educators. Very few of them
25 worked their way up through the custodial ranks and

1 many of them lack enough training, education or
2 benchmark standards in how clean a bathroom should be.

3 By not having some benchmark standards from
4 the state level it allows each and every district to
5 create an ad hoc set of assumptions. Some of which
6 are not monitored at local level and none of which are
7 monitored at a state wide level for consistency. It's
8 this deficiency by the state that's created the
9 problem.

10 It also just seems really odd that we have
11 a system that requires more than a thousand school
12 districts in county offices of education to reinvent
13 what should be from fairly consistent standards for
14 health and safety.

15 Nursing homes have standards. Barber shops
16 have standards. If you look at beautician sections of
17 the state law it tells you how often you have to wash
18 your combs. And embalming parlors have standards.
19 You name it, the state has many, many prescriptive
20 standards. Schools have nothing.

21 Q If you'll turn to page 36 of your report --

22 A (Complying)

23 Q -- and referring to the second full
24 paragraph on that page, in your opinion if a school
25 district develops inadequate standards, is that

1 elsewhere in this report.

2 Q Look on page 37 of your report.

3 A (Complying)

4 Q From the second sentence under heading No.
5 4 you write, "No other agency, state or local, has
6 been given responsibility or authority to monitor and
7 enforce conditions in schools."

8 Would you agree that the citation on page
9 34 of your report to Education Code Section 35229
10 gives authority to monitor conditions in schools?

11 MR. ELIASBERG: Compound. Calls for a
12 legal conclusion.

13 THE WITNESS: I'm not an attorney and I
14 can't comment on the legalities of this. But what I
15 will say, Education Code 35229 that is referenced on
16 page 34 does not require the governing board or the
17 superintendent to evaluate the schools. It merely
18 says you have to visit them and examine it carefully.
19 You can go out and say, wow, the bathroom is still
20 there.

21 I'm also unaware if this is a widely known
22 requirement. I don't believe the state monitors
23 whether this is done on an annual basis, and I don't
24 think there is any compilation of results from these
25 purported visits and examinations.

1 sufficient or is it also necessary to have a state
2 standard?

3 MR. ELIASBERG: Objection. Incomplete
4 hypothetical. Vague.

5 THE WITNESS: I think your question has
6 really gone to kind of the heart of the issue here is
7 how a school district would know it has developed an
8 adequate standard.

9 In the complete absence of state standards
10 or references a local district can develop a standard.
11 But we really have no way of saying whether it's
12 adequate or inadequate or applicable in one community
13 or a different community. Implied in that is that
14 there is a universally perceptible set of standards
15 for cleanliness and hygiene that should apply to
16 schools and other facilities.

17 The implication that a school district
18 could develop a standard is reasonable. The
19 implication that we know it's adequate lacks the
20 comparative nexus to any published broader standard.
21 So I would not know how they would know their standard
22 was adequate other than to ask themselves and agree
23 with themselves that it is.

24 And that's precisely the situation that led
25 to some of the extremely deficient conditions outlined

1 What's being discussed on page 37 is that
2 were the state to say the county health department
3 gets to inspect the school classrooms and kitchens,
4 there would be county-by-county standards. Right now
5 we have nothing other than the superintendent is
6 supposed to drop by once a year and look at things.
7 Education Code 35229 is so vague it's virtually
8 meaningless.

9 One would hope that the governing board or
10 superintendent would visit the schools. In the case
11 of Los Angeles Unified, with 700 plus schools, it's
12 physically impossible. But there are duties and
13 others to do it in place of the actual superintendent.

14 Q MR. SEFERIAN: Would you please turn to
15 page 41 of your report.

16 A (Complying)

17 Q Specifically Section P, Section E.

18 In the first sentence you write, "A more
19 comprehensive and vigorous system of state oversight
20 with respect to facility conditions in schools is
21 certainly feasible."

22 Was it within the scope of your work in
23 this case to prepare a model demonstrating that a more
24 comprehensive and vigorous system of state oversight
25 would be effective in improving facilities conditions

1 statewide?

2 MR. ELIASBERG: Objection. Vague as to
3 model.

4 THE WITNESS: When evaluating the need for
5 consistent standards and the role of the state it was
6 certainly a part of the chore to evaluate whether it
7 was at all physically or financially feasible.

8 If we turn a few more pages there is a,
9 quite a detailed analysis of how it's both feasible
10 and economically practical. So while it was not a
11 specific numbered item in the scope of work, it
12 clearly was implied and the results are included in
13 the expert report that you're examining at this time.

14 Q MR. SEFERIAN: In the work you prepared
15 for this case did you perform a detailed analysis
16 showing how a comprehensive and vigorous system of
17 state oversight with respect to facility conditions in
18 schools would be effective in improving facilities
19 conditions across the state?

20 MR. ELIASBERG: Objection. Vague.

21 THE WITNESS: I'm not clear on the level of
22 detail you require here.

23 If you go a few more pages in this report
24 in the same section it outlines a very feasible and
25 very economical system that would be minimally

1 discussion down to assumptions listed and quantified
2 and conclusions drawn based on that analysis.

3 So it is my professional opinion that the
4 protocol described here, which is minimally intrusive,
5 very economical and eminently feasible would alleviate
6 much of the problem.

7 I do not present it as a panacea or
8 solution to every problem in the state, but to address
9 that one entrenched problem, that could be a step that
10 the state could very feasibly take.

11 Q Are you aware of any research studies that
12 examine the extent to which the statewide system of
13 inspections improves the conditions of the public
14 school facilities in the state?

15 A As presented in the expert report, I had a
16 personal conversation with the, I believe the
17 associate director of the Maryland state program,
18 where he described first person how inspections are
19 conducted in that state.

20 He described how in the beginning of the
21 program, where extremely poor conditions were found in
22 the Baltimore public schools which motivated the
23 statewide program, that over time the continued
24 predictable inspection pattern has led to an
25 across-the-board increase in cleanliness, operational

1 intrusive on school districts that would accomplish
2 most of the oversight in terms of cleanliness that is
3 required.

4 That's one key area of deficiency. And it
5 would show that for a 30-minute visit every four years
6 the state could virtually assure compliance with
7 cleanliness requirements in its public schools.

8 30 minutes every four years, possibly a
9 million a year, is a trivial amount of money in time
10 when compared to the situations that are existing in
11 some schools today.

12 I don't mean to minimize a million dollars.
13 A million dollars is a lot of money. But the state
14 spends something like 40 billion dollars a year on
15 education. When you compare one million to 40 billion
16 it's not a great deal of money. It's less than the
17 rounding error in the state budget document.

18 Q MR. SEFERIAN: For your work in this case,
19 have you performed a detailed analysis examining how,
20 for example, a 30-minute visit every four years by the
21 state would improve compliance and conditions in
22 California public schools?

23 A Your question is somewhat vague in that
24 you're asking for detail. If you turn a few more
25 pages in the report there is quite a detailed

1 availability and general conditions in public schools
2 in the state of Maryland. They have a very small
3 staff and they do very infrequent visits, and yet they
4 have had a dramatic affect.

5 In addition, I have not gone out and done
6 more evaluation. I believe there is literature, I
7 have seen references to it but I have not pursued it.
8 But based on my own personal knowledge, based on my
9 own analysis and based on conversation with the
10 practitioner in a statewide system, it appears that
11 they are easily demonstrable results that would follow
12 from implementation of such a system in the state of
13 California.

14 Q From the work that you did for this case,
15 did you review any research studies that examined
16 whether a statewide system of facilities inspections
17 improves the conditions of public school facilities in
18 the state?

19 MR. ELIASBERG: Asked and answered.

20 THE WITNESS: I did not examine any
21 research studies. I'm not aware of any detailed
22 academic studies of the type you're proposing.

23 What we are dealing with is such a common
24 sense issue I can't think of any academic committing
25 to do potty checks in public schools. The underlying

1 problem is different than most academics study.

2 Q MR. SEFERIAN: Are you aware of any formal
3 evaluations of the system of public school inspections
4 in the state of Maryland?

5 A Yes.

6 MR. ELIASBERG: Objection as to vagueness
7 of "formal evaluation." You can answer.

8 THE WITNESS: I reviewed evaluation of the
9 program on the Maryland State Department of
10 Education's web site. That's how I got the phone
11 number for Mr. Abend, who is the associate director.

12 Then in speaking with him he indicated they
13 do annual reports, they do quarterly reports in-house
14 in the Department of Education and an annual report to
15 the legislature and governor. So there are
16 evaluations. And again, these are the practices in
17 the field in public schools in other states.

18 (Off-the-record discussion)

19 MR. SEFERIAN: Will you attempt to locate
20 that evaluation?

21 MR. ELIASBERG: Not a problem.

22 MR. SEFERIAN: We had a discussion off the
23 record where Plaintiffs' counsel agreed to attempt to
24 locate the evaluation that Mr. Corley referred to on
25 the State of Maryland's web site.

1 involving the Scottsdale school system, that forcibly
2 imposed statewide inspection on school districts due
3 to seriously deficient conditions in those schools.

4 Q Are you aware of any published evaluations
5 of the effectiveness of the statewide school
6 inspection programs in Florida or Ohio?

7 A As I responded to an earlier question from
8 you today, no, I have not conducted that research or
9 that investigation.

10 What's discussed here is a solution to
11 California's situation that again appears practical
12 and common sense based on my own personal knowledge
13 and observation of the conditions and situation in
14 California.

15 Q In the middle of that same paragraph on
16 page 42 there is a reference to "Abend, Maryland State
17 Department of Education 2001." Is that reference to
18 telephone calls that --

19 A The phone conversation we discussed
20 earlier, yes.

21 Q Can you relate the substance -- I know you
22 related part of it, but can you relate the general
23 substance of your conversation with Mr. Abend in 2001?

24 A In addition to the information I previously
25 provided, I just, I point out he's a field worker so

1 Would that be accurate?

2 MR. ELIASBERG: That's accurate.

3 To be clear, Tony didn't insist and I
4 didn't concede that that was something that we
5 previously should have produced. But I'm more than
6 happy to because it came up in the course of the
7 deposition; well make every effort to find it and
8 produce it.

9 Q MR. SEFERIAN: If you'll please refer to
10 page 42 of your report --

11 A (Complying)

12 Q -- in the second sentence under Section 2
13 Where you state, "For example, other states are able
14 to operate statewide school inspection programs based
15 on state standards," which other states were you
16 referring to in that sentence?

17 A We just had an extensive discussion of the
18 state of Maryland's program.

19 I am aware of a similar program in the
20 state of Florida. I'm aware of a similar program in
21 the state of Ohio. And other than that I have not
22 done any extensive review of the literature or the
23 regulations in the different states.

