

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

---o0o---

ELIEZER WILLIAMS, a minor, by
Sweetie Williams, his guardian ad litem,
et al., each individually and on behalf
of all others similarly situated,

Plaintiffs,

vs.

No. 312236

STATE OF CALIFORNIA, DELAINE EASTIN,
State Superintendent of Public
Instruction, STATE DEPARTMENT OF
EDUCATION, STATE BOARD OF EDUCATION,
Defendants.

-----/

Deposition of

SUSIE LANGE

Thursday, May 31, 2001

Reported by:

TRACY LEE MOORELAND

CSR No. 10397

Job No. 25773

APPEARANCES

1
2
3 For the Plaintiffs Eliezer Williams, et al.:

4 MORRISON & FOERSTER LLP
5 BY: MICHAEL A. JACOBS, ESQ.
6 LEECIA WELCH, ESQ. (present from page 9)
7 425 Market Street
8 San Francisco, California 94105
9

10 For the Defendant State of California:

11 O'MELVENEY & MYERS LLP
12 BY: DAVID L. HERRON, ESQ.
13 400 South Hope Street
14 Los Angeles, California 90071
15

16 For the Defendant Delaine Eastin, State Superintendent
17 of Public Instruction, State Department of Education,
18 State Board of Education:

19 DEPARTMENT OF JUSTICE
20 OFFICE OF THE ATTORNEY GENERAL
21 BY: ANTHONY V. SEFERIAN, ESQ.
22 1300 I Street, Suite 1101
23 Sacramento, California 95814
24 /
25 /

APPEARANCES, cont.

1
2
3 LOZANO & SMITH
4 BY: JUDD JORDAN, ESQ. (present from page 10)
5 20 Ragsdale Drive, Suite 201
6 Monterey, California 93940
7

8 The Intervener:

9 CALIFORNIA SCHOOL BOARD ASSOCIATION
10 BY: RICHARD L. HAMILTON, ESQ.
11 3100 Beacon Boulevard
12 West Sacramento, California 95691
13

14 ---o0o---

15
16
17
18
19
20
21
22
23
24
25

INDEX

1			
2	Examination by:	Page	
3	Mr. Jacobs	5	
4	Mr. Jordan	202	
5	--- <td></td> <td></td>		
6			
7	EXHIBITS		
8	Defendants'	Page	
9	SAD-33 SFPD Advisory 99-02		43
10	SAD-34 School Facilities Fingertip Facts		
11	January 2001	64	
12	SAD-35 Memo dated June 8, 2000, Bates		
13	stamped DOE00899 - DOE00921		76
14	SAD-36 California's Education Technology		
15	Survey	102	
16	SAD-37 California Department of Education		
17	Mission, Vision, Guiding Principles,		
18	Goals, and Objectives	130	
19	SAD-38 California State Board of Education		
20	Public Session, July 12-13, 2000		
21	Approved Minutes	170	
22	SAD-39 School Facilities Planning Division,		
23	About Us	179	
24	SAD-40 Governor's budget for fiscal		
25	year 2001-02	195	

1 BE IT REMEMBERED, that on Thursday, May 31,
2 2001, commencing at the hour of 10:00 a.m., thereof, at
3 the Law Offices of Morrison & Foerster LLP, 400 Capitol
4 Mall, Suite 2300, Sacramento, California, before me,
5 TRACY LEE MOORELAND, a Certified Shorthand Reporter in
6 the State of California, there personally appeared
7 SUSIE LANGE,
8 called as a witness herein, who, having been duly sworn
9 to tell the truth, the whole truth, and nothing but the
10 truth, was thereupon examined and interrogated as
11 hereinafter set forth.
12 ---o0o---

13 EXAMINATION BY MR. JACOBS

14 Q. Ms. Lange, have you had your deposition taken
15 before?
16 A. Yes.
17 Q. In what case?
18 A. It was a personnel related case with the
19 Department of Education several years ago.
20 Q. Is that the only occasion in which your
21 deposition has been taken?
22 A. I was involved in a personal lawsuit many years
23 ago and had a deposition taken then.
24 Q. Are you familiar with the basic procedures from
25 the deposition that you had a few years ago?

1 A. Yes.
 2 Q. Your current position is deputy superintendent
 3 of finance technology and -- of finance technology and
 4 administration; is that correct?
 5 A. Yes.
 6 Q. Do you have a shorthand name for that branch?
 7 A. FTAB.
 8 Q. How long have you been in that spot?
 9 A. For two years in this configuration.
 10 Q. Did the department reorganize?
 11 A. At that time, yes.
 12 Q. What was the shift in responsibilities?
 13 A. I acquired a branch. We call them branches.
 14 That's what I'm the deputy over. I acquired a branch of
 15 a departing person.
 16 Q. And what was that branch?
 17 A. He had the finance and technology part of that
 18 title, and I was the admin deputy.
 19 Q. So these two branches were consolidated into
 20 one at that time?
 21 A. Yes, that's correct.
 22 Q. So for some time were you the deputy
 23 superintendent of an administration branch?
 24 A. Yes.
 25 Q. How long was that?

1 A. Two additional years.
 2 Q. Before that, what was your position?
 3 A. Before I was deputy --
 4 Q. Of administration.
 5 A. -- of administration? It was actually deputy
 6 of management services was the title. I was the
 7 director of the executive office for the State
 8 Department of Education.
 9 Q. How long did you have that spot?
 10 A. About four years.
 11 Q. What was your core area of responsibility as
 12 that -- in that job?
 13 A. Communications, public relations and oversight
 14 of the superintendent's executive office,
 15 correspondence, and that kind of thing.
 16 Q. Before that job, what was your --
 17 A. I was the public relations director for the
 18 State Department of Corrections.
 19 MR. HERRON: I'll caution you to let him finish
 20 his question before you start to answer.
 21 THE WITNESS: Okay.
 22 Q. BY MR. JACOBS: Just so I have the years lined
 23 up, do you recall the start and ending year in which you
 24 were the public relations director?
 25 A. It started in 1983.

1 Q. And ended in?
 2 A. '92, maybe.
 3 Q. The departing deputy superintendent had the
 4 finance and technology areas; is that correct?
 5 A. Yes.
 6 (Ms. Welch entered the room.)
 7 Q. BY MR. JACOBS: And his or her name was?
 8 A. His name is Pat Keegan.
 9 Q. The functions of the management services
 10 branch, do they align with what is currently called the
 11 administrative part of your branch?
 12 A. Yes.
 13 MR. HERRON: Objection. Vague and ambiguous.
 14 Q. BY MR. JACOBS: And what are those? What are
 15 the functions of what was management services and is now
 16 administration?
 17 A. The personnel division, the fiscal and
 18 administrative services division, the school facilities
 19 division, and the publications division.
 20 Q. The personnel function, is that an internally
 21 focused job; that is, is it the personnel of the State
 22 Department of Education?
 23 A. Yes.
 24 Q. And fiscal and administration, that is not just
 25 the fiscal side of the Department of Education's

1 internal operations, correct, it's much broader than
 2 that?
 3 A. That's not correct.
 4 Q. Okay. So --
 5 A. It's primarily the department's fiscal.
 6 Q. Okay. And by that we mean the ongoing
 7 operating budget of the department in terms of its own
 8 buildings and its own personnel and related systems?
 9 A. Yes.
 10 Q. And school facilities, that is not an
 11 internally-focused job, correct?
 12 A. That's correct.
 13 Q. What are the functions of the school's
 14 facilities division of your branch?
 15 A. School facilities planning division is the
 16 formal title.
 17 Q. Is that Duwayne Brooks' division?
 18 A. Yes.
 19 Q. That was Duwayne Brooks' division, correct?
 20 A. Yes, that's correct.
 21 Q. And the publications division, that is
 22 publications of the Department of Education; is that
 23 correct?
 24 A. Yes.
 25 Q. So to sum up the four functions in

1 administration, three of them are primarily focused on
2 the department's own operations, and one of them, the
3 school facilities planning division, is an externally
4 focused assignment; is that correct?

5 A. Yes.

6 Q. Okay. Now, let's talk then about technology.

7 What are the divisions under technology?

8 A. The technology services division includes the
9 department's technology and also the education
10 technology.

11 Q. By education technology you mean the
12 dissemination of technology to schools in the State?

13 A. Yes.

14 Q. Any other functions under the technology
15 service division?

16 A. No.

17 Q. And then finance, what falls under finance?

18 A. That's school fiscal services division. That's
19 the dissemination of the funds that go to schools, to
20 school districts, county offices and school districts.

21 (Mr. Jordan entered the room.)

22 Q. BY MR. JACOBS: By "dissemination," do you
23 actually mean the fiscal disbursement function?

24 A. Yes.

25 Q. And other functions as well?

1 through a county office and then comes to the State
2 Department of Education.

3 Q. Are there any other functions under the school
4 fiscal services division?

5 A. Yes.

6 Q. What are they?

7 A. We handle oversight of the charter schools.

8 Q. Oversight of fiscal matters, or beyond fiscal
9 matters?

10 A. It is their fiscal matters and also general
11 information about charters.

12 Q. Are there aspects of the charter school
13 oversight that are managed by other divisions in the
14 department outside of FTAB?

15 A. No.

16 Q. So charter schools, to put it colloquially,
17 falls under FTAB; is that correct?

18 A. That's correct.

19 Q. What else is in the finance part of your
20 branch?

21 MR. HERRON: Objection. Vague and ambiguous.
22 You mean functions?

23 MR. JACOBS: Yes.

24 THE WITNESS: That's it.

25 Q. BY MR. JACOBS: So then going back to school

1 A. Yes. Actually, technically, the controller is
2 who disburses the funds. We do all of the work to
3 certify the disbursement of the funds, and it is the
4 controller's office that sends the money out.

5 Q. This is the controller of the state of
6 California?

7 A. Yes.

8 Q. So by certifying in your last answer, what did
9 you mean?

10 A. It is our responsibility to review the budgets
11 of all of the school districts and the county offices,
12 and to determine the appropriate amount of money that
13 should go to all of them.

14 Q. So, in other words, when a school district
15 reports to you its ADA, for example, you would make --
16 you in that office would make calculations based on that
17 ADA as it relates to budget allocations?

18 MR. HERRON: Objection. Vague and ambiguous.
19 Assumes facts not in evidence.

20 You may respond if you understand.

21 THE WITNESS: We certify that those
22 calculations are correct. We don't do the calculations.

23 Q. BY MR. JACOBS: And who actually does the
24 calculations in the general case?

25 A. It begins with the school district and goes

1 fiscal services, we talked about the certification
2 function. Are there other areas of responsibility for
3 school fiscal services than certification?

4 A. They do the apportionment. They certify the
5 apportionment.

6 MR. JACOBS: If I could ask you not to counsel
7 your witness by whispering if there's something that
8 should be said. It should either not be said because
9 it's inappropriate, or it should be said on the record.

10 Q. Are there areas that since -- let's take the
11 last two years when the branch was consolidated under
12 your supervision.

13 Are there areas that you have paid special
14 attention to as a matter of your own special interest or
15 special projects?

16 MR. HERRON: Objection. Vague and ambiguous.
17 Vague as to time.

18 MR. JACOBS: Go ahead.

19 MR. HERRON: You may answer if you understand.
20 If you don't, you can ask him to clarify.

21 THE WITNESS: Do clarify. I sort of missed the
22 beginning of your question.

23 Q. BY MR. JACOBS: We're taking the last two years
24 as the period of time, and my question is, are there
25 special projects that you have paid personal attention

1 to as opposed to, say, the projects that you've
 2 delegated out to your division chiefs or their direct
 3 reports?
 4 A. No.
 5 MR. SEFERIAN: Objection. Vague and ambiguous.
 6 THE WITNESS: No.
 7 Q. BY MR. JACOBS: So you've handled this job in
 8 the last two years as a -- let me come at it in another
 9 direction.
 10 We've seen your name, for example, on a lot of
 11 technology-related documents. Is technology an area
 12 you've paid special attention to in the last two years?
 13 MR. HERRON: Objection. Vague and ambiguous.
 14 THE WITNESS: I guess I wonder, do you mean
 15 more than other things?
 16 MR. JACOBS: Yes.
 17 THE WITNESS: Then the answer is no.
 18 Q. BY MR. JACOBS: Okay. Have you become familiar
 19 with the allegations in the Williams lawsuit against the
 20 State and certain of its agencies?
 21 A. Vaguely.
 22 Q. Have you participated in any discussions about
 23 the lawsuit?
 24 For the moment, let's just answer yes or no so
 25 we give your lawyer a chance to do his attorney/client

1 privilege thing.
 2 A. What was the question?
 3 Q. Have you participated in any discussions
 4 concerning the lawsuit?
 5 A. Yes.
 6 Q. Have any of those discussions been in a context
 7 in which lawyers were not present?
 8 A. That's a double negative. Have any of them
 9 been -- repeat the question.
 10 Q. Have you had any of those discussions without
 11 lawyers present?
 12 A. Yes.
 13 Q. And what have those discussions been?
 14 A. Information gathering.
 15 Q. What kind of information gathering?
 16 MR. HERRON: I object as attorney/client
 17 privilege. To the extent that she was asked to do
 18 something by attorneys or directed to do something by
 19 attorneys, she shouldn't respond and doesn't need to.
 20 And you're instructed not to respond to the extent that
 21 you were acting at the behest of counsel. Otherwise you
 22 may respond.
 23 THE WITNESS: I would have -- I have asked
 24 clarification on responsibility over -- technically the
 25 responsibility over facilities.

1 Q. BY MR. JACOBS: What do you mean by that?
 2 A. Where exactly responsibility resides in the law
 3 for oversight of schools facilities.
 4 Q. What did you find out?
 5 A. That no one is quite sure.
 6 Q. More precisely, were you trying to find out who
 7 was responsible for oversight of conditions of
 8 facilities, or facilities more generally?
 9 MR. HERRON: I'm going to object as
 10 attorney/client privilege. You should not disclose any
 11 conversations or directions received by counsel. He's
 12 not asking you that. He's asking you, aside from
 13 communications with counsel, communications outside
 14 counsel's presence or outside their direction, that's
 15 what he's asking you for.
 16 THE WITNESS: My clarification was with my
 17 staff, to make sure that I understood what they believed
 18 their responsibility was.
 19 Q. BY MR. JACOBS: And their responsibility in
 20 terms of what?
 21 A. School facilities.
 22 Q. And what aspect of school facilities?
 23 A. That was my question.
 24 Q. So your question was, let's break down the
 25 various aspects of school facilities, who is responsible

1 for what?
 2 A. No.
 3 Q. What was your question?
 4 A. My question was, what are we responsible for,
 5 I, as the overseer of the school facilities planning
 6 division.
 7 Q. And the answer that came back was, it's not
 8 really clear what you are or are not responsible for?
 9 A. No.
 10 Q. What was the answer?
 11 A. It's clear that the Department of Education is
 12 responsible for reviewing school site plans.
 13 Q. As distinct from what?
 14 A. Existing buildings.
 15 Q. And as to existing buildings, what was the
 16 answer?
 17 A. That that's not our responsibility.
 18 Q. Did you learn in the course of that interaction
 19 whose responsibility it was?
 20 MR. SEFERIAN: Objection. Calls for a legal
 21 opinion.
 22 THE WITNESS: No.
 23 Q. BY MR. JACOBS: You stopped with it's not our
 24 responsibility because that was your principal focus,
 25 was finding out what you were responsible for?

1 A. That's correct.
 2 Q. So to clarify that, you did not learn in the
 3 course of that interaction that it was the
 4 responsibility of another branch in the Department of
 5 Education to have oversight over existing facilities; is
 6 that correct?
 7 A. No.
 8 Q. No, it's not correct?
 9 A. Repeat your question.
 10 Q. Sure. Just replay. The answer that came back
 11 to you was there's a distinction between new school
 12 sites and existing facilities, correct?
 13 A. Yes.
 14 Q. And the distinction is that as to new school
 15 sites, the Department of Education has statutory
 16 responsibility to approve the selection of those sites,
 17 correct?
 18 MR. HERRON: Objection. Misconstrues prior
 19 testimony.
 20 You may respond if you understand what he's
 21 asking you.
 22 THE WITNESS: Yes.
 23 Q. BY MR. JACOBS: As to existing facilities, you
 24 learned that the department -- that the -- that your
 25 branch had no responsible -- no oversight

1 responsibilities set out in law; is that correct?
 2 MR. SEFERIAN: Objection. Calls for a legal
 3 conclusion. Vague and ambiguous.
 4 THE WITNESS: Could you rephrase that?
 5 Q. BY MR. JACOBS: What part is confusing?
 6 A. What is it that you're asking me, about what I
 7 learned about our responsibility?
 8 Q. That you did not have -- you learned that you
 9 did not have oversight responsibility with respect to
 10 existing facilities?
 11 MR. SEFERIAN: Objection. Vague and ambiguous.
 12 THE WITNESS: Yes.
 13 Q. BY MR. JACOBS: And by the "you" there, was the
 14 "you" that you learned about limited to your branch, or
 15 was it an answer that came back to you that was an
 16 answer with respect to the Department of Education as a
 17 whole?
 18 A. With respect to the Department of Education as
 19 a whole.
 20 Q. With respect to existing facilities, are you
 21 aware of any systematic effort on the part of the
 22 department to collect information about the state of
 23 those facilities?
 24 MR. HERRON: Objection. Vague and ambiguous.
 25 Calls for speculation.

1 THE WITNESS: No.
 2 Q. BY MR. JACOBS: Have you discussed in the
 3 department -- you, have you participated, you personally
 4 participated in discussions about whether such an effort
 5 would be advisable?
 6 MR. HERRON: Objection. Vague and ambiguous.
 7 Calls for speculation.
 8 THE WITNESS: About -- I don't understand the
 9 question.
 10 MR. JACOBS: About a systematic effort to
 11 collect information about the state of existing school
 12 facilities.
 13 MR. HERRON: Same objections.
 14 THE WITNESS: No, I've not participated in a
 15 discussion about whether that would be a good idea.
 16 Q. BY MR. JACOBS: Are you aware of any such
 17 discussions having taken place separate, whether or not
 18 you participated in them?
 19 A. No, I'm not aware of that.
 20 Q. And if I change the question to nonsystematic
 21 efforts -- let me be even more precise. Suppose that
 22 through an informal mechanism, like a letter to the
 23 Department of Education or a news account, information
 24 surfaces about the state of facilities in a particular
 25 school district. Is there any -- are you aware of any

1 effort to assemble that information in the department?
 2 MR. SEFERIAN: Objection. Hypothetical
 3 question. It's vague and ambiguous.
 4 THE WITNESS: If anyone ever asks us for
 5 information, we do what we can to get information,
 6 whether it's about facilities or anything else about a
 7 circumstance, just to be helpful to the public.
 8 Q. BY MR. JACOBS: And give me -- is there an
 9 example that's coming to mind as you're answering that
 10 question?
 11 A. A million examples.
 12 Q. So start with one.
 13 A. My teacher is being mean to my kid.
 14 Q. And you deal with that in some way?
 15 A. Right.
 16 Q. All right. Let's focus on facilities though.
 17 You become aware through a complaint from a parent --
 18 back up.
 19 Have you ever, you now meaning your branch,
 20 ever become aware of a -- through a complaint from a
 21 parent about what the parent regards as inadequate
 22 existing school facilities?
 23 MR. HERRON: Objection. Calls for speculation.
 24 Vague and ambiguous as phrased and as to time.
 25 THE WITNESS: Yes, I have received -- been made

1 aware of a parent with a complaint about their child.
 2 Q. BY MR. JACOBS: And about their child's school
 3 facilities, I take it?
 4 A. Yes.
 5 Q. And is that something that's happened -- let's
 6 take the last two years. Is that something that's
 7 happened you would say occasionally, frequently? How
 8 would you characterize the frequency of those sorts of
 9 instances?
 10 A. Occasional.
 11 Q. What is the -- do you have a general practice
 12 with respect to the treatment of those sorts of
 13 complaints?
 14 A. Yes.
 15 Q. What is your general practice?
 16 A. Correspondence or calls like that are logged
 17 in, assigned to the school facilities division to
 18 analyze, and they recommend a response.
 19 Q. A response that would go out under your
 20 signature?
 21 A. Sometimes.
 22 Q. Who else?
 23 A. The superintendent. Either the superintendent
 24 or I would sign correspondence.
 25 Q. And by "the superintendent," you mean the

1 superintendent to which you report?
 2 A. Yes.
 3 Q. What is the -- let's just take the last case
 4 that you can recall. What was the nature of the
 5 complaint and the response?
 6 MR. HERRON: Objection. Compound. Calls for a
 7 narrative.
 8 But you may respond.
 9 THE WITNESS: I actually can't recall an exact
 10 example.
 11 Q. BY MR. JACOBS: Can you recall the substance of
 12 any responses in the last two years to those sorts of
 13 complaints?
 14 A. Yes, because the format is generally the same.
 15 Q. Okay. What is that format?
 16 A. It is that we -- if the complaint seems to have
 17 merit, we contact the local officials.
 18 MR. SEFERIAN: Could we go off the record for a
 19 minute?
 20 MR. JACOBS: For what purpose?
 21 MR. SEFERIAN: I'd like to speak to my client.
 22 MR. JACOBS: About a privilege issue?
 23 MR. SEFERIAN: Yes.
 24 MR. HERRON: Michael, no question is pending.
 25 I mean, if he wants to talk to her, he can talk to her,

1 can't he?
 2 MR. JACOBS: The question doesn't raise a
 3 privilege issue so -- but I'll take your representation
 4 that it's to discuss a privilege issue.
 5 (Recess taken from 10:26 a.m. to 10:30 a.m.)
 6 MR. JACOBS: Could you note the time that we
 7 are back on the record, please.
 8 Do you want to read back the answer so far.
 9 (Record read.)
 10 Q. BY MR. JACOBS: Do you have in mind the pending
 11 question?
 12 MR. JACOBS: Let's read back the question as
 13 well, please.
 14 (Record read.)
 15 Q. BY MR. JACOBS: I think to refresh your
 16 recollection as to where we are, you described a common
 17 format about parental complaints about existing school
 18 facilities. So what is that common format?
 19 A. It is to contact the local officials where the
 20 incident was -- where the complaint was being made
 21 about.
 22 Q. What kind of contact would you make?
 23 A. Normally a phone call.
 24 Q. Is it a fact-finding phone call? What's the
 25 nature of the call?

1 MR. HERRON: Objection. Calls for speculation.
 2 Assumes facts not in evidence.
 3 You may respond.
 4 THE WITNESS: We normally initially just try to
 5 gather -- yeah. Yes.
 6 Q. BY MR. JACOBS: It's a fact-finding call?
 7 A. Yes.
 8 Q. What do you do with the facts that you find?
 9 MR. HERRON: Same objections.
 10 THE WITNESS: That would vary based upon what
 11 was found.
 12 Q. BY MR. JACOBS: Have there been instances in
 13 which you have found that the parental complaint was
 14 factually accurate?
 15 MR. HERRON: Objection. Calls for speculation.
 16 THE WITNESS: I can't recall.
 17 Q. BY MR. JACOBS: Who actually handles these
 18 complaints?
 19 A. The staff in the school facilities planning
 20 division.
 21 Q. Under Duwayne Brooks?
 22 A. Yes.
 23 Q. To your knowledge, is there someone who is
 24 specifically responsible for handling those
 25 interactions?

1 Let's start with the interactions with the
 2 school districts. In response to the complaint, is
 3 there somebody who is assigned that responsibility?
 4 A. No.
 5 Q. It's dispersed among his staff?
 6 A. Yes.
 7 Q. Is that because he has a -- in that staff there
 8 are representatives assigned to particular districts?
 9 A. To geographic areas, yes.
 10 Q. So to the best of your knowledge, the way those
 11 are handled is they're routed to the individual with the
 12 geographic responsibility for the district in which the
 13 complaint arose?
 14 MR. HERRON: Objection. Calls for speculation.
 15 THE WITNESS: Generally, yes.
 16 Q. BY MR. JACOBS: Are there categories in which
 17 that doesn't happen, or is it a case of someone being
 18 out and unavailable?
 19 Under what circumstances would it not be
 20 assigned to the person with geographic responsibility
 21 for the school district in question?
 22 A. That would depend on the nature of the
 23 complaint.
 24 Q. Is there a category of complaint that is
 25 handled differently from the normal case?

1 A. No.
 2 Q. So what do you have in mind?
 3 What are you thinking of in indicating that
 4 some complaints are not handled by the geographic
 5 representative?
 6 MR. SEFERIAN: Objection. Calls for
 7 speculation.
 8 THE WITNESS: The judgment of Duwayne. Duwayne
 9 would have to be the judge of how it was assigned out.
 10 Q. BY MR. JACOBS: What's the -- what are the
 11 formats for responses to parents from the department?
 12 A. Formats?
 13 Q. Let's assume -- you said there is a common
 14 format, but then you clarified that actually it depends
 15 on what happens in the interaction with the school
 16 district.
 17 So I take it that there's a range of responses
 18 that the department can give to parents; is that
 19 correct?
 20 A. That is correct.
 21 Q. And what's that range of responses?
 22 A. Our priority generally is to determine whether
 23 the parent has exhausted any local recourse, because we
 24 respect the authority given to local officials.
 25 Q. And so I take it, then, that one of the things

1 that happens in the interaction with the school district
 2 is you learn whether the parent has previously
 3 complained to the district?
 4 MR. HERRON: Objection. Calls for speculation.
 5 THE WITNESS: Yes.
 6 Q. BY MR. JACOBS: Do you do anything else to
 7 discern whether the parent has exhausted local
 8 resources?
 9 MR. HERRON: Same objection.
 10 THE WITNESS: That would generally be asked of
 11 the parent, where else have they complained. We would
 12 try to determine that.
 13 Q. BY MR. JACOBS: And what's the range of
 14 responses, then, depending on what you learn about
 15 whether the parent has exhausted local resources?
 16 MR. HERRON: Objection. Calls for speculation.
 17 THE WITNESS: The range of whose responses?
 18 MR. JACOBS: The department's responses.
 19 MR. HERRON: Also object on the basis that it's
 20 an incomplete and improper hypothetical. It's vague and
 21 ambiguous.
 22 You may respond if you understand what he's
 23 asking.
 24 THE WITNESS: Could you ask it again.
 25 Q. BY MR. JACOBS: I think we were in agreement

1 that there's a range of responses that comes from the
 2 department, and then you said -- when I asked what's the
 3 range of responses, you said our priority is to
 4 determine whether the parent has exhausted local
 5 resources.
 6 So I take it that that is an important
 7 component in the department's determination of what
 8 response to send to the parent at the end of that
 9 inquiry; is that correct?
 10 A. That is correct.
 11 Q. And to move this along, I'm going to propose to
 12 you that if the parent has not exhausted local
 13 resources, one of your responses is to suggest to the
 14 parent that the parent take the matter up with the local
 15 school offices; is that correct?
 16 MR. SEFERIAN: Objection. Call for
 17 speculation. Misstates witness' testimony.
 18 THE WITNESS: We try to establish that the
 19 parent understands that there is local recourse, that
 20 some issues can be taken care of on the spot, and that
 21 there are officials within their area that they could
 22 contact.
 23 Q. BY MR. JACOBS: Are those officials exclusively
 24 school district employees?
 25 MR. SEFERIAN: Objection. Calls for

1 speculation.

