

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF SAN FRANCISCO

3 UNLIMITED JURISDICTION

4 -----

5 ELIEZER WILLIAMS, a minor, by SWEETIE)
6 WILLIAMS, his guardian ad litem, et)
7 al., each individually and on behalf)
8 of all others similarly situated,)
9 Plaintiffs,)

10 vs.)

NO. 312236

11 STATE OF CALIFORNIA, DELAINE EASTIN,)
12 State Superintendent of Public)
13 Instruction, STATE DEPARTMENT OF)
14 EDUCATION, STATE BOARD OF EDUCATION,)
15 Defendants.)

VOLUME III

16 -----

17

18 Continued deposition of NANCY RUTH
19 MYERS, Ed.D., at 275 Battery Street,
20 25th Floor, San Francisco, California,
21 commencing at 9:43 A.M., Friday,
22 January 24, 2003, before Jo Ann
23 Bruscella, CSR No. 4295.

1 APPEARANCES OF COUNSEL:
 2
 3 FOR THE PLAINTIFFS:
 4
 5 ACLU FOUNDATION OF SOUTHERN CALIFORNIA
 6 BY: PETER J. ELIASBERG, ESQ.
 7 1616 Beverly Boulevard
 8 Los Angeles, California 90026-5752
 9 Tel: (213) 977-9500 x228
 10 Fax: (213) 250-3919
 11 E-mail: peliasberg@aclu-sc.org
 12
 13 FOR THE DEFENDANT STATE OF CALIFORNIA:
 14
 15 O'MELVENY & MYERS LLP
 16 BY: SHAUN M. SIMMONS, ESQ.
 17 400 South Hope Street
 18 Los Angeles, California 90071-2899
 19 Tel: (213) 430-6000
 20 Fax: (213) 430-6407
 21 E-mail: ssimmons@omm.com
 22
 23
 24
 25

1 APPEARANCES OF COUNSEL (CONTINUED):
 2
 3 FOR INTERVENOR LOS ANGELES UNIFIED
 4 SCHOOL DISTRICT:
 5
 6 STRUMWASSER & WOOCHEER LLP
 7 BY: KEVIN S. REED, ESQ.
 8 100 Wilshire Boulevard
 9 Suite 1900
 10 Santa Monica, California 90401
 11 Tel: (310) 576-1233
 12 Fax: (310) 319-0156
 13 E-mail: kreed@strumwooch.com
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 APPEARANCES OF COUNSEL (CONTINUED):
 2
 3 FOR THE DEFENDANTS SUPERINTENDENT OF PUBLIC
 4 INSTRUCTION, DELAINE EASTIN; STATE DEPARTMENT
 5 OF EDUCATION AND STATE BOARD OF EDUCATION:
 6
 7 STATE OF CALIFORNIA DEPARTMENT OF JUSTICE
 8 OFFICE OF THE ATTORNEY GENERAL
 9 BY: ANTHONY V. SEFERIAN, ESQ.
 10 DEPUTY ATTORNEY GENERAL
 11 1300 I Street, Suite 1101
 12 Sacramento, California 94244-2550
 13 Tel: (916) 445-8227
 14 Fax: (916) 324-5567
 15 E-mail: anthony.seferian@doj.ca.gov
 16
 17 FOR INTERVENOR CALIFORNIA SCHOOL BOARDS ASSOCIATION:
 18
 19 CALIFORNIA SCHOOL BOARDS ASSOCIATION
 20 BY: ABE HAJELA, SPECIAL COUNSEL
 21 555 Capitol Mall, Suite 1425
 22 Sacramento, California 95814
 23 Tel: (916) 442-2952
 24 Fax: (916) 442-1280
 25 E-mail: abe@olsonhagel.com

1 NANCY RUTH MYERS, Ed.D.,
 2 having been previously duly affirmed to tell the
 3 truth, the whole truth and nothing but the truth,
 4 testified further as follows:
 5
 6 EXAMINATION (CONTINUING)
 7 BY MR. SIMMONS:
 8 Q. Good morning, Dr. Myers.
 9 A. Good morning.
 10 Q. I just want to remind you briefly that you
 11 are still under oath here today. 09:43 AM
 12 A. Okay. Thanks. May I clarify one comment
 13 from yesterday?
 14 Q. You certainly may.
 15 A. On page 12 of the expert report, I believe
 16 you asked -- well, I'm sorry. It's really page 13 09:44 AM
 17 on the legislative findings that are noted A, B
 18 and C.
 19 Q. Uh-huh.
 20 A. I think you asked me yesterday how did I
 21 know about those, or I'm not exactly sure what the 09:44 AM
 22 question was. I said from Rob Corley. I want to
 23 clarify, yes, it was -- Rob Corley is the one that
 24 suggested that I look at the California code, but
 25 obviously those are legislative findings. Those

Page 376

1 aren't Rob Corley's findings. 09:44 AM
 2 Q. If you know, are those the legislative
 3 findings that are referred to in paragraph 46 of
 4 your report?
 5 A. I'm not sure that's the exact number of the
 6 code. 09:44 AM
 7 Q. I just want to do a couple quick points of
 8 clarification. There are very few states that
 9 require an ongoing inspection process; is that
 10 correct?
 11 MR. ELIASBERG: Objection, vague. 09:45 AM
 12 MR. SIMMONS: Actually, strike that.
 13 Q. You are aware of a number of states that do
 14 inspections when new facilities are constructed; is
 15 that correct?
 16 A. Yes. 09:45 AM
 17 Q. There are very few states that require any
 18 kind of inspection once the facility has been built;
 19 is that correct?
 20 A. There are some states, but I don't know
 21 what very few means. I don't know if I would 09:45 AM
 22 characterize out of fifty-plus states, if -- you
 23 know, what very few means. In my research of the
 24 states I looked at, there certainly wasn't a
 25 majority of those states, but I don't know that I

Page 377

1 would say very few, because I don't know what very 09:46 AM
 2 few means.
 3 Q. You identified two states as having a very
 4 specific process for addressing maintenance and
 5 operations.
 6 Those were Maryland and Virginia; is that 09:46 AM
 7 correct? Or West Virginia. I'm sorry.
 8 A. Yes, Maryland and West Virginia were the
 9 two states that have specific processes.
 10 Q. In the course of your multistate survey,
 11 did you have conversations with anyone about the 09:46 AM
 12 wisdom of having a very specific process for
 13 addressing maintenance and operations for all
 14 schools in a state?
 15 A. Yes.
 16 Q. Did anybody suggest to you that that was a 09:46 AM
 17 bad idea?
 18 A. My recollection right now is I don't know
 19 because of the numbers of people that I talked to
 20 over a ten-month period. You know, I can't imagine
 21 that somebody didn't say there's a concern about 09:47 AM
 22 that. But to say specifically who that would be, I
 23 couldn't do that right now without looking at my
 24 notes.
 25 Q. What concerns do you think folks would have

Page 378

1 raised in connection with having a very specific 09:47 AM
 2 process for addressing maintenance and operations
 3 for all schools in the state?
 4 MR. ELIASBERG: Objection to the extent it
 5 calls for speculation.
 6 THE WITNESS: Again, since I don't 09:47 AM
 7 remember, I don't know what they would really raise
 8 as objections.
 9 BY MR. SIMMONS:
 10 Q. Were you going to add to that answer?
 11 A. The only thing I would think would be it's 09:47 AM
 12 very difficult to have state requirements without
 13 funding to assist with that. Again, I don't
 14 remember anyone specifically said that to me.
 15 Q. Did anyone propose to you that it would be
 16 best to leave the maintenance and operations of 09:48 AM
 17 public school facilities within local control?
 18 MR. ELIASBERG: Objection, vague.
 19 THE WITNESS: Again, I don't remember
 20 anybody specifically saying that.
 21 BY MR. SIMMONS: 09:48 AM
 22 Q. Do you have an understanding of the term
 23 "local control," as it's used in connection with
 24 schools, the management of schools?
 25 A. My understanding would be what you're

Page 379

1 suggesting is that it's totally up to the local 09:48 AM
 2 district to decide how they will maintain their
 3 facilities if they choose to do -- whatever they
 4 choose to do, and nobody else will be involved in
 5 that decision. That's my understanding.
 6 MR. SIMMONS: I would like to have an 09:48 AM
 7 exhibit marked, which is a couple of e-mails.
 8 (Deposition Exhibit 4 was marked for
 9 identification.)
 10 BY MR. SIMMONS:
 11 Q. Have you had a chance to look at what's 09:50 AM
 12 been marked as Exhibit 4, Dr. Myers?
 13 A. Yes.
 14 Q. Do you recognize the first page of Exhibit
 15 4?
 16 A. What do you mean, do I recognize? 09:50 AM
 17 Q. Have you seen the document before?
 18 A. Yes.
 19 Q. Is this an e-mail communication that you
 20 sent to someone?
 21 A. Yes. 09:51 AM
 22 Q. The first page is an e-mail communication
 23 that you sent to Roger Young; is that correct?
 24 A. Yes.
 25 Q. And there is also a response from -- an

Page 380

1 e-mail response from Mr. Young on that page as well; 09:51 AM
2 is that correct?
3 A. Yes.
4 Q. If you will just look down toward the
5 bottom of the page, the first page of Exhibit 4. I
6 think you will see that you have -- the second 09:51 AM
7 sentence of that first paragraph under Roger says,
8 "As I am sure you are aware, there are few states
9 that require any kind of inspection once the
10 facility is built."
11 What did you mean by "few states," as you 09:52 AM
12 used it there?
13 A. Not a majority of the states.
14 Q. Can you turn to the second page of Exhibit
15 4? Have you seen that document before?
16 A. Yes. 09:52 AM
17 Q. Can you tell me what the document is?
18 A. It's the e-mail survey that I sent to
19 people across the United States.
20 Q. Does this document that's page 2 of Exhibit
21 4 include a response from someone you sent a survey 09:52 AM
22 out to?
23 A. Yes.
24 Q. Who is the response from?
25 A. David Anstrandt.

Page 381

1 Q. Let's see. Question five of your survey 09:53 AM
2 dealt with whether you were aware of other states
3 that have a very specific process for addressing
4 maintenance and operations for all schools in the
5 state; correct?
6 A. Yes, that was question five. 09:53 AM
7 Q. Mr. Anstrandt's response was, "You must be
8 a Democrat. I vote for local control." Is that
9 correct?
10 A. That's his response.
11 Q. Did you ask him about that response at all? 09:53 AM
12 A. He and I have worked together for the last
13 two years on the project in Manheim Township, and we
14 have had this ongoing friendly dialogue on all kinds
15 of issues. He is one of the reviewers of my book
16 and is a very conservative gentleman. And so he and 09:54 AM
17 I over this last two years have played these games
18 with each other of philosophical beliefs.
19 And so, as matter of fact, he called me the
20 next day and asked me if I received his e-mail and
21 what did I think. And we laughed about it, and that 09:54 AM
22 was kind of the extent of the discussion.
23 Q. Would you characterize Mr. Anstrandt as an
24 advocate for local control in connection with the
25 maintenance and operations of public school

Page 382

1 facilities? 09:54 AM
2 A. No, not necessarily.
3 Q. Why is that?
4 A. He is a very strong believer that
5 facilities have to be kept up. And it just so
6 happens the district he is working in now, they have 09:54 AM
7 the funding to do that. And he has written -- they,
8 the district, has a very comprehensive master plan,
9 and they have the funding to do what needs to happen
10 in their facilities. But he also understands, from
11 our conversations and working with him, that there 09:55 AM
12 are some districts that aren't that fortunate. So
13 part of this was a shot at me because of the
14 badgering we do with each other.
15 Q. If you will turn back real quickly to the
16 first page of Exhibit 4. There is a Calif. written 09:55 AM
17 on there. Does it stand for California?
18 A. Yes.
19 Q. Did you write that?
20 A. Yes, I did.
21 Q. Can you tell me why you put that 09:55 AM
22 abbreviation for California on page 1 of Exhibit 4?
23 A. If I recall -- and again, this was December
24 of 2001. If I recall, this e-mail was to a
25 gentleman in California who was the primary editor

Page 383

1 for the new ASBO, Association of School Business 09:56 AM
2 Officials, facility manual. And I had seen the
3 manual proposal on line. And so I had written him
4 to ask him if we could collaborate on working
5 together, and I believe the California there is just
6 because he is located, I believe, in California. 09:56 AM
7 That was the purpose of that.
8 Q. The he who you are referring to, is that
9 Mr. Young or someone else?
10 A. Mr. Young, Roger Young.
11 Q. His address, you will agree, that's listed 09:56 AM
12 in his e-mail is for Massachusetts; is that right?
13 A. Yes. But the document, as I saw it on the
14 e-mail, there is a whole group of people that were
15 writing this document.
16 MR. SIMMONS: Let me go off record for just 09:57 AM
17 one second.
18 (Discussion off the record.)
19 MR. SIMMONS: We will have the court
20 reporter mark that first.
21 (Deposition Exhibit 5 was marked for 09:58 AM
22 identification.)
23 BY MR. SIMMONS:
24 Q. Dr. Myers, do you recognize what's just
25 been marked as Exhibit 5?