24 I also am aware of a statewide court
25 settlement in the state of Arizona, I believe

1 he's not in his office very often. And I called the
2 office and was patched through to his disk, and he was
3 very pleasant and informative conversation. I
4 indicated I was interested in the program I had heard
5 about.

6 He generally described it and described
7 some of his personal experiences. Again, in a very
8 general way. And said he thought it was an excellent
9 idea because he has personally seen the benefits and
10 positive results of an inspection program.

11 Q What was Mr. Abend's first name?

12 A I don't recall off the top of my head. I
13 would have to look it up.

14 Q How many conversations did you have with
15 Mr. Abend?

16 A One. He's a field worker. He's not in the
17 office a lot.

18 Q Do you recall how long your telephone
19 conversation was with Mr. Abend?

20 A Probably 20 minutes. 15, 20 minutes,
21 something like that.

22 Q If you'll please refer to page 43 of your
23 report in the last paragraph on that page, are you
24 familiar with the FCMAT -- F-C-M-A-T -- model of
25 school facilities assessment and inspection?

1 A Yes. As it's described on page 43.
 2 Q Have you had any professional experience or
 3 relationship with FCMAT?
 4 MR. ELIASBERG: Vague as to "professional
 5 experience with FCMAT."
 6 THE WITNESS: Can you expand on that?
 7 Q MR. SEFERIAN: In the course of your
 8 consulting career have you had occasion to work on any
 9 projects with which FCMAT was involved or seen FCMAT
 10 in operation in any occasion?
 11 A As to a different part of your question, I
 12 have never worked for FCMAT. I've never applied or
 13 sought to do so. So I never actually worked for
 14 FCMAT.
 15 I have worked in districts where they are
 16 also working so I have observed their teams in
 17 process, and I have researched or reviewed and
 18 observed their work product at the conclusion of their
 19 study and investigation.
 20 They have quite a good methodology. And
 21 whenever they make conclusions based on the review
 22 they do include the evaluation instrument. So the
 23 standards and criteria that are mentioned on page 43
 24 are always published in their reports.
 25 In addition, they published their current

1 criteria on their web site because criteria that they
 2 use in their work do evolve over time based on their
 3 constant learning and improvement.
 4 Q Have you observed any FCMAT teams while
 5 they are in the process of performing school
 6 facilities assessment?
 7 A Yes.
 8 Q Generally, what have you seen in that
 9 regard?
 10 MR. ELIASBERG: Vague and over broad.
 11 THE WITNESS: That's a very broad question,
 12 but let me answer by saying when I was working on the
 13 Oakland Master Plan, FCMAT was also in the district
 14 conducting a portion of its analysis. And we would
 15 sometimes cross paths or bump into each other.
 16 They were interviewing the same people I
 17 was interviewing. They visited some of the same
 18 schools I visited. And sometimes with comical
 19 results. The principal would be expecting an
 20 inspector. He would show up and leave and the other
 21 inspector would show up. So things happen like that
 22 in the district.
 23 They had a rigorous methodology. FCMAT is
 24 a very serious and professional group and their work
 25 is scrutinized by very rigorous criteria, so they tend

1 to be very methodical. They approach the job with
 2 great professionalism and they always had a clipboard
 3 with many, many questions on it.
 4 The reported data that they repaired
 5 matched my own personal observation in that case, so I
 6 have generally great respect for FCMAT.
 7 I'm not familiar with every single project
 8 they have ever done, but the projects I have read and
 9 examined in detail I conclude are very professionally
 10 and thoroughly done. And I believe that's a widely
 11 held belief throughout the state of California.
 12 Q In general, is it your opinion that FCMAT's
 13 facilities assessments are helpful in those school
 14 districts where they have been conducted?
 15 MR. ELIASBERG: Vague.
 16 THE WITNESS: Let me state that FCMAT is
 17 primarily a financial auditing team. The trigger for
 18 their involvement in the district is, number 1,
 19 financial failure or threat of failure or a request by
 20 the local administration.
 21 So again, their primary focus is on fiscal
 22 matters. That's their name. They also do management
 23 assistance upon request when they have the staff
 24 capability to do those studies.
 25 Yes, their results have been helpful

1 because they are very clear. They make hard
 2 recommendations. In the case of Oakland they made
 3 recommendations about time keeping equipment,
 4 staffing. These are financial matters, but they also
 5 directly affect the performance of the custodial and
 6 the operations department.
 7 Q MR. SEFERIAN: Are you familiar with any
 8 of the management assistant work that FCMAT performs?
 9 A I have read some of their studies, yes.
 10 Q What was your opinion of the FCMAT
 11 management assistance studies that you have read?
 12 A Again, they have been very objective,
 13 professional and quite thoroughly done. I believe
 14 FCMAT has, if anything, too much reliance on
 15 compliance with codes and published standards, which
 16 is an area of weakness in their facilities evaluations
 17 because there is so few published standards.
 18 If, for example, a school district lacks a
 19 code-compliant fire alarm, that will be red flagged as
 20 a major violation. If there is an overall situation
 21 of disorder they will note that as a potential fire
 22 hazard or trip hazard, but because there is no state
 23 benchmark or standard, FCMAT then checks its gates,
 24 its general criteria that are published and discussed
 25 in this report.

1 Q In connection with FCMAT's school
2 facilities assessments, has FCMAT developed its own
3 facilities standards or checklists?

4 A They have developed their own checklist.
5 And those are again included in their published
6 reports. They are also available on the FCMAT web
7 site.

8 Q Can you describe generally how your expert
9 report was prepared?

10 MR. ELIASBERG: I just want to take a very
11 short bathroom break.

12 (Recess taken)

13 (The record was read as follows:

14 Q Can you describe generally how your
15 expert report was prepared?)

16 THE WITNESS: How was this report prepared?
17 It evolved over time frankly. I spent some time doing
18 research on available literature, on available
19 resources, and finally just started writing based on
20 my own observations and knowledge in supplementing
21 this with materials that I found either through news
22 sources or code research or every one of the pieces
23 you see in the report.

24 The report evolved through several drafts,
25 and I have to say I'm indebted to Peter and his

1 more than me spending many, many hours driving all
2 over the state of California visiting places.

3 Q When you say you originally proposed a
4 site-by-sight review of many schools, proposed to
5 whom?

6 A More in a, probably in a telephone
7 conversation with Peter, just talking about how to get
8 our hands around this whole issue of conditions and
9 adequacy in California schools.

10 Q Why was it that you originally proposed
11 this site-by-sight review of many schools?

12 A It was my personal desire to truly quantify
13 how widespread this problem is.

14 But again, when one thinks of more than 700
15 schools in Los Angeles Unified alone, that could be a
16 multi-year project for a small team of people. So
17 what was very clear to me was that this was a
18 widespread occurrence. And there is sufficient
19 evidence of that through published sources that it was
20 not necessary for me to spend the time traveling
21 around and making appointments and walking through all
22 the campuses in some set of state schools.

23 This was basically a volunteer project. My
24 total compensation is limited shall we say, and I had
25 to make a living at the same time. So with my time

1 cohorts for editorial and associational help.

2 Frankly, I kind of tied myself in a knot on
3 the organizational structure and Peter and the others
4 were able to help suggest a way of organizing the
5 paragraphs that did make more sense. So the research
6 in here, the words in here are mine. Outside of that,
7 it's just the process of writing any report.

8 Q MR. SEFERIAN: Do you recall when you were
9 first contacted for this case?

10 A Frankly, I don't. It was a long time ago.
11 It was sometime in 2000. Year 2000 I believe.
12 Frankly, I have lost to the sands of time.

13 Q Do you recall when it was when you began,
14 you first began researching and writing your report in
15 this case?

16 A Sometime in 2000, I believe in the late
17 summer. Again, this has been kind of an evolutionary
18 project. The direction I thought it would be being
19 written in is not the way it came out.

20 Q What do you mean by that?

21 A I had originally proposed to do a very
22 ambitious site-by-sight review of many, many schools.
23 Kind of came to my senses after trying to figure out
24 the logistics of visiting a representative sample of
25 schools. So, hence, reliance on published sources

1 available, the other project and commitments I had, it
2 just was not feasible to do an overly ambitious study.
3 So that results in a more focused and I believe
4 equally comprehensive look at California school
5 conditions.

6 Q What were your compensation arrangements
7 with Plaintiffs' counsel in this case?

8 A Vague at best. It started off as a pro
9 bono and eventually, after I spent plenty of hours
10 into it, I proposed sending them a bill, and they
11 agreed to pay it. And here we are. But basically
12 covered my expenses.

13 Q What was the amount of your bill?

14 A I would have to look it up. I believe it
15 was three thousand dollars for a year and a half's
16 worth of work. This was not a profit making
17 enterprise.

18 Q Do you have any agreement or expectation
19 that you will receive any further compensation for the
20 work that you have performed or will perform in this
21 case?

22 A It's my understanding that the witnesses in
23 depositions such as today's event are compensated.
24 But outside of that, no. The report's done. It's
25 been filed. Again it was never foreseen as a profit

1 making enterprise. I didn't do this for the money.
 2 I lost money hand over fist on this
 3 project, but I believe it's very important and
 4 somebody has to do it, and I think I have a somewhat
 5 unique perspective because I have worked in so many
 6 different parts of the state with so many different
 7 districts, and I willingly and voluntarily have done
 8 this.

9 Q Did anyone assist you in any way with the
 10 research or writing of your report in this case?

11 A That's a very broad question. Certain
 12 materials were provided to me by Plaintiffs' counsel.
 13 Mainly through Peter. I requested certain documents
 14 that I was unable to locate on my own that they had
 15 copies of in their archives. So there was that kind
 16 of assistance.

17 I also made numerous phone calls to state
 18 officials and others where I had specific questions
 19 about interpretation or understanding certain sections
 20 of the law or regulations that I was not that familiar
 21 with. Outside of that, no, it was largely a singular
 22 work product.

23 Q Did anyone provide you with research
 24 materials in this case other than Plaintiffs' counsel?

25 A Again, if you mean materials that became

1 sure what you're getting toward.

2 Q Other than merely providing you with a
 3 document that you requested, did Plaintiffs' counsel
 4 provide you with any help regarding researching an
 5 area of the law or researching facts or researching
 6 any other items that went into your report?

7 A The extent of assistance was I would for
 8 example, in this GAO report the 1996 2AO report it
 9 referenced an earlier report. I asked and they
 10 provided a copy of the relevant sections of that other
 11 report, just so I can balance out what was said in the
 12 later report. But that was a request for information,
 13 they provided it; a published document by another
 14 source.

