

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

ELIEZER WILLIAMS, et al.,)
)
 Plaintiffs,)
)
 vs.) No. 312 236
)
STATE OF CALIFORNIA, DELAINE)
EASTIN, State Superintendent)
Of Public Instruction, STATE)
DEPARTMENT OF EDUCATION,)
STATE BOARD OF EDUCATION,)
)
 Defendants.)
-----))
STATE OF CALIFORNIA,)
)
 Cross-Complainant,)
)
 vs.)
)
SAN FRANCISCO UNIFIED SCHOOL)
DISTRICT, et al.,)
)
 Cross-Defendants.)
-----))

DEPOSITION OF THOMAS E. HENRY

San Francisco, California

Wednesday, September 26, 2001

Volume 2

Reported by:
PATRICIA C. STEPHENS
CSR No. 10058
JOB No. 28204

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2 CITY AND COUNTY OF SAN FRANCISCO

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13 DEPARTMENT OF EDUCATION,)
14 STATE BOARD OF EDUCATION,)
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16 Defendants.)

17
18 STATE OF CALIFORNIA,)
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20 Cross-Complainant,)
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22 vs.)
23)
24 SAN FRANCISCO UNIFIED SCHOOL)
25 DISTRICT, et al.,)
Cross-Defendants.)

Deposition of THOMAS E. HENRY, Volume 2
taken on behalf of Defendant/Cross-Complainant
State of California, at 425 Market Street,
33rd Floor, San Francisco, California,
beginning at 8:12 a.m. and ending at 1:05 p.m.
before PATRICIA C. STEPHENS, Certified
Shorthand Reporter No. 10058.

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1 by the court reporter.)
2 BY MR. ROSENBAUM:
3 Q Mr. Henry, do you recognize what's been marked
4 as Exhibit 59?
5 A Yes.
6 Q And you provided that to all counsel?
7 A Yes.
8 Q You or your attorney.
9 A Yes.
10 Q And can you identify this for me?
11 A It's my personal resume.
12 Q Okay. And did you prepare this?
13 A Yes.
14 Q Can you tell me approximately when?
15 A No.
16 Q Should there -- is it current? Are there any
17 additions or deletions that ought to be made?
18 A Well, it's current up to the date that I
19 prepared it.
20 Q Looking it over, can you see any other items or
21 entries that ought to be added?
22 A I believe it's up-to-date.
23 Q Thanks. In our prior deposition, Mr. Henry, you
24 stated to us that your immediate supervisor and employer
25 was an individual by the name of Dr. Larry Rider; is that

1 San Francisco, California, Wednesday, September 26, 2001

2
3 8:12 a.m. - 1:05 p.m.

4
5 THOMAS E. HENRY,
6 having been first duly sworn, was examined and testified
7 as follows:

8 EXAMINATION

9 BY MR. ROSENBAUM:

10 Q Okay. How are you, Mr. Henry?

11 A Fine, thank you.

12 Q Thanks for coming back. I know you didn't have
13 a lot of choice, but nice to see you again.

14 Off the record.

15 (Discussion off the record.)

16 MR. ROSENBAUM: Back on the record.

17 Let me mark, please -- have marked, please, as
18 Exhibit 59 a copy of a several-page document. The front
19 page bears the title "RESUME" in all caps. In the
20 left-hand column it says "Thomas E. Henry." I'm going to
21 have this marked and supply copies to counsel and put
22 this copy in front of the deponent.

23 (Deposition Exhibit Number 59
24 was marked for identification
25

1 correct? I'll restate that. Is your immediate
2 supervisor Dr. Larry Rider?
3 A Yes, it is.
4 Q Does he have a title?
5 A He's the Kern County Superintendent of Schools.
6 Q And with respect to your duties and
7 responsibilities, does he report to anybody, so far as
8 you know?
9 A Yes.
10 Q To whom?
11 A The constituents, elected constituents in
12 Kern County.
13 Q The Board? Who would that be?
14 A He's elected by the electorate in his county.
15 Q Okay. To your knowledge, does he -- with
16 respect to your duties and responsibilities, does he
17 report to any elected or appointed officials?
18 A He is a constitutional officer and is
19 independent from the Board, but he does have an elected
20 board that he meets with regularly.
21 Q To your knowledge, does he make reports to the
22 Board about the activities of FCMAT?
23 A Yes.
24 Q FCMAT.
25 And are those written reports?

1 MR. HERRON: Objection, calls for speculation.
 2 BY MR. ROSENBAUM:
 3 Q If you know?
 4 A They are written reports and oral reports.
 5 Q Okay. Have you always reported to Dr. Larry
 6 Rider, or have there been other individuals in his
 7 position to whom you reported?
 8 MR. HERRON: While he was at FCMAT?
 9 MR. ROSENBAUM: Yes.
 10 THE WITNESS: There have been others.
 11 BY MR. ROSENBAUM:
 12 Q Who have there been?
 13 A Dr. Kelly Blanton.
 14 Q Can you spell that person's name, please.
 15 A B-l-a-n-t-o-n.
 16 Q Anyone else?
 17 A No.
 18 Q Over what years did you report to -- is it
 19 Dr. Blanton?
 20 A Yes, it is.
 21 Q Over what years?
 22 A I don't have this to memory, but I believe it
 23 was in the position of, that I currently hold in FCMAT, I
 24 believe it was a two-year period, around 1994 to 1996.
 25 Q Okay. And then from 1996 to the present, has

1 your immediate supervisor been Dr. Rider?
 2 A Yes.
 3 Q Were you involved at all, Mr. Henry, in the
 4 creation of FCMAT?
 5 MR. HERRON: Objection. Asked and answered.
 6 THE WITNESS: Yes.
 7 MS. KAATZ: May I interject for a minute the
 8 air is very loud in here and your voices aren't carrying
 9 very well.
 10 (Discussion off the record.)
 11 BY MR. ROSENBAUM:
 12 Q And that was at or about 1991; is that right?
 13 A I believe it was around that period of time that
 14 the -- point in time that AB1200 was written.
 15 Q And was there a team of people who were involved
 16 in developing FCMAT?
 17 A If you're asking was there a team that assisted
 18 with the writing of AB1200 relative to the Fiscal Crisis
 19 and Management Assistance Team, the answer is yes.
 20 Q Who were the members of that team?
 21 MR. HERRON: Objection, calls for speculation.
 22 THE WITNESS: I don't recall all of the members
 23 of that team, but there was a team of administrators and
 24 others that participated on a statewide level in the
 25 writing of the section that relates to the development of

1 the Fiscal Crisis and Management Assistance Team.
 2 BY MR. ROSENBAUM:
 3 Q And you were part of that team; is that right?
 4 A Yes.
 5 Q Did you have a particular position with respect
 6 to that team?
 7 A Yes.
 8 Q What was that?
 9 A I chaired that team.
 10 Q Approximately how many persons were on that
 11 team?
 12 A I think that there were around ten individuals
 13 on that team.
 14 Q Do you know how it was set up?
 15 MR. HERRON: How what was set up?
 16 MR. ROSENBAUM: The team.
 17 MR. HERRON: Objection, vague and ambiguous.
 18 THE WITNESS: Yes.
 19 BY MR. ROSENBAUM:
 20 Q Can you explain?
 21 MR. HERRON: Objection, calls for a narrative.
 22 THE WITNESS: The State -- the State Department
 23 of Education developed a series of teams. The team that
 24 I sat on focused in on the development of the language
 25 for the Fiscal Crisis and Management Assistance Team.

1 There are other teams that focused in on other elements
 2 of AB1200.
 3 I think that each team had a representative from
 4 the Department of Education, and then there were members
 5 selected throughout the state from a county office
 6 perspective, as well as a district perspective on those
 7 teams.
 8 BY MR. ROSENBAUM:
 9 Q To the best of your recollection, who was on
 10 your team?
 11 A The individual members, you're asking for the
 12 individual members?
 13 Q Right.
 14 A I recall that, from the Department of Education,
 15 Mary Chenear. She was on the team for the Department of
 16 Education.
 17 Q Can you do the best you can to spell her name.
 18 A I believe it's C-h-e-n-e-a-r.
 19 Q Do you know what her position was at that time?
 20 A No.
 21 Q And who else was on the team besides
 22 Ms. Chenear, as best you recall?
 23 A Jim Hooley, who was and still is Deputy
 24 Superintendent and Chief Business Official at San Mateo
 25 County Office of Education.

1 Q Can you spell his last name, please.
 2 A It's H-o-o-l-e-y.
 3 Q Anyone else you recall?
 4 A I'm not certain about the others. That is in my
 5 files, but I'm not certain.
 6 Q What files would those be?
 7 A I would go back and look at the original writing
 8 of AB1200. And I'm sure I have a file on that somewhere.
 9 Q Okay.
 10 A I think that that team would be in there.
 11 Q Who assigned you to the position, so far as you
 12 know?
 13 MR. HERRON: Objection, vague and ambiguous.
 14 THE WITNESS: I believe that -- I believe that
 15 it was Pat Keegan, who was at the time either Deputy
 16 Superintendent at the Department of Education or served
 17 in an administrative position there at the department. I
 18 believe that he was responsible for selecting the chairs
 19 of those committees.
 20 BY MR. ROSENBAUM:
 21 Q Okay. Now, the other committees, to your
 22 knowledge, did they deal with FCMAT at all?
 23 A No.
 24 Q Did you, from Mr. Keegan or anyone else, receive
 25 a particular charge as to what your job was to be, what

1 your responsibilities were?
 2 A I believe the committee was formed just prior or
 3 during the writing of AB1200. And one of the charges, of
 4 course, was to create a concept on how an independent
 5 external entity would provide services to California's
 6 local educational agencies under AB1200.
 7 Q Did you have an understanding as to why you were
 8 selected to head this team?
 9 A No.
 10 Q Was it ever stated to you why you were selected?
 11 MR. HERRON: Objection, asked and answered.
 12 THE WITNESS: I don't believe so.
 13 BY MR. ROSENBAUM:
 14 Q Now, when you say provide services, what do you
 15 mean by that?
 16 MR. HERRON: Objection, vague and ambiguous as
 17 phrased, especially in terms of the use of "that."
 18 If you don't understand what he's asking, you
 19 can certainly ask him to rephrase. He uses "that" a lot,
 20 and it causes people to speculate. So if you want him to
 21 rephrase it, he certainly will.
 22 THE WITNESS: Could you rephrase the question,
 23 please.
 24 BY MR. ROSENBAUM:
 25 Q Sure. A couple of questions ago you told me

1 that you understood that part of your charge was to work
 2 on some language regarding the creation of an independent
 3 external agency that would provide services to local
 4 districts.
 5 Am I understanding that correctly?
 6 A I think I said entity.
 7 Q When you gave me that answer and you talked
 8 about providing services, what sorts of services did you
 9 mean?
 10 MR. HERRON: He's testified about that. Object,
 11 asked and answered.
 12 THE WITNESS: AB1200 suggested that there be an
 13 independent external entity that would provide services
 14 for California public schools. And those services were
 15 broken into two distinct components which relate to the
 16 name of FCMAT, Fiscal Crisis and Management Assistance
 17 Team.
 18 The concept was to provide to the local
 19 education agencies fiscal crisis intervention, which was
 20 defined, in part by the committee's work, and also
 21 management assistance, which was also defined in part in
 22 the statutes.
 23 BY MR. ROSENBAUM:
 24 Q And what was your understanding as to what sort
 25 of fiscal crisis intervention FCMAT was to provide?

1 MR. HERRON: As of what date?
 2 MR. ROSENBAUM: At the time.
 3 THE WITNESS: There was a discussion amongst the
 4 committee members in terms of trying to develop a clear
 5 definition of what would constitute a fiscal crisis
 6 intervention at that time and through today.
 7 We've relied on it often in terms of
 8 intervention on the Fiscal Crisis' part. And it was a
 9 district or county office that had a disapproved budget,
 10 either by a county office disapproving a school
 11 district's budget or the Superintendent of Public
 12 Instruction disapproving a county office budget and
 13 either a qualified or negative certification at the two
 14 interim report periods.
 15 So by definition we have embraced that, that if
 16 a school district or county office has a disapproved
 17 budget or a negative or qualified certification at the
 18 two interim report periods, that by definition
 19 constitutes a fiscal crisis. And those entities can
 20 either invite FCMAT in under that scenario or we can be
 21 assigned to a local education agency under that scenario.
 22 BY MR. ROSENBAUM:
 23 Q And I know we talked about this a little, but
 24 when you say assigned, assigned by whom?
 25 A FCMAT can be assigned by the intermediate agency

1 that is the county superintendent of schools office into
2 any school district within their county. The
3 Superintendent of Public Instruction statutorily can
4 assign FCMAT into a county office of education and under
5 certain conditions, in collaboration with the county
6 office, assign FCMAT into a school district. And the
7 legislature on occasion has assigned FCMAT into local
8 education agencies.

9 Q To the best of your knowledge, Mr. Henry, on how
10 many occasions has FCMAT been invited in to do fiscal
11 crisis intervention?

12 MR. HERRON: Objection, asked and answered.

13 THE WITNESS: I have a percentage. I haven't
14 quantified it, but 85 percent of FCMAT's work, since 1992
15 and is true currently, 85 percent of our work is in the
16 management assistance area, and 15 percent of our work is
17 in the fiscal crisis intervention area.

18 BY MR. ROSENBAUM:

19 Q And I'm trying to understand that, within the
20 fiscal crisis intervention, what you just told me a few
21 moments ago is that FCMAT's involvement can be either by
22 invitation or assignment; is that right?

23 A Yes.

24 Q And I'm trying to understand what's the
25 distribution approximately? How many times have you been

1 in for purposes of fiscal crisis intervention?

2 A Then that's about 85 percent, and that would be
3 around 260.

4 Q I may be confused here, so if I'm going back
5 over territory, I apologize. You do fiscal crisis
6 intervention work, "you" being FCMAT, right?

7 A Yes.

8 Q And FCMAT can either be invited in to do fiscal
9 crisis intervention work or assigned to do fiscal crisis
10 intervention work?

11 A Okay, I'm sorry. I misunderstood the question.
12 How many times have we been invited in to do the fiscal
13 crisis?

14 Q Exactly.

15 A In terms of -- the 45 would be the approximate
16 total, and I would be guessing at the number of times
17 we've been invited. It would be minimal amount in terms
18 of the 45.

19 Q Okay. Now, 85 percent of FCMAT's work is
20 management assistance work, that's what you just told me?

21 A Yes.

22 Q When you were working on the development of
23 these definitions, what was your understanding of what
24 management assistance would include?

25 MR. HERRON: Objection, vague and ambiguous.

1 invited in and how many times have you been assigned in?

2 A Normally the fiscal crisis intervention is by
3 assignment. Occasionally it can be by invitation, but
4 normally by assignment. So about 15 percent of our work
5 represents an assignment, being assigned into a local
6 education agency.

7 Q Do you know an organization -- give me your --
8 strike that.

9 Can you give me your best estimate as to number
10 of times FCMAT has been invited in to do fiscal crisis
11 intervention since 1992?

12 A Just in the rough estimates, I would say about
13 45.

14 Q Now, you also told me just a few moments ago --

15 THE WITNESS: I'm sorry. Counsel asked me if
16 that included assigned. And I thought that that was your
17 question, how many times have we been assigned into LEAs
18 in terms of assignment. And in that situation I
19 approximated about 45 times we have been assigned into a
20 local education agency.

21 BY MR. ROSENBAUM:

22 Q For purposes of fiscal crisis intervention, was
23 that what your answer was?

24 A Yes.

25 Q And on how many occasions have you been invited

1 THE WITNESS: The statutes relative to AB1200
2 provided a litany of areas that we -- that FCMAT was
3 required to have that the team -- this is prior to the
4 team being formed, of course.

5 But the team was required to have a certain
6 expertise in a number of areas, and those areas are
7 spelled out in the statutes. And it's broad, but
8 everything from personnel management to risk management
9 to organization to budgetary issues.

10 There's a whole list of areas that we were
11 required to have that expertise on our team and the
12 statutory authority to provide management assistance to
13 local educational agencies.

14 BY MR. ROSENBAUM:

15 Q Okay. And your involvement in management
16 assistance matters, Mr. Henry, is that also by invitation
17 or assignment?

18 MR. HERRON: Objection, asked and answered,
19 vague and ambiguous with the use of the term "your."

20 MR. ROSENBAUM: I appreciate that. I mean
21 FCMAT.

22 THE WITNESS: Yes.

23 BY MR. ROSENBAUM:

24 Q Okay. And since 1992 can you give me a
25 breakdown as to the percent of times that management

1 assistance has been provided by FCMAT by virtue of
2 invitation as opposed to by virtue of assignment?

3 MR. HERRON: Objection, calls for speculation,
4 compound.

5 THE WITNESS: I would be speculating on that.
6 My guess is that by far the majority would be by
7 invitation under the management assistance program.

8 BY MR. ROSENBAUM:

9 Q I don't want you to make a wild guess, but can
10 you be any more specific in terms of what you think the
11 majority, when you say the majority, what that would
12 mean?

13 MR. HERRON: Objection, calls for speculation,
14 asked and answered. He's already told you he can't
15 answer without speculating.

16 THE WITNESS: It's a guess, but probably 95
17 percent, up in that area.

18 BY MR. ROSENBAUM:

19 Q Okay. Now, returning for just a moment to the
20 fiscal crisis intervention responsibilities. Has --
21 FCMAT can be assigned by the Legislature or by the
22 superintendent, is that what you told me?

23 A No.

24 Q Okay. Help me.

25 A FCMAT can be assigned by -- the local

1 District. And there's a little caveat relative to
2 Oakland. The Board in Oakland voted unanimously to have
3 FCMAT conduct a comprehensive assessment subject to the
4 State Legislature funding the study, which the State
5 Legislature did.

6 And then San Francisco Unified, FCMAT was
7 assigned by the state Superintendent of Public
8 Instruction because it is a single-district county, and
9 the oversight agency in that situation is the state
10 department. But that also was funded by the State
11 Legislature.

12 And then most recently, West Contra Costa
13 Unified, the assignment there was through the State
14 Legislature and funded through the State Legislature.

15 Q And all those were fiscal crisis intervention
16 assignments?

17 A San Francisco --

18 (Brief interruption)

19 THE WITNESS: There is an additional district
20 that I did not add, Emery Unified. The State
21 Legislature -- the Superintendent of Public Instruction
22 and the State Legislature was involved, as well as the
23 county superintendent in that assignment.