1 A. Do I recall the e-mail? No. 09:59 AM
 2 Q. Do you know whether this e-mail relates to
 3 any particular state?
 4 MR. REED: I'm sorry. We are talking about
 5 Bates No. 0581?
 6 MR. SIMMONS: Yes. 09:59 AM
 7 MR. REED: It doesn't appear to me to be an
 8 e-mail. How do we know it's an e-mail?
 9 MR. SIMMONS: I agree.
 10 Q. How do you know it's an e-mail, Dr. Myers?
 11 A. I don't. I don't. 09:59 AM
 12 Q. Do you have any idea where this document
 13 may have come from that's been marked as Exhibit 5?
 14 A. Right now, that was February 7th, 2002.
 15 Right now I have no idea where this came from.
 16 Q. You can put Exhibit 5 away for just a 10:00 AM
 17 second.
 18 Can we mark the next document in the pile?
 19 (Deposition Exhibit 7 was marked for
 20 identification.)
 21 MR. SIMMONS: That's been marked as Exhibit 10:01 AM
 22 7; is that correct?
 23 (Discussion off the record.)
 24 (Deposition Exhibit 7 was remarked as
 25 Exhibit 6 for identification.)

1 MR. SIMMONS: We have just remarked. 10:03 AM
 2 Exhibit 7 has now been turned into Exhibit 6. We
 3 skipped a number.
 4 Q. Dr. Myers, when you have had a chance to
 5 review Exhibit 6, would you let me know if you
 6 recognize the document? 10:03 AM
 7 A. Yes, I do.
 8 Q. What is the document that's marked as
 9 Exhibit 6?
 10 A. This is an example of one of the reports
 11 from the state of West Virginia. 10:03 AM
 12 Q. Who prepared this report, if you know?
 13 A. I don't know.
 14 MR. ELIASBERG: Take any time you need.
 15 You should not just skim. You should look at the
 16 report and be comfortable with what it is. 10:04 AM
 17 MR. SIMMONS: Please take your time.
 18 THE WITNESS: Okay.
 19 BY MR. SIMMONS:
 20 Q. Now that you have had a little more time to
 21 review the document, do you have an understanding as 10:06 AM
 22 to what the document that has been marked as Exhibit
 23 6 is?
 24 A. I understand it's part of what the data
 25 collection is for the state of West Virginia in

1 addressing their schools. 10:07 AM
 2 Q. Did reviewing the document trigger your
 3 memory at all as to who might have prepared this
 4 document that's been marked as Exhibit 6?
 5 A. No. This was given to me as some of the
 6 information from Dr. Williams to review. 10:07 AM
 7 Q. It appeared to me as a report that was
 8 prepared by a Grand Jury.
 9 Is that your understanding of the report?
 10 A. I don't know if the Grand Jury prepared it,
 11 but certainly the Grand Jury reviewed the school 10:07 AM
 12 districts. I don't know that it says they prepared
 13 it. I don't know.
 14 Q. Exhibit 6 refers to Amador Unified School
 15 District; is that correct?
 16 A. Yes. 10:08 AM
 17 Q. Are you familiar with the Amador Unified
 18 School District?
 19 A. No, I'm not.
 20 Q. Are you aware whether that's a school
 21 district within West Virginia? 10:08 AM
 22 A. It's my assumption that it is because
 23 Dr. Williams gave me this information, but it
 24 certainly doesn't say that.
 25 Q. You can put that document aside for now.

1 Can we mark the next document? 10:08 AM
 2 (Deposition Exhibit 7 was marked for
 3 identification.)
 4 A. Can I ask a question?
 5 Q. Yes.
 6 A. What do these numbers mean? 10:09 AM
 7 Q. Those are referred to as Bates stamp
 8 numbers. When a party produces documents to another
 9 party, we generally mark them with a number that
 10 will allow us to identify the documents at a later
 11 time. 10:09 AM
 12 A. That's what's all through here is these
 13 numbers. I thought I have never seen those numbers
 14 before. Okay. Thank you very much.
 15 Q. Do you recognize the document that's been
 16 marked as Exhibit 7? 10:09 AM
 17 A. Yes, I do.
 18 Q. What is this document?
 19 A. These are some of the general notes that I
 20 took in talking -- in organize -- not organizing,
 21 but in summarizing some of the information from some 10:10 AM
 22 of the states that I talked to.
 23 Q. Do you see any inaccuracies in the notes
 24 that you have made here on Exhibit 7?
 25 A. As best as I can remember from over a year

Page 388

1 and a half ago, these are the notes I took for 10:10 AM
 2 certain. So I assume they are accurate.
 3 Q. Okay. Thank you. Let's move on to the
 4 next document, if we can mark that, please.
 5 (Deposition Exhibit 8 was marked for
 6 identification.) 10:12 AM
 7 BY MR. SIMMONS:
 8 Q. Have you had a chance to review that
 9 document?
 10 A. Yes, I have.
 11 Q. Do you know what that document is that's 10:12 AM
 12 been marked as Exhibit 8?
 13 A. These were some of the notes -- questions
 14 that I wanted to ask of Dr. Williams with regards to
 15 the West Virginia system on one or more of the phone
 16 calls that we had, and probably prior to my visit 10:12 AM
 17 because there are a number of questions there.
 18 Q. At the bottom of the first page of Exhibit
 19 8 there seems to be a little writing that was cut
 20 off. I wasn't able to decipher that. I wonder if
 21 you can. 10:12 AM
 22 A. No, I can't.
 23 Q. Exhibit 8 also -- in addition to questions
 24 that you may have wanted to ask, it also seems to
 25 contain some summary statements about the school

Page 389

1 building authority; is that correct? 10:13 AM
 2 A. It describes what their -- some of the
 3 things they do, yes.
 4 Q. Are there any inaccuracies in those
 5 statements that you're aware of?
 6 A. Again, this is from the notes that I took 10:13 AM
 7 over a year ago. So I assume they are accurate.
 8 MR. SIMMONS: Let's mark the next document,
 9 please.
 10 (Deposition Exhibit 9 was marked for
 11 identification.) 10:13 AM
 12 MR. SIMMONS: Please take all the time you
 13 need to review that.
 14 MR. ELIASBERG: Let the record reflect that
 15 Abe is not sharing his jokes with us.
 16 MR. SEFERIAN: Can we go off the record? 10:14 AM
 17 MR. ELIASBERG: Yes.
 18 (Discussion off the record.)
 19 BY MR. SIMMONS:
 20 Q. Have you had a chance to review Exhibit 9?
 21 A. Yes. 10:15 AM
 22 Q. Can you tell me what Exhibit 9 is?
 23 A. You have a combination of two or three
 24 different conversations and notes that I was taking
 25 to myself -- or giving to summarize some of the

Page 390

1 things that I needed to include in the expert 10:15 AM
 2 report. Somehow this all got stapled together, but
 3 it's really more than --
 4 Q. More than one set of notes?
 5 A. Yes. Right.
 6 Q. Can you separate them out or separate them 10:16 AM
 7 out into the order you would put them for me?
 8 MR. ELIASBERG: When you say "order,"
 9 chronological?
 10 BY MR. SIMMONS:
 11 Q. I guess, basically, which documents that 10:16 AM
 12 are part of Exhibit 9 would you put together?
 13 A. The first four pages are from one or more
 14 of the phone conversations that I had with Rob
 15 Corley. And then the next four pages are a
 16 combination of beginning to summarize some of my 10:16 AM
 17 information, as well as a phone conversation -- I'm
 18 speculating because I'm not sure because I haven't
 19 identified it -- one of the conversations, when we
 20 were starting to talk about how I needed to organize
 21 my expert report. And I would say that because it 10:17 AM
 22 speaks to data gathering, and talking about how, you
 23 know, that was done. So I assume that was from one
 24 of our conversations.
 25 Q. When you say, "one of our conversations,"

Page 391

1 you mean between you and Mr. Eliasberg? 10:17 AM
 2 A. Yes. And these are some of my thoughts on
 3 points that I needed to make.
 4 Q. When you say "these," which pages of
 5 Exhibit 9 are you referring to?
 6 A. Probably page 6, where it says, "No one 10:17 AM
 7 right way in order to provide an equitable process.
 8 Looking at standards, dollars. Follow up." That
 9 page. These are some keywords.
 10 Q. Okay. Do you know -- if you look at the
 11 page that has the -- bears the Bates stamp No. 1719. 10:18 AM
 12 Do you by chance -- have you retained,
 13 perhaps, a better copy of those notes?
 14 A. Obviously mine was on a yellow pad. I
 15 don't know what all this is here.
 16 MR. ELIASBERG: Shaun, if you like -- I 10:18 AM
 17 didn't actually literally put the stuff on the Xerox
 18 machine myself, if you want to make a request -- it
 19 would be helpful if you follow up with an e-mail or
 20 letter. We don't have any problem re-Xeroxing it.
 21 MR. SIMMONS: Thank you. 10:18 AM
 22 Q. You mentioned that the first four pages of
 23 Exhibit 9 were notes of a conversation that you had
 24 with Mr. Corley?
 25 MR. ELIASBERG: Objection, misstates her

Page 392

1 prior testimony. 10:19 AM
 2 THE WITNESS: I said it was one or more
 3 conversations. I'm not sure that this was all one
 4 conversation. My system was to try to keep separate
 5 sections, as I talked to people, because I was doing
 6 it over so many months and so many different places. 10:19 AM
 7 I'm not certain this is one day, necessarily, one
 8 conversation.
 9 BY MR. SIMMONS:
 10 Q. I think that you testified earlier that you
 11 thought you had had one, maybe two conversations 10:19 AM
 12 with Mr. Corley; is that correct?
 13 A. I really don't remember. I know I have had
 14 at least a couple of conversations with him.
 15 Q. When you say, "a couple," what number are
 16 you referring to? Two? 10:20 AM
 17 A. Possibly two, yes.
 18 Q. How many conversations can you recall
 19 having with Mr. Corley?
 20 A. Again, I think it was a couple of
 21 conversations. I think, as I stated earlier, we 10:20 AM
 22 were playing phone tag back and forth. And I'm not
 23 really sure. I called him several times. He called
 24 me several times. I'm not really sure how many
 25 times. You know, we set up times to talk, and

Page 393

1 that's why I am a little confused, because there 10:20 AM
 2 were numbers of times we called each other.
 3 Q. Do you know whether you took any more notes
 4 than are provided here in the first four pages of
 5 Exhibit 9 while talking with Mr. Corley?
 6 A. I'm not sure because, again, I travel a 10:21 AM
 7 lot, and I would take notes on small pieces of paper
 8 and big pieces of paper. I tried diligently to keep
 9 them in the box, but I assume the notes are in here.
 10 But there may be a case they are stuck in some
 11 project. 10:21 AM
 12 MR. SIMMONS: Could we mark the next
 13 document?
 14 (Deposition Exhibit 10 was marked for
 15 identification.)
 16 BY MR. SIMMONS: 10:21 AM
 17 Q. The reason I'm showing you this set of
 18 documents here, and actually the next document, is
 19 that in reviewing your work papers I was trying to
 20 find a checklist for Maryland that Maryland uses in
 21 its inspection process. 10:22 AM
 22 Is that checklist anywhere within the
 23 document that's just been identified as Exhibit 10?
 24 A. This could be considered one of the
 25 checklists.

Page 394

1 Q. When you say, "this," are you referring to 10:22 AM
 2 a particular set of documents within Exhibit 10?
 3 A. I'm referring to the Building Maintenance
 4 Survey and the Building Maintenance Inspection,
 5 where it asks a number of questions, and they have
 6 to check off yes, no, or specific information about 10:23 AM
 7 schools.
 8 Q. So the first two pages of Exhibit 10 could
 9 be considered a checklist that is used in connection
 10 with Maryland's inspection process?
 11 A. Yes, part of their process. This is one 10:23 AM
 12 part of it.
 13 MR. ELIASBERG: We have been going a little
 14 less than an hour. Can we take a short break?
 15 MR. SIMMONS: Yeah.
 16 (Discussion off the record.) 10:23 AM
 17 MR. SIMMONS: Let's mark -- it's a large
 18 document, 654 through 7003.
 19 (Deposition Exhibit 11 was marked for
 20 identification.)
 21 MR. SIMMONS: You can take your time to 10:34 AM
 22 review that document. Again, the reason I'm handing
 23 this to you is to determine whether this is part of
 24 the checklist that's listed in Maryland at all.
 25 Q. Have you had a chance to review Exhibit 11?