15 They did provide some newspaper articles
 16 and other information dating back to the '80s which
 17 they indicated might be of interest. It was my task
 18 to read through those to sort those and use the ones
 19 that were germane and applicable.

20 Q How many drafts of your report did you
 21 prepare?

22 A It was over 10 drafts by the time it
 23 started getting in final form. I can't answer the
 24 question directly. That's not uncommon in a major
 25 report that I'm writing. You write and rewrite and

1 the basis for this report, I would say no.

2 In the process of researching this project
 3 and determining the eventual scope of the report I
 4 accumulated lots of information from lots and lots of
 5 sources. Much of which never made it into this
 6 report. It just got pushed aside in favor of the core
 7 elements of this report.

8 At one time I was interested in the overall
 9 financial arrangements of school districts, but
 10 clearly that was beyond the scope of work and would
 11 have been just an impossible undertaking.

12 Q Did you have any research assistant help
 13 you with any of the research you performed in this
 14 case?

15 A No, not really. Because this area is not
 16 well cataloged and well inventoried, a lot of research
 17 is really investigative process where you find a
 18 thread and follow it and see where it goes. So one
 19 footnote leads to another document, so much of this
 20 was in fact original, quite original research.

21 Q Other than merely providing you with
 22 documents that you requested from Plaintiffs' counsel,
 23 or their assistance, provide with any research help
 24 for your work in this case?

25 A Can you define "research help?" I'm not

1 rearrange and rewrite some more. It's a process
 2 document.

3 Q Did you prepare your report using a
 4 computer?

5 A Yes.

6 Q And you used -- which word processing
 7 program did you use to prepare your report?

8 A It was written in Microsoft Word.

9 Q What was the date that you finalized your
 10 report in this case, approximately?

11 A To be honest with you, I've forgotten. I
 12 believe it was August 2002. It was very close to the
 13 time it was submitted as an expert report. Whenever
 14 that was.

15 Does it say on the cover somewhere? It was
 16 actually September, something like that. It was late
 17 August, early September, something like that.

18 Q Would you say that you worked on the report
 19 for roughly two years?

20 A I really didn't get engaged in writing it
 21 until probably early 2001.

22 Q Do you recall approximately when it was
 23 that you finished the first draft of your expert
 24 report?

25 A Again, it was a work in progress for at

1 least a year. So the first complete, reasonably
2 complete draft was probably spring of 2002.

3 Q Can you be more specific on the date?

4 A No. Each draft was simply pulling up the
5 latest version, the last version and adding, deleting,
6 rearranging, fleshing out a section, stretching it
7 from outline form to text form. So it was truly an
8 evolutionary process.

9 They weren't nearly as many drafts that
10 were submitted. Again, this is work done in between
11 other projects, in between other commitments.

12 Q After each of the drafts of your report was
13 prepared, did you show it to a Plaintiffs' counsel in
14 some form?

15 A No.

16 Q To your knowledge, when was the first time
17 that Plaintiffs' attorneys saw a draft of your report
18 or any portion of your report before it was finalized?

19 A Boy, that's a tough one. I really couldn't
20 tell you.

21 I know I had several conversations with
22 Peter about an outline and how to organize it. And I
23 would say it was sometime in early, sometime in 2001
24 or early 2002 before they really got their hands on a
25 copy.

1 did they ever make any revisions or changes or
2 additions to a version of the draft?

3 A At various times. Often. I would say
4 almost with every draft there would be suggestions and
5 recommendations on how to make it flow better and how
6 to organize it in a more understandable way to a judge
7 or a layperson.

8 And occasionally there would be comments
9 like from Peter to illustrate this point; here's a
10 news angle that seems right directly related and
11 provides some background information. Then I would
12 have the option of including or not including it. It
13 wasn't like they were the guys writing it.

14 Q At any time did Plaintiffs' attorneys
15 actually make changes in a draft version of your
16 document; actually go into the document and add in
17 words or make amendments, changes, additions?

18 A I believe there was one draft where,
19 possibly more, where Peter or somebody on his staff
20 went in and actually did some editing. I would
21 categorize it more as editing than writing.

22 MR. ELIASBERG: Let the record reflect I
23 don't have a staff. But I like the idea.

24 Q MR. SEFERIAN: What do you mean when you
25 say editing rather than writing?

1 Q The first time the Plaintiff saw a version
2 of your report or a draft was early 2002?

3 MR. ELIASBERG: Objection. Misstates his
4 prior testimony.

5 THE WITNESS: I'm frankly not able to
6 recall the date they first saw a draft.

7 I did show Peter some portions of the
8 report; a chapter, a section. Sometimes asked for his
9 advice on organization and structure.

10 Q MR. SEFERIAN: How would you show
11 Peter Eliasberg a portion of your report?

12 A I think we met once or twice at ACLU
13 offices in Los Angeles when I had occasion to be in
14 downtown L.A., which is more than an hour from my
15 office, so it's not a convenient drop-by. I recall
16 one time Peter drove up to Ventura.

17 Q Did you ever send Plaintiffs' attorneys
18 portions or drafts of your report attached to an
19 e-mail?

20 A There were some e-mails back and forth once
21 this thing really started to take shape. And it was
22 just a more expedient way of moving the information
23 around.

24 Q To your knowledge, at any time you sent an
25 e-mail draft of your report to Plaintiffs' attorneys

1 A Again, on how to better phrase a sentence,
2 creating clearer introductory sentences to paragraphs,
3 taking some long and complicated paragraphs, breaking
4 them in sections that would be easier for a different
5 reader to follow.

6 Q Do you still have the drafts of the report,
7 of your report for this case?

8 A No. It's my practice as a draft is
9 replaced by a new draft, it goes in the recycle bin.
10 I'm drowning in paper anyway. I can't keep drafts.

11 Again, during the whole time period here, I
12 would have a half a dozen other major projects going.
13 So really, there is a lot of paper moving in and out
14 of my office all the time, and I don't hang on to
15 drafts as a matter of course anyway.

16 This was not a major part of my life for
17 two years. This fit in the cracks between other
18 projects.

19 Q Other than minor citations to a newspaper
20 article, were there any parts of your report that
21 Plaintiffs' attorneys asked you to add in, take out,
22 amend; that you can recall?

23 MR. ELIASBERG: It's compound.

24 THE WITNESS: That's broad.

25 I don't want to say for certain, but I

1 recall we had an earlier discussion about the
2 Lou Harris survey. I believe I had included that data
3 in text form and Peters comment was it was really hard
4 to follow, why don't you make a table.

5 And I don't know if Peter actually proposed
6 a table or just proposed the organization of a table.
7 Again, it was taking information out of a long,
8 complicated narrative text and putting it in table
9 form that would just be easier to read and understand.
10 I don't think it changed the outcome or the essence of
11 the message in any way, it just made it easier to
12 follow.

13 Q Do you recall any other instances like that
14 where you discussed changes with Peter Eliasberg about
15 your report?

16 A Probably if I thought about it more I
17 could. It was, again it was an ongoing process.
18 There were many discussions about different topics.

19 Generally Peter is saying when the heck are
20 you going to get done with this thing because he had
21 to move on with the thing. Then I would have a blaze
22 of working on it, then put it aside for a while, then
23 blaze some more and --

24 Q Did you just discuss your report while you
25 were preparing it or before that time with anyone

1 Q During that meeting with Lori Schecter and
2 Floyd Stark, did you show them a draft of your report?

3 A I don't really recall. I don't recall what
4 was prepared at that point in time.

5 Q To your knowledge, has Floyd Stark agreed
6 to be an expert witness for the Plaintiffs in this
7 case?

8 A I can't give you an answer on that. I know
9 he may have been asked. I don't know if he followed
10 through.

11 Q What leads you to say "may have been
12 asked?"

13 A He was at a meeting in Los Angeles. So he
14 had been contacted by the Plaintiffs' attorneys. I
15 don't know in what capacity.

16 Q Did you know Mr. Stark before you began
17 working on this case?

18 A Oh, yeah. We have known each other 20
19 years.

20 Q Did you suggest Mr. Stark's name to
21 Plaintiffs' attorneys?

22 A You know, I can't recall if I did or
23 didn't. I don't believe I did. I think they located
24 him independently.

25 The school facilities world is not a big

1 other than Mr. Eliasberg?

2 A There was a meeting in Los Angeles with
3 Lori Schecter, who is an attorney affiliated with the
4 case.

5 Floyd Stark I might in Los Angeles. Floyd,
6 is a long time colleague from the Rancho Cucamonga
7 area. I had some discussions of that type. And I
8 believe sure there were others.

9 Q Did you discuss -- who is Lori Schecter?

10 A I believe she is an attorney with Morrison
11 and Forster Los Angeles.

12 Q Have you spoken with any other Plaintiffs
13 attorneys about this case other than Peter Eliasberg
14 and Lori Schecter?

15 A There was one meeting at the ACLU offices
16 with Catherine LaPlan, Mark Rosenberg and others -- I
17 can't even recall who else was there -- where we
18 discussed in general what the research had shown and
19 how to present the report. So it was kind of a
20 briefing for Mark, and I think he made some
21 suggestions on organizing and arranging the material.

22 Q Did you have an in-person meeting with
23 Lori Schecter and Floyd Stark?

24 A Yes, at the Morrison and Forster's office
25 in Los Angeles.

1 place. And I'm aware they had talked to other people
2 working in the field, and one name leads to another
3 name, which leads to another name. There really are
4 not a lot -- all of our paths cross frequently.

5 Q What was discussed at the meeting with
6 Lori Schecter and Floyd Stark?

7 A Without referring to notes I could not tell
8 you.

9 Obviously, the substance of this report, I
10 believe there was some discussion of visiting and
11 evaluating schools I think is when we were still
12 thinking of doing that effort. Outside of that, I
13 would have to refer to notes.

14 (Off-the-record discussion)

15 MR. HAJELA: Off the record we discussed
16 how much time was left for Mr. Seferian's questions,
17 and it appears there won't be enough time for me to
18 start and finish. So I'm going to reserve my
19 objections and ask Mr. Corley questions later on when
20 Mr. Reed and I reschedule.

21 Is that agreeable?

22 MR. ELIASBERG: So stipulated, as we say,
23 in formal terms.

24 MR. SEFERIAN: Yes.

25 MR. HAJELA: I preserve my objections

1 rather than reserving them.

2 Q MR. SEFERIAN: Who was it that first
3 contacted you about working on this case?

4 A I truly have to say I don't recall.

5 I do know the first serious discussion was
6 with Peter Eliasberg. There was somebody else made an
7 initial call. I simply can't remember. It's been
8 going on three years.