24 Back to your earlier question about whether
25 those were fiscal crisis interventions, San Francisco

1 educational agency can assign us -- I mean the school
2 district could say we are going to assign you to do this
3 work. The county office -- the intermediate agency,
4 which is the county superintendent of schools office, can
5 assign us to conduct a review or assessment in the
6 districts within their county.

7 The Superintendent of Public Instruction can
8 assign FCMAT to conduct assessments at the county office
9 of education and in certain situations, in working in
10 collaboration with the county, can jointly assign FCMAT
11 into a school district.

12 And then, lastly, the State Legislature can and
13 has assigned FCMAT into local educational agencies.

14 Q How many times has the Legislature done that --

15 MR. HERRON: Objection, asked and answered.

16 MR. ROSENBAUM: -- to the best of your
17 knowledge?

18 THE WITNESS: There have been four situations
19 in, where the Legislature has been involved in the
20 assignment, directly involved in the assignment of FCMAT
21 into local school districts.

22 BY MR. ROSENBAUM:

23 Q And those four examples are what?

24 A The first was Compton Unified School District.

25 The second was the Oakland Unified School

1 Unified was a fiscal crisis intervention by definition,
2 as well as Emery Unified.

3 However, Compton Unified, Oakland Unified and
4 West Contra Costa Unified were unique in that the State
5 Legislature required a comprehensive systemic review of
6 those five operational areas that we had mentioned at the
7 last deposition. So it was -- it incorporated more than
8 a financial review of the school district.

9 BY MR. ROSENBAUM:

10 Q And besides the districts that you have just
11 mentioned, have there been any assignments in the area of
12 management assistance?

13 MR. HERRON: Objection, asked and answered.
14 Vague and ambiguous.

15 THE WITNESS: Are you asking whether the State
16 Legislature has assigned FCMAT to do any studies relative
17 to management assistance?

18 MR. ROSENBAUM: Let's start there, yes.

19 THE WITNESS: The answer is yes.

20 BY MR. ROSENBAUM:

21 Q And what districts?

22 A Those three districts, Compton Unified, West
23 Contra Costa and Oakland Unified, also incorporated
24 management assistance.

25 Q Has the Superintendent of Public Instruction

1 since 1992 made any assignments with respect to
2 management assistance?

3 MR. SEFERIAN: Objection, no foundation, calls
4 for speculation.

5 MR. HERRON: I take it your question is asking
6 assignments to FCMAT?

7 MR. ROSENBAUM: Yes.

8 THE WITNESS: Yes.

9 BY MR. ROSENBAUM:

10 Q And for what districts?

11 A Both San Francisco Unified and Emery Unified,
12 even though by definition, fiscal crisis intervention, we
13 did provide management assistance to those districts, as
14 well.

15 Q And the -- has the county -- I want to get this
16 straight because I was mistaken last time the way I
17 explained it. The county -- it's the county
18 superintendent's office, is that right, that could make
19 assignments? Am I understanding that?

20 A The county superintendent of schools office can
21 assign FCMAT, as well.

22 Q Has that ever happened in the area of management
23 assistance? Has the county superintendent's office ever
24 made an assignment?

25 A Yes.

1 MR. SEFERIAN: Same objection.

2 THE WITNESS: The State wanted an intermediate
3 agency to be the administrative agent for the Fiscal
4 Crisis and Management Assistance Team, independent and
5 external from the State Department of Education, and an
6 agency that at that time and then AB1200 expanded their
7 oversight responsibilities, that is, the county
8 superintendent of schools office's responsibilities for
9 fiscal oversight.

10 BY MR. ROSENBAUM:

11 Q And do you have an understanding as to why the
12 State wanted an intermediate office to be in that
13 position?

14 A Proximity to the local school districts. That
15 was one of the reasons. And they were by -- statutorily
16 they were already responsible for certain oversight. And
17 then AB1200 and trailer legislation expanded that
18 oversight, and it was a natural for the intermediate
19 agency to continue that work.

20 MR. HERRON: Trailer legislation?

21 THE WITNESS: Trailer legislation.

22 MR. HERRON: Follow-up legislation, is that what
23 you meant?

24 THE WITNESS: Yes.

25 BY MR. ROSENBAUM:

1 Q For what districts?

2 A I wouldn't be able to answer that today.
3 Numerous districts.

4 Q Okay. Is there a list of those districts?

5 A Yes.

6 Q How could I get that list?

7 MR. HERRON: You have it.

8 THE WITNESS: I believe that we have provided
9 that to you. Either through one of the annual reports or
10 data off of the website.

11 BY MR. ROSENBAUM:

12 Q Now, the decision to -- when AB1200 was passed,
13 as part of that process the office of Kern County
14 Superintendent of Schools was selected to administer
15 FCMAT; is that right?

16 A Yes.

17 Q And do you know -- do you have any
18 understanding, Mr. Henry, as to why FCMAT was to be
19 administered by a county superintendent of schools
20 office?

21 MR. SEFERIAN: Objection, no foundation, calls
22 for speculation.

23 THE WITNESS: Yes.

24 BY MR. ROSENBAUM:

25 Q What's your understanding?

1 Q When you say the State wanted, what did you mean
2 by "State"?

3 MR. SEFERIAN: Objection, calls for speculation,
4 vague and ambiguous as phrased.

5 THE WITNESS: I meant the Department of
6 Education.

7 BY MR. ROSENBAUM:

8 Q Okay. And do you know who was head of the
9 Department of Education at that time?

10 MR. HERRON: Objection, relevance.

11 MR. SEFERIAN: Objection, vague and ambiguous.

12 THE WITNESS: Well, it was either
13 Superintendent Honig or Interim Superintendent Dawson.
14 There was a transition period there, and I'm not certain
15 who the State superintendent was at the time the bill was
16 passed.

17 BY MR. ROSENBAUM:

18 Q Who at the present time funds FCMAT?

19 A FCMAT is funded through the State Legislature.

20 Q Okay. And does the Kern County superintendent's
21 office provide any funds for FCMAT?

22 A Well, that's a difficult question to answer.

23 Not certain of that. Our entire budget, I believe, is
24 made up of state apportionment dollars that are

25 apportioned by the State Department of Education through

1 the State Legislature.
 2 Q Okay. Now, subsequent to the passage of AB1200,
 3 have the duties and responsibilities of FCMAT changed?
 4 A Since AB1200 was enacted?
 5 Q Yes.
 6 A Yes.
 7 Q And on more than one occasion?
 8 A Yes.
 9 Q When was the first time it changed?
 10 A I'm not certain of the year, but soon after
 11 AB1200 was enacted, there was additional legislation that
 12 required an appropriation for FCMAT to conduct statewide
 13 staff development relative to the work that we were
 14 conducting up and down the state in fiscal crisis
 15 intervention and management assistance.
 16 Q You probably just answered this, Mr. Henry.
 17 When you say staff development, in what areas?
 18 A In those areas that are delineated in the
 19 statutes, that litany that I mentioned earlier. And also
 20 the staff development is based upon our day-to-day work
 21 plus a survey that we conduct on an annual basis relative
 22 to the needs in the state.
 23 Q Okay.
 24 A I believe that legislation was AB3141. I forget
 25 the author.

1 Q Okay. Thanks. And subsequent to those changes,
 2 did the duties and responsibilities of the FCMAT change
 3 again?
 4 A Yes.
 5 Q And can you give me an approximate date as to
 6 when that occurred?
 7 A I don't believe this was through legislation,
 8 but maybe it was in terms of the appropriation. But
 9 FCMAT was charged with developing or administering a
 10 project known as Ed-Data. The Ed-Data partnership, which
 11 includes the partnership, includes FCMAT's responsibility
 12 to administer an electronic network of demographic data
 13 for local educational agencies, as well as the State
 14 Department of Education. And the partnership includes
 15 FCMAT, Ed Source, the Alameda County Office of Education
 16 and the Department of Education.
 17 Q Okay.
 18 A That partnership maintains an electronic system
 19 on the Web whereby the educational community or others
 20 can look at various demographic data and make comparisons
 21 of school district data.
 22 Q What sorts of demographic data are you referring
 23 to?
 24 A Financial data primarily. Most recently some
 25 academic data in terms of test scores, but primarily

1 financial data in terms of revenue expenditure -- revenue
 2 and expenditure data. Trend data.
 3 Q When you say trend data, what do you mean by
 4 that?
 5 A Those individuals that visit the website can
 6 compare like-sized districts in terms of trends,
 7 comparing like-sized districts in terms of revenue
 8 expenditures in various object codes or expenditures in
 9 various object codes.
 10 Q What's the website address?
 11 A It can be accessed through www.fcmat.com, which
 12 is our FCMAT website. There is a bullet on that website.
 13 And the Ed-Data has a precise Web address, as well, and I
 14 don't have that to memory.
 15 Q What sort of academic data is included?
 16 A The --
 17 MR. HERRON: Included where? Objection, vague
 18 and ambiguous.
 19 THE WITNESS: You're asking what kind of data
 20 is, academic data is included on the Ed-Data website?
 21 MR. ROSENBAUM: Yes.
 22 THE WITNESS: The API scores are included.
 23 There's also ethnicity data that's included on the
 24 website.
 25 BY MR. ROSENBAUM:

1 Q Were you involved in a decision to add the
 2 academic data?
 3 A I was, yes.
 4 Q Do you have an understanding as to why the
 5 academic data was added?
 6 A The partnership -- yes, I do.
 7 Q What is that?
 8 A The partnership is attempting to provide
 9 meaningful, accurate and timely data to the educational
 10 community. And we felt that that data needed to be
 11 provided.
 12 Q And why is that?
 13 A Basically, we are attempting to create a
 14 one-stop shop website for parents, community members and
 15 others, policymakers, so that they don't have to jump
 16 around to various websites to get that data. So it's an
 17 attempt to put as much meaningful data on one site.
 18 Q Is there any discussion, to your knowledge,
 19 about adding any other data?
 20 A The partnership meets regularly to discuss how
 21 the website should be designed and what data needs to be
 22 on and what data needs to be removed. I'm not
 23 knowledgeable of what that recent discussion is, but I
 24 know that they meet often and discuss those issues.
 25 Q Who is the representative from FCMAT to this

1 partnership?
 2 A Joel Montero.
 3 Q Okay. Do you know how frequently it meets?
 4 A They were meeting on a monthly basis, and I'm --
 5 I think that they've moved to a quarterly schedule now.
 6 Q Does this partnership have a name?
 7 A It is -- yes, it does.
 8 Q What's that?
 9 A Ed-Data Partnership.
 10 Q To your knowledge, Mr. Henry, does it have any
 11 other purpose besides running this website?
 12 A Yes, it does.
 13 Q What's your understanding of what other
 14 purposes?
 15 A Each partner brings a different expertise to the
 16 project, and Ed Source's expertise that they provide to
 17 the partnership is to analyze complex educational data
 18 and to put that data in meaningful terms to the viewer or
 19 the reader of the website.
 20 And so in terms of the purpose, one of the main
 21 purposes is to take complex data and to analyze it and
 22 reformat it so that it's meaningful to decision makers
 23 and interested viewers.
 24 Q Who is the representative from Ed Source, if you
 25 know?

1 A Ed Source typically had three members. When I
 2 participated in the meetings, they had three members that
 3 attended. Trish Williams, who is their executive
 4 director, Penny Howell and Barbara Miller were the three
 5 representatives.
 6 Q When did you participate?
 7 A I have not participated in over two years.
 8 Joel Montero has been participating for the last two
 9 years.
 10 Q Do you know who is currently the member from the
 11 Department of Education?
 12 A I believe I do, yes.
 13 Q Who is that?
 14 A It's changed over time. Scott Hannah from the
 15 Department of Education attended during the time that I
 16 was involved. And I believe that Karen Becker currently
 17 attends on behalf of the Department of Education.
 18 Q Does -- to your knowledge, has the partnership
 19 ever looked at the question of resource needs, financial
 20 needs of districts?
 21 MR. SEFERIAN: Objection, no foundation, calls
 22 for speculation, vague and ambiguous.
 23 THE WITNESS: I'm not aware of that.
 24 BY MR. ROSENBAUM:
 25 Q Now, when FCMAT performs its duties and

1 responsibilities, am I correct, Mr. Henry, that it
 2 prepares reports summarizing its work?
 3 MR. HERRON: Objection, asked and answered,
 4 argumentative.
 5 THE WITNESS: Yes.
 6 BY MR. ROSENBAUM:
 7 Q And is there a set of agencies or individuals to
 8 whom FCMAT regularly provides its reports?
 9 A Yes.
 10 Q What's your understanding as to who those
 11 agencies or individuals are?
 12 A I don't have to memory the complete list, but I
 13 know that a -- certain members of the -- on the list that
 14 receive the report.
 15 Q Who are they?
 16 A Every member of the FCMAT board, which is a
 17 23-member board, receives a copy of the reports that we
 18 issue.
 19 (Discussion off the record between
 20 the witness and his counsel.)
 21 THE WITNESS: You're asking me if -- who
 22 receives our formal reports that we complete relative to
 23 Fiscal Crisis Intervention and Management Assistance
 24 studies?
 25 MR. ROSENBAUM: That's right.

1 THE WITNESS: Every member of the governing
 2 board receives a copy of the report. The Superintendent
 3 of Public Instruction, through her staff members,
 4 receives a copy of the report. I believe Scott Hill and
 5 Susie Lange are two individuals that receive copies of
 6 our reports.
 7 The Secretary of Education receives a copy of
 8 the reports. The executive director of ACSA and CSBA
 9 receives a copy of the reports. Dr. Rider, my immediate
 10 supervisor, receives a copy of the report. The
 11 Department of Finance receives a copy of the reports.
 12 The ledge analyst office receives a copy of the report.
 13 School Services of California receives a copy of
 14 the report. The executive director of the California
 15 County Superintendents Educational Services Association
 16 receives a copy of the report.
 17 And there are others that have requested to
 18 receive the report, and I don't have those to memory.
 19 BY MR. ROSENBAUM:
 20 Q The individuals and entities who receive
 21 reports, is that done by -- is that a required -- a
 22 statutory requirement, or is that just a custom that has
 23 evolved or some combination? I guess I could say that
 24 more eloquently. Is there a criteria as to who receives
 25 the report, that you're aware of?

1 A There have been legislative assignments whereby
2 there has been a written statutory requirement that the
3 reports be provided to the State Legislature and others.
4 The controller's office, the Department of Finance, the
5 superintendent of instruction. Those have been very few
6 in number. And the others -- the other more larger
7 mailing is just by operational protocol.

8 Q Established by FCMAT?

9 A Yes.

10 Q When you talked about the superintendent's
11 office, you said, if I understood you correctly, through
12 certain staff members; is that right?

13 A I'm sorry. I didn't understand the question.

14 Q Who -- to your knowledge, who in the
15 superintendent's office receives copies of the reports?

16 MR. SEFERIAN: Objection, no foundation, calls
17 for speculation.

18 MR. HERRON: Asked and answered.

19 THE WITNESS: You're asking who in the
20 Superintendent of Public Instruction's office receives a
21 copy of the report?

22 MR. SEFERIAN: Yes.

23 MR. ROSENBAUM: Yes.

24 MR. SEFERIAN: Same objections.

25 THE WITNESS: I am certain that we mail a copy

1 acronym. One was CABA; is that right?

2 A Yes.

3 Q And the other is CSBA.

4 A Correct.

5 Q Can you spell that for the reporter, please.

6 A CSBA would be the California School Boards
7 Association, and ACSA is the Association of California
8 School Administrators.

9 Q Okay. And in your experience, Mr. Henry, to the
10 best of your knowledge, have you ever received a written
11 response from any of the individuals or agencies you just
12 mentioned regarding any of your reports?

13 MR. HERRON: Objection, calls for speculation,
14 assumes facts not in evidence. Vague and ambiguous.

15 MR. SEFERIAN: Objection, no foundation.

16 THE WITNESS: Yes.

17 BY MR. ROSENBAUM:

18 Q Okay. And what's the basis of that answer,
19 please?

20 A You've asked whether we've ever received any
21 written responses from any of the organizations regarding
22 our reports that we've issued?

23 Q Exactly.

24 A And my answer was yes, we have.

25 Q From which organizations?

1 of the reports to Scott Hill and Susie Lange.

2 BY MR. ROSENBAUM:

3 Q Okay. Is a copy mailed directly to
4 Superintendent Eastin, as far as you know?

5 MR. SEFERIAN: Objection, no foundation.

6 THE WITNESS: There have been occasions when we
7 have hand delivered certain reports to Superintendent
8 Delaine Eastin, but normally that is through first-class
9 mail.

10 MR. SEFERIAN: Move to strike the answer as
11 nonresponsive to the question.

12 BY MR. ROSENBAUM:

13 Q On what occasions have there been hand-delivered
14 copies to Superintendent Eastin, as far as you know?

15 MR. HERRON: Objection, calls for speculation.
16 He's the CEO, not the mail boy.

17 MR. SEFERIAN: Objection, no foundation.

18 MR. HERRON: Lacks relevance, wastes our time.

19 THE WITNESS: I'm fairly certain that we hand
20 delivered the Emery Unified School District report. And
21 I'm pretty certain that we hand delivered the Oakland
22 Unified School District report just prior to the
23 presentation at the Board level.

24 BY MR. ROSENBAUM:

25 Q Okay. You mentioned two organizations by

1 A Well, I believe for certain that we've received
2 written responses from the Superintendent of Public
3 Instruction, Delaine Eastin.

4 Q On what occasions?

5 MR. SEFERIAN: Objection, no foundation.

6 MR. HERRON: Calls for speculation.

7 THE WITNESS: Most recently, Compton Unified
8 School District's progress reports and the comprehensive
9 assessments at Emery Unified School District.

10 BY MR. ROSENBAUM:

11 Q Any other occasions that you recall?

12 MR. SEFERIAN: Objection, no foundation, calls
13 for speculation.

14 THE WITNESS: I don't recall any other
15 correspondence that we received from the other agencies
16 regarding our reports.

17 MR. FEKETE: Counsel, I just note we've been
18 going for about an hour.

19 MR. ROSENBAUM: Give me one more question.

20 MR. FEKETE: Sure.

21 BY MR. ROSENBAUM:

22 Q To your knowledge, Mr. Henry, have we received
23 copies of the correspondence you've just referred to
24 regarding Compton and Emery?