Page 395

1 A. Yes, I have. 10:36 AM
 2 Q. Do you recognize Exhibit 11 as information
 3 that you gathered in connection with your work on
 4 this case?
 5 A. Yes, I do.
 6 Q. Can you tell me whether any documents 10:36 AM
 7 relating to Maryland's checklist are included in
 8 Exhibit 11?
 9 MR. ELIASBERG: Objection, vague.
 10 MR. SIMMONS: Actually, why don't I ask it
 11 a different way. 10:36 AM
 12 Q. What documents are included the Exhibit 11?
 13 A. This is a letter to the Superintendent of
 14 Schools in Baltimore County Board of Education,
 15 summarizing the twelve schools that were surveyed
 16 during the months of January and February in 2001. 10:36 AM
 17 And it provides an overall rating of the inspection
 18 reports. On the first two pages it's the letter
 19 giving the rating of each of the buildings that had
 20 been inspected of the twelve. The backup
 21 information, then, talks specifically about the 10:37 AM
 22 public school inspection and justification of each
 23 of those ratings in thirty-four different
 24 categories.
 25 Q. That page you're referring to right there

Page 396

1 is Bates stamped 657; is that correct? 10:37 AM
2 A. 657, yes.
3 Q. What, if you know, are pages 658 through
4 660 of Exhibit 11?
5 A. This gives the -- on page 657 it talks --
6 it just gives a rating and does not provide any 10:37 AM
7 comments about why they got that particular rating.
8 On 6589 it specifically says -- for instance, on
9 roadways and parking lots, which is one of the
10 areas, it tells why they got the rating that they
11 received because the front brustling is badly 10:38 AM
12 cracked, et cetera.
13 So it gives the comments on -- from the
14 inspection as to why they gave the rating that they
15 did.
16 Q. I think that most of the documents are -- 10:38 AM
17 just the remainder of documents in Exhibit 11 are
18 just a repeat for different schools of what we have
19 already discussed. So I won't make you go through
20 those.
21 What I wanted to find out is whether, for 10:38 AM
22 example, pages 657 through pages 660, are those an
23 example of the checklist that Maryland uses in its
24 inspection process?
25 MR. ELIASBERG: Are you saying example of

Page 397

1 the checklist or checklists, plural? 10:38 AM
2 MR. SIMMONS: Yeah, checklists if
3 that's. . . .
4 THE WITNESS: The checklist -- one of the
5 checklists or one of the ways they evaluate is on
6 page 657. Page 658 and 659 would be the backup data 10:39 AM
7 as to why they gave them those ratings.
8 BY MR. SIMMONS:
9 Q. Page 657 of Exhibit 11 is something that
10 you would identify as one of Maryland's checklists;
11 correct? 10:39 AM
12 A. Yes, one of their evaluations.
13 Q. The Building Maintenance Survey that we
14 discussed in paragraph 10 is another document that
15 you would identify as part of Maryland's checklist;
16 is that correct? 10:39 AM
17 MR. ELIASBERG: You mean Exhibit 10.
18 MR. SIMMONS: Exhibit 10.
19 THE WITNESS: I would say it's part of
20 their data-gathering process. It may be -- it's
21 part of the inspection process, but the Building 10:39 AM
22 Maintenance Survey is more of a data gathering. The
23 only reason it's a checklist is because they check
24 off yes or no in some cases, but it's certainly part
25 of the data-gathering process for each of the

Page 398

1 schools. 10:39 AM
2 BY MR. SIMMONS:
3 Q. I guess what I'm trying to find out, when
4 we have been discussing Maryland's inspection
5 process, we have been referring to checklists. I
6 went through the documents that were produced to us 10:40 AM
7 and tried to find an example of Maryland's
8 checklist. These were the closest documents that I
9 could come up with.
10 Is there something else, in addition to the
11 materials that we just looked at here in Exhibits 10 10:40 AM
12 and 11, that would constitute a checklist for
13 Maryland?
14 A. I believe that you could find a blank copy
15 of this. What Dr. Stenzler did to make it more 10:40 AM
16 beneficial for me, he actually gave me filled-out
17 forms, and we didn't talk about all of the -- you
18 know, he didn't hand me, as Dr. Williams did, here's
19 everything we do, more or less, or at least here's a
20 bigger picture of it. He actually gave me real
21 projects. 10:40 AM
22 So, you know, this is what I have, but I
23 would imagine you could talk with Dr. Stenzler, and
24 he could give you, quote, the data-gathering, all
25 the pieces of that.

Page 399

1 Q. That's fine. I guess I just want to make 10:41 AM
2 sure that in terms of data-gathering mechanisms, are
3 the only data-gathering mechanisms that you
4 obtained, in connection with your multistate survey,
5 the ones that you have identified here in Exhibits
6 10 and 11? 10:41 AM
7 MR. ELIASBERG: For Maryland.
8 MR. SIMMONS: For Maryland, yes.
9 THE WITNESS: The only ones I have in my
10 possession. But I saw -- in going to the site
11 inspection, I saw the whole process. For instance, 10:41 AM
12 there is -- how do you define superior, very good,
13 and so forth. There is materials that helped them
14 define that, and there is training that goes along
15 with that.
16 Just to say that this is it would not be 10:41 AM
17 correct. This certainly is one piece of the data
18 gathering. And since they have been doing it for a
19 number of years, and these schools have a history,
20 it's probably a little more advanced than where you
21 might start if you're starting, you know, with a 10:42 AM
22 brand-new model.
23 BY MR. SIMMONS:
24 Q. This other information that you're
25 referring to in connection with data-gathering

Page 400

1 mechanisms, did you rely on that in forming the 10:42 AM
 2 basis of the opinions that you express in your
 3 report?
 4 A. What I relied on was -- well, I didn't rely
 5 on one particular thing, but certainly what I looked
 6 at was the whole process and how it all fit 10:42 AM
 7 together. This certainly was a integral piece of
 8 that. To say you could use this without knowing
 9 that these have definition would also be critical,
 10 as well as knowing that they do the data gathering
 11 in each of the schools. That's also critical. So 10:42 AM
 12 it wasn't any one particular area or piece of
 13 information. It was the process and all of the
 14 pieces they gathered.
 15 Q. I understand that. I guess what I'm
 16 saying, I think you identified that there are some 10:42 AM
 17 additional documents available in Maryland that
 18 relate to the data-gathering process, is that
 19 correct, than what's been identified here in
 20 Exhibits 10 and 11?
 21 A. I know that there is more to how they go 10:43 AM
 22 about doing this than what I took home specifically,
 23 yes.
 24 Q. I guess what I want to find out is, is that
 25 "more" something you relied some in forming the

Page 401

1 opinions you express in your report? 10:43 AM
 2 A. No. It certainly provided background
 3 knowledge.
 4 Q. How do you distinguish between background
 5 knowledge and something that you relied on in
 6 producing your report? 10:43 AM
 7 A. To know how they define superior versus
 8 very good is interesting and certainly something you
 9 might want to consider, but what I was investigating
 10 is what was their process and how did they go about
 11 doing that. 10:44 AM
 12 MR. SIMMONS: You can probably handle this
 13 next one just as easy as Dr. Myers. I think we got
 14 a bad printout of this document. Maybe it's
 15 supposed to look like that.
 16 MR. ELIASBERG: A lot of the stuff that I 10:44 AM
 17 look at that the state puts out looks like that.
 18 Yeah, I mean, I will check on this during lunch and
 19 see what the story is.
 20 MR. SIMMONS: For the record, will you give
 21 us the Bates numbers of that? 10:44 AM
 22 MR. ELIASBERG: 0466 through 0476.
 23 MR. SEFERIAN: Are you marking that?
 24 MR. SIMMONS: So long as the Bates stamps
 25 are in the record, I trust Peter to look and see if

Page 402

1 they have a better printout of that. I don't see 10:45 AM
 2 that we need to mark it.
 3 MR. REED: At least ask what it is or what
 4 it's doing in her work papers.
 5 BY MR. SIMMONS:
 6 Q. Can you answer Mr. Reed's question? 10:45 AM
 7 Actually, if we are going to do this, we might as
 8 well mark it. I'm sorry.
 9 (Deposition Exhibit 12 was marked for
 10 identification.)
 11 MR. ELIASBERG: Shaun, Kevin asked two 10:45 AM
 12 questions. Why don't you ask them one at a time.
 13 MR. SIMMONS: Yeah, I will.
 14 Q. Have you had a chance to look at this
 15 document that's been marked as Exhibit 12?
 16 A. Yes, I have. 10:46 AM
 17 Q. I recognize that there seems to be some,
 18 perhaps, printing; that the document has symbols
 19 instead of language where it likely would have
 20 words, I would suspect.
 21 Do you recognize this document at all? 10:47 AM
 22 A. No, I don't.
 23 Q. Do you have any idea as to how you acquired
 24 this document?
 25 A. I can speculate on one way because I was

Page 403

1 sitting here thinking about it. When we began the 10:47 AM
 2 process -- we, meaning my assistant and I began the
 3 process of gathering data, I asked her to go online
 4 and try to find information, legislative
 5 information, in all the states, including
 6 California. So she may have pulled this off from 10:47 AM
 7 the state of California. It looks like a PowerPoint
 8 presentation.
 9 What I tended to do was that she would give
 10 me forty, fifty, sixty pages every time I came back
 11 into the office, and I would kind of skim it and say 10:47 AM
 12 I'm going to look at this. No, I'm not going to
 13 look at this. So this may have been one of those
 14 documents. I'm really not sure.
 15 MR. SIMMONS: I would like to mark the next
 16 collection of documents as Exhibit 13, please. 10:48 AM
 17 (Deposition Exhibit 13 was marked for
 18 identification.)
 19 MR. SIMMONS: It's a number of e-mail
 20 communications that don't span any particular Bates
 21 range. I don't think there is a need to go through 10:48 AM
 22 these now because, really, what I want to find out
 23 is if this looks like the sum total of responses
 24 that you received via e-mail in connection with your
 25 survey.

Page 404

1 MR. ELIASBERG: Okay. We can do that at 10:48 AM
 2 lunch.
 3 MR. SIMMONS: Just for your information,
 4 there is one e-mail that's not included in here,
 5 which is the one from New Mexico, that we had
 6 already marked as an exhibit. 10:48 AM
 7 MR. ELIASBERG: And also the one from
 8 California; right?
 9 MR. SIMMONS: That one is actually in here,
 10 still.
 11 MR. SIMMONS: I have nothing further at 10:49 AM
 12 this time.
 13 (Discussion off the record.)
 14 EXAMINATION
 15 BY MR. SEFERIAN:
 16 Q. Good morning, Dr. Myers. My name is Tony 11:05 AM
 17 Seferian, and I represent the California Department
 18 of Education, the California Board of Education, and
 19 the California Superintendent of Public Instruction
 20 in this lawsuit.
 21 Did you have any discussions with 11:05 AM
 22 Mr. Eliasberg about the deposition or about this
 23 case during the break we just took?
 24 A. Yes.
 25 Q. What did you discuss with Mr. Eliasberg?

Page 405

1 A. We were talking about one of the documents 11:06 AM
 2 that had been asked of me earlier, and whether or
 3 not -- I mean, I was clarifying with him. I don't
 4 remember seeing that. So we were discussing that.
 5 Q. You were referring to Exhibit 12?
 6 A. Yes. 11:06 AM
 7 Q. Did you have any other discussion with
 8 Mr. Eliasberg?
 9 A. No.
 10 Q. I would like to ask you to direct your
 11 attention again to Exhibit 9. And on the first page 11:06 AM
 12 of Exhibit Myers 9, do you see any references there
 13 to the Department of Education, or the Board of
 14 Education, or the Superintendent of Public
 15 Instruction?
 16 A. The word "state" is on this page, but I 11:07 AM
 17 don't know if that's a reference to the Board of
 18 Education or the State Superintendent, if that's
 19 what you asked me.
 20 MR. ELIASBERG: You're asking about the
 21 whole document; right? 11:07 AM
 22 MR. SEFERIAN: I was asking about the first
 23 page.
 24 MR. ELIASBERG: I'm sorry.
 25 BY MR. SEFERIAN:

Page 406

1 Q. And you're referring to page 1715? 11:07 AM
 2 A. Yes.
 3 Q. What does page 1715 say about the state?
 4 A. "The state agrees to craft something to
 5 more equitably distribute dollars." I don't know.
 6 I don't know what my notes were at that point. 11:08 AM
 7 Q. On the second page of Exhibit 9, Bates
 8 stamped 1716, are there any references to the
 9 Department of Education, the Board of Education, or
 10 Superintendent of Public Instruction?
 11 A. Again, there is a reference to state grant 11:08 AM
 12 and local grant, and a comment about DOE and OPSC.
 13 "Check the plans," is what it says.
 14 Q. What did you mean when you said, "DOE and
 15 OPSC, check the plans," on page 1716?
 16 A. From the best of my recollection from a 11:08 AM
 17 year ago, what that note means is that those two
 18 organizations checked the design drawings -- and I
 19 don't know which level, but checked the design
 20 drawings for new construction. That's the best of
 21 my recollection what that note means. 11:09 AM
 22 Q. On the third page of Exhibit 9, Bates
 23 stamped 1717, are there any references to the State
 24 Board of Education, Department of Education, or
 25 Superintendent?