2 THE WITNESS: Not always.

3 Q. BY MR. JACOBS: Who else might you propose that

4 the parent contact?

5 A. Local health officials.

6 Q. Anybody else?

7 A. No.

8 MR. HERRON: Objection. Calls for speculation.

9 Q. BY MR. JACOBS: If the -- in the case where the

10 parent has, in the department's judgment, exhausted

11 local resources, what is the range of responses that the

12 department gives to parents complaining about conditions

13 in existing school facilities?

14 MR. HERRON: Objection. Calls for speculation.

15 Vague and ambiguous. Incomplete and improper

16 hypothetical.

17 THE WITNESS: That is something that Duwayne

18 Brooks could answer. I'm not -- I don't deal with that

19 level of detail on correspondence.

20 Q. BY MR. JACOBS: Do you sign some of those

21 letters?

22 A. Yes.

23 Q. As to the ones that you've signed, what is the

24 range of responses in that circumstance?

25 A. It would vary with the circumstance.

1 Q. Let's take a -- I take it that some of these

2 complaints have been about what the department concludes

3 are health and safety issues; is that correct?

4 A. That's correct.

5 Q. What kind of responses have you signed with

6 respect to parental complaints about health and safety

7 issues in existing schools?

8 MR. HERRON: If you recall.

9 THE WITNESS: I don't recall specifics, but

10 generally our response is to direct them as closely as

11 possible to an official that can solve their problem.

12 Q. BY MR. JACOBS: Is that official -- in the

13 cases that you can recall, has that official ever been

14 an official in the Department of Education?

15 A. No.

16 Q. Has it ever been an official in -- if I propose

17 to you that there are state level education officials

18 and then there are local educational agencies, does that

19 distinction reflect your understanding of the structure

20 of the state education governance system?

21 MR. SEFERIAN: Objection. Vague and ambiguous.

22 Calls for a legal opinion.

23 THE WITNESS: I actually don't understand the

24 question.

25 Q. BY MR. JACOBS: You understand what an LEA is,

1 correct?

2 A. Yes.

3 Q. And then there are state level entities that

4 are not LEAs, correct?

5 A. Correct.

6 Q. One of those is the Department of Education,

7 correct?

8 A. Yes.

9 Q. And what are the other state level entities

10 that you think of in that category that aren't -- in

11 other words, entities that are not LEAs that are

12 parallel to the Department of Education in the hierarchy

13 of school governance in California?

14 MR. SEFERIAN: Objection. Calls for a legal

15 opinion.

16 MR. HERRON: Do you want a list?

17 MR. JACOBS: I want to be clear. If I say

18 state level, it's a shorthand. I want to make sure

19 we're on the same page as to what the shorthand means.

20 THE WITNESS: So you're not asking in relation

21 to school facilities in general, you're asking if I'm

22 aware of the hierarchy of other agencies?

23 MR. JACOBS: Exactly.

24 THE WITNESS: Yes, I'm aware of the distinction

25 between agencies.

1 Q. BY MR. JACOBS: And the distinction between

2 agencies at the state level as opposed to the local

3 educational agencies?

4 A. Yes.

5 Q. So has the response to parental complaints

6 about health and safety conditions at existing school

7 facilities ever included a direction to an official at a

8 state level agency who would solve their problem?

9 MR. HERRON: Objection.

10 MR. SEFERIAN: Objection. Calls for

11 speculation. Vague and ambiguous.

12 MR. JACOBS: I'm asking for the ones that you

13 recall based on your having reviewed or signed such a

14 letter.

15 THE WITNESS: I don't recall that.

16 Q. BY MR. JACOBS: To sum up, the parent is

17 directed to an official who you believe, you and the

18 people in your branch believe could solve their problem,

19 and that official is, to the best of your recollection,

20 an official at a local educational agency or an arm of

21 local government?

22 A. That is correct.

23 Q. If we broaden it beyond health and safety

24 issues to other issues concerning existing school

25 facilities, is the general case one in which you direct

1 the parent again to an official who can solve their
 2 problem?
 3 MR. SEFERIAN: Objection. Assumes facts not in
 4 evidence. Calls for speculation.
 5 MR. JORDAN: Join the assumes facts not in
 6 evidence.
 7 MR. JACOBS: That's just lawyer stuff.
 8 MR. HERRON: The problem is she will forget the
 9 question. Do you want it reread?
 10 THE WITNESS: Yes. Can I know who these people
 11 are?
 12 MR. JORDAN: I'm Judd Jordan. I represent Los
 13 Angeles Unified School District and Pajaro Valley
 14 Unified School District.
 15 MR. JACOBS: Do you know this gentlemen?
 16 THE WITNESS: Yes.
 17 MR. JACOBS: And this is Leecia Welch, who is
 18 my associate. Let's start again.
 19 Q. A parent complains about a non health and
 20 safety related issue, and let's take the period for the
 21 last two years. First question is, have there been such
 22 complaints about existing school facilities that are non
 23 health and safety related?
 24 MR. HERRON: Objection. Calls for speculation.
 25 THE WITNESS: I can't recall.

1 Q. BY MR. JACOBS: Maybe just to try and tickle
 2 your memory a little bit. Have there been any
 3 complaints in the last two years about overcrowding in
 4 existing school facilities that have come to the
 5 department of which you are aware?
 6 A. Yes.
 7 Q. And what is the -- is there a practice with
 8 respect to parental complaints about overcrowding in
 9 terms of how those complaints are handled?
 10 MR. HERRON: Objection. Calls for speculation.
 11 THE WITNESS: Do you mean different than other
 12 complaints?
 13 MR. JACOBS: Not complicate it for the moment.
 14 Let's take overcrowding related complaints.
 15 THE WITNESS: There's not a separate practice
 16 for dealing with overcrowding related complaints.
 17 Q. BY MR. JACOBS: What is the practice, then, for
 18 dealing with those complaints?
 19 A. It is the same as I described before.
 20 Q. That is to refer the parent to a local
 21 educational agency official or other official of local
 22 government who could, in the department's judgment,
 23 solve their problem?
 24 MR. JORDAN: Assumes facts not in evidence.
 25 MR. HERRON: Calls for speculation as well.

1 You may respond.
 2 THE WITNESS: We try to refer the parent to the
 3 closest person to them that could help them.
 4 Q. BY MR. JACOBS: Just to review, what is the
 5 response if the parent, you conclude, has already
 6 resorted to those officials?
 7 MR. HERRON: Objection. Calls for speculation.
 8 Incomplete and improper hypothetical.
 9 If you have a basis for answering, you may.
 10 THE WITNESS: Part of our analysis is to
 11 determine who they have already talked to, and that's
 12 how we decide who we would recommend that they talk to.
 13 Q. BY MR. JACOBS: And has there been a case in
 14 the last two years in which you concluded that the
 15 parent had, in fact, exhausted local resources before
 16 complaining to you?
 17 MR. SEFERIAN: Objection. Calls for
 18 speculation.
 19 THE WITNESS: Yeah, I can't recall.
 20 Q. BY MR. JACOBS: Is there a format for a
 21 response to a parent who has exhausted local resources?
 22 MR. HERRON: Objection. Asked and answered.
 23 Vague and ambiguous.
 24 THE WITNESS: If the parent indicates they have
 25 exhausted local remedies, we would check that ourselves.

1 Q. BY MR. JACOBS: Right. And so my question is,
 2 what if you check that and confirm that the parent's
 3 indication was correct?
 4 MR. SEFERIAN: Objection. Hypothetical
 5 question. Calls for speculation.
 6 THE WITNESS: What we would do would depend on
 7 the circumstances.
 8 Q. BY MR. JACOBS: What's the range of responses
 9 that are available to you?
 10 MR. SEFERIAN: Objection. Calls for a legal
 11 opinion. Calls for speculation.
 12 THE WITNESS: It would depend on the
 13 circumstances.
 14 Q. BY MR. JACOBS: And what circumstances do you
 15 have in mind in suggesting that it is circumstance
 16 dependent?
 17 MR. HERRON: Objection. Vague and ambiguous.
 18 Calls for speculation.
 19 You can respond if you understand the question.
 20 THE WITNESS: Can you repeat the question?
 21 MR. JACOBS: Let's settle the context of this
 22 because we'll ask a couple of lines of questions and
 23 maybe I can deal with some of the objections and clarify
 24 it for you as well.
 25 My questions relate to the practices and

1 procedures of the -- of FTAB as they relate to the
2 practices and procedures in dealing with parental
3 complaints about existing school facilities. And to the
4 extent you have information about those practices and
5 procedures, that is all I'm asking for.

6 Q. So with that as background, my question is,
7 what is the practice and procedure for dealing with a
8 parental complaint where you conclude that the parent
9 has exhausted local resources and the complaint relates
10 to existing school facilities and it is an overcrowding
11 complaint?

12 MR. SEFERIAN: Objection. Assumes facts not in
13 evidence. Calls for speculation.

14 THE WITNESS: Our response is to make clear
15 that the parent understands what the chain of command
16 is.

17 The Department of Education has no
18 responsibility over anything to do with facilities other
19 than what I described earlier. And we try to make sure
20 that a parent understands who the people are that are
21 responsible so they can pursue remedies through the
22 appropriate routes.

23 Q. BY MR. JACOBS: And the people who are
24 responsible that you have in mind in describing the
25 practices and procedures of the department are local

1 had exhausted local resources and the local resources
2 had informed the parent that they could not solve the
3 parent's problem because of a lack of assistance from
4 state level agencies?

5 MR. HERRON: Do you understand the question?

6 THE WITNESS: I understand the question, and
7 the answer is no.

8 Q. BY MR. JACOBS: Are you aware of a format for a
9 response to a parent in such circumstances, a format for
10 a response to a parent in such circumstances?

11 MR. HERRON: Objection. Vague and ambiguous.
12 Calls for speculation.

13 THE WITNESS: The format for our response is to
14 clarify for them what the remedies are if they are -- if
15 there are any.

16 MR. SEFERIAN: You've answered the question.

17 Q. BY MR. JACOBS: And if there are any parts -- I
18 guess what's interesting, what if you determine that the
19 parent has exhausted the local remedies and there are no
20 remedies available at the local level, do you have a
21 response for that case?

22 MR. HERRON: Objection. Asked and answered.
23 Incomplete and improper hypothetical. Calls for
24 speculation. Vague and ambiguous.

25 You may respond if you understand.

1 officials; is that correct?

2 A. That's correct.

3 Q. So do you have a practice and procedure for the
4 case where the parent says in his complaint, and you
5 confirm that the indication to you is correct, that the
6 parent has exhausted local resources and local resources
7 have informed the parent that with the resources
8 available to them the problem cannot be solved, so in
9 other words, the local official has said, we've done
10 everything we can to address your problem, but we are
11 not getting the assistance we need from the State of
12 California to solve this problem, do you have a response
13 for that case?

14 MR. HERRON: Objection. Calls for speculation.
15 Incomplete and improper hypothetical. Vague and
16 ambiguous. Assumes facts not in evidence. What else
17 can I think of?

18 You may respond if you possibly can.

19 THE WITNESS: I can't. That's too -- too
20 vague.

21 Q. BY MR. JACOBS: Do you recall an instance in
22 the last two years in which you have had to review or
23 sign a response to a parent, a parental complaint in
24 which the complaint related to existing school
25 facilities, it was overcrowding related, and the parent

1 THE WITNESS: It would be to confirm that there
2 are none.

3 Q. BY MR. JACOBS: Aside from handling the
4 complaint in the way that you've described, do you have
5 a mechanism for -- do you do anything else with the
6 complaint by way of data gathering?

7 Let me expand on the question. Suppose you
8 were to get a bunch of complaints from a particular
9 school district. Aside from processing the complaints
10 in the way that you've described, is there any data
11 assembly that you would do with those complaints?

12 MR. SEFERIAN: Objection. Hypothetical
13 question. Calls for speculation.

14 THE WITNESS: That -- there is -- that would
15 depend on the circumstances.

16 Q. BY MR. JACOBS: Under what circumstance would
17 there be such a data gathering?

18 MR. HERRON: Objection. Calls for speculation.
19 Incomplete and improper hypothetical. Vague and
20 ambiguous.

21 THE WITNESS: In any circumstance in the
22 department that we get correspondence, if we get a lot
23 of correspondence about the same thing, note is taken of
24 that.

25 Q. BY MR. JACOBS: And with respect to school

1 facilities, have there been instances while you've
 2 been -- let's just take the last two years. Have there
 3 been instances in which note has been taken in the way
 4 you've described?
 5 MR. SEFERIAN: Objection. No foundation.
 6 Calls for speculation.
 7 THE WITNESS: Not that I can recall, no.
 8 Q. BY MR. JACOBS: Let me try out an example that
 9 we've seen in your printed materials. There's an
 10 advisory that's gone out about school bathrooms where
 11 the advisory begins by saying, we've received a lot of
 12 complaints and questions about bathroom facilities.
 13 Are you a -- first of all, are you aware of
 14 that advisory?
 15 MR. SEFERIAN: Objection. Vague and ambiguous.
 16 THE WITNESS: I don't recall that advisory.
 17 Q. BY MR. JACOBS: Might you recall it if we
 18 showed it to you?
 19 MR. SEFERIAN: Objection. Calls for
 20 speculation.
 21 Q. BY MR. JACOBS: You don't know?
 22 A. I don't know.
 23 MR. JACOBS: Off the record for a second.
 24 (Discussion held off the record.)
 25 MR. JACOBS: Let's mark as SAD-33 SFP advisory

1 99-02 printed from --
 2 MR. HAMILTON: Are there copies?
 3 MR. JACOBS: There are. -- printed from the
 4 CDE website.
 5 (Exhibit SAD-33 was marked.)
 6 Q. BY MR. JACOBS: Does this refresh your
 7 recollection as to the issuance of an advisory
 8 concerning the number and conditions of toilets at
 9 California public schools?
 10 MR. HERRON: Can she have an opportunity to
 11 review it, please.
 12 Has this been produced in discovery, Michael,
 13 if you know?
 14 MR. JACOBS: I don't know.
 15 MR. HERRON: To the extent it's not, we object
 16 to its use in the deposition since all documents
 17 relevant to the case have been requested, and I don't
 18 believe this has been produced, and so to that extent I
 19 object to its use in deposition.
 20 MR. JACOBS: To be clear, David, I believe you
 21 produced this document to us.
 22 MR. HERRON: I don't see any ID on it, so it
 23 may be possible. And I don't know either, Michael, I'm
 24 just saying to the extent that it hasn't been produced
 25 and it's being used for the first time in deposition, we

1 object.
 2 THE WITNESS: What was your question?
 3 Q. BY MR. JACOBS: Do you recall the issuance of
 4 this advisory?
 5 A. I do not recall it.
 6 Q. Have you had any participation in any
 7 discussions about the number and conditions of toilets
 8 at California public schools in the last four years?
 9 A. No.
 10 Q. Are you aware that the California Department of
 11 Education frequently receives questions from the public
 12 concerning the number and conditions of toilets and
 13 other health and safety issues in California public
 14 schools?
 15 A. Not personally. I'm not personally aware.
 16 Q. By the "personally aware," I take it you're
 17 not -- you said that because you don't dispute that the
 18 department has issued this advisory and is therefore
 19 aware of it.
 20 This issue has not personally surfaced to your
 21 attention, is that what you meant?
 22 A. That is exactly what I meant.
 23 Q. Do you see down at the bottom of this advisory
 24 it says on the first page, CDE reviews and approves
 25 school sites and facility plans for educational adequacy

1 and child safety? Do you see that?
 2 A. Yes.
 3 Q. Is that consistent with your understanding that
 4 the Department of Education reviews and approves plans
 5 for new school facilities?
 6 A. Yes.
 7 Q. And then it goes on to say, however,
 8 enforcement of the building code requirements and other
 9 regulations that deal with these topics is the
 10 responsibility of the local school board.
 11 Do you see that?
 12 A. Yes.
 13 Q. And then it says, CDE has no regulatory
 14 responsibility in the maintenance of facilities,
 15 maintenance also is the responsibility of the local
 16 school board. Do you see that?
 17 A. Yes.
 18 Q. Is that consistent with -- as you read that
 19 information, is that consistent with the answer that you
 20 received concerning -- when you inquired as to the
 21 Department of Education's responsibility for existing
 22 school facilities?
 23 MR. SEFERIAN: Objection. Vague and ambiguous.
 24 THE WITNESS: If you're referring to your
 25 earlier question of my conversation with Duwayne Brooks

1 about my responsibility with the Department of
 2 Education, yes, this is as I understand it to be.
 3 Q. BY MR. JACOBS: Have you ever participated in
 4 discussions at any time in your position in State -- in
 5 the Department of Education in which it was proposed
 6 that the CDE assume greater responsibility with respect
 7 to maintenance of facilities?
 8 MR. SEFERIAN: I'll object to the extent that
 9 that calls for privileged communications.
 10 THE WITNESS: I actually don't recall having
 11 that kind of conversation.
 12 Q. BY MR. JACOBS: Let me ask you about policy
 13 development and how the different divisions engage in
 14 policy development.
 15 MR. HERRON: You mean within her branch?
 16 MR. JACOBS: Yes.
 17 Q. Is it part of the branch's responsibility, as
 18 you understand those responsibilities, to examine issues
 19 and engage in policy initiatives?
 20 MR. SEFERIAN: Objection. Vague and ambiguous.
 21 THE WITNESS: The branch means me. Duwayne is
 22 the division.
 23 MR. JACOBS: Okay.
 24 THE WITNESS: The answer to your question is,
 25 yes, I consider that part of my responsibility in

1 general in the division I oversee, to examine policy
 2 related to them.
 3 Q. BY MR. JACOBS: And it is not -- let me say it
 4 in the negative. It's not outside your area of
 5 responsibility to examine issues and then engage in
 6 policy initiatives with respect to those issues?
 7 MR. SEFERIAN: Objection. Calls for a legal
 8 opinion.
 9 MR. HERRON: Vague and ambiguous.
 10 THE WITNESS: I'm not sure I know what you
 11 mean, so I can't answer that.
 12 Q. BY MR. JACOBS: Have you led any policy
 13 initiatives in the last two years?
 14 MR. HERRON: Objection. Vague and ambiguous.
 15 THE WITNESS: Yes, I have.
 16 Q. BY MR. JACOBS: Give me a for instance.
 17 A. In education technology we have been involved
 18 in recommending policies for schools.
 19 Q. Are you aware of any information about -- let
 20 me see if I can refine this.
 21 We've talked about whether you've engaged in a
 22 systematic effort to collect information about existing
 23 school facilities, and we talked about complaints from
 24 parents about existing school facilities.
 25 Are you aware of any other sources of

1 information available to your branch or divisions in
 2 your branch about the conditions of existing school
 3 facilities?
 4 A. You know, I got confused at the beginning of
 5 your question because you really didn't ask me if we
 6 engaged in gathering information about existing school
 7 facilities.
 8 Q. What did you understand me to be asking you
 9 about?
 10 A. Why don't you repeat what you're asking me.
 11 Q. What I have in my notes is that you answered
 12 there is no systematic eff -- there has been no
 13 systematic effort to collect information regarding
 14 existing school facilities.
 15 A. And I understand that to be complaints about
 16 existing school facilities. We have data about existing
 17 school facilities.
 18 Q. What data do you have?
 19 A. We have basic information about where they are
 20 and how many there are.
 21 Q. Do you have information about the age of those
 22 facilities?
 23 MR. SEFERIAN: Objection. Calls for
 24 speculation.
 25 THE WITNESS: You would have to ask Duwayne

1 Brooks.
 2 Q. BY MR. JACOBS: Have you ever asked, in your
 3 role as branch deputy superintendent, what information
 4 do we have about existing school facilities?
 5 A. I don't recall.
 6 Q. Are you aware of any other information that you
 7 do have about existing school facilities other than the
 8 data elements you just mentioned?
 9 A. I'm not aware of what else is in the data that
 10 we have.
 11 MR. HERRON: When you get to a convenient
 12 stopping point --
 13 MR. JACOBS: This is probably a good time.
 14 (Recess taken 11:05 a.m. to 11:10 a.m.)
 15 Q. BY MR. JACOBS: Let's stay with facilities for
 16 a little while longer. What is the role of your branch
 17 in the development of State policy with respect to
 18 facilities?
 19 A. Duwayne Brooks represents the State
 20 superintendent on the State allocation board. She's a
 21 statutory member. So to the extent that the work of the
 22 State allocation board is -- their work is influenced
 23 somewhat by our involvement.
 24 Q. What other roles does the -- does your branch
 25 play?

1 MR. SEFERIAN: Objection. Calls for
2 speculation.

3 THE WITNESS: We are asked to respond to
4 legislative requests regarding legislative proposals. A
5 portion of our work is to analyze proposed legislation.

6 Q. BY MR. JACOBS: While you have been in your
7 FTAB role, have you analyzed legislation with respect
8 to -- proposed legislation with respect to existing
9 school facilities?

10 MR. HERRON: She personally?

11 MR. JACOBS: Your branch, that you're aware of.

12 THE WITNESS: My branch, yes.

13 Q. BY MR. JACOBS: What comes to mind in terms of
14 proposals you've analyzed?

15 A. There are hundreds of bills every year that go
16 through the legislature that relate to school
17 facilities, and we would be asked to respond to most of
18 them. I don't personally have a recollection of a
19 particular issue.

20 Q. In the course of your analysis of legislative
21 proposals with respect to existing school facilities,
22 has your branch been called upon to assess the degree to
23 which those proposals would resolve any unmet needs on
24 the part of local educational agencies with respect to
25 school facilities?

1 existing facilities?

2 A. Yes.

3 Q. And so how about with respect to existing
4 facilities, have you --

5 A. I don't know the extent to which the data is
6 able to capture that level of data.

7 Q. And have you -- to your knowledge, has your
8 branch been asked to assess whether -- start with bond
9 initiatives -- whether proposed bond initiatives would,
10 in fact, meet unmet needs for existing school
11 facilities?

12 A. Could you repeat the first part of the
13 question.

14 Q. Let's just do it again. Has your branch been
15 asked to assess whether proposed bonds would meet unmet
16 needs for existing school facilities?

17 MR. HERRON: Objection. Vague and ambiguous.
18 Calls for speculation.

19 THE WITNESS: I don't know.

20 Q. BY MR. JACOBS: Aside from proposed bonds, have
21 there been other instances in which your branch has been
22 asked to assess whether a legislative proposal would
23 meet unmet needs with respect to existing school
24 facilities?

25 MR. HERRON: Same objections.

1 MR. HERRON: Objection. Vague and ambiguous.
2 Calls for speculation.

3 THE WITNESS: So repeat the question, please.
4 (Record read.)

5 THE WITNESS: Yes.

6 Q. BY MR. JACOBS: What are the circumstances in
7 which that is -- in which you've been asked to do that?

8 A. The common one is bond legislation, proposing
9 bonds.

10 Q. And in that connection, I take it, you have
11 answered the question will this bond be sufficient to
12 meet so far unmet needs?

13 MR. HERRON: Objection. Vague and ambiguous.
14 Calls for speculation.

15 THE WITNESS: Yes.

16 Q. BY MR. JACOBS: How have you gone about
17 assessing that question?

18 MR. HERRON: Objection. Assumes facts not in
19 evidence. Calls for speculation. Vague and ambiguous.
20 You may respond.

21 THE WITNESS: Wayne Brooks's division keeps --
22 has data that supports estimates on projected need for
23 school facilities.

24 Q. BY MR. JACOBS: By "projected needs," are you
25 focusing on new school construction as opposed to

1 THE WITNESS: Yes, that's a common thread
2 through legislation, dealing -- addressing school
3 facilities.

4 Q. BY MR. JACOBS: That common thread being the
5 existing?

6 A. The justification for the legislation would be
7 the need, and we would be asked to comment on that.

8 Q. And what information do you have as to the
9 analytical methods your branch uses to address those
10 questions?

11 MR. HERRON: Objection. Vague and ambiguous.

12 MR. SEFERIAN: Calls for speculation.

13 THE WITNESS: Duwayne Brooks would be the best
14 person to respond to that. I don't have good firsthand
15 information about that.

16 Q. BY MR. JACOBS: Have you ever been involved in
17 discussions in which you have -- in which the topic of
18 discussion has been whether the branch's analytical
19 capabilities with respect to questions that are posed to
20 the branch about existing school facilities need to be
21 strengthened?

22 MR. HERRON: Objection. Vague and ambiguous.

23 THE WITNESS: Could you repeat the question.

24 (Record read.)