25 A Well, both were pretty recent, and I don't know

1 whether my staff has forwarded those to you yet.
 2 Q Are they in a file? How would that --
 3 MR. HERRON: That's two questions, sorry. Go
 4 ahead.
 5 THE WITNESS: Yes.
 6 MR. ROSENBAUM: He's showing off.
 7 MR. HERRON: No, I'm trying to hold you at your
 8 word, which is hard to do sometimes.
 9 BY MR. ROSENBAUM:
 10 Q And how would I find those? Do you know what
 11 file they're in?
 12 A Well, I do, yes, I know what file they're in.
 13 Q What files would they be?
 14 A They would be both in the Oakland Unified School
 15 District files, as well as the Emery file. And, I'm
 16 sorry, you're asking what files they may be in in your
 17 office or what files they may be in, in my office?
 18 Q My office, it would be impossible --
 19 MR. FEKETE: I assume he's asking your office,
 20 Mr. Henry.
 21 THE WITNESS: Yes, well.
 22 MR. ROSENBAUM: I think we need a break.
 23 MS. KAATZ: We would love to know where they are
 24 in our office.
 25 THE WITNESS: It's possible they've been sent to

1 you. I think it's been requested that the documents up
 2 to a certain point plus others would be sent to you. And
 3 I know that our counsel has requested that the documents
 4 be recently sent, so you may have them.
 5 BY MR. ROSENBAUM:
 6 Q You just said Oakland. Did you mean Oakland or
 7 Compton?
 8 A The two letters that I know we received from
 9 Superintendent Delaine Eastin were relative to the
 10 Compton Unified School District and the Emery Unified.
 11 MR. ROSENBAUM: Let's take a break.
 12 (Brief break.)
 13 BY MR. ROSENBAUM:
 14 Q Mr. Henry, I want to go back to just a couple of
 15 things earlier. You were talking to me earlier this
 16 morning about the origins of AB1200. Are you familiar
 17 with a fiscal crisis in the Richmond School District
 18 about that time?
 19 A Yes.
 20 Q And to your knowledge, did that fiscal crisis
 21 have any impact on the creation of AB1200?
 22 MR. HERRON: Objection, calls for speculation.
 23 THE WITNESS: Yes.
 24 BY MR. ROSENBAUM:
 25 Q What's your understanding?

1 A My understanding is that the bankruptcy of the
 2 Richmond Unified School District was more or less the
 3 catalyst for the creation of AB1200 for the common
 4 knowledge and I think was discussed during the hearing,
 5 bill process.
 6 Q And when you say the catalyst with respect to
 7 1200, would that include those provisions relating to
 8 FCMAT?
 9 A That would include the entire writing of AB1200.
 10 Q Thanks. You and I were also in the process of
 11 discussing changes in the duties and responsibilities,
 12 the scope of the duties and responsibilities of FCMAT
 13 over time. Do you remember that?
 14 A Yes.
 15 Q And the last one that we talked about dealt with
 16 duties and responsibilities of FCMAT relating to staff
 17 development.
 18 A Yes.
 19 Q Were there any -- was there any expansion of
 20 duties or responsibilities subsequent to that, to your
 21 knowledge?
 22 A We have discussed the Ed-Data partnership.
 23 Q When was that?
 24 A That was subsequent to the statewide
 25 professional development responsibilities. I would --

1 and this is a guess, around in 1994, '95, right around in
 2 there.
 3 Q Was that as a result of legislation?
 4 MR. HERRON: Objection, calls for speculation.
 5 THE WITNESS: No, it was not the result of
 6 legislation.
 7 BY MR. ROSENBAUM:
 8 Q Do you know how that came about?
 9 A Yes.
 10 Q How is that?
 11 A The Department of Education was successful in
 12 generating an appropriation that would fund the
 13 partnership. And I'm not certain whether that was a
 14 budget change proposal or whether a line item in the
 15 Governor's budget. I'm fairly certain it was not a
 16 specific bill other than perhaps maybe the Governor's
 17 budget bill that funded the partnership.
 18 Q Okay. And you told me that the Alameda County
 19 Board of Education is part of that partnership; is that
 20 right?
 21 A No.
 22 Q Okay. Somebody from Alameda County; is that
 23 right?
 24 A The Alameda County Office of Education, through
 25 the elected official, the county superintendent, is a

1 member of the partnership.

2 Q Do you know how that office was designated for
3 involvement in the partnership?

4 A Yes.

5 Q How is that?

6 A At the time that they were encouraged, invited
7 to participate in the partnership, the Alameda County
8 Office of Education maintained a parallel system to the
9 Department of Education in terms of their mainframe.

10 So it was -- that agency was our agency that
11 provided the mainframe to store the data.

12 Q I see.

13 A And in more or less a backup to the Department
14 of Education.

15 Q Does the partnership, to your knowledge, have
16 separate offices?

17 A Does the Department of Education have separate
18 offices?

19 Q Not the Department of Education. The
20 partnership itself.

21 A Are you asking do we all reside in different
22 locations?

23 Q Well, maybe -- let me see if I can articulate
24 that more clearly. This is called the Ed-Data
25 partnership; is that right?

1 THE WITNESS: There was not a specific bill, but
2 there was an appropriation that was provided to FCMAT to
3 administer the statewide teleconferencing project. So in
4 that regard I believe that an appropriation at some point
5 in time had to be in a bill. And I'm guessing at this
6 point that it must have been in the budget bill.

7 MR. HERRON: He's not asking you to guess or
8 speculate.

9 BY MR. ROSENBAUM:

10 Q Do you have an understanding of what the
11 statewide teleconferencing project is?

12 A Yes.

13 Q Is it the same thing today, in sum and
14 substance, as it was in 1994, '95?

15 A Yes.

16 Q And what is it, to the best of your knowledge?

17 A FCMAT was provided an appropriation to develop a
18 satellite digital and analog capability that was
19 steerable throughout the State of California to provide
20 staff development via teleconferencing and in-service
21 training. And FCMAT went about that by placing satellite
22 dishes in each of the 58 county offices of education in
23 the state.

24 Q Is that one of the methods by which FCMAT does
25 staff development?

1 A Yes.

2 Q Does Ed-Data have an office?

3 A FCMAT is administrative agent of Ed-Data and,
4 yes, we have an office.

5 Q Okay. And is there an employee or an individual
6 full-time for Ed-Data, so far as you know?

7 A No.

8 Q Okay. Is there someone on your staff who's
9 assigned to that?

10 A Yes.

11 Q Who is that?

12 A Joel Montero.

13 Q Okay. Subsequent to the addition of Ed-Data,
14 among the duties and responsibilities for FCMAT was there
15 any other expansion?

16 A Yes.

17 Q When is the next one that you're aware of?

18 A I believe it was the statewide teleconferencing
19 project.

20 Q Do you know approximately when that occurred?

21 A I believe that that was around 1990 -- I believe
22 around 1994, '95, as well.

23 Q Okay. And was that as a result of legislation
24 or something else?

25 MR. HERRON: Objection, calls for speculation.

1 A Yes.

2 Q Do you know whose idea that was?

3 A Yes.

4 Q Who?

5 A It was mine.

6 Q Pretty cool.

7 Do you know outside of this particular area
8 whether or not the Department of Education uses satellite
9 teleconferencing for any purpose?

10 MR. SEFERIAN: Objection, no foundation, calls
11 for speculation.

12 MR. HERRON: Vague and ambiguous.

13 THE WITNESS: Yes.

14 BY MR. ROSENBAUM:

15 Q What's the basis of that answer?

16 MR. HERRON: Objection, vague and ambiguous.

17 THE WITNESS: The State, one, has participated
18 through the statewide teleconferencing project.
19 Superintendent Eastin has been a speaker at one of the
20 conferences. And in addition to that, on occasion -- I
21 don't know how often, but I know that the State, through
22 either Sac State -- and I believe Sac State provides
23 statewide staff development on certain topics throughout
24 the year.

25 BY MR. ROSENBAUM:

1 Q Do you know what topics?
 2 A No, I don't.
 3 Q Okay. Do you know what was the occasion for
 4 Superintendent Eastin to use these facilities?
 5 A Yes.
 6 Q What was that?
 7 A It was the original kickoff for our project.
 8 And she was -- she participated in that original kickoff.
 9 Q But to your knowledge, not subsequently?
 10 MR. SEFERIAN: Objection, no foundation, calls
 11 for speculation, vague and ambiguous.
 12 THE WITNESS: I don't believe that she has
 13 participated in the teleconferencing project since that
 14 time, that FCMAT-sponsored teleconferencing project.
 15 BY MR. ROSENBAUM:
 16 Q Okay. Help me understand how this works. There
 17 are facilities in each of the 58 county offices that can
 18 access the teleconferencing facilities; is that right?
 19 A Yes.
 20 Q How about beyond those 58 offices?
 21 MR. HERRON: Objection, vague and ambiguous.
 22 THE WITNESS: If you're asking if there are
 23 other locations or entities that can participate in the
 24 same teleconferencing project other than the 58 counties,
 25 the answer is yes.

1 BY MR. ROSENBAUM:
 2 Q Do you know which other --
 3 A No, no, I don't. There are school districts and
 4 colleges and other agencies that have the capability of
 5 receiving.
 6 Q Do you know how many, approximately?
 7 A I don't know how many. I don't have that to
 8 memory. But we have -- I know that the last
 9 teleconferencing we quantified that, and I just don't
 10 remember the number.
 11 Q If I wanted to find out who else had access, how
 12 should I go about doing that?
 13 A Joel Montero would be the person to contact
 14 regarding that.
 15 Q And when you say -- when you talked to me about
 16 staff conference -- I'm sorry, staff development
 17 trainings, in what areas, to the best of your knowledge,
 18 what subject areas?
 19 MR. HERRON: Objection, asked and answered.
 20 THE WITNESS: There are a few focus topics that
 21 we provide on a yearly basis. One of the focus topics is
 22 on the May revise, that we provide expertise, if you
 23 will, relative to the Governor's May revise to the
 24 educational community and others that participate.
 25 We are currently getting ready to broadcast in

1 October the ten most important bills that were signed by
 2 the Governor and passed by the legislature to the
 3 educational community.
 4 And then, depending on needs, throughout the
 5 year we can gear up relatively soon and provide a
 6 broadcast to the LEAs. And there's a schedule for that
 7 that provides the topics in advance. And the
 8 coordinates, satellite coordinates, in advance, is
 9 provided so that notices can go out to the local school
 10 districts by the county offices of education that host
 11 those districts for the conference, teleconference.
 12 Q To your knowledge, when a teleconference takes
 13 place, is a video cassette ever made of that conference?
 14 A Yes.
 15 Q And does your office maintain copies of those
 16 video cassettes?
 17 A Yes.
 18 Q Is it routinely done?
 19 MR. HERRON: Objection, vague and ambiguous.
 20 THE WITNESS: I believe it was routinely done,
 21 yes.
 22 BY MR. ROSENBAUM:
 23 Q Do you know how many times that has occurred,
 24 how many times you've recorded conferences?
 25 A No.

1 Q More than 20?
 2 A I do not believe it has been more than 20.
 3 Q Now, after the expansion in the area of
 4 statewide teleconferencing project for FCMAT, were there
 5 any other expansions?
 6 A Yes.
 7 Q When was the next one, to the best of your
 8 knowledge?
 9 A Well, the California School Information Services
 10 Project, known as CSIS, C-S-I-S -- this is a guess, I
 11 apologize for this, but I think around 1996.
 12 Q Okay.
 13 A There was a legislative assignment for FCMAT to
 14 develop and administer the CSIS project.
 15 Q What is the CSIS project?
 16 A CSIS is a statewide project to develop an
 17 electronic system of transferring student data between
 18 our local educational agencies and the Department of
 19 Education, with a coordination to higher education as a
 20 secondary piece, but also a vital piece.
 21 Q And what is your understanding of what FCMAT is
 22 to do with respect to this project?
 23 A FCMAT is charged to develop the project,
 24 software, hardware, and to administer the project for the
 25 State of California.

1 Q And what's your understanding of the purpose of
2 the project?

3 A To provide accurate and meaningful data of all
4 sorts, primarily student data, but other data to decision
5 makers, policymakers in Sacramento and, just as
6 important, data, student record transfers between LEAs,
7 so that when the student transfers from one school to
8 another or one school district to another, instead of a
9 manual transfer of records, the requirement is that there
10 would be an electronic transfer done immediately and
11 timely and accurately.

12 Q And when you say accurately and meaningful data,
13 what do you mean by that?

14 A All -- well, there are student elements, student
15 data elements that are being defined by CSIS in
16 collaboration with the Department of Education and CSIS
17 advisory group. And that data would include typically
18 the data that you would find in a cumulative record of a
19 student.

20 Q Is the data -- I take it from your testimony
21 that the data -- at least some of the data is at the
22 student level; is that right?

23 A Yes.

24 Q And would the student's name be identified?

25 A No.

1 A It -- if there's a time line, it's a moving time
2 line. That's a good question. And there are numerous
3 folks that are asking that question. And there's not a
4 specific time when we've actually said the project will
5 be done by this year.

6 There are certain elements of the project that
7 we hope to have done in a timely manner, but it's a
8 large -- it's a very large, comprehensive project, and I
9 don't believe that there's been a statutory time assigned
10 to that when that project would be completed.

11 Q You think it's an important project?

12 A It's a very important project.

13 Q Why is that?

14 A Well, there are several reasons. It is a
15 project that we think in time will be very cost-effective
16 for the State. It in time will provide very accurate,
17 timely and immediate information to not only
18 policymakers, but parents of children that, where the
19 children transferring from grade to grade or school to
20 school or district to district and in time will allow
21 parents to receive data at a one-stop shop again relative
22 to financial aid or admission requirement issues for our
23 State and UC system, as well as the community college
24 system.

25 Q Will the public have access to this data?

1 Q Why is that?

2 A There has been lengthy discussion regarding the
3 privacy issues, sensitivity that has been expressed by
4 the State Board of Education, as well as others in terms
5 of protecting identity of the student records by name.
6 So CSIS is working on a student -- a nonidentifiable
7 number, if you will, to transfer records so that a
8 student's name could never be associated with the
9 records.

10 Q Okay. Are you part of the advisory group?

11 A I'm not part of the formal advisory group, no.

12 Q Are you involved in the project?

13 A Yes.

14 Q What's the nature of your involvement?

15 A I'm the immediate supervisor of the operations
16 officer of CSIS.

17 Q Do you know, Mr. Henry, whose idea it was to set
18 up this project?

19 A Yes.

20 Q Who is that?

21 A I believe that it originally came from
22 Pat Keegan, who was a deputy superintendent several years
23 at the State Department of Education.

24 Q Okay. And the -- is there a time line as to
25 when this project is to be completed?

1 MR. HERRON: Objection, vague and ambiguous.

2 THE WITNESS: Well, the public will not have
3 access to all of the data because the transfer of
4 records, of course, is for the purposes of the schools
5 themselves and getting the data in a timely manner.

6 So they wouldn't have access to that data, other
7 than their own student records. And then the transfer of
8 data up to the Department of Education, in time there
9 will be, I believe, some analysis of that data relative
10 to informed policy decision making. And I would think
11 that that data in time would be available to the public.
12 I'm not sure in what form, but I'm sure that once that
13 data is analyzed, it in some form will be available to
14 the public.

15 BY MR. ROSENBAUM:

16 Q And do you think that's important?

17 MR. HERRON: Objection, vague and ambiguous in
18 use of the term "that." If you don't understand the
19 question -- he often uses "that" in his questions. I
20 think it calls for you to speculate. If you don't
21 understand, I'm sure he'll rephrase.

22 THE WITNESS: You're asking whether the data
23 that will eventually be collected and analyzed and
24 provided to the policymakers and to the general public
25 would be valuable to the public or the parents? The

1 answer is yes.

2 BY MR. ROSENBAUM:

3 Q Why is that?

4 MR. HERRON: Same objection.

5 THE WITNESS: Accurate and timely information is
6 important to parents as much as the policymakers relative
7 to selecting a school, to be able to analyze the course
8 of study, to the number of credentialed teachers perhaps
9 in a school or a district. Several other data elements
10 that I think that would be valuable in terms of making an
11 informed decision, whether it's a policymaker or a
12 parent.

13 BY MR. ROSENBAUM:

14 Q Why do you think the number of credentialed
15 teachers would be important?

16 MR. HERRON: Objection, calls for speculation,
17 asks him to testify beyond his role at FCMAT, calls for
18 expert opinion, it's vague and ambiguous.

19 THE WITNESS: You're asking why I personally
20 think credentialed teachers are very important?

21 MR. ROSENBAUM: Based on your training and
22 experience.

23 MR. SEFERIAN: Objection, calls for an
24 inadmissible opinion, vague and ambiguous, no foundation.

25 THE WITNESS: Well, there's several pieces of

1 speculation. There's been questions asked about that. I
2 don't think that they've been answered in terms of
3 whether CSIS will ultimately have testing data or other
4 classroom data. That hasn't been decided at a policy
5 level.

6 BY MR. ROSENBAUM:

7 Q Okay. Have you been involved -- I'm not asking
8 now about the classroom level question. I want to know,
9 generally under your role, have you been involved in
10 policy discussions as to what this CSIS data should
11 include?

12 MR. HERRON: Objection, vague and ambiguous in
13 terms of policy. What did you say, policy discussions?

14 MR. ROSENBAUM: Yes.

15 MR. HERRON: Yes.

16 THE WITNESS: Not formally in terms of
17 policymakers at the -- in Sacramento. Not in a formal
18 way at all.

19 BY MR. ROSENBAUM:

20 Q Have individuals asked your judgment on the
21 question of what the data should comprise?

22 A Yes.

23 Q Anyone from the superintendent's office?

24 MR. SEFERIAN: Objection, no foundation, vague
25 and ambiguous.

1 legislation and several policymakers that -- in this
2 state, as well as parents themselves that are concerned
3 about the number of credentialed teachers that are
4 available to teach the children in the schools.

5 So you know it is an issue. It's a statewide
6 issue. It's well-known the importance of a credentialed
7 teacher in a classroom. It seems basic to me and
8 obvious, but it's important to have a credentialed
9 teacher teaching our students in the classroom.