Page 407

1 A. Yes. 11:09 AM
 2 Q. What are those references?
 3 A. One of the comments says, "Department of Ed
 4 thirty billion in need," and something "a year
 5 given." On down it says, "State Board, State
 6 allocation, public school construction. Approved by 11:10 AM
 7 DOE, architectural plans are by the state
 8 architect," and then it lists some others, which I
 9 can't read.
 10 Q. What did you mean in the reference on page
 11 1717, "Department of Ed, thirty billion in need a 11:10 AM
 12 year"?
 13 A. I don't know. I don't remember.
 14 Q. On the fourth page of Exhibit 9, Bates
 15 stamped 1718, are there any references to the Board
 16 of Education, Department of Education, or State 11:10 AM
 17 Superintendent?
 18 A. There is one -- there is a note. It says,
 19 "State" something "is funding on formula basis." I
 20 don't know if that's a reference specifically to
 21 what you're asking, but it says, "1/3 state and 2/3 11:10 AM
 22 local."
 23 Q. Are there any other references?
 24 A. Not that I recognize.
 25 Q. I would like to ask you to look at Exhibit

1 Myers 4 again. Is Exhibit 4 a printout of an e-mail 11:11 AM
 2 that you sent to Roger Young on December 19, 2001?
 3 A. Yes, it is.
 4 Q. And at the bottom of the first page of
 5 Exhibit 4, did you state, "I am working with the
 6 state of California in addressing the need for 11:11 AM
 7 facility maintenance standards across the country"?
 8 A. That's what I stated.
 9 Q. What did you mean when you said that you
 10 were working with the state of California, in
 11 Exhibit 4? 11:12 AM
 12 A. I was trying to shorten it so I didn't have
 13 to go through the hole harangue. I was just saying
 14 I was working in California.
 15 Q. At any time were you working on behalf of
 16 the State of California? 11:12 AM
 17 Have you ever worked on behalf of the State
 18 of California?
 19 A. No, I have not.
 20 Q. The next line in that message, where it
 21 says, "There are a few states that require" -- 11:12 AM
 22 withdraw that.
 23 The next sentence in Exhibit 4 says, "As I
 24 am sure you are aware, there are a few states that
 25 require any kind of inspection once the facility is

1 built." 11:12 AM
 2 Do you have any estimate of how many states
 3 require any kind of inspection once the facility is
 4 built?
 5 MR. ELIASBERG: Asked and answered.
 6 THE WITNESS: No, I don't. 11:12 AM
 7 BY MR. SEFERIAN:
 8 Q. Do you know if there are more or less than
 9 five states that require any kind of inspection once
 10 a facility is built?
 11 A. No, I don't. 11:13 AM
 12 Q. Have there been any studies, to your
 13 knowledge, that assess whether state and local
 14 partnership results in improved public school
 15 facility maintenance?
 16 MR. ELIASBERG: Objection, vague. 11:13 AM
 17 THE WITNESS: If you're asking me if there
 18 is research -- academic research conducted on the
 19 state and local partnerships, and the condition of
 20 facilities, I know that in the state of Ohio one of
 21 the things that they are looking at is beginning a 11:13 AM
 22 longitudinal study because the state is providing so
 23 much -- so many dollars, and establishing that
 24 partnership, or that partnership has been
 25 established. But I'm not aware, at this point, of

1 other research that is completed. 11:14 AM
 2 BY MR. SEFERIAN:
 3 Q. Would it be correct to say that, as of this
 4 date, you're not aware of any studies that assess
 5 whether a state/local partnership results in
 6 improved public school facility maintenance? 11:14 AM
 7 MR. ELIASBERG: Objection, vague and
 8 ambiguous.
 9 THE WITNESS: There are a number of
 10 anecdotal studies that speak to the success of
 11 schools in improving facilities. 11:14 AM
 12 BY MR. SEFERIAN:
 13 Q. Are you aware of any published studies that
 14 assess whether a state/local partnership results in
 15 improved public school facility maintenance?
 16 A. There are published anecdotal studies. 11:15 AM
 17 Q. What did you mean by "anecdotal studies"?
 18 A. Where a school district is talking about
 19 what the attitude -- a number of areas of criteria
 20 looking at school facilities before monies were
 21 spent on facility conditions, and then those -- that 11:15 AM
 22 same criteria after dollars were spent on school
 23 facilities.
 24 Q. Have those anecdotal studies that you're
 25 referring to been published?

1 A. Some of them have. 11:15 AM
 2 Q. Which of those studies are you aware have
 3 been published?
 4 A. One I am familiar with is one from
 5 Washington, D.C.
 6 Q. Do you know the name of the study? 11:15 AM
 7 A. No, I don't.
 8 Q. Do you know where the study was published?
 9 A. It was a doctoral dissertation, I believe.
 10 Q. Was it a doctoral dissertation published in
 11 any recognized journal or literary source? 11:16 AM
 12 MR. ELIASBERG: Objection, compound and
 13 vague and ambiguous.
 14 THE WITNESS: I believe it was published in
 15 the CEFPI, the Council of Educational Facility
 16 Planners international journal. 11:16 AM
 17 BY MR. SEFERIAN:
 18 Q. Other than anecdotal studies, are you aware
 19 of any studies that assess whether state and local
 20 partnership results in improved public school
 21 facility maintenance? 11:16 AM
 22 A. I'm not aware of any right now, as I sit
 23 here.
 24 Q. Have there been any studies, to your
 25 knowledge, that assess whether a facilities survey

Page 412

1 results in improved public school facility 11:17 AM
 2 maintenance?
 3 A. Specifically addressing only a survey being
 4 done for the district would not -- no, I'm not aware
 5 of any studies suggesting that if you do a survey,
 6 then conditions are going to improve. 11:17 AM
 7 Q. Are you aware of any studies that have
 8 assessed whether a survey in part results in
 9 improved public school facility maintenance?
 10 MR. ELIASBERG: Objection, vague and
 11 ambiguous. 11:17 AM
 12 THE WITNESS: I don't understand that.
 13 BY MR. SEFERIAN:
 14 Q. Are you aware of any studies that have in
 15 any way related a facility survey to improved public
 16 school facility maintenance? 11:17 AM
 17 A. Not a survey alone.
 18 Q. How about a survey as part of a program of
 19 other options as well?
 20 MR. ELIASBERG: Objection, vague.
 21 THE WITNESS: I don't understand the 11:18 AM
 22 question.
 23 BY MR. SEFERIAN:
 24 Q. What studies are you aware of that in any
 25 way discuss performing facility surveys as it

Page 413

1 relates to improving public school facility 11:18 AM
 2 maintenance.
 3 Are you aware of any such studies?
 4 A. Yes.
 5 Q. Which studies are you aware of?
 6 A. Again, it's anecdotal case studies of 11:18 AM
 7 school districts, but it's not just the survey.
 8 It's the whole process.
 9 Q. Can you recall any such anecdotal case
 10 studies of school districts, as you sit here today?
 11 A. Yes. 11:19 AM
 12 Q. Would you please tell me which studies you
 13 can recall?
 14 A. I can give you a number of examples.
 15 Again, it's a case study, and it's looking
 16 at Oklahoma City public schools. And part of the 11:19 AM
 17 process for their master planning for renovation of
 18 facilities was to do facility surveys of each of
 19 their buildings. And that -- part of that, then,
 20 became the criteria for evaluating facilities and
 21 determining which facilities could be renovated or 11:20 AM
 22 which facilities needed to be replaced. And from
 23 that data a bond issue was -- was passed, and they
 24 are currently in the process of doing those
 25 projects.

Page 414

1 Q. What do you mean when you say "case study"? 11:20 AM
 2 A. Case studies refer to looking at specific
 3 school districts and talking about the process that
 4 they went through to bring their facilities up to a
 5 standard that they established.
 6 Q. Have there been any statewide studies, to 11:21 AM
 7 your knowledge, to assess whether the state/local
 8 partnership -- let me withdraw that.
 9 Have there been any statewide surveys, to
 10 your knowledge, that address whether a facility
 11 survey results in improved public school facility 11:21 AM
 12 maintenance?
 13 A. A facility survey doesn't do that alone.
 14 That's only one piece of the information.
 15 Q. I appreciate that. I think my question was
 16 focused a little more narrowly than that. 11:21 AM
 17 Are you aware of any statewide studies that
 18 assess whether a facility survey results in improved
 19 public school facility maintenance?
 20 A. Again, in the state of Ohio where they have
 21 done a statewide facility survey. And in addition 11:21 AM
 22 to that survey, they gathered other data and
 23 prioritized, and now they are in the process of
 24 improving facility conditions in the state of Ohio.
 25 Q. Are there any other such studies you're

Page 415

1 aware of? 11:22 AM
 2 A. Again, I think in the state of Maryland
 3 they began with a facility survey as one of their
 4 data-gathering mechanisms.
 5 Q. Are you aware of any statewide studies that
 6 have examined whether a state that has implemented a 11:22 AM
 7 state and local partnership thereby obtains improved
 8 public school facility maintenance?
 9 MR. ELIASBERG: Objection, ambiguous and
 10 vague.
 11 THE WITNESS: I don't understand what 11:23 AM
 12 you're asking.
 13 BY MR. SEFERIAN:
 14 Q. You mentioned in Maryland that they
 15 performed a survey initially as a data-gathering
 16 advice. My question is a little bit different than 11:23 AM
 17 that. I'm asking whether you're aware of any
 18 studies that have assessed whether any state that
 19 has implemented a state and local partnership has
 20 thereby found improved public school facility
 21 maintenance. 11:23 AM
 22 MR. ELIASBERG: Objection, compound,
 23 misstates her prior testimony.
 24 THE WITNESS: I think what I spoke to
 25 earlier was in the state of Maryland they have done

Page 416

1 a historical study looking at the rankings of the 11:23 AM
 2 school districts twenty years ago, I believe. It
 3 may have been ten years, but I believe it's twenty
 4 years ago, and then the ranking of the schools this
 5 last year.
 6 And in their study, in the summary of that 11:24 AM
 7 study, they suggest that the schools have improved
 8 because of -- well, they -- the schools have
 9 improved, and the -- you have to infer from that
 10 it's because of the process that they are using in
 11 the state of Maryland. 11:24 AM
 12 I would have to look at the study to
 13 exactly know what they say, but basically what they
 14 are saying is, you know, this is where they were
 15 when we started the process. This is where the
 16 schools are now. 11:24 AM
 17 Q. Are you aware of any other such studies?
 18 A. As I sit here right now, I can't think of
 19 another one.
 20 Q. The study you just referred to where
 21 Maryland examined school districts twenty years ago, 11:24 AM
 22 and then ranked the school last year, is that study
 23 in the materials that you produced in this case?
 24 MR. ELIASBERG: Objection, calls for
 25 speculation.

Page 417

1 THE WITNESS: I don't know if it was. 11:25 AM
 2 BY MR. SEFERIAN:
 3 Q. What is the name of that study in Maryland
 4 that you referred to?
 5 A. I don't remember. I was asked earlier, and
 6 I don't remember. 11:25 AM
 7 MR. ELIASBERG: It is in the box that we
 8 sent to you. I said it was speculation because she
 9 didn't exactly know what we produced to you. But,
 10 yes, we did produce that document.
 11 THE WITNESS: I remember it had a green 11:25 AM
 12 cover.
 13 BY MR. SEFERIAN:
 14 Q. In the Maryland study that you referred to,
 15 did that study specifically find that there was
 16 increased public school facility maintenance as a 11:25 AM
 17 result of the facility survey being implemented in
 18 the state?
 19 A. The study really looked at the schools. It
 20 did not specifically say it was one thing. In other
 21 words, the survey wasn't the reason why those 11:26 AM
 22 schools have improved.
 23 What I am inferring from this
 24 information -- because I don't believe they come
 25 right out and say it was this or that, but it was

Page 418

1 the whole process; that schools were in a much lower 11:26 AM
 2 category twenty years ago in terms of fair, poor,
 3 whatever those categories were. And now the numbers
 4 suggest that most of the schools are in good to very
 5 good condition. But it does not say it's because of
 6 a particular facility survey or, you know, a 11:26 AM
 7 particular thing. It speaks to the process, from my
 8 recollection.
 9 Q. Have there been any studies, to your
 10 knowledge, that assess whether an inspection process
 11 results in improved public school facility 11:27 AM
 12 maintenance?
 13 A. Again, what I would be aware of would be
 14 case studies or anecdotal incidences.
 15 Q. Other than anecdotal studies, are you aware
 16 of any studies that have assessed whether an 11:27 AM
 17 inspection process results in improved public school
 18 facility maintenance?
 19 A. I assume, when you're using the word
 20 "studies," you're referring to academic research.
 21 And, no, I'm not aware of academic research. 11:27 AM
 22 Q. Have you developed any objective way to
 23 compare the quality of public school facility
 24 maintenance in California with maintenance in other
 25 states?

Page 419

1 A. No. 11:27 AM
 2 Q. In this case did you perform any
 3 statistically valid study comparing the overall
 4 quality of public school facility maintenance in
 5 California with New Mexico?
 6 MR. ELIASBERG: Objection, vague and 11:28 AM
 7 ambiguous.
 8 THE WITNESS: My responsibility for my
 9 expert report was to look at models in other states
 10 that were successful. So, no, I did not look at
 11 California and do a comparison. 11:28 AM
 12 BY MR. SEFERIAN:
 13 Q. In this case did you perform any
 14 statistically valid study comparing the overall
 15 quality of public school facility maintenance in
 16 California with maintenance in any other state? 11:28 AM
 17 A. No, I did not.
 18 Q. Have you performed any analysis of whether
 19 there are greater or lesser disparities in
 20 facilities maintenance among public schools in
 21 California as compared with other states? 11:28 AM
 22 A. No, I have not.
 23 Q. Do you have any opinion that quantifies
 24 exactly how much facility standard affect facility
 25 maintenance?

