

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

ELIEZER WILLIAMS, et al.,)

)

Plaintiffs,)

)

vs.)

No. 312236

)

STATE OF CALIFORNIA, DELAINE)

EASTIN, et al.,)

)

Defendants.)

)

-----)
AND RELATED CROSS ACTION.)

)
-----)

TELEPHONIC DEPOSITION OF THOMAS E. HENRY
Castro Valley, California
Wednesday, December 5, 2001
Volume III

Reported by:
KATHY NELSON
CSR No. 9796
JOB No. 29003

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

3
4 ELIEZER WILLIAMS, et al.,)
5)
6 Plaintiffs,)
7)
8 vs.) No. 312236
9)
10 STATE OF CALIFORNIA, DELAINE)
11 EASTIN, et al.,)
12)
13 Defendants.)
14)
15 AND RELATED CROSS ACTION.)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

15 Telephonic Deposition of Thomas E. Henry,
16 Volume 3, taken on behalf of the Plaintiffs, at
17 22361 Princeton Place, Castro Valley, California,
18 beginning at 10:03 a.m. and ending at 12:27 p.m.,
19 on Wednesday, December 5, 2001, before KATHY
20 NELSON, Certified Shorthand Reporter No. 9796.

1 APPEARANCES (Continued):
2
3 For Defendant State of California:
4 OMELVENY & MYERS, LLP
5 BY: DAVID L. HERRON
6 Attorney at Law
7 400 South Hope Street
8 Los Angeles, California 90071
9 (213) 430-6000
10 (Telephonic Appearance)
11
12 For the LA Unified School District and Pajaro Valley
13 Unified School District:
14 LOZANO & SMITH
15 BY: SARAH LEVITAN KAATZ
16 Attorney at Law
17 20 Ragsdale Drive, Suite 201
18 Monterey, California 93940
19 (831) 646-1501
20 (Telephonic Appearance)
21
22 For the Intervenor:
23 CALIFORNIA SCHOOL BOARDS ASSOCIATION:
24 BY: RICHARD L. HAMILTON
25 Attorney at Law
3100 Beacon Boulevard
West Sacramento, California 95691
(916) 371-4691
(Telephonic Appearance)
For Deponent Thomas E. Henry:
LAW OFFICES OF FRANK J. FEKETE
BY: FRANK J. FEKETE
Attorney at Law
1300 17th Street
Bakersfield, California 93301
(661) 345-2321
(Telephonic Appearance)

1 APPEARANCES:
2
3 For Plaintiffs Eliezer Williams, et al.:
4 AMERICAN CIVIL LIBERTIES UNION
5 BY: MARK ROSENBAUM
6 CATHERINE E. LHAMON
7 Attorneys at Law
8 1616 Beverly Boulevard
9 Los Angeles, California 90026
10 (213) 977-9500
11 (Telephonic Appearance)
12
13 MORRISON & FOERSTER, LLP
14 425 Market Street, 33rd Floor
15 San Francisco, California 94105
16 (415) 268-6621
17 (No Appearance)
18
19 LAW OFFICES OF PUBLIC ADVOCATES
20 BY: JOHN T. AFFELDT
21 Attorney at Law
22 1535 Mission Street
23 San Francisco, California 94103
24 (415) 431-7430
25 (Telephonic Appearance)
For Defendants Delaine Eastin, State Department of
Education, and the State Board of Education:
OFFICE OF THE ATTORNEY GENERAL CALIFORNIA
DEPARTMENT OF JUSTICE
BY: ANTHONY V. SEFERIAN
Attorney at Law
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, California 94244-2550
(916) 445-8277
(Telephonic Appearance)

1 INDEX
2
3 WITNESS EXAMINATION
4 THOMAS E. HENRY
5 Volume 3
6 BY MR. ROSENBAUM 389
7
8 EXHIBITS
9 PLAINTIFFS' PAGE
10 61 Document entitled "Fiscal Crises and 390
11 Management Assistance Team Request Form";
12 64 pages (FCMAT0001-FCMAT0064)
13 62 Letter addressed to John Wight and Jerry 477
14 Johnson from Anthony L. Bridges, dated
15 July 16, 2001; 10 pages
16
17 INSTRUCTION NOT TO ANSWER
18
19 PAGE LINE
20 405 03
21
22 465 05
23
24 466 21
25
26 470 12

1 Castro Valley, California, Wednesday, December 5, 2001
2 10:03 a.m. - 12:27 p.m.

3
4 THOMAS E. HENRY,
5 having been previously duly sworn, was examined and
6 testified as follows:

7
8 EXAMINATION

9 BY MR. ROSENBAUM:

10 Q Mr. Henry, you look very nice today.

11 A Thank you.

12 Q This is a resumption of our deposition. And I
13 want to say again, I appreciate everyone's cooperation
14 with this mechanism.

15 Because we're doing it by telephone, Mr. Henry,
16 it's especially important that you wait after the
17 question and if counsel have objections, so that they
18 have the opportunity to enter any objections they have
19 or make any comments.

20 Mr. Henry, you're aware you're still under
21 oath?

22 A Yes.

23 Q Okay. Did you receive a copy, Mr. Henry, of a
24 report? The first page said "Cloverdale Unified School
25 District," and it is Bates numbered FCMAT -- let me

1 for me?

2 A Well, the cover page of the document that was
3 faxed to me represents the Request Form from the county,
4 the Sonoma County Office of Education, requesting
5 management assistance for the Cloverdale Unified School
6 District back in September of 1997.

7 Q Okay. And then -- and that is FCMAT 0001; is
8 that right, Mr. Henry?

9 A Yes, it is.

10 Q Okay. And then do you see FCMAT 0002 of
11 Exhibit 61?

12 A Yes.

13 Q Can you please generally identify what that is?

14 A That is a letter from Marshall Wiley, our
15 director at that time of FCMAT, to Mr. Jerry Johnson,
16 the deputy superintendent at the Sonoma County Office of
17 Education, requesting that agency to complete a User
18 Evaluation survey relative to work that we performed for
19 the Sonoma County Office of Education.

20 Q Okay. When you say "we," you're referring to
21 FCMAT?

22 A Correct.

23 Q And you notice in the lower right-hand corner
24 of FCMAT 0002, of Exhibit 61, it says "FCMAT Chief
25 Administrative Officer, Thomas E. Henry." That's you;

1 start over.

2 Mr. Henry, did you receive a copy of a
3 document? The front page should have said "Cloverdale
4 Unified School District," and the Bates numbers -- I
5 have no Bates number on the cover sheet, but the Bates
6 numbers run from FCMAT 0001 through 0064.

7 A Yes.

8 MR. ROSENBAUM: Okay. And does any counsel not
9 have copies of that? Okay.

10 Do you know the next number for our exhibits?

11 THE REPORTER: I was told to start with 61.

12 MR. ROSENBAUM: All right. Let's mark that
13 exhibit as Exhibit 61.

14 (Plaintiffs' Exhibit 61 was marked for
15 identification by the court reporter.)

16 BY MR. ROSENBAUM:

17 Q And Mr. Henry, I'm going to ask you, if you
18 would, please, to take a look at it. You don't need to
19 read it through in its entirety at this point. I want
20 you to be familiar with it. And if you have specific
21 questions or you need time to review the document in
22 detail, you should feel free to do that.

23 A Okay.

24 Q Thank you. Looking at what's been marked as
25 Exhibit 61, Mr. Henry, can you identify this document

1 right?

2 A Yes, it is.

3 Q And you were the chief administrative officer,
4 at the time of this review at Cloverdale; is that
5 correct?

6 A Yes.

7 Q And directing your attention to FCMAT 0004 of
8 what's been marked as Exhibit 61 and accompanying
9 documents, can you tell me generally what that is?

10 A FCMAT 0004 represents the -- I believe it
11 represents the cover page of the study itself, the
12 management review for the Sonoma County Office of
13 Education regarding Cloverdale Unified School District,
14 dated January 15th, 1998.

15 Q Okay. Thank you. And turning to page -- FCMAT
16 0005, can you identify that document, please?

17 A Yes.

18 Q Okay. What's that?

19 A That is a correspondence to the county
20 superintendent, Mr. Tom Crawford, from Thomas Henry, the
21 chief administrative officer of FCMAT, indicating that
22 the work at Cloverdale had been completed. And enclosed
23 was a copy of the report relative to that work.

24 Q Okay. And there is a copy of a signature. Is
25 that your signature on 0005?

1 A Yes.

2 Q Okay. And the actual visit -- there was a
3 visit that took place at Cloverdale; is that correct?

4 A Yes.

5 Q Am I correct, sir, that that took place in
6 October and November of 1997?

7 A I don't have those dates in front of me, but
8 that sounds like the correct time period.

9 Q Okay. Would it help refresh your recollection
10 if you looked at the third paragraph of this letter,
11 Mr. Henry, on FCMAT 0005?

12 A Yes. During October and November
13 representatives from FCMAT visited the school district
14 and conducted interviews and collected data.

15 Q Now, Mr. Henry, when we last had our
16 deposition, you told me, if I understood you correctly,
17 that FCMAT functions in five operational areas. Do you
18 remember talking to me about that?

19 A Yes, I do.

20 Q Okay. And those areas were personnel
21 management, financial management, facilities management,
22 instructional management, and government/community. Did
23 I understand that right?

24 A That is correct relative to the comprehensive
25 assessments that we've been asked to perform through the

1 familiar with, those were essentially financial
2 management reviews to determine solvency.

3 Q Okay. When you say "solvency," what do you
4 mean by that?

5 A There was a request, I believe, when the county
6 office requested us to do the review, to conduct
7 multiyear projections to determine whether the district
8 would be fiscally solvent for current and subsequent
9 school years.

10 Q And you told us, Mr. Henry, FCMAT has conducted
11 these sorts -- if I'm using the wrong phrase, let me
12 know. But FCMAT has conducted these sorts of studies of
13 solvency into other instances too; isn't that right?

14 A Yes.

15 Q Now, directing your attention to page 0005 --
16 let me move you right now, actually, to 0018 of Exhibit
17 61. Can you please put that in front of you.

18 Do you have that in front of you?

19 A Yes, I do.

20 Q And, again, take as much time as you need, but
21 I see the phrase "Enrollment Projection" on 0018.

22 What's your understanding of what that means?

23 A In this context, that represents the enrollment
24 projection that the district had projected for their
25 1997/'98 fiscal year. And one of our charges in this

1 state legislature. There is also a litany of areas of
2 responsibility in the statutes as well.

3 Q And the Cloverdale -- the Cloverdale project,
4 the Cloverdale study -- if I'm using the wrong words,
5 please correct me.

6 Does the Cloverdale study that is referenced in
7 Exhibit 61, does that fall into one of those five
8 operational areas, one or more of those areas?

9 A Yes.

10 Q What areas?

11 A I'm sorry. I responded "yes," that it does.

12 Q And which area or areas would it fall into?

13 A Well, clearly, it falls into the financial
14 management/operational area.

15 Q Okay. To your knowledge, has FCMAT ever
16 conducted any study of Cloverdale in any of the other
17 four areas that I mentioned: personnel management,
18 facilities management, instructional management, and
19 government/community?

20 A Not in a comprehensive sense. Typically, when
21 we're looking at finance, we'll look at some of the
22 other areas if we believe it will impact that
23 operational area. For instance, personnel management
24 practices we typically look at relative to finance
25 issues. But in Cloverdale, in the two studies I'm

1 particular study was to verify whether those enrollment
2 projections were accurate.

3 Q And why is that an important thing to do?

4 A Well, the enrollment projections dictate the
5 revenue that the district is projecting to receive from
6 the state in terms of what they base their budget
7 development on. And so if the enrollment projections
8 are not accurate, the district could be spending money
9 that they are not entitled to and would have to be
10 refunded during the course of the year.