10 A Okay.

11 Q Now, you have told me that there will be
12 information at the student level; is that right?

13 MR. HERRON: Objection, asked and answered.
14 Vague and ambiguous.

15 THE WITNESS: Yes.

16 BY MR. ROSENBAUM:

17 Q Will there also be information at the classroom
18 level?

19 MR. HERRON: Objection, vague and ambiguous.

20 MR. SEFERIAN: Objection, calls for speculation.

21 THE WITNESS: You're asking whether the CSIS
22 data will eventually have classroom data?

23 MR. ROSENBAUM: Yes.

24 MR. SEFERIAN: Objection, calls for speculation.

25 THE WITNESS: Obviously is calling for

1 MR. FEKETE: By the superintendent, do you mean
2 state superintendent or county superintendent?

3 MR. ROSENBAUM: I'm sorry, the SPI.

4 MR. SEFERIAN: Same objection.

5 THE WITNESS: Yes.

6 BY MR. ROSENBAUM:

7 Q Who there?

8 A Susie Lange.

9 Q Anyone else?

10 A No.

11 Q Have you had discussions with Ms. Lange about
12 what the data should include?

13 MR. SEFERIAN: Objection, vague and ambiguous.

14 THE WITNESS: Not in a formal sense.

15 BY MR. ROSENBAUM:

16 Q But just general discussions, am I understanding
17 that right?

18 A Yes.

19 Q And what have you said?

20 A It has been some time since I've had the
21 discussion, and I think in fairness I'd be really
22 speculating. We had general conversation about whether
23 CSIS should or shouldn't include certain data. And I'm
24 really reliant -- not only reliant, expecting that my
25 chief operations officer, with his staff and the advisory

1 group that they meet with often, will respond to those
2 issues.

3 And I'm also equally confident that the
4 policymakers in time will resolve those issues. And so
5 it's really not a very fair question for me to answer.

6 Q Who is the chief operating officer?

7 A Robert Friedman.

8 Q Can you spell his last name, please.

9 A It's F-r-i-e-d-m-a-n.

10 Q Okay. And if you're uncomfortable, just tell
11 me -- do you have a view as to whether or not CSIS data
12 should include information at the classroom level?

13 MR. SEFERIAN: Objection, vague and ambiguous,
14 calls for an inadmissible opinion.

15 THE WITNESS: I'm uncomfortable in that there
16 has been decisions made to this point relative to the
17 data elements. I'm not familiar enough to comment on all
18 those data elements in terms of whether the CSIS staff
19 and operations officer and the department has signed off
20 on those data elements. I'm not familiar with which ones
21 they've signed off on and which ones they haven't.

22 BY MR. ROSENBAUM:

23 Q To your knowledge -- if you have just answered
24 this, tell me. But to your knowledge, would it be
25 possible to look at CSIS data and determine whether or

1 Mr. Hampton or by Mr. Fekete.

2 MS. LHAMON: But not Ms. Kaatz?

3 MR. HERRON: No, not Ms. Kaatz, nor your
4 objections.

5 BY MR. ROSENBAUM:

6 Q Do you know, sir, Mr. Henry, whether or not
7 there is any plan at this time for CSIS to maintain data
8 at the school level as to say the numbers of fully
9 credentialed teachers at the school?

10 MR. SEFERIAN: Objection, calls for speculation,
11 no foundation.

12 MR. HERRON: Could we have the question
13 repeated. I missed that.

14 (Record read as follows:

15 "Question: Do you know,
16 sir, Mr. Henry, whether or
17 not there is any plan at
18 this time for CSIS to
19 maintain data at the school
20 level as to say the numbers
21 of fully credentialed
22 teachers at the school?")

23 THE WITNESS: I don't.

24 BY MR. ROSENBAUM:

25 Q Or the subject matter of -- strike that.

1 not individual students in a classroom were being taught
2 by emergency credentialed teachers?

3 MR. SEFERIAN: Objection, vague and ambiguous,
4 calls for speculation, no foundation.

5 THE WITNESS: I don't know.

6 BY MR. ROSENBAUM:

7 Q Or whether students had textbooks --

8 MR. SEFERIAN: Same objection.

9 BY MR. ROSENBAUM:

10 Q -- or other basic instructional materials?

11 THE WITNESS: I do not believe that the CSIS
12 data includes whether students have textbooks or basic
13 instructional materials.

14 BY MR. ROSENBAUM:

15 Q Or whether the data would show anything about
16 the state of the facilities in the schools where the
17 students attended?

18 MR. SEFERIAN: Objection, calls for speculation,
19 vague and ambiguous.

20 MR. HERRON: Assumes facts not in evidence.

21 THE WITNESS: I don't believe that that data
22 would be or is being collected at this time.

23 MR. ROSENBAUM: Okay.

24 MR. HERRON: Just so it's clear, I join in any
25 objections that are made by Mr. Seferian or by

1 Do you know if there's plans at this time for
2 CSIS to include data regarding the subject matter of that
3 that is being taught by emergency credentialed teachers
4 at certain schools?

5 A I don't know.

6 Q Is CSIS up and running to any degree at this
7 point?

8 A Yes.

9 Q And to what extent?

10 A There are pilot projects in the State of
11 California whereby there are phases of CSIS that we have
12 gone through Phase I and proceeding to Phase II within
13 the pilot projects.

14 Q Okay. What did Phase I consist of, so far as
15 you know?

16 A This will be a very broad and general statement.

17 MR. HERRON: Objection, calls for a narrative.

18 THE WITNESS: I don't know the specifics, but I
19 know that it does include the, making sure that the
20 school district has the necessary software and hardware
21 to accommodate the transfer of records.

22 MR. ROSENBAUM: Okay.

23 THE WITNESS: But this funding is provided to
24 the pilot projects to allow for that development.

25 BY MR. ROSENBAUM:

1 Q Do you know how many schools were involved in
2 the pilot projects?
3 A No.
4 Q Any idea about the percent of the schools
5 throughout the state?
6 MR. HERRON: Objection, vague and ambiguous.
7 THE WITNESS: I don't know the percent of
8 schools, but I know the percent of ADA was high in terms
9 of the State of California.
10 BY MR. ROSENBAUM:
11 Q Is there a report that has been provided, to
12 your knowledge, regarding Phase I?
13 A There have been a couple risk analysis reports
14 that have been completed.
15 Q What is a risk analysis report in this regard?
16 A It's a report that looks at and examines the
17 relative risk of the project to identify elements that
18 CSIS would need to focus in on to lessen the risk of the
19 project.
20 Q Help me understand. When you say risk, what do
21 you mean by risk?
22 A This is a very large statewide project that
23 encompasses a number of agencies, large sums of money,
24 and at all levels there's a huge audience in terms of how
25 effective or efficient those funds are being used to

1 safeguard those funds. The ledge analyst, as well as the
2 Legislature, has required that there be an independent
3 risk analysis of CSIS.
4 And there have been at least two, if not more,
5 independent risk analyses of the project identifying what
6 the potential risk might be and recommendations to
7 address those risks.
8 Q Do you know who prepared those reports?
9 A Yes.
10 Q Who is that?
11 A MGT of America provided a risk analysis for
12 FCMAT. And Logicon provided a risk analysis for the
13 Department of Education.
14 Q Do you have copies in your office of each of
15 those reports?
16 A I believe I do, yes.
17 Q Is there a Phase II that is about to begin or
18 has begun?
19 A Yes.
20 Q And has it started yet?
21 A I believe it has.
22 Q What's your understanding of what Phase II
23 involves?
24 A In part, expanding the number of participants in
25 the project. And also monitoring those LEAs that were

1 funded during the first phase.
2 Q What does that mean, monitor?
3 A To monitor the scope of responsibilities that
4 the LEAs have in participating in this project.
5 Q What is your understanding of what the scope of
6 the responsibilities is?
7 A It is very broad, and I would prefer
8 that Robert Friedman respond to that question.
9 Q Okay. Do you know if there are models for CSIS
10 in other states?
11 MR. HERRON: Objection, vague and ambiguous.
12 THE WITNESS: I don't think there is a model
13 relative to CSIS because of the size of California and
14 the particular charge in terms of the project. There are
15 other statewide electronic transfer of student data.
16 BY MR. ROSENBAUM:
17 Q Is that your understanding of what the main
18 purpose of CSIS is, is to be able to track students as
19 they go from school to school?
20 A I believe the main purpose is to transfer
21 electronically student data from LEA to LEA and to also
22 transfer data to the Department of Education to lessen
23 paperwork at the local educational agency's area. And
24 then the third component is in articulation with higher
25 education.

1 Q Now, after the expansion of FCMAT in the area of
2 CSIS, any other expansion of duties and responsibilities?
3 A Yes.
4 Q When is the next one that you're aware of?
5 A The State Legislature funded FCMAT to conduct
6 personnel assessments under certain criteria. And that
7 was in, I believe, legislation of 1999.
8 Q Okay. And when you say personnel assessments,
9 what do you mean by that?
10 A The Legislature has required us to conduct
11 assessments in school districts that meet certain
12 criteria and to conduct a comprehensive assessment in
13 terms of personnel recruitment and retention.
14 Q Okay. And when you say personnel, what do you
15 mean by that?
16 A Certificated staff members, specifically
17 teachers.
18 Q Any personnel besides teachers?
19 A The assessment includes policies and practices
20 at the administrative and governance level, but primarily
21 focused in on reviewing legal and professional standards
22 regarding the district's ability to recruit and retain
23 certificated teachers.
24 Q Okay. And when you say certificated, what is
25 your understanding of what that means?

1 MR. HERRON: Objection, asked and answered.
 2 THE WITNESS: Certificated teachers as it
 3 relates to the classroom teaching.
 4 BY MR. ROSENBAUM:
 5 Q And this legislation, does it have a name or a
 6 number?
 7 A It does, yes.
 8 Q Here's the trick question: Do you know what it
 9 is?
 10 A I believe that it is SB1331.
 11 Q And were you involved in any discussions leading
 12 to the passage of what you understand to be SB1331?
 13 A Yes.
 14 Q And approximately when was that; was that in
 15 1999?
 16 A I believe that it was initially passed in 1999,
 17 yes.
 18 Q And did you have discussions with persons
 19 regarding the development of this legislation in 1999?
 20 MR. HERRON: Objection, vague.
 21 THE WITNESS: Yes.
 22 BY MR. ROSENBAUM:
 23 Q And in 1998?
 24 MR. HERRON: Same objection.
 25 THE WITNESS: I had discussions with legislative

1 staff, as well as governmental relations staff members
 2 regarding the writing of 1331.
 3 BY MR. ROSENBAUM:
 4 Q Did you actually submit any language?
 5 MR. HERRON: Objection, vague and ambiguous.
 6 THE WITNESS: I don't recall if I submitted any
 7 language.
 8 BY MR. ROSENBAUM:
 9 Q Do you know if anyone at FCMAT did?
 10 A No.
 11 Q Legislative -- when you say legislative staff
 12 members, of which staffs, do you recall?
 13 A I am guessing here. I believe it was
 14 Dede Alpert's staff. I think she may have been the
 15 author of the bill, but that's a guess.
 16 Q Did you ever have any discussions with the
 17 Superintendent of Public Instruction leading up to the
 18 passage of SB1331 about the measure?
 19 A No.
 20 Q Or anyone on her staff?
 21 A No.
 22 Q Did you ever have any discussions with anyone in
 23 the Governor's office or on the Governor's staff
 24 regarding SB1331 leading up to its passage?
 25 MR. HERRON: Objection, that calls for

1 privileged information, and the deponent is advised not
 2 to respond. Any privilege that is the Governor's office
 3 should not be waived by you.
 4 THE WITNESS: I don't recall if I did.
 5 BY MR. ROSENBAUM:
 6 Q Okay. Anyone in the Secretary -- did you have
 7 any discussions with anyone in the Secretary for
 8 Education's office with respect to the development of
 9 SB1331?
 10 MR. HERRON: Same warning is provided to the
 11 deponent, that any discussions about policy matters or
 12 part of the deliberative process are privileged and
 13 therefore you're advised not to respond.
 14 MR. FEKETE: Calls for a yes or no answer.
 15 MR. ROSENBAUM: That's right.
 16 MR. FEKETE: Did you have or did you not have,
 17 yes or no, is the question. The substance of any
 18 discussions is not a proper response to the question.
 19 Question is, did you have such discussions. The only
 20 answer is yes, no or you don't recall.
 21 THE WITNESS: That's right, I don't recall.
 22 MR. FEKETE: Okay.
 23 THE WITNESS: I was waiting for the third.
 24 MR. FEKETE: Well, I want you to choose the one
 25 that's correct, but that's the only answer that's

1 appropriate.
 2 BY MR. ROSENBAUM:
 3 Q And, again, this is a yes or no question: More
 4 specifically, do you recall ever having this discussion
 5 with John Mockler regarding the development of the
 6 legislation SB1331?
 7 MR. HERRON: The content of that discussion is
 8 privileged.
 9 MR. ROSENBAUM: I'm just asking yes or no.
 10 MR. HERRON: I don't care what you're asking
 11 him. I can object.
 12 MR. ROSENBAUM: Your objections are completely
 13 inappropriate.
 14 MR. HERRON: Yeah, that's what you always say,
 15 but your questions are inappropriate. Ask a decent
 16 question. Go after something that's not privileged.
 17 MR. ROSENBAUM: Go after something that -- go
 18 ahead.
 19 MR. HERRON: Go after something that's relevant
 20 to the case. That would be the most interesting.
 21 MR. ROSENBAUM: Go ahead.
 22 MR. FEKETE: As you will recall, the proper
 23 answers are yes, no or you don't recall.
 24 THE WITNESS: I don't recall.
 25 BY MR. ROSENBAUM:

1 Q Anyone from the State Board of Education?
 2 A No.
 3 Q What about Kerry Mazzoni, any discussion with
 4 Kerry Mazzoni about the development of SB1331?
 5 MR. HERRON: Again, any such conversation would
 6 be privileged.
 7 THE WITNESS: I don't recall.
 8 BY MR. ROSENBAUM:
 9 Q Okay. Now, when you said to me several moments
 10 ago "legal and professional standards," do you remember
 11 using that phrase?
 12 A Yes.
 13 Q What did you mean by that?
 14 MR. HERRON: Objection, asked and answered in
 15 the prior deposition.
 16 THE WITNESS: You're asking what did I mean by
 17 the legal and professional standards relative to the
 18 personnel assessments?
 19 MR. ROSENBAUM: Exactly.
 20 THE WITNESS: FCMAT has created a list of both
 21 legal and professional standards in the five operational
 22 areas, personnel management being one of the five.
 23 And we have taken those original legal and
 24 professional standards and refined them for the
 25 assignment to conduct personnel studies in the qualifying

1 school districts.
 2 BY MR. ROSENBAUM:
 3 Q Were you involved in that refinement process?
 4 MR. HERRON: Objection, asked and answered in
 5 the prior deposition.
 6 THE WITNESS: Yes.
 7 BY MR. ROSENBAUM:
 8 Q Who else from your office was involved with
 9 respect to that refinement process?
 10 MR. HERRON: Same objection.
 11 THE WITNESS: Joel Montero, Roberta Mayor.
 12 BY MR. ROSENBAUM:
 13 Q Can you spell her last name, please.
 14 A M-a-y-o-r.
 15 Q Anyone else?
 16 A Not that I'm aware of.
 17 Q Okay. And was there a process by which this
 18 refinement took place, in other words a set of meetings,
 19 or what's your best understanding as to how this
 20 refinement took place?
 21 MR. HERRON: Objection, compound.
 22 THE WITNESS: FCMAT staff members took the
 23 original personnel management standards and analyzed the
 24 legislation, the charge in the legislation to develop a
 25 more refined set of standards relative to that

1 charge, and then subsequently worked with a provider
 2 that's assisting FCMAT in the assessments to further
 3 refine and develop the standards used in those personnel
 4 studies.
 5 BY MR. ROSENBAUM:
 6 Q Okay. And when you say original personnel
 7 management standards, what did you mean by that?
 8 A In 1992 -- or I'm sorry, in 1997, I believe,
 9 Carl Washington's bill, AB52, required FCMAT to conduct a
 10 comprehensive assessment of the Compton Unified School
 11 District in those five operational areas. And in order
 12 to do that FCMAT believed that it was necessary to
 13 develop a standards-based approach to the assessment.
 14 And we went about identifying necessary legal
 15 standards, as well as professional or industry standards,
 16 in those five areas, including personnel management. And
 17 so we took those original standards and refined and added
 18 to those original standards to do our work currently in
 19 the personnel studies.
 20 Q And when you said -- so let me see if I
 21 understand. You started with the original personnel
 22 management standards that came out of the Compton
 23 project; is that right?
 24 A Yes.
 25 Q And then you did further refinement; is that

1 right?
 2 A Yes.
 3 Q Now, was anyone, to your knowledge, from the
 4 Department of Education involved in that further
 5 refinement?
 6 MR. SEFERIAN: Objection, vague and ambiguous,
 7 no foundation, calls for speculation.
 8 THE WITNESS: I am not aware of whether
 9 Joel Montero, who was point on that project, involved
 10 anyone at the Department of Education.
 11 BY MR. ROSENBAUM:
 12 Q Okay. I appreciate what you're saying. I'm
 13 just interested in your knowledge. I understand you
 14 wouldn't necessarily understand what either Ms. Mayor or
 15 Mr. Montero did. But to your knowledge was anyone from
 16 the Secretary for Education involved in the further
 17 refinement?
 18 A No.
 19 Q Anyone from the Governor's office?
 20 A No.
 21 Q Anyone from the State Board of Education?
 22 MR. SEFERIAN: Objection, no foundation, calls
 23 for speculation.
 24 THE WITNESS: No.
 25 BY MR. ROSENBAUM:

1 Q Now, were -- to your knowledge, who, if anybody,
2 was consulted in the further refinement of the set of
3 standards?

4 MR. SEFERIAN: Objection, no foundation, calls
5 for speculation.

6 MR. HERRON: Vague and ambiguous.

7 THE WITNESS: FCMAT staff members were
8 consulted.

9 BY MR. ROSENBAUM:

10 Q And which FCMAT staff members were consulted, to
11 the extent of your knowledge?

12 A Joel Montero and Roberta Mayor, and occasionally
13 we will have counsel review the standards. Counsel did
14 originally, and I believe that counsel reviewed the most
15 recent standards. And then the provider that we
16 ultimately contracted with to assist us was consulted, as
17 well.

18 Q Okay. And when you say counsel, who do you
19 mean?

20 A Originally I believe that the schools' legal
21 services counsel housed in Kern County provided a review
22 of those legal standards.

23 Q Do you know what attorney or attorneys were
24 involved in that?

25 A I'm guessing, originally Frank Fekete, and most

1 but I believe that Dick Schromm lives in the -- I believe
2 he lives in the Sacramento area.