9 Q Did you say serious call?

10 A Where we really got down to discuss what
11 all was expected.

12 There may have been a general inquiry made
13 by someone else earlier, I don't really remember.

14 This whole thing is moved from a 30-day,
15 10-page project into a 100-page, 3-year project. So
16 if I seem vague on the early details, I did not keep a
17 lot of notes or really get that engaged in it because
18 I thought the scope would be much, much smaller. Then
19 we had a couple false starts, and here we are today.
20 It's been a learning curve.

21 (Off-the-record discussion)

22 Q MR. SEFERIAN: Have you kept any type of
23 log or time sheets of the work you performed in this
24 case or the dates you performed the work or the amount
25 of hours?

1 school facilities. So reviewing news articles, maybe
2 I paid a little more attention to articles on
3 conditions. But I read those portions of the web base
4 newspapers everyday anyway. So it's very hard for me
5 to isolate only the portion of my time over
6 two-and-a-half years, almost three years devoted to
7 this one project among many.

8 Q Was the phone call you had with
9 Mr. Eliasberg where you really discussed what was
10 expected in this case, was that one of the first phone
11 calls you had with him?

12 A Probably. It would make sense.

13 Q Was that a telephone conversation or was it
14 in person?

15 A Telephone.

16 Q In the telephone conversation you had with
17 Mr. Eliasberg where you first discussed what would be
18 expected in this case, did you agree to be an expert
19 witness at that time?

20 A I don't know if that came up. I honestly
21 can't recall. I do believe he asked me to prepare a
22 report. And the, which eventually became the expert
23 witness report. I at the time didn't really
24 understand the legal process enough to know whether
25 one necessarily meant the other.

1 A No. Because it was not being billed on a
2 hourly basis, I did not. Probably should have, but I
3 didn't.

4 Q Do you have any estimate of the amount of
5 hours that you've spent working on this case?

6 MR. ELIASBERG: Just for clarity, do you
7 want him to include the last three days, or is it
8 leaving out the deposition days?

9 Q MR. SEFERIAN: How much time did you spend
10 in total working on this case from the time you were
11 first contacted until the time your report was
12 finalized?

13 A In all honesty, I couldn't even answer that
14 question.

15 Let me state for the record, just to expand
16 on that answer, all of the work I do involves school
17 facilities. Concurrent with this report I was
18 lobbying certain, for certain changes in state law.
19 We were investigating and negotiating portions of what
20 became Proposition 47. I was involved with the Cash
21 organization, which is a statewide school facilities
22 group on many legislative questions. So the research
23 I did for one piece may have led to question on
24 another piece. So it all muddled together.

25 I have an ongoing, decades-long interest in

1 Q In that telephone conversation you had with
2 Mr. Eliasberg where it was discussed what was
3 expected, did you agree to prepare a report at that
4 time?

5 A I believe his requests would be that I
6 would prepare a report based on my own knowledge and
7 experiences. I think the vision at that point was it
8 would be a briefer, more of a summary report.

9 Q Have you been asked to prepare or assist
10 with the preparation of any exhibits or charts or
11 demonstrations for this case other than what's in your
12 report?

13 A No. The complete work product is the
14 expert report you have before you.

15 Q Have you performed any work on this case
16 since you finalized your report?

17 A Can you define "work?"

18 Q Have you done any further research or
19 inspections or any other type of work related to your
20 opinions in this case since the date you finalized
21 your report?

22 A Since the date I finalized the report I
23 know I did do a drive by of the junior high in
24 Richmond. Just had not had a chance to get up there
25 before then, and I was heading down Highway 80 and

1 stopped off just to take a look at it.

2 I have not prepared any other work
3 products, no. But I have continued to keep my eyes
4 open and I continue to bump into news articles about
5 unusually poor conditions in California schools.

6 There was an article on the front page of
7 the San Francisco Chronicle on Monday this week, two
8 days ago. So it very much is an issue I keep bumping
9 into. But I have not attempted to produce additional
10 work product.

11 Q Have you been asked to perform any
12 additional work in this case by Plaintiffs' attorneys?

13 A No.

14 Q Do you recall if there was any source that
15 you relied upon that was not cited in your report?

16 A Can you clarify that?

17 Q Was there any reference material or report
18 or article that you reviewed in preparing your
19 opinions in this case that you did not cite in the
20 bibliography to your report?

21 (The record was read as follows:

22 Q Was there any reference material or
23 report or article that you reviewed in
24 preparing your opinions in this case
25 that you did not cite in your

1 schools facilities program?

2 A That's an extremely broad question. I have
3 given speeches and other presentations on changes to
4 the school program. I was asked to testify at the
5 Little Hoover Commission as an example. I can't
6 remember the year now. 2000, or something like that.
7 And I have done work in that context.

8 I'm not sure that is germane to the work
9 here. I've frequently spoken at conferences on the
10 issue of school facilities. I have prepared materials
11 for the legislative review process. I don't know if
12 that's responsive to your question or not.

13 Q Do you have any publications in any
14 educational or facilities journals concerning the
15 components of a successful statewide school facilities
16 program?

17 A I have had articles published in the CASH
18 newsletter that comes out monthly. I did an article
19 for the ACSA Group. And then I have done an article
20 or two for the California Planning and Development
21 Report. Which is another trade newsletter that comes
22 out.

23 MR. ELIASBERG: I wasn't certain -- those
24 are publications that are specifically about a state
25 program or just publication generally?

1 bibliography to your report?)

2 MR. ELIASBERG: That's vague and ambiguous.

3 THE WITNESS: I'm not sure I completely
4 understand your question.

5 If your question is in preparing this
6 report, in the contents of this report, the sources
7 that support this product are included in the
8 bibliography fee or cited in text or both.

9 I did review other materials that was never
10 included in this report at any time. So of course I
11 have had, I have seen other information, other news
12 articles, other resources, but they did not play a
13 role in this report.

14 Q MR. SEFERIAN: Just so I understand, would
15 it be accurate to say that all of the sources that you
16 relied upon in specifically preparing your report,
17 and your opinions, you have cited in your bibliography
18 to your report?

19 A I made a good faith effort to do so. I
20 will never claim perfection and say there wasn't
21 something I read that got left out. I made every
22 effort to include a complete and comprehensive
23 bibliography and citation list.

24 Q Have you ever authored any publications
25 concerning the components of a successful statewide

1 THE WITNESS: They are publications about
2 the broadest issue of school facilities in the state
3 of California. They are not particularly relevant to
4 the discussion in this expert witness report.

5 But, for example, the Little Hoover
6 testimony was about ways of making the entire
7 comprehensive statewide facilities program more
8 efficient and more effective.

9 Elements of that are similar to what's in
10 the expert report, but they are really totally
11 separate reports. I don't make it a habit to write a
12 lot of articles. The academics get paid for that. I
13 don't.

14 Q MR. SEFERIAN: Have any of the articles
15 that you have written for CASH or ACSA or California
16 Planning and Development Report concerned the propose
17 tenets of a successful statewide school facilities
18 program?

19 MR. ELIASBERG: Asked and answered.

20 THE WITNESS: As I just said in my earlier
21 statement, some of them contained elements about a
22 successful, mainly new construction program. The
23 focus of all those articles were on new construction;
24 building new schools to serve a growing state of
25 California. The condition issues in the expert report

1 are really separate.

2 Q Have you ever had any articles published in
3 any educational journals?

4 A If you exclude the educational facilities
5 journals that we just mentioned, no. I don't, I don't
6 even read most of those journals. They just are not
7 germane to the work I do.

8 MR. SEFERIAN: I would like to show you a
9 document which I'll ask the Court Reporter to mark as
10 the next exhibit.

11 (Defendants' Exhibit 8
12 was marked for identification)

13 Q MR. SEFERIAN: Do you recognize the
14 document that the court reporter has marked as
15 Exhibit 8?

16 A No. I've never seen this before. I
17 recognize some of the titles on the report, but I've
18 never seen this particular report.

19 Q Do the titles that you recognize on
20 Exhibit 8 pertain to some of the materials that
21 Plaintiffs' attorneys provided to you in this case?

22 A Just looking at this for the very first
23 time today, some of them are familiar, yes.

24 The depositions of Mr. Brooks, Suzie Lane,
25 Tom Henry, Tom Paine, these are Plaintiffs' attorneys

1 Q Did you read all of the deposition
2 transcripts that are listed on Exhibit 8?

3 A No.

4 Q Did you read any of the deposition
5 transcripts on Exhibit 8?

6 A I read portions of each of them. They are
7 very long and very tedious, but yes, I skimmed all of
8 them and read in depth portions of it.

9 Much of the discussion had nothing to do
10 with areas of interest to me. No offense to the
11 people being deposed or the attorneys involved.

12 Q Did you read all the pages of the II/USP
13 action plans that are listed on Exhibit 8?

14 MR. ELIASBERG: All the pages of all.
15 II/USP plans? Is that your question?

16 MR. SEFERIAN: I will restate it.

17 Q MR. SEFERIAN: Did you personally read all
18 of the pages of all of the II/USP action plans that
19 are listed on Exhibit 8?

20 A I can clearly state that no, I did not.

21 I did read the facilities, relevant portion
22 of each of those plans. But the other parts that had
23 nothing to do with facilities, I again flipped through
24 the pages, skimmed them but didn't read them in depth.

25 They are quite thick reports. There is

1 did provide me with a copy of those depositions.

2 Some of the II/USP plans I recognize. The
3 Oakland study. The Lou Harris teachers survey that we
4 talked about earlier, "No Room for Johnny," the
5 Little Hoover Commission Report, yes, I have seen
6 these. The Gordon Wohlers report. W-o-h-l-e-r-s.

7 Q Is there any title listed on Exhibit 8 that
8 you do not believe you were provided with in this
9 case?

10 A I can't possibly answer that without
11 referring back to my notes and the big stack of papers
12 I have in a bankers box in my office. There were, the
13 list you're showing me has probably four thousand
14 pages in it. And it all blends together after a
15 while. I don't mean to be evasive, but there is a lot
16 of paper in this case.

17 Q Are there any documents that you can recall
18 receiving, as you sit here today, from Plaintiffs'
19 counsel that are not on the list Exhibit 8?

20 A There were some newspaper article excerpts
21 that I don't know if they are on this list or not. I
22 would have to look a little more in depth. But I
23 don't see them listed. They were just miscellaneous
24 articles over a period of time. Other than that,
25 nothing jumps out at me.

1 good information, but it has nothing to do with my
2 area of interest, so I didn't burden my brain with
3 stuff that's not relevant.

4 Q With regard to the other items on Exhibit 8
5 besides the deposition transcripts in the II/USP
6 action plans, did you actually review every page of
7 those documents or did you only read portions?