25 MR. HERRON: I'll stand by that objection.

1 You may respond if you understand.
 2 THE WITNESS: No, I don't recall that kind of
 3 conversation.
 4 Q. BY MR. JACOBS: Are you aware of any
 5 recommendations from outside the department that the
 6 department strengthen its ability to analyze questions
 7 about proposed initiatives related to existing school
 8 facilities?
 9 A. No.
 10 Q. Have you expressed any views about whether the
 11 existing mechanisms by which the State supports local
 12 educational agencies with respect to existing school
 13 facilities are sufficient to meet the needs of those
 14 LEAs?
 15 MR. SEFERIAN: Objection. Vague and ambiguous.
 16 Overbroad.
 17 THE WITNESS: Could you repeat the question.
 18 (Record read.)
 19 THE WITNESS: No, I have not.
 20 Q. BY MR. JACOBS: So to just ask it a couple
 21 different ways to make sure we're not misunderstanding
 22 each other. You have never said in words or substance,
 23 we at the state level are not doing enough to support
 24 school districts in maintaining existing school
 25 facilities?

1 MR. SEFERIAN: Objection. Vague and ambiguous.
 2 Misstates the witness' testimony.
 3 THE WITNESS: I have -- you're asking me if I
 4 personally have said that the State doesn't do enough to
 5 meet -- that the State does not do enough to meet school
 6 facilities?
 7 MR. JACOBS: That's my question, correct.
 8 THE WITNESS: No, I haven't said that.
 9 Q. BY MR. JACOBS: Have you engaged in any
 10 discussions on that topic internally to the branch?
 11 MR. HERRON: Objection. Asked and answered.
 12 I'll object to the extent that you're asking for
 13 communications that may have been made to an attorney,
 14 but I don't think that's what you're asking.
 15 MR. JACOBS: Correct.
 16 MR. HERRON: Do you want the question reread?
 17 THE WITNESS: Yeah.
 18 MR. HERRON: Sorry.
 19 THE WITNESS: That's okay. I'm trying to
 20 figure out what you're asking me.
 21 Q. BY MR. JACOBS: Okay. So we've covered --
 22 we've approached this question of what the State does
 23 from a couple of different perspectives. We've talked
 24 about data gathering, and I've asked you questions about
 25 that. We've talked about the analytical capabilities of

1 the branch. And I'm going to an even higher level of
 2 abstraction, I suppose, and I'm asking you whether
 3 you've participated in any discussions in which the
 4 topic of discussion has been whether the State does
 5 enough to support local educational agencies with
 6 respect to the maintenance of existing school
 7 facilities?
 8 MR. HERRON: Is that a question?
 9 MR. JACOBS: Yes.
 10 MR. HERRON: Objection. Asked and answered.
 11 You've already asked that question a couple of different
 12 ways.
 13 You may answer again.
 14 THE WITNESS: And the question started with,
 15 have I participated in a discussion?
 16 Q. BY MR. JACOBS: Yeah. To reset, I previously
 17 asked you whether you personally articulated a view
 18 on --
 19 A. Now you're asking if I participated in the
 20 conversation?
 21 Q. Yes.
 22 A. Yes, I have participated.
 23 Q. What has been the forum for those
 24 conversations?
 25 A. Most recently there was a study by the

1 legislative analyst suggesting some solutions for
 2 funding of school facilities.
 3 Q. Did that study prompt internal discussion in
 4 your branch?
 5 A. Yes, it did.
 6 Q. What was the result of that discussion?
 7 MR. HERRON: Objection. Vague and ambiguous.
 8 Q. BY MR. JACOBS: Was there a result of that
 9 discussion?
 10 A. There was.
 11 Q. Was there a conclusion?
 12 A. Yes.
 13 Q. What was the conclusion?
 14 A. We provided a written response to the
 15 legislative analyst with an analysis of some of their
 16 recommendations, not one conclusion.
 17 Q. Did that go out under your signature?
 18 A. No.
 19 Q. Duwayne's?
 20 MR. SEFERIAN: Objection. Calls for
 21 speculation.
 22 THE WITNESS: No, it didn't.
 23 Q. BY MR. JACOBS: Under whose auspices --
 24 A. It went out under Delaine's signature.
 25 Q. Aside from the legislative analyst proposal

1 prompting such a discussion, have there been other
 2 discussions on the topic of whether the State does
 3 enough to support LEAs with respect to existing school
 4 facilities?
 5 MR. HERRON: In which she participated?
 6 MR. JACOBS: In which she participated, yes.
 7 MR. HERRON: If you recall.
 8 THE WITNESS: Yes.
 9 Q. BY MR. JACOBS: What discussions do you recall?
 10 A. Those are the kinds of discussions that go on
 11 normally related to legislative proposals.
 12 Q. The output of those discussions is a formal
 13 comment on the proposal?
 14 A. Yes.
 15 Q. And that's conveyed by the department to the
 16 legislature?
 17 A. Yes.
 18 Q. Is there someone in your branch who is
 19 interested with coordinating comments on legislative
 20 proposal -- legislative proposals?
 21 A. There -- yes.
 22 Q. Who is that?
 23 A. Each division has someone that coordinates
 24 responses that they do for legislation related to their
 25 work.

1 Q. And in the case of Duwayne's division, do you
 2 happen to know who that is?
 3 A. Duwayne would ultimately coordinate that.
 4 Q. Aside from commenting on proposed legislation,
 5 have you had discussions about legislation -- let me
 6 start again.
 7 I take it that the answer you just gave relates
 8 to the case where something comes out of the legislature
 9 as a piece of proposed legislation, and then you're
 10 asked to comment on it, correct?
 11 A. Yes.
 12 Q. Are there cases in which you've had discussions
 13 about support for LEAs with respect to existing school
 14 facilities in which the focus has been legislation you
 15 would like to see come out of the legislature but has
 16 not yet been proposed?
 17 MR. HERRON: "You" being her branch?
 18 MR. JACOBS: Correct.
 19 THE WITNESS: Yes.
 20 Q. BY MR. JACOBS: What kind of discussions have
 21 you had along those lines?
 22 A. Exactly what you said, the discussion would be
 23 should the department take any kind of proactive role in
 24 causing there to be legislation.
 25 Q. And what such discussions have you had in the

1 last year, let's say, aside from discussions with
 2 attorneys on this case?
 3 MR. HERRON: You kind of need to define the
 4 topic of the discussion.
 5 MR. JACOBS: I think she just did.
 6 MR. HERRON: I don't understand it. Objection.
 7 Vague and ambiguous.
 8 If you understand, you may respond.
 9 THE WITNESS: In the past year we have
 10 supported -- each year each branch is asked to suggest
 11 proposed legislation, and as long as I have been in the
 12 Department of Education, every year we have proposed
 13 additional funding for school facilities.
 14 Q. BY MR. JACOBS: And in particular with respect
 15 to existing school facilities?
 16 MR. SEFERIAN: Objection. Calls for
 17 speculation.
 18 THE WITNESS: I don't know.
 19 Q. BY MR. JACOBS: Your answer related to both,
 20 that is future -- new facilities and possibly existing
 21 facilities in the same context; is that right?
 22 A. That is correct.
 23 Q. So take the most recent year. Did the -- did
 24 your branch propose that the legislature appropriated
 25 additional funding for school facilities?

1 MR. SEFERIAN: Objection. Calls for
 2 speculation.
 3 THE WITNESS: Yes. Yes.
 4 Q. BY MR. JACOBS: And what was the proposal that
 5 your branch recommended?
 6 A. What I recommended was that Duwayne check and
 7 make sure that if the pro -- whether or not there was
 8 already a proposal on the table.
 9 Q. Meaning something that had been developed in
 10 the legislature?
 11 A. That was already being formulated by other
 12 groups that are also involved in advocating for more
 13 school facilities, to determine whether we needed to do
 14 a new different one or just support what was going to be
 15 there.
 16 Q. What did you learn?
 17 A. I think there already was one in the hopper
 18 this year, but I'm not exactly sure. Duwayne would be
 19 the best source of information on that.
 20 Q. And do you have an operating understanding, you
 21 personally have an operating understanding when you
 22 approach these policy questions about funding for school
 23 facilities about whether there are serious unmet needs
 24 with respect to school facilities?
 25 MR. HERRON: Objection. Vague and ambiguous as

1 phrased. Vague as to time.
 2 THE WITNESS: I don't understand what
 3 "operating understanding" would be.
 4 Q. BY MR. JACOBS: Well, by an operating
 5 understanding I mean a -- kind of a consistent viewpoint
 6 that doesn't necessarily have to get revisited each time
 7 you look at a legislative proposal, but it's just
 8 something that you share, that you have to yourself and
 9 that you share with your colleagues, and then that
 10 becomes the framework for evaluating these proposals.
 11 That's what I mean by an operating
 12 understanding.
 13 A. We have data that tells us there are not enough
 14 school buildings for the children we have in this state,
 15 and I know that, and that's the basis of most of the
 16 legislation that we would advocate, is to fill that gap.
 17 Q. Do you have a current understanding as to
 18 whether, given current funding levels and legislation,
 19 that gap will be closed?
 20 MR. SEFERIAN: Objection. Vague and ambiguous.
 21 MR. HERRON: Calls for speculation as well.
 22 Object on that ground.
 23 THE WITNESS: I know that current legislation
 24 does not solve the problem.
 25 Q. BY MR. JACOBS: And do you have a -- can you

1 expand on that answer, in what way it doesn't solve the
 2 problem?
 3 MR. HERRON: She can if you ask a question.
 4 MR. JACOBS: Go ahead.
 5 MR. HERRON: You can wait until he asks you a
 6 question that you can understand. If you understand
 7 what he's asking -- I don't think it's a question, but
 8 if you understand, you can respond. Otherwise you can
 9 ask him to be more specific.
 10 THE WITNESS: Ask a question because now I sort
 11 of lost the train of thought.
 12 Q. BY MR. JACOBS: Why will the gap not be closed?
 13 MR. HERRON: Objection. Calls for speculation.
 14 Vague and ambiguous.
 15 THE WITNESS: Our projection of need surpasses
 16 the dollar amounts that are in current proposed
 17 legislation.
 18 Q. BY MR. JACOBS: Is that viewpoint summarized in
 19 any reports that have come out of your branch?
 20 MR. SEFERIAN: Objection. Calls for
 21 speculation.
 22 THE WITNESS: Yes, we have basic data about
 23 school facilities, sheet, that is done every year, and
 24 it consistently substantiates that there are not enough
 25 facilities for current and projected student population.

1 Q. BY MR. JACOBS: Have you personally discussed
 2 that sheet with people outside the branch, have you
 3 explained what's on that sheet?
 4 MR. HERRON: Objection. Vague and ambiguous.
 5 THE WITNESS: Ever?
 6 MR. JACOBS: Yes.
 7 THE WITNESS: Yes.
 8 Q. BY MR. JACOBS: Is school facilities fingertip
 9 facts, January 2001, is this the -- first of all, is
 10 school facilities fingertip facts the sheet you have in
 11 mind?
 12 A. Yes, it is.
 13 Q. And is January 2001 the latest version of that
 14 sheet, to the best of your knowledge?
 15 A. To the best of my knowledge.
 16 MR. JACOBS: So let's mark this as SAD-34.
 17 (Exhibit SAD-34 was marked.)
 18 Q. BY MR. JACOBS: Please take a minute to review
 19 this document. I'm going to ask you to explain its
 20 contents to us.
 21 MR. HERRON: Michael, do you know whether this
 22 document has been produced in discovery?
 23 MR. JACOBS: I only know from the print date
 24 that we just found it, so I don't know whether it was
 25 produced.

1 I would submit that it is a document responsive
 2 to requests we have framed to your clients for document
 3 production, however --
 4 MR. HERRON: I would submit that it's
 5 responsive to requests that we propounded on you, and
 6 since it's being used in deposition, and I don't believe
 7 it's been produced by you yet, we object to its use for
 8 the reasons I've noted in writing several times.
 9 MR. JACOBS: Noted.
 10 Q. BY MR. JACOBS: Can you explain this document
 11 to us?
 12 MR. HERRON: You can take as much time as you'd
 13 like to review the document. If he's going to ask you
 14 about the contents, feel comfortable with it and then he
 15 can ask you questions.
 16 MR. SEFERIAN: Objection. No foundation.
 17 Calls for speculation.
 18 THE WITNESS: This is a typical annual fact
 19 sheet that we put out about school facilities.
 20 Q. BY MR. JACOBS: Does this document go to the
 21 State Board of Education?
 22 A. I don't know.
 23 Q. Do you know to whom it is distributed?
 24 MR. SEFERIAN: Objection. Assumes facts not in
 25 evidence.

1 THE WITNESS: Its purpose is for whoever asks
 2 for it.
 3 Q. BY MR. JACOBS: Have you -- are you aware of
 4 this particular version, the January 2001 version,
 5 having been asked for by anyone?
 6 A. I'm not aware of any specific requests for it.
 7 Q. Can you explain the various entries on here and
 8 how the document relates to the conclusion that you
 9 reported a few questions and answers ago about that the
 10 projection of the need surpasses the dollar amounts that
 11 are currently available?
 12 MR. HERRON: Objection. Compound. Vague and
 13 ambiguous.
 14 MR. SEFERIAN: No foundation.
 15 MR. HERRON: Are you asking whether she's able
 16 to?
 17 MR. JACOBS: Yes.
 18 THE WITNESS: I could probably explain it.
 19 Q. BY MR. JACOBS: Would you please do so.
 20 MR. SEFERIAN: Objection. Calls for a
 21 narrative.
 22 MR. HERRON: I'm going to object as vague and
 23 ambiguous. I'm not sure I understand what the question
 24 is, although my understanding doesn't matter.
 25 So if you understand, feel free to respond.

1 THE WITNESS: The document pretty clearly lays
 2 out the need per year, and the bond history would tell
 3 you that there's not enough money to pay for that.
 4 Q. BY MR. JACOBS: So let's take the bond history
 5 category first. How does one read this chart? I take
 6 it you're looking at the Roman numeral VIII; is that
 7 correct?
 8 A. Uh-huh.
 9 Q. How does one read this chart to discern how
 10 much money is available for school construction?
 11 MR. SEFERIAN: Objection. No foundation.
 12 Calls for speculation.
 13 THE WITNESS: So what was your question again?
 14 MR. JACOBS: Could you read it back, please.
 15 (Record read.)
 16 THE WITNESS: The question is how would
 17 somebody discern how much money is available for school
 18 construction?
 19 MR. JACOBS: Based on this chart.
 20 THE WITNESS: This chart doesn't tell you that.
 21 Q. BY MR. JACOBS: It tells you what?
 22 A. It tells you what the last bond was. It
 23 doesn't tell you the correlation between the need -- the
 24 number of classrooms and the cost per classroom.
 25 Q. No, my question was, with respect to Roman

1 VIII -- maybe I'll prompt you a little bit and we'll
 2 expedite this.
 3 Roman VIII recites the State's general bond
 4 obligation, bond history, correct?
 5 A. Yes.
 6 Q. And these general obligation bonds are set
 7 forth here because they are general obligations as to
 8 school construction as opposed to highways?
 9 A. Yes.
 10 Q. Looking at the 1998 entry, for example, general
 11 obligation bonds for school constructions of \$6.7
 12 billion for four years were approved; is that correct?
 13 A. Yes.
 14 Q. And I may be wrong on this, but to move this
 15 along, I take it that what you are suggesting one would
 16 do is look at 6.7 billion over four years, divide it by
 17 four, come up with an annual amount, and compare that
 18 annual amount with the identification of new
 19 construction needs, is that how you work this?
 20 A. Would that be --
 21 MR. SEFERIAN: Objection. Misstates the
 22 witness' testimony. Vague and ambiguous.
 23 THE WITNESS: The premise isn't correct, that
 24 you divide it by four, so you -- I probably -- I'm
 25 probably reading into this chart because I know that the

1 bond money is pretty much gone now, so that wouldn't be
 2 clear from this chart.
 3 Q. BY MR. JACOBS: So let's focus on the chart
 4 first, and then we'll go to what other information you
 5 have.
 6 How do you read this chart to determine whether
 7 there are sufficient funds available for school
 8 facilities on a projected basis?
 9 MR. SEFERIAN: Objection. Calls for
 10 speculation.
 11 THE WITNESS: I'm not sure.
 12 Q. BY MR. JACOBS: I thought you had indicated you
 13 had explained at least a form of this chart in the past
 14 to others?
 15 A. Yeah, I have. And, actually, there is
 16 another -- we have a fact book for the department that's
 17 in narrative, not in chart form, and it actually
 18 narratively explains that.
 19 Q. Do you know the title of that document?
 20 A. It's called The Fact Book.
 21 Q. State Department of Education Fact Book?
 22 A. Yes.
 23 Q. Whether or not aided by this chart, I take it
 24 it is your view that there is insufficient funding
 25 currently appropriated to meet projected school

1 construction needs; is that correct?
 2 MR. HERRON: Objection. Vague and ambiguous.
 3 Calls for speculation.
 4 THE WITNESS: Well, and also to correct my
 5 previous statement, the extrapolation here, if it
 6 exists, if you look at Roman numeral II that says new
 7 construction needs being almost 2 billion a year and not
 8 seeing another bond after 1998, you could get -- you
 9 could make that -- that is clear, then, that the money
 10 doesn't exist on this sheet of paper.
 11 Q. BY MR. JACOBS: Now maybe you can help me,
 12 though, with how Roman numeral II, new construction
 13 needs relates to Roman III, modernization and deferred
 14 maintenance need.
 15 A. What is the question?
 16 Q. How do they relate to each other?
 17 A. They don't.
 18 Q. So to determine total needs do you add Roman II
 19 and III?
 20 MR. SEFERIAN: Objection. Calls for
 21 speculation. Vague and ambiguous. Lacks foundation.
 22 THE WITNESS: By adding II and III, you would
 23 get a partial picture of the need.
 24 Q. BY MR. JACOBS: What would you be leaving out?
 25 MR. HERRON: Objection. Calls for speculation.

1 THE WITNESS: I'm not sure what we'd be leaving
 2 out.
 3 Q. BY MR. JACOBS: You said you'd get a partial
 4 picture?
 5 A. I'm not sure this is the total. So the
 6 question is, I don't know -- I mean, the answer is, I
 7 don't know.
 8 Q. But you're not sure that --
 9 MR. HERRON: That may be the question.
 10 MR. JACOBS: I think I've proven that.
 11 Q. Just to be clear, are you questioning whether
 12 the entry on Roman II or Roman III is correct, or are
 13 you questioning whether they are all of the components
 14 of projected needs?
 15 A. The latter.
 16 Q. And so in addition to new construction needs
 17 and modernization and deferred maintenance needs, you're
 18 unsure whether there may be additional facilities
 19 related needs?
 20 A. That is correct.
 21 Q. And do you have anything in mind as you're --
 22 A. No, I just don't know.
 23 Q. But by adding the 1.94 in Roman II and the 3.81
 24 in Roman III, you would be -- let me ask that a little
 25 differently.

1 The reason I'm asking is it says under Roman
 2 III total need for both state and local funds, 2 and 3
 3 rounded. I guess now I'm seeing this. That 3.81
 4 billion represents the sum of 2 plus 3A and B; is that
 5 your understanding of this chart?
 6 MR. SEFERIAN: Objection. No foundation.
 7 THE WITNESS: What was your question?
 8 MR. HERRON: I think he's saying you add 2 plus
 9 3A and 3B to get that. I think that's the question.
 10 THE WITNESS: It appears that that's what's
 11 happened there.
 12 Q. BY MR. JACOBS: Have you -- do you have a -- if
 13 someone asks you in the course of a meeting, Ms. Lange,
 14 what do we need on an annual basis for facilities, do
 15 you have a kind of a quick answer to that question?
 16 MR. HERRON: Now?
 17 MR. JACOBS: Currently, yes.
 18 THE WITNESS: A school a day for several years.
 19 Q. BY MR. JACOBS: Do you have any other quick
 20 answers to that question?
 21 A. No.
 22 Q. You don't say something like we need \$4 billion
 23 a year or we need \$3 billion a year, something like that
 24 in answer to that question?
 25 A. Right now, no.

1 Q. Have you had such a number as a basis for
 2 giving a quick answer to that question in the past?
 3 A. In the past, more when I did public relations,
 4 we generally had for that year. Any given year that
 5 number will change, and so we usually had the numbers of
 6 the year.
 7 Q. Can you explain to me the process -- let's take
 8 it for the last year -- if there was one, in which the
 9 department's assessments of unmet needs were fed into
 10 the appropriations mechanism? I guess I'm asking two
 11 questions.
 12 Was there such a feeding? Was there such a
 13 process, and if so, what was it?
 14 MR. HERRON: Objection to the extent it's
 15 already been asked and answered.
 16 You may respond.
 17 Also object as vague and ambiguous.
 18 THE WITNESS: I assume the information was fed
 19 in. I don't know the process.
 20 Q. BY MR. JACOBS: So to ask that a little
 21 differently, are you aware of a process by which the
 22 Department of Education formally states to another
 23 entity of state government, this is our assessment of
 24 how much we need for school facilities on a this-year or
 25 next-year basis, this is our recommendation as to how --

1 as to what you should do with that dollar figure?

2 A. I don't know the answer to that.

3 Q. Is there -- do you know of an obstacle, of a
4 barrier to that information being conveyed to the
5 legislature?

6 A. No.

7 Q. So you're not aware of a case in which you
8 have, let's take you, yourself, where you've said, we've
9 got to get this money, I'm going to do what I can to get
10 it done, and you reached some sort of a barrier in the
11 executive branch in which you are told, no, you cannot
12 convey that to the legislature?

13 MR. HERRON: Objection. Vague and ambiguous.
14 Incomplete, improper hypothetical.

15 THE WITNESS: No, I'm not aware of that ever
16 happening.

17 Q. BY MR. JACOBS: Roman VIII with the general
18 obligation bond history, is this -- what is your
19 understanding of the financing mechanism for new school
20 construction?

21 Let me focus that question a little bit. Are
22 the general state obligation bonds the exclusive source
23 of funding for new construction?

24 A. No.

25 Q. What are the other sources?

1 school a day, how many schools are we building a week, a
2 month, this year?

3 A. No, I've never asked that.

4 MR. HERRON: If you're done with this document,
5 is this a good breaking point?

6 MR. JACOBS: It's fine to break now. What was
7 our understanding of Ms. Lange's availability? What's
8 our previous understanding of Ms. Lange's availability
9 today?

10 MR. HERRON: We're certainly here for today. I
11 don't know what your needs are. You probably don't know
12 either at this point. I have to -- if we're going to
13 stay over, I have to leave no later than noon tomorrow,
14 so if it's going to go, you know, beyond a day, that's
15 my limitation.

16 MR. JACOBS: Was it your -- and it was your
17 plan to go day to day and continue?

18 MR. HERRON: I mean, if we need to. I
19 thought -- this can be off the record.

20 MR. JACOBS: Yeah.

21 (Lunch recess taken 12:38 p.m. to 1:04 p.m.)

22 (Exhibit SAD-35 was marked.)

23 Q. BY MR. JACOBS: Ms. Lange, I've marked as
24 SAD-35 a memo dated June 8th, 2000, produced by the
25 Department of Education under Bates No. 899 to 921.

1 A. I don't know enough about those to speak about
2 them.

3 Q. Are you personally knowledgeable about -- let's
4 take 1 for example -- estimated public K-12 growth, it
5 says, based on California Department of Finance
6 estimates?

7 Do you have any information about -- any
8 additional information about the source of that data?

9 A. No.

10 Q. How about Roman IV, new classrooms needed, do
11 you have any additional information about the source of
12 that data?

13 MR. HERRON: Objection. Vague and ambiguous.

14 THE WITNESS: I don't have any other
15 information about it.

16 Q. BY MR. JACOBS: And do you know who actually
17 prepares this facts sheet?

18 A. Duwayne Brooks and his staff.

19 Q. Come back to your school-a-day answer. Do you
20 happen to know how many new schools are currently being
21 constructed in this state?

22 A. No, I don't know the answer to that.

23 Q. In general terms?

24 A. No.

25 Q. Have you ever asked -- my view is we need a

1 MR. SEFERIAN: Can I have a copy of that?

2 MR. JACOBS: I'm sorry. Sure.

3 MR. SEFERIAN: Thank you.

4 Q. BY MR. JACOBS: This document is identified as
5 coming from you to members of the State Board of
6 Education, and it refers in the opening paragraph to a
7 request at a recent meeting for updated information on
8 school facilities. Do you see that?

9 A. Uh-huh. Yes.

10 Q. Do you recall the request that was made?

11 A. Yes.

12 Q. What was the request?

13 A. We, at this time, had new Board members on the
14 State Board of Education, and they just wanted to
15 understand the State Department of Education's role in
16 school facilities and have some general information.

17 Q. Did the -- once this memo was delivered --
18 strike that.

19 Do you attend State Board of Education meetings
20 routinely?

21 A. Yes.

22 Q. Do you have any information as to whether there
23 was a discussion of this memo at the State Board of
24 Education?