Page 420

1 MR. ELIASBERG: Objection, vague and 11:29 AM
2 ambiguous.
3 THE WITNESS: I don't know what you mean by
4 that.
5 BY MR. SEFERIAN:
6 Q. In your report you refer to implementation 11:29 AM
7 of statewide facilities standards; correct?
8 A. I'm saying that's one part of the process,
9 yes.
10 Q. Have you attempted in some way to quantify
11 the relationship between implementation of statewide 11:29 AM
12 facility standards and improvement of facility
13 maintenance in public schools?
14 A. No.
15 Q. Are you aware of any study that has
16 demonstrated that the public school facility 11:29 AM
17 organizational structure in Maryland has improved
18 public school facility maintenance there?
19 A. I don't understand your question.
20 Q. Can you tell me what part you don't
21 understand or what's unclear about it, and I can 11:30 AM
22 rephrase it?
23 A. Something about the organizational
24 structure of Maryland, and then I don't know. I was
25 kind of thinking about that, and then I got lost.

Page 421

1 Q. Are you aware of any study that has 11:30 AM
2 attempted to demonstrate whether or not the public
3 school organizational structure in Maryland has
4 improved the public school facility maintenance in
5 that state?
6 A. I'm not aware of a study that directly 11:30 AM
7 speaks only to that.
8 Q. In the report that you prepared for this
9 case, which we have marked as Myers 1, did you site
10 any studies that show that a system of standards and
11 inspections needs to be in place to ensure that 11:31 AM
12 public school facility maintenance will occur for
13 the life of the building?
14 MR. ELIASBERG: Objection, vague and
15 ambiguous.
16 THE WITNESS: Again, if you're referring to 11:31 AM
17 defining studies as academic research, no, I did
18 not.
19 BY MR. SEFERIAN:
20 Q. Are you aware of any studies that show that
21 a system of standards and inspections needs to be in 11:31 AM
22 place to ensure that public school facility
23 maintenance will occur for the life of the public
24 school building?
25 A. Will you ask that again, please? I don't

Page 422

1 understand. 11:32 AM
2 Q. Are you aware of any studies generally that
3 show that a state needs to have a system of
4 statewide standards and inspections in order to
5 ensure that that state -- let me withdraw that
6 question. 11:32 AM
7 Are you aware of any study that shows that
8 a system of statewide standards and inspections is
9 needed to ensure that public school facility
10 maintenance in that state will occur for the life of
11 the public school buildings? 11:32 AM
12 A. If what I think you're asking is, am I
13 aware of any academic research that speaks to state
14 intervention to maintain school facilities for the
15 life of the building? My answer would be, again,
16 only anecdotal information. Only anecdotal studies. 11:32 AM
17 Q. Are you aware of any study that has found
18 that a different public school facility
19 organizational structure in California would
20 improve -- let me withdraw that.
21 Are you aware of any study that has found 11:33 AM
22 that a different public school facility
23 organizational structure in California would
24 improve -- let me withdraw that.
25 The last time. Are you aware of any study

Page 423

1 that found that a different public school 11:33 AM
2 organizational structure in California would result
3 in improved public school facility maintenance?
4 A. Again, my expert report was to look at
5 other state models. So, no, I'm not aware of
6 studies in California. 11:33 AM
7 Q. Did your report in this case cite any
8 studies that have proven that a system of formal
9 inspections in a state has resulted in improved
10 public school facility maintenance?
11 MR. ELIASBERG: Objection, asked and 11:34 AM
12 answered.
13 THE WITNESS: Again, if you're defining
14 studies as academic research, I did not site any
15 academic research.
16 BY MR. SEFERIAN: 11:34 AM
17 Q. In this case have you made any attempt to
18 rate the states in terms of the quality, efficiency
19 or frequently of public school facility maintenance?
20 MR. ELIASBERG: Objection, vague and
21 compound. 11:34 AM
22 THE WITNESS: If you're asking me, in
23 looking -- surveying the other states, did I give
24 them a rank order of who I thought was best versus
25 not so good, no, I did not make an attempt to do

Page 424

1 that. 11:34 AM
 2 BY MR. SEFERIAN:
 3 Q. Have you rated the states in terms of the
 4 equality of public school facility maintenance
 5 within each state?
 6 A. In my multistate survey, no, I did not do a 11:35 AM
 7 ranking.
 8 Q. In any of the work that you did in this
 9 case, have you rated the states in terms of the
 10 equality of the public school facility maintenance
 11 within each state? 11:35 AM
 12 A. In terms of equality of public school
 13 maintenance with any states, no, I did not.
 14 Q. Have there been any studies, to your
 15 knowledge, that have assessed the most important
 16 factors that determine equality of the state's 11:35 AM
 17 public school facility maintenance?
 18 A. Again, if you're referring to academic
 19 research, speaking to state involvement, and
 20 facility conditions, I'm not aware of academic
 21 research. 11:35 AM
 22 Q. Have you measured or rated the adequacy of
 23 public school facility maintenance in California as
 24 compared with any other states?
 25 A. No, I have not.

Page 425

1 Q. Are you aware of any studies that have 11:36 AM
 2 examined which types of governmental organizational
 3 structure are best suited to ensure equality and
 4 quality of public school facility maintenance?
 5 MR. ELIASBERG: Objection, compound, vague.
 6 THE WITNESS: What I think -- if you're 11:36 AM
 7 asking are there studies -- I'm sorry. I don't
 8 understand what you asked.
 9 BY MR. SEFERIAN:
 10 Q. I'm glad you told me. One thing I forgot
 11 to ask you, if any of the questions I ask aren't 11:37 AM
 12 clear, if you would please let me know, and I will
 13 be happy to restate them.
 14 A. Okay. Would you restate that? Thanks.
 15 Q. Are you aware of any studies which have
 16 looked at the organizational structure of public 11:37 AM
 17 schools in a state or more states, and related that
 18 structure to the equality or quality of public
 19 school facility maintenance in that state?
 20 MR. ELIASBERG: Objection,
 21 incomprehensible. 11:37 AM
 22 THE WITNESS: You will have to restate it.
 23 I'm sorry.
 24 BY MR. SEFERIAN:
 25 Q. Are you aware of any studies that have

Page 426

1 related the organizational structure of the 11:37 AM
 2 government in a state with the quality of that
 3 state's public school facility maintenance?
 4 A. If you're asking if I know of academic
 5 research that looks at organizational -- state
 6 organizational structures relating to school 11:38 AM
 7 facility conditions in particular schools, no, I'm
 8 not aware of any academic research.
 9 Q. Have you ever published any materials
 10 concerning the components of a successful state
 11 school facilities program? 11:38 AM
 12 Let me withdraw that.
 13 Do you have any publications concerning the
 14 components of a successful statewide school
 15 facilities program?
 16 A. In the -- yes. 11:38 AM
 17 Q. Would you please state what those
 18 publications are?
 19 A. I'm sorry. The answer should be, no, I
 20 haven't published it yet. But in the book that we
 21 are writing on school facilities, one of the 11:38 AM
 22 chapters is going to talk about maintenance and
 23 operations. And it's not written yet, but in our
 24 outline one of the things that we are going to talk
 25 about are some of the components that make up a good

Page 427

1 process for ensuring maintenance and operations for 11:39 AM
 2 school facilities. We are going to speak to that as
 3 one example.
 4 Q. As of the date of this deposition, do you
 5 have any publications concerning the components of a
 6 successful statewide school facilities program? 11:39 AM
 7 A. No, I don't.
 8 Q. Has any published study examined whether
 9 West Virginia's public school facility maintenance
 10 has improved since it adopted the organizational
 11 structures mentioned in your report? 11:39 AM
 12 A. If the question is am I aware of any
 13 studies that have been done or have been published,
 14 I'm aware of, again, a case study published in the
 15 Council of Educational Facility Planners talking
 16 about their process. And I am not sure if the 11:40 AM
 17 content also talked about results, but I know that
 18 it was published in the Council of Educational
 19 Facility Planners journal.
 20 Q. What is the name of that case study that
 21 you're referring to? 11:40 AM
 22 A. I don't know the name, but it's an article.
 23 It would be something about West Virginia.
 24 Q. Is that a document that was produced in
 25 this case?

1 A. No. 11:40 AM
 2 MR. ELIASBERG: Not that I'm aware of.
 3 BY MR. SEFERIAN:
 4 Q. Is it a document you relied on in this
 5 case?
 6 A. No. 11:40 AM
 7 Q. Have you conducted any analysis of whether
 8 school facilities funding is more or less equitable
 9 in California as compared to any other states?
 10 A. No, I have not.
 11 Q. Have you made any determination of whether 11:41 AM
 12 Idaho ensures that adequate statewide attention and
 13 resources are devoted to maintenance and operations
 14 of school facilities?
 15 A. No, I haven't.
 16 Q. Have you made any determination of whether 11:41 AM
 17 New Mexico ensures that adequate statewide attention
 18 and resources are devoted to maintenance and
 19 operations of school facilities?
 20 A. Will you restate the question?
 21 MR. SEFERIAN: Would you please reread that 11:41 AM
 22 and see if that -- if it doesn't make sense, I will
 23 restate it. That's okay. I will restate it again.
 24 Q. In this case have you made any type of
 25 finding about whether New Mexico ensures that that

1 state gives adequate attention and resources to 11:42 AM
 2 school facilities maintenance?
 3 A. Yes.
 4 Q. What determination have you made in that
 5 regard?
 6 A. Again, it's been anecdotal in talking with 11:42 AM
 7 Richard Herrera in the state of New Mexico, who,
 8 from his opinion, is that it has made a difference
 9 and will make a difference since they have
 10 implemented the process.
 11 Q. Does your report address at all whether 11:42 AM
 12 California spends more or less money per student on
 13 public school facility maintenance than the other
 14 states mentioned in your report?
 15 MR. ELIASBERG: Objection. The document
 16 speaks for itself. 11:42 AM
 17 THE WITNESS: No.
 18 BY MR. SEFERIAN:
 19 Q. In this case did the plaintiffs' counsel
 20 ask you to assess whether the public schools are
 21 better maintained in California as compared with any 11:43 AM
 22 other state?
 23 A. No, they did not.
 24 Q. In this case did you assess the overall
 25 quality of public school facilities statewide in

1 Maryland? 11:43 AM
 2 A. No, I did not.
 3 Q. In this case did you assess the overall
 4 quality of public school facilities statewide in
 5 West Virginia?
 6 A. No, I did not. 11:43 AM
 7 Q. In this case did you assess the overall
 8 quality of public school facilities statewide in any
 9 state?
 10 A. No, I did not.
 11 Q. In this case did you assess the extent to 11:44 AM
 12 which public school facility maintenance funding in
 13 California is distributed to schools in the worst
 14 condition?
 15 A. No, I did not.
 16 Q. In this case did you assess the extent to 11:44 AM
 17 which public school facility maintenance funding in
 18 any state is distributed to schools in the worst
 19 condition?
 20 A. Yes.
 21 Q. With regard to which states did you make 11:44 AM
 22 that assessment?
 23 A. I didn't -- if you're defining assessment
 24 did I investigate and look and see if they did that,
 25 I personally didn't go to the worst school and say,

1 "Yes, that's the right money for that school." But 11:45 AM
 2 I did look at the documents in Maryland, for
 3 instance, on how they prioritized. And that
 4 priority was based on a number of issues, but one of
 5 them certainly was facility conditions. So my
 6 assessment was an assessment in looking at their 11:45 AM
 7 documents.
 8 Q. Did you make that assessment with respect
 9 to any other states besides Maryland?
 10 A. In Ohio, yes. In West Virginia.
 11 Q. Any other states? 11:45 AM
 12 A. Not that I can recall right now.
 13 Q. With respect to Ohio, Maryland and West
 14 Virginia, did you make any attempt to quantify the
 15 extent to which school facilities maintenance
 16 funding is distributed to schools in the worst 11:46 AM
 17 condition?
 18 MR. ELIASBERG: Objection, vague and
 19 ambiguous.
 20 THE WITNESS: If you're asking did I look
 21 and see that they were actually giving dollars to 11:46 AM
 22 those schools in the worst condition, again, I
 23 looked at their -- the data and how they were
 24 distributing dollars. And it appeared from what I
 25 saw that they were -- based on their evaluation