8 A I would be hard pressed to answer your
9 question with any integrity.

10 For example, the EdSource report in here is
11 quite short, and I probably read the complete report.
12 The Little Hoover commission report, there are two of
13 'em. I'm not sure if I read every word of both
14 reports.

15 I did review the complete report and read
16 the parts that were germane and relevant to my areas
17 of study here. Again, there's a lot of pages in these
18 reports and I just --

19 Q Did you provide to Plaintiffs' attorneys
20 copies of all notes, telephone messages, records that
21 you prepared in this case?

22 A It was asked that I turn over everything I
23 could get my hands on to them; to Plaintiffs' counsel.
24 And I did so. It was provided to a Mr. Moynahan.

25 MR. SEFERIAN: I'll ask the court reporter

1 to mark the next document as the next exhibit in order
 2 a two-page document marked PLTP, PRC 0560 and 0561.
 3 (Defendants' Exhibit 9
 4 was marked for identification)

5 Q MR. SEFERIAN: Do you recognize that
 6 document Exhibit 9?

7 A To be completely honest with you, no, I
 8 don't. In reading it, it is vaguely familiar.

9 This is August of the year 2000,
 10 two-and-a-half years ago. And I get a lot of e-mails.
 11 I apologize, but I really don't. No offense to the
 12 people who were involved in the conversation.

13 I do recall this general discussion about
 14 providing a graduate student to do some research. I
 15 don't think the discussion went farther than that.

16 Q Is Exhibit 9 a copy of an e-mail
 17 transmission between you and Peter Eliasberg?

18 A Right. It appears to be a forward from
 19 Peter to me in August 3rd, 2000. And it refers to a
 20 discussion with Susanna Loeb of Stanford University.
 21 L-o-e-b.

22 Q Did you have any discussion with
 23 Susanna Loeb regarding this case?

24 A Yes. In fact, I met her in her office at
 25 Stanford, and we talked for, I don't know, less than

1 notes?

2 A It appears to be my scribbling, yes.

3 Q Can you read what's on the handwritten
 4 notes on the first page of Exhibit 9?

5 A Um, not very legibly. I believe they are
 6 directions and trying make an appointment to meet with
 7 her at her office.

8 She is also a very busy person. It was
 9 during the summer break for the university, so she was
 10 in and out, not keeping regular office hours, and I
 11 had other work in the vicinity and we arranged that
 12 when it was up in the Bay Area anyway I would make an
 13 appointment to stop by and see her. And that
 14 eventually did transpire.

15 Her office is buried in, it's very hard to
 16 find on the Stanford campus. It's out in the middle
 17 of a class area. And I think that is the gist of the
 18 discussion; simply discussions from the freeway to her
 19 office.

20 Q Have you ever spoken with any of Plaintiffs
 21 or expert witnesses or consultants in this case?

22 A I'm not able to give you a really good
 23 answer on that because I don't know all of their other
 24 experts and witnesses. If you could propose some
 25 specific names I could give you better answers.

1 an hour. And it became very apparent that her area of
 2 research and her very considerable knowledge was not
 3 in the area I was working.

4 She is very much an expert on school
 5 finance comparisons between states, but in the area of
 6 facilities had very limited experience. She did give
 7 me a couple of papers that she had written that again
 8 were very interesting but really were not my area of
 9 interest.

10 Q What was the reason you spoke with
 11 Susanna Loeb about this case?

12 A There was a suggestion -- and I honestly
 13 don't recall from whom -- that she had a nationwide
 14 perspective, had done considerable research in the
 15 area.

16 What I determined after talking to her in
 17 more depth was while she had done an incredible amount
 18 of research and a lot of publications and knew a great
 19 deal, I wasn't in the narrow area that I was working
 20 in of facilities. And therefore, that was really the
 21 last time I have ever spoken to her or dealt with any
 22 of her materials.

23 Q On the first page of Exhibit 9, in the
 24 upper right-hand corner, there appears to be some
 25 handwritten notes. Can you tell if those are your

1 Q Have you spoken with Nancy Meyers?

2 A The name is vaguely familiar. I don't
 3 believe I've ever spoken to her.

4 Q Have you spoken with Dr. Madden Sandal?

5 A No.

6 Q Have you spoken with Jenny Oaks?

7 A No.

8 Q Have you spoken with Glen Ertman?

9 A Yes, I have.

10 Q Did you know Mr. Ertman before you began
 11 working on this case?

12 A No, I was not familiar with him.

13 Q Did you discuss this case with Mr. Ertman?

14 A Yes. In the beginning of this case, I
 15 believe back in the year 2000 -- I'm straining my
 16 memory here -- two internationally recognized experts,
 17 Glen Ertman and Jeff Lackney, who is a professor in
 18 Ann Arbor, Michigan at this time, indicated they would
 19 be working or considering working on different
 20 portions of the facility issue. Again, they are both
 21 nationally recognized experts, and it was something I
 22 looked forward to learning more about the broader
 23 perspective.

24 In the end, Dr. Ertman and his graduate
 25 students in Virginia wrote a report completely

1 independently of me. I did see their final work
2 product, which was very well done, very high quality
3 report.

4 And I have not followed through with
5 anything on Dr. Lackney. We did have a conference
6 call, the three of us, trying to figure out how to
7 parcel this out. And I think the end result was that
8 we would all kind of go our separate ways because we
9 all had different interests anyway.

10 Again, that was in the very early, very
11 preliminary discussion stages, just trying to get our
12 hands on what the issues were. They are very nice
13 people.

14 Q When was it that you read Dr. Ertman's
15 report?

16 A I'm completely unable to answer that
17 question. Sometime within the past year. I really
18 could not tell you.

19 Q When you spoke with Mr. Lackney, did he
20 tell you what, if anything, he was going to be working
21 on; what his project was?

22 A I believe at the time he proposed that he
23 would prepare a matrix of issues. And I think in his
24 mind he was starting to assemble his part and,
25 Dr. Ertman's part and my part.

1 He did e-mail around some form of a matrix,
2 and then afterward, for whatever reasons, it never
3 came to pass that there was a coordinated project.
4 Again, each party did his own piece of the action.

5 All three of us have actually very
6 different interests. So it was a logical outgrowth of
7 the conversation that we would focus on what we each
8 know best and each do best.

9 Q What is Mr. Lackney's best --

10 A You would have to ask him that. He appears
11 to have done a great deal of research in the physical
12 effects of buildings and spaces on children and in the
13 social effects. And that generally appeared to be the
14 area of his greatest interest.

15 Q Since that phone call with Mr. Lackney and
16 Dr. Ertman, have you had any other conversations with
17 Mr. Lackney?

18 A As I just said in the last answer, there
19 were one or two follow up e-mails, but there were no
20 further phone calls.

21 Q Have you had any discussions since that
22 time about what work, if any, Mr. Lackney is
23 performing for this case?

24 A No.

25 MR. ELIASBERG: Objection. Assumes facts.

1 THE WITNESS: I don't even know if he is
2 affiliated with the case.

3 I know he changed universities in the
4 middle of this time. And I frankly have lost track of
5 where he is right now.

6 MR. SEFERIAN: I would like to show you
7 another document I'll ask the court reporter to mark
8 as the next exhibit.

9 (Defendants' Exhibit 10
10 was marked for identification)

11 (Recess taken)

12 Q MR. SEFERIAN: Do you recognize that
13 document: Exhibit 10?

14 A Yes. This one's a little more
15 contemporaneous, and I do have better recollection of
16 this document.

17 Q What is Exhibit 10?

18 A These are my handwritten notes from a
19 conference call held last Thursday, February 6, with
20 Hector Villagra and Peter Eliasberg from ACLU and
21 myself to prepare for this deposition session we are
22 ending this afternoon.

23 MR. SEFERIAN: I would like to show you
24 another document which I will mark as Exhibit 11.

25 ///

1 (Defendants' Exhibit 11
2 was marked for identification)

3 MR. ELIASBERG: I'm showing --

4 THE WITNESS: Yes, you have handed me
5 Exhibit 11.

6 Q MR. SEFERIAN: Yes.
7 Do you recognize Exhibit 11?

8 A Yes, I do.

9 Q What is Exhibit 11?

10 A These are my personal scribbles from a
11 conference call that occurred on August 9th of the
12 year 2000. I was on a cell phone in Vacaville,
13 California. And it was a call with Jeff Lackney,
14 Glenn Ertman myself, and then Peter joined us for all
15 or part of it.

16 This is the conference call I mentioned
17 earlier where we were trying to figure out if there
18 was a commonality of interest; if we should share
19 parts of the project or if we should all work
20 individually.

21 Q On the first page of Exhibit 11 at the top
22 appears to be written "Rob in Vacaville?"

23 A Correct.

24 Q Below that there is some other writing
25 directly below that.

1 Can you tell what that says?

2 A It says -- again, they are random notes. I
3 was literally sitting in my car in a parking lot of a
4 shopping center when the time came for this conference
5 call. So they were just scribbles.

6 It says "Standards/criteria." Then under
7 it, it says "protocols/benchmarks." We were trying to
8 play out some ideas of how to approach this whole
9 subject of facilities and adequacy and effects.

10 This is the first time I had ever spoken to
11 Dr. Lackney or Dr. Ertman. I really didn't even know
12 who they were or what they did.

13 Q Does Exhibit 11 refresh your recollection
14 as to the approximate date when you were first
15 contacted in this case?

16 A I believe it confirms that my initial
17 contact was sometime in the late spring or summer of
18 the year 2000. This was sometime later when we
19 finally were able to coordinate calendars and get
20 people to do stuff. I believe one of the two was
21 traveling out of the country. I was gone for a part
22 in July that year. Academics take time off in the
23 summer.

24 Q On the first page of Exhibit 11, near the
25 top of the page, appears to have the letters "PE."

1 Do you see that?

2 A Correct.

3 Q What does that signify?

4 A I would guess it would be Peter Eliasberg.

5 Q And what was the reason you wrote PE on
6 that document?

7 A I think Peter was the person who suggested
8 we have the conference call. And I think he was
9 laying out some general concepts of what needed to be
10 done and who would be doing what. Just kind of
11 throwing the idea out to get people's reaction to it.

12 Q Can you tell what's written directly to the
13 right of where it says PE on Exhibit 11.

14 A I think it says "financing, et cetera."

15 Q And then what's written right below that?

16 A It said "Rob or Susanna." And that's
17 Susanna Lobe of Stanford University would do the
18 introduction how the state interacts with school
19 districts and so on. These are just scribbles in a
20 flowing four-way conference over a conference call.