11 Q And when the document, sir, speaks of accurate
12 projections of student enrollment -- and I'm looking,
13 sir, at the second sentence on page 0018 of Exhibit
14 61 -- what's your understanding of what "accurate
15 projections of student enrollment" means?

16 A Well, this probably is a variance relative to
17 the particular projections. But "accurate projections"
18 would be that the projections that the district had made
19 would be consistent with what the actual ADA ends up
20 being during the course of the year, or end of the year,
21 so that there would not be a negative adjustment made by
22 the state.

23 Q Do you know, sir, the number of districts that
24 are presently -- strike that.

25 Do you know, Mr. Henry, the number of districts

1 that make enrollment projections -- what the percent is
2 of districts in the state that make enrollment
3 projections?

4 MR. HERRON: This is David Herron. Objection.
5 Calls for speculation. It goes beyond the scope of what
6 this deposition was set for, which I think is to
7 question him about this document and not other items.

8 THE WITNESS: Yes, I do.

9 BY MR. ROSENBAUM:

10 Q And what's the answer?

11 A Well, the majority of school districts in the
12 state would -- if not all -- would have to make
13 enrollment projections when they develop their budget
14 for the next fiscal year.

15 Q Why is that?

16 A It requires that enrollment projections be made
17 to develop the revenue that the state would provide
18 relative to average daily attendance, the ADA figure.

19 Q To your knowledge, Mr. Henry, do you know the
20 number of districts that make accurate enrollment
21 projections, as that phrase is used on page 0018 of
22 Exhibit 61?

23 A No, I don't have that information.

24 Q Do you know if anyone in the state of
25 California has ever undertaken to determine the degree

1 Q Do you know the number or percent? Mr. Henry,
2 do you know the percent or number of school districts
3 throughout the state of California that utilize computer
4 software that would be regarded as a dependable tool to
5 assist in projecting annual enrollment?

6 MR. SEFERIAN: Tony Seferian. Objection. No
7 foundation. Vague and ambiguous as to "dependable
8 tool."

9 THE WITNESS: No.

10 BY MR. ROSENBAUM:

11 Q Do you know if anyone in the state has ever
12 surveyed the districts to determine the number or
13 percent of districts which are using such computer
14 software?

15 MR. HERRON: This is David Herron. Objection.
16 You're asking him questions that go beyond the scope of
17 the deposition, which we all agreed it would be limited.

18 THE WITNESS: No.

19 BY MR. ROSENBAUM:

20 Q In your experience, Mr. Henry -- and I'm
21 referring to FCMAT as well as you personally -- have you
22 seen districts besides Cloverdale that have not made
23 accurate projections of student enrollment?

24 A Yes.

25 Q Can you tell me the number of districts, in

1 of accuracy of enrollment projections by districts
2 throughout the state?

3 MR. HERRON: David Herron. Same objection.
4 That goes beyond the scope of the deposition, as we all
5 agreed it would be limited.

6 THE WITNESS: I'm not aware of any entity or
7 individual that has actually done a study relative to
8 that question.

9 BY MR. ROSENBAUM:

10 Q Okay. Now, directing your attention,
11 Mr. Henry, to the second full sentence -- the second
12 sentence, the second full paragraph, on 0018. Again,
13 please feel free to review as much of this document as
14 you like.

15 See where it says, "There is computer software
16 available at a relatively low cost that can provide the
17 district with a dependable tool to assist in projecting
18 annual enrollment"? Do you see that?

19 A Yes, I do.

20 Q Do you know if that is still true?

21 A Are you asking whether there is computer
22 software available at a relatively low cost that is
23 dependable relative to that?

24 Q Yes.

25 A Yes, that's still a true statement.

1 your experience, that fall in that category; that is, do
2 not make accurate projections of student enrollment?

3 MR. HERRON: This is David Herron. Objection.
4 Calls for speculation. It goes beyond the scope of the
5 deposition that we all agreed this particular deposition
6 would be limited to.

7 THE WITNESS: I wouldn't be able to provide you
8 today with a number relative to that question.

9 BY MR. ROSENBAUM:

10 Q Can you give me a ballpark percentage or
11 ballpark number?

12 MR. HERRON: This is David Herron. Same
13 objections.

14 THE WITNESS: No.

15 BY MR. ROSENBAUM:

16 Q Okay. Do you know if there are districts today
17 that do not make accurate projections of student
18 enrollment?

19 MR. HERRON: David Herron. Same objections.

20 THE WITNESS: Well, today you mean? No, I
21 wouldn't be able to tell you today whether there are
22 districts today that are not making accurate
23 projections. There are districts that we are working
24 in, that we have worked in, that have not made accurate
25 projections relative to their average daily attendance.

1 BY MR. ROSENBAUM:

2 Q Some of those districts, Mr. Henry -- would
3 that include this calendar year, 2001?

4 A Yes, it would.

5 Q And how many for the year 2001?

6 A I'm not certain of the number.

7 Q More than ten?

8 A I'm not certain.

9 Q Okay. To your knowledge, Mr. Henry, does the
10 state of California do anything to assure that districts
11 make accurate enrollment projections?

12 MR. HERRON: David Herron. Objection. Asked
13 and answered. Calls for speculation. Goes beyond the
14 proper scope of the deposition.

15 THE WITNESS: Yes.

16 BY MR. ROSENBAUM:

17 Q And what does it say?

18 A The state is responsible for reviewing not only
19 the budgets, but the two interim reports that are
20 completed that are also reviewed by the county office of
21 education. And in their review, expenditures and
22 revenues are analyzed. And if they believe that
23 revenues are inflated or expenditures are
24 underrepresented, I do believe they have a process by
25 which they communicate that information back to the

1 districts. I would think in that capacity they would be
2 intimately involved.

3 Q What about if the state is not involved as a
4 trustee? Do you know if it conducted those reviews?

5 A Would you repeat your question regarding the
6 state's review, what it is that you're asking?

7 Q Sure. Let me see if I understand you.

8 Mr. Henry, FCMAT has been involved in looking
9 at solvency questions and enrollment projections in
10 districts other than those districts in which the state
11 is a trustee with respect to the school district; is
12 that right?

13 A That is correct.

14 Q And in those districts, Mr. Henry, to your
15 knowledge, has the state reviewed enrollment
16 projections?

17 MR. SEFERIAN: Tony Seferian. Objection.
18 Vague and ambiguous as to "reviewed enrollment
19 projections."

20 THE WITNESS: I really don't know.

21 BY MR. ROSENBAUM:

22 Q Okay. Do you know if in any of those
23 districts -- I'm referring to districts where the state
24 is not a trustee -- the state has taken any steps to
25 assure accurate enrollment projections?

1 county offices and/or the school districts.

2 Q In Cloverdale, Mr. Henry, to your knowledge,
3 has the state undertaken such review?

4 MR. SEFERIAN: Tony Seferian. Objection.
5 Lacks foundation. Calls for speculation.

6 THE WITNESS: I'm not aware of any review by
7 the state relative to FCMAT's two assessments.

8 BY MR. ROSENBAUM:

9 Q You mean prior to the FCMAT assessment?

10 A No. I'm just not aware whether the state has
11 done any assessment or review at Cloverdale Unified.

12 Q And in the districts FCMAT is presently
13 reviewing that you were referencing, has the state
14 reviewed the projections in those instances, to your
15 knowledge?

16 A I'm fairly certain that they reviewed -- I
17 would think that they reviewed the projections at Emery
18 Unified School District.

19 Q How about other districts?

20 A I would also think that they had because of --
21 their role -- their relationship has been fairly
22 involved at Compton Unified School District.

23 Q Okay. How about any other districts?

24 A Well, the state is in a position that -- the
25 state is administrator or trustee of a number of school

1 MR. SEFERIAN: Tony Seferian. Calls for
2 speculation. No foundation.

3 THE WITNESS: I don't know.

4 BY MR. ROSENBAUM:

5 Q Are you familiar, Mr. Henry, with districts
6 that have underestimated enrollment increases?

7 A Yes.

8 Q And is Los Angeles Unified one of those
9 districts?

10 MR. HERRON: David Herron. Objection. Calls
11 for speculation. Goes beyond the proper scope of the
12 deposition.

13 MR. FEKETE: I'm going to add my objection at
14 this point. This is Frank Fekete. I hear questions
15 here that go far beyond either the Cloverdale report,
16 which seems to me to focus on Cloverdale and not on
17 every subject that FCMAT looked at Cloverdale for, and
18 it goes beyond any of those personnel reports, which I
19 had understood at the last deposition were the matters
20 that you were going to be reserving to ask Mr. Henry at
21 this deposition.

22 So I'm going to instruct Mr. Henry that with
23 respect to questions that you're asking that have
24 nothing to do with Cloverdale and have nothing to do
25 with personnel reports and are just broad questions

1 about how FCMAT functions with other districts, he
2 should not answer those questions.
3 (Instruction not to answer.)
4 MR. ROSENBAUM: What I said was that I needed
5 to look at the Cloverdale report. I've now had a chance
6 to look at the Cloverdale report. I have asked
7 questions specifically about Cloverdale, but I also want
8 the opportunity, now that I see the contents of that
9 report, which has made clear to me certain things that
10 FCMAT does and doesn't do that I want to inquire about
11 based on the contents of that report. So I think it's
12 inappropriate curtailment in our questioning to not
13 permit me to explore the areas that remain otherwise
14 unknown to me until I actually saw the contents of the
15 report.

16 I can say to you that I don't have a lot of
17 questions in these areas, but I do think it's perfectly
18 appropriate for me to use this report as a way of
19 educating us as to some of the duties and functions of
20 FCMAT. I don't think I'm going far afield at all, but I
21 think it's an inappropriate limitation to not explore
22 what I've learned through this report.

23 MR. HERRON: David Herron. I join with
24 Mr. Fekete in his objection and direct everyone to pages
25 369 and 370 of the transcript, where we had an agreement

1 believe that that document, the document -- Exhibit 61
2 was sent to all parties in advance of the second
3 deposition session. And I don't -- therefore, I don't
4 see how this is new information to you.

5 MR. ROSENBAUM: Well, Mr. Fekete, I never got
6 the documents you're talking about.

7 MR. FEKETE: Well, I didn't get the documents
8 that you're looking at subsequent to the second
9 deposition session.

10 MR. ROSENBAUM: Well, that may or may not be,
11 but the document you're referring to, I never received.

12 MR. FEKETE: Well, it was sent on October 16th,
13 and I was in communication with your office indicating
14 that it would be sent. So if no one received it, no one
15 had called me to indicate they hadn't received it.

16 I just think that what you're attempting to do
17 is use Cloverdale to inquire into matters that have
18 nothing to do with Cloverdale that have to do with
19 matters that were well within the scope of the
20 deposition in the first two sessions that we held.

21 So I think you should confine your questions to
22 Cloverdale, what FCMAT did in Cloverdale, and what the
23 references to the report mean with respect to
24 Cloverdale. And if you want to use that as an example
25 of how FCMAT functions, that's fine. But to go beyond

1 from you, Mr. Rosenbaum, about what you had and what you
2 did not have.

3 I disagree with your assessment of whether or
4 not your questions are appropriate. I don't believe
5 they are.

6 MR. ROSENBAUM: I just don't think, Dave, it's
7 appropriate for me to get a report and learn about some
8 of the activities that FCMAT is involved with and be
9 precluded from exploring that.

10 Again, I don't intend to go into any great
11 detail. I haven't pursued these questions.

12 MR. FEKETE: Let me ask this question,
13 Mr. Rosenbaum. What was the date of the last session?

14 MR. ROSENBAUM: I just have Volume 1 in front
15 of me. Do you have it, David?

16 MR. HERRON: Yes. This is David Herron. The
17 date is September 26.

18 MR. FEKETE: It's my understanding that the
19 most recent Cloverdale report that we sent was not the
20 report that you're asking Mr. Henry about. It was a
21 document that is dated July 12th of the year 2001, which
22 was finally transmitted to the district subsequent, I
23 believe, to the second deposition session. And I'm
24 being informed that the date is October 16, 2001, but
25 that is not the document you're looking at. And I

1 it and ask Mr. Henry to tell you about all of the other
2 school districts in California, I believe exceeds the
3 purpose of today's session. And so to that extent, my
4 instruction to my client stands.