25 A. Yes.

1 Q. What information do you have?
 2 A. There was no discussion.
 3 Q. Does this format for the document at Bates --
 4 do you see this number down here, the Bates number that
 5 I'm referring to? Do you see No. 901?
 6 A. Uh-huh.
 7 Q. Does this format -- do you have more
 8 familiarity with this format of the document than the
 9 fingertip facts that we looked at before?
 10 MR. HERRON: You're at 901?
 11 MR. JACOBS: Yes.
 12 THE WITNESS: Yes.
 13 Q. BY MR. JACOBS: What does this document convey?
 14 A. This was generally intended to give the
 15 magnitude of the need at that time.
 16 Q. And looking at the second category there it
 17 says, local portion of need.
 18 A. Yes.
 19 Q. What is your understanding of that information?
 20 A. That's to express what it would take to match
 21 the State needs, since in the school funding that comes
 22 from -- this is all Proposition 1A as it's categorized
 23 at the top. That funding needed a match in order to be
 24 received.
 25 Q. So, in other words, if a school district was

1 going to draw on Prop 1A funds for, let's start with new
 2 construction, it was going to have to match the Prop 1A
 3 funds with money from its budget at a 50/50 level?
 4 A. That's correct.
 5 Q. And do you have an understanding of what
 6 sources a school district can draw on for that
 7 50-percent match?
 8 A. I don't have a good enough understanding of
 9 that to discuss it.
 10 Q. And then do you understand the 20/80
 11 distinction -- do you understand the distinction between
 12 modernization and new construction?
 13 A. I generally understand the distinction, yes.
 14 Q. And the distinction is what?
 15 A. That new construction could be for brand-new
 16 buildings, and modernization would be for upgrading
 17 current facilities.
 18 Q. Is it your understanding that it was a feature
 19 of Proposition 1A that modernization would be funded on
 20 an 80-percent state, 20-percent local basis?
 21 A. That's my understanding.
 22 Q. What is the, as they say, bottom line of this
 23 document in terms of needs versus funds provided?
 24 MR. SEFERIAN: Objection. Vague and ambiguous.
 25 MR. HERRON: Document speaks for itself. Calls

1 for speculation.
 2 Are you referring only to page 901?
 3 MR. JACOBS: Well, that's a fair question.
 4 Q. This is the way we got the document from -- as
 5 it was produced to us. Do you recall the document and
 6 what actually went to the -- what went to the Board of
 7 Education under your memo?
 8 A. I don't know that it was different than this.
 9 Q. At the time did you form an understanding of
 10 the rest of the document?
 11 A. The rest of the document is something that was
 12 not prepared separately for them, it was something
 13 already in existence that we keep on hand and try -- the
 14 general information in it is commonly asked for
 15 information.
 16 Q. So let's come back to the rest of it then.
 17 A. But we usually try to put it rightside up.
 18 Q. What is the -- let's start with the
 19 intermediate bottom line. It says total annual State
 20 need, \$1.9 billion.
 21 A. Are you back on 901?
 22 Q. Yes. I'm sorry. And what's your understanding
 23 of what's conveyed in that box?
 24 A. What box was it? What was your question?
 25 Q. The total annual State need minus total annual

1 Prop 1A funds equals total annual State shortfall.
 2 MR. HERRON: Objection. Calls for speculation.
 3 THE WITNESS: Yeah, I'm not -- I don't know
 4 enough about the generation of these numbers to know
 5 what else it was trying to say other than what it says.
 6 Q. BY MR. JACOBS: And what you understand it to
 7 say is that there's a \$.4 billion projected annual
 8 shortfall in State -- in the State portion of the total
 9 annual need for new construction and modernization?
 10 MR. HERRON: Objection. Vague and ambiguous.
 11 Document speaks for itself. Calls for speculation.
 12 Vague as to time.
 13 THE WITNESS: I only know what it says there.
 14 Q. BY MR. JACOBS: On the cover memo it refers to
 15 the SAB currently having in excess of \$1.3 billion in
 16 approved projects.
 17 MR. HERRON: I'm sorry, where are you at?
 18 THE WITNESS: On the front.
 19 MR. HERRON: Oh.
 20 Q. BY MR. JACOBS: And then it says -- there's the
 21 next sentence and the sentence after that, the SAB then
 22 will create an approved but unfunded list of
 23 modernization projects which will be funded at a future
 24 date when additional state funds for modernization have
 25 been identified. Do you see that?

1 A. Uh-huh.
 2 Q. Did the SAB, to your knowledge, create such a
 3 list?
 4 A. I don't know.
 5 Q. So as you sit here today, you don't know
 6 whether there is a list of unfunded projects over at the
 7 SAB?
 8 A. I don't know that for sure.
 9 Q. It says the Prop 1A funds were intended to last
 10 four years from the date that the proposition passed.
 11 Do you see that?
 12 A. Yes.
 13 Q. And you earlier testified, I think, that it was
 14 your understanding that that funding had already been
 15 exhausted; is that correct?
 16 MR. SEFERIAN: Objection. Misstates witness'
 17 testimony.
 18 THE WITNESS: It's my understanding that the
 19 funds are already committed.
 20 Q. BY MR. JACOBS: Looking at page 902, do you
 21 understand the components of this chart labeled
 22 apportionments?
 23 A. No, I'm not sure I do understand this. And
 24 it's hard to read.
 25 Q. Yes. Is it Ms. or Mr. Brooks?

1 A. Mr. It's a guy.
 2 Q. I thought so. Is it your understanding that
 3 Mr. Brooks' office prepared these charts?
 4 MR. SEFERIAN: Objection. Calls for
 5 speculation.
 6 THE WITNESS: I know that Duwayne's office
 7 prepared most of this. I'm not sure that this chart
 8 came from his office originally, but he is who prepared
 9 the packet.
 10 Q. BY MR. JACOBS: Have you participated in any
 11 discussions about the impact -- strike that.
 12 To sum up, is it your view that there is a
 13 funding shortfall with respect to school construction
 14 and modernization at the present time in the State of
 15 California for public schools?
 16 MR. HERRON: Objection. Calls for speculation.
 17 Vague as to time. Vague and ambiguous as phrased.
 18 THE WITNESS: It's my general understanding
 19 that there are insufficient funds for school
 20 construction.
 21 Q. BY MR. JACOBS: Have you participated in any
 22 discussions about the educational impact of that
 23 insufficiency?
 24 MR. HERRON: Objection. Asked and answered.
 25 Calls for speculation. Vague and ambiguous.

1 THE WITNESS: Yes.
 2 Q. BY MR. JACOBS: What discussions come to mind?
 3 A. It is not uncommon to be asked whether --
 4 especially in relation to class size reduction, if there
 5 is value in continuing to reduce class sizes when we
 6 know there aren't adequate facilities.
 7 Q. And have you expressed an opinion on that?
 8 A. No.
 9 Q. Is there someone in your branch who is partly
 10 charged with monitoring the relationship between class
 11 size reduction and facilities funding issues?
 12 MR. SEFERIAN: Objection. Vague and ambiguous.
 13 THE WITNESS: The school facilities planning
 14 division is responsible for the -- for appropriating the
 15 class size reduction funds.
 16 Q. BY MR. JACOBS: And I take it -- let me back up
 17 a second. Your answer suggested that there's kind of a
 18 net assessment being made, right, about whether given
 19 facilities funding issues, class size reduction should
 20 be pursued; is that right?
 21 A. Yes. Yes.
 22 Q. And one input into that discussion is the
 23 impact of facilities funding issues on the actual
 24 ability to house smaller classes; is that correct?
 25 MR. HERRON: Objection. Vague and ambiguous.

1 THE WITNESS: Actually, I didn't understand the
 2 question.
 3 Q. BY MR. JACOBS: One input into that discussion
 4 is given facilities funding issues, can we and to what
 5 extent can we house smaller classes in California public
 6 school facilities, right?
 7 MR. HERRON: Same objection. Argumentative.
 8 Vague as to time.
 9 THE WITNESS: There's a tension between where
 10 is the best place to put limited dollars.
 11 Q. BY MR. JACOBS: And what has been the -- has
 12 your branch had a viewpoint on -- in discussing that
 13 tension?
 14 MR. SEFERIAN: Objection. Vague.
 15 MR. HERRON: Objection. Calls for speculation
 16 to the extent you're asking her to speak for other
 17 people that actually deal with these issues.
 18 You may respond.
 19 THE WITNESS: My branch is generally not as
 20 involved in policy related to the effect on the
 21 classroom. There are other places in the department
 22 that talk about delivery of the education program.
 23 Q. BY MR. JACOBS: So what has been the
 24 involvement of your branch in these discussions?
 25 A. Providing the data.

1 Q. And, in particular, data about class size
2 reduction as it relates to the availability of
3 facilities?
4 A. Particularly related to how many kids are out
5 there now in what size classrooms at what grade levels.
6 Q. Do you have an understanding about the current
7 resolution of that tension, the tension you described?
8 MR. SEFERIAN: Objection. Vague and ambiguous.
9 THE WITNESS: There is no resolution of that
10 tension.
11 Q. BY MR. JACOBS: Meaning what?
12 MR. HERRON: Objection. Asked and answered the
13 question before. She just answered that, Michael.
14 THE WITNESS: There is -- that's an ongoing
15 debate.
16 Q. BY MR. JACOBS: For the moment class size
17 reduction continues to be a program promoted by the
18 State; is that correct?
19 MR. SEFERIAN: Objection. Vague and ambiguous.
20 Calls for an opinion.
21 THE WITNESS: It currently exists in
22 kindergarten through 3rd grade.
23 Q. BY MR. JACOBS: The one issue in terms of
24 attention is whether it should be expanded to other
25 grades?

1 A. That's correct.
2 Q. And so far there is no decision by the State as
3 to whether it will be expanded to other grades?
4 MR. SEFERIAN: Objection. Vague and ambiguous.
5 Calls for an opinion.
6 MR. HERRON: Calls for speculation as well.
7 THE WITNESS: There is currently no mandate for
8 it and no funding for it.
9 Q. BY MR. JACOBS: By "mandate" you mean
10 legislation that would endorse expansion of class size
11 reduction to other grades?
12 A. That's correct. And I should actually clarify.
13 There isn't a mandate for K-3 either, it is a voluntary
14 program, but there does not exist a mandate for any
15 other grade levels either.
16 Q. Or a voluntary program of the sort that exists
17 for K-3?
18 A. Of the sort that exists for K-3, that's
19 correct.
20 Q. Obviously a school district on its own could
21 reduce class size if it thought it was something that it
22 wanted to do in 4th through 6th, right?
23 A. That's correct.
24 Q. I asked you earlier about your branch's
25 involvement in discussions about educational impact,

1 facilities issues, facilities funding issues, and you
2 pointed to class size reduction as one area in which
3 you've participated in discussions about that impact.
4 Are there other areas -- other impacts of the
5 funding issues with respect to facilities that you've
6 participated in in terms of educational impact?
7 MR. HERRON: Objection. Vague and ambiguous.
8 THE WITNESS: That I have participated in?
9 MR. JACOBS: Uh-huh.
10 THE WITNESS: No.
11 Q. BY MR. JACOBS: Are you aware of any data
12 available to your branch about whether the impact of the
13 funding shortfall is concentrated in particular school
14 districts in the state, that is, the funding shortfall
15 for facilities?
16 MR. HERRON: Objection. Assumes facts not in
17 evidence.
18 THE WITNESS: I don't know for sure how
19 their -- what data they have regarding the impact
20 falling on certain districts.
21 Q. BY MR. JACOBS: Have you participated in any
22 discussions about whether the funding shortfall with
23 respect to facilities is affecting certain districts
24 more than others?
25 MR. HERRON: Objection. Assumes facts not in

1 evidence.
2 THE WITNESS: No, I'm not aware of that.
3 Q. BY MR. JACOBS: Do you have a -- are you aware
4 of any anecdotal data about the funding shortfall
5 affecting some districts more than others?
6 MR. HERRON: Same objection. Also object as
7 vague and ambiguous.
8 THE WITNESS: No, and that's not in our realm
9 of responsibility. That data may be available, but our
10 role in it isn't to decide who is being affected more
11 than others. We review plans.
12 Q. BY MR. JACOBS: You -- so let me try this out
13 on you. If you had information that the funding
14 shortfall was affecting a particular school district
15 with particular acuteness, that's not something --
16 that's not a piece of information that your branch would
17 regard as within its purview to gather and process?
18 MR. HERRON: Objection. Vague and ambiguous.
19 Incomplete improper hypothetical. Calls for
20 speculation.
21 You may respond if you can.
22 THE WITNESS: We probably have the data. Our
23 responsibility is to collect data, and we have that. So
24 it's not a matter of our not feeling responsible for
25 having it.

1 Q. BY MR. JACOBS: What is it a matter of? If you
2 were to go back to your previous question and answer,
3 you said you --

4 A. Our role isn't to advocate for -- we have no
5 authority to go through and decide who needs it more
6 than anyone else. That process -- there is a process in
7 place for determining how money gets disseminated for
8 facilities.

9 Q. And that process is not part of your branch's
10 responsibility?

11 MR. SEFERIAN: Objection. Calls for a legal
12 opinion.

13 THE WITNESS: Our role is pretty clear in where
14 we fit in the whole process of school facilities.

15 Q. BY MR. JACOBS: And that role is laid out in
16 the memo SAD-35 that you sent to the State Board,
17 correct?

18 A. Generally, yes.

19 Q. As you look at this memo, is there anything
20 that strikes you as maybe having changed since then, or
21 something that you think should have been -- as you sit
22 here today would be included in a description of the --
23 of your branch's role with respect to facilities?

24 MR. SEFERIAN: Objection. Overly broad. I
25 don't think she should have to go through the whole

1 A. Only generally. That's something that Duwayne
2 knows, and we do have documents in the department that
3 speak to this issue.

4 Q. Do you view it as a role of your branch to in
5 any way prompt school districts to plan for school
6 facilities construction to meet expanding population
7 needs?

8 MR. SEFERIAN: Objection. Vague and ambiguous.
9 Overly broad.

10 THE WITNESS: To prompt them to meet school
11 facilities needs?

12 MR. JACOBS: Uh-huh.

13 THE WITNESS: No. Can I ask you a question
14 about that?

15 MR. JACOBS: Sure.

16 THE WITNESS: Do you mean -- when you say
17 school facilities needs, do you mean the need for a new
18 building versus the quality of it?

19 MR. JACOBS: The need for a new building is
20 what I had in mind.

21 THE WITNESS: Okay. Then, no, I don't think we
22 need to prompt them to address the need for -- their
23 need for school facilities.

24 Q. BY MR. JACOBS: And it's not part of your
25 responsibility to do that?

1 document and try to find other things that should have
2 been included in the memo. Calls for a narrative.

3 MR. JACOBS: Actually, I can reframe it.

4 Q. When you said "generally," was that because you
5 had something in mind about the role of the -- of your
6 branch that's not in this memo?

7 A. Well, it's actually the next page that
8 describes it, so the front page doesn't. There is stuff
9 missing on the front page, but the second page covers
10 it.

11 Q. So -- okay.

12 A. Yes, I am satisfied that this page does
13 describe what -- at a high level what they do.

14 Q. Do you see there on the middle paragraph that
15 starts out SFPD staff, the last fragment is
16 relationships of educational programs to facility
17 design?

18 A. Yes.

19 Q. And it says, we provide information on, and
20 then that's the last entry in that sentence. Do you see
21 that?

22 A. Yes. Uh-huh.

23 Q. Do you have an understanding of what kind of
24 information is intended to be referred to by that
25 fragment?

1 A. Right.

2 MR. SEFERIAN: Objection. Calls for a legal
3 opinion.

4 THE WITNESS: I would generally think we
5 don't -- that's not our responsibility.

6 Q. BY MR. JACOBS: I think I asked this before,
7 but I want to be sure I got it right. Have you
8 participated in any discussions about whether particular
9 facilities issues are especially acute in any school
10 districts in the state?

11 MR. HERRON: Objection. Vague and ambiguous as
12 phrased.

13 THE WITNESS: What was the first part of your
14 question?

15 Q. BY MR. JACOBS: Have you participated in any
16 discussions?

17 A. No.

18 Q. Are you aware of any analyses of that question
19 from within or without the department?

20 A. I'm not personally aware of any, no.

21 Q. Is it your belief that there is no differential
22 impact of school facilities funding issues on particular
23 school districts, or do you just have no belief one way
24 or the other on that topic?

25 MR. HERRON: Objection. Vague and ambiguous.

1 Respond if you understand. You can ask him to
 2 clarify if you'd like.
 3 THE WITNESS: Well, I know that different
 4 school districts have different quality of facilities.
 5 Q. BY MR. JACOBS: And "different quality" in what
 6 sense?
 7 A. Their age, their appearance, their sufficiency.
 8 As a citizen of California, I'm aware of that, as a
 9 parent with a kid in school.
 10 Q. One becomes aware of these things in an
 11 informal way through that vehicle; is that right?
 12 A. Yes.
 13 Q. But in your official capacity, do you have an
 14 awareness of that?
 15 A. Well, our statistics would tell me, that we
 16 generate.
 17 Q. The statistics would tell you at the aggregate
 18 that there is a gap in funding, correct?
 19 A. Yes.
 20 Q. But in your official capacity, are you aware of
 21 a differential impact of that gap on school districts?
 22 MR. SEFERIAN: Objection. Vague and ambiguous.
 23 Overly broad.
 24 THE WITNESS: I'm aware of it, yeah, in my
 25 official capacity.

1 Q. BY MR. JACOBS: What are you thinking of when
 2 you say --
 3 A. I have a demographics division in my branch.
 4 When I did press before, the issue of highly-impacted
 5 school districts is fairly common knowledge, so I am
 6 aware of it, yes.
 7 Q. Have you formed any judgments about what the
 8 causal factors are of that differential impact?
 9 MR. HERRON: Objection. Vague and ambiguous as
 10 to the term differential impact. If you'd like to
 11 define that for us, that would be certainly helpful, I
 12 think, so we'll all know what her answer refers to.
 13 MR. JACOBS: I'll take your previous answer as
 14 defining differential.
 15 MR. HERRON: Let's read it back for my benefit,
 16 because I don't think she defined differential impact,
 17 and I don't know what you're talking about.
 18 MR. JACOBS: Let's just move on.
 19 MR. HERRON: No.
 20 MR. JACOBS: The witness understands the
 21 question.
 22 MR. HERRON: If you understand the question,
 23 you can answer.
 24 THE WITNESS: I forgot the question now.
 25 MR. JACOBS: Could you read back my question,

1 please.
 2 (Record read.)
 3 MR. HERRON: Vague and ambiguous, "that
 4 differential impact."
 5 You may respond if you understand it.
 6 THE WITNESS: The question was do I have any
 7 information about it?
 8 MR. JACOBS: Have you formed any opinions or
 9 judgments.
 10 THE WITNESS: No.
 11 Q. BY MR. JACOBS: So to test that. You haven't
 12 concluded that some districts are differentially
 13 affected by the funding -- by funding issues with
 14 respect to facilities because of population growth in
 15 that district?
 16 MR. SEFERIAN: Objection. Vague and ambiguous.
 17 THE WITNESS: The first part of your question
 18 was have I done any analysis of it?
 19 MR. JACOBS: Have you formed a judgment.
 20 Q. If somebody asked you in a State Board of
 21 Education meeting, Ms. Lange, why are facilities issues
 22 so acute in district -- in some districts in the state
 23 of California, would you be able to answer that
 24 question?
 25 MR. SEFERIAN: Objection. Hypothetical

1 question. Calls for speculation.
 2 THE WITNESS: I could offer opinion. I in my
 3 role have no ability to say with authority that these
 4 are reasons that I would stand behind and be able to
 5 prove.
 6 Q. BY MR. JACOBS: Would the opinion be based on
 7 your knowledge and experience in working in the
 8 education system for as long as you have?
 9 A. Yes.
 10 Q. What would your opinion be in answer to that
 11 question?
 12 MR. HERRON: Objection. Vague and ambiguous.
 13 Calls for speculation. Incomplete, improper
 14 hypothetical. Vastly overbroad and unfair.
 15 But if you understand it, you can certainly
 16 respond.
 17 THE WITNESS: Very generally I could say that
 18 population growth has had a huge impact on every part of
 19 the education system, including facilities and lack of
 20 funding, not just for facilities, but in the whole
 21 education system.
 22 Q. BY MR. JACOBS: And would that be the end of
 23 your answer?
 24 A. Yes.
 25 Q. Let me come at it from another standpoint.

1 Have you analyzed whether -- let me rewind a little bit.
 2 I have seen analyses of educational performance
 3 in which outliers are analyzed, those schools that are
 4 doing better than might be expected based on a certain
 5 set of information versus those that are doing worse
 6 with the same set of underlying data.
 7 Is that a kind of analysis that you're familiar
 8 with that?
 9 A. I'm familiar with that kind of analysis, yes.
 10 Q. Are you aware of any analysis of that sort with
 11 respect to school districts dealing with facilities
 12 issues, that is, analysis that would show how some
 13 school districts might be managing their facilities
 14 issues more successfully than other school districts
 15 given a common set of underlying factors?
 16 A. No, but it would be real interesting if someone
 17 had.
 18 Q. It would be an interesting study, wouldn't it?
 19 But you're not aware of anyone having done
 20 that?
 21 A. I'm not aware of that.
 22 Q. Are you aware of anyone doing that anywhere in
 23 the country?
 24 A. I'm not.
 25 Q. Have you ever had a discussion about whether

1 that is a study that the department should conduct?
 2 A. No.
 3 MR. SEFERIAN: Objection. Vague and ambiguous.
 4 Q. BY MR. JACOBS: Would that be a study that the
 5 department could initiate without legislative -- without
 6 a legislative mandate for such a study?
 7 MR. SEFERIAN: Objection. Calls for a legal
 8 opinion. Calls for speculation.
 9 MR. JACOBS: In your judgment.
 10 THE WITNESS: It also calls for funding, and
 11 so, no, we probably wouldn't do it.
 12 MR. JACOBS: Let the record reflect smiles and
 13 laughter.
 14 Q. Let me ask you about that. Do you have a fund
 15 that you can draw on for studies that the department
 16 decides would be worthy of undertaking?
 17 A. We have a very small amount of general funds.
 18 The State department of California -- of Education in
 19 California is very underfunded by the state, the bulk of
 20 our funds are federal, and so we have discretionary
 21 money.
 22 Q. Let me understand that. The discretionary
 23 money you have that might, for example, be used for a
 24 study like that would largely be federal funding?
 25 A. No. The answer is, we don't have much funding.

1 Q. And that's because the federal funding is
 2 categorical?
 3 A. That is correct.
 4 Q. And you don't get much general funding, then,
 5 from the -- through legislative appropriations?
 6 MR. HERRON: Objection. Calls for speculation.
 7 Assumes facts not in evidence.
 8 THE WITNESS: It is true that we don't get much
 9 general fund, which would be our only discretionary
 10 funding.
 11 Q. BY MR. JACOBS: Let's talk about technology.
 12 Your branch has taken a leadership role in promoting the
 13 dissemination of computers and related technology to
 14 California public schools, correct?
 15 MR. SEFERIAN: Objection. Vague and ambiguous.
 16 THE WITNESS: We have attempted to provide some
 17 leadership in educational technology.
 18 Q. BY MR. JACOBS: Can you describe for me the
 19 process by which the branch decided that that was an
 20 area in which it would play that role?
 21 MR. HERRON: Objection. Assumes facts not in
 22 evidence. Calls for speculation.
 23 THE WITNESS: Repeat the question.
 24 MR. JACOBS: That's actually one of the few
 25 objections that I think may be meritorious.

1 MR. HERRON: Keep listening, there are lots of
 2 them.
 3 Q. BY MR. JACOBS: Did the branch decide on its
 4 own that it wished to play -- strike that.
 5 Did the branch take the initiative in the
 6 process by which the branch ended up playing --
 7 exercising some leadership in this area as opposed to a
 8 mandate coming from the superintendent saying I want the
 9 branch to do this, for example?
 10 MR. SEFERIAN: Objection. Vague.
 11 THE WITNESS: It didn't come from within.
 12 Q. BY MR. JACOBS: Where did it come from?
 13 A. It came from the superintendent.
 14 Q. And do you know the process by which that
 15 direction was developed?
 16 A. Yes.
 17 Q. What was that process?
 18 A. She, shortly after taking office, assembled a
 19 task force on technology, and based on the findings, we
 20 began to take more of an active role in education
 21 technology.
 22 Q. The task force was called what?
 23 A. Probably the task force on education
 24 technology. I actually don't remember exactly. There
 25 is a report.

1 Q. Were you in your -- did you have responsibility
2 for technology at the time that direction was given from
3 the superintendent?
4 A. No.
5 Q. So your predecessor was the first to implement
6 that direction?
7 A. Yes.
8 Q. We found on the website a technology survey, so
9 let me show you a document called California Department
10 of Education, education technology office, California's
11 education technology survey, and mark that as SAD-36.
12 (Exhibit SAD-36 was marked.)
13 Q. BY MR. JACOBS: Are you familiar with this
14 survey?
15 MR. HERRON: Please don't ask her questions
16 about the document until she's had an opportunity to
17 review it and I've been given a copy so I can review it
18 too, since we've never seen this in discovery.
19 MR. JACOBS: I think, just to be clear,
20 Mr. Herron, we even refer to this document in our letter
21 to you about topics we were going --
22 MR. HERRON: I don't believe so. I'd be glad
23 for you to point it out to me in your letter.
24 You're referring to the letter of May 25th. I
25 think I have it in front of me. And maybe I'm mistaken,

1 but I don't see this particular document referred to.
2 MR. JORDAN: I think it's item 5 on page 2.
3 MR. HERRON: Is it? I don't think so. Item 5
4 on page 2 of the May 25 letter that you sent us -- and I
5 do appreciate you sending this letter because this was
6 most helpful -- says March 30, 2001, education
7 technology survey memoranda.
8 MR. JACOBS: It is the same document. They're
9 all together on the website, and there are memos
10 underneath the survey.
11 MR. HERRON: So it was intended to mean a bunch
12 of documents. This obviously is in the March 30th, 2001
13 memoranda -- or memorandum.
14 MR. JACOBS: On the theory that no good deed
15 goes unpunished, I think we made it very clear here.
16 MR. HERRON: I think not, but I do appreciate
17 your trying to identify them. That was kind of you.
18 Q. BY MR. JACOBS: Ms. Lange, are you familiar
19 with this survey?
20 A. Yes.
21 Q. Can you tell me how it came to be launched?
22 A. We have, in the past year or two, as there has
23 been increasing interest in education technology, been
24 asked to provide baseline information about what exists
25 so that the new money can be targeted to where the need

1 is.
2 Q. And the task that you're referring to, the
3 request for that information, where did that come from?
4 A. Most recently from the governor's office
5 through legislation that came about in the current year
6 budget.
7 Q. When you refer to the governor's office and
8 then legislation, I take it you're referring to the
9 governor's office having initiated the legislative
10 process to then give a legislative mandate for the
11 gathering of this kind of information?
12 A. Partially, yes. They gave the mandate to give
13 out money based on need, and we had to determine the
14 need.
15 Q. "They" being the legislature prompted by the
16 governor?
17 A. As part of the statute, yes.
18 Q. What is your understanding of need in that
19 context?
20 A. Generally, need has to do with establishing
21 what the availability of computers and computer
22 technology-related materials are in districts and
23 schools.
24 MR. HERRON: Can you read that back?
25 (Record read.)