21 Q Then what is right below that? Does it say
22 "Susanna?"

23 A Yes. It basically said that she and I
24 would coordinate and figure out who was going to do
25 what.

1 Q What is right below that; the next line?

2 A Just that Peter would check and kind of
3 coordinate and make sure everything was getting
4 covered. Again, this is a couple years ago.
5 Two-and-a-half years ago.

6 Q If you'll look on the second page of
7 Exhibit 11 please, near the middle of page it appears
8 to say "JRE?"

9 A Yes.

10 Q What does that say next to JRE?

11 A I'm not sure if that's a correct spelling.
12 It was a decision in West Virginia. There was some
13 kind of decision back there. My guess is Glenn Ertman
14 brought it up because he's from that area. I cannot
15 recall the context at this time.

16 Q Farther down on the second page of Exhibit
17 11, does it say, "Jeff to do first draft?"

18 A Yes. After having this hour-and-a-half
19 conversation, Jeff Lackney, from wherever he was at
20 the time, volunteered that he would put together a
21 first draft of an outline showing who would do what.
22 I believe he did so in a subsequent email.

23 Eventually it did not work out that there
24 was a coordinated project here at all, as I previously
25 have said. But Jeff Lackney did volunteer to do the

1 first draft more or less assigning areas of
2 investigation and duties to three people involved in
3 the conference call.

4 In the little scribbles he proposed to do
5 it in a matrix format. That's what the little
6 scribbles show.

7 Q Looking at Exhibit 11, does that refresh
8 your recollection about what tasks you were going to
9 perform after that conference call?

10 MR. ELIASBERG: I'm not sure there was an
11 issue about his recollection needing to be refreshed.

12 Q MR. SEFERIAN: On Exhibit 11, does it
13 contain any notes regarding any specific actions that
14 you were going to perform for this case?

15 A It doesn't necessarily refresh my
16 recollection. It does confirm that I agreed to meet
17 with Susanna Loeb.

18 One of us was to write the introductory
19 section about school financing. Subsequent, upon
20 meeting her, it became very apparent that she is a
21 great nationwide expert in school operational
22 financing and has tremendous resources in that but
23 knows relatively little about California facility
24 financing.

25 At that point our paths diverged, and I

1 don't know if she became an expert for the balance of
2 the case. She would be a good expert if she were to
3 be involved, but her area of interest and my area are
4 quite distant.

5 MR. SEFERIAN: I would like to ask you to
6 look at another document which we will mark as
7 Exhibit 12.

8 (Defendants' Exhibit 12
9 was marked for identification)

10 Q MR. SEFERIAN: What is Exhibit 12?

11 A Exhibit 12 appears to be a copy of another
12 scribbled note I made to myself. Apparently
13 Peter Eliasberg had called on August 10th I assume of
14 the year 2000, providing a phone number and an e-mail
15 address for Susanna Loeb at Stanford. I believe her
16 name was mentioned. I didn't know how to get ahold of
17 her. I think Peter agreed that he would provide me
18 with that information.

19 The second part of that or -- do you have
20 any questions about that.

21 Q No.

22 A The second part is Brian S-t-e-c-h-e-r is a
23 professor at UCLA and a very highly regarded research
24 administrator who had just published an extensive
25 study on class size reduction and CSRS class size

1 another document which we will mark as Exhibit 13.

2 Q MR. SEFERIAN: What is Exhibit 13?

3 A This appears to be a transcript of an
4 e-mail exchange between me and Paul Holmes, who is
5 a -- how would I describe Paul? He's a lobbyist and
6 consultant in Sacramento.

7 And for many years Paul has been building
8 and supplementing and improving a database on school
9 districts and schools in California. And in a casual
10 conversation with one of his staff I indicated I was
11 doing some research. They said, "Talk to Paul." I
12 sent Paul an e-mail. He responded back.

13 Later, when I was in Sacramento, we sat
14 down and looked at what he had available, and it
15 turned out it was not relevant to what I was working
16 on. He did have a lot of information, but it was
17 dated and frankly was not on point with what I was
18 doing.

19 Q Near the bottom of Exhibit 13 where it says
20 "One of the MWH staff," what is that reference to?

21 A Paul works for a firm that is known as
22 Murdock, Walrath, Holmes. Is another Holmes. This is
23 a, they are the lobbyists for the CASH organization.
24 Paul Holmes is the former chief consultant of the
25 Assembly Education Committee and has been involved in

1 reduction. And I believe Peter and I had some
2 discussion about whether any of his findings would be
3 relevant at all.

4 The question here is whether it's
5 proprietary to the sponsor of the study and to
6 Rand Corporation, which actually published it.

7 Q Did you review any class size reduction
8 data from Mr. Stecher in forming your opinions in this
9 case?

10 A In the course of doing preliminary research
11 for this project I contacted an assistant to
12 Dr. Stecher who referred me to some published data on
13 the UCLA web site about class size reduction. I
14 reviewed that data and concluded it would not be
15 helpful to the project I was doing.

16 It was very good data about the effects of
17 class size reduction, but they did not analyze the
18 facilities effects. And in that my report had a very
19 narrow focus, it just simply wasn't relevant to my
20 work. Even though I found it very interesting, it
21 just wasn't relevant and no part of that found its way
22 in the expert report.

23 (Defendants' Exhibit 13
24 was marked for identification)

25 MR. SEFERIAN: I would like to show you

1 California education matters for 20 years plus. As
2 long as I can remember. He is just a very nice guy
3 and a tremendous resource.

4 Jim Murdock, of the same firm, is also a
5 former chief consultant to the Assembly Education
6 Committee back when Assemblyman Leroy Green was chair
7 of the committee. The two of them have a tremendous
8 long history and involvement with all aspects of
9 California education.

10 Q Do you recall specifically why you were
11 seeking the information that's mentioned in
12 Exhibit 13?

13 A As discussed in the report and as you asked
14 a series of questions about earlier, there appears to
15 be a tendency for schools in unusually poor condition,
16 as described in my expert report, to be in areas where
17 there are lower socioeconomic measures for the
18 students in the schools.

19 I was attempting to find out if he had a
20 good index that could be used to -- again, we are
21 proposing to do a more in-depth survey and actually
22 visit a number of campuses -- double check that
23 against his database or another database. And see if
24 there was a correlation. In the end it became an
25 impossibly difficult project and the whole concept was

1 dropped. One of the reasons it was dropped is they
2 really did not have good data.

3 Since then the data has become more readily
4 available. But in the year 2000, when this e-mail
5 exchange occurred, it was very difficult to get that
6 data. Starting in mid-2002 it became more readily
7 available from the Department of Education.

8 Q Which specific data are you referring to?

9 A On the Department of Education web site you
10 can now access socioeconomic and ethnic and other
11 measures on the, right on the Internet. So for a
12 district or a school or a grade level within a school,
13 you can now get that kind of information. So from a
14 research point of view, it's a wonderful new tool.

15 This time, in the year 2000, it was not
16 readily available. It may have been there, but nobody
17 seemed to know how to get to it.

18 Q MR. SEFERIAN: I would like to ask you to
19 look at another document, Exhibit 14, which is Bates
20 stamped 0556 on the bottom.

21 (Defendants' Exhibit 14
22 was marked for identification)

23 THE WITNESS: Uh-hum.

24 Q MR. SEFERIAN: Do you recognize
25 Exhibit 14?

1 large Williams project at different times Peter had
2 questions or other people asked him questions about
3 how does the real world work. He would call and ask
4 questions.

5 The number three on the list is what is the
6 relationship between these four different agencies.
7 That's a reasonable question for people who don't deal
8 with this every single day. And I believe we had a
9 very brief discussion trying to clarify the
10 relationship between these four state agencies that
11 are all involved in facility construction and on every
12 site.

13 Down below are some bullet items which
14 appear to be a reminder list from me which I promised
15 to send him an e-mail address on the Maryland
16 evaluation program.

17 Q What are the other bullet items on
18 Exhibit 15 referring to?

19 A The "J200" is a state-mandated accounting
20 report.

21 Again, the State of California minutely
22 defines how a school district does its accounting
23 reports, all the way down to the color of ink that
24 they sign the report with. The J200 is one portion
25 that breaks out cost expenditures for a school

1 A Yes.

2 Q What is Exhibit 14?

3 A Again, Exhibit 14 is an October 5, 2000
4 transcript of an e-mail exchange with myself and Chris
5 Lopez-Chatfield. Chris is an old friend. I worked
6 with her in the Gilroy Unified School District. She
7 and her husband are very practiced and expert in doing
8 II/USP studies and many other evaluation studies for
9 school districts. And I contacted her via e-mail to
10 say, you know, do you know of any data? And she
11 responded by saying it is one of the criterion that is
12 used, but it is a very limited and narrow criteria.

13 MR. SEFERIAN: I would like to ask you to
14 look at Exhibit 15, which is Bates stamped 0551.

15 (Defendants' Exhibit 15
16 was marked for identification)

17 Q MR. SEFERIAN: What is Exhibit 15; if you
18 know?

19 A I'm not clear if this is a transcript of a
20 phone conversation or a subsequent summary of a phone
21 conversation between Peter Eliasberg and myself.

22 There appear to be some generalized
23 questions that I'm assuming that Peter asks some
24 general questions.

25 I'm aware that in working on this very

1 district for a fiscal year. And one portion of it
2 deals with maintenance.

3 And so what I had done is updated the
4 information I had from the Department of Education on
5 what the maintenance tracking portion of this report
6 does.

7 And then as far as surveys, I'm blanking on
8 that one. I don't know. And follow up a year after
9 filing. This is about a year after the case was filed
10 if my memory is correct. Probably he was just asking
11 me to see the status of my report or some other polite
12 task of the time. Only in the metaphorical sense of
13 course.

14 MR. SEFERIAN: I'll ask you to look at
15 Exhibit 16, Bates stamped 0538.

16 (Defendants' Exhibit 16
17 was marked for identification)

18 Q MR. SEFERIAN: What is Exhibit 16; if you
19 know?

20 A These appear to be my notes following a
21 phone conversation with Peter. Or possibly a meeting.
22 I can't recall here. And I'm not really sure what
23 they all mean to be honest with you. They probably
24 meant something at the time.

25 This is October 2001, over a year and a

1 half, about a year and a half ago. And jeeppers, this
2 seems to say that Lori Schecter is with Morrison and
3 Foerster in San Francisco rather than Los Angeles. I
4 believe. I'm not sure where she is from.

5 And I believe at this time it became clear
6 that they had asked if I would testify at the trial in
7 addition to preparing a report. That's what is my
8 area of expertise and possible areas of my testimony.
9 I think it's just a general outline of the flow.