3 Q Do you personally know Mr. Schromm?

4 A Yes.

5 Q And did you make a judgment that he and his
6 associates had sufficient expertise to assist in this
7 project?

8 A Yes.

9 Q And what was the basis of that judgment?

10 A It was based upon past experience, personal and
11 professional experience in his work product.

12 Q And where was that?

13 MR. HERRON: Objection, vague and ambiguous.

14 THE WITNESS: Dick Schromm & Associates --

15 MR. HERRON: Calls for speculation. I'm sorry.

16 THE WITNESS: Dick Schromm & Associates

17 conducted the personnel management reviews at -- when
18 FCMAT was charged with doing the comprehensive reviews at
19 Oakland -- I'm sorry, at Compton Unified School District,
20 at Oakland and West Contra Costa.

21 BY MR. ROSENBAUM:

22 Q And did you --

23 MR. FEKETE: Counsel, we're coming up to the end
24 of another hour.

25 MR. ROSENBAUM: Okay. Give me two more

1 recently I'm not certain who.

2 Q And what's your understanding, Mr. Henry, as to
3 the purpose for which counsel reviewed these standards?

4 MR. SEFERIAN: Objection, calls for privileged
5 information, calls for work product.

6 MR. FEKETE: I'll join in the objection and
7 instruct the witness not to answer.

8 BY MR. ROSENBAUM:

9 Q Now, who is the provider you're referring to?

10 A It's Dick Schromm & Associates.

11 Q Can you spell that?

12 A I believe it's S-c-h-r-o-m, Schromm &
13 Associates.

14 Q Okay. Were you involved in the decision to
15 involve Dick Schromm & Associates?

16 A Yes.

17 Q And who is Dick Schromm & Associates?

18 A Dick Schromm is the president of Schromm &
19 Associates, and associates are a group of individuals
20 that have expertise in personnel management.

21 Q Including teachers?

22 A Including expertise and experience in assessing
23 school districts relative to recruitment and retention.

24 Q Okay. Do you know where they're based?

25 A The associates are based throughout California,

1 questions or so.

2 MR. FEKETE: I'll count them, but I'll give you
3 the "or so" margin.

4 BY MR. ROSENBAUM:

5 Q Did you consult with them in the development for
6 the standards in the Compton and West Contra Costa and
7 Oakland investigations?

8 MR. HERRON: Mark, I'm sitting right across from
9 you and I can barely hear your questions.

10 BY MR. ROSENBAUM:

11 Q Did you consult with them in the development of
12 the standards for the Compton and West Contra Costa and
13 Oakland reports?

14 A Yes.

15 Q Do you know -- we can take our break here. This
16 is fine.

17 (Brief break.)

18 BY MR. ROSENBAUM:

19 Back on the record.

20 Q Mr. Henry, if I understood you correctly, you
21 told me in this further refinement process some of your
22 staff members were involved in that process along with
23 you; is that right?

24 A Yes.

25 Q Did you consult anybody outside FCMAT in that

1 refinement process?

2 A Only, I believe, only -- as far as my knowledge,
3 only the provider that we ultimately contracted with.

4 Q Did you or staff members, to your knowledge,
5 review any literature or academic studies?

6 MR. HERRON: Objection, vague and ambiguous.

7 MR. SEFERIAN: Objection, calls for speculation.

8 THE WITNESS: If you're asking did we research
9 the literature originally, the answer is yes. Did we
10 most recently, I'm uncertain about that, other than I
11 know that there was great attention placed on the
12 legislation in terms of what the charge was.

13 BY MR. ROSENBAUM:

14 Q And the literature that you mentioned just now
15 that was researched, can you tell me some of that
16 literature?

17 MR. SEFERIAN: Objection, calls for speculation.

18 THE WITNESS: In terms of the legal standards,
19 the -- we relied on various codes, Education Code,
20 Title 5, to help us frame what we believed were important
21 legal standards in personnel management.

22 And in terms of the management assistance, I do
23 not recall the literature that we looked at. But I know
24 there was an effort to review the literature in each of
25 the five areas to gather as much information as we could

1 reflecting back at the report. I don't know to what
2 degree we utilized the data, but I know that during that
3 period of time we looked at that report.

4 Q And what is your understanding as to why you
5 looked at that report?

6 A The Little Hoover Commission had conducted a
7 study to address some of the issues that the Legislature
8 was grappling with. And that was recruitment and
9 retention, as I recall, issues. And so they were
10 analyzing if there were any elements that were
11 contributing to the ability to recruit and the ability to
12 retain teachers.

13 Q Did you talk with any of the authors of that
14 report --

15 MR. HERRON: Objection, vague and ambiguous.

16 THE WITNESS: I know that I've had discussions
17 with the executive director at the Little Hoover
18 Commission. I want to say Jim Mayor. And I've had
19 discussions with one other staff member there in regards
20 to personnel management practices, but I don't recall his
21 name.

22 BY MR. ROSENBAUM:

23 Q Okay. And approximately when did those
24 discussions take place?

25 A The discussion with the gentleman that I don't

1 relative to the development of the standards.

2 BY MR. ROSENBAUM:

3 Q Okay. And let me break it down more
4 particularly to -- we were talking about personnel
5 management; do you recall that?

6 A Yes.

7 Q And we were talking about, if I understood you
8 correctly, primarily teachers, classroom teachers?

9 A Yes.

10 Q Do you recall any of the literature that was
11 reviewed with respect to that subject matter, classroom
12 teachers or any of the writers, any of the researchers?

13 MR. HERRON: Objection, compound.

14 THE WITNESS: Well, I know that I looked over
15 the -- there have been reports -- there have been reports
16 completed on this topic, and I know that I've read over
17 the report that the Little Hoover Commission completed.
18 And I'm not sure what year that was completed, but I know
19 that I reviewed that report in terms of the study on
20 credentialed teachers and availability of our teachers
21 for our California public schools.

22 BY MR. ROSENBAUM:

23 Q And that is in conjunction with the refinement
24 of the standards; is that right?

25 A Not necessarily at the same time, but I remember

1 recall his name occurred within the last six to seven
2 months. And then with the executive director it was
3 prior to that.

4 Q The staff member whose name you are not
5 recalling at this time, is it your understanding that
6 that individual authorized the report or was a principal
7 author of the report?

8 A No, I don't know what role he played in the
9 report. He had actually called me regarding personnel
10 management issues.

11 Q Did they involve teachers?

12 A Yes.

13 Q What was your understanding as why he called
14 you?

15 MR. SEFERIAN: Objection, calls for speculation.

16 THE WITNESS: I don't recall whether it was at
17 the time that the report was being developed or whether
18 it was subsequent and it related to a piece of
19 legislation that was being considered. One or the other,
20 I believe, but I don't recall which one.

21 BY MR. ROSENBAUM:

22 Q Did you have subsequent discussions with this
23 gentleman?

24 A I believe it was just one conversation.

25 Q Okay. Now, do you know if Mr. Montero, was he

1 the -- you used the word "point" before. Is he the point
2 person with respect to this overall project for FCMAT
3 dealing with teachers?

4 A Yes, he is.

5 Q And what is Ms. Mayor's responsibilities, as you
6 understand them?

7 A Roberta Mayor is one of our staff members
8 that, her specific responsibility has been the
9 administration and follow-up at Compton Unified School
10 District in terms of AB52 and Serna versus Eastin, the
11 consent decree.

12 And she has also been a lead auditor on the work
13 that we did for IUSP, and so she has broad background,
14 and we've relied on her knowledge to assist us in the
15 development of standards.

16 Q Did you assign Mr. Montero these
17 responsibilities?

18 A Yes.

19 Q Why did you choose him?

20 A He is my deputy and essentially is responsible
21 for the day-to-day operation of the various components
22 FCMAT's in charge of.

23 Q Was there any additional reason as to why you
24 assigned him responsibility with respect to the teacher
25 project?

1 A Well, he is my deputy, and from a organizational
2 standpoint he would be the one that I would assign it to.
3 And he has the necessary expertise and knowledge, as
4 well.

5 Q What's the basis of that answer?

6 A He has been a classroom teacher for a number of
7 years and a site principal, as well as a superintendent
8 of a Unified School District, and brings that -- has
9 brought that knowledge and experience to FCMAT.

10 Q Where was he superintendent?

11 A He was superintendent at the Novato Unified
12 School District.

13 Q Where was he a teacher?

14 A At Novato Unified School District.

15 Q Do you know, Mr. Henry, whether Mr. Montero or
16 Ms. Mayor consulted with any individuals regarding the
17 teacher project?

18 MR. HERRON: Objection, vague and ambiguous.

19 THE WITNESS: I am certain that they consulted
20 with Dick Schromm, and I'm pretty certain that he had a
21 conversation with a staff member at the Secretary of
22 Education office.

23 BY MR. ROSENBAUM:

24 Q When you say "he," that's Mr. Montero?

25 A Yes.

1 Q Do you know who at the Secretary's office?

2 A I believe that it was Margaret Fortune.

3 Q Who is that?

4 A She was a staff member under -- I believe she
5 was a staff member under either super who was the Interim
6 Secretary at that time and maybe in the transition or in
7 part under Kerry Mazzoni.

8 Q Do you know why there was consultation with
9 Ms. Fortune?

10 A Yes.

11 Q Why is that?

12 A She -- Margaret Fortune at that time was
13 assigned the responsibility of the -- had a
14 responsibility relative to IUSP, as well as an assignment
15 in terms of the personnel management studies that FCMAT
16 was in charge of.

17 Q And what was the nature of those assignments, as
18 you understand them?

19 A I'm -- I don't have the knowledge base of that.
20 I believe it was just assignment from the Secretary. She
21 was responsible for being -- taking the lead in the
22 office, I believe, on those projects.

23 Q Did you have any discussions with her about the
24 teacher project?

25 A I did, yes.

1 Q On more than one occasion?

2 A Yes.

3 Q Did she call you or did you call her, or how did
4 that work?

5 A I think that she called -- she called me.

6 Q To the best of your recollection, when was that?

7 A Well, it either had to be just prior or after
8 the signing of 1331, I believe. So I think the first
9 year was 1999. Maybe 2000.

10 And then there was another augmentation the
11 second year. And I could be a little confused on the
12 years there, but I think it was right after the signing
13 or just prior to the signing.

14 Q Okay. And to the best of your recollection,
15 what did she say to you?

16 MR. HERRON: I object on the grounds of
17 privilege to the extent that it exposes the deliberative
18 process. That is a privileged conversation.

19 MR. FEKETE: I'll join in the objection and
20 instruct the witness not to answer.

21 BY MR. ROSENBAUM:

22 Q How many discussions did you have with her?

23 MR. HERRON: Objection, asked and answered.

24 THE WITNESS: I know of at least two
25 conversations that I had with her.

1 BY MR. ROSENBAUM:

2 Q And were either of those discussions after the
3 passage of 1331?

4 A Yes.

5 Q One or two?

6 A I believe that both conversations were after the
7 passage of 1331.

8 Q I don't view that, the objection having any
9 merit to begin with, but since it's subsequent I'm going
10 to now repeat the question: Can you tell me the
11 substance of those discussions, please.

12 MR. HERRON: Well, to the extent that they deal
13 with the deliberative process, we still assert the
14 privilege. I don't know that they do, but the privilege
15 is asserted.

16 MR. FEKETE: What exactly are you looking for,
17 Counsel, so I can better understand? You're asking
18 him -- what exactly are you asking him?

19 MR. ROSENBAUM: I just want to know what she
20 said to him.

21 MR. HERRON: About what topic?

22 MR. ROSENBAUM: Regarding the, what we've been
23 referring to as the teacher project that -- the issue in
24 terms of what FCMAT would be doing concerning valuation
25 of the teachers. Those aren't your words, but you

1 Q Was there discussion about what FCMAT would be
2 doing?

3 MR. FEKETE: I think you can answer that
4 question.

5 THE WITNESS: Yes.

6 BY MR. ROSENBAUM:

7 Q Can you tell me what the answer to that question
8 was, please.

9 MR. HERRON: The privilege is asserted.

10 MR. FEKETE: I will not object to the witness
11 answering that question.

12 THE WITNESS: There are two bills. SB1331, I
13 believe that specifically speaks to FCMAT's
14 responsibility. There is a -- I don't want to use the
15 word parallel bill, but there's a related bill, and I
16 believe it's SB1661. SB1661 assigned responsibilities to
17 the Sacramento County Office of Education to develop
18 regional consortia to focus in on the same topic, that
19 is, issues relating to retention and recruitment. It is
20 coined as, I think, the TRIP, TRIP legislation, Teacher
21 Recruitment Incentive Program.

22 So there was funding to the Sacramento County
23 Office of Education to develop consortium in the state
24 that -- and why it is linked to FCMAT is that those
25 schools that are identified as having a proportionately

1 understand the category I'm talking about?

2 MR. FEKETE: Are you asking what she told him
3 his -- FCMAT's role was supposed to be? I'm not quite
4 sure.

5 MR. ROSENBAUM: My question was broader. I
6 wanted to know just what she said.

7 MR. HERRON: And why does it matter, at least in
8 terms of the privilege assertion, if it was before or
9 after legislation was passed?

10 MR. ROSENBAUM: First of all, I don't understand
11 the privilege invocation in the first place. But even
12 arguably, there's no -- the policy leading up to 1331 is
13 complete once 1331 passes.

14 MR. HERRON: And 1331 is what deals with the
15 teacher project, as you've defined it?

16 MR. ROSENBAUM: Yes.

17 MR. FEKETE: Just the question whether he had
18 subsequent discussions with this person about FCMAT's
19 involvement in the teacher project after the legislation
20 was enacted?

21 MR. ROSENBAUM: Yeah, we can start there. I
22 think Mr. Henry has already stated that the discussion
23 took place after the passage of 1331, so that's been
24 established. I'll break it down a little bit.

25 BY MR. ROSENBAUM:

1 high number of emergency credentials and also fall in a
2 certain quartile relative to the test scores received
3 highest priority for FCMAT's assessment.

4 And Margaret Fortune was not only, I believe,
5 point at communicating at a policy level, the status of
6 what was occurring in the TRIP projects, the various
7 regions; she was also point at communicating the status
8 of FCMAT's work relative to the assessment. And so her
9 questions were related to the status of FCMAT's work in
10 regards to 1331.

11 BY MR. ROSENBAUM:

12 Q And what questions did she ask you regarding the
13 status of FCMAT's work?

14 A I don't recall the specific questions other than
15 just how far along are you, have you identified any
16 qualifying school districts, how soon can we expect
17 reports. Those types of questions.

18 Q Did you give her an answer to as how many
19 qualifying districts you had identified or what
20 qualifying districts you had identified?

21 A Yes.

22 Q What did you say?

23 A I don't recall the specific number, but I know
24 that we provided her at that time with a number of
25 schools that we had identified that had qualified under

1 the legislation.
 2 Q Do you have a ballpark number?
 3 MR. HERRON: Objection, calls for speculation.
 4 THE WITNESS: No, I do not.
 5 BY MR. ROSENBAUM:
 6 Q And had the number of school districts
 7 qualifying, has that increased since you spoke with her?
 8 A Yes, it has.
 9 Q Do you know what the number is now?
 10 A I do not. We had as a target for the last
 11 fiscal year to -- we had as a target, I believe, 40
 12 school districts. And I believe that we met that target,
 13 and we're in the second funding cycle, second year. And
 14 we are continually identifying school districts that
 15 qualify.
 16 Q And the criteria for qualification, it's your
 17 understanding that comes from the legislation?
 18 A Yes.
 19 Q And what is your understanding of what those
 20 criteria are?
 21 A I don't have the specifics to memory, but the
 22 two major components has to do with the number of
 23 requests for emergency or permit credentials. And
 24 there's a second component relative to where the school
 25 sits in terms of the, I believe, the API scores.

1 Q Do you know which decile?
 2 A No, I don't.
 3 Q When you say the number of requests for
 4 emergency credentials, what do you mean by that?
 5 MR. HERRON: Objection, vague and ambiguous.
 6 THE WITNESS: School districts can request an
 7 emergency credential if the teacher doesn't possess the
 8 necessary credential or units based upon certain
 9 criteria. And so if that number is at a certain level,
 10 that is one of the criteria that establishes a
 11 prioritization for FCMAT's assessment.
 12 BY MR. ROSENBAUM:
 13 Q Is it your understanding that one of the numbers
 14 for that is 20 percent or higher?
 15 A You know, I really do not recall the specifics
 16 of that.
 17 Q Do you know -- do you recall -- you told me
 18 earlier that you were involved in the development of
 19 1331.
 20 A I don't know if I said that.
 21 Q Tell me your words. I don't want to
 22 mischaracterize your testimony.
 23 A I think that there was a call or two made during
 24 the development of 1331, but I don't remember the
 25 specifics of it.

1 Q Do you know where -- let me strike that.
 2 Let me mark as Exhibit 60 -- off the record.
 3 (Discussion off the record.)
 4 (Deposition Exhibit Number 60
 5 was marked for identification
 6 by the court reporter.)
 7 BY MR. ROSENBAUM:
 8 Q Mr. Henry, I'm going to place in front of you
 9 what's been marked as Exhibit 60. It's a three-page
 10 document from the Education Code. You can either look at
 11 it or just ask Mr. Fekete from memory to recite it for
 12 you.
 13 MR. FEKETE: Which sections of the Code do you
 14 have in mind?
 15 BY MR. ROSENBAUM:
 16 Q I'm going to come over and look over your
 17 shoulder for a moment.
 18 Directing your attention to section 1,
 19 subsection 1, A-1 of 42127.85, title: "County Office
 20 Fiscal Crisis and Management Assistance Teams; Additional
 21 Duties; Review of Personnel Systems." And I want you to
 22 look specifically at subsection A-1 and see if that
 23 refreshes your recollection as to what the numbers are.
 24 A It does.
 25 Q And what's your recollection now, Mr. Henry?