1 Q. BY MR. JACOBS: Did you draw on any preexisting
2 surveys, whether or not with respect to technology, in
3 deciding on this method of assessing the baseline
4 information that you refer to?
5 MR. HERRON: When you say "you," you mean her
6 branch?
7 MR. JACOBS: Yes.
8 THE WITNESS: Yes, we actually have done
9 previous surveys, and this was a refinement of -- and
10 other outside entities have done surveys and the
11 districts were getting surveyed to death, so we tried to
12 come up with one instrument that would meet the needs.
13 Q. BY MR. JACOBS: And the surveys that you're
14 referring to are surveys with respect to technology?
15 A. Yes.
16 Q. And aside from technology surveys, did you --
17 did your branch, to the best of your knowledge, have in
18 mind any other surveys that had been conducted of school
19 districts that aim at establishing a baseline?
20 A. Not my branch.
21 Q. How about other branches?
22 A. The department does a lot of surveys for
23 various reasons.
24 Q. Did those preexisting surveys inform the choice
25 of a survey instrument to assess the baseline level

1 of -- the baseline availability of technology?
 2 MR. HERRON: Objection. Vague and ambiguous.
 3 Calls for speculation.
 4 THE WITNESS: I'm not sure I understand the
 5 question.
 6 Q. BY MR. JACOBS: When your branch was deciding
 7 to send out this particular survey, did you have in mind
 8 that the department has generally surveyed school
 9 districts about a range of topics?
 10 A. Yes.
 11 Q. What other surveys are you -- as you sit here
 12 today, can you recall any other surveys outside of your
 13 branch?
 14 A. Yes.
 15 Q. What can you recall?
 16 A. They get surveyed a lot on their curriculum and
 17 use of various curriculum material and textbooks and a
 18 lot of things related to the education program.
 19 Q. And these are surveys, I take it, that don't go
 20 to the availability of curricular materials, but rather
 21 to curricular choices that schools and school districts
 22 have made, to the best of your knowledge?
 23 MR. SEFERIAN: Objection. Calls for
 24 speculation.
 25 THE WITNESS: I'm not that familiar with them.

1 Q. BY MR. JACOBS: Do you know who conducted those
 2 surveys in terms of what division?
 3 MR. HERRON: Curriculum surveys, you mean?
 4 MR. JACOBS: The ones that --
 5 THE WITNESS: I couldn't name you them right
 6 now, but I think probably every branch in the department
 7 has done some kind of survey.
 8 Q. BY MR. JACOBS: Have you assembled the results
 9 of this technology survey yet?
 10 A. Not yet. It's just happening kind of as we
 11 speak.
 12 Q. One possibility is that it will show that there
 13 is -- that there are particular needs for computers
 14 concentrated in particular schools and school districts?
 15 MR. HERRON: So stipulated.
 16 MR. SEFERIAN: Objection. Calls for
 17 speculation. Calls for an opinion.
 18 THE WITNESS: Yes, part of the survey is to
 19 identify -- it's to tally what exists where.
 20 Q. BY MR. JACOBS: And I take it that that tally
 21 is not for the purpose of assessing at the -- at an
 22 aggregate level what the level of technology
 23 dissemination is, or at least not only that, but to
 24 identify whether there are particular pockets where
 25 technology has not been disseminated; is that correct?

1 MR. SEFERIAN: Objection. Vague. Calls for
 2 speculation.
 3 THE WITNESS: It's to identify exactly who has
 4 what.
 5 Q. BY MR. JACOBS: And on an identifiable basis
 6 that is so that you know that a particular school or
 7 school district does or does not have certain kinds of
 8 technology; is that correct?
 9 A. That's correct.
 10 Q. What do you understand the policy purpose to
 11 which those survey results will be put?
 12 MR. SEFERIAN: Objection. Calls for
 13 speculation. Vague and ambiguous.
 14 THE WITNESS: All of the money for education
 15 technology at this time is discretionary. There is no
 16 mandated money for technology, no automatic
 17 appropriation for technology, so districts have to
 18 apply.
 19 And any program at the moment that has provided
 20 that opportunity has required that the applicant
 21 identify what they currently have in order to become
 22 eligible for something new.
 23 Q. BY MR. JACOBS: And how would the world change
 24 with the results of this survey?
 25 MR. HERRON: Objection. Calls for speculation.

1 Vague and ambiguous. The world change?
 2 MR. JACOBS: I think you understand.
 3 THE WITNESS: This helps --
 4 MR. HERRON: I think she needs to guess.
 5 THE WITNESS: This helps ensure that funding is
 6 being distributed equitably and with some knowledge of
 7 previously existing materials.
 8 Q. BY MR. JACOBS: So the before and after here --
 9 as I understand your answer here, the before is that the
 10 funding has to be applied for by an LEA; is that
 11 correct?
 12 A. Generally. Sometimes federal money schools can
 13 apply for it.
 14 Q. As opposed to when I said LEA, that was
 15 limited --
 16 A. The district.
 17 Q. Got it. Okay. So to complete the picture, a
 18 school or school district could use its general funding
 19 for technology as well, right?
 20 A. That's correct.
 21 Q. But what you were directing your comments to
 22 was the categorical funding for technology?
 23 A. Yes.
 24 Q. And, again, in the before case that you
 25 described, the school or the school district has to make

1 an application to draw on these funds; is that correct?
 2 A. Yes.
 3 Q. And after -- strike that.
 4 Did you participate in any discussions in which
 5 it was -- in which that methodology was analyzed in
 6 terms of whether it was meeting the department's goals
 7 for technology or not?
 8 A. Which methodology?
 9 Q. The methodology of having school districts
 10 apply for funding. Did you participate in any
 11 discussions in which people said, if we wait for people
 12 to apply, that means that people who don't apply aren't
 13 going to get the money, or discussions of that sort?
 14 MR. SEFERIAN: Objection. Vague.
 15 THE WITNESS: No.
 16 Q. BY MR. JACOBS: Do you know if such discussions
 17 occurred?
 18 A. Yes.
 19 Q. What information do you have?
 20 A. The discussion is still -- is a very basic one,
 21 which is at the moment the only technology money
 22 available is discretionary, that the state has not
 23 chosen to provide funding for technology.
 24 Q. And just so I understand --
 25 A. As they do for textbooks, for example.

1 Q. So I understand your word choice there,
 2 "discretionary" means what?
 3 A. That it's not mandated. A mandated program in
 4 the State means the State has to pay for it, so they --
 5 the way the Department of Finance at the state level
 6 operates is as long as they make money discretionary,
 7 they don't have to deal with who gets it and who
 8 doesn't. That's a classic executive branch way of
 9 avoiding having to buy every kid in the State a
 10 computer.
 11 Q. But "discretionary" here means -- whose
 12 discretion is being referred to?
 13 A. The receiver. It's at the discretion of the
 14 receiver to apply or do what's necessary to get it.
 15 Q. And this is a distinction between discretionary
 16 and mandatory?
 17 A. Yes.
 18 Q. Is a common theme running through educational
 19 programs that you're aware of?
 20 A. Yes.
 21 Q. And "mandatory" means that the -- who is
 22 mandated in the mandatory case?
 23 A. The giver.
 24 Q. And is the -- is there yet another category in
 25 this schema of discretionary versus man -- with the

1 survey, is the intent that it will move to a mandatory
 2 world?
 3 A. No.
 4 Q. What will it move to?
 5 A. All the survey is doing is establishing a
 6 baseline.
 7 Q. But that baseline was requested as part of a
 8 shift in policy direction, correct?
 9 A. No.
 10 MR. SEFERIAN: You answered the question.
 11 Q. BY MR. JACOBS: Was it simply asked for on a
 12 stand-alone basis?
 13 A. We were asked to perfect the information we
 14 had. We have been surveying prior to this survey.
 15 Q. I thought what you said, though, was that the
 16 survey instrument -- the request for the information
 17 that will be gathered by the survey arose out of a
 18 desire to allocate funding based on need?
 19 A. It did. It's just there was previous
 20 information that was considered incomplete, and we were
 21 asked to continue to try to perfect what was available.
 22 Q. Do you understand that a choice has been made
 23 though to allocate based on need going forward?
 24 MR. SEFERIAN: Objection. Vague. Overbroad.
 25 THE WITNESS: No.

1 Q. BY MR. JACOBS: That still remains to be
 2 decided?
 3 MR. SEFERIAN: Same objections.
 4 MR. HERRON: Calls for speculation as well.
 5 THE WITNESS: The need can be different based
 6 on what funding is available.
 7 Q. BY MR. JACOBS: Meaning different funding
 8 sources?
 9 A. Yes. And our baseline will have a lot of
 10 information in it, and if it's the decision of the giver
 11 of the funds is that they want to augment numbers of
 12 computers versus Internet access versus staff
 13 development or some aspect of technology, this baseline
 14 serves any one of these purposes. Do you see what I
 15 mean?
 16 Q. Yes.
 17 A. It wasn't designed to just serve one purpose.
 18 Q. Are you aware that there will be a change in
 19 any technology-related funding methodology going forward
 20 that may in some substantial part rely on this survey
 21 data?
 22 MR. HERRON: Would you mind if we had that
 23 question reread?
 24 THE WITNESS: I would like to hear the question
 25 again.

1 (Record read.)
 2 THE WITNESS: Let me clarify something that may
 3 be confusing us all here. This is the first time we've
 4 done this on-line. That is very much what's new about
 5 this. So we had previous data, decisions have been
 6 being made on it.
 7 In the newest money that went out from the
 8 governor's office, they wanted us to do this on-line so
 9 it was quicker, because speed became an issue in
 10 spending it, and that's what is unique really about
 11 this. Other than refining the data that's available in
 12 it, it just made that survey information more readily
 13 available to anybody who might be thinking about doing
 14 something with technology.
 15 Q. BY MR. JACOBS: So separate from the survey,
 16 you would distinguish -- you distinguished discretionary
 17 funding from mandatory funding. And I believe your
 18 testimony was that to date technology funding has been
 19 discretionary; is that correct?
 20 A. That's correct.
 21 Q. My question is -- let me ask it a little
 22 differently. Is there any plan that you're aware of to
 23 distribute technology-related funding on a
 24 nondiscretionary basis going forward?
 25 A. No.

1 Q. Is there a type of -- besides discretionary and
 2 mandatory at that level of abstraction, what other types
 3 of funding methodologies are there?
 4 MR. SEFERIAN: Objection. Calls for
 5 speculation.
 6 THE WITNESS: In the common world here, that's
 7 it.
 8 Q. BY MR. JACOBS: Has your branch expressed a
 9 policy viewpoint on how technology-related funding
 10 should be disseminated?
 11 Let me ask it a little differently. To use
 12 your schema, have you expressed a position that funding
 13 for technology should continue to be discretionary, or
 14 have you said, we think we should move to a mandatory
 15 world or we should move to a needs-based world? Have
 16 you taken a position on that issue?
 17 MR. SEFERIAN: Objection. Overly broad.
 18 MR. HERRON: She personally?
 19 MR. JACOBS: The branch.
 20 MR. HERRON: Calls for speculation.
 21 You can answer.
 22 THE WITNESS: We have expressed the need to try
 23 to ensure that technology services are available
 24 equitably across the system.
 25 Q. BY MR. JACOBS: In expressing that view, have

1 you proposed any mechanisms by which that may be
 2 accomplished?
 3 A. Yes.
 4 Q. What mechanisms have you proposed?
 5 A. We were designers -- part of the team of
 6 designers of the digital high school project, as an
 7 example, that has been available now for -- I think it's
 8 in the fourth year.
 9 Q. And how does -- what mechanisms does the
 10 digital high school project use to try to promote an
 11 equitable distribution of technology resources?
 12 A. It had adequate funding for every high school
 13 that wanted to apply, if they were willing to follow the
 14 requirements of making themselves eligible to receive
 15 funding.
 16 Q. In terms of that, did that -- that conclusion
 17 that you stated, that there was adequate funding, I take
 18 it that you settled on some sort of a benchmark for what
 19 every school required on a per student basis to become
 20 adequately supplied with technology?
 21 MR. HERRON: Objection. Assumes facts not in
 22 evidence.
 23 THE WITNESS: No.
 24 Q. BY MR. JACOBS: What did you have in mind?
 25 A. We just said that there was adequate funding

1 made per pupil for them to advance their situation.
 2 Q. As opposed to -- what's the difference between
 3 your answer and --
 4 A. Supplying, getting everybody where they should
 5 be in a perfect world.
 6 Q. I see. So the benchmark was not this is what
 7 it costs to have a standard level of technology, rather
 8 the benchmark was this is what it will take to move from
 9 wherever they are now to a more advanced position?
 10 A. Yes.
 11 Q. Have you proposed any other mechanisms --
 12 strike that.
 13 Is that all of the mechanisms that the digital
 14 high school project uses to promote an equitable
 15 distribution of technology?
 16 A. Is what all?
 17 Q. An adequate level of funding for every school
 18 that is willing to meet the standard and apply. I
 19 believe that was your answer when I asked you.
 20 A. And your question was -- I gathered from your
 21 question that we said, that's done, now we can go do
 22 something else. We don't consider high school done, if
 23 that's --
 24 Q. I didn't understand you to have said that.
 25 Let's replay. My question to you was, what mechanisms

1 has the digital high school project used to promote an
2 equitable distribution of technology, and your answer
3 was there was, there's an adequate level of funding
4 for -- to achieve that, and then we had our benchmark
5 discussion.

6 And so my question to you is, aside from that
7 mechanism, does the digital high school project use any
8 other mechanisms to promote an equitable distribution of
9 technology?

10 MR. HERRON: Objection. Misconstrues prior
11 testimony. Calls for speculation.

12 You may respond.

13 THE WITNESS: I think the digital high school
14 project puts in place a good framework for beginning to
15 address the needs of high schools. It did not provide
16 adequate funding to complete that task. It has put a
17 good framework in place.

18 Q. BY MR. JACOBS: I take it putting the framework
19 in place itself is one mechanism for promoting an
20 equitable distribution of technology; is that correct?

21 A. Yes.

22 Q. Otherwise it would be up to school districts to
23 figure out for themselves how to get started in
24 implementing technology, is that your point?

25 A. Yes, more or less. We establish guidelines

1 MR. JACOBS: Yes.

2 THE REPORTER: I need to change my paper.

3 (Recess taken from 2:06 p.m. to 2:15 p.m.)

4 (Ms. Welch no longer present.)

5 (Record read.)

6 MR. SEFERIAN: Objection. Calls for a legal
7 conclusion.

8 THE WITNESS: That's a hypothetical question,
9 and I guess the answer would be it's possible.

10 MR. JACOBS: Let me ask a more focused
11 question.

12 Q. Is it part of the design of the digital high
13 school project that such proactive steps would be taken
14 in that circumstance?

15 MR. SEFERIAN: Objection. Vague and ambiguous.
16 Overly broad.

17 THE WITNESS: The digital high school project
18 is separate from the survey. The digital high school
19 project actually has its own set of data, and within it
20 a lot has been done to address inequities in high
21 schools.

22 Q. BY MR. JACOBS: When you say "a lot has been
23 done," what do you have in mind?

24 A. The design of the program was to try to
25 bring -- to level the playing field, and the money was

1 jointly. We saved every school from having to reinvent
2 the wheel.

3 Q. So that's one function. And I take it that
4 establishing that sort of guideline is a mechanism
5 that -- strike that.

6 Aside from establishing a framework and aside
7 from the funding, are there any other mechanisms that
8 the digital high school project uses to promote an
9 equitable distribution of technology?

10 MR. HERRON: Objection. Calls for speculation.

11 THE WITNESS: No.

12 Q. BY MR. JACOBS: Let me try some out on you.
13 Who administers the digital high school project?

14 A. The education technology division.

15 Q. And that's in your branch?

16 A. Yes.

17 Q. If the education technology division learned
18 that, say, through the survey that there was a
19 technology poor high school, is there any proactive
20 steps that that division could take to enhance the level
21 of technology at that location?

22 MR. SEFERIAN: Objection. Vague and ambiguous.
23 Calls for speculation.

24 MR. HERRON: Do you mean under the digital high
25 school program?

1 designed to be allocated based on steps taken so that
2 they were brought along step by step in order to ensure
3 that it was being used effectively and efficiently, and
4 so that's -- this survey would not tell us anything we
5 didn't already know.

6 You sort of jumped from digital high school and
7 this survey back and forth.

8 Q. So leave out the survey part?

9 A. Yeah.

10 Q. Let's just go back to the design of the digital
11 high school project. My sense from your answer is that
12 there is -- that the project is more than just a request
13 response sort of project, request coming from the school
14 district, response coming from the project, that there's
15 more going on there in terms of interactivity, if you
16 will?

17 A. Yes.

18 Q. Is that correct?

19 A. That is correct.

20 Q. Can you describe the nature of that
21 interaction?

22 A. Yes, it's actually designed to be phased in,
23 that there is sufficient funding to cover a four-year
24 period, that you're only eligible for the next phase if
25 you do the first phase, and you're monitored and helped

1 to accomplish what you said you were going to do, what
 2 the school said it was going to do, and so it's pretty
 3 carefully administered and monitored.
 4 Q. And we're now talking about the project itself,
 5 correct?
 6 A. Digital high school project.
 7 Q. Is it the case that a high school embarking on
 8 the program outlined by the project would nonetheless
 9 have to take the first step of saying we want to be a
 10 digital high school project high school?
 11 A. Yes, that's true.
 12 Q. And are there high schools that did not take
 13 that step?
 14 A. It's not complete. We're in the final year
 15 right now. There were some that -- there were some in
 16 first, and -- you know, but they have not lost their
 17 last opportunity yet.
 18 Q. Have you taken any, you meaning your branch
 19 or -- is all the activity related to getting high
 20 schools in the project being done by the project as
 21 opposed to other parts of your division or branch?
 22 MR. SEFERIAN: Objection. Calls for
 23 speculation.
 24 THE WITNESS: Yes, it's being done by the
 25 education technology division.

1 Q. BY MR. JACOBS: That's that division taking
 2 steps to enlist high schools in the project that to date
 3 have not enlisted?
 4 A. Yes, we would have notified -- we've kept
 5 records on who has applied and who hasn't and that's
 6 been readily available information.
 7 Q. And what has been done with that information?
 8 A. We notify the school districts, we notify the
 9 high schools, reminding them of their eligibility and of
 10 the process for applying.
 11 Q. Are there any other steps taken to enlist high
 12 schools? Let me set it up a little bit.
 13 This is the last year of this, right?
 14 A. Uh-huh.
 15 Q. Let's suppose -- are there high schools that
 16 haven't signed up yet? I think the answer was yes.
 17 A. Yes. But Nancy Sullivan, who is the program
 18 manager for this, could speak more at that level of
 19 detail.
 20 Q. Have you had any discussions in which you
 21 have -- in which the topic of the discussion has been,
 22 this is the last year, we need to take additional steps
 23 to make sure that no high school is left unsupported by
 24 the digital high school project, let's really go out
 25 there and sign these high schools up?

1 MR. SEFERIAN: Objection. Vague and ambiguous.
 2 THE WITNESS: I have had the conversation with
 3 my staff about ensuring that we could answer that
 4 question, that no school would say it had not been
 5 informed.
 6 Q. BY MR. JACOBS: Therefore, I take it, making it
 7 very clear, that it was a choice by a school district
 8 not to participate rather than just a lack of
 9 information?
 10 A. That's correct.
 11 Q. Do you have a sense of, to use the technology
 12 term, the penetration level of the digital high school
 13 project?
 14 A. Yes, we have a sense of that.
 15 Q. And what is it?
 16 A. It's been very effective at -- at establishing
 17 a good solid base for building technology in high
 18 schools.
 19 Q. And in terms of a percentage of high schools
 20 reached by the project, do you have a sense of that?
 21 MR. SEFERIAN: Objection. Calls for
 22 speculation.
 23 THE WITNESS: We're very close to 100 percent,
 24 but understand there are traditional high schools and
 25 there are then -- there are about 800 of those, and

1 there are about that many of nontraditional that may
 2 have 20 kids in them that are continuation schools and
 3 juvenile court high schools and things that also are
 4 eligible for this funding, so those are the ones that
 5 are in the group that are now not all on board yet.
 6 Q. BY MR. JACOBS: Those smaller and alternative
 7 kinds of high schools presented special challenges for
 8 being reached by the project, correct?
 9 A. Yes.
 10 Q. Shall we call them traditional high schools?
 11 A. Traditional high schools.
 12 Q. Do you think that you're approaching 100
 13 percent in terms of the --
 14 A. Yes, we're approaching 100 percent.
 15 Q. What's the -- are all of the personnel in the
 16 project who have interactions with the high school,
 17 employees of the project and the technology services
 18 division?
 19 A. No.
 20 Q. There are outside contractors, or what's the
 21 other category of personnel?
 22 A. The Department of Education uses county
 23 services of education. There is a network of -- that's
 24 called California Technology Assistance Project, CTAP,
 25 that operates through county offices of education that

1 are staff to this project.
 2 Q. Do you have an estimate of the total number of
 3 personnel who are may be FTE, full-time equivalent, who
 4 are involved with the project?
 5 MR. HERRON: Objection. Calls for speculation.
 6 Vague and ambiguous.
 7 THE WITNESS: Formally the department has had a
 8 very small education technology division. There are
 9 probably three people who have something to do with
 10 that, and there are eleven regions of CTAB.
 11 Q. BY MR. JACOBS: And each of the regions has
 12 several counties?
 13 A. Right, the 11 regions cover all 58 counties.
 14 Q. Do you know how many county personnel are
 15 involved in the project?
 16 A. I don't know that.
 17 Q. By county personnel, we're talking about
 18 individuals whose salaries are, in the general case,
 19 paid by the county superintendent of education; is that --
 20 that --
 21 MR. SEFERIAN: Objection. Calls for
 22 speculation.
 23 THE WITNESS: Yes, they are employees of the
 24 counties.
 25 Q. BY MR. JACOBS: And is there special funding

1 for the counties to hire those individuals?
 2 A. As part of this project, we have the funding
 3 that we contract with them to assist us in delivering
 4 this service.
 5 Q. Do you know the budget --
 6 A. I don't.
 7 Q. And the person who is closest to the actual
 8 implementation of the digital high school project at a
 9 managerial level is Nancy Sullivan?
 10 A. Yes.
 11 Q. And is she one of these three people in
 12 educational technology?
 13 A. Yes.
 14 Q. Were you involved in the design of the digital
 15 high school project?
 16 A. No.
 17 Q. Have you participated -- have you been involved
 18 in any evaluations of it?
 19 A. Yes.
 20 Q. What kinds of evaluations are done?
 21 A. There are required evaluations, and I only sign
 22 off on their completion.
 23 Q. The fact that they have been done?
 24 A. That they have been done.
 25 Q. That's a legislative requirement?

1 A. Yes.
 2 Q. Have you familiarized yourself with the results
 3 of those evaluations?
 4 A. Only distantly.
 5 Q. Have you participated in any discussions in
 6 which the model of the digital high school project has
 7 been proposed for applicability to areas other than the
 8 dissemination of technology?
 9 MR. HERRON: Objection. Vague and ambiguous.
 10 THE WITNESS: No.
 11 Q. BY MR. JACOBS: Have you yourself thought about
 12 that possibility?
 13 A. Other than technology?
 14 Q. Yes, where you've said to yourself --
 15 A. No.
 16 Q. -- we've set up an interesting model here of
 17 activity with the school districts, and this might make
 18 sense to apply to the following issue confronting
 19 California public schools?
 20 MR. SEFERIAN: Objection. Vague and ambiguous.
 21 THE WITNESS: No, but it's a good idea.
 22 MR. JACOBS: Happened here.
 23 Q. Do you have any current intention to repeat the
 24 survey?
 25 A. Yes, we intend to do it annually.

1 Q. I take it that this is, at least by design,
 2 going to substitute for other information queries about
 3 technology to the school districts so that they're not
 4 unduly burdened by the information requests?
 5 A. Yes.
 6 Q. And that is a -- I take it that you received
 7 input from the districts that they were, as you put it,
 8 being surveyed to death, that they were being asked too
 9 many times the same question, and that they wanted you
 10 to adopt a more efficient mechanism for eliciting this
 11 information, correct?
 12 A. Yes.
 13 Q. It's a case where the districts said we've got
 14 to do this more efficiently and your branch responded by
 15 developing this particular survey instrument?
 16 A. Yes.
 17 MR. SEFERIAN: Objection. Misstates the prior
 18 testimony.
 19 THE WITNESS: That wasn't the only reason, but
 20 yes, that is true, districts complained.
 21 Q. BY MR. JACOBS: Another reason was the one that
 22 you described, that you were actually asked to do this
 23 on an on-line basis, is that what you're pointing to?
 24 A. Yes.
 25 MR. JACOBS: I literally just this morning,

1 just to answer your question why we haven't produced it
2 to you, came across the mission statement and vision and
3 guiding principles of the California Department of
4 Education. I want to ask you whether you're familiar
5 with that. Let's mark them as the next in order.

6 (Exhibit SAD-37 was marked.)

7 THE WITNESS: Yes, I recognize it.

8 Q. BY MR. JACOBS: Have you -- you recognize it
9 because you've seen them before?

10 A. Yes.

11 Q. Is it something that you refer to periodically,
12 or is it something that you happened to see when they
13 were last updated, or none of the above?

14 A. Actually, both. Periodically is when it's
15 updated.

16 Q. And do you ever -- is it something that's
17 actually used in the sense that when you are deciding on
18 tasks, do you either on your own or in discussion with
19 your staff say, let's go back to CDE goals and
20 objectives and see how this fits in?

21 A. Yes.

22 Q. So, for example, in the technology area, the
23 CDE goals and objectives for technology, goal 4, is this
24 something that has operational significance for your
25 branch?

1 department?

2 A. Yes.

3 Q. One of the activities of your branch is the
4 development of the CSIS; is that correct?

5 A. Yes.

6 Q. The California school information services
7 system?

8 A. Right.

9 Q. What is the current status of the development
10 of the CSIS?

11 A. It's California school information system --
12 services, yes. Right.

13 Q. We'll call it the CSIS.

14 A. Okay.

15 Q. What's its current status?

16 A. It is in development.

17 Q. You are an advocate for the development of
18 CSIS?

19 MR. HERRON: She personally?

20 MR. JACOBS: You personally.

21 THE WITNESS: Yes, I am.

22 Q. BY MR. JACOBS: You believe strongly in the
23 importance of CSIS to the accomplishment of the
24 educational mission of California public schools?