10 Q What are the items listed 1 through 5 on
11 Exhibit 16?

12 MR. ELIASBERG: Do you want him to read
13 back what they are?

14 Q MR. SEFERIAN: It's a broader question.
15 Do you recall what the items 1 through 5 on
16 Exhibit 16 referred to?

17 A I believe at this point in time I was
18 writing an earlier version of what's now the final
19 expert report. And in our back and forth discussion
20 these were my notes to myself of things that, based on
21 our discussion, would be important to include at some
22 point in the report and in the eventual testimony.

23 What should a school look like, what is the
24 problem, what is the state's responsibility? And I,
25 because it was a passing conversation during the whole

1 A These appear to be notes taken during a
2 November 19, 2001 meeting with Lori Schecter and
3 Peter Eliasberg. And I believe Floyd Stark was at
4 that same meeting. Or it may have been a phone call.
5 I honestly don't recall.

6 Q Exhibit 17 appears to have Lori's name
7 written and Peter's name written; is that correct?

8 A Yes.

9 Q And these are handwritten notes that you
10 took?

11 A Yes.

12 Q Did you take these notes during the
13 meeting?

14 A I don't, at this time I can't tell you if
15 this was a meeting or a phone conversation.

16 Q Do you recall why you wrote Lori's name on
17 Exhibit 17?

18 A I don't recall. But I would hypothesize
19 that either she was at the meeting or on the phone.

20 Q Can you read what it says below Lori's name
21 on Exhibit 17?

22 A "States expert reports are due on
23 February 15th."

24 So this was mid-November, they were saying
25 a couple months to get your reports done. Says, "To

1 developmental process, some of the stuff is in the
2 report, some of it may not be in there. In its
3 entirety, some of it may have been modified as I
4 started writing the rest of the report. Again, this
5 is a year-and-a-half ago, and I can't be more specific
6 than that.

7 Q Specifically with regard to number 5 on
8 Exhibit 16, do you know what that refers to?

9 A Handwritten number 5 on Exhibit 16 is a
10 model system. And it's got several subsections. One
11 is funding. One is oversight. And one is inspection.
12 And the final one is how schools can be brought up to
13 a level place. That a portion of my notes on the four
14 key parts of describing a model system. And elements
15 of this are in the final expert report.

16 MR. SEFERIAN: I would like to ask you to
17 look at another document marked Exhibit 17. Bates
18 stamp 0536 and 0537.

19 THE WITNESS: Uh-hum.
20 (Defendants' Exhibit 17

21 was marked for identification)

22 MR. SEFERIAN: Off the record.
23 (Off-the-record discussion)

24 Q MR. SEFERIAN: Do you recognize
25 Exhibit 17?

1 summarize experiences, explain how things are done in
2 the state and provide a basis for conclusions."

3 So these appear to be some general requests
4 that in this expert report it just includes a little
5 bit of context information you might say.

6 Q Will you read what it says below the name
7 "Peter" on Exhibit 17.

8 A Heading number 1 says, "What level of state
9 oversight after built." Meaning schools.

10 Then number two is, "What intervention, if
11 any, if conditions fall below the norm, and why not if
12 there is no intervention."

13 Then it talks about the different agencies.
14 There is "DSA," Division of State Architect. "CDE"
15 for California Department of Education. "The County"
16 for county superintendents. Then last "OPSC." Then
17 there is a dash, and then we talk about the property
18 check only.

19 Q What does it say right below that on
20 Exhibit 17?

21 A It's a note to myself that says, "Purpose
22 of the expert report is to educate the judge, who may
23 not have any experience in the facilities area."

24 No disrespect to the judges, but they all
25 come from different backgrounds; that there is no

1 statewide program; that there are holes in the program
2 if there is any semblance of an inspection program.
3 So it's to establish for the record the conditions in
4 California today.

5 Q Can you read the last two lines on the
6 bottom of the first page of Exhibit 17?

7 A I think it says "legislation a few years
8 ago for facility audits."

9 And I think that's a reference again we are
10 just talking to include in the expert report that
11 legislation was passed requiring -- one piece was
12 passed requiring DSA to do facility inspections.
13 Another piece I believe was proposed to do facility
14 audits on conditions and operational aspects of
15 schools.

16 Q On the second page of Exhibit 17, can you
17 read the first section of the top of the page.

18 A It says, "How does it happen? Why some
19 places but not other places. There is one or more
20 reasons," then an asterisk. "And no back stops when
21 sliding occurs."

22 Then there is a quote, "Building
23 competence," a quote from the Little Hoover
24 Commission. I think we discussed the report that they
25 prepared the year before.

1 there.

2 Q Does Exhibit 18 contain notes that you
3 wrote during a telephone conversation?

4 A It's so jumbled I would guess it was my
5 notes taken in the middle of a conversation. They
6 don't, they appear to be notes taken in the middle of
7 a conversation.

8 Q On the top of the first page of Exhibit 18
9 there appears to be a phone number and then some
10 writing below that.

11 What's written below that?

12 A It says, "Followed the normal practice for
13 drafts."

14 And I think they, I was instructed by the
15 attorney to do whatever I normally do for draft
16 reports; if I keep 'em and file 'em, to keep 'em and
17 file 'em.

18 And I told 'em my practice is to pitch 'em
19 out as soon as they are replaced with new ones and to
20 overwrite the old drafts in my computer. Which is
21 what I do on every single report. I have a very big
22 recycle bin in my office.

23 Q The item listed on Exhibit 18, are those
24 items that you suggested should be in your expert
25 report or that the Plaintiffs' attorney suggested, or

1 MR. SEFERIAN: I would like to ask you to
2 look at Exhibit 18, five pages, Bates stamp 0518.
3 Through 0522.

4 (Defendants' Exhibit 18
5 was marked for identification)

6 Q MR. SEFERIAN: What is Exhibit 18; if you
7 know?

8 A You're testing my memory again. This
9 appears to be my notes from either a phone call or a
10 meeting. I don't recall the meeting, so it must have
11 been a phone call.

12 If you recall, an earlier document I was
13 told the expert report was due about February. And
14 this is in late January, talking about the final
15 editing and format. And again, I believe what this is
16 just making sure that as I wrote the report I included
17 what is normally expected in an expert witness report.

18 I don't normally write expert witness
19 reports. This is the first one I have ever written.
20 So I simply was unschooled in what normally goes into
21 an expert witness report.

22 Peter and Lori were trying to help me put
23 the right pieces in there and make sure they fell in
24 the right order so that an attorney or a judge reading
25 it would have some clue as to having all the pieces

1 both?

2 A I believe the essence of this, the
3 conversation that is described in these handwritten
4 notes was an attempt to organize and reorganize the
5 material that had already been written.

6 I believe in an early draft, which would be
7 about this period, I just kind of jumped in with the
8 conclusions and they said no, first tell who you are.
9 And we try and do that in this report. And they said
10 give a summary of your conclusions. So these are
11 strictly organizational issues. So rather than start
12 mid-stream and just kind of go, they start at number
13 1, go to number 2 and so on.

14 And that's all it is. They are just
15 editorial comments. Just because again I was not
16 familiar with the normal practice for expert witness
17 reports.

18 (Defendants' Exhibit 19
19 was marked for identification)

20 Q MR. SEFERIAN: Will you look at
21 Exhibit 19, marked RC0001, and RC0002.

22 A (Complying)

23 Q Do you recognize what Exhibit 19 is?

24 A I have to candidly admit I have no memory
25 of this document, but it appears to be a fax that I

1 sent to Peter transmitting a document that was
2 distributed at a statewide conference.

3 The document was an interim report from the
4 Committee on Education in California, led by Senator
5 Dee Dee Albert. Tom Duffy is a lobbyist who was very
6 actively involved in that project. And the topic is
7 "Our Standards and Accountability."

8 So the document being distributed is
9 something written by the Legislative Joint Committee
10 on the Education Master Plan. That may not be their
11 official title, but it was something like that.

12 And it was of interest to me and I thought
13 it might be of interest to Peter, so I just dropped it
14 on the fax machine to him. And the date appears to be
15 November 14th of 2001.

16 (Defendants' Exhibit 20
17 was marked for identification)

18 Q MR. SEFERIAN: Will you look at
19 Exhibit 20. What is Exhibit 20; if you know. It's
20 marked 529, 530 and 531, Bates stamped.

21 A My memory is getting a little clearer.
22 This appears to be notes from a meeting between
23 Peter Eliasberg, Lori Schecter, Floyd Stark and myself
24 on December 7, 2001. And again, it was just a general
25 discussion of content and expectations for the expert

1 Exhibit 20 is a meeting that appears to
2 occur, or meeting or phone call, from December 7,
3 2001.

4 The first page of Exhibit 21 is different
5 than the second page. And the third and fourth page
6 go together, but they don't go with the first two
7 pages. So I guess I would ask you to restate your
8 question because I'm really not sure what you're
9 getting at. They are three completely separate
10 meetings at three points in time over two months.

11 Q The only reason they are put together is
12 just for, just so we can efficiently do the
13 deposition.

14 I'm just asking you if Exhibit 21 contains
15 your notes from different meetings that you attended
16 in this case generally?

17 A I cannot say conclusively at this time
18 whether these were meetings.

19 The last two pages on January 4 are labeled
20 as a conference call. But I honestly don't recall if
21 the next, if the two preceding dates were phone calls
22 or meetings. I believe they were phone calls.

23 Yes, these are notes from phone calls or
24 meetings. I just can't recall without checking
25 further.

1 report.

2 I think we were trying to define
3 contributions that Floyd Stark, who is a very well
4 known, long time educator in California, could make to
5 the process. And after that they were just notes from
6 a meeting.

7 MR. SEFERIAN: I would like to ask you to
8 look at Exhibit 21, which is a document marked 528 and
9 527, 525 and 526.

10 (Defendants' Exhibit 21
11 was marked for identification)

12 Q MR. SEFERIAN: Will you describe generally
13 what documents are in Exhibit 21.

14 Are those notes you took from different
15 meetings?

16 A There appear to be several different
17 meetings put together here.

18 There appear to be three separate meetings
19 or conversations. I'm not sure what you want me to do
20 with 'em.

21 Q Do the documents which are in Exhibit 21
22 contain your notes of meetings you had regarding this
23 case for different dates?

24 A I'm, I guess I have to say I'm confused by
25 what you have given me as Exhibit 21.

1 Q Are all the documents in Exhibit 21 in your
2 handwriting?

3 A Yes.

4 MR. SEFERIAN: I would like to ask you to
5 look at Exhibit 22, marked RC109.

6 (Defendants' Exhibit 22
7 was marked for identification)

8 Q MR. SEFERIAN: Do you recognize that
9 document?

10 A To be honest with you, I don't have any
11 specific recollection of this document. But it
12 appears to be an e-mail from me to Peter Eliasberg
13 dated January 28th, 2002.