5 MR. ROSENBAUM: Well, first of all, I did not
6 get the second document. I don't know with whom you
7 spoke, but I did not get the second document. Secondly,
8 we're entitled to explore, of course, what FCMAT did in
9 Cloverdale. And then pursuant to the Butte case and
10 equal protection document of the state, I am absolutely
11 entitled to explore whether or not what took place in
12 Cloverdale and what was discovered in Cloverdale was
13 similar to what exists in other districts in the state.
14 And I'm also entitled to find out whether or not what
15 FCMAT did was in any way replicated or otherwise
16 undertaken by other bodies or agencies throughout the
17 state of California. And that's all I'm doing in these
18 questions. And if I am precluded from asking these
19 questions, then I am precluded from undertaking an
20 appropriate exploration of core constitutional questions
21 in this case. That's all I'm doing is finding out what
22 happened in Cloverdale and whether or not those
23 transitions in their methodologies in state agencies are
24 similar to what takes place elsewhere in the state. It
25 is absolutely appropriate for me to explore.

1 MR. FEKETE: Do you want to ask your last
2 question again?

3 MR. ROSENBAUM: And I am really concerned
4 because I sure don't want to spend Mr. Henry's or
5 anybody else's time asking questions about documents
6 that I don't have in front of me.

7 MR. FEKETE: If you want to ask your last
8 question again --

9 MR. ROSENBAUM: Would you mind reading that
10 back, Ms. Reporter.

11 (Record read.)

12 MS. KAATZ: This is Sarah Kaatz. I think I'm
13 already on the record in joining Mr. Fekete's objection
14 as to form, but I would like to specifically join in the
15 objection as to the appropriateness of the scope of
16 questioning.

17 MR. FEKETE: Well, I'm going to permit
18 Mr. Henry to answer this question, but only in this
19 context. And Mr. Rosenbaum, this is intended to be
20 helpful to you in how you want to shape your further
21 questions, and that is to ask him whether he is aware of
22 anything that FCMAT has done with respect to other
23 districts that is the same that FCMAT did or had looked
24 at in Cloverdale. And in that context, I will tell
25 Mr. Henry that your question is, if you are aware of

1 district would need an emergency loan.

2 What we do fairly routinely is, we share our
3 reports with various state agencies and policymakers.
4 And those reports then would include, among other
5 things, our findings on revenue projections, ADA
6 projections, and what our recommendation would be
7 relative to those findings.

8 Q Okay. To your knowledge, Mr. Henry, has anyone
9 from the state board of education ever had any
10 discussions with you about a district that FCMAT has
11 found that underestimated enrollment increases?

12 MR. SEFERIAN: Tony Seferian. Objection.
13 Vague and ambiguous as to "underestimated enrollment
14 increases."

15 THE WITNESS: No.

16 BY MR. ROSENBAUM:

17 Q Or from the secretary of education office?

18 A You're asking specifically whether I had a
19 discussion with anyone from the secretary's office
20 regarding enrollment projections?

21 Q Yes, sir.

22 A No.

23 Q Or from the superintendent's office?

24 MR. SEFERIAN: Tony Seferian. Same objection.

25 THE WITNESS: I have had discussions with state

1 underaccounting of the ADA with respect to LA Unified.

2 MR. ROSENBAUM: Okay. I appreciate that.

3 MR. FEKETE: And I think now Mr. Henry wants to
4 answer.

5 MR. ROSENBAUM: Okay.

6 THE WITNESS: No.

7 BY MR. ROSENBAUM:

8 Q What other districts that FCMAT has looked at
9 has FCMAT found an underestimation of enrollment
10 increases?

11 A I don't know the number or have to memory the
12 names of the districts.

13 Q Mr. Henry, can you think of any?

14 A I would be speculating, and I really don't want
15 to do that. Our reports -- I'm certain that our reports
16 that we have conducted on the school districts relative
17 to financial management areas would speak to that.

18 Q Let me ask you a question about FCMAT's
19 methodologies. In the area -- Mr. Henry, when FCMAT
20 discovers that a district had underestimated enrollment
21 increases, does FCMAT pass that information on to any
22 state office?

23 A I don't believe that we would take that
24 isolated information and pass it on unless it was
25 related to a serious solvency situation. I believe the

1 department staff members regarding a number of our FCMAT
2 reports that would encompass enrollment projections, but
3 I don't believe I've had a conversation with state
4 department staff members specifically related to a
5 school district and only speaking about enrollment
6 projections.

7 BY MR. ROSENBAUM:

8 Q Okay. Have you had any discussion in your
9 capacity as chief administrative officer of FCMAT
10 regarding -- with anyone from the superintendent's
11 office or the department of education regarding
12 methodologies that the districts use to project
13 enrollments?

14 A No.

15 Q Okay. Or from the state board of education?

16 A No.

17 Q Or from the governor's office?

18 A No.

19 Q Let me direct your attention, Mr. Henry, to
20 page 0021 of what's been marked as Exhibit 61. Do you
21 have that in front of you?

22 A I do.

23 Q Okay. And if you could read over to yourself
24 "Budget Projection Recommendations," No. 1, on 0021.
25 And, again, feel free to look at it as much as you would

1 like.

2 MR. HERRON: David Herron. I'm sorry. What
3 was the page number?

4 MR. ROSENBAUM: I'm sorry, David. It's 0021.

5 MR. HEROIN: Thank you.

6 BY MR. ROSENBAUM:

7 Q Have you had a chance to look at that,
8 Mr. Henry?

9 A Yes. I'm still looking at the document.

10 Q Okay. Sorry.

11 A Yes.

12 Q Do you know, Mr. Henry, what if any
13 expenditures were reduced? And I'm looking in
14 particular at the phrase in 1, "The district should
15 begin immediately a review process to evaluate current
16 spending in order to reduce expenditures to approximate
17 projected revenues."

18 A Yes.

19 Q And what were they?

20 A Well, unfortunately it sounds like you've not
21 received a copy of the July report where FCMAT was
22 requested to return to Cloverdale Unified by a joint
23 request by the school district as well as the county
24 office of education to also conduct the multiyear
25 projections and to determine whether the recommendation

1 A No.

2 Q Did you review the report, the final report?

3 A Yes.

4 Q And do you know, Mr. Henry, whether or not
5 there was a FCMAT team that undertook this review?

6 A Yes.

7 Q And do you know if as part of that review team
8 they investigated whether or not students in the
9 Cloverdale High School had textbooks in all of their
10 classes?

11 A I don't believe that -- I don't believe that
12 was part of the study.

13 Q Nobody asked -- so far as you know, no one
14 asked FCMAT to examine whether or not students had books
15 in, for example, their science and geography classes?

16 A I'm not aware of that.

17 Q And as part of the follow-up, Mr. Henry, to
18 your knowledge, did the FCMAT teams examine whether or
19 not there were functioning air conditioners in the
20 classrooms at Cloverdale High School?

21 A I've not read over the report recently, so I'm
22 not aware of whether that's included in the report or
23 not, or whether we were asked to look at that.

24 Q Okay. Who is the person -- was there a person
25 who was head of the FCMAT team?

1 in the earlier report had been implemented.

2 And I believe -- I haven't looked at it
3 recently. I believe our follow-up had indicated that
4 that particular recommendation had not been fully
5 implemented, that the district was still struggling with
6 balancing revenues to expenditures.

7 Q Okay. Mr. Henry, do you know if as part -- do
8 you know -- when did the follow-up study take place?

9 A Well, the report itself was completed -- it
10 looks like it was completed towards the end of July. I
11 have a draft in front of me, and that information jumps
12 out at me.

13 Q The end of July of this year?

14 A Yes.

15 Q Did personnel from FCMAT personally visit
16 Cloverdale?

17 A Yes, they did.

18 Q Do you know when that took place?

19 A Well, it would have been prior to July. In
20 May. So approximately -- it would be between May and
21 the end of June. During the month of May and June.

22 Q And were you part of that follow-up?

23 A Are you asking whether I visited the school
24 site or the district?

25 Q Yes.

1 A Yes.

2 Q Who was that?

3 A I believe that it was Marshall Wiley.

4 Q And did you have discussions with Mr. Wiley
5 regarding his examination at Cloverdale this past year?

6 A I'm certain that I did, but that was some time
7 ago.

8 Q And to the best of your recollection,
9 Mr. Henry, do you recall any discussion about whether or
10 not students had books in Cloverdale High School?

11 A No.

12 Q You don't remember any discussion about that;
13 is that right?

14 A That is correct.

15 Q And to the best of your recollection,
16 Mr. Henry, was there ever any discussion about whether
17 or not classrooms at Cloverdale High School had
18 functioning air conditioners?

19 MR. HERRON: David Herron. Objection. Calls
20 for speculation.

21 THE WITNESS: I would be speculating. It seems
22 to me there was a question about heating and
23 ventilation, but I'm not certain whether that's in the
24 report or whether that was something that we were asked
25 to do. It just seems like I recall a discussion in

1 regards to that.
 2 BY MR. ROSENBAUM:
 3 Q When you say "ventilation," does that include
 4 air conditioners?
 5 A Right.
 6 Q I'm sorry. You're saying yes?
 7 A Yes.
 8 Q And, again, I don't want you to guess, but can
 9 you give me your best recollection of what was said
 10 regarding ventilation at Cloverdale High School?
 11 A No.
 12 Q Okay. To your knowledge, did the FCMAT team
 13 interview students at Cloverdale High School regarding
 14 ventilation in their classrooms?
 15 A I'm not aware of that, if that occurred.
 16 Q Or interviewed teachers about whether or not
 17 they had ventilation in their classrooms?
 18 A I'm not aware of it.
 19 Q To your knowledge, did the FCMAT team interview
 20 students or teachers regarding whether or not they had
 21 textbooks in their classes?
 22 A I'm not aware of that.
 23 Q And you're not aware of that having taken
 24 place?
 25 A That is correct.

1 Q Okay. Thank you. Now, directing your
 2 attention -- strike that.
 3 So far as you know, nobody from the state of
 4 California has ever asked FCMAT to determine whether or
 5 not students have books in their high school classes at
 6 Cloverdale High School; is that right?
 7 MR. HERRON: David Herron. Objection. Calls
 8 for speculation. Goes beyond the proper scope of the
 9 deposition.
 10 THE WITNESS: Would you repeat the question,
 11 please?
 12 BY MR. ROSENBAUM:
 13 Q To the best of your knowledge, Mr. Henry, has
 14 anyone from the state of California asked FCMAT to
 15 determine whether or not students have books for their
 16 classes at Cloverdale High School?
 17 A No.
 18 Q And to the best of your knowledge, Mr. Henry,
 19 has anyone asked FCMAT to determine whether or not the
 20 ventilation systems properly function at Cloverdale High
 21 School?
 22 A You say you didn't limit that to the
 23 department? You're saying did anyone; is that correct?
 24 Q Yes.
 25 A I'm uncertain whether the county office of

1 education asked us to look at that or not.
 2 Q Okay. If it had, that would be -- that would
 3 be reflected in the report?
 4 A If it was noteworthy it would have been
 5 reflected in the report. That is correct.
 6 Q What do you mean by "noteworthy"?
 7 A If we felt the findings were significant, we
 8 would have reported it; yes.
 9 Q Would it be -- what if you weren't asked, would
 10 you be able to determine -- strike that.
 11 If you had been asked to look at ventilation,
 12 would that be reflected in the report?
 13 A Yes.
 14 Q Let me ask you, Mr. Henry, looking at
 15 Recommendation No. 2, you see where it says "The
 16 district should contract with an outside consultant to
 17 complete a demographic study of the district"?
 18 A Correct.
 19 Q And, again, feel free to look at as much or
 20 more of that as you would like.
 21 To your knowledge, did the district in fact
 22 contract with an outside consultant?
 23 A That may have been one of the recommendations
 24 that was not implemented. I know there were several
 25 recommendations not implemented. Again, I have not

1 looked at the report recently, so I'm not certain
 2 whether that's one, but I know there were several that
 3 were not implemented. I'm thinking that was one that
 4 they did not implement.
 5 Q Now, these recommendations, they were made on
 6 or about January 1998; is that right?
 7 A That is correct.
 8 Q And to your knowledge, had anyone from the
 9 state department of education undertaken any
 10 investigation or inquiry to determine whether or not the
 11 recommendations had been implemented between January
 12 1998 and the current time?
 13 MR. SEFERIAN: Tony Seferian. Objection. No
 14 foundation. Calls for speculation. Assumes facts not
 15 in evidence. Vague and ambiguous as to "investigation."
 16 THE WITNESS: If that occurred, I'm not aware
 17 of it.
 18 BY MR. ROSENBAUM:
 19 Q And so far as you know, you had never been
 20 consulted by anybody from the state as to what the
 21 status is of Cloverdale's implementation of the FCMAT
 22 recommendations; is that right?
 23 A Yes.
 24 Q And so far as you know, Mr. Wiley had never
 25 been consulted as to whether or not the budget

1 projection recommendations advocated by FCMAT had been
2 implemented; is that right?