25 MR. HERRON: Objection. Argumentative.

1 MR. SEFERIAN: Objection. Overly broad. Vague
2 and ambiguous.

3 THE WITNESS: Well, the operational
4 significance is that in order to request funding each
5 year through the state budget process, you have to tie
6 your request to your goals and objectives so, yes, in
7 that regard.

8 Q. BY MR. JACOBS: Did you participate, you
9 meaning your branch or the technology services division
10 in particular, participate in the development of the
11 technology goals?

12 A. Yes, I did.

13 Q. And, in fact, are these goals in whole or
14 substantial part in the form that you proposed them?

15 MR. SEFERIAN: Objection. Overly broad. Vague
16 and ambiguous.

17 THE WITNESS: This is an effort of the home
18 management team. All deputies participated, so I had
19 input, yes.

20 Q. BY MR. JACOBS: And others had input?

21 A. But not singularly. Yes.

22 Q. So technology is in your branch, correct?

23 A. That's correct.

24 Q. But the management team participated in the
25 identification of the goals for technology for the

1 MR. JACOBS: It's not a trick question. I'm
2 not going to use it against you. I saw in some Board
3 minutes that you were praised in your role as an
4 advocate for this system.

5 THE WITNESS: Yes, I think it's a valuable
6 system.

7 Q. BY MR. JACOBS: Briefly, why is the system
8 valuable?

9 A. There does not exist a student tracking system
10 in the State of California, and therefore there is a lot
11 of data that is impossible to piece together.

12 Q. What kinds of data in particular do you have in
13 mind?

14 A. Common examples are drop-out data, graduation
15 data, things where students -- where you need to track
16 students as they go through their education and pass
17 from one location to another, and there's no way to
18 track them.

19 Q. So we know how many students graduate each
20 year, but we don't know with respect to a particular
21 graduate where this student went to school over the
22 course of his or her education; is that correct?

23 MR. SEFERIAN: Objection. Overly broad.

24 MR. JACOBS: We meaning at the state level.

25 THE WITNESS: That's an example, yes.

1 Q. BY MR. JACOBS: And do you have in mind some
2 particular uses that the CSIS might well be put once it
3 is implemented?

4 A. Yes.

5 Q. What do you have in mind?

6 A. Well, we have, for starters, 40 individual data
7 collections that are required of school districts that
8 they must submit individually now that could be -- they
9 could be relieved of if we had one valid, reliable
10 student data system.

11 Q. These 40 individual data collections, by
12 individual you mean what?

13 A. They each have to be filled out separately.

14 Q. And so how does that relate to student by
15 student?

16 A. Because once we -- for example, there's migrant
17 students, there's limited English speaking students,
18 there's special ed students, there are any number of
19 different categories of students by programs that get
20 funding, and at the moment we have to collect all that
21 data separately, whereas if we had a way to track those
22 students, we could just pick that data out of the
23 database and put it in any one of these configurations
24 ourselves and the schools wouldn't have to fill that
25 form out separately.

1 A. No, it's those two. It's bringing those two
2 things together.

3 Q. Are there other areas of the California
4 Department of Education Mission, Vision, Guiding
5 Principles, Goals, and Objectives that you had
6 substantial input into?

7 A. Yes.

8 Q. What are those?

9 A. I had a lot of input into all of this actually.

10 Q. Let me break it down there. Are there areas
11 where you took the initial drafting responsibility?

12 A. Beyond the technology division, the adequate
13 flexible funding, goal 7, department management.

14 Q. With respect to goal 6, did you have initial
15 drafting responsibility for the first paragraph there,
16 advocate?

17 A. I participated in it. These have been around a
18 while.

19 Q. How long?

20 A. Several years. We just kind of update them
21 each year.

22 Q. Has additional resources and additional
23 flexibility been in the statement for some time?

24 A. Yes.

25 Q. The goal 6.2 there, back to our facilities

1 Q. Have the data fields that you were going to
2 include in CSIS been defined yet?

3 MR. SEFERIAN: Objection. Calls for
4 speculation.

5 MR. HERRON: Asked and answered in part.

6 THE WITNESS: Actually, they have been. At
7 this stage it's a phased-in development. There
8 currently are districts participating in the first
9 phase, and there are five data systems included in that
10 first phase, and there has been a data dictionary
11 developed for them.

12 Q. BY MR. JACOBS: And by -- and your reference to
13 phases contemplates that additional data elements could
14 be incorporated into the system prospectively?

15 A. Yes.

16 Q. And is the next phase in terms of data elements
17 defined?

18 A. Yes. But the phase-in is also of the school
19 districts coming into it.

20 Q. So there's a breadth of data access to the
21 phase-in, and then there's a penetration to school
22 district's access, is that what you have in mind?

23 A. Yes.

24 Q. Is there any other major component of the
25 phase-in?

1 topic, do you see that?

2 A. Yes.

3 Q. I was going to say, suppose I ask you about. I
4 think I'll just ask you.

5 How has your branch implemented that objective?

6 MR. SEFERIAN: Objection. Overly broad.

7 Assumes facts not in evidence. Calls for speculation.

8 MR. HERRON: Which one was it, Michael?

9 MR. JACOBS: 6.2.

10 THE WITNESS: Well, in our role of analyzing
11 legislation, we are called upon to testify as well in
12 support of legislation or opposition, and we are always
13 strong advocates. And our data is used by the
14 committees and other advocates for trying to push that
15 issue of needing more facilities.

16 Q. BY MR. JACOBS: Have you participated in any
17 discussions in which the thrust of the discussion was
18 there's a gap between funding and needs, there's been a
19 gap between funding and needs for several years, how are
20 we going to change that situation, how are we going to
21 get out of this pickle we're in of funding for
22 facilities, have you participated in discussions of that
23 sort?

24 MR. HERRON: Objection. Vague and ambiguous.

25 Assumes facts not in evidence.

1 You may respond.
 2 THE WITNESS: Yes.
 3 Q. BY MR. JACOBS: What discussions do you have in
 4 mind?
 5 THE WITNESS: That's the kind of discussion
 6 that goes on at the time that we're deciding to -- what
 7 requests we might make in our budget or what legislation
 8 we might want to support that's going through the
 9 legislature, or that we want to find an author to
 10 support the issue of facilities is one that the
 11 superintendent would look to my branch for advice on
 12 what we might need to do.
 13 Q. BY MR. JACOBS: As you sit here today, are you
 14 aware of any concrete plans that will address the gap in
 15 funding that you've identified with respect to
 16 facilities?
 17 MR. SEFERIAN: Objection. Calls for
 18 speculation. Vague and ambiguous.
 19 THE WITNESS: Concrete plans? The only
 20 concrete plan I would be aware of would be the pursuit
 21 of more bond money.
 22 Q. BY MR. JACOBS: Is there -- do you have in mind
 23 a particular bond proposal?
 24 A. Actually, I don't know right now what that one
 25 is. There is one knocking around, but --

1 Q. Did you reach sort of a summary conclusion
 2 about the legislative analyst report that you mentioned
 3 in the morning, the report on funding of school
 4 construction, as to whether that report represented a
 5 possible answer to the gap?
 6 A. And the first part of your question was, had we
 7 reached --
 8 Q. You said that you commented on the report, and
 9 I'm asking now about one aspect of your comment now,
 10 which is, did you decide whether --
 11 A. We didn't decide anything, we made some
 12 comments about some of the recommendations in the
 13 report.
 14 Q. Did you comment on the funding level that the
 15 report proposed?
 16 A. I don't recall specifically the funding level
 17 being an issue.
 18 Q. So if I understood your answer to my have you
 19 participated in discussions about how we change the
 20 situation with respect to the funding gap, your answer
 21 was along the lines of, this topic comes up in a variety
 22 of contexts and you participate in those discussions?
 23 A. Yes.
 24 Q. And in your personal judgment, is there any
 25 particular approach to addressing the funding gap that

1 you believe is especially meritorious?
 2 MR. HERRON: Objection. Calls for speculation.
 3 Calls for an expert opinion.
 4 THE WITNESS: No, I think there are a
 5 combination of things that need to be done.
 6 Q. BY MR. JACOBS: And what is that combination?
 7 MR. HERRON: Same objections.
 8 THE WITNESS: It would include things like
 9 lowering the voting number, which has been somewhat
 10 addressed. But just continuing to press for recognition
 11 of the need for more funding.
 12 Q. BY MR. JACOBS: And by pressing for that
 13 recommend -- for recognition of that need, what do you
 14 mean?
 15 A. Through the legislature.
 16 Q. Have you identified -- let me approach this
 17 from the following standpoint.
 18 I showed you the advisory that was sent out
 19 about bathroom conditions, and you indicated that you
 20 were not aware of that advisory.
 21 Are you aware of any other issues with respect
 22 to conditions in facilities in the schools that, in your
 23 judgment, are not substantially attributable to funding
 24 shortfalls?
 25 MR. SEFERIAN: Objection. Calls for

1 speculation. Vague and ambiguous. Calls for an
 2 opinion.
 3 THE WITNESS: The only thing that comes to mind
 4 is there is currently a growing concern about toxic
 5 issues, and I think that it's unclear at this time
 6 exactly how to get our arms around that one and whether
 7 it's -- it would ultimately be a funding issue, but
 8 there is a lot that needs to be done, I think, to help
 9 us understand that issue better.
 10 Q. BY MR. JACOBS: And one of the things that's
 11 being done, as I understand it from reading the paper,
 12 is some information gathering about the extent of the
 13 problem; is that right?
 14 A. Yes, and mitigation and --
 15 Q. Meaning mitigation -- potential mitigation
 16 techniques?
 17 A. Yes.
 18 Q. As opposed to what's actually been done to
 19 mitigate so far, or what do you have in mind by
 20 mitigation?
 21 A. Or whether it works or not. There's disputes
 22 about how to mitigate.
 23 Q. How have you addressed the toxics issue in
 24 terms of assignment of responsibility in your branch?
 25 A. Our only responsibility really is information.

1 There's a department in state government that has most
2 of the responsibility for actually developing
3 guidelines. We are a participant in those discussions,
4 but that's not our expertise. We have no expertise in
5 toxics.

6 Q. And the "department" in the state government is
7 which department?

8 A. I think it's the department of toxic substance
9 something.

10 MR. JORDAN: Substance control?

11 THE WITNESS: Yeah, toxic substance control or
12 something. There is a separate agency.

13 Q. BY MR. JACOBS: Is it your understanding that
14 that's not in the department of environmental --

15 A. I'm not sure whether it's department of health
16 or under environmental.

17 Q. Are there -- what's your understanding of the
18 process by which this issue surfaced to the attention of
19 state officials and an action plan -- strike that.

20 In your judgment, has an action plan been
21 developed for assessing the scope of this problem and
22 developing a plan for ameliorating it?

23 MR. HERRON: Objection. Calls for speculation.
24 It's beyond the scope of her knowledge.

25 THE WITNESS: Yeah, I don't really know. It

1 department of general services. Those are the
2 primary -- it used to be the office of public school
3 construction, but that's now with the State allocation
4 board, I think.

5 Q. And then the toxics issue is in this toxic
6 substances group. They have a large role to play in
7 that one, right?

8 A. Yes.

9 Q. Are there other instances related to facilities
10 in which you're aware of other agencies playing a major
11 role?

12 MR. HERRON: Objection. Vague and ambiguous.

13 THE WITNESS: I'm not sure. There are water
14 issues. I would guess those are someplace else. But
15 Duwayne would know that.

16 Q. BY MR. JACOBS: On 6.5 of goal 6, provide
17 resources and guidance to ensure that local education
18 agencies utilize resources effectively, efficiently and
19 appropriately, do you see that?

20 A. Uh-huh. Yes.

21 Q. Is there anything that comes to mind that your
22 branch is involved in that is focused on addressing that
23 objective?

24 A. You know, I don't even know what this means. I
25 don't know what we were thinking when we wrote it.

1 isn't just a problem.

2 Q. BY MR. JACOBS: It's many problems?

3 A. Yes.

4 Q. Different kinds of toxins potentially from
5 different kinds of sources?

6 A. Yes.

7 Q. Is there somebody in your branch who is
8 tracking it from the standpoint of the Department of
9 Education?

10 A. Duwayne is primarily the person who
11 participates.

12 Q. Has this been an issue that's been discussed at
13 the State Board of Education?

14 A. No.

15 Q. Are you aware of any other facilities, school
16 facilities related issues that, in your judgment, are
17 the primary responsibility at the state level of other
18 State agencies?

19 MR. SEFERIAN: Objection. Calls for a legal
20 opinion. Calls for speculation. Vague and ambiguous.

21 MR. JACOBS: It is pretty broad.

22 Q. Facilities funding involves several agencies,
23 right? It involves your agency, it involves the SAB.
24 What other agencies are involved?

25 A. State architect, who I think is in the

1 Q. Let me try something. FCMAT plays a role, at
2 least in sort of the urgent cases, right?

3 MR. HERRON: Objection. Calls for speculation.
4 The document speaks for itself, albeit not with perfect
5 clarity.

6 THE WITNESS: Yeah, it's possible FCMAT is --
7 was part of what was being referred to in here.

8 Q. BY MR. JACOBS: So whether or not it was the
9 original intention of the drafters to refer to FCMAT, do
10 you think of FCMAT as playing a role in ensuring that
11 LEAs utilize resources effectively, efficiently and
12 appropriately?

13 A. Yes.

14 Q. What is your involvement with FCMAT?

15 A. I represent the superintendent on the Board.

16 Q. And what is the role of the Board with respect
17 to the day-to-day activities of FCMAT?

18 MR. SEFERIAN: Objection. Calls for a legal
19 opinion. Overly broad.

20 THE WITNESS: The Board isn't involved in the
21 day-to-day activities of FCMAT.

22 Q. BY MR. JACOBS: What does the Board do?

23 A. The Board, in my opinion, is an advisory body.
24 It's broadly representative of the state, districts and
25 county offices and is there to give guidance.

1 Q. What kind of guidance?
 2 A. To the mission of FCMAT, which is to provide
 3 advice and services to school districts who feel they
 4 need -- who are either in fiscal crisis or believe they
 5 need some evaluation of their fiscal health.
 6 Q. How do you actually staff your Board
 7 membership; that is, do you do it all yourself, or do
 8 you have somebody who assists you with your Board
 9 involvement in FCMAT?
 10 MR. HERRON: Objection. Vague and ambiguous.
 11 THE WITNESS: I go alone. The director of the
 12 school fiscal services division is someone that I depend
 13 on for information about issues that might be on that
 14 agenda.
 15 Q. BY MR. JACOBS: Do you -- you've been on this
 16 board for how long?
 17 A. A couple of years.
 18 Q. Have there been any issues that have -- as
 19 opposed to you seeking input from someone under you, and
 20 then you yourself deciding what you're going to do as a
 21 FCMAT board member, have there been issues in which
 22 people superior to you in the department have given you
 23 guidance as to what they would like you to do, in turn,
 24 giving guidance to FCMAT?
 25 MR. HERRON: Objection. Long.

1 MR. JACOBS: It was long.
 2 Q. BY MR. JACOBS: Did you understand it?
 3 A. Yeah. The superintendent can call upon FCMAT
 4 at her will by statute. They exist partially -- their
 5 service is provided at her request in addition to other
 6 responsibilities they can take on themselves. So, yes,
 7 she would -- I would be the instrument of her initiating
 8 a request to them.
 9 Q. Has that happened?
 10 A. Yes.
 11 Q. On what occasions?
 12 MR. HERRON: Do you want a list, or are you
 13 just asking --
 14 THE WITNESS: I mean, at the moment we are
 15 involved in San Francisco Unified School District, we're
 16 involved in Emery School District, we're involved in
 17 Alameda County office, in Compton Unified School
 18 District, and to varying degrees we have called upon
 19 FCMAT to assist us in evaluating their fiscal health.
 20 Q. BY MR. JACOBS: And by the "we" there, you're
 21 referring to a FCMAT request that came from the
 22 superintendent?
 23 A. Yes.
 24 Q. So what I understand, FCMAT -- I understood
 25 FCMAT to be responsive to district requests, and what

1 you're pointing to now is that the superintendent
 2 herself can enlist FCMAT in issues that she considers
 3 worthy of FCMAT's attention; is that correct?
 4 A. Yes.
 5 Q. And in the cases that you identified, was
 6 the -- as far as you know, was the exclusive call upon
 7 FCMAT a call that came from the superintendent as
 8 opposed to a call that also came from the district?
 9 A. I know that to be the case in a couple of them.
 10 I don't know whether the district independently had
 11 asked for their assistance as well.
 12 Q. Is there a mechanism in the department by which
 13 an issue reaches the superintendent with sort of a
 14 recommendation to her, we should get FCMAT involved in
 15 this problem?
 16 A. What was the first part of your question?
 17 Q. Is there a procedure or process in the
 18 department with which an issue reaches the
 19 superintendent?
 20 MR. HERRON: Objection. Calls for speculation.
 21 THE WITNESS: No, there's not a process.
 22 Fiscal issues are important, and there are various ways
 23 we find out about them.
 24 Q. BY MR. JACOBS: So it could be a very informal
 25 way in the sense that you would learn, say, from the

1 paper that there's a fiscal crisis and then you, now
 2 meaning the department, would have a discussion, and
 3 then the request would be made to FCMAT?
 4 A. Yes, that could happen.
 5 Q. Do you know whether FCMAT has rules of thumb
 6 for what portions of school district budgets should go
 7 to what categories of expenditures?
 8 MR. SEFERIAN: Objection. Calls for
 9 speculation.
 10 THE WITNESS: I don't know that for a fact.
 11 Q. BY MR. JACOBS: Are you aware of any such rules
 12 of thumb?
 13 MR. SEFERIAN: Objection. Calls for
 14 speculation.
 15 MR. HERRON: You mean by FCMAT or the
 16 department, or anyone else?
 17 MR. JACOBS: Anyone.
 18 THE WITNESS: I am not personally.
 19 Q. BY MR. JACOBS: Do you think that somebody --
 20 you're thinking that I should ask somebody else that
 21 question who might be more knowledgeable about that
 22 topic?
 23 A. Jan Sterling, the director of my school fiscal
 24 services division, has staff that reviews school
 25 district budgets and, yes, they have criteria by which

1 they assess a general sense of stability.
 2 Q. Do you have any information about whether the
 3 department has given out guidance to LEAs that indicate
 4 in the typical case "X" percentage goes to facilities,
 5 "Y" percentage goes to teachers, something along those
 6 lines?
 7 A. I don't know that for a fact. I only -- only
 8 in the case of reserves. There actually is a statutory
 9 requirement on reserves, that a certain percent be
 10 there.
 11 Q. That a district has to maintain a certain level
 12 of reserves?
 13 A. Reserves, uh-huh.
 14 Q. Is that something that the fiscal services
 15 division reviews when it reviews budgets?
 16 A. Yes.
 17 MR. HERRON: When you are at a convenient
 18 point, could we take a break?
 19 MR. JACOBS: Let me just ask a couple more
 20 about fiscal service and its connection.
 21 MR. HERRON: Sure.
 22 Q. BY MR. JACOBS: Do you have any information
 23 about whether the fiscal services division in reviewing
 24 budgets draws on the budgetary review process to
 25 identify particular funding issues confronting the state

1 public education system? In other words, let me set
 2 this up.
 3 I can imagine that FSD reviews budgets and says
 4 your budget is okay, your budget is okay, your budget is
 5 okay. And my question is, aside from that, do they
 6 actually assemble that data and try to draw some
 7 conclusions about it, about what kind of fiscal problems
 8 they are having?
 9 MR. SEFERIAN: Objection. Calls for
 10 speculation. Assumes facts not in evidence.
 11 THE WITNESS: We have a requirement that we
 12 categorize districts that we feel are -- show some sign
 13 of having difficulty, so, yes, we don't just do nothing
 14 with them.
 15 Q. BY MR. JACOBS: Separate -- explain what you
 16 mean by that. You look at a budget and then an
 17 identification is made that this district has some
 18 problems, fiscal issues?
 19 MR. HERRON: Are you now talking about the
 20 fiscal services division?
 21 MR. JACOBS: Yes.
 22 Q. Is that correct?
 23 A. Yes.
 24 Q. Is there a name for it?
 25 A. You are put on a qualified list for a negative,

1 and those are -- it's just a series of kind of warning
 2 flags that say that's known publically. We inform that
 3 district and their board that we believe they're in a
 4 sensitive situation and they need to address the issues
 5 that we identified that made us arrive at that
 6 conclusion. We do that twice a year, budgets are
 7 reviewed for their stability.
 8 Q. Twice a year for all districts, or twice a year
 9 for qualified or negative?
 10 A. All districts twice a year.
 11 Q. When you say it's "known publically," is it
 12 announced in some sense, or is it merely conveyed to the
 13 Board?
 14 A. It's conveyed, and if asked for, it would be
 15 told to anyone who wanted to know.
 16 Q. Do you know if it's posted on the web?
 17 A. I don't know.
 18 Q. Is there any trend analysis conducted from this
 19 budgetary review, not as to particular districts, but as
 20 to the school system statewide?
 21 MR. SEFERIAN: Objection. Calls for
 22 speculation.
 23 MR. HERRON: Vague and ambiguous.
 24 THE WITNESS: I don't know actually. It could
 25 be. The data is there always and it's public, so

1 anybody could review. Those are all public documents,
 2 the budgets are.
 3 Q. BY MR. JACOBS: But to your knowledge, it isn't
 4 a -- let me take it at its most simple.
 5 Is the number of school districts on the
 6 qualified or negative going up, do you know?
 7 MR. HERRON: Objection. Calls for speculation.
 8 THE WITNESS: I don't know right now. It goes
 9 up and down.
 10 Q. BY MR. JACOBS: Are there any trends that your
 11 branch has spotted in terms of reasons districts might
 12 be on the qualified or negative list?
 13 MR. HERRON: Objection. Calls for speculation.
 14 THE WITNESS: Not consistently. Right now we
 15 will expect to see more because of the energy crisis,
 16 for example.
 17 Q. BY MR. JACOBS: And will you -- that's a good
 18 example. Do you have any plan to gather the data about
 19 energy costs that you have potentially available to you
 20 through this budget review process and do anything with
 21 that data from the standpoint of, for example,
 22 advocating for adequate resources?
 23 MR. SEFERIAN: Objection. Calls for
 24 speculation. Hypothetical question.
 25 THE WITNESS: The superintendent already has

1 publically stated her concern over the effect of the
2 energy crisis and said that in front of both committees,
3 budget committees of both houses of the legislature,
4 that that's an issue that definitely needs to be
5 addressed in this budget, because school districts will
6 need to deal with that.

7 We have also sent out notices through Duwayne's
8 shop actually about energy conservation, just to alert
9 districts to attend to that as well as they can.

10 Q. BY MR. JACOBS: But in terms of drawing on the
11 data that's available to you through the budget review
12 process with respect to energy costs, do you have any
13 plan to assemble that data and report it out?

14 MR. HERRON: Objection. Calls for speculation.

15 THE WITNESS: Right now there's not a plan.

16 MR. JACOBS: Let's take a break.

17 (Recess taken 3:06 p.m. to 3:14 p.m.)

18 (Mr. Hamilton not present.)

19 Q. BY MR. JACOBS: Does FCMAT assess nonfinancial
20 conditions in schools that it reviews? For example, if
21 there was overcrowding in a school, would it be within
22 FCMAT's purview, as you understand it, to identify that
23 as an issue and recommend appropriate action?

24 A. No.

25 Q. And how about the fiscal services division in

1 homework.

2 Do you have any information on whether that
3 condition, that is, the absence of sufficient numbers of
4 current legible textbooks, exists in some subset of
5 California public schools?

6 MR. SEFERIAN: Objection. Calls for
7 speculation. Overly broad. Vague and ambiguous.

8 THE WITNESS: What was the first part of the
9 question?

10 Q. BY MR. JACOBS: Do you have any information on
11 whether that condition exists in some subset of
12 California schools?

13 MR. SEFERIAN: Same objections.

14 MR. HERRON: Would you mind also defining
15 "you"? Are we talking about Ms. Lange personally?

16 MR. JACOBS: I'm asking if Ms. Lange is aware
17 of --

18 MR. HERRON: She herself?

19 MR. JACOBS: -- if there's any information on
20 that topic, that's correct.

21 THE WITNESS: I don't have information on that
22 topic.

23 Q. BY MR. JACOBS: So you're not in a position to
24 say whether or not it's true or false; is that correct?

25 A. That's correct.

1 its role in reviewing budgets, does it have within its
2 purview assessing nonfinancial conditions in school?

3 MR. SEFERIAN: Objection. Calls for a legal
4 opinion. Calls for speculation. Overly broad.

5 (Mr. Hamilton entered the room.)

6 THE WITNESS: No.

7 Q. BY MR. JACOBS: Are you aware of any vehicle in
8 the state -- at the state level for assessing conditions
9 in schools with respect to, let's say, overcrowding?

10 First of all, we've talked about FCMAT, we've
11 talked about fiscal services division. Is there any
12 other entity in the state apparatus that assesses the
13 existence of those conditions?

14 MR. HERRON: Objection. Vague and ambiguous.
15 Calls for speculation.

16 THE WITNESS: I'm not aware of any.

17 Q. BY MR. JACOBS: Let me walk you through a
18 couple of the issues we identified in the complaint and
19 ask you what information you have about whether or not
20 those conditions exist. Okay?

21 The first one that we identified was a lack of
22 sufficient numbers of legible and current textbooks or
23 instructional materials for each student to have his or
24 her own textbook or materials in core subjects to use in
25 class without sharing and to be able to use at home for

1 Q. Are you aware of any effort to say whether that
2 condition exists?

3 A. I'm not aware. There is a textbook and
4 instructional materials office in another branch of the
5 department, and they may be.

6 Q. Another allegation in the complaint is that
7 there are insufficient numbers of -- that there are some
8 schools that have high numbers of emergency-credentialed
9 teachers as opposed to fully credentialed, quote,
10 unquote, teachers.