Page 432

1 criteria, that they were giving the dollars. They 11:46 AM
2 were distributing them to those facilities that
3 needed it the most based on the criteria they had
4 established.
5 Q. In your work in this case, did you make any
6 attempt to quantify or somehow rate the extent to 11:46 AM
7 which Ohio and Maryland or West Virginia provided
8 facilities maintenance funding to the schools in the
9 worst condition?
10 MR. ELIASBERG: Objection, vague and
11 ambiguous and compound. 11:47 AM
12 THE WITNESS: Would you restate?
13 BY MR. SEFERIAN:
14 Q. In this case did you make any attempt to
15 look at the public school facilities maintenance
16 funding that goes to schools in Ohio, Maryland or 11:47 AM
17 West Virginia, and determine the extent to which in
18 a quantifiable way that funding is distributed to
19 schools in the worst condition?
20 MR. ELIASBERG: Objection, vague and
21 ambiguous, and asked and answered. 11:47 AM
22 THE WITNESS: If you're asking did I look
23 at how -- what their criteria was to evaluate
24 facility conditions in each of those states, and did
25 it appear to me that they were indeed evaluating

Page 433

1 those schools based on a number of issues, but 11:48 AM
2 certainly one is facility conditions, and the
3 dollars were going appropriately to those schools in
4 that priority ranking, I did look at that in those
5 states.
6 BY MR. SEFERIAN: 11:48 AM
7 Q. Did you make any attempt to statistically
8 analyze the extent to which in Ohio, Maryland and
9 West Virginia the schools that were in the worst
10 condition received public school facility
11 maintenance funding? 11:48 AM
12 A. No, I did not.
13 Q. In Exhibit Myers 1, Exhibit A, in that
14 exhibit is a copy of your resume; correct?
15 A. Yes.
16 Q. Did you prepare that resume for this case, 11:49 AM
17 or was that already prepared?
18 A. It was already prepared.
19 Q. Are there any items that should be added or
20 changed from the information that's on the resume,
21 given the time that's elapsed since the resume was 11:49 AM
22 prepared?
23 Any information that is no longer accurate?
24 A. There is a lot of presentations I have done
25 since two years ago. Certainly this was

Page 434

1 presented -- given -- I'm not sure exactly when. 11:50 AM
2 It's not the most updated resume I have. And I
3 understand from -- no, mine say San Diego United.
4 It's Unified School District. That was a typo, if
5 that's what you're asking. I would have to -- I
6 would have to look at my current resume because I 11:50 AM
7 have done a lot of things since this one, I believe.
8 Q. As you sit here today, other than the
9 presentation section of your resume, is there
10 anything that strikes you as maybe out of date or
11 needs to be changed? 11:51 AM
12 MR. ELIASBERG: Are you also excluding
13 within that the San Diego change?
14 MR. SEFERIAN: Yes, and the change to
15 San Diego Unified.
16 THE WITNESS: Yeah. In this brief look, 11:51 AM
17 no, I don't see anything.
18 BY MR. SEFERIAN:
19 Q. Are there any presentations that you have
20 made that are not on this resume that in any way
21 relate to any of the opinions that you have 11:51 AM
22 expressed in this case?
23 A. Yes.
24 Q. What presentations are those?
25 A. I have done several workshops on the

Page 435

1 proposal for the book, and it talks about the 11:51 AM
2 importance of connections, building connections.
3 And we refer both in those presentations to the
4 connection of state/local partnerships, as well as
5 community/parent partnerships. As we discussed the
6 chapters -- we have done self-presentations talking 11:52 AM
7 about the book, as we discussed those chapters.
8 Q. Where have those work shops occurred?
9 A. One of them was the National School Board
10 Association. Another one was at the CEFPI
11 International Conference. And then we had six 11:52 AM
12 regional conferences this last year, and we
13 presented at each one of those regional conferences.
14 Those are the ones I can recall off the top because
15 we have been spending the year bringing people up to
16 speed on the book. 11:52 AM
17 Q. When you "we," who are you referring to?
18 A. My co-author and myself.
19 Q. Who is that?
20 A. Sue Robertson.
21 Q. I would like to show you a document which I 11:53 AM
22 will ask to be marked next in order.
23 (Deposition Exhibit 14 was marked for
24 identification.)
25 BY MR. SEFERIAN:

1 Q. Dr. Myers, have you seen what's been marked 11:53 AM
 2 as Exhibit 14?
 3 A. I'm looking at it right now.
 4 Q. Okay. I'm sorry. After you have had a
 5 chance to look at it, I will ask you if you have
 6 seen that before. 11:53 AM
 7 Have you seen that document before, Exhibit
 8 14?
 9 A. No, I haven't.
 10 Q. Does Exhibit 14 contain, to your knowledge,
 11 a list of some of the documents that you were asked 11:54 AM
 12 to review in this case?
 13 MR. ELIASBERG: Objection, vague and
 14 assumes fact.
 15 THE WITNESS: There are some things on this
 16 list I recognize. There's others that I'm not so 11:54 AM
 17 sure that I looked at.
 18 BY MR. SEFERIAN:
 19 Q. Which ones are the ones you're not so sure
 20 you looked at?
 21 A. I don't remember the deposition of Payne, 11:55 AM
 22 P-A-Y-N-E. No. 5 I don't remember. I don't
 23 remember 6. 11 and some of the others, I know they
 24 were in my information. But as to what they
 25 contained, right now I couldn't tell you. But I do

1 remember seeing them. 11:55 AM
 2 Q. Did you personally read all the materials
 3 that were provided to you by plaintiffs' counsel in
 4 this case?
 5 A. No, because some of them I don't even
 6 remember. If you're asking did I read all fourteen 11:56 AM
 7 of those things, no, because I don't remember them
 8 at all.
 9 Q. Of the material that you actually received
 10 from the plaintiffs' attorneys in this case, did you
 11 personally read all of the material? 11:56 AM
 12 A. Of the materials that I remember, I read
 13 parts. I skimmed the materials in some cases and
 14 read parts. In other words, I'm not sure I read all
 15 of Volume 1, 2 and 3 of Brooks' deposition.
 16 Q. Did anyone assist you in reviewing any of 11:56 AM
 17 the materials that were sent to you by plaintiffs'
 18 counsel in this case?
 19 A. Yes.
 20 Q. Who was that?
 21 A. In conversations with Mr. Eliasberg, he 11:56 AM
 22 would point me to the sections that I really needed
 23 to focus on so -- because my time was so limited, so
 24 that I wouldn't be spending a lot of time reading
 25 the whole document if that wasn't something I needed

1 to do. 11:57 AM
 2 Q. Were there some documents that plaintiffs'
 3 counsel provided that you did not read -- actually
 4 read the entire document?
 5 MR. ELIASBERG: Asked and answered.
 6 THE WITNESS: Yes. 11:57 AM
 7 BY MR. SEFERIAN:
 8 Q. Would that include some of the depositions
 9 that were provided to you?
 10 A. Yes.
 11 Q. Were there any of the depositions that were 11:57 AM
 12 provided to you by plaintiffs' counsel that you
 13 actually read the entire deposition?
 14 A. I really don't remember.
 15 Q. Other than plaintiffs' attorneys, did
 16 anyone else assist you in reviewing the material 11:57 AM
 17 that you were provided with in this case?
 18 MR. ELIASBERG: Objection, compound and
 19 misstates prior testimony.
 20 THE WITNESS: If you mean did somebody say
 21 you ought to look at this, Rob Corley suggested that 11:57 AM
 22 I look at some things. But like, for instance, he
 23 suggested to look at the California code, and that's
 24 not on here because they didn't give it to me.
 25 Did I answer? I'm sorry.

1 MR. SEFERIAN: Yes. 11:58 AM
 2 Q. Have you ever spoken with any of
 3 plaintiffs' attorneys, other than Mr. Eliasberg and
 4 Mr. London?
 5 A. Yes.
 6 Q. Which other attorneys have you spoken with? 11:58 AM
 7 A. Early on somebody by the name of Lori or
 8 Laura.
 9 Q. Anyone else?
 10 A. That's the only one I can remember.
 11 Q. What conversations did you have with Lori 11:58 AM
 12 or Laura?
 13 A. From my best recollection, I think she was
 14 helping determine whether or not my experience and
 15 background would be helpful in this lawsuit.
 16 Q. Do you recall Lori or Laura's last name? 11:59 AM
 17 A. No, I don't.
 18 Q. Do you recall if you spoke with Lori or
 19 Laura before or after the first time you spoke with
 20 Mr. Eliasberg?
 21 A. My first conversation was with 11:59 AM
 22 Mr. Eliasberg.
 23 Q. When Mr. Eliasberg first spoke with you,
 24 did he tell you how he learned about you?
 25 A. I don't remember.

Page 440

1 Q. As you sit here today, do you recall any 11:59 AM
 2 materials that you reviewed for this case that were
 3 provided to you by plaintiffs' attorneys that are
 4 not listed in Exhibit 14?
 5 A. No, I don't recall any.
 6 Q. Did you keep any type of log of the work 12:00 PM
 7 you performed in this case?
 8 A. No.
 9 MR. HAJELA: Go off the record a second.
 10 (There was a brief recess.)
 11 BY MR. SEFERIAN: 12:00 PM
 12 Q. Dr. Myers, did you have any conversations
 13 with Mr. Eliasberg about this deposition or this
 14 case during the last break we just took?
 15 A. No, we didn't.
 16 Q. Did you speak with anyone about this case 12:27 PM
 17 or this deposition?
 18 A. No.
 19 Q. When you spoke with Mr. Corley, did he give
 20 you any criticisms of the California Department of
 21 Education? 12:27 PM
 22 A. I don't remember that he did.
 23 Q. Did Mr. Corley ever criticize you to the
 24 Board of Education or the California Superintendent
 25 of Public Instruction?

Page 441

1 A. I don't remember that he did. 12:27 PM
 2 Q. Did Miss Boggs ever criticize you to the
 3 California Board of Education, the Department of
 4 Education or Superintendent of Public Instruction?
 5 A. No. No. I don't believe so.
 6 Q. Have you ever qualified in the court as an 12:28 PM
 7 expert witness regarding school facilities?
 8 A. I testified once in the state of Indiana,
 9 but I don't know -- that's what I have done.
 10 Q. When you testified in Indiana, were you
 11 testifying as an expert witness on school 12:28 PM
 12 facilities?
 13 A. Yes, I was.
 14 Q. Have you ever qualified in court as an
 15 expert witness on school facilities maintenance
 16 issues? 12:28 PM
 17 MR. ELIASBERG: Objection, vague.
 18 THE WITNESS: I don't understand the
 19 question.
 20 BY MR. SEFERIAN:
 21 Q. Have you ever been called in court and 12:29 PM
 22 testified as an expert witness regarding any issues
 23 regarding school facilities maintenance, public
 24 school facilities maintenance?
 25 A. Not specifically only maintenance.

Page 442

1 Q. Do you have any degrees in statistics? 12:29 PM
 2 A. No.
 3 Q. Have you ever written a maintenance and
 4 operations manual?
 5 A. No.
 6 Q. Do you have any publications on the 12:29 PM
 7 maintenance and operation of school facilities?
 8 A. Through the book that I am writing there
 9 will be information in there on maintenance and
 10 operation of school facilities.
 11 Q. As of the date of your deposition, do you 12:29 PM
 12 have any publications on the maintenance and
 13 operation of public school facilities?
 14 A. As of today, no.
 15 Q. Were there any notes or papers that you
 16 prepared in this case that you have not turned over 12:30 PM
 17 to plaintiffs' attorneys, or that have been somehow
 18 lost or misplaced?
 19 MR. ELIASBERG: Objection, vague and
 20 compound.
 21 THE WITNESS: Not that I'm aware of. 12:30 PM
 22 BY MR. SEFERIAN:
 23 Q. Are you on the faculty of Indiana
 24 University?
 25 MR. ELIASBERG: Objection, asked and

Page 443

1 answered. 12:30 PM
 2 THE WITNESS: I serve as an adjunct
 3 professor for Indiana University.
 4 BY MR. SEFERIAN:
 5 Q. Are you presently teaching a course in
 6 Indiana University? 12:30 PM
 7 MR. ELIASBERG: Asked and answered.
 8 THE WITNESS: Not currently.
 9 BY MR. SEFERIAN:
 10 Q. What's the reason for that?
 11 MR. ELIASBERG: Objection, vague. 12:31 PM
 12 MR. REED: Objection, irrelevant.
 13 THE WITNESS: It's for doctoral students.
 14 The course on school facility planning, which is
 15 what I teach, Basics 40, is for doctoral students
 16 and students working on their administrative 12:31 PM
 17 license. And there aren't enough students every
 18 year to have -- hold a full class. And so typically
 19 it's only taught every two or three years. And so
 20 that's one of the reasons why I'm not teaching right
 21 now. 12:31 PM
 22 BY MR. SEFERIAN:
 23 Q. Do you anticipate teaching that course
 24 again at some point?
 25 MR. ELIASBERG: Objection, irrelevant.