3 A That is correct. Mr. Wiley, I believe, would
4 have contacted me and the state would have called him
5 regarding this report, and that has not happened; that
6 is, Mr. Wiley's not contacted me relative to any calls
7 from the state department.

8 Q Okay. Now, the recommendation, Mr. Henry, to
9 contract with an outside consultant, has FCMAT ever
10 made that recommendation in other instances so far as
11 you know?

12 A I'm not aware of that if we have.

13 Q Okay. And do you know why FCMAT recommended
14 that the district contract with an outside consultant to
15 complete a demographic study in the matter of
16 Cloverdale?

17 A I believe that we felt the district needed that
18 expertise relative to a demographic study in order to
19 project -- to do a better job projecting their
20 anticipated revenue.

21 Q Do you know, Mr. Henry, whether or not the
22 state had the expertise to make demographic studies of
23 the district for that purpose?

24 MR. HERRON: David Herron. Objection. Calls
25 for speculation. Vague and ambiguous.

1 Q Do you know if FCMAT has made that
2 recommendation with respect to other districts besides
3 Cloverdale?

4 MR. HERRON: David Herron. Objection. Goes
5 beyond the scope of a proper deposition.

6 THE WITNESS: I'm not certain we've made that
7 exact recommendation. But I'm fairly certain that in
8 any district that we've worked in, that had difficulties
9 making accurate projections, that we would have had
10 something similar or relative to excused and unexcused
11 absences.

12 BY MR. ROSENBAUM:

13 Q Okay. Why did FCMAT -- if you know, do you
14 know why FCMAT thinks it's important that such
15 comparisons be made?

16 A Well, at the time, and specifically to
17 Cloverdale, I think there was a disproportionate amount
18 of unexcused absences, and we felt that the district
19 needed to do a better job of tracking those unexcused
20 absences.

21 Q Now, at the time that FCMAT was brought about
22 into Cloverdale, it's my understanding, correct, sir,
23 that there had been a determination by the Sonoma County
24 office that Cloverdale had overstated its projected
25 revenues by \$670,000; is that right?

1 THE WITNESS: No.

2 BY MR. ROSENBAUM:

3 Q Okay. And you see the phrase -- I'm looking,
4 sir, at the third sentence of Recommendation No. 2.
5 "Enrollment projections are the primary anticipated
6 outcome of the demographic study and are indispensable
7 for long range budget and facility planning." Do you
8 see that?

9 A Yes.

10 Q Do you know why those enrollment projections
11 are indispensable for long range budget and facilities
12 planning?

13 A Yes.

14 Q Why is that?

15 A Well, enrollment projections drive the budget,
16 and it's essential that those projections are accurate
17 relevant to solvency and future planning, whether it's
18 facilities or just any other operational areas.

19 Q And directing your attention, Mr. Henry, to
20 Recommendation No. 5. Do you see where it says
21 "Comparisons should be made on a monthly basis between
22 physical enrollment and actual attendance to determine
23 the percentage of student enrollment lost to unexcused
24 absences"?

25 A Correct.

1 A Yes.

2 Q And do you know if there had been overstatement
3 of projected revenues in years subsequent to 1997/'98 by
4 Cloverdale?

5 A No.

6 Q You don't know one way or the other?

7 A No, I don't.

8 Q And do you know if anyone from the state has
9 made any investigation to determine whether or not
10 Cloverdale had overstated its projected revenues in
11 years subsequent to '97/'98?

12 MR. SEFERIAN: Tony Seferian. Objection. No
13 foundation. Calls for speculation.

14 THE WITNESS: No.

15 BY MR. ROSENBAUM:

16 Q You don't know; is that right?

17 A That's correct.

18 Q And do you know if anyone at the Sonoma County
19 Office of Education had made any determination as to
20 whether or not Cloverdale had overstated its projected
21 revenues subsequent to '97/'98?

22 A In the course of their review, I would think
23 that they would have looked at the trends in past years.
24 So there's probably staff members in the Sonoma County
25 office that have looked at the past trends relative to

1 revenue and attendance, projected enrollment
2 projections.

3 Q Okay. But do you know for a fact whether or
4 not that's occurred?

5 A No, I don't know for a fact.

6 Q Now, the overstatement of projected revenues,
7 Mr. Henry, do you know what the consequences of that
8 overstatement was?

9 A Well, yes, I do. In part, I do.

10 Q Tell me what you know, please.

11 A Well, the consequences for the district as it
12 relates to FCMAT is that we were assigned by the
13 oversight agency -- the Sonoma County Office of
14 Education -- to do an assessment, conduct multiyear
15 projections, provide recommendations, review practices.
16 So one of the consequences, if you will, on the
17 preventative side is to have the county office engage
18 FCMAT to assist the district relative to that area of
19 projections.

20 Q Okay. I appreciate that. Do you know,
21 Mr. Henry, whether or not there was a shortfall -- there
22 was a shortfall -- strike that.

23 What was the final shortfall that you're aware
24 of?

25 A Well, I know that the original shortfall was

1 Q Okay. And so I take it you're not aware one
2 way or the other whether or not the shortfall had any
3 impact on the provision of textbooks to high school
4 students; is that right?

5 A I think it would be difficult to determine what
6 impact the shortfall had, for us to sit here and
7 speculate. It impacted the school district and the
8 school district's ability to operate in all five areas,
9 but we didn't -- I believe that we didn't determine
10 where the most serious impact was, whether it was
11 instruction or facilities or personnel practices. What
12 we attempted to do, first of all, is identify the
13 problem, and then provide recommendations to correct the
14 problem.

15 Q To your knowledge, Mr. Henry, did anyone in the
16 state of California at the state level look at what the
17 consequences of the shortfall was with respect to
18 programs or operations of the school district?

19 MR. SEFERIAN: Tony Seferian. Objection.
20 Calls for speculation. Vague and ambiguous as to
21 "consequences." Vague as to time.

22 THE WITNESS: No.

23 MR. FEKETE: I've got to ask for clarification.

24 When you ask a question, Mr. Rosenbaum, "To
25 your knowledge, has something happened?" and

1 reduced significantly down from 670 to 273,000, I
2 believe.

3 Q When we're talking about these revenues, is
4 that out of the general operating budget of the
5 Cloverdale Unified School District?

6 A Yes, it is.

7 Q And do you know if that shortfall had any
8 effect on plans by the Cloverdale Unified School
9 District with respect to modernization of its
10 facilities?

11 A I'm not aware of that.

12 Q You're not aware one way or the other?

13 A No.

14 Q And more specifically, do you know if it
15 affected, for example, whether or not high school
16 classrooms would have air conditioners or not?

17 A You're asking me to speculate, and I would
18 prefer to have the report speak for itself relative to
19 that.

20 Q Okay. And the report doesn't say anything
21 about what the impact was in terms of school operations.
22 Is the reason that -- is the reason for that because
23 that wasn't within the charge of FCMAT? That wasn't one
24 of the things FCMAT was supposed to look at?

25 A That is correct.

1 Mr. Henry says "No," my question to Mr. Henry is, does
2 he mean he doesn't know or to his knowledge it didn't
3 happen.

4 MR. ROSENBAUM: I'm glad to have that
5 clarified.

6 MR. FEKETE: This is a clarification going
7 forward and going backward with respect to the type of
8 questions that you've been asking. Frequently you ask
9 "To your knowledge," and Mr. Henry says "No."

10 My question is, Are you saying that you don't
11 know that, you don't have knowledge?

12 THE WITNESS: Right. I have no knowledge to
13 be able to respond to that question.

14 MR. FEKETE: Thank you.

15 MR. ROSENBAUM: Okay. I appreciate that
16 clarification too.

17 Q And to your knowledge, Mr. Henry, no one has
18 made -- and I'm talking at the state level and county
19 level -- no one has made any inquiry to determine what
20 impact the shortfall had on the operations of the
21 Cloverdale Unified School District; is that right?

22 MR. SEFERIAN: Tony Seferian. Objection.
23 Vague and ambiguous. Compound question. Vague and
24 ambiguous as to "shortfall." No foundation.

25 MR. HERRON: David Herron. Objection. Asked

1 and answered.

2 THE WITNESS: I'm fairly certain that the
3 county office of education in their role with the school
4 district, in terms of their oversight role, that there
5 has been discussion about the impact of the budget
6 shortfall on that school district.

7 What I'm not certain about is the specificity
8 relative to that impact, and that those individuals
9 would be better to answer that question.

10 BY MR. ROSENBAUM:

11 Q Okay. Let me ask you, Looking at
12 Recommendation No. 4, at page 0021 of Exhibit 61 -- do
13 you see that?

14 A Yes.

15 Q Do you know if that recommendation was
16 implemented by 2001?

17 A I'm not aware of whether that recommendation
18 has been implemented or not.

19 Q How about Recommendation 3? Do you know if
20 that was implemented by 2001?

21 A I'm not aware.

22 Q You're not aware one way or the other?

23 A That's correct.

24 Q Okay. Let me ask you -- let me ask you to
25 please turn to exhibit -- I'm sorry -- FCMAT 0024 of

1 here and just let that report speak for itself.

2 MR. ROSENBAUM: Okay. Let me go off the record
3 for a minute.

4 (Recess.)

5 MR. ROSENBAUM: David, did you get the fax?

6 MR. HERRON: You know, not yet. I've got our
7 folks on fax alert. If you can just identify the report
8 again for me. I'm sorry.

9 MR. ROSENBAUM: Let me see if I could do it for
10 the record, if I've got it.

11 MR. HERRON: Okay.

12 BY MR. ROSENBAUM:

13 Q Mr. Henry, you and your counsel talked to me
14 about a report from this year that was a follow-up on
15 the '98 review of Cloverdale; is that right?

16 A Yes, that's correct.

17 Q And is that -- that report, that's not exactly
18 the same format as Exhibit 61 that we've been talking
19 about; is that right?

20 A That is correct.

21 Q And what you're talking about is a ten-page
22 document -- well, yeah, a ten-page document dated July
23 16th, 2001, addressed to John Wight, W-i-g-h-t,
24 superintendent of the Cloverdale Unified School
25 District, and Jerry Johnson, deputy superintendent of

1 Exhibit 61.

2 MR. FEKETE: Mr. Rosenbaum, before you ask
3 questions about this page, we've been at this for an
4 hour. I don't know what your time estimate is, but
5 fairly shortly I would like Mr. Henry to have a
6 ten-minute break.