11 Do you have any information in your official
12 capacity as to whether that condition exists or doesn't
13 exist?

14 MR. SEFERIAN: Objection. Calls for
15 speculation.

16 THE WITNESS: The CBEDS database may have that.
17 I'm not sure.

18 Q. BY MR. JACOBS: CBEDS is in your branch?

19 A. Yes.

20 Q. In the demographics?

21 A. In the demographics division. Lynn Bocker is
22 the division director.

23 Q. Educational demographics office, Lynn Boc --

24 A. Bocker.

25 Q. Are you aware of any reports that have been

1 generated by your branch in which the issue of
2 concentration of nonfully credentialed teachers has been
3 assessed?

4 A. No.

5 Q. Is it your view that there's another branch
6 that would -- CBEDS is in your branch?

7 A. Yes.

8 Q. But I take it, in part from your answer, that
9 whether or not -- what that data shows in terms of its
10 policy implications is not part of your branch's
11 responsibilities; is that correct?

12 A. That's correct.

13 Q. And is there a branch that you would identify
14 that as most appropriately residing in?

15 MR. HERRON: Objection. Vague and ambiguous.
16 Calls for speculation. Calls for an expert opinion
17 beyond this witness' capability.

18 THE WITNESS: There's a curriculum and
19 instructional leadership branch, and they might know
20 that. And the data is on-line.

21 Q. BY MR. JACOBS: But in terms of relying on the
22 data and making policy recommendations, that would
23 address, if there is such a concentration, what to do
24 about it, do you have a view as to what branch that
25 would most appropriately reside in?

1 A. I'm not aware.

2 Q. Another condition we identified is a series of
3 conditions related to facilities. Let me break them
4 down. One issue is noise levels, ambient noise levels,
5 external noise as opposed to a lively classroom. We --
6 the complaint alleges that there are a subset of
7 California public schools in which the classrooms are
8 too noisy in that way to allow effective learning to
9 take place.

10 Do you have any information on whether that's
11 true or false?

12 A. I don't.

13 MR. SEFERIAN: Objection. Calls for
14 speculation.

15 Q. BY MR. JACOBS: Are you aware of any data
16 gathering that takes place routinely from which one
17 could discern whether that condition exists?

18 A. I'm not aware of that.

19 Q. Another issue that was identified is whether
20 there are sufficient numbers of clean, stocked and
21 functioning toilets. I think the issue that we
22 discussed in conjunction with that advisory that went
23 out.

24 Are you aware of any information about whether
25 that condition exists?

1 MR. HERRON: Same objection. Asked and
2 answered.

3 THE WITNESS: Just the same as I answered
4 before.

5 Q. BY MR. JACOBS: Another issue we identified is
6 an issue related to classroom temperature, and in
7 particular whether there are some schools in which
8 classrooms are too cold or too hot on a -- with a
9 regularity or are frequency sufficient to make it an
10 issue.

11 Do you have any information on whether that
12 condition exists in some subset of California public
13 schools?

14 MR. SEFERIAN: Objection. Vague and ambiguous.
15 Calls for speculation.

16 THE WITNESS: I don't know.

17 Q. BY MR. JACOBS: Are you aware of any efforts to
18 assess whether that condition exists in California
19 public schools?

20 A. Am I aware of any effort to assess --

21 Q. Whether it exists?

22 A. No.

23 Q. Are you aware of any data gathering that occurs
24 routinely from which one could assess whether that
25 condition exists or not?

1 MR. SEFERIAN: Objection. Calls for
2 speculation.

3 THE WITNESS: Other than what is said in the
4 memo by my staff, I'm not personally aware, no.

5 Q. BY MR. JACOBS: Are you aware of any efforts to
6 assess whether that condition exists?

7 MR. HERRON: Objection. Vague and ambiguous.

8 THE WITNESS: I am aware of one circumstance
9 that is -- yes.

10 Q. BY MR. JACOBS: What are you thinking of?

11 A. It's Compton, because at the moment the State
12 Department of Education is the trustee of Compton, and
13 that is one of the issues related to the Compton
14 District, so I have -- I am aware of that.

15 Q. What role does your branch play in the
16 administration of the Compton district?

17 MR. SEFERIAN: Objection. Assumes facts not in
18 evidence.

19 THE WITNESS: We have advised their business
20 officials in reconstructing their budget since the
21 beginning of the trusteeship.

22 Q. BY MR. JACOBS: There is a team in your branch
23 that is assigned to the Compton project?

24 A. There is not now.

25 Q. There was?

1 A. Yes.

2 Q. What happened to that team?

3 MR. HERRON: Objection. Calls for speculation.

4 THE WITNESS: It was before I was in this role.

5 Q. BY MR. JACOBS: So what has the involvement of

6 the branch been while you've been in the -- in your

7 current role?

8 A. My branch's involvement has been more in an

9 on-call advisory capacity to the business office.

10 Q. And the "business office," you're referring to

11 what?

12 A. Compton School District.

13 Q. The business office is the ongoing

14 administrative entity?

15 A. Right.

16 Q. You understood from -- I take it from internal

17 discussions that one of the issues that surfaced was a

18 bathroom issue at Compton; is that correct?

19 A. Yes.

20 Q. Are you aware of any other bathroom-related

21 conditions in California public schools?

22 A. Not personally.

23 MR. SEFERIAN: Objection. Vague and ambiguous.

24 Q. BY MR. JACOBS: The issue of multi-tracking and

25 how multi-tracking is implemented is another issue that

1 we identified in the complaint.

2 What information -- what is your branch's role

3 in multi-tracking programs?

4 A. Duwayne, good old Duwayne has responsibility

5 for the administration of MTYRE grants and general

6 information.

7 Q. Have you participated in any discussions about

8 revisions to the MTYRE program in your current capacity?

9 A. Yes.

10 Q. What sorts of discussions have those been?

11 A. Those are generally in response to legislative

12 proposals.

13 Q. Have you initiated any such proposals?

14 A. Not that I can recall.

15 Q. Is there a prevailing view in your branch about

16 what the -- let me come at this from another direction.

17 When you've made those analyses of legislative

18 proposals, are there any consistent themes that come out

19 of your branch in response to those proposals with

20 respect to MTYRE programs?

21 MR. HERRON: Objection. Vague and ambiguous.

22 Calls for speculation.

23 THE WITNESS: No, not any particular themes.

24 Q. BY MR. JACOBS: Are there some particular

25 directions that your branch would like to see MTYRE

1 programs head into?

2 MR. HERRON: Same objections.

3 THE WITNESS: We have a concern related to

4 MTYRE in light of the new effort to extend the school

5 year for middle schools and other programs that extend

6 into summer, or supplemental service that become

7 difficult for year-around schools to participate in, and

8 that often gets overlooked in the legislative process.

9 Q. BY MR. JACOBS: So extending the school year

10 may be particularly difficult when the school is on an

11 MTYRE program; is that the point?

12 A. That is --

13 MR. SEFERIAN: Objection. Overly broad. Vague

14 and ambiguous.

15 THE WITNESS: That can be a problem, yes.

16 Q. BY MR. JACOBS: Is that something that has

17 shown up? Has that issue shown up in your analysis of

18 legislative proposals?

19 A. Yes, that's an issue that arises in

20 legislation.

21 Q. Are you aware of any other issues -- let me see

22 if I can approach this differently.

23 Are you aware of any evaluations of MTYRE

24 programs that have been provided to your branch?

25 A. Yeah.

1 Q. What are you aware of?

2 A. Recently there was an evaluation or a

3 suggestion in an evaluation that the API rankings, that

4 the test results of students correlated negatively with

5 year-around schools.

6 Q. And was there a suggestion that there was a

7 causal relationship?

8 A. There was a discussion in that report that was

9 done, yes.

10 Q. What was the source of that report?

11 A. I'm not sure. It may have been -- I'm not

12 sure. It was not the department.

13 Q. So it was an external report?

14 A. Yes.

15 Q. When did you see it?

16 A. It's been in the last month.

17 Q. What else do you recall of the report's

18 conclusions?

19 MR. SEFERIAN: Objection. Calls for

20 speculation.

21 THE WITNESS: I just recall that we don't think

22 that they substantiated that.

23 Q. BY MR. JACOBS: They just didn't substantiate

24 the statistical correlation, or they didn't substantiate

25 the causal relationship?

1 A. The causal relationship.
 2 Q. And do you have any -- did you have contrary
 3 information, or just did you simply conclude that there
 4 was insufficient substantiation in the report itself?
 5 A. Insufficient substantiation of cause and
 6 effect.
 7 Q. Let me ask the question directly. Do you have
 8 any information that was contrary on that question?
 9 MR. SEFERIAN: You mean her personally?
 10 Q. BY MR. JACOBS: Are you aware of any
 11 information in the branch that's contrary to that
 12 conclusion?
 13 A. No.
 14 Q. Do you have a belief based on your knowledge
 15 and experience in the education system that they're not
 16 causally related?
 17 MR. HERRON: Objection. Calls for speculation.
 18 Also asks for an expert opinion beyond the competence of
 19 this witness.
 20 THE WITNESS: Our concern is just that
 21 conclusions not be drawn without sufficient evidence.
 22 Q. BY MR. JACOBS: Do you have a belief yourself?
 23 MR. HERRON: Same objection.
 24 THE WITNESS: I believe they started out poor
 25 performing, and that's why they -- and they are in

1 low-income districts, and that it wasn't year-around
 2 school that caused them to do poorly on the test. That
 3 was our concern.
 4 Q. BY MR. JACOBS: Have you -- are you aware of
 5 any other evaluations of MTYRE programs?
 6 A. I'm not personally aware.
 7 Q. Do you -- does the department have an
 8 officially expressed concern about the expansion of
 9 MTYRE and whether that's good or bad for California
 10 public schoolchildren?
 11 MR. SEFERIAN: Objection. Calls for
 12 speculation. Overly broad. Vague and ambiguous.
 13 THE WITNESS: There's not a department position
 14 on MTYRE.
 15 Q. BY MR. JACOBS: How about your branch, has your
 16 branch expressed a position on whether MTYRE -- that
 17 policy makers should be concerned about the expansion of
 18 MTYRE programs?
 19 MR. SEFERIAN: Objection. Vague and ambiguous.
 20 THE WITNESS: No, our role is to ensure that
 21 they get served fairly and well, and that information is
 22 available for those that have no choice but to go on
 23 multi-track year-around school.
 24 Q. BY MR. JACOBS: So the answer is, no, you have
 25 not expressed -- your branch has not expressed the view

1 that it is deleterious to educational outcomes or
 2 educational objectives that multi-track, year-around
 3 programs might be expanded?
 4 MR. HERRON: Objection. Argumentative.
 5 THE WITNESS: I don't know whether -- what was
 6 the question?
 7 Q. BY MR. JACOBS: Whether your branch has -- let
 8 me refine it a little bit. When you are advocating for
 9 more facilities funding, do you point out that one
 10 benefit of more facilities funding would be less need
 11 for multi-track, year-around education in the belief
 12 that MTYRE, all things being equal, would be better if
 13 it wasn't expanding?
 14 MR. HERRON: Objection. Vague and ambiguous in
 15 the use of the term "you."
 16 THE WITNESS: Yeah, we don't -- now I've
 17 lost -- we don't advocate for more facilities funding to
 18 get people off MTYRE. Is that the question?
 19 MR. JACOBS: Yeah.
 20 THE WITNESS: We don't do that.
 21 (Record read.)
 22 Q. BY MR. JACOBS: In providing your estimates of
 23 the amount of new classroom construction that is needed,
 24 the kinds of estimates we talked about earlier in
 25 connection with those fingertip facts, do those

1 estimates assume that students will move out of MTYRE
 2 programs into traditional calendared programs?
 3 MR. SEFERIAN: Objection. Calls for
 4 speculation.
 5 THE WITNESS: And I don't know the answer.
 6 Q. BY MR. JACOBS: Just to make sure I asked the
 7 question in this way, in your personal opinion, based on
 8 your experience in the educational system, do you
 9 personally believe that MTYRE programs are in a general
 10 case beneficial, neutral, deleterious to education?
 11 MR. HERRON: Objection. Vague and ambiguous.
 12 Calls for speculation. Calls for an expert opinion
 13 beyond the capabilities of this witness.
 14 THE WITNESS: I think year-around education is
 15 good, the more multi -- the more tracks you have, the
 16 more it increases the difficulty of delivering a good
 17 program.
 18 Q. BY MR. JACOBS: Would it be fair to
 19 characterize your views that the MTYRE presents special
 20 challenges to educational administrators?
 21 MR. HERRON: Same objections.
 22 THE WITNESS: I think it's challenging.
 23 Q. BY MR. JACOBS: Do you have a view as to what
 24 makes for a successful implementation of an MTYRE
 25 program as opposed to an unsuccessful one?

1 MR. HERRON: Same objections.
 2 THE WITNESS: No, I don't know enough about it.
 3 Q. BY MR. JACOBS: Do you know whether your branch
 4 has conducted a study of that question?
 5 A. I don't know that.
 6 Q. Have you participated in any discussions in
 7 which conducting such a study was the topic of the
 8 discussion?
 9 A. No.
 10 Q. Has the study that you referred to that drew
 11 both the statistical correlation and proposed a causal
 12 relationship between poor educational outcomes and
 13 MTYRE, did that study prompt any discussion about
 14 whether additional studies should be performed?
 15 A. No, because the study wasn't about MTYRE, it
 16 was about the testing results, and that was just one
 17 of -- a conclusion they drew from the bigger study.
 18 Q. Did that conclusion prompt any discussion about
 19 whether additional study of MTYRE would be called for?
 20 A. No.
 21 MR. JACOBS: Let's mark as the next document
 22 the approved minutes of the California State Board of
 23 Education, public session, July 12-13, 2000.
 24 (Exhibit SAD-38 was marked.)
 25 Q. BY MR. JACOBS: Directing your attention to

1 page 4, item 8, CSIS. The minutes state, Susie Lange
 2 deputy superintendent, stated that the Board's role is
 3 now minor, but will grow over the years. Did you say
 4 that in words or substance?
 5 A. Yes.
 6 Q. What did you mean by the Board's role would
 7 grow?
 8 A. That was a year ago, and CSIS is relatively new
 9 and small, and it's going to get bigger, and I expect
 10 that the oversight of the State Board of Education will
 11 grow with it.
 12 Q. So by the Board there, you were actually
 13 referring to the members of the Board of Education and
 14 the role they would play in overseeing the uses to which
 15 CSIS data would be put, for example?
 16 MR. SEFERIAN: Objection. Misstates the
 17 witness' testimony.
 18 THE WITNESS: That's not what I meant.
 19 Q. BY MR. JACOBS: What did you mean?
 20 A. They have a role of approving the data
 21 dictionary, and the data dictionary will get bigger.
 22 Q. Then I assume this is a report of what you
 23 said, the funding for this project goes through the
 24 California Department of Education to the Kern County
 25 Office of Education to FCMAT to CSIS. Is that correct,

1 you said that?
 2 A. Yes.
 3 Q. Is that, in fact, the funding pathway?
 4 A. Yes, for the bulk of the money. The Department
 5 of Education keeps a small piece, but FCMAT gets the big
 6 piece of it.
 7 Q. What is the explanation for why CSIS is funded
 8 through FCMAT?
 9 A. Prop 98.
 10 Q. How did that cause that to happen?
 11 A. The State Department of Education cannot spend
 12 Prop 98 funding. Do you know what Prop 98 is?
 13 Q. Go ahead.
 14 A. In order to carve out enough money to pay for
 15 this project, it was beneficial from the State
 16 standpoint to take it out of the appropriations that's
 17 allocated out of Prop 98. So they couldn't give it to
 18 us to spend, they have to give it to an LEA to spend.
 19 Q. And the Prop 98 restriction at issue here is a
 20 restriction on what can go to administration?
 21 A. Just what can be spent by the State versus a
 22 local school, a local education agency.
 23 Q. And then data collection is an essential part
 24 of the assessment and accountability systems, did you
 25 say that in words or substance?

1 A. Yes.
 2 Q. What did you mean by that?
 3 A. That understanding what's going on out there is
 4 beneficial to helping us make decisions about policy and
 5 spending.
 6 Q. Does FCMAT have an operational role in CSIS
 7 that's not very good?
 8 Is CSIS a project unto itself and does the
 9 funding merely come through FCMAT, or does FCMAT play a
 10 role in the design and development of CSIS?
 11 MR. HERRON: Objection. Compound.
 12 THE WITNESS: FCMAT contracts with a person
 13 who -- with an entity that does CSIS. FCMAT does not
 14 participate.
 15 Q. BY MR. JACOBS: Does CSIS administer that
 16 contract?
 17 A. FCMAT administers the contract.
 18 Q. In the sense of overseeing the performance of
 19 the contractor?
 20 A. FCMAT oversees the performance of the
 21 contractor, yes.
 22 Q. Have you been involved in any discussions about
 23 possibly expanding FCMAT's role to cover additional
 24 areas of potential concern in terms of what they examine
 25 when they go into a school district?

1 MR. SEFERIAN: Objection. Vague and ambiguous.
 2 THE WITNESS: So repeat the question.
 3 MR. JACOBS: Read it, please.
 4 (Record read.)
 5 THE WITNESS: Yes.
 6 Q. BY MR. JACOBS: What such discussions?
 7 A. Whether or not they should be involved in
 8 evaluating the education program instead of just the
 9 fiscal.
 10 Q. The shorthand for what they do now is examine
 11 the fiscal operations of a school district, correct?
 12 A. Yes.
 13 Q. And the topic of discussion was whether their
 14 role should be expanded to cover the educational program
 15 as well?
 16 A. Yes.
 17 Q. And by educational program, what was meant?
 18 A. The academic performance, not just the fiscal
 19 performance of a district.
 20 Q. By "academic performance," what kinds of
 21 factors were under discussion?
 22 A. That would open the area of looking at their
 23 curriculum, looking at anything involved in the delivery
 24 of the educational program as opposed to just how they
 25 handle their finances and their budgeting.

1 Q. Would that include -- did the discussion
 2 contemplate including an area such as the condition of
 3 facilities?
 4 A. No.
 5 Q. Did the discussion contemplate including an
 6 area such as the availability of instructional
 7 materials?
 8 A. No.
 9 I have to correct the facilities thing.
 10 There's nothing right now that precludes FCMAT from
 11 looking at facilities. If a district called them in and
 12 asked them to help them evaluate, that would be part of
 13 their business operations, and I assume -- and they
 14 could do that. That's different than what we are
 15 talking about right now.
 16 Q. With respect to the expansion of the role?
 17 A. Right.
 18 Q. So with respect to facilities, are you aware of
 19 instances in which FCMAT has played a role in evaluating
 20 facilities issues?
 21 A. I'm not aware of that personally.
 22 Q. But you understand it to be within their
 23 charter to undertake that if asked?
 24 A. Yes.
 25 Q. And are you aware of any instances in which

1 they have been asked to do that through the
 2 superintendent request mechanism that we discussed
 3 earlier?
 4 MR. SEFERIAN: Objection. Vague and ambiguous.
 5 THE WITNESS: I'm not aware of the
 6 superintendent having asked them to do facilities.
 7 Q. BY MR. JACOBS: Is there anything -- is there
 8 any barrier that you're aware of, any institutional
 9 barrier to that request being made of FCMAT?
 10 MR. SEFERIAN: Objection. Calls for a legal
 11 opinion.
 12 THE WITNESS: I'm not aware of there being a
 13 barrier.
 14 Q. BY MR. JACOBS: So to set this up then, if you
 15 became aware, you collectively became aware of a major
 16 facilities issue in a school district, one possible
 17 avenue available to you, the department, would be to ask
 18 FCMAT to examine that facility's question, right?
 19 MR. SEFERIAN: Objection. Vague and ambiguous.
 20 Calls for a legal opinion. Calls for speculation.
 21 MR. HERRON: Michael, "you" has been defined
 22 two different ways.
 23 MR. JACOBS: It's collectively and you the
 24 department. They meant the same thing.
 25 MR. HERRON: Okay.

1 THE WITNESS: We the department use ourselves
 2 in facilities, so we have not called upon FCMAT. And I
 3 don't know that we would need to spend the money for
 4 them to do that.
 5 Q. BY MR. JACOBS: When you say we "use
 6 ourselves"?
 7 A. The school facilities planning division is
 8 capable of doing a level of evaluation of a facilities
 9 program without having to call -- call upon and pay for
 10 further external evaluations.
 11 Q. So the way we got to this stage is I asked you
 12 if the department became aware of a major facilities
 13 issue in a school district, could you engage FCMAT, and
 14 your answer was, we probably wouldn't do that because we
 15 have the internal resources. Is that a fair summary of
 16 your testimony?
 17 MR. SEFERIAN: Objection. Misstates the
 18 witness' testimony.
 19 THE WITNESS: We could do it, I assume,
 20 legally. I don't think we would.
 21 Q. BY MR. JACOBS: We could engage FCMAT legally?
 22 A. Yes.
 23 Q. I don't think we would because we have the
 24 internal resources to carry out such an evaluation?
 25 MR. SEFERIAN: Objection. Vague and ambiguous

1 overly broad.

2 Q. BY MR. JACOBS: Is that correct?

3 A. Yes.

4 Q. So what do you have in mind in characterizing
5 the capabilities of the facilities staff to engage in a
6 facilities evaluation?

7 MR. SEFERIAN: Objection. Calls for
8 speculation. Calls for an opinion. Overly broad.
9 Vague and ambiguous. Beyond the scope of knowledge of
10 this witness to testify.

11 THE WITNESS: It's beyond my scope.

12 Q. BY MR. JACOBS: Is it beyond your scope because
13 he told you it's beyond your scope, or do you really
14 think it's beyond your scope?

15 MR. HERRON: Come on. Ask her a question.

16 MR. SEFERIAN: Objection. Argumentative.

17 THE WITNESS: Yeah, a facilities evaluation is
18 very broad, so it would depend on the problem we were
19 evaluating as to whether we felt our facilities division
20 could do it or not.

21 Q. BY MR. JACOBS: Are you aware of any instance
22 in which the department has turned to its facilities
23 division to conduct an assessment of the sort that you
24 had in mind in proposing that you have that internal
25 capability?

1 MR. HERRON: I appreciate your having shown
2 this to the witness before asking her about it. That's
3 kind and beyond the call, but I do object to the use of
4 this document because I don't think it's been either
5 identified or previously produced in discovery.

6 Q. BY MR. JACOBS: Do you see at the top it says
7 SFPD field services consultants and analysts assist
8 California's 58 counties with long-range master planning
9 for new school facilities? Do you see that?

10 A. Yes, I do.

11 Q. What's your understanding of the role of
12 counties in that as referred to in that sentence,
13 counties as opposed to school districts?

14 MR. SEFERIAN: Objection. Calls for
15 speculation.

16 THE WITNESS: I don't know the answer to that.

17 Q. BY MR. JACOBS: Are you aware of any mechanism
18 by which the SFPD assesses whether counties or school
19 districts, in fact, have long-range master plans?

20 A. Am I aware if we do assess whether they have
21 them?

22 Q. I can use another word. Do you monitor whether
23 school districts or counties, in fact, have in place
24 long-range master plans for facilities?

25 MR. SEFERIAN: Objection. Vague and ambiguous

1 MR. HERRON: Objection. Vague and ambiguous.

2 THE WITNESS: I can't speak to that. Duwayne
3 would be a better source of information on the
4 specifics.

5 Q. BY MR. JACOBS: Are you aware generally if
6 they've conducted such evaluations?

7 MR. HERRON: Objection. Asked and answered the
8 question before.

9 THE WITNESS: I'm not specifically aware of an
10 example.

11 Q. BY MR. JACOBS: How about generally aware of
12 whether such evaluations have been conducted?

13 MR. HERRON: Objection. Asked and answered the
14 last two questions.

15 THE WITNESS: I think evaluation is problematic
16 for me because I think our staff is called upon to give
17 advice to school districts about their facilities, and
18 how that is defined, they do that routinely in answering
19 questions that they get asked. Where that stops and
20 starts with the evaluation, I don't know.

21 MR. JACOBS: Let me ask you about the next
22 document, the school facilities planning division, about
23 us, printed from the web of the CDE, and I guess this
24 will be SAD-39.

25 (Exhibit SAD-39 was marked.)

1 as to "monitor."

2 THE WITNESS: Yeah, I don't know for sure.

3 Q. BY MR. JACOBS: Have you participated in any
4 discussions about whether having such a monitoring
5 capacity would be beneficial?

6 A. I haven't participated in that.

7 Q. Aside from SFPD, from the school facilities
8 planning division, would your answer be the same if we
9 extended it to the Department of Education as a whole;
10 that is, you're unaware of a monitoring mechanism and
11 you haven't participated in discussions about whether
12 such a mechanism would be a good idea?

13 A. That's correct.

14 Q. And on an informal basis do the geographic
15 representatives have a practice of reporting to the
16 branch that they have observed facilities issues in the
17 course of their -- of their visits to schools for school
18 districts?

19 MR. SEFERIAN: Objection. Vague and ambiguous.

20 THE WITNESS: The field representatives that
21 work for these -- that work for Duwayne?

22 MR. JACOBS: Correct.

23 THE WITNESS: Duwayne calls all the field
24 representatives in to Sacramento periodically for that
25 purpose, for reporting in as well as receiving

1 information that they need.
 2 Q. BY MR. JACOBS: Do you -- are you aware of any
 3 actions taken as a result of those meetings?
 4 MR. HERRON: Objection. Calls for specu --
 5 take that back.
 6 THE WITNESS: I don't know. I'm -- my
 7 assumption is that Duwayne -- any information he would
 8 receive that he felt we needed to have, he would give
 9 me.
 10 Q. BY MR. JACOBS: Have there been instances in
 11 which he has come to you and said something along the
 12 lines of, you know, in the XYZ school districts they are
 13 really in a jam on facilities, I learned this through my
 14 field representative, through my field services
 15 consultant?
 16 A. I don't recall that happening.
 17 Q. Have you encouraged that kind of reporting?
 18 MR. SEFERIAN: Objection. Vague and ambiguous.
 19 Overly broad.
 20 THE WITNESS: I encourage my division directors
 21 to do what they need to do to do their jobs, and they
 22 don't necessarily always have to report all of that to
 23 me. So I would assume that kind of feedback comes in
 24 and gets acted upon by Duwayne and his people, but I
 25 have not been a participant in that.