Page 444

1 THE WITNESS: They call me on an as-need 12:31 PM
 2 basis. And if my schedule allows it, I try to teach
 3 it. But I don't know. As of right now, I have no
 4 idea.
 5 BY MR. SEFERIAN:
 6 Q. What's the title of the course that you 12:31 PM
 7 taught at Indiana University?
 8 A. The course number is A640. I don't know.
 9 It's the educational school facilities. It's an
 10 overview of all of the parts of school facilities
 11 for education. 12:32 PM
 12 Q. Other than your work for The Myers Group
 13 and your work as a speech pathologist, do you
 14 currently have any other sources of income?
 15 MR. ELIASBERG: Objection, irrelevant,
 16 improper personal question. 12:32 PM
 17 MR. SEFERIAN: I will restate the question.
 18 Q. Other than your work for The Myers Group
 19 and your work as speech pathologist, do you
 20 currently have any other positions that you are
 21 working in a professional capacity? 12:32 PM
 22 A. No.
 23 Q. Are you affiliated with a company called
 24 School Improvement Planning Specialists?
 25 A. No.

Page 445

1 Q. Have you ever been affiliated with such a 12:33 PM
 2 company?
 3 A. Yes.
 4 Q. In what capacity?
 5 A. I was one of the co-owners of the
 6 organization. 12:33 PM
 7 Q. What did the organization do?
 8 A. Basically our goal was to work with schools
 9 in the state of Indiana to deal with the new
 10 mandates for accountability for the state.
 11 Q. Is that organization still in existence? 12:33 PM
 12 A. Yes.
 13 Q. When did you no longer become affiliated
 14 with the School Planning Specialists?
 15 A. We only worked together like four months.
 16 I'm not sure. It was last fall. I don't know 12:33 PM
 17 exactly when.
 18 Q. Do you have any estimate of how much time
 19 you spent working on the case?
 20 A. If you're referring -- "this case" means on
 21 my expert report? I don't have any idea. I could 12:34 PM
 22 get that information because I keep track of all my
 23 hours. Over a ten-month period I know it was quite
 24 a tremendous amount of time.
 25 Q. How do you keep track of your hours?

Page 446

1 A. I do a time sheet. 12:34 PM
 2 Q. Do you submit the time sheets to
 3 plaintiffs' counsel?
 4 A. No. It's strictly for my own person use
 5 and for my office.
 6 Q. Have you produced those time sheets for 12:34 PM
 7 this case?
 8 A. No.
 9 Q. Do you have any estimate of how much time
 10 you spent on this case?
 11 MR. ELIASBERG: Asked and answered. 12:34 PM
 12 THE WITNESS: No. I couldn't even begin to
 13 tell you.
 14 BY MR. SEFERIAN:
 15 Q. What were your payment arrangements as an
 16 expert witness in this case? 12:34 PM
 17 A. I was paid for the site visits. I was paid
 18 expenses only for the site visits and any
 19 reproduction. Like, for instance, reproducing all
 20 of the information that I sent to Mr. Eliasberg.
 21 They paid for that. 12:35 PM
 22 Q. Are you receiving any other payment for
 23 your expert witness work in this case, other than
 24 the expenses for visits and the reproduction?
 25 A. I believe they are going to pay me for the

Page 447

1 time that I have had to take to travel, the days 12:35 PM
 2 that I had to travel here for the deposition.
 3 Q. Were you paid in the case for the work you
 4 have done over this ten-month period in doing your
 5 research and preparing your report?
 6 A. No. 12:35 PM
 7 Q. Do you have any agreement with plaintiffs'
 8 counsel with regard to your payment for the expert
 9 witness work you have done in this case, including
 10 the research and expert witness report?
 11 MR. ELIASBERG: Objection, compound and 12:36 PM
 12 ambiguous.
 13 THE WITNESS: Will you restate?
 14 BY MR. SEFERIAN:
 15 Q. I'm trying to find out what your payment
 16 arrangement is with plaintiffs' counsel for your 12:36 PM
 17 work in this case.
 18 A. At this point, I haven't been paid to do
 19 anything, other than I am supposed to be paid for
 20 the deposition, and they are going to pay me for the
 21 days that I have to testify because it's basically 12:36 PM
 22 full days of traveling. There is nothing formally
 23 written. That has been informal.
 24 Q. Do you have any arrangement with
 25 plaintiffs' counsel that you will ever be paid for

Page 448

1 the work you have done over the last ten-month 12:36 PM
 2 period?
 3 A. No, there is no arrangement to do that.
 4 Q. Have you ever discussed with plaintiffs'
 5 counsel whether or not you will be paid for the work
 6 you have done in this case? 12:36 PM
 7 A. No, because I'm not going to be paid.
 8 Q. So have you discussed that with plaintiffs'
 9 counsel, that you will not be paid for this case?
 10 A. Yes. Yes, at the beginning of the whole
 11 process, when we talked about my involvement. 12:37 PM
 12 Q. All of the work that you have done in this
 13 case, apart from your out-of-pocket expenses, you
 14 are essentially volunteering your time; is that
 15 correct?
 16 A. That's correct. 12:37 PM
 17 Q. What was the reason you agreed to work
 18 essentially as a volunteer expert in this case for
 19 plaintiffs?
 20 A. There were a number of reasons. One of
 21 them was the fact that when Mr. Eliasberg contacted 12:37 PM
 22 me, it was the same time that we were proposing to
 23 do this book, and I knew that one of the parts of
 24 the book needed to have a lot of research on
 25 maintenance and operations. And I felt that I could

Page 449

1 use -- I mean, I was going to be gathering a lot of 12:37 PM
 2 data anyway, and it could be helpful with this
 3 expert report. That's one reason.
 4 Q. Are there any other reasons that you
 5 decided to volunteer your time in this case?
 6 A. Because I spent the last twenty-some years 12:38 PM
 7 working in the school facility planning area. And I
 8 am very passionate about the importance of facility
 9 conditions in schools and felt like that I wanted to
 10 learn more about that. It was an area that I wasn't
 11 particularly -- well, it was an area that I felt 12:38 PM
 12 like I needed to know more about, and I thought this
 13 was a good opportunity for me to do some research in
 14 terms of doing some surveying of other states. So
 15 it would help my professional growth, as well.
 16 Q. How much are you being paid for your 12:38 PM
 17 deposition time in this case?
 18 A. I believe it states in the expert report
 19 ninety dollars an hour.
 20 Q. Will you briefly describe how your expert
 21 report in this case was prepared? 12:39 PM
 22 MR. ELIASBERG: Asked and answered.
 23 THE WITNESS: Are you asking -- I can
 24 describe how, once I gathered all the information, I
 25 began to write drafts, my first draft.

Page 450

1 As I gathered information over the 12:39 PM
 2 nine-month period, I would begin to delineate those
 3 things that I thought were critical components for
 4 me to review. And then as I started writing the
 5 draft, then I started just making bullet points of
 6 these seem to be salient points that needed to be 12:39 PM
 7 included in the report. And then over a period of
 8 several weeks I would write different sections.
 9 Q. How many different drafts of your report
 10 did you prepare for this case?
 11 A. I would have no idea. 12:39 PM
 12 Q. Do you have any estimate of how many drafts
 13 you prepared? Was it more than ten?
 14 A. I don't know. If you're talking about a
 15 draft, meaning a complete report, I wouldn't think
 16 more than ten. But there certainly were lots of 12:40 PM
 17 drafts where I would write a section, and go back
 18 and read it a few hours later, and say, oh, no, I
 19 want to change it to this on individual sections.
 20 Q. How many different drafts did you provide
 21 to plaintiffs' counsel before your report was 12:40 PM
 22 finalized?
 23 A. I don't know. There were several.
 24 Q. What was your understanding of the purpose
 25 that you were preparing the report?

Page 451

1 MR. ELIASBERG: Asked and answered. 12:40 PM
 2 THE WITNESS: It was my understanding that
 3 I would be opining on the -- looking at what other
 4 states were doing, to do a survey of what other
 5 states were doing in terms of the successfully
 6 addressing facility conditions -- I'm sorry, 12:41 PM
 7 successfully addressing facility maintenance
 8 operations for school facilities.
 9 BY MR. SEFERIAN:
 10 Q. Were you told that your report in this case
 11 will be published? 12:41 PM
 12 A. Published? I don't know. I don't know
 13 what published means. I assumed it was going to be
 14 in a report. You mean, published in a document or
 15 published in a magazine? No.
 16 Q. Were you told your report in this case 12:41 PM
 17 would be placed on the Internet?
 18 A. No. Not that I remember.
 19 Q. Have you been asked to do any other work on
 20 this case that you have not yet accomplished?
 21 A. No. 12:42 PM
 22 Q. Was there any work that plaintiffs' counsel
 23 asked you to do that for any reason you did not
 24 perform?
 25 A. Not that I recall.

Page 452

1 Q. Have you ever been to any other schools in 12:42 PM
2 California outside of San Diego County?
3 MR. ELIASBERG: Asked and answered.
4 THE WITNESS: No. Not that I recall.
5 BY MR. SEFERIAN:
6 Q. Were there any records that you asked for 12:43 PM
7 to review in this case that were not provided to
8 you?
9 MR. ELIASBERG: Objection, vague,
10 "records."
11 THE WITNESS: If you mean were there any 12:43 PM
12 documents or information that I would ask to review,
13 and I assume you mean did the lawyers not, then,
14 give that to me, no, there aren't any that I
15 remember.
16 BY MR. SEFERIAN: 12:43 PM
17 Q. Did you ever ask to review any records from
18 the California Department of Education in this case?
19 A. No, I don't believe so.
20 Q. Did you ever ask to review any records from
21 the School Facilities Planning Division? 12:43 PM
22 A. No, I did not.
23 Q. Do you know anyone involved in the School
24 Facilities Planning in California?
25 MR. ELIASBERG: Beyond the people she

Page 453

1 already testified about? 12:44 PM
2 THE WITNESS: I know some -- yes.
3 BY MR. SEFERIAN:
4 Q. Who do you know?
5 A. I know some of the CEFPI members that work
6 in facilities in California. 12:44 PM
7 Q. What where their names?
8 A. One of them is a former facilities person
9 named Byron Kimball. There is an organization
10 called CASH for the State of California, and several
11 of their members are members of CEFPI. But right 12:45 PM
12 now I can't tell you one of their names, but they
13 come to the conference. So that's who I would know.
14 Q. Do you know anyone who is working for the
15 state government in California?
16 A. No, I do not. 12:45 PM
17 Q. Do you have any opinions about or
18 criticisms of the California Superintendent of
19 Public Instruction in this case?
20 A. I don't have any opinions or any knowledge
21 of this position. 12:45 PM
22 Q. Do you have any opinions about or
23 criticisms of the California Board of Education in
24 this case?
25 A. No, I don't have any opinions or knowledge.

Page 454

1 Q. Do you have any opinions about or 12:46 PM
2 criticisms of the California Department of Education
3 or the School Facilities Planning Division in this
4 case?
5 A. No.
6 Q. What do you consider to be your areas of 12:46 PM
7 expertise?
8 A. In the area of school facility planning,
9 which is what I assume you're speaking to. That's a
10 very broad area, obviously. I have had the
11 opportunity over the past twenty-two years basically 12:46 PM
12 to deal with all areas of school facility planning
13 from pre-planning all the way through
14 post-evaluations of school facilities.
15 I worked for an architectural firm for ten
16 years. So I have been involved in all the phases of 12:47 PM
17 design as a reviewer of educational program. I have
18 been involved in working with custodians and
19 maintenance personnel in addressing facility
20 conditions in school facilities. I have worked
21 extensively with faculty members in addressing 12:47 PM
22 facility issues as it relates to educational
23 program. And I have done a lot of community
24 consensus-building work.
25 So there are -- most of the areas, or I

Page 455

1 would say all of the areas in school facility 12:47 PM
2 planning I have been involved with over the last
3 twenty-two years.
4 Q. You would consider yourself to be an expert
5 in the area of school facilities planning; correct?
6 A. As a general category, yes. 12:47 PM
7 Q. Do you consider yourself to be an expert in
8 the field of speech and hearing pathology?
9 MR. ELIASBERG: Objection, relevance.
10 THE WITNESS: Do I think I am a good speech
11 therapist when I work with clients? Yes, 12:48 PM
12 absolutely.
13 BY MR. SEFERIAN:
14 Q. Do you consider yourself to be an expert in
15 school administration?
16 A. No, I don't. I know administrative 12:48 PM
17 studies, and I have certainly have been involved,
18 but no.
19 Q. Do you consider yourself to be an expert in
20 the maintenance and operation of school facilities?
21 MR. ELIASBERG: Objection, asked and 12:48 PM
22 answered.
23 THE WITNESS: As a part of what it means to
24 be in a school facility planning, yes.
25 BY MR. SEFERIAN:

1 Q. What do you mean by that? 12:48 PM
 2 A. In looking at how buildings are maintained,
 3 facility conditions, custodial staff requirements.
 4 Some of the standards. Some of the general
 5 standards. But in terms of day-to-day should we buy
 6 this cleaner or that cleaner, no, I don't get to 12:49 PM
 7 that level of involvement.
 8 Q. Before this case have you ever performed an
 9 analysis similar to the one you did for this case?
 10 MR. ELIASBERG: Objection, vague and
 11 ambiguous. 12:49 PM
 12 THE WITNESS: I don't know. I don't
 13 understand.
 14 BY MR. SEFERIAN:
 15 Q. In this case you were asked to opine on the
 16 range of solutions available and utilized by states 12:50 PM
 17 other than California to address the long-term
 18 planning, maintenance, supervision and operation of
 19 school facilities; correct?
 20 A. That's correct.
 21 Q. Before you were asked by the plaintiffs in 12:50 PM
 22 Williams to perform an analysis, had you ever done
 23 an analysis similar to that?
 24 A. Not looking specifically at school facility
 25 models in states. Not specifically in that area.