7 MR. ROSENBAUM: That's fine. Frankly, I just
8 have two questions on this page, but I'm glad to take
9 the review.

10 MR. FEKETE: Ask your two questions, and I will
11 count them.

12 BY MR. ROSENBAUM:

13 Q Okay. Looking, Mr. Henry, at page 0024 of
14 Exhibit 61, do you see where it says, "A freeze on all
15 hiring, vacant positions, and unnecessary overtime until
16 the budget can be stabilized and deficit spending
17 eliminated"?

18 A Yes, I see that.

19 Q I hope that doesn't count as a question.
20 Do you know if that was done?

21 A You're asking me to speculate. The follow-up
22 report that we completed for the most part zeroed in on
23 some of the more important recommendations, and we
24 determined whether the recommendations had been
25 implemented or not. So I would choose not to speculate

1 the Sonoma County Office of Education; is that right?

2 MR. FEKETE: That is correct, except that you
3 said "July 16." You mean July 12?

4 MR. ROSENBAUM: Mine says "July 16."

5 MR. FEKETE: It does? Okay. Well, we have a
6 version that says "July 12."

7 MR. ROSENBAUM: I don't have that version.

8 MR. FEKETE: Well, mine is marked "draft."
9 I've asked my secretary down in Bakersfield to fax out
10 the final copy to you folks, and so she's going to send
11 one up this way as well. So I'm looking at one that's
12 marked "draft" too, and I'm assuming that it's the same,
13 but we'll have the same copy here in a second. She
14 asked to fax us last.

15 MR. ROSENBAUM: I'm going to have that marked
16 as Exhibit 62. And I've made arrangements with the
17 reporter off the record, who does not have a copy of it,
18 that I will fax her a copy of that, with the consent of
19 other counsel, at the completion of this deposition.

20 Does anybody have a problem with that?

21 Frank, do you have any objection to my asking
22 questions about this?

23 MR. FEKETE: No. I don't have it in front of
24 me. If you can give me 15 seconds, please.

25 MR. ROSENBAUM: Of course.

1 MR. FEKETE: Why don't you go ahead. I'm
2 hoping it will be delivered shortly.

3 MR. ROSENBAUM: Okay. Obviously, if you want
4 me to stop or go back, tell me.

5 MR. FEKETE: Okay.

6 BY MR. ROSENBAUM:

7 Q Mr. Henry, the document that we've just
8 referred to as Exhibit 62, dated July 2001, that's the
9 follow-up to the '97/'98 Cloverdale review that FCMAT
10 undertook?

11 A It is represented as a joint request to
12 essentially focus in on two areas to help the district
13 develop their 2001 budget, and also review the
14 district's progress regarding implementation of the
15 findings of the 1998 report.

16 Q Okay. And if I've already asked you this
17 question, just bear with me, please. But with the
18 exception of these two reports, 61 and 62, has FCMAT
19 undertaken any other analysis of Cloverdale's district
20 operations?

21 A No.

22 Q Okay. And did you review what's been marked as
23 Exhibit 62 before it was sent to Mr. Wight and
24 Mr. Johnson?

25 A Yes, I did.

1 with anyone from the Cloverdale district or the Sonoma
2 County Office of Education?

3 A It is not uncommon to have calls for me from
4 the county or school district, but I am not aware of
5 whether that's happened or not.

6 Q To your knowledge, has anyone at the Sonoma
7 County office or the Cloverdale district made any
8 comments with respect to any of the findings and
9 recommendations in what's been marked as Exhibit 62?

10 A I'm not aware of any if they have been made.

11 Q Okay. Now, before the break -- let me strike
12 that.

13 To your knowledge, has anyone from the State of
14 California undertaken any investigation of the fiscal
15 situation in Cloverdale subsequent to July '97 -- I'm
16 sorry -- subsequent to the '97/'98 investigation by
17 FCMAT?

18 A I don't know.

19 Q Okay. And prior to what's been marked as
20 Exhibit 61, besides FCMAT, has anyone from the State of
21 California undertaken any review of the fiscal situation
22 at Cloverdale, so far as you know?

23 MR. HERRON: David Herron. Objection. Calls
24 for speculation.

25 THE WITNESS: I don't know.

1 Q And you approved of this submission being sent
2 out to them?

3 A Yes.

4 Q Have you received anything in writing,
5 subsequent to sending out what's been marked as Exhibit
6 62, from Mr. Wight or Mr. Johnson or anyone at the
7 district, the Cloverdale district?

8 A I have not received anything. I have not
9 checked with staff on that, but normally correspondence
10 would be reviewed by me.

11 Q When you say you haven't received anything,
12 would that also include that you haven't received
13 anything from the Sonoma County Office of Education
14 regarding Cloverdale?

15 A That is correct.

16 Q Have you had any discussions with Mr. Wight or
17 anyone on his staff regarding the situation at
18 Cloverdale?

19 A No, I have not.

20 Q Or with Mr. Johnson or anyone at the county
21 office of education?

22 A No.

23 Q Okay. To your knowledge, has anyone in your --
24 in FCMAT -- subsequent to the July 2001 letter and
25 materials, has anyone on your staff had any discussion

1 BY MR. ROSENBAUM:

2 Q Okay. Now, directing your attention,
3 Mr. Henry, to page 7 of this document -- and I just want
4 to make sure we're talking the same language -- where it
5 says "Budget Projection," and then to the left there is
6 a box that says "Report Findings," on Exhibit 62 -- are
7 we literally on the same page?

8 A Yes.

9 Q Okay. And that's where the report reviews the
10 status of the recommendations; is that right?

11 A Yes.

12 Q Okay. And after the first recommendation on
13 page 7 of what's been marked as Exhibit 62, that's where
14 the recommendation is that the district should begin
15 immediately to review the process to evaluate current
16 spending in order to reduce expenditures to approximate
17 revenues. Do you see that?

18 A Yes, I do.

19 Q And then the finding is that the district
20 continues to rely on reserves rather than making the
21 appropriate reductions to balance the budget. Do you
22 see that?

23 A Yes.

24 Q And the status is "Incomplete"?

25 A Correct.

1 Q Do you know why they made -- why that
2 recommendation was not fully complied with by the time
3 of the FCMAT follow-up?

4 A No.

5 Q Do you know if any inquiry or investigation by
6 FCMAT was undertaken to determine the reasons?

7 A No. I'm not aware of whether -- are you asking
8 whether FCMAT did any further review of why that
9 recommendation wasn't implemented?

10 Q Yes, sir.

11 A No, I'm not aware whether we've done that or
12 not.

13 Q Do you know if anyone at the State of
14 California has undertaken any investigation or inquiry
15 to determine why that recommendation was not complied
16 with by the time of the second FCMAT review?

17 A I am certain that the oversight agency, the
18 county office of education has reviewed our report, and
19 they are in contact with the school district relative to
20 those recommendations.

21 Q But specifically do you know if the county or
22 the state has undertaken any specific inquiry to
23 determine why that recommendation was not implemented
24 by the time of the second FCMAT report?

25 A I don't know.

1 Q When you say "fiscal obligations," what does
2 that mean?

3 A Being able to pay their warrants to be able to
4 project -- to be able to have sufficient revenues to
5 address their expenditures.

6 Q And do you know whether or not that has had any
7 impact in the ability of the Cloverdale School District
8 to have air conditioners in its classrooms that function
9 properly?

10 A I don't know.

11 Q Or books for its students?

12 A I don't know.

13 Q And has FCMAT reviewed other districts that
14 also were unable to meet their fiscal obligations in the
15 way you've just described?

16 MR. HERRON: David Herron. Objection. Asked
17 and answered. Goes beyond the proper scope of the
18 deposition.

19 THE WITNESS: Yes.

20 BY MR. ROSENBAUM:

21 Q Okay. And do you know what percent of school
22 districts in the state of California are presently
23 unable to meet their fiscal obligations, as you've
24 defined it?

25 MR. SEFERIAN: Tony Seferian. Objection. This

1 Q And do you know, Mr. Henry, what the
2 consequences of the failure of the district to fully
3 implement that review, that recommendation, were with
4 respect to the operations and functions of the
5 Cloverdale School District?

6 A I know that the county office, in their
7 oversight role, certified the district as a qualified
8 certification at second interim. I am uncertain on the
9 status of the district's budget for this current fiscal
10 year; that is, I don't know whether the county office
11 disapproved it or approved it.

12 And so when you say "What are the
13 implications?" the county office in their oversight role
14 has responsibility to look at the interim reports as
15 well as analyzing the budget to determine whether it's a
16 fiscally-sound budget. And I'm just -- I know that they
17 qualified their second interim last year, going into
18 this year's budget development. I'm just not certain
19 what they have done in regards to their budget.

20 Q What does it mean, you've been qualified as
21 second interim?

22 A "Qualification" essentially means that the
23 county has determined that the school district will
24 not -- or I'm sorry -- may not be able to meet its
25 fiscal obligations in current or subsequent years.

1 goes beyond the scope of the deposition that was agreed
2 to prior to the deposition.

3 THE WITNESS: The second interim reports that
4 are reviewed by the county office, and subsequently by
5 the state department, provides an assessment and a
6 certification relative to fiscal solvency so the state
7 would have an accurate depiction of the school
8 district's fiscal status as of the second interim, which
9 would have been April of last year. And they currently
10 have a real good indication of how many budgets have
11 been disapproved or approved in the state. I don't have
12 that information.

13 BY MR. ROSENBAUM:

14 Q And I take it, Mr. Henry, in your experience as
15 the chief executive officer for FCMAT, not all districts
16 have problems meeting their fiscal obligations; isn't
17 that right?

18 A Yes.

19 Q In fact, the majority of districts are able to
20 meet their fiscal obligations; isn't that right?

21 A Yes.

22 Q Okay. And to your knowledge, has FCMAT ever
23 been asked to determine the principal causes for
24 districts not being able to meet their fiscal
25 obligations?

1 A Would you repeat the question?

2 Q Of course. To your knowledge, has FCMAT ever
3 been asked by the legislature or by anyone in the state
4 to make a determination as to why districts are
5 unable -- certain districts are unable to meet their
6 fiscal obligations?

7 MR. HERRON: David Herron. Objection. Calls
8 for speculation. Goes beyond the proper scope of the
9 deposition. Asked and answered in part.

10 MR. FEKETE: Mr. Rosenbaum, I don't understand
11 the question. Are you asking in general why districts
12 are unable or are you asking whether FCMAT has gone into
13 individual districts to examine that question?

14 MR. ROSENBAUM: Well, that's a fair objection.
15 This is what I'm trying to find out. Mr. Henry
16 testified that in Cloverdale and certain other
17 districts, FCMAT has determined that certain districts
18 have been unable to meet their fiscal obligations. I'm
19 not asking him to repeat what he just told me regarding
20 the terms of individual inquiries.

21 Q What I'm asking is, Has anyone said to you,
22 Mr. Henry, or to anyone at FCMAT, to your knowledge,
23 "Why don't you take a look at your expenses in the
24 districts that you've been to and help us understand
25 what are some of the principal causes for districts

1 Q And were you involved in the process of
2 developing those predictors?

3 A Yes.

4 Q What was the nature of your involvement?

5 A I was actually at a point in the development of
6 the predictors in terms of taking the information from a
7 variety of reports, looking at trends that we see often,
8 talking to staff members specifically about key issues,
9 and then memorializing them in a document for
10 distribution.

11 Q And to your knowledge, Mr. Henry, prior to
12 FCMAT undertaking this analysis, did any similar
13 analysis in sum or substance exist in the state of
14 California?

15 MR. HERRON: David Herron. Objection. Calls
16 for speculation. Goes beyond the proper scope of
17 deposition. Vague and ambiguous.