1 Q. BY MR. JACOBS: Do you have any understanding
 2 of the ways in which Mr. Brooks is empowered to act on
 3 such information?
 4 MR. SEFERIAN: Objection. Calls for a legal
 5 opinion.
 6 THE WITNESS: I'm not sure I understand what
 7 you're asking.
 8 Q. BY MR. JACOBS: When we talked earlier about
 9 complaints from parents, by the time we got through the
 10 discussion on various formats, my takeaway from our
 11 discussion was that at the end of the day, essentially
 12 your response to parents is these are the people who can
 13 take action on your complaint, we at the state level
 14 aren't empowered to take action on your complaint.
 15 Whether or not that's an accurate characterization,
 16 that's my takeaway, and you don't have to agree or
 17 disagree.
 18 But it's in that context that I ask you whether
 19 Mr. Brooks is empowered to take action if he learns of a
 20 facility situation through his field services
 21 consultants and analysts?
 22 MR. SEFERIAN: Calls for speculation and a
 23 legal opinion. Objection.
 24 THE WITNESS: Well, I absolutely expect Duwayne
 25 to take action, as does Duwayne expect me to expect

1 Duwayne to take action without having to ask that.
 2 There are two routes for information to come
 3 into the department. The formal one is through the
 4 superintendent's office which has a tracking system
 5 because it has to come back out that way. That would be
 6 if a parent wrote and said I have a concern, and that
 7 would be documented.
 8 But if people call in or information comes in
 9 directly to Duwayne's office, then I expect that he will
 10 act on that and do as much as possible to solve the
 11 problem, and often solving the problem is to get the
 12 person connected with the person closest to them that
 13 actually can solve the problem, and understand that we
 14 are not necessarily that entity.
 15 Q. BY MR. JACOBS: So my question to you is, what
 16 other than putting -- this is a different situation now.
 17 This is a situation in which the field services
 18 consultant is reporting to Duwayne there is a major
 19 facilities issue at the XYZ school district. What is
 20 the range of tools available to Mr. Brooks to address
 21 that, to deal with that information?
 22 MR. SEFERIAN: Objection. Hypothetical. Calls
 23 for speculation. Calls for a legal opinion.
 24 MR. HERRON: Assumes facts not in evidence.
 25 THE WITNESS: And all of that said, it really

1 would depend on the kind of complaint. If it was a
 2 safety issue, I would expect them to take an action to
 3 ensure that it got taken care of, if that meant the
 4 visiting consultant should at the time and place talk to
 5 the person in charge of that facility to address and
 6 then report it and then we would follow it up.
 7 If it's -- if they don't have enough classrooms
 8 for their kids, that's a different kind of a problem,
 9 and we would address it depending on what a possible
 10 solution would be.
 11 Q. BY MR. JACOBS: Let's take the latter case.
 12 What is the range of tools available to Mr. Brooks in
 13 his official capacity to address a situation where there
 14 are not enough classrooms?
 15 MR. SEFERIAN: Objection. Hypothetical
 16 question. Calls for speculation. Calls for a legal
 17 conclusion.
 18 MR. HERRON: I believe it's been asked and
 19 answered.
 20 THE WITNESS: I consider the least we could do
 21 is to make sure it's brought to the attention of
 22 officials that have the authority or the ability to
 23 correct it.
 24 Q. BY MR. JACOBS: That's at the local. You now
 25 have in mind officials at the local level, correct?

1 A. Generally, yeah.
 2 Q. So Mr. Brooks doesn't have any tools available
 3 to him to -- to actually -- even to facilitate
 4 addressing that problem; isn't that correct?
 5 MR. SEFERIAN: Objection. Vague and ambiguous.
 6 Calls for an opinion. Calls for speculation. Asked and
 7 answered.
 8 MR. HERRON: Argumentative.
 9 THE WITNESS: Like a magic wand?
 10 Q. BY MR. JACOBS: Let's take some possibilities.
 11 He doesn't have any power as -- he doesn't have any
 12 power, as you understand his powers, to order school
 13 districts to address a shortage of class sizes by
 14 spending their own money; is that correct?
 15 MR. SEFERIAN: Objection. Calls for an
 16 opinion. Calls for speculation. Incomplete
 17 hypothetical question.
 18 THE WITNESS: I mean, our powers are very
 19 limited statutorily.
 20 Q. BY MR. JACOBS: And they don't include the
 21 power to issue that sort of order I just --
 22 MR. SEFERIAN: Objection. Calls for a legal
 23 opinion.
 24 THE WITNESS: We have very little power to
 25 issue orders.

1 Q. BY MR. JACOBS: And specifically I just need a
 2 clean answer to my question. You don't understand your
 3 branch or Mr. Brooks to have the power to order a school
 4 district to spend its own money to build additional
 5 classrooms; isn't that correct?
 6 A. That's correct.
 7 Q. And now let's take a different case. Let's
 8 take -- one of the allegations in the complaint is that
 9 there are classrooms that have persistent vermin and
 10 rodent issues.
 11 If one of the school facilities -- the field
 12 services consultants reported to Mr. Brooks, I've been
 13 to that school and they've got rodents and vermin just
 14 like the parents say, and I understand the field
 15 services consultant says that the parents have
 16 complained and nothing happened, what are the range of
 17 tools available to Mr. Brooks in that case?
 18 MR. HERRON: Objection. Assumes facts not in
 19 evidence. Incomplete and improper hypothetical. Vague
 20 and ambiguous. Calls for speculation. Calls for a
 21 legal conclusion. Goes beyond the expertise of this
 22 particular witness.
 23 THE WITNESS: My expectation is that any time
 24 one of our consultants would observe something that was
 25 in that vein of a very apparent potential health risk,

1 that that would be reported to officials both of the
 2 school district and local health officials.
 3 Q. BY MR. JACOBS: Are you aware of any policy on
 4 the last part of your answer, that is, that
 5 health-related issues should, as a matter of routine
 6 practice, be reported to local health officials?
 7 A. I don't know of -- I don't know if there's a
 8 policy or a law or anything in that regard.
 9 Q. And in no case does Mr. Brooks have a pot of
 10 money that he can draw on to facilitate the correction
 11 of problems that a field services consultant would
 12 relate to him about facilities; isn't that correct?
 13 MR. SEFERIAN: Objection. Vague and ambiguous.
 14 MR. HERRON: Calls for speculation.
 15 THE WITNESS: That's probably true, we don't
 16 have money allocated to us for those purposes.
 17 Q. BY MR. JACOBS: Are there any other tools that
 18 you are aware of that Mr. Brooks -- we'll use Mr. Brooks
 19 as a proxy for your branch -- that your branch has
 20 available to you to address facilities issues that a
 21 field services consultant would report?
 22 MR. SEFERIAN: Objection. Vague and ambiguous.
 23 Calls for a legal opinion. Calls for speculation.
 24 THE WITNESS: I'm not sure I understand the
 25 question.

1 Q. BY MR. JACOBS: We talked about the capacity to
 2 order, we've talked about whether there's a pot of money
 3 available, we've talked about reporting to local
 4 officials.
 5 A. Uh-huh.
 6 Q. Are there any other?
 7 A. I consider our advice to be a very valuable
 8 asset to districts. The rat thing to me has nothing to
 9 do with whether he's a facilities consultant or a nurse
 10 or a P.E. teacher, that's like clean up the place.
 11 But in terms of facilities-related things that
 12 have to do with our responsibility for them, we are --
 13 our first line of action should be to ensure that that
 14 facility and the people in charge of it understand
 15 what's available to them to fix something.
 16 Q. So, in fact, one of the tools that you rely on
 17 most heavily is putting out advisories on issues that
 18 come to your attention through whatever mechanism?
 19 MR. HERRON: Could we have that reread or
 20 restated.
 21 (Record read.)
 22 MR. SEFERIAN: Objection. Misstates the
 23 witness testimony.
 24 MR. JACOBS: Go ahead.
 25 THE WITNESS: We use advisories to disseminate

1 information.
 2 Q. BY MR. JACOBS: But more particularly, are
 3 advisories a tool available to you to address particular
 4 issues that from time to time come to your attention?
 5 A. Yes, advisories are.
 6 Q. And for that purpose it doesn't really matter
 7 how they come to your attention, correct?
 8 A. That's correct.
 9 Q. If you become aware of a problem and it seems
 10 like a new advisory would be useful and the resources
 11 are available, you generate an advisory to districts
 12 about the problem and the tools that are available to
 13 them to address it?
 14 MR. SEFERIAN: Objection. Hypothetical
 15 question. Vague and ambiguous.
 16 MR. HERRON: Calls for speculation.
 17 THE WITNESS: Yes.
 18 Q. BY MR. JACOBS: I think we've covered four
 19 orders, or the lack of a capacity to order, a pot of
 20 funds, reference to local officials, and advisories.
 21 Are there any other tools available to the
 22 branch to deal with facilities issues that come to your
 23 attention?
 24 A. Not that I can think of.
 25 Q. Have you participated in any discussions in

1 which the question of the expansion of the availability
 2 of such tools to your branch to deal with facilities
 3 issues has been discussed?
 4 A. No.
 5 Q. Have you participated in any discussion in
 6 which the expansion of tools available to the branch to
 7 deal with other issues that come to the branch's
 8 attention, local issues, issues that come to the
 9 branch's attention about what's happening in school
 10 districts or schools has been discussed?
 11 A. Related to facilities?
 12 Q. I just moved off of facilities to a more
 13 general question.
 14 A. So repeat it again.
 15 Q. Where you've had discussion along the lines of,
 16 we could really use an additional tool to deal with this
 17 sort of problem in school districts.
 18 A. Yes.
 19 Q. What sorts of discussions do you have in mind?
 20 A. Education technology is a good example.
 21 Q. And the tool there that you -- the kinds of
 22 tools that you were talking about, what did you --
 23 A. There's a lot of information available now
 24 about computer-related issues that schools could benefit
 25 from knowing that we could help them understand better.

1 Q. So does this -- do you distinguish this from
 2 advisories, or is this an expansion of the advisory?
 3 I think of advisories as information flowing
 4 from the department to districts.
 5 A. Yes, I think it's an expansion in that this is
 6 the kind of stuff you probably need to go there, go help
 7 them evaluate how they're using their tool and suggest
 8 ways that they could do it differently and better.
 9 Q. So this is more -- less in the nature of a
 10 general advisory to school districts, and more
 11 particularized as to the circumstances of a particular
 12 school or school district?
 13 A. Yes.
 14 Q. And you've discussed whether it would be
 15 beneficial to have additional personnel who were
 16 appropriately trained so that they could consult with
 17 school districts in this way?
 18 A. Yes.
 19 MR. SEFERIAN: Objection. Misstates witness'
 20 testimony.
 21 Q. BY MR. JACOBS: Have you had any discussions
 22 about other tools or the same tool in other contexts
 23 being useful to have in your repertoire?
 24 A. Yeah, I lost you on that one.
 25 Q. So we identified another tool, which is a

1 consulting capacity, and we talked about it being
 2 applied to the technology dissemination issue, right?
 3 A. Yes.
 4 Q. Have you talked about having additional
 5 consulting capacity for other purposes?
 6 A. Yes.
 7 Q. And what other purposes?
 8 A. The school fiscal services area is one that we
 9 have lost staff through the budget, the state budget
 10 over the years. We used to have a much broader capacity
 11 to go do hands-on consulting with districts. That's
 12 really been stripped away.
 13 Q. So you've had discussions, say, within the last
 14 two years about rebuilding that capacity in the
 15 department?
 16 A. Yes.
 17 Q. To serve the policy objective of what?
 18 A. Providing assistance to school districts on
 19 handling their fiscal affairs.
 20 Q. Would one of those -- would one of the benefits
 21 of such an expansion of capacity be that school
 22 districts could be made available of categorical funding
 23 sources that they might not be drawing upon?
 24 MR. HERRON: Objection. Vague and ambiguous.
 25 Q. BY MR. JACOBS: Is that something you discussed

1 as a benefit?
 2 A. No.
 3 Q. What did you have in mind in terms of how the
 4 school district would benefit?
 5 A. More in the management, their business
 6 management.
 7 Q. As in accounting controls, or what?
 8 A. Yes, fiscal -- just traditional fiscal
 9 management.
 10 Q. Have you had any other discussions about
 11 enhancing the tools available at the branch in dealing
 12 with local issues?
 13 A. No.
 14 Q. And if I change the question a little bit to
 15 discussions you've had about capacity building in your
 16 branch, have you had discussions in the last two years
 17 about where it would be beneficial to add capacity in a
 18 general sense?
 19 MR. SEFERIAN: Objection. Vague and ambiguous.
 20 Q. BY MR. JACOBS: What have those discussions
 21 been?
 22 MR. SEFERIAN: Objection. Vague and ambiguous.
 23 THE WITNESS: In my branch?
 24 MR. JACOBS: Uh-huh.
 25 THE WITNESS: It's all relatively technical.

1 On their data gathering, on their fiscal management,
 2 we -- other than education technology, we don't deliver
 3 programs out of my branch.
 4 Q. BY MR. JACOBS: So what you were just referring
 5 to when you referred to technical aspects, that was a
 6 capacity that you had discussions about building to have
 7 more technical -- not technical in the technology sense,
 8 but technical in the fiscal sense?
 9 A. Yes.
 10 Q. And the discussion was about whether it would
 11 be beneficial for the branch to have additional such
 12 capacity?
 13 A. Yes.
 14 Q. Let me ask you about management bulletin 001.
 15 I think it's there.
 16 (Exhibit SAD-40 was marked.)
 17 Q. BY MR. JACOBS: So SAD-40 is a January 12th,
 18 2001 memo from you to county and district
 19 superintendents, charter school administrators?
 20 A. There should be a comma in there, I think.
 21 Q. It's to district superintendents, whether or
 22 not they have charter schools, correct?
 23 A. Uh-huh.
 24 Q. Is this a kind of memo that you issue on a
 25 periodic basis?

1 A. Yes.
 2 Q. What is its purpose?
 3 A. It's to provide a summary of the budget as it
 4 came out from the governor when he first announces it in
 5 January.
 6 Q. How is this document prepared?
 7 A. The school fiscal services division has a
 8 policy analysis unit that goes through the budget and
 9 synthesizes the information for the field.
 10 Q. Is this the -- are there any other vehicles in
 11 the department that you're aware of by which school
 12 districts get this kind of information?
 13 A. Not all in one place.
 14 Q. But they may get information about particular
 15 programs from other branches?
 16 A. Yes.
 17 Q. And in the course of your involve -- how are
 18 you involved in the preparation of this document?
 19 A. I just review it right before it goes out.
 20 Q. For general comprehensibility and issues like
 21 that?
 22 A. Yes.
 23 Q. And do you personally get involved in finding
 24 out what happened in the budget process to particular
 25 proposals?

1 A. Yes.
 2 Q. And in what way?
 3 A. The governor's budget is the product of input
 4 from us, as well as from himself. So our first run
 5 through a governor's new budget would be to see what of
 6 our recommendations were incorporated into it, and
 7 then -- so we have our self-serving reasons because
 8 there are things we need for ourselves to operate.
 9 And then, in addition, we would look at what
 10 newly the governor was offering for -- generally he's
 11 where the big-picture issues come from.
 12 Q. In that context, from the governor's office to
 13 the legislature, things can happen as well, right? The
 14 legislature may not adopt what the governor proposes?
 15 A. Right.
 16 Q. And is that something that you monitor?
 17 A. Yes.
 18 Q. So if somebody in the department says, what
 19 happened to that proposal from the governor to do "X,"
 20 you're one of the people they might turn to and ask that
 21 question?
 22 A. Yes.
 23 Q. At one point there was a proposal for a special
 24 funding allocation to incent (sic) the recruitment of
 25 teachers for districts in which there were large numbers

1 of emergency-credentialed teachers.
 2 Are you aware of that proposal?
 3 A. Only as much as you just said, yes, that there
 4 is such a proposal.
 5 Q. And do you have any information on what has
 6 happened to that proposal?
 7 A. I don't. I don't know.
 8 Q. Did the proposal come initially from your
 9 branch?
 10 A. It was a combination of the CT -- the
 11 California teacher credentialing commission and us and
 12 the governor's office staff. There were a number of
 13 people interested in that issue.
 14 Q. And how was your branch involved in that issue?
 15 A. A participant in a discussion about how to do
 16 that, what the best way to do that to keep track.
 17 Q. Why was your branch involved in that issue?
 18 A. My branch really wasn't.
 19 Q. You were personally?
 20 A. No, only -- I was not involved in that
 21 discussion.
 22 Q. The "we" there was the department?
 23 A. Yes.
 24 Q. Do you have any other information about what
 25 led to the development of that proposal?

1 A. Nothing other than that is a major concern of
 2 everyone right now, the number of emergency-credentialed
 3 teachers.
 4 Q. Do you recall the Butt case?
 5 MR. HERRON: He's not swearing.
 6 THE WITNESS: I recognize the name. I couldn't
 7 tell you right now what it was.
 8 MR. JACOBS: Let me just take a minute and see
 9 if I've covered everything.
 10 Q. In your -- you've been a deputy superintendent
 11 for four years; is that right?
 12 A. Yes.
 13 Q. In your four years as a deputy superintendent,
 14 have you participated in any discussions about measures
 15 that would enhance the effectiveness of local school
 16 boards?
 17 A. No. School boards? No.
 18 Q. The LAO report that you mentioned earlier
 19 dealing with school construction issues, one of the
 20 topics in that report is the -- is strengthening the
 21 accountability of local school boards for the delivery
 22 of facilities to their constituents.
 23 Do you recall that in that report?
 24 A. Not specifically, no.
 25 Q. Do you recall any discussion about that aspect

1 of the report, whether -- how local school board
 2 accountability could be strengthened?
 3 MR. HERRON: Whether there was such a
 4 discussion in which she was involved?
 5 MR. JACOBS: Yes.
 6 THE WITNESS: No.
 7 Q. BY MR. JACOBS: Do you have -- does your branch
 8 have any -- does your branch have any insight into how
 9 effective local school boards are at delivering the
 10 services that your branch is particularly charged with,
 11 such as facilities or technology?
 12 MR. SEFERIAN: Objection. Vague and ambiguous.
 13 Overly broad.
 14 MR. HERRON: Calls for speculation.
 15 THE WITNESS: The only involvement we have with
 16 boards would be through the fiscal services division
 17 generally, because they're -- a lot of the documentation
 18 of fiscal budgets and audits need to have a board
 19 approval, but we don't normally deal a lot with boards
 20 in my branch.
 21 Q. BY MR. JACOBS: Have you had any discussions
 22 about measures that would strengthen the capacity of
 23 local school boards to monitor the performance of school
 24 administrators in delivering the sorts of services that
 25 your branch has a special interest in?

1 A. No.
 2 Q. Have you participated in any discussions in
 3 which the issue has been whether -- or the topic has
 4 been whether local school boards are equally responsive
 5 to the needs of all of their constituents? Let me
 6 reframe that a little bit.
 7 If we are right, that is, that if the
 8 plaintiffs here are right, that there are some schools
 9 in some school districts that are disparately treated
 10 with respect to facilities or textbooks or the other
 11 conditions we've identified in the complaint, one
 12 possible explanation for that would be the school boards
 13 are disparately responsive to different constituents.
 14 My question to you is whether with that as
 15 background, have you participated in any discussions in
 16 which the topic has been are school boards equally
 17 responsive to all our constituents, or are some left
 18 out, if you will, or disempowered or otherwise
 19 neglected?
 20 A. I haven't participated in that kind of
 21 discussion.
 22 Q. Are you aware of any assessment of that issue?
 23 A. No.
 24 Q. Are you aware of any programs in the department
 25 that monitor that question?

1 A. No.

2 Q. In your branch do you deal with discrimination

3 issues? If a complaint comes in that looks like

4 somebody's being discriminated against for some

5 particular reason, does that stay within your branch, or

6 does that go somewhere else in the department?

7 MR. SEFERIAN: Objection. Incomplete

8 hypothetical. Vague and ambiguous. Calls for

9 speculation.

10 THE WITNESS: We don't deal with discrimination

11 issues other than among our own employees in my branch.

12 MR. JACOBS: I have no further questions.

13 EXAMINATION BY MR. JORDAN

14 Q. Referring to Exhibit 33, that memo about

15 sanitation and codes for bathrooms.

16 A. Uh-huh.

17 Q. I know you didn't write this. This is another

18 Duwayne Brooks memo. But there's a statement in here

19 about the enforcement process for school projects being

20 different than the process for private sector projects.

21 Do you have any familiarity at all with how

22 projects are designed and reviewed and constructed?

23 A. Not really.

24 Q. In particular what I wanted to ask you about

25 is -- let's take new construction, for example. This

1 memo says that enforcement of building code

2 requirements, regulations that deal with these topics is

3 the responsibility of the local school board. Do you

4 have any information whether what this means is that

5 individual board members are supposed to go out and try

6 to figure out whether a school building being designed

7 complies with all code requirements, or whether it has

8 in mind to hire somebody like an architect to take care

9 of that thing?

10 A. It's the latter.

11 Q. Okay. And as to existing school facilities, I

12 take it you wouldn't expect board members to go out and

13 try to figure out whether all existing buildings comply

14 with all the codes that were in effect at the time they

15 were built?

16 MR. SEFERIAN: Objection. Calls for

17 speculation.

18 THE WITNESS: I think generally the reference

19 to the school board means that the buck stops with them,

20 and they ought to make sure it's getting done.

21 Q. BY MR. JORDAN: So if there's a complaint, for

22 example, it would be their responsibility to make sure

23 the complaint was investigated and that sort of thing?

24 A. Yes.

25 Q. Okay. Another area that I'd like to clarify at

1 the risk of getting things more confused. There was

2 some discussion about mandates and mandatory funding and

3 discretionary funding.

4 A. Uh-huh.

5 Q. And a particular question asked, I don't

6 pretend to remember the exact wording, but the question

7 was essentially mandatory for whom, and your response

8 was something along the lines of, it's mandatory for the

9 giver. I think you were talking about the State in that

10 case.

11 Were you having reference to the commission on

12 State Mandates where the State require something new and

13 one way or another they've got to provide the funding

14 for it, is that the definition?

15 MR. HERRON: Objection. Calls for speculation.

16 Calls for a legal conclusion.

17 THE WITNESS: I wasn't referring to the

18 Commission on State Mandates.

19 Q. BY MR. JORDAN: So when you talked about

20 mandatory funding, what did you mean by that?

21 A. I meant that either you are told that you have

22 to do something and given the money to do it, or you're

23 told you can and here is how you get it if you want it.

24 Q. Okay. For example, your digital high school

25 program, that's not something districts have to do, but

1 if they want to take advantage of that, then they've got

2 to spend the money in a particular way?

3 A. Yes.

4 Q. As opposed to discretionary funding or general

5 funding sort of like in your department where there are

6 strings on exactly how the money has got to be spent?

7 A. Actually, that's a good point, and I thought

8 about that later, that there is a third category, which

9 is the apportionment that goes out per student that's

10 neither discretionary nor mandatory, but given to the

11 district to use at their discretion. So that is a third

12 distinction.

13 And that money is not controlled by the state

14 as to how it's spent, it's controlled by that local

15 district and board.

16 MR. JACOBS: Okay. I think that's what I

17 wanted to clear up. No further questions.

18 MR. HERRON: None for us. I did want to thank

19 you for identifying the documents in the letter of May

20 25th. That was a pleasure to have you do that.

21 Do you want to stipulate?

22 MR. JACOBS: Do you have something in

23 particular in mind?

24 MR. HERRON: I don't want to have her come down

25 to the court reporter's office.

1 MR. JORDAN: She can sign it in front of any
2 notary.

3 MR. HERRON: I prefer to relieve the court
4 reporter of her obligations under the code and have 30
5 days after the receipt by us of the transcript to review
6 it to make any changes and to communicate those changes
7 to Mr. Jacobs and the other parties.

8 MR. JACOBS: And in the absence of such
9 communication, the transcript will be deemed signed?

10 MR. HERRON: Yes.

11 MR. JACOBS: So stipulated.

12 MR. HERRON: Great.

13 (The deposition concluded at 4:49 p.m.)

14 ---o0o---

15 Please be advised that I have read the
16 foregoing deposition. I hereby state there are:

17
18 (check one) _____ NO CORRECTIONS
19 _____ CORRECTIONS ATTACHED

20
21 _____
22 Date Signed

23 _____
24 SUSIE LANGE

25 Case Title: Williams vs State of California

Date of Deposition: Thursday, May 31, 2001

1 REPORTER'S CERTIFICATE

2
3 I certify that the witness in the foregoing
4 deposition,

5 SUSIE LANGE,

6 was by me duly sworn to testify the truth, the whole
7 truth, in the within-entitled cause; that said
8 deposition was taken at the time and place therein
9 named; that the testimony of said witness was reported
10 by me, a duly certified shorthand reporter and a
11 disinterested person, and was thereafter transcribed
12 into typewriting.

13 I further certify that I am not of counsel or
14 attorney for either or any of the parties to said cause,
15 nor in any way interested in the outcome of the cause
16 named in said deposition.

17 IN WITNESS WHEREOF, I have hereunto set my hand
18 this 11th day of June, 2001.

19 _____
20 TRACY LEE MOORELAND, CSR 10397
21 State of California

1 DEPONENT'S CHANGES OR CORRECTIONS

2 Note: If you are adding to your testimony, print the
3 exact words you want to add. If you are deleting from
4 your testimony, print the exact words you want to
5 delete. Specify with "Add" or "Delete" and sign this
6 form.

7 DEPOSITION OF: SUSIE LANGE

8 CASE: WILLIAMS VS STATE OF CALIFORNIA

9 DATE OF DEPOSITION: THURSDAY, MAY 31, 2001

10 I, _____, have the following
11 corrections to make to my deposition:

12 PAGE LINE CHANGE/ADD/DELETE

13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____
19	_____	_____	_____
20	_____	_____	_____
21	_____	_____	_____
22	_____	_____	_____
23	_____	_____	_____
24	_____	_____	_____

25 SUSIE LANGE _____ DATE _____