14 Q The document says, "Draft Outline." Do you
15 know what that refers to?

16 A Again, without checking further, I'm
17 totally lost here. This was over a year ago.

18 It appears the context here is this is the
19 time period where the deadline for the expert report
20 was rapidly coming up. I believe I had discussed with
21 them earlier some organizational issues and I, my
22 speculation is that I had revised the outline,
23 probably included the text that had already been
24 written and shipped it off via e-mail or fax or some
25 other mechanism. This is sending it to Peter -- and

1 I'm not clear what Peter did with it -- to say here's
2 where I am so far, it's a quarter to six in the
3 evening and that I would work on it more that night.
4 Again, this was an evolutionary, incremental process.

5 MR. SEFERIAN: I would like to ask you to
6 look all the Exhibit 23, RC104, 105, 106, 107, 108.
7 (Defendants' Exhibit 23
8 was marked for identification)

9 Q MR. SEFERIAN: Do you recognize
10 Exhibit 23?

11 A I don't recall the cover sheet, but I do
12 recognize the attachment by the California Budget
13 Project. The September 2001 analysis. The
14 September --

15 Q Is Exhibit 23 a document that Mr. Eliasberg
16 sent you?

17 A It appears to be that he, that Peter
18 e-mailed to me an electronic document that is the
19 summary of the California Budget Project Report on
20 distribution of Proposition 1A money.

21 My guess is that we had a conversation
22 about this. Either I could not find my copy or hadn't
23 seen it or had some question. And rather than have me
24 go fishing, he just threw it on the e-mail and got it
25 up higher. It's a statewide, generally available

1 (Defendants' Exhibit 25
2 was marked for identification)

3 Q MR. SEFERIAN: Do you recognize
4 Exhibit 25?

5 A To be honest with you, I don't. Sorry, but
6 I don't. That was over a year ago. It was a year ago
7 and I've -- I get a heck of a lot of e-mails.

8 This appears to be a very ordinary
9 communication. I believe it was, it represents to be
10 some preliminary results from the Lou Harris survey.
11 And at some point I saw the actual detailed printout,
12 but I can't put it in any greater context than that.

13 Q What are those preliminary results
14 pertaining to?

15 MR. ELIASBERG: Objection. Vague.

16 THE WITNESS: Without doing additional
17 research, I couldn't really answer that.

18 The text of the e-mail says these are
19 preliminary results from the teachers' survey prepared
20 by Lou Harris. I would speculate that these are some
21 advance findings or a summary of some kind.

22 And later I got a more complete report and
23 probably tossed this in the recycle bin. I don't
24 particularly recall this particular document.

25 (Off-the-record discussion)

1 report.

2 The California Budget Project is a well
3 known group in Sacramento that's published a number of
4 research reports.

5 MR. SEFERIAN: The next document,
6 Exhibit 24, I'll ask you to look at. And I will
7 represent to you that I believe these to be series of
8 e-mail printouts. But I'll ask you to look at these
9 and ask you if you recognize these documents that are
10 in Exhibit 24.

11 (Defendants' Exhibit 24
12 was marked for identification)

13 THE WITNESS: This -- what's your question
14 on Exhibit 24?

15 Q MR. SEFERIAN: With regard to Exhibit 24,
16 are those documents in Exhibit 24 printouts of e-mail
17 communications that you had regarding this case?

18 A They appear all to be related to this case,
19 yes.

20 I would have to examine each one more
21 carefully to give a comprehensive answer, but they all
22 appear to be from mid-spring 2002 regarding this
23 expert report in this case.

24 MR. SEFERIAN: I would look to ask to you
25 look at Exhibit 25.

1 MR. SEFERIAN: I will ask you to look at
2 Exhibit 26.

3 (Defendants' Exhibit 26
4 was marked for identification)

5 Q MR. SEFERIAN: Do you recognize
6 Exhibit 26?

7 A Again, without checking my files, this
8 appears to be the report prepared by Lou Harris based
9 on the survey of more than a thousand teachers in the
10 state of California.

11 I'm not sure if this is an executive
12 summary or a preliminary report or exactly what it is.
13 But the cover is reminiscent of the actual report.
14 The report I reviewed was considerably thicker, so
15 this may have been a subparagraph or it may not have
16 been.

17 Again, without digging through a file from
18 a year ago, I couldn't tell you. But clearly, this is
19 the Lou Harris report.

20 Q Before this case, had you ever given a
21 deposition?

22 A Yes, in a couple of times regarding
23 litigation against school districts where I was asked
24 to assist or respond to questions.

25 Q Did you give a deposition as an expert

1 witness?

2 A Um, to be honest with you, I'm not sure. I
3 know I was asked by the school district's attorney to
4 be there and be deposed. Whether I was technically an
5 expert witness or not, I'm not really sure.

6 Q Have you ever testified in court as an
7 expert witness?

8 A In a very limited scope in one case. And I
9 have had other cases where we prepared but the trial
10 got called off at the last minute.

11 Q What was the substance of your testimony in
12 court as an expert?

13 A It was concerning a developer fee
14 justification study where a builder was suing the
15 school district claiming it was inadequate. On behalf
16 of the school district I responded it was not
17 inadequate and did meet the law.

18 Q Have you ever written a maintenance and
19 operations manual for a public school?

20 A You would have to define "written."

21 I have revised a policy manual for a school
22 district where I was employed that involved aspects of
23 maintenance and operations, but I have not written a
24 complete manual specifically on that topic.

25 Q Do you have any degrees or expertise in

1 or university?

2 A No. I have been a guest lecturer and I
3 don't know what you call it, guest, a guest speaker to
4 various graduate level seminars and courses at
5 different points in time.

6 Q In your consulting work, have you ever been
7 hired by a school district to specifically address
8 maintenance and operations?

9 MR. ELIASBERG: Vague.

10 THE WITNESS: No, that is not my area of
11 expertise. If I do get such a call I refer them to
12 other people who specialize in the maintenance and
13 operations area.

14 Q MR. SEFERIAN: What is your area or areas
15 of expertise?

16 A As stated in the resume, my work involves,
17 in a nutshell, the long range planning for school
18 districts. And that includes analysis of demographic
19 trends, facility conditions, facility needs and
20 methods of financing and developing the needed
21 facilities.

22 Q Do you have any expertise in public health
23 issues including lead and indoor air quality?

24 A Exhibit 1 does not claim that I have
25 expertise in those areas.

1 statistics?

2 A I have studied statistics, both at the
3 undergraduate and graduate level, and my MBA involved
4 extensive work in quantitative methods of analysis.

5 Q Does Exhibit 1 contain a copy of your
6 resume?

7 A Exhibit 1 is the expert witness report.
8 And Exhibit A to that contains two different forms of
9 the resume, yes.

10 Q Are there any changes or additions to that
11 resume that have occurred since you prepared it?

12 A Yes. The longer form document's constantly
13 evolving. And since this was prepared I completed
14 several additional studies that are listed under
15 "Relevant Planning Projects."

16 There is a slightly more current version,
17 but the basic information is the same.

18 Q Do you maintain as part of your resume a
19 separate list of publications?

20 A Only what's listed in the resume and
21 Exhibit 1.

22 Q Have you ever taught at a school or college
23 or university?

24 A If you could clarify "taught" I guess.

25 Q Have you ever been a professor at a college

1 I'm familiar with those topics only in the
2 context of requirements as they relate to California
3 public schools.

4 We do encounter lead and indoor air quality
5 issues in modernization and renovation and expansion
6 projects, so I'm generally aware of those, but I don't
7 hold himself out to be an expert in those areas.

8 MR. SEFERIAN: I don't have any other
9 questions. Thank you.

10 MR. ELIASBERG: The state agency defendants
11 have stopped their questioning. And the court
12 reporter is relieved of her responsibility with
13 respect to the transcript; she'll produce the original
14 and send it to Plaintiffs' counsel; Plaintiffs'
15 counsel will make the transcript available to the
16 witness, who will have 30 days from the date that the
17 court reporter sends the transcript to Plaintiffs'
18 counsel in order to make any corrections and sign the
19 transcript.

20 If the transcript is not signed within 30
21 days an unsigned version can be used.

22 If the court requires that any party other
23 than Plaintiffs use the original as opposed to a copy
24 of the transcript, Plaintiffs' counsel will in those
25 circumstances make the transcript available. The

1 original available.
 2 MR. SEFERIAN: So stipulated.
 3 (Ending time: 5:30 p.m.)
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1 STATE OF CALIFORNIA)
 2
 3 COUNTY OF SAN FRANCISCO)
 4 I, JAN W. SERRA, CSR No. 8207, Certified
 5 Shorthand Reporter, certify:
 6 That the foregoing proceedings were taken
 7 before me at the time and place therein set forth, at
 8 which time the witness was put under oath by me;
 9 That the testimony of the witness and all
 10 objections made at the time of the examination were
 11 recorded stenographically by me and were thereafter
 12 transcribed;
 13 That the foregoing is a true and correct
 14 transcript of my shorthand notes so taken.
 15 I further certify that I am not a relative
 16 or employee of any attorney or of any of the parties,
 17 nor financially interested in the action.
 18 I declare under the penalty of perjury
 19 under the laws of the State of California that the
 20 foregoing is true and correct.
 21 Dated this February 25, 2003.
 22
 23 _____
 24 Certified Shorthand Reporter
 25

1 STATE OF { _____ }
 2) ss.
 3 COUNTY OF { _____ }
 4
 5
 6
 7 I, the undersigned, declare under penalty
 8 of perjury that I have read the foregoing transcript,
 9 and I have made any corrections, additions, or
 10 deletions that I was desirous of making; that the
 11 foregoing is a true and correct transcript of my
 12 testimony contained therein.
 13 Executed this _____ day of _____, 2003,
 14 at
 15
 16
 17
 18
 19 _____
 20 ROBERT CORLEY
 21
 22
 23
 24
 25

1 REPORTER'S CERTIFICATION OF CERTIFIED COPY
 2
 3
 4
 5 I, JAN W. SERRA, CSR No. 8207, Certified
 6 Shorthand Reporter in the state of California certify
 7 that the foregoing pages 395 through 570 constitute a
 8 true and correct copy of the original deposition of
 9 ROBERT CORLEY, taken on February 12, 2003.
 10 I declare under penalty of perjury under
 11 the laws of the state of California that the foregoing
 12 is true and correct.
 13 Dated this February 25, 2003.
 14
 15 _____
 16 JAN W. SERRA, C.S.R. No. 8207
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