18 THE WITNESS: There have been other individuals
19 or agencies that have grappled with that; that is, how
20 do we come up with a list of predictors that we can
21 provide our school districts or county offices with as
22 early warning signs. And so there have been attempts
23 earlier at developing that list. We looked at that list
24 as well, and then we looked at our reports, and we
25 combined some of them; the ones that were consistent

1 being unable to meet their fiscal obligations"?

2 A The answer is yes.

3 Q And when did that occur?

4 A I don't have a specific date, but I know for
5 certain during the budget hearings last year, where I
6 testified in front of the budget legislative hearings
7 in regards to FCMAT's work and appropriation requests,
8 that there were questions in regards to whether we had
9 developed any sort of early warning signs or predictors
10 in terms of school districts nearing insolvency. So
11 there have been general discussions at various levels of
12 the state and specific questions asked of me at budget
13 hearings relative to that issue.

14 Q Okay. And when you say "early warning
15 signals," what do you mean by that?

16 A FCMAT has taken the information over the last
17 several years and have analyzed patterns and trends, and
18 we've developed a list of what we call predictors or
19 early warning signs of districts nearing insolvency or
20 meriting intervention, and we provide those predictors
21 on our website, and we provide them during various
22 workshops or conferences that we're invited to speak at.

23 Q And the predictors that you're talking about,
24 when were they -- FCMAT did develop them; is that right?

25 A That is correct.

1 with our findings.

2 So to answer your question, there have been
3 other kinds of early warning lists out there, produced
4 by other individuals. I'm not certain who those
5 individuals are, but I have run across lists in the
6 past, several years ago, early warning signs for
7 districts to look at and be aware of.

8 BY MR. ROSENBAUM:

9 Q Do you know if any of these prior lists -- if I
10 understand you correctly -- have been developed by
11 anyone in the superintendent's office or staff?

12 A I'm not -- I don't know.

13 Q Or in the state department, the department of
14 education?

15 A I don't know.

16 Q Or the state board of education?

17 A I don't know.

18 Q Do you know whether or not anyone in the
19 superintendent's office makes use of your early warning
20 predictors?

21 MR. SEFERIAN: Tony Seferian. Objection. No
22 foundation. Calls for speculation. Vague and ambiguous
23 as to "makes use." Vague and ambiguous as to time.

24 THE WITNESS: I don't know.

25 BY MR. ROSENBAUM:

1 Q Or the state board of education?
 2 A I don't know.
 3 MR. SEFERIAN: Tony Seferian. Same objections.
 4 THE WITNESS: I don't know.
 5 BY MR. ROSENBAUM:
 6 Q Or the legislature?
 7 A I don't know.
 8 Q Or the governor's office?
 9 A I don't know.
 10 Q Or the secretary for education offices?
 11 A I don't know.
 12 Q Has FCMAT, as a result of the experiences in
 13 Cloverdale and other districts, Mr. Henry, looked at
 14 what the consequences of failing to heed these early
 15 warning signals are for the operations of school
 16 districts?
 17 A Yes.
 18 Q And have you looked as to whether or not
 19 failing to heed the early warning signals affects the
 20 ability of districts to construct and modernize
 21 facilities?
 22 MR. HERRON: David Herron. Objection. Asked
 23 and answered. Goes beyond the proper scope of the
 24 deposition. Calls for speculation.
 25 THE FEKETE: I also think it's getting pretty

1 far afield in the deposition. I'll let the witness
 2 answer the question after I ask for a clarification.
 3 Again, are you speaking generically?
 4 MR. ROSENBAUM: Yes.
 5 MR. FEKETE: Do you want to go back to the
 6 question? Can we have the question again?
 7 MR. ROSENBAUM: Sure. Why don't you read back
 8 the question.
 9 (Record read.)
 10 THE WITNESS: There are eleven conditions that
 11 we have developed, that any one of them may not -- may
 12 not be serious in terms of affecting the school
 13 district's budget or the operational areas. But
 14 sometimes in combination, and depending on the
 15 seriousness in isolation, they can affect a number of
 16 areas.
 17 One of the conditions that we've addressed is
 18 the infrastructure. So we use a different term than
 19 you've used. We've used the term "infrastructure"
 20 relative to facilities and sites.
 21 BY MR. ROSENBAUM:
 22 Q And when you say "infrastructure," what do you
 23 mean by that?
 24 A The physical plant, the condition of the
 25 physical plant, as well as the school site that the

1 plant sits on.
 2 Q I have one more question in this area.
 3 Mr. Henry, has anyone ever asked you or have
 4 you ever prepared any memorandum discussing the
 5 possibility of FCMAT expanding its duties to monitor
 6 early warning signals in districts throughout the state?
 7 MR. FEKETE: Anyone other than you,
 8 Mr. Rosenbaum?
 9 THE WITNESS: Could you repeat the question?
 10 BY MR. ROSENBAUM:
 11 Q What I'm interested in, Mr. Henry, is whether
 12 or not you've ever prepared any memorandum or if anyone
 13 on your staff has prepared any memorandum or whether
 14 FCMAT has been asked, to your knowledge, about its role
 15 to monitor early warning signals, like you've described,
 16 of districts throughout the state of California?
 17 A Yes.
 18 Q And tell me the basis of your answer.
 19 A We were written into a piece of legislation
 20 that subsequently was not passed by the legislature,
 21 signed by the governor, but we were written into a piece
 22 of legislation written by Marco Firebaugh.
 23 Q F-i-r-e-b-a-u-g-h?
 24 A Correct. And I believe it was AB 174, but I'm
 25 not certain on that. That particular piece of

1 legislation had FCMAT in the role of conducting
 2 facilities assessments in the state of California and
 3 providing recommendations for improvement.
 4 Q Okay. And that bill, that went through
 5 different amendments, did it not?
 6 A Yes.
 7 Q And did FCMAT support any of those amendments?
 8 A When you say "any of those amendments," I'm not
 9 sure what you mean by that.
 10 Q Let's break it down. The first version of
 11 AB 174 requires the state allocation board to adopt and
 12 enforce minimum standards of habitability applicable to
 13 existing school buildings; is that right?
 14 A I believe that's correct.
 15 Q Did you support that, sir?
 16 MR. HERRON: David Herron. I would object to
 17 this question. It's going well beyond the scope of the
 18 deposition to which we all agreed.
 19 BY MR. ROSENBAUM:
 20 Q Go ahead, Mr. Henry.
 21 A I'm not certain what you mean by "support,"
 22 so --
 23 Q Let me state it differently. Did you think it
 24 was a good idea?
 25 A I personally believe that the bill was well

1 written and could have provided a mechanism to the local
2 educational agencies relative to facilities, and cites
3 mechanisms to identify and establish an inventory and
4 provide assistance to address the conditions.

5 Q And why did you think that was a good idea?
6 Why did you think it was well written?

7 A Well, it did identify, I thought, some of the
8 issues that had been reported, either in the Hoover
9 commission report or some of the others, about the lack
10 of inventory.

11 There was, at the time, no inventory in the
12 state relative to the conditions of school facilities,
13 and the bill would have accomplished that; and two, it
14 would have provided the mechanism to address some of
15 those conditions.

16 Q And then that was amended to redact the minimum
17 standards language and then provide for the county
18 superintendent of schools to request FCMAT to assign a
19 school safety and audit team; is that correct?

20 A I think that was based on certain conditions
21 being in place. I haven't looked at the bill in some
22 time, but I think that was linked to certain
23 certifications made by the county superintendent
24 school's office relative to the budgets.

25 Q And did you think that was a good idea?

1 policymakers regarding the bill. I'm uncertain whether
2 I ever attended a bill hearing, a legislative bill
3 hearing relative to that bill.

4 Q Do you know if anyone from FCMAT did testify
5 regarding the Firebaugh bill?

6 A It is possible that our governmental relations
7 person may have, but I'm not certain on that.

8 Q Who was that person, please?

9 A That would be Michael Hulsizer,
10 H-u-l-s-i-z-e-r.

11 Q And Mr. Henry, isn't it right that there was a
12 third version that would have required the county
13 superintendent, if necessary, to request FCMAT to assign
14 a school physical plant safety audit team to advise the
15 district regarding physical plant safety problems?

16 A That's correct.

17 Q And did you support that amendment?

18 A Yes.

19 Q Why was that?

20 A At the time, we believed that the county
21 schools office was well positioned to have a good
22 understanding and assessment of their local school
23 district facilities, and we thought that there was -- at
24 the time, we thought there was a nexus between, again,
25 the fiscal oversight and, perhaps, the oversight of

1 A Yes.

2 Q And why was that?

3 A I believe that there is a nexus between the
4 management of the resources, the fiscal resources, and
5 the condition of California public schools.

6 Q What's the basis of that conclusion?

7 A It's based on our experience in conducting the
8 management assistance and fiscal crises intervention
9 studies in the last several years.

10 Q I take it when I asked if you supported it -- I
11 don't want to be confusing here -- you did not support
12 the legislation of the minimum standards language; isn't
13 that right?

14 A I would have to go back -- that is a very
15 formal process that typically our governmental relations
16 person is involved in. I would have to go back and
17 inquire of him and others as to what our formal position
18 was at the budget hearing, at the bill hearing level.

19 I don't recall at this point what our formal
20 opposition or support was regarding the bill at that
21 level.

22 Q Okay. And did you personally testify as to any
23 of these measures, any of these amendments?

24 A I know that I was contacted and had discussions
25 several times with legislators as well as state

1 facilities. And that if the district had a qualified or
2 negative budget, that there may be a correlation between
3 the management of resources and the management of
4 facilities. So we thought that agency was well
5 positioned to be able to determine that. And then much
6 like they do now on the AB 1200 site, be able to invite
7 or assign our agency in to conduct an independent,
8 external assessment of those areas.

9 Q County offices have adequate resources and
10 personnel; you still think that's true, isn't that
11 right, based on your experience?

12 A I think that the resource and personnel issue
13 is key to that, that some county offices -- most would
14 say they are not currently funded to perform that
15 function. And so I think it is a question -- clearly a
16 question of resources and personnel.

17 Q Have you recommended at any point that county
18 offices obtain adequate resources and personnel to
19 perform these functions?

20 A I believe that the bill itself -- we were
21 attempting to get adequate resources to counties at the
22 time of the Firebaugh bill. We were working diligently
23 to try and make sure there were adequate resources
24 provided to county offices if in fact they were going to
25 be questioned or required to conduct those facility

1 reviews.

2 Q Why is that?

3 A Well, we believed that it would be an added
4 responsibility to the current oversight, and that that
5 would require the necessary resources.

6 Q To your knowledge, Mr. Henry, did the
7 superintendent support any of the versions of the
8 Firebaugh bill?

9 MR. SEFERIAN: Tony Seferian. Objection. No
10 foundation. Calls for speculation. Goes beyond the
11 scope of this deposition.

12 THE WITNESS: I don't know whether the county
13 superintendents took a position on the bill.

14 BY MR. ROSENBAUM:

15 Q I'm sorry. What about Superintendent Eastin?

16 MR. SEFERIAN: Same objections.

17 THE WITNESS: I don't know.

18 BY MR. ROSENBAUM:

19 Q What about the governor's office?

20 A If you mean -- do you mean the secretary of
21 education's office?

22 Q Yes, sir.

23 A I believe that at the time the secretary of
24 education's office was -- they were very interested in
25 the bill. And I believe at that time we had support of

1 A I don't recall.

2 Q In the year 2000, was there any attempt to
3 resuscitate AB 174?

4 A Not to my knowledge.

5 Q How about in 2001?

6 A Are you asking whether there was any attempt
7 from a legislature -- if I'm aware of whether a
8 legislature has tried to rewrite that bill or reissue
9 that bill?