1 A Well, a school district that's requested at
 2 least three consecutive years a waiver relative to the
 3 emergency permits, either those that exceed 20 percent of
 4 the school district's estimated need for credentialled
 5 teachers or exceeds 50 permits, whichever is more.
 6 Q I'm not asking you for your views. I want to
 7 know, prior to this legislation, had you ever heard that
 8 20 percent figure with reference to emergency
 9 credentialled teachers?
 10 MR. HERRON: Objection, vague and ambiguous,
 11 calls for speculation.
 12 THE WITNESS: I don't recall.
 13 BY MR. ROSENBAUM:
 14 Q Okay. Do you have any understanding as to where
 15 that 20 percent figure came from?
 16 MR. SEFERIAN: Objection, no foundation.
 17 MR. HERRON: Vague and ambiguous as phrased.
 18 THE WITNESS: No, I don't.
 19 MR. ROSENBAUM: Okay.
 20 MR. HERRON: While we're on the topic of
 21 exhibits, I wonder --
 22 MR. ROSENBAUM: I want to finish the set of
 23 questions. Then I'll be glad do entertain your thought.
 24 BY MR. ROSENBAUM:
 25 Q In your discussions with Ms. Fortune, did you

1 ever hear any objection to that 20 percent figure from
2 her?
3 MR. HERRON: Objection, privilege is asserted as
4 to the deliberative process. To the extent that
5 privileged conversations occurred, the witness is advised
6 not to waive that privilege.
7 MR. ROSENBAUM: I want to be clear I'm talking
8 about the discussions that took place post passage of
9 1331.
10 MR. HERRON: That helps but the privilege is
11 still asserted.
12 MR. FEKETE: I have told the witness that I
13 would not object to his answering questions about
14 conversations that took place after the statute was
15 enacted.
16 THE WITNESS: No.
17 BY MR. ROSENBAUM:
18 Q Okay. Regarding the 40 school district --
19 regarding the audits of the 40 school districts, did
20 FCMAT receive funding for that process?
21 MR. HERRON: Objection, vague and ambiguous,
22 misconstrues prior testimony.
23 THE WITNESS: If you're asking whether FCMAT
24 received an appropriation to conduct the personnel
25 assessments, the answer is yes.

1 BY MR. ROSENBAUM:
2 Q Do you know how much?
3 A Yes.
4 Q How much?
5 A I believe that the first year was a one million
6 dollar appropriation, and that same appropriation has
7 been provided for the second year.
8 Q Okay. And is there a number of target districts
9 for the second year?
10 A I believe that we had hoped for 40 districts in
11 a fiscal year.
12 Q Each year?
13 A Yes. But that -- that's going to be affected by
14 the size of the school district that we will be
15 conducting the study. So the larger the school district,
16 perhaps the lower number that we're going to be able to
17 reach.
18 Q Did your office undertake any budgeting
19 exercises to try to come up with a figure as to what
20 would be needed to conduct audits of 40 school districts?
21 MR. HERRON: Objection, vague as to time.
22 THE WITNESS: I am fairly certain that we did,
23 yes.
24 BY MR. ROSENBAUM:
25 Q When was that?

1 A Well, it would have had to be either -- it had
2 to be prior to the signing of the bill, I believe.
3 Q Okay. And was there any subsequent budgeting
4 estimate made?
5 MR. HERRON: Objection, calls for speculation.
6 THE WITNESS: Only in that we felt that in order
7 to hit our target, that the one million dollar
8 appropriation allowed for that to happen.
9 BY MR. ROSENBAUM:
10 Q Did you -- the first time that you undertook the
11 estimate, do you recall what number you came up with?
12 A I do not.
13 Q Was Mr. Montero, was he in charge of that, do
14 you know?
15 MR. HERRON: Objection, vague and ambiguous.
16 THE WITNESS: I don't think so.
17 BY MR. ROSENBAUM:
18 Q Do you know who was?
19 MR. HERRON: Same objection.
20 THE WITNESS: Yes.
21 BY MR. ROSENBAUM:
22 Q Who was that?
23 A I would typically be involved in any discussion
24 regarding appropriate funding for FCMAT's work.
25 Q Okay. Would there be documents that would be

1 related to the budgeting process in your office?
2 MR. HERRON: Objection, calls for speculation.
3 THE WITNESS: If you're asking generally do we
4 have budgets that relate to our various assignments, the
5 answer is yes, we have budgets that relate to our various
6 assignments.
7 MR. ROSENBAUM: It's a poor question by me.
8 BY MR. ROSENBAUM:
9 Q Regarding the analysis of what it would take to
10 budget for the retention and recruitment audits, do you
11 know if there are documents that relate to that
12 estimation analysis?
13 MR. HERRON: Objection, vague and ambiguous.
14 THE WITNESS: I'm not aware of, if there are any
15 documents.
16 BY MR. ROSENBAUM:
17 Q Incidentally, the document that's in front of
18 you right now, Exhibit 60, and particularly what you
19 looked at code 4212785; do you see that?
20 A Yes.
21 Q When we talked about 1331, how does that relate
22 to 1331?
23 MR. HERRON: Objection, calls for a legal
24 conclusion, calls for speculation.
25 MR. ROSENBAUM: It's another poor question.

1 MR. FEKETE: Counsel, it is 1331.
 2 BY MR. ROSENBAUM:
 3 Q That's your understanding of 1331?
 4 A Yes.
 5 Q Now, in conducting an audit of a school district
 6 for the purposes of 1331, do you have an understanding of
 7 what activities would be involved?
 8 A Yes.
 9 Q And what would those activities consist of?
 10 MR. HERRON: Objection, asked and answered,
 11 calls for speculation.
 12 THE WITNESS: The standards -- the personnel
 13 management standards are assessed at each of the
 14 qualifying school districts, and a report is issued to
 15 the school district and other interested parties
 16 regarding the findings of that assessment, which includes
 17 the recommendation.
 18 BY MR. ROSENBAUM:
 19 Q Is that a similar protocol, in general, as to
 20 what the reports say for Compton?
 21 A Yes.
 22 Q And have those reports been prepared for the
 23 first 40 audits or for any of those audits?
 24 A There have been reports prepared for the school
 25 districts where we've completed the audits. The first

1 year did not provide for a full year because of when
 2 the -- when the legislation became effective.
 3 So even though we believed that the projections
 4 were accurate relative to the number of studies that we
 5 were going to be able to complete, I'm not certain
 6 whether we actually were able to complete that many that
 7 first year because of where the legislation fell.
 8 But in the current year I believe we're on a
 9 pace to reach our target.
 10 Q The first year -- I take it what you're saying
 11 you didn't have a full 12 months for the first year?
 12 A Correct.
 13 Q Do you know how many months you had?
 14 A I'm thinking that -- I do not believe it was
 15 urgency, and I'm thinking it would have been effective
 16 January -- and I want to say effective January 2000 and
 17 then re-funded for this next fiscal year, '01/'02.
 18 Q So am I right that you had approximately six
 19 months?
 20 A Yes.
 21 Q And would that mean that you completed
 22 approximately 60 audits -- I mean 20 audits?
 23 A I'm not certain the number of audits that we've
 24 completed.
 25 Q Have reports been prepared for those audits that

1 were completed?
 2 A Yes.
 3 Q And have those documents been distributed to the
 4 schools, the school districts?
 5 A Yes, they have.
 6 Q And are those reports available?
 7 A Are they available to the public?
 8 Q Yes.
 9 A Yes.
 10 Q How could I get copies of those?
 11 A I believe that we have directed staff to provide
 12 copies of those reports to you. I don't know whether
 13 you've received them yet or not, but I believe I've
 14 directed staff to do that.
 15 MR. HERRON: The State has not received them.
 16 MS. KAATZ: We've not received them.
 17 MR. FEKETE: They're available, Counsel,
 18 through a public records request.
 19 MS. KAATZ: I think they're also responsive to
 20 the subpoena request, though.
 21 MR. FEKETE: I don't know whether that's
 22 correct, and there were objections to the subpoena
 23 request. And I don't know whether that's been resolved.
 24 So anything that's been provided has been provided in
 25 response to the public records request.

1 MS. KAATZ: We can do this off the record, but I
 2 think that the public records request also paralleled or
 3 mirrored the subpoena request.
 4 MR. FEKETE: It did, but I don't know whether
 5 this type of record has been asked for. I can't answer
 6 that question. If you say it has, then -- and it, in
 7 fact it has, we will certainly respond.
 8 MS. KAATZ: My word is not enough today?
 9 MR. FEKETE: Well, it's close but not quite the
 10 whole thing.
 11 BY MR. ROSENBAUM:
 12 Q I don't want to waste your time, Mr. Henry, to
 13 make you recall things that are hard to recall. But can
 14 you remember any of the districts that were in the first
 15 20 or so?
 16 MR. HERRON: Objection, I think you're asking
 17 him to speculate.
 18 THE WITNESS: We can provide that information to
 19 you. There's a number and I do not have them to memory.
 20 BY MR. ROSENBAUM:
 21 Q FCMAT is also undertaking an audit for purposes
 22 of looking at TRIP with respect to the Los Angeles
 23 Unified School District; is that right?
 24 A TRIP relates to SB1661, I believe, and that's
 25 the -- and that's the Sacramento County office's charge

1 to assist in the identification of qualifying school
2 districts within those regions that are identified in
3 TRIP.

4 Those school districts that have been identified
5 receive a higher priority for FCMAT's assessment, higher
6 than even what the criteria in the statutes provide.
7 That is a level of criteria that establishes the
8 districts that receive the assessment, but overlaying
9 that is the districts that are identified through the
10 TRIP consortia, and those receive the highest priority.

11 And I apologize for that long-winded narrative
12 that I'm cautioned on, but now I forget what your
13 question was.

14 MR. ROSENBAUM: That's okay.

15 MR. FEKETE: That's the first time you've
16 apologized for a long-winded answer.

17 BY MR. ROSENBAUM:

18 Q Do you know what the criteria are for TRIP, for
19 the TRIP consortium?

20 A Well, I believe that it is fairly consistent
21 with the criteria that's established in the statutes
22 here. But what I'm not certain of is whether TRIP has
23 established other elements relative to that.

24 Q And when you say the statutes here, you mean
25 1331?

1 BY MR. ROSENBAUM:

2 Q And what's the basis of that statement?

3 A It's based upon conversations with Joel Montero
4 and Dick Schromm in terms of identifying the qualifying
5 school districts for this next fiscal year.

6 Q And was FCMAT invited by the Los Angeles School
7 District to undertake this audit?

8 MR. HERRON: Objection, calls for speculation.

9 MS. KAATZ: Join.

10 THE WITNESS: I believe that LA Unified School
11 District qualifies relative to the criteria, and I also
12 believe that they have invited FCMAT to conduct the
13 assessment.

14 BY MR. ROSENBAUM:

15 Q And do you know who in the school district was
16 involved with respect to that invitation?

17 A I do not know.

18 Q Does FCMAT have authority to direct a school
19 district to change its practices regarding retention,
20 recruitment of teachers?

21 MR. SEFERIAN: Objection, it calls for an
22 inadmissible legal conclusion, calls for speculation.

23 THE WITNESS: Are you asking whether FCMAT has
24 the statutory authority under SB1331 to direct a school
25 district to change its personnel management practices?

1 A Correct.

2 Q And is there a person or persons who are the
3 chair people for TRIP? I want to get a sense of what the
4 organizational structure is.

5 A Every region has a funded unit that has a chair
6 that -- of that region, and that is administered through,
7 again, the Sacramento County Office of Education. And
8 I'm not familiar with all of the chairs of the regions.
9 We have those identified on our website, the regions and
10 the participating school districts.

11 Q So the headquarters for the TRIP consortium
12 would be in Sacramento?

13 A The Sacramento County Office of Education is the
14 administrative agent in charge of implementing the TRIP
15 legislation.

16 Q Going back to the LAUSD, FCMAT is undertaking an
17 investigation into the retention and recruiting practices
18 of teachers for the Los Angeles School District; is that
19 correct?

20 MR. HERRON: Objection, calls for speculation,
21 vague and ambiguous.

22 THE WITNESS: I believe and am fairly certain
23 that Los Angeles Unified School District will be a
24 district that we will conduct an assessment. And I
25 believe that it's -- it will occur in this next phase.

1 MR. ROSENBAUM: Yes.

2 MR. SEFERIAN: Same objection.

3 THE WITNESS: I believe that the answer is no.

4 BY MR. ROSENBAUM:

5 Q Under any other statutes or regulation that
6 you're aware of, does FCMAT have that authority, as far
7 as you're aware?

8 MR. SEFERIAN: Same objections.

9 THE WITNESS: I believe that under certain
10 conditions, under certain conditions FCMAT would have the
11 authority to affect personnel management decisions.

12 BY MR. ROSENBAUM:

13 Q And are those relating to matters of fiscal
14 crisis?

15 MR. HERRON: Objection, vague and ambiguous.

16 THE WITNESS: Yes.

17 BY MR. ROSENBAUM:

18 Q Has your office undertaken to budget what it
19 would take to audit the Los Angeles Unified School
20 District itself, just that school district for purposes
21 of evaluating retention, recruitment of teachers?

22 A Yes.

23 Q And do you have an estimate of what percent of
24 that million dollars will be devoted to the Los Angeles
25 Unified School District audit?

1 A I know that that number has been determined. I
 2 don't know exactly what that number is.
 3 Q Can you give me a ballpark figure?
 4 A No.
 5 Q Is there a person who will be in charge of the
 6 LAUSD audit?
 7 A FCMAT is in charge administratively of all the
 8 audits, and there will be a -- there would be a FCMAT
 9 administrator that would be lead, but then there would be
 10 the on-site administrator, as well.
 11 Q Is that on-site administrator, do you expect
 12 that to be a FCMAT employee or someone from Schromm &
 13 Associates?
 14 A The on-site administrator would be someone from
 15 Schromm & Associates.
 16 Q Is that true of other unified school districts,
 17 as well?
 18 MR. HERRON: Objection, calls for speculation,
 19 vague and ambiguous.
 20 THE WITNESS: Yes, it would be.
 21 BY MR. ROSENBAUM:
 22 Q Okay. And is there a particular person at
 23 Schromm & Associates with whom FCMAT deals regarding
 24 these audits? Is it Mr. Schromm himself?
 25 A Yes, it is.

1 Q Now, when we were talking about the criteria,
 2 if I understand you correctly, you told me first you had
 3 the criteria from -- that had been previously developed.
 4 Then it went through a further refinement process, and
 5 then there is one more refinement process in which
 6 Schromm & Associates was involved. Am I getting the
 7 picture right here?
 8 A The original personnel management standards that
 9 were utilized at Compton Unified School District have
 10 gone through a number of reviews and analysis since
 11 Compton. So those standards that we ultimately decided
 12 on for the personnel management reviews have gone through
 13 multiple reviews in our past studies.
 14 Q Okay. The standards that were ultimately
 15 developed -- I'm now talking about the final product,
 16 have you seen those standards anywhere else, used
 17 anywhere else by the Department of Education?
 18 MR. SEFERIAN: Objection --
 19 MR. ROSENBAUM: Is that question clear? It may
 20 not be.
 21 MR. SEFERIAN: -- compound question, calls for
 22 speculation, no foundation, vague and ambiguous.
 23 MR. ROSENBAUM: I gave you a better objection
 24 than that, but -- so I'll start it over.
 25 BY MR. ROSENBAUM:

1 Q Those standards, to your knowledge, do they
 2 exist anywhere outside FCMAT?
 3 MR. HERRON: Objection, vague and ambiguous,
 4 calls for speculation, calls for him to testify beyond
 5 his role at FCMAT.
 6 MR. SEFERIAN: Objection, calls for a legal
 7 opinion, inadmissible legal opinion.
 8 THE WITNESS: I am fairly certain that there are
 9 legal standards that we have incorporated in our review
 10 of those five operational areas that are also standards
 11 that the Department of Education has utilized on
 12 occasion.
 13 And I'm not certain about other agencies, but in
 14 terms of the legal standards, as I mentioned prior, we
 15 went about researching the codes and talking to certain
 16 experts in the field relative to developing those legal
 17 standards.
 18 So that included the review of certain State
 19 department management advisories and bulletins that
 20 embraced standards. And so some of those standards
 21 indeed would be standards that I think the State
 22 Department of Education has, as well.
 23 MR. SEFERIAN: Move to strike as nonresponsive.
 24 BY MR. ROSENBAUM:
 25 Q Would that include standards in the area of

1 recruitment and retention of teachers?
 2 MR. HERRON: Objection, asked and answered,
 3 vague and ambiguous, the use of the term "that."
 4 MR. SEFERIAN: Objection, calls for an
 5 inadmissible legal opinion, no foundation.
 6 THE WITNESS: I'm not certain on whether the
 7 standards that I was responding to relate to personnel
 8 management standards.
 9 BY MR. ROSENBAUM:
 10 Q You were thinking, in part, of facilities, the
 11 facilities area; is that right?
 12 A Yes.
 13 Q When you testified last time, Mr. Henry, you
 14 mentioned that you had to recuse yourself from the West
 15 Contra Costa review. Do you remember that?
 16 A Yes.
 17 Q And somebody else, I take it, was head of that
 18 review team?
 19 A Yes.
 20 Q Do you know who that person was, is?
 21 A Yes.
 22 Q Who is that?
 23 A Joel Montero.
 24 Q Were you involved -- strike that.
 25 Since your earlier testimony in this case, which

1 was August 21st, to your knowledge, has FCMAT contracted
2 to conduct any new assessments of schools or districts or
3 counties?

4 A Yes.

5 Q Which ones?

6 A I don't have that list to memory.

7 Q Any with respect to comprehensive, the
8 comprehensive reviews that we talked about?

9 MR. HERRON: Objection, vague and ambiguous.

10 THE WITNESS: We have an ongoing assignment at
11 Emery Unified School District that is comprehensive in
12 nature in that -- that has been since the West Contra
13 Costa study.

14 BY MR. ROSENBAUM:

15 Q Any others besides Emery that you recall?

16 A You're asking any other comprehensive assessment
17 studies?

18 Q Yes.

19 MR. HERRON: Objection, asked and answered.

20 THE WITNESS: Would you repeat the question for
21 me, please.

22 BY MR. ROSENBAUM:

23 Q Yes. I appreciate your qualification. I'm just
24 asking about the comprehensive reviews. And you've
25 indicated Emery has come on since West Contra Costa,

1 A The bill itself addresses that, and it would be
2 no sooner -- and I believe, this is from recollection --
3 no sooner than one year after the emergency loan is paid
4 by the school district.

5 Q Has your office made any estimate as to when you
6 think that will be?

7 A No.

8 Q Who is in charge of the Emery investigation at
9 FCMAT?

10 A FCMAT has an assigned fiscal advisor that there
11 are multiple staff members that are participating in that
12 engagement, multiple FCMAT staff members that are
13 participating in that engagement.