10 Q Yes.

11 A I'm not aware of it.

12 Q But you have advocated that a bill, in sum or
13 substance like the first two versions of AB 174 --
14 strike that.

15 Do you know why AB 174 failed? Do you have an
16 opinion?

17 A Yes, I do.

18 Q What's your opinion?

19 A I believe that a similar -- Firebaugh had a
20 number of bills, and I believe that there was a
21 determination made in ones that were of the highest
22 priority. And he moved on those high-priority bills,
23 some of which I think goes to safety and health issues
24 in his particular district.

25 Q Let's return to the exhibit. Have you had any

1 the concepts in the bill as it was going forward.

2 Q From the secretary's office?

3 A Correct.

4 Q Who was the secretary?

5 A I would have to go back and look at that.
6 There was a transition that occurred there, and I'm not
7 certain whether at the time it was Sue Burr or whether
8 it was Kerry Mazzone. There had been a number of
9 secretaries in a relatively short period of time, and
10 I'm not certain which one was actually in office at the
11 time.

12 Q Do you know if the state board of education
13 supported the first two versions of the bill that we've
14 talked about?

15 A I don't know.

16 Q Do you know if Governor Davis supported any
17 versions of AB 174?

18 A I don't know if Governor Davis was supportive
19 or not.

20 Q Did you ever have any discussions with anyone
21 in his office about AB 174?

22 A Yes.

23 Q Who was that?

24 A That would have been the secretary's office.

25 Q Anyone else?

1 discussion with anyone from the governor's office about
2 a new version of 174?

3 A Since that time?

4 Q Yes, sir.

5 MR. HERRON: David Herron. I object. That
6 goes well beyond the scope of what we've agreed to here,
7 Mark. It's beginning to be abusive.

8 MR. FEKETE: You're about to finish this line
9 of questioning?

10 MR. ROSENBAUM: Yes, I am.

11 MR. FEKETE: Go back to Cloverdale and not
12 stray from it again.

13 MR. ROSENBAUM: Well, I don't want to agree
14 with that characterization. I'm about to finish.

15 MR. FEKETE: I direct the witness not to answer
16 any non-Cloverdale questions.

17 BY MR. ROSENBAUM:

18 Q Can I ask you, Have you had any discussions
19 regarding the governor or anyone on his staff regarding
20 some sort of restoration of AB 174?

21 A I am certain that I've had some discussions
22 relative to 174 with a number of people since it was
23 first written. It's been some time, and I don't recall
24 the specifics of those conversations.

25 Q Okay. When you say "some people," that would

1 include people in the governor's office and the
2 secretary's office?

3 A Correct.

4 Q Let me return, now, to Exhibit 62. Looking at
5 page 7, do you see where it says at the bottom of the
6 page, "The district should purchase enrollment
7 projection software and provide staff development and
8 training for business personnel in order to track
9 student enrollment"? Do you see that?

10 A Yes, I do.

11 Q And the status is in process; is that right?

12 A Correct.

13 Q Just help me understand what "in process"
14 means.

15 A Mark, give me a second to look over this.
16 We're at page 7, and you're asking if the district
17 purchased enrollment projections?

18 Q I'm trying to get the term of art, "in
19 process," what that means.

20 A What that would mean is we had concluded they
21 had not completed that recommendation, but they had
22 either preliminary discussions or they were in the
23 process of addressing that recommendation.

24 Q When that recommendation was initially made in
25 Exhibit 61, was there, in your mind, Mr. Henry, a

1 Q Would it have been the practice of FCMAT to let
2 the people at the Cloverdale district know where the
3 software could have been obtained?

4 A We probably would have provided maybe three
5 vendors, and then they could have chosen.

6 Q Do you have any idea, Mr. Henry, why the
7 software wasn't purchased more promptly after the
8 recommendations were issued?

9 A No, I don't know.

10 Q Do you know if anyone from the state has looked
11 into that question?

12 A I don't know.

13 Q Do you know what the consequences of not having
14 purchased that software and completing the enrollment
15 projection models were with respect to the operations of
16 the Cloverdale School District?

17 MR. SEFERIAN: Tony Seferian. Incomplete
18 hypothetical. The question calls for speculation. No
19 foundation.

20 MR. HERRON: David Herron. Objection. Vague
21 and ambiguous.

22 THE WITNESS: Well, the reports speak to some
23 of the consequences, and then the review of the county
24 office relative to budget would speak to that as well.

25 BY MR. ROSENBAUM:

1 timeline as to when that software should be purchased?

2 A Well, I'm sure that our thought was that we had
3 hoped they would purchase it in time to utilize it for
4 their next budget cycle.

5 Q And that wasn't done?

6 A Well, this report is in July. It says "July
7 16th." And the district had purchased the software, and
8 they were in the process of completing several
9 enrollment projections. So it may have been that it was
10 a little delayed in that the budget would have been
11 adopted by then. But the opinion on how quickly they
12 actually received the software and implemented it,
13 downloaded it, would depend on how effective it was
14 relative to their last budget development process.
15 Hopefully, they have been able to use it for their first
16 interim, which closes on December 15th.

17 Q But you don't have specific knowledge one way
18 or the other; is that right?

19 A No, because of the timing of this report. And
20 we're saying they have not -- they purchased it, we are
21 indicating, and they did not receive it, and that it
22 probably was not available for their budget development.

23 Q Where can you purchase this software?

24 A There are vendors, private vendors, that
25 develop it and market it; a software agency.

1 Q Do you know if it had any impact one way or the
2 other on modernization of facilities or provision of
3 books or other instructional materials to students?

4 A No.

5 Q You just don't know?

6 A No, I don't know.

7 Q So far as you know, no one has made any inquiry
8 to determine that?

9 MR. HERRON: David Herron. Objection. Vague
10 and ambiguous.

11 THE WITNESS: That's right.

12 BY MR. ROSENBAUM:

13 Q I'm looking, now, Mr. Henry, at page 8 of
14 Exhibit 62. And I'm looking specifically at the top
15 bullet. The recommendation is, "District personnel
16 should be assigned to meet with representatives of the
17 city of Cloverdale and Sonoma County planning
18 departments on a quarterly basis to fully evaluate the
19 impact of development on the district's current and
20 future enrollment." Do you see that?

21 A Yes, I do.

22 Q Do you know when -- do you see where there is
23 an entry for "Status: In process - the new
24 superintendent has begun dialog and responds to
25 facilities demands with the appropriate agencies"?

1 A Yes, I see that.

2 Q Do you know whether the superintendents began
3 that dialog in response?

4 A The report doesn't reflect that, but I'm
5 certain the staff would know that. My staff would know
6 that.

7 Q Do you know what's meant by "facilities
8 demands" with respect to Cloverdale?

9 A I would be speculating in what that
10 specifically means.

11 Q Okay. As FCMAT uses that term or phrase, could
12 that include the construction of new facilities to meet
13 student needs, like classrooms?

14 A Correct. Yes, it would.

15 Q Could it include having functional ventilation
16 systems in classrooms?

17 A I think that it relates to either a series of
18 questions or findings that my staff addressed, and I
19 would be speculating. I would prefer to have the report
20 speak to that, or have the opportunity to talk with the
21 staff that actually formed that finding.

22 Q Okay. And finally, on the section above
23 "Budget Development," on page 8 of what's been marked as
24 Exhibit 62, do you see where it says "Monthly
25 comparisons should be made between physical enrollment

1 status report is "Incomplete." I'm looking at pages 8,
2 9, and 10 of Exhibit 62. Do you see that?

3 A Yes, I do.

4 Q Do you, Mr. Henry, know why those
5 recommendations were incomplete as of the time of
6 Exhibit 62?

7 A Well, you're asking me to speculate, and I do
8 not know the specific reasons. I would be speculating.

9 Q Do you know if the State of California has
10 undertaken any inquiry to determine why the
11 recommendations were not complied with by the time of
12 the drafting of Exhibit 62?

13 A I don't know.

14 Q Do you know, Mr. Henry, that the
15 recommendations on pages -- on page 15 -- I'm sorry --
16 page 15, 0021 of Exhibit 61, what's your understanding
17 as to when those recommendations were to be fully
18 implemented?

19 A Would you repeat the FCMAT number, please?

20 Q Sure. I'm directing your attention to Exhibit
21 61.

22 A Yes.

23 Q And I'm looking at page 0021.

24 A Okay.

25 Q And that lists the five budget projection

1 and actual attendance to determine the percentage of
2 student enrollment lost to unexcused absences"?

3 That was FCMAT's representation in '98?

4 A Correct.

5 Q And the status of that is "Incomplete." Do you
6 see that?

7 A Yes.

8 Q Okay. Do you know why the status was
9 incomplete?

10 A Well, maybe due to that passage of SB 727 that
11 went from an attendance accounting system, where excused
12 absences were important to the school district, and now
13 we're on an actual attendance system. So that may be a
14 recommendation that's no longer valid.

15 Q Okay. Let me see if I can ask an encompassing
16 question, Mr. Henry. I don't want you to -- I don't
17 want to bog you down on individual questions if a larger
18 question can handle it, but feel free to say to me, "You
19 need to break it down."

20 Do you see on pages 8, 9, and 10, of Exhibit
21 62, there are a number of descriptions of the FCMAT
22 representations for '98? And then the FCMAT analysis
23 and status of implementation of recommendations?

24 A Yes, I see that.

25 Q And for six of those recommendations, the

1 recommendations that the FCMAT team made for the
2 Cloverdale Unified School District; is that right?

3 A Yes.

4 Q Do you have an understanding as to whether
5 those recommendations were to be implemented?

6 A Yes.

7 Q When were they to be implemented by?

8 A Well, we determined immediately. So our
9 understanding was the district would get on it
10 immediately.

11 Q And to your knowledge, did anyone monitor the
12 status of implementation between the time of 61 and 62,
13 those exhibits?

14 A The county superintendent school office is the
15 oversight agency, and they were -- obviously, they
16 received both of these reports, so they would be -- they
17 would be monitoring the school district under their
18 oversight role and relative to their engagement,
19 remembering that they assigned us in initially to the
20 school district and commissioned the initial report.

21 Q To your knowledge, Mr. Henry, does the state
22 have any legal obligation to monitor how the county
23 monitors local districts with respect to budgets?

24 MR. SEFERIAN: Tony Seferian. Objection. No
25 foundation. Calls for, in addition, his legal opinion.

1 Vague and ambiguous as to "monitor."

2 MR. FEKETE: I will join in the objection. I
3 don't think Mr. Henry can give a legal opinion here.
4 I'll instruct him not to answer.

5 (Instruction not to answer.)

6 BY MR. ROSENBAUM:

7 Q Mr. Henry, I don't want you to have to repeat
8 anything you've already told me. But as a result of the
9 FCMAT experience in Cloverdale and similar districts,
10 have you recommended any expansion of FCMAT's authority,
11 duties, capacities, or responsibilities?

12 A To whom?

13 Q To anyone in the superintendent's office.

14 MR. SEFERIAN: Tony Seferian. Objection.
15 Overly broad, compound question. Vague and ambiguous.
16 Goes beyond the scope of the deposition.

17 THE WITNESS: Would you repeat the question,
18 please.

19 MR. ROSENBAUM: Sure. Would you read it back.
20 (Record read.)

21 THE WITNESS: I periodically have conversations
22 with state department staff members, including the
23 superintendent of public instruction, regarding FCMAT's
24 role. I don't recall any specific conversation that
25 I've had relative to expansion of that role. But

1 Q And why is that?

2 A Well, our engagement has been completed as soon
3 as we can submit the report. We would only be
4 re-engaged if we were invited in by the school district
5 or assigned by an oversight agency.

6 Q Just a colloquialism. You've done what you've
7 been asked to do, and you haven't been asked to do
8 anything else; is that right?

9 A That is correct.

10 Q Have you heard of any possibility that you
11 would be called back to Cloverdale?

12 A I have not.

13 Q Mr. Henry, you used the phrase, in talking
14 about your work in Cloverdale, about the district
15 nearing insolvency. Do you remember using that phrase?