14 Q Who is the assigned person? Is there one person
15 who is most in charge of the project?

16 A Ron Kuntz, K-u-n-t-z, is the current and
17 designated fiscal advisor.

18 Q Is FCMAT, to your knowledge, currently involved
19 in the process of reviewing the Cloverdale School
20 District?

21 MR. HERRON: Objection, vague and ambiguous.

22 THE WITNESS: No.

23 BY MR. ROSENBAUM:

24 Q Has it completed a review of Cloverdale?

25 A Yes.

1 correct?

2 A I believe that we were engaged initially in
3 Emery prior to West Contra Costa, but that engagement has
4 now extended beyond the West Contra Costa report.

5 Q Any other school districts for which you are now
6 undertaking a comprehensive review since Emery?

7 A If you're asking by comprehensive review the
8 five operational areas, the answer is no.

9 Q Do you have a target date -- strike that.

10 What's the scope of your charge with respect to
11 Emery, as you understand it?

12 MR. SEFERIAN: Objection, calls for an
13 inadmissible legal conclusion, no foundation.

14 MR. HERRON: And it's vague and ambiguous.

15 THE WITNESS: You're asking what our current
16 scope is in Emery, not what our past scope was?

17 MR. ROSENBAUM: Correct.

18 MR. SEFERIAN: Same objections.

19 THE WITNESS: Assembly Member Aroner's Bill AB96
20 that was signed by the Governor required the
21 Superintendent of Public Instruction to appoint FCMAT as
22 fiscal advisor at the Emery Unified School District.

23 BY MR. ROSENBAUM:

24 Q Okay. And is there an end date for your
25 involvement?

1 Q And do you know when that review was completed?

2 A I believe that that review was completed several
3 months go.

4 Q Were you -- did you review -- strike that.
5 Was a report prepared?

6 A Yes.

7 Q And is that report complete?

8 A I believe it is complete, yes.

9 Q Were you -- did you review the report?

10 A Yes.

11 Q Were you involved in the actual audit itself?

12 MR. HERRON: Objection, vague and ambiguous.

13 THE WITNESS: If you're asking whether I was
14 involved in the on-site audit, the answer is no.

15 BY MR. ROSENBAUM:

16 Q Who was involved in the on-site investigation
17 from FCMAT?

18 A I do not have that to memory.

19 Q And do you know, Mr. Henry, what the
20 circumstances of FCMAT becoming involved in Cloverdale
21 were?

22 A Yes.

23 Q What were those circumstances?

24 MR. HERRON: Objection to the extent it calls
25 for him to speculate.

1 THE WITNESS: I believe that we were assigned to
2 Cloverdale Unified School District by the intermediate
3 agency, the Sonoma County Office of Education.

4 BY MR. ROSENBAUM:

5 Q What's your understanding as to why you were
6 assigned?

7 A I believe that Cloverdale either had a
8 certified -- a negative certification or a disapproved
9 budget. I'm not certain which it was.

10 MR. FEKETE: Counsel, I just note that we've
11 come to the end of another hour. I don't know where you
12 are but we're about ready.

13 MR. ROSENBAUM: I'm good to take a break if you
14 would like.

15 MR. FEKETE: All right.
16 (Brief break.)

17 MR. ROSENBAUM: Back on the record.
18 For the record, we did not get the Cloverdale
19 report.

20 MR. FEKETE: Let me say that a box should have
21 been express mailed yesterday of any reports that have
22 been completed since the first -- actually, there should
23 be two copies. It should be arriving here. They were
24 addressed to Elaine Silverberg.

25 And if they're here now, there's a copy for you

1 phrased.

2 THE WITNESS: Most recently at Emery Unified
3 School District, prior to the assignment by Delaine
4 Eastin to be fiscal advisor, we served as fiscal advisor
5 under the auspices of the Alameda County superintendent
6 of schools. And under that assignment FCMAT had stay and
7 rescind power over the -- over decisions made by the
8 governing board that would be considered to be
9 inconsistent with the new budget that was developed.

10 So I was really referring to that unique role
11 that we were playing as fiscal advisor.

12 BY MR. ROSENBAUM:

13 Q For which district?

14 A Emery Unified.

15 Q Are you aware of any other circumstance where
16 FCMAT has that -- has the authority to indirectly affect
17 personnel management practices?

18 MR. SEFERIAN: Objection, calls for an
19 inadmissible opinion.

20 MR. HERRON: Vague and ambiguous.

21 THE WITNESS: Well, in -- under any
22 circumstances where we are designated the fiscal advisor
23 under that -- under the statutes that provide for
24 operations of fiscal advisor we would have stay and
25 rescind power over board actions that would be considered

1 and a copy for you. And if they're not, they will be
2 here, I assume, today, tomorrow. And this is continuing
3 response to public records request.

4 THE WITNESS: I'm surprised you haven't
5 received the Cloverdale report because, unless I'm
6 mistaken and maybe I am, that that was done, that was
7 completed some time ago. It should have been in the
8 original.

9 MR. FEKETE: If it wasn't, then what we're doing
10 is we're doing a catch-up, subsequent catch-up.

11 MR. HERRON: We'd appreciate your ensuring that
12 we get those, Catherine, if you don't mind.

13 MS. LHAMON: Sure.

14 BY MR. ROSENBAUM:

15 Q Let me go back for just a few moments,
16 Mr. Henry. You have told me right before, a few moments
17 before the break or several moments before the break that
18 under certain circumstances you believed that FCMAT had
19 the legal authority to indirectly affect personnel
20 management practices.

21 Did I understand you right?

22 A Yes.

23 Q And when you say indirectly affect, what did you
24 mean by that?

25 MR. HERRON: Objection, vague and ambiguous as

1 inconsistent with good fiscal practices and inconsistent
2 with the new budget that would have been developed.

3 BY MR. ROSENBAUM:

4 Q So you are talking to me about activities of
5 FCMAT relating to fiscal management; is that right -- I'm
6 sorry, with regard to fiscal crises? Am I getting that
7 right? Where you were called in for --

8 A Fiscal crisis intervention.

9 Q Yes.

10 A We have only been assigned to be -- we have only
11 been appointed as fiscal advisor under the fiscal crisis
12 intervention definition, if you will.

13 Q You mentioned to me -- strike that.

14 How many districts, to your knowledge, have
15 invited FCMAT's participation with respect to personnel
16 practices of teacher recruitment and retention?

17 MR. HERRON: Objection, asked and answered.

18 THE WITNESS: I don't have that to memory.

19 BY MR. ROSENBAUM:

20 Q Okay. Can you give me a ballpark number?

21 MR. HERRON: Objection, calls for speculation.

22 THE WITNESS: Ballpark. You're asking what my
23 estimation is on the number of districts that have
24 invited FCMAT in to do personnel management studies under
25 SB1331?

1 MR. ROSENBAUM: Yes.
 2 MR. HERRON: Same objection.
 3 THE WITNESS: My estimation is around 30.
 4 BY MR. ROSENBAUM:
 5 Q And has FCMAT accepted every invitation it's
 6 been offered?
 7 A I'm not aware of any that we have not accepted.
 8 Q The audits that were done the first year
 9 regarding the teacher retention and recruitment, the
 10 schools, the districts that were targeted, are any of
 11 those districts also the subject of audits the second
 12 year?
 13 MR. HERRON: Objection, calls for speculation.
 14 THE WITNESS: I do not believe that any of the
 15 school districts that we audited in the first year are
 16 currently being considered for an audit the second fiscal
 17 year.
 18 BY MR. ROSENBAUM:
 19 Q Okay. I take it -- I don't want to take your
 20 time asking you questions about documents that aren't in
 21 front of us and we haven't had a chance to examine, but I
 22 take it in a general way some or all of these audits make
 23 recommendations to the school districts; is that right,
 24 regarding teacher retention and recruitment practices; is
 25 that right?

1 MR. HERRON: Objection, vague and ambiguous.
 2 The documents speak for themselves.
 3 THE WITNESS: Yes, they do.
 4 BY MR. ROSENBAUM:
 5 Q Does FCMAT undertake any inquiry or
 6 investigation to determine the degree to which the
 7 districts follow those recommendations?
 8 MR. HERRON: Objection, vague and ambiguous as
 9 to time and, as phrased and as to subject matter.
 10 THE WITNESS: The -- I believe that the
 11 legislation SB1331 has a reportability requirement, as
 12 well, to the State Legislature in regards to the
 13 assessment and the recommendations. And I believe that
 14 is on an annual basis.
 15 And part of that annual evaluation will in part
 16 incorporate FCMAT's assessment on progress made relative
 17 to those recommendations.
 18 BY MR. ROSENBAUM:
 19 Q And is there a person who's in charge of that,
 20 FCMAT's -- is it fair to call that follow-up?
 21 A Yes.
 22 Q Is there a person in charge of that follow-up?
 23 A That would be our provider, Dick Schromm &
 24 Associates.
 25 Q Okay. Do you know if a report has been prepared

1 or a draft of a report has been prepared regarding
 2 follow-up?
 3 A I don't believe that the follow-up report has
 4 been completed.
 5 Q Have you seen any drafts of it?
 6 A No.
 7 Q Have you had a discussion with Mr. Schromm or
 8 any of his associates regarding the follow-up?
 9 A No.
 10 Q Do you know if Mr. Montero has?
 11 A I'm not certain of that.
 12 Q Has -- have you had any discussions with anyone
 13 on the Superintendent of Public Instruction's staff
 14 regarding any of the audits that you undertook with
 15 respect to teacher retention or recruitment?
 16 MR. HERRON: Objection, asked and answered.
 17 THE WITNESS: I don't think that I have had any
 18 conversations with department staff regarding the
 19 personnel assessments other than the discussions that
 20 take place at the quarterly board meetings, where there
 21 is a representative from Superintendent Eastin's staff
 22 attends those quarterly meetings.
 23 BY MR. ROSENBAUM:
 24 Q And when you say you don't believe you have had
 25 any discussions with persons from the staff other than

1 the quarterly board meeting, would that include the
 2 superintendent herself?
 3 A Yes, it would.
 4 Q Same question, Mr. Henry, with respect to the
 5 State Board of Education. Have you or, to your
 6 knowledge, any member of your staff had any discussions
 7 with any member of the State Board of Education or its
 8 staff regarding the work that FCMAT did regarding teacher
 9 recruitment and retention?
 10 MR. SEFERIAN: Objection, vague and ambiguous.
 11 THE WITNESS: I don't believe that we've had any
 12 discussion up to this point, but I believe that our
 13 annual evaluation of the project will be disseminated to
 14 the State Board of Education.
 15 BY MR. ROSENBAUM:
 16 Q When is that annual report expected to be -- has
 17 that been completed?
 18 A No, it has not.
 19 Q Is there a draft of it?
 20 A I'm not aware whether there's a draft or not. I
 21 believe that -- I believe that the requirement relates to
 22 the current fiscal year because of when the legislation
 23 was enacted midyear.
 24 I believe that report -- there's a statutory
 25 deadline for that, and I'm not certain when that is. But

1 I'm certain that it hasn't occurred yet. I believe it's
2 at the end of this fiscal year.

3 Q So that would be June 2002?

4 A I believe so.

5 Q And same question with respect to the Governor's
6 office or the Governor's staff, any discussions regarding
7 FCMAT's work regarding teacher retention or recruitment?

8 MR. HERRON: Objection, vague and ambiguous.

9 THE WITNESS: No discussion other than that that
10 I mentioned earlier with Margaret Fortune from the
11 Secretary's office.

12 BY MR. ROSENBAUM:

13 Q And same question with respect to the Secretary
14 for Education. Anyone from her staff or her regarding
15 FCMAT's work regarding teacher recruitment and retention?

16 MR. HERRON: Objection, vague and ambiguous.

17 THE WITNESS: I believe that I've had a
18 conversation with Eric Skinner of the Secretary's office
19 regarding our charge under SB1331.

20 BY MR. ROSENBAUM:

21 Q And who is Eric Skinner?

22 A Eric Skinner is a staff member -- I'm not
23 certain of his title -- that works for the Secretary of
24 Education's office.

25 Q Can you tell me approximately when that

1 BY MR. ROSENBAUM:

2 Q In the discussion with Mr. Skinner and
3 Terry Burns, if that is the right person, was there any
4 discussion about the substance of the audits regarding
5 district personnel practices?

6 MR. HERRON: Objection, compound.

7 THE WITNESS: I know that I provided the
8 committees with a listing of completed studies, as well
9 as the regional map depicting the number of studies that
10 were pending versus completed and a justification in
11 terms of the appropriation that was being provided for
12 those studies.

13 BY MR. ROSENBAUM:

14 Q Did you have -- did you do any discussion about
15 the details of the actual findings in the audits
16 themselves?

17 A I don't believe that we had substantive
18 discussion regarding the specific details.

19 Q Help me understand, Mr. Henry. You told me
20 before that because you essentially started in midstream,
21 you couldn't get all 40 done, of the audits regarding
22 district personnel practices, the first year; is that
23 right?

24 A No. There was a real effort to do that, but I'm
25 not certain whether we achieved that goal.

1 discussion took place?

2 MR. HERRON: Relative to the adoption of 1331?

3 THE WITNESS: Eric Skinner has -- one of his
4 areas of responsibility has to do with the financial
5 matters, apportionments. And I believe that he
6 participated in the budget hearings when the Assembly and
7 Senate discussed FCMAT appropriations, all of FCMAT's
8 appropriations, including the personnel management one.
9 Eric represented the Secretary of Education's office.

10 BY MR. ROSENBAUM:

11 Q The district audits regarding the district
12 personnel practices, who receives copies of those
13 practices as a matter of practice?

14 MR. SEFERIAN: Objection, no foundation, calls
15 for speculation.

16 THE WITNESS: If I may go back to the previous
17 question, the one previous to this: Just reflecting that
18 the budget hearings, I'm fairly certain that those
19 hearings including a representative from the Department
20 of Education, as well. I don't recall who that is, who
21 that was. I think it was Terry Burns, but I'm not sure
22 of that. But I'm fairly certain the Department of
23 Education had a representative during those budget
24 hearings.

25 MR. SEFERIAN: Move to strike as nonresponsive.

1 Q Is it your anticipation that at the end of the
2 second year there will be 80 completed audits or
3 something less, reflecting that you had less time than
4 the first year?

5 A I would really prefer for Joel Montero to
6 address that question. I think it would -- he would have
7 the precise numbers. I know that we quantified it. I'm
8 just not certain today how many that is.

9 Q Let me go back to the individual district audit
10 records regarding district personnel practices. Who gets
11 copies of those as a matter of practice?

12 MR. SEFERIAN: Objection, no foundation, calls
13 for speculation.

14 THE WITNESS: Are you asking the personnel
15 management studies?

16 MR. ROSENBAUM: Yes.

17 MR. FEKETE: Who gets copies of those reports?

18 MR. ROSENBAUM: Exactly.

19 MR. SEFERIAN: Same objections.

20 THE WITNESS: I'm not certain whether we've
21 established a mailing list for those reports. I know for
22 certain the school district receives a copy of those
23 reports and the region chair. And I know that there is a
24 mailing list. I'm not certain who's on that mailing
25 list.

1 BY MR. ROSENBAUM:
 2 Q When you spoke before the budget committee, did
 3 you receive any request for copies of the audit reports?
 4 A I cannot recall any requests for a specific
 5 audit related to personnel management studies.
 6 Q Okay. Let's go back to Cloverdale. Did you
 7 review the final report?
 8 MR. HERRON: Objection, asked and answered.
 9 THE WITNESS: Yes.
 10 BY MR. ROSENBAUM:
 11 Q What were the subject areas that FCMAT was
 12 concerned with, with respect to Cloverdale?
 13 MR. HERRON: Objection, the document speaks for
 14 itself. Calls for speculation.
 15 THE WITNESS: It has been some time since I've
 16 reviewed the report. And the document would address the
 17 recommendations and findings and the scope of study.
 18 BY MR. ROSENBAUM:
 19 Q Okay. After FCMAT concludes its assessment and
 20 review of a district or a school, does any further
 21 follow-up or assessment or review of the district or
 22 school take place by FCMAT?
 23 MR. SEFERIAN: Objection, overly broad,
 24 incomplete hypothetical, vague and ambiguous, no
 25 foundation.

1 MR. HERRON: Asked and answered.
 2 THE WITNESS: The follow-up, the degree of --
 3 the follow-up and the degree of follow-up is determined
 4 by either the scope of study or the -- in the case of
 5 when we were assigned by the Legislature, the bill
 6 itself.
 7 BY MR. ROSENBAUM:
 8 Q And when you say scope of study, what do you
 9 mean by that?
 10 A Each of FCMAT's engagements requires a scope of
 11 study that delineates the scope and objectives of our
 12 work that is mutually signed off on by FCMAT and the
 13 engaging entity.
 14 Q Can you cite me any examples of where FCMAT has
 15 conducted follow-up?
 16 A Yes.
 17 Q What are those?
 18 MR. HERRON: Objection, calls for a narrative,
 19 calls for speculation.
 20 THE WITNESS: Compton Unified School District.
 21 BY MR. ROSENBAUM:
 22 Q Any others?
 23 A Yes.
 24 Q What are those?
 25 A We are required to conduct six-month progress

1 reports regarding the comprehensive assessment at West
 2 Contra Costa Unified.
 3 Q Any others, have you ever -- any others besides
 4 West Contra Costa and Compton?
 5 A I'm fairly certain that there have been study
 6 agreements that have requested or required follow-up.
 7 I'm not aware this morning which districts those are.
 8 Q Do you have an estimate as to the percent?
 9 A No.
 10 Q In the case of Compton, Mr. Henry, do you
 11 believe that the follow-up assessments were valuable?
 12 A Yes.
 13 Q Why is that?
 14 MR. HERRON: Objection, vague and ambiguous.
 15 THE WITNESS: Follow-up by an independent
 16 external entity is paramount to, we believe, paramount to
 17 the meeting of the standards and that it provides clear
 18 communication and expectations regarding the
 19 recommendations.
 20 BY MR. ROSENBAUM:
 21 Q Then what -- and what do you base that answer
 22 on?
 23 MR. HERRON: Objection, vague and ambiguous,
 24 asked and answered, the question just preceding. Calls
 25 for speculation.

1 THE WITNESS: FCMAT has found that a
 2 standards-based approach to assessment provides for a
 3 more likely success in meeting those standards. And so
 4 it's based on our experience in working in the California
 5 public schools.
 6 BY MR. ROSENBAUM:
 7 Q Okay. Regarding -- you're aware that FCMAT
 8 concluded a review of the Centinela Valley Union High
 9 School District in 1997?
 10 A Yes, I am.
 11 Q And were you involved in that review?
 12 A Yes.
 13 Q What was the nature of your involvement?
 14 A The Los Angeles County Office of Education
 15 requested that the FCMAT Board declare a fiscal emergency
 16 at Centinela Valley High School District, and during --
 17 and which they did. The Board did declare a fiscal
 18 emergency, which provides for immediate resources and
 19 attention.
 20 And through that assignment the Los Angeles
 21 County Office of Education assigned FCMAT as fiscal
 22 advisor. And during that period -- and I became,
 23 personally became the fiscal advisor. And during that
 24 period of time the superintendent -- the superintendent
 25 left his position, and I ended up serving as the fiscal

1 advisor/interim superintendent until the Board appointed
2 a new interim superintendent.

3 Q And in terms of the report that FCMAT prepared,
4 were you involved in the drafting and/or the review of
5 that report?

6 A Yes.

7 Q What was the nature of your involvement?

8 A Well, both edited it, as well as substantive in
9 that I worked at Centinela on a daily basis during that
10 period of time, and I was overseeing a team that we had
11 assigned to conduct various reviews and assessments.

12 Q And over what period of time was that, as best
13 you recall?

14 A At the time it seemed like it was a long period
15 of time. I don't recall the length of time. It was --
16 it was a number of months, I know that.

17 Q Between one month and a hundred years?

18 Was one of the recommendations, Mr. Henry, with
19 respect to your -- FCMAT's report regarding Centinela, is
20 it true that the community board and other control
21 agencies, municipal fire marshals and health inspectors,
22 California Department of Education, should periodically
23 monitor and inspect the status and condition of the
24 district sites and facilities?

25 MR. SEFERIAN: Objection, no foundation, calls

1 sites and facilities subsequent to the issuance of your
2 report?

3 MR. SEFERIAN: Objection, lacks foundation,
4 calls for speculation, vague and ambiguous.

5 THE WITNESS: Would you repeat the question.

6 BY MR. ROSENBAUM:

7 Q Sure. Subsequent to the issuance of your report
8 regarding the Centinela Valley Union High School
9 District, do you know if the California Department of
10 Education monitored and inspected the status and
11 condition of the district's sites and facilities?

12 MR. SEFERIAN: Objection, lacks foundation,
13 calls for speculation, vague and ambiguous.

14 THE WITNESS: I don't know.

15 BY MR. ROSENBAUM:

16 Q Mr. Henry, you recall at the -- strike that.

17 We had some negotiation about setting up this
18 deposition to begin with; do you recall that?

19 A Yes, I do.

20 Q And we tried to accommodate your schedule and be
21 as decent as lawyers can be. And do you recall that
22 there was some question about who your representation
23 would be?

24 A Are you asking that we had some discussion,
25 negotiation about my need to leave at 1:00?

1 for speculation.

2 THE WITNESS: It's been awhile since I've
3 reviewed that report, but I am certain that we had
4 findings and recommendations that addressed that specific
5 issue.

6 BY MR. ROSENBAUM:

7 Q Do you know, Mr. Henry, whether or not there was
8 any subsequent monitoring and inspection of the status
9 and condition of the district sites and facilities by any
10 control agency?

11 MR. SEFERIAN: Objection, lacks foundation,
12 calls for speculation, vague and ambiguous.

13 THE WITNESS: I recall during the time that we
14 had cooperation from the local fire marshal related to
15 those issues. And I recall that they did periodically
16 look at fire extinguishers in terms of expiration dates
17 and availability of fire extinguishers.

18 BY MR. ROSENBAUM:

19 Q Do you know if that took place subsequent to the
20 issuance of your report?

21 A I don't have any personal knowledge that that
22 took place.

23 Q Do you know if the State Department of Education
24 or any of its personnel undertook any monitoring or
25 inspecting of the status and conditions of the district

1 Q No, no, no. No. I meant at the very beginning
2 of the process, do you remember there was some discussion
3 as to who would represent you at your deposition?

4 A I recall that, yes.

5 Q And attorneys for State of California sought to
6 represent you at the deposition.

7 MR. HERRON: Is that a question?

8 BY MR. ROSENBAUM:

9 Q Is that right?

10 MR. SEFERIAN: Objection, that calls for
11 privileged information.

12 MR. ROSENBAUM: No, it doesn't.

13 MR. HERRON: Sure it does.

14 MR. ROSENBAUM: Go ahead.

15 THE WITNESS: Are you asking me a question?

16 MR. ROSENBAUM: Yes.

17 THE WITNESS: Can you restate the question.

18 BY MR. ROSENBAUM:

19 Q Did lawyers from the State of California offer
20 to represent you at the deposition?

21 MR. HERRON: I object. Any conversation you've
22 had with any state counsel is privileged.

23 MR. FEKETE: I'm going to object to the line of
24 questioning, direct the witness not to answer.

25 BY MR. ROSENBAUM:

1 Q Is Mr. Fekete your counsel?

2 A Yes.

3 Q Besides his eminent qualifications, why is he
4 your counsel?

5 MR. HERRON: Objection, calls for privileged
6 information.

7 MR. FEKETE: I don't think you have any right to
8 inquire as to why a witness selects whatever counsel he
9 selects, and I'll direct him not to answer.

10 I'll give you my qualifications if you want
11 them, but I don't think that's what you're asking.

12 MR. ROSENBAUM: Let me go off the record for a
13 second -- no, stay on the record for a minute.

14 You have been entirely generous with us with
15 your time.

16 MR. FEKETE: There is no question pending.

17 MR. ROSENBAUM: I'm actually --

18 MR. HERRON: Speech time.

19 MR. ROSENBAUM: We don't have the teacher
20 reports. I do think that they were responsive to what we
21 said. I don't impute any ill will or anything like
22 that. What I would like to do is I would like to get
23 those reports, take a look at them.

24 I'm not sure I'm going to need to question Mr.
25 Henry about those reports. There may be other persons at

1 MR. ROSENBAUM: And I see no reason why you
2 can't ask questions as to the areas in which I've made
3 inquiry.

4 MR. HERRON: Well, I don't -- again, I don't
5 much care what your viewpoint is on this.

6 MR. ROSENBAUM: I don't appreciate the
7 discourtesy.

8 MR. HERRON: It's not a discourtesy.

9 MR. ROSENBAUM: I am still entitled to courtesy.

10 MR. HERRON: You are getting courtesy, you
11 always have.

12 MR. ROSENBAUM: No, I have not and I don't --
13 I'm not talked to in a civil way.

14 MR. HERRON: This is civil. Mark, Mark, Mark --

15 MR. ROSENBAUM: And I want to be treated that
16 way.

17 MR. HERRON: You are being treated that way.

18 MR. ROSENBAUM: We disagree.

19 MR. HERRON: Again, your viewpoint does not sway
20 my position at all. So once you're able to say that
21 you're done questioning this witness, then we'll proceed.

22 MR. ROSENBAUM: I'm done questioning this point
23 with respect to --

24 MR. HERRON: You have reserved the right to --

25 MR. ROSENBAUM: I want to finish my sentence. I

1 FCMAT who would be more appropriate. I just want to
2 leave myself the opening for that possibility, obviously
3 being sensitive to your schedule.

4 As I said, I'm not necessarily expecting even to
5 need to question you about it, but because I don't have
6 the reports, I don't want to bind myself in.

7 So I don't have any further questions subject to
8 seeing those documents. Thanks for your time, Mr. Henry.
9 I appreciate it and I appreciate the attorneys' time,
10 too.

11 MR. HERRON: We're not asking questions until
12 you're done, so let's wait and see what happens.

13 THE WITNESS: So I do not have to report
14 tomorrow?

15 MR. ROSENBAUM: I don't agree with that, David.
16 I don't agree with that at all.

17 MR. HERRON: I don't care if you agree with it,
18 Mark. I really don't care.

19 MR. ROSENBAUM: I'm going to make clear that I'm
20 complete with all of my questions with respect to that
21 one possible area I can --

22 MR. HERRON: You can still --

23 MR. ROSENBAUM: I want to finish my sentence.
24 Then I'll give you that courtesy.

25 MR. HERRON: Sure.

1 gave you that courtesy. I am done -- I'm completed with
2 my questions as to all areas for which I have been
3 provided materials.

4 I indicated that there may be one discrete area,
5 because I haven't had an opportunity to review the
6 documents, but there's no question that I have completed
7 my questions in all other areas.

8 MR. HERRON: Okay.

9 MS. KAATZ: For the record, we do have a small
10 number of questions that we would like to ask. But for
11 the sake of being efficient and effective, I would prefer
12 to know that all of the questioning is done as well. And
13 if we are going to have to come back and reconvene with
14 Mr. Herron's questions, potentially for yours, as well, I
15 would prefer to just wait.

16 MR. ROSENBAUM: I want to state for the record,
17 I think it's a discourtesy to Mr. Henry. There's no
18 question that the deposition is completed, done with
19 respect to the areas that we've been talking about.

20 Mr. Herron isn't saying -- first of all, I don't
21 agree with the basis of what he's saying, but Mr. Herron
22 isn't saying he's going to necessarily come back. I
23 think we ought to do everything we can to minimize the
24 necessity of Mr. Henry coming back on a third occasion.

25 MR. FEKETE: Let me say on behalf of Mr. Henry,

1 since he is more or less in the area, I don't believe
2 that the deposition is done as to your questioning until
3 you are prepared to say that you have no other
4 questions. I have not heard you say that. You have
5 given a qualification. I understand the qualification
6 you have given.

7 That being the case, perhaps what we have to do
8 is get you those reports, you make your decision as to
9 whether or not you have additional questions, and if we
10 need to reconvene for Mr. Herron and others to ask
11 questions, we will do that. But I'm not particularly
12 interested in sitting and listening to counsel argue over
13 this issue any further.

14 So if we're not done so that Mr. Herron and
15 others will begin, then I think we're done for the day,
16 and we'll reconvene if that's necessary.

17 MR. SEFERIAN: The State as defendants also
18 reserve the right to ask questions of Mr. Henry upon the
19 conclusion of the plaintiffs questioning of the witness.

20 MR. ROSENBAUM: I want to just state, in light
21 of these comments, I want to amend my comment. As I
22 indicated, I haven't seen the Cloverdale report, which is
23 not a teacher report. And I don't know what other
24 documents I haven't seen a report.

25 As I said, I don't impugn the good faith in

1 MR. ROSENBAUM: That's fine with me.

2 MR. AFFELDT: Does nine o'clock work for you?

3 MR. ROSENBAUM: Sure.

4 MR. SEFERIAN: That's fine.

5 MS. KAATZ: That's fine with me. I was planning
6 to be here anyway, and it would be great if we can get
7 through it tomorrow and ask my handful of questions.

8 MR. FEKETE: Part of the problem is that express
9 services don't tend to arrive at eight o'clock in the
10 morning. They tend to arrive closer to 10:00.

11 MS. KAATZ: Choose one that arrives at 8:00.
12 (Discussion off the record.)

13

14 EXAMINATION

15 BY MS. KAATZ:

16 Q Mr. Henry, I have reviewed the transcript from
17 your prior day of deposition, and there are a couple of
18 things that I wanted to clarify.

19 At one point during the prior day, which for
20 anybody else's reference, is at page 169, Mr. Rosenbaum
21 was inquiring about current textbooks. And he asked you
22 to define current. And this was your answer: "I mean
23 those textbooks that have been recently ordered and
24 purchased by the school district for purposes of
25 instruction."

1 getting the reports to us, but I obviously reserve the
2 right then to take a look at those reports and ask
3 discrete questions.

4 MR. FEKETE: Sure. And let me say that it is
5 not impossible to get the reports in people's hands
6 overnight, and we do have tomorrow reserved.

7 So the question is, under those circumstances
8 shall we make an effort to determine what it is we need
9 to try and get you overnight and we can continue this
10 deposition tomorrow, as we had originally scheduled?

11 We're fairly rapidly approaching the agreed-upon
12 end time for today in any event. And I'm certainly -- as
13 I said, some things are on their way. I don't know
14 what's on its way, but I can find that out and we can
15 have that conversation off the record.

16 MR. ROSENBAUM: That's a good idea.

17 MR. FEKETE: Shall we reserve the possibility
18 and plan, absent a telephone call to people, to resume at
19 nine o'clock in the morning?

20 MR. ROSENBAUM: That would be fine.

21 MR. FEKETE: I would like to get this thing
22 sorted out also.

23 MR. ROSENBAUM: Well, in the end how quickly
24 could the reports get here?

25 MR. FEKETE: We have to determine that.

1 My follow-up question is, when you say recently
2 ordered, what did you mean?

3 A Well, I haven't had a chance to look at my
4 deposition. And I would -- I guess as it relates to that
5 would prefer to read it in the context with the questions
6 that preceded or followed that question.

7 Q Let me ask you a couple of questions to see if I
8 can get you there. I certainly don't want to force you
9 to answer that question.

10 This was with respect to, I believe,
11 Compton. And Mr. Rosenbaum inquired as to whether you
12 noted that these students did not have current textbooks.
13 And by current textbooks you said the current textbooks
14 were those that had been recently ordered.

15 And I am wondering in that context what to you
16 would be a recently ordered and current textbook?

17 A I think that that related to the conversation
18 that we were having with Compton Unified School District
19 and their State book -- their State book order in terms
20 of the adopted State textbooks. And I think it was in
21 relationship to whether the school district had indeed
22 ordered in a timely manner and whether they had received
23 and then whether they had issued those textbooks to the
24 students. My recollection is that is what the
25 conversation was about.

1 So in terms of recent, did Compton recently
2 order adopted State textbooks and did they issue those
3 textbooks to their students?
4 Q Okay. I noticed that you started in your
5 current position in 1995. Is it fair to say then that
6 you were not involved in any reviews or assessments by
7 FCMAT prior to your start in July of 1995?
8 A No.
9 Q Do you know which districts you were involved in
10 reviews or assessments prior to 1995?
11 A I know for certain that I was involved in the
12 Hayward Unified School District assessment, which was one
13 of the first, if not the first, FCMAT assessment.
14 And I was intimately involved in the Mendocino
15 County Office of Education assessment.
16 Q Do you recall whether you had any involvement in
17 the 1993 financial review of Pajaro Valley Unified School
18 District?
19 A I was the 1993 -- I believe that -- 1993 -- give
20 me a second here. In 1993 I was the associate Kern
21 County superintendent of schools. And in that position I
22 was the immediate supervisor of the administrator of
23 FCMAT at that time, and periodically I would be involved
24 in studies.
25 And that particular study I recall that I had

1 some involvement. I don't know precisely what the
2 involvement was.
3 Q I would like to ask you a couple of questions
4 about the Hemet School District review, specifically the
5 educational review.
6 Do you have a recollection of the educational
7 review that was done at Hemet?
8 A Hemet over the years has requested numerous
9 reviews. And I do not recall the specific nature of that
10 review.
11 Q Do you know whether or not you have performed
12 what you would call an educational review in other
13 districts besides Hemet?
14 A Yes.
15 Q Do you use the same questionnaires -- excuse me,
16 strike that.
17 Do you use the same survey questions in each of
18 your educational reviews?
19 A I am distinguishing between the reviews we did
20 on an educational nature under management assistance and
21 those that we did under our assignment as external
22 auditor under IUSP, that we did instructional reviews in
23 that capacity as well. But under the management
24 assistance, we, as a basis of starting the review, we
25 would reflect on those instructional standards in terms

1 of determining whether the legal or professional
2 standards were in place in that entity.
3 Q Do you know then whether or not you used a
4 standard set of survey questions or whether it varied by
5 district?
6 A I believe that it varied in that it varies in
7 that the study agreement dictates, if you will, the scope
8 of the study. And in part I know that the standards are
9 part of that study agreement but also the interview with
10 the entity that's engaging us.
11 So their input is important to the study
12 agreement, as well. So each study agreement is designed
13 specifically for the study.
14 Q My understanding, from looking at some of these
15 studies, is that you present the survey questions to a
16 group of interviewees, take in the responses and base
17 your report on those responses. Is that accurate?
18 MR. ROSENBAUM: Objection.
19 THE WITNESS: No, I don't believe that's
20 accurate at all.
21 MS. KAATZ: Okay.
22 THE WITNESS: If you're saying do we base our
23 studies on a series of questions and answers, that would
24 be one element of the comprehensive assessment but not
25 the entire element.

1 BY MS. KAATZ:
2 Q Are there supplemental questions to the set of
3 survey questions that you ask?
4 A I'm not familiar with the survey questions that
5 you're referring to, but I know that in many assignments
6 we develop a set of questions that we require to be
7 asked. They're not all-inclusive, but there are certain
8 questions that we require to be asked. And then in
9 addition to questioning there are observations and
10 document reviews and interviews that take place.
11 MS. KAATZ: Being that Mr. Henry has not -- is
12 not intimately familiar with the Hemet review and
13 obviously there's not time to give him that and ask him
14 specific questions about it if I chose to do so, I would
15 like to stop for now.
16 But in the event that we reopen, I would like to
17 reserve the right to ask additional questions on that and
18 anything else that the other parties ask questions about.
19 But assuming that we do not schedule another day for
20 anybody else's purposes, I am through.
21 MR. FEKETE: Okay. And the only thing I would
22 say in response to that is, don't assume that if
23 Mr. Henry returns he will have done his homework and
24 studied any report in preparation. I've told him it's
25 not his responsibility to do that.

1 MS. KAATZ: No. In the event that I decided
2 that more questions were necessary, I would bring the
3 report and point out the sections that I wanted him to
4 review.

5 MR. FEKETE: You would have to lay lots of
6 foundation, but that's fine.

7 MS. KAATZ: Otherwise I am done for the day.

8 MR. ROSENBAUM: Mr. Henry, thank you very much.
9 I appreciate it.

10 MS. KAATZ: Off the record.

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

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

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

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

19

20 Dated: _____

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PATRICIA C. STEPHENS
CSR No. 10058

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9 I, THOMAS E. HENRY, do hereby declare under
10 penalty of perjury that I have read the foregoing
11 transcript; that I have made any corrections as appear
12 noted, in ink, initialed by me; that my testimony as
13 contained herein, as corrected, is true and correct.

14 EXECUTED this _____ day of _____,
15 20__, at _____,
(City) (State)

THOMAS E. HENRY
Volume 2