16 A Yes.

17 Q What does "nearing insolvency" mean?

18 A The school district had a responsibility to
19 project their expenditures and their revenues formally
20 three times a year -- that is budget development -- and
21 then at the first and second interim reports.

22 The county offices have a responsibility then
23 to review that certification and to determine whether
24 indeed it's an accurate certification. One of the first
25 and second interim reports are required to be looked at

1 certainly I've had conversations with staff members, as
2 well as Superintendent Eastin, about the roles and
3 responsibilities that FCMAT takes.

4 BY MR. ROSENBAUM:

5 Q And what have you recommended?

6 MR. SEFERIAN: Tony Seferian. Objection.

7 THE WITNESS: I'm not sure I've recommended
8 anything. It's been more along the lines of
9 coordination of responsibilities of the department
10 versus responsibilities of FCMAT. Those sorts of
11 conversations.

12 BY MR. ROSENBAUM:

13 Q Okay. Can you summarize the best you can what
14 those conversations have been about?

15 MR. SEFERIAN: Tony Seferian. Objection. This
16 goes beyond the scope of the deposition.

17 MR. FEKETE: I'm going to object. I think the
18 question is much too broad and has nothing whatsoever to
19 do with the reason that we continued the deposition, so
20 I'll instruct the witness not to answer.

21 (Instruction not to answer.)

22 BY MR. ROSENBAUM:

23 Q Does FCMAT have any plans to continue to
24 monitor Cloverdale?

25 A No.

1 in essentially one of three ways. And that is, is it a
2 positive certification, which means is the district in
3 the current year and subsequent year with a positive
4 ending fund balance or is it a qualified certification.
5 And, again, the school district or the county office can
6 render that certification.

7 The county office can essentially override the
8 school district if they believe the certification is
9 inaccurate. But a qualified certification is a
10 determination that the school district may not be able
11 to end the current year or subsequent years. We
12 essentially take two subsequent years with a positive
13 ending fund balance. And the most severe certification
14 would be a negative certification, which essentially
15 says that it will not -- the school district will not
16 end the current year or two subsequent years with a
17 positive ending fund balance.

18 Back to your question of insolvency.
19 Typically, if a district has a qualified certification
20 or a negative certification or a disapproved budget, in
21 general terms that would be a solvency situation and we
22 would be concerned with whether the district would be
23 solvent in current or subsequent years.

24 Q Where would the state get the information?

25 A I'm sorry. I didn't understand your question.

1 Q You're talking about categorization of
2 districts based on their fiscal circumstances. Is it
3 based on their fiscal circumstances? Am I understanding
4 you right?

5 A Yeah, the fiscal condition of the school
6 district.

7 Q Who receives that information at the state
8 level?

9 A What individual receives that?

10 Q Well, first of all, is there an office that
11 receives it?

12 A Yes, I believe there is an office that receives
13 it.

14 Q And do you know what office that is?

15 A I'm certain that Janet Sterling receives the
16 certifications from the county superintendent schools
17 office.

18 Q And who is Janet Sterling?

19 A She is -- I believe she is a director in the
20 department of education in the business division. And
21 that's probably not the correct title.

22 Q Do you know if anyone else besides Janet
23 Sterling receives this information?

24 A I'm not -- I don't know.

25 Q Exhibit 62 -- strike that.

1 A I would have to ask staff if that actually
2 occurred. As you noted earlier, this was a different
3 format and more or less a management letter than a
4 comprehensive report that we typically issue. It was a
5 follow-up. So I'm not certain on the distribution of
6 this particular report; the July 16th report, that is.

7 Q Mr. Henry, maybe this can shortcut. Your
8 office supplies your teacher recruitment incentive
9 program reports?

10 A Yes.

11 Q To your knowledge, have there been any reports
12 of that nature, teacher improvement incentive reports
13 produced since October?

14 A Yes.

15 Q Do you know for which districts?

16 A No, I don't have the districts, but I know that
17 there are a couple of reports that they have just
18 recently finalized, that they are getting prepared to
19 mail out to your office and O'Melveny & Myers.

20 Q Okay. Thank you. This is what I mean about
21 shortcutting. I take it you reviewed this report; is
22 that right?

23 A I don't review every report. There are some
24 reports that I review. I review all of the Fiscal
25 Crises Management Assistance Team reports, but I have

1 Do you know what duties and responsibilities
2 Ms. Sterling has, or that office has, with respect to
3 this information?

4 MR. SEFERIAN: Tony Seferian. Objection. No
5 foundation. Calls for speculation. Calls for an
6 inadmissible legal opinion. It goes beyond the scope of
7 the deposition agreed to prior to the deposition.

8 MR. FEKETE: I'll join in those objections. I
9 think someone else is better suited to answer the
10 question as to what her duties and responsibilities are.

11 I'll instruct the witness not to answer.

12 (Instruction not to answer.)

13 BY MR. ROSENBAUM:

14 Q Mr. Henry, with respect to Exhibit 62, is there
15 a set of people or offices that would receive copies of
16 that from FCMAT, based on your usual practices?

17 MR. HERRON: David Herron. Objection. Asked
18 and answered.

19 BY MR. ROSENBAUM:

20 Q Just tell me "yes" or "no."

21 A Yes. And I believe you asked that question in
22 a prior deposition, not specific to this report, but
23 reports in general.

24 Q And this report falls in the category of how
25 your usual reports are treated; is that right?

1 not reviewed every personnel management assistance
2 report.

3 Q I notice in these reports that the forward
4 typically includes a letter from Mr. Montero; is that
5 right?

6 A I have not looked at every one of the reports,
7 but that sounds like it would be correct, that he is
8 pointed out on those particular studies.

9 Q If I want to talk about these reports, he's the
10 person who is the most knowledgeable; is that right?

11 A That is correct.

12 Q Okay. Since the last deposition, has FCMAT had
13 any new responsibilities or duties, to your knowledge,
14 assigned to it?

15 A You're talking formally through the state
16 legislature.

17 Q Yes, sir.

18 A No.

19 Q Or any other way?

20 A Occasionally we are asked to participate on
21 various committees or projects, and that happens fairly
22 often. I'm certain there has probably been an
23 engagement since our last deposition.

24 Q Can you think of any?

25 A I don't know whether I had shared with you that

1 I was asked to participate with the Legislative
2 Analyst's Office in developing our fee. They were
3 required to develop through the state legislature a
4 review of charter schools, and I was asked to
5 participate in that process.
6 Q Okay. Has FCMAT undertaken any investigation
7 of charter schools in comparison to schools that are not
8 chartered?
9 A Are you asking whether FCMAT has conducted any
10 assessments that incorporate charter schools?
11 Q Yes, sir.
12 A Yes.
13 Q What are those?
14 MR. HERRON: Herron. I object to this line of
15 questioning. It's going beyond the scope of the
16 deposition.
17 MR. ROSENBAUM: I'm not going to take this very
18 far, David.
19 MR. FEKETE: I'll permit the witness to answer
20 which districts, if any, he can recall where that's
21 involved, but I am not going to agree to walking into an
22 inquiry about charter schools.
23 THE WITNESS: There are two that I'm familiar
24 with. There could be others, but the Nevada county
25 superintendent of schools, Cary Macatier, requested

1 FCMAT to do a study a few years ago in regards to one of
2 his school districts in his county that had a charter
3 school, and we reviewed the school district as well as
4 the charter school at that time.
5 And the superintendent at Fresno county -- the
6 superintendent at the Fresno County Office of Education
7 has requested that FCMAT conduct a comprehensive
8 assessment of West Fresno. And in that particular
9 assignment, we were also looking at some issues related
10 to a charter school approved by West Fresno.
11 BY MR. ROSENBAUM:
12 Q When you say "comprehensive," is that like what
13 we talked about before with Oakland and Compton?
14 A No. What I mean by that -- thank you. What I
15 mean by that is a comprehensive fiscal assessment, and
16 comprehensive in that there are a number of areas that
17 we'll be examining and studying.
18 Q And the source of comprehensive reviews that
19 you've talked to us about at West Contra Costa and
20 Compton and Oakland, has FCMAT taken on any of those
21 since the last deposition?
22 A No.
23 Q Do you know of any plans to take on such
24 comprehensive reviews in the future, of other districts?
25 A I'm sorry?

1 Q Did you get my question, Mr. Henry?
2 A Would you ask it again.
3 Q Are you aware of anything in the offing or any
4 plans to have FCMAT undertake similar comprehensive
5 reviews of other districts?
6 A Yes.
7 Q Which ones?
8 A I'm not certain whether this will actually
9 occur, but the last legislative session we -- FCMAT was
10 approached relative to doing a comprehensive study of a
11 fairly sizable unified school district.
12 Q Is that final?
13 A No, it's not final.
14 Q Do you have a date of when that's going to
15 happen?
16 A No, I do not.
17 Q Besides this large district, any other
18 districts?
19 A No.
20 Q Okay. I take it you're not comfortable telling
21 me the name of that district? Is it public?
22 A No.
23 Q You're not comfortable saying it?
24 A That is correct.
25 MR. ROSENBAUM: Mr. Henry, Mr. Fekete, I

1 really appreciate your time, and the cooperation of all
2 counsel. I don't have any additional questions.
3 MR. SEFERIAN: This is Tony Seferian. I want
4 to state for the record when plaintiff solicited this
5 deposition to proceed via teleconference, we were told
6 it would be less than an hour's worth of questions from
7 plaintiff, and we have gone about two and a half hours.
8 Also, an expressed condition for our office
9 agreeing to hold the deposition by teleconference was
10 that we receive all exhibits prior to the deposition
11 beginning, which did not occur. And I still haven't
12 received Exhibit 62, which was the subject of many
13 questions in the deposition.
14 MR. ROSENBAUM: I'm sorry. I thought you had
15 61. I thought that was sent to all counsel.
16 MR. SEFERIAN: I did receive 61, but not 62.
17 MR. ROSENBAUM: I'm sorry. And I appreciate
18 the indulgence of all counsel, and Mr. Henry especially.
19 As I said, I have no further questions.
20 Okay. Mr. Fekete, just the usual stipulations
21 in terms of Mr. Henry reviewing as he did with the other
22 depositions?
23 MR. FEKETE: That is fine. Mr. Henry has in
24 fact noticed some contextual errors, nonsubstantive
25 errors, with respect to the first two volumes. And when

1 we get the third, we will note all of those upon his
2 signing the document.
3 MR. ROSENBAUM: Okay. I have nothing further.
4 Off the record.
5 (Plaintiffs' Exhibit 62 was marked for
6 identification by the court reporter.)
7 //
8 //
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4 I, the undersigned, a Certified Shorthand
5 Reporter of the State of California, do hereby certify:
6 That the foregoing proceedings were taken
7 before me at the time and place herein set forth; that
8 any witnesses in the foregoing proceedings, prior to
9 testifying, were placed under oath; that a verbatim
10 record of the proceedings was made by me using machine
11 shorthand which was thereafter transcribed under my
12 direction; further, that the foregoing is an accurate
13 transcription thereof.
14 I further certify that I am neither financially
15 interested in the action nor a relative or employee of
16 any attorney of any of the parties.
17 IN WITNESS WHEREOF, I have this date subscribed
18 my name.
19
20 Dated: _____
21
22
23
24 _____
KATHY NELSON
25 CSR NO. 9796

1
2
3
4
5
6
7
8
9 I, THOMAS E. HENRY, do hereby declare under penalty
10 of perjury that I have read the foregoing transcript;
11 that I have made any corrections as appear noted, in
12 ink, initialed by me; that my testimony as contained
13 herein, as corrected, is true and correct.
14 EXECUTED this ___ day of _____,
15 2001, at _____, _____.
(City) (State)
16
17
18
19
20 _____
THOMAS E. HENRY
21 Volume 3
22
23
24
25