1 Q. Have you ever advised or consulted with any 12:50 PM
 2 state government regarding school facilities
 3 maintenance and operations?
 4 A. Not specifically only for school facility
 5 maintenance and operations, no.
 6 Q. Have you ever advised or consulted with any 12:51 PM
 7 state government generally?
 8 MR. ELIASBERG: Objection, vague.
 9 THE WITNESS: I would characterize my
 10 testimony for the State of Indiana as -- I don't
 11 know -- well, I don't know if that's advising. I 12:51 PM
 12 guess I didn't advise them, no.
 13 BY MR. SEFERIAN:
 14 Q. So would it be correct to say that you have
 15 never advised or consulted with a state government
 16 regarding school facilities maintenance and 12:51 PM
 17 operations?
 18 A. Yes.
 19 Can I clarify that? I have been working
 20 with Dr. Stenzler and Dr. Williams, and then in the
 21 state of Indiana, in New Mexico, and some of the 12:52 PM
 22 states, when we would have conferences, and they
 23 were the state heads, and we would talk about what
 24 should be and how we were doing it, you know, they
 25 would ask my opinion, since I have worked in so many

1 states. 12:52 PM
 2 Now, you know, that was advising in a sense
 3 of a specific person, but he wasn't in a position to
 4 say, "I am representing the state," but rather, you
 5 know, he was the director of the state in
 6 Dr. Stenzler's and Dr. Williams' case. And they 12:52 PM
 7 have called me, prior to this case, to talk about,
 8 you know, some of my experience. So I guess I have
 9 advised them informally.
 10 Q. Have you ever formally advised or consulted
 11 with a state government regarding school facilities 12:53 PM
 12 maintenance and operations?
 13 A. No, I have not.
 14 Q. Who else besides Mr. Eliasberg looked at
 15 your report before it was finalized?
 16 MR. ELIASBERG: Objection to the extent it 12:53 PM
 17 calls for speculation.
 18 THE WITNESS: I have no idea. I don't
 19 know.
 20 BY MR. SEFERIAN:
 21 Q. Did you ever show your report or a draft of 12:53 PM
 22 your report to anyone other than Mr. Eliasberg
 23 before it was finalized in this case?
 24 A. Not that I recall.
 25 Q. Have you ever been a teacher in a public

1 school? 12:53 PM
 2 A. Yes.
 3 Q. When were you a teacher?
 4 A. I think it's in my resume. I was a speech
 5 therapist. I started out as a speech therapist in
 6 1973 to 1977 or eight, and then I went back into 12:54 PM
 7 public schools four years ago and worked a year part
 8 time in the public schools. And I continue to serve
 9 as a teacher/speech therapist currently.
 10 Q. Were you ever a teacher where you had your
 11 own classroom? 12:54 PM
 12 MR. ELIASBERG: Objection, vague.
 13 THE WITNESS: If you're defining me as a
 14 regular classroom teacher, no.
 15 BY MR. SEFERIAN:
 16 Q. Have you ever been a principal or another 12:54 PM
 17 type of administrator in a school?
 18 A. Yes. In a co-op, cooperative for special
 19 ed. I am a supervisor for speech therapists for the
 20 cooperative, and assistant director of special ed.
 21 Q. Is that listed on your resume? 12:55 PM
 22 A. No, I don't believe so.
 23 Q. When and where did that occur?
 24 A. That was in -- started in 1973 and went
 25 till 1976 or '77. I don't remember for sure. I

Page 460

1 also supervised at the university, as well. 12:55 PM
2 Q. Did any of your academic courses relate to
3 the maintenance and operation of school facilities?
4 A. Yes.
5 Q. Can you name those?
6 A. The graduate course in school facilities. 12:56 PM
7 MR. ELIASBERG: Classes she took or taught?
8 MR. SEFERIAN: Took.
9 Q. Is that how you understood it?
10 A. Yes. The business and finance course, part
11 of that was addressing schools facilities. That's 12:56 PM
12 all I can remember now.
13 Q. Have you ever worked in the maintenance and
14 operations department in a school or school
15 district?
16 A. No, I have not. 12:56 PM
17 Q. Have you ever testified before any
18 legislative body on the proper role of various
19 levels of government in the maintenance and
20 operation of school facilities?
21 A. No. 12:56 PM
22 Q. Before you began work on this case, did you
23 ever express the opinion that there needs to be a
24 centrally -- withdraw that question.
25 Before you began work on this case, did you

Page 461

1 ever express the opinion that there needs to be a 12:57 PM
2 clearly defined organizational structure which
3 incorporates a partnership between state and local
4 district authorities, and encompasses all
5 educational facility projects under the same
6 umbrella? 12:57 PM
7 A. Before I began this project, I strongly
8 believed, and I still believe, there needs to be
9 strong connections made between all levels relating
10 to education.
11 As I mentioned earlier, I think it's very 12:57 PM
12 important that the ownership of schools be part --
13 the connection needs to be with state, local,
14 parents, faculty. There needs to be more of a
15 connection than what there currently is.
16 If that's what you're asking, that's the 12:57 PM
17 connection that I believe needs to occur, and that's
18 a premise of the book that we are writing.
19 Q. Before you began work on this case, did you
20 ever express anywhere in writing the opinion that
21 there needs to be a clearly defined organizational 12:58 PM
22 structure which incorporates a partnership between
23 state and local district authorities, and
24 encompasses all educational facility projects under
25 the same umbrella, or an opinion to that effect?

Page 462

1 A. Again, in the proposal that we wrote for 12:58 PM
2 the book we talked about partnerships, and the
3 importance of those, and the connections throughout
4 the entire book. And one of the chapters speaks to
5 maintenance and operations. So, you know, that's in
6 writing. But it's much broader than -- it certainly 12:58 PM
7 was much broader than only looking at an
8 organizational structure for state and local
9 partnership.
10 Q. When did you submit the proposal for the
11 book? 12:59 PM
12 A. It was sometime in the fall of 2001, to my
13 best recollection.
14 Q. When did you begin work on this case, the
15 Williams case?
16 A. Sometime in the fall of 2001. They both 12:59 PM
17 were occurring somewhere around the same time.
18 Q. In the -- withdraw that.
19 Does your book have a title or a tentative
20 title?
21 A. What we called it in the proposal was The 12:59 PM
22 Building and Beyond, Creating Connections. I can't
23 remember. Creating Connections That -- Creating
24 Connections something.
25 Oh, you've got it right there. What is the

Page 463

1 title? 01:00 PM
2 Q. I would like to ask you.
3 MR. HAJELA: He can't tell you that. That
4 would be crazy.
5 MR. SEFERIAN: I would like to ask you to
6 refer to Exhibit 3. 01:00 PM
7 THE WITNESS: I don't have it.
8 MR. SIMMONS: The record should probably
9 reflect the witness has a copy of Exhibit 3.
10 BY MR. SEFERIAN:
11 Q. Is Exhibit 3 the book proposal that you 01:00 PM
12 were just referring to?
13 A. Yes, it is.
14 Q. In the book proposal, which is Exhibit 3,
15 does that proposal talk about a clearly defined
16 organizational structure which incorporates a 01:01 PM
17 partnership between state and local district
18 authorities, and encompassing all educational
19 facility projects under the same umbrella?
20 MR. ELIASBERG: The document speaks for
21 itself. 01:01 PM
22 THE WITNESS: All this is is bullet points
23 of what might be considered in the book, but there
24 is more to the proposal than that. There was a
25 cover letter and an explanation of what and how we

1 were going to do, and what these icons meant. No, 01:01 PM
 2 this does not do that on these two pages.
 3 BY MR. SEFERIAN:
 4 Q. Does the proposal -- withdraw that.
 5 What other documents constitute the book
 6 proposal that you're referring to? 01:02 PM
 7 A. There is a cover letter. There is a brief
 8 explanation of our feeling about connection, and we
 9 give some very general statements about the
 10 importance of connections in public education.
 11 There is a fee structure, time line, and then 01:02 PM
 12 obviously this tentative outline, and what the icons
 13 mean, and how we were going to use those in the
 14 book.
 15 Q. Before you began work on this case, did you
 16 ever have any material that was published where you 01:02 PM
 17 expressed the opinion that this needs to be a
 18 clearly defined organizational structure which
 19 incorporates a partnership between state and local
 20 district authorities, and encompasses all
 21 educational facility projects under the same 01:03 PM
 22 umbrella, or an opinion to that effect?
 23 MR. ELIASBERG: Objection, asked and
 24 answered.
 25 THE WITNESS: No.

1 BY MR. SEFERIAN: 01:03 PM
 2 Q. Before you began work on this case, did you
 3 ever express in writing the opinion that a state
 4 needs to establish an initial and an ongoing
 5 data-gathering mechanism to identify all the
 6 facilities within the state? 01:03 PM
 7 A. No.
 8 Q. Before you began work on this case, did you
 9 ever express in writing the opinion that there need
 10 to be standards imposed, at the state level, for the
 11 maintenance of school facilities and a state 01:04 PM
 12 compliance program with a regularized inspection
 13 regime?
 14 MR. ELIASBERG: In those exact words?
 15 MR. SEFERIAN: Or an opinion to that
 16 effect. 01:04 PM
 17 THE WITNESS: Would you restate the
 18 question?
 19 BY MR. SEFERIAN:
 20 Q. Yes.
 21 Before you began work on this case, did you 01:04 PM
 22 ever express in writing the opinion that there need
 23 to be standards imposed, at the state level, for the
 24 maintenance of school facilities and a state
 25 compliance program with a regularized inspection

1 regime, or words to that effect? 01:05 PM
 2 A. I don't think that -- that wouldn't
 3 characterize what I would have written, no.
 4 Q. Are you sufficiently familiar with
 5 California to say whether or not California has a
 6 clearly defined organizational structure which 01:05 PM
 7 incorporates a relationship between state and local
 8 district authorities?
 9 MR. ELIASBERG: Objection, vague.
 10 THE WITNESS: No, I'm not. I know of some
 11 information about California, but I don't consider 01:05 PM
 12 myself an expert on what happens in California or
 13 the organizational structure of California.
 14 BY MR. SEFERIAN:
 15 Q. In your opinion, would you characterize any
 16 state as presently having an initial and ongoing 01:06 PM
 17 data-gathering mechanism to identify all of its
 18 public school facilities?
 19 MR. ELIASBERG: Objection, asked and
 20 answered.
 21 THE WITNESS: Yes. 01:06 PM
 22 BY MR. SEFERIAN:
 23 Q. Which states are those?
 24 MR. ELIASBERG: Objection, asked and
 25 answered.

1 THE WITNESS: Maryland has a process not 01:06 PM
 2 only for initial, but also for ongoing, and West
 3 Virginia, are two that have it right now. Ohio is
 4 starting. They have gathered data, but they don't
 5 have an ongoing maintenance process yet.
 6 BY MR. SEFERIAN: 01:06 PM
 7 Q. Are the only states that presently have an
 8 initial and ongoing data-gathering mechanism to
 9 identify all of their public school facilities
 10 Maryland and West Virginia?
 11 A. No. 01:07 PM
 12 Q. What other states have that?
 13 A. States that have an initial data-gathering
 14 mechanism and an ongoing data-gathering mechanism,
 15 Arizona has a mechanism. New Jersey has a
 16 mechanism. Massachusetts has a mechanism. And Ohio 01:07 PM
 17 does in the sense that they have gathered the data
 18 and are going to continue to ask the districts to
 19 include that data. Those would be ones I can think
 20 of right now.
 21 Q. Are you sufficiently familiar with 01:07 PM
 22 California to say whether California encompasses all
 23 educational facility projects under the same
 24 umbrella?
 25 A. No, I'm not.

Page 468

1 Q. Do you have any opinion as to the cost of 01:08 PM
 2 an initial and ongoing data-gathering mechanism to
 3 identify all of the facilities within the state of
 4 California?
 5 A. No, I do not.
 6 MR. ELIASBERG: Asked and answered. 01:08 PM
 7 BY MR. SEFERIAN:
 8 Q. Do you have any opinion as to whether
 9 California has a fair and equitable means to
 10 allocate school facilities' financial resources?
 11 A. If you're asking do I have an opinion if 01:08 PM
 12 California has a fair and equitable system for
 13 allocating resources for school maintenance?
 14 It's my understanding from my conversations
 15 that the deferred maintenance area is addressed in
 16 California, but it's not -- again, from my 01:09 PM
 17 conversations it's not necessarily fair and
 18 equitable.
 19 MR. SEFERIAN: I'm sorry. Would you read
 20 that answer, please?
 21 (The reporter read the answer as 01:10 PM
 22 requested.)
 23 BY MR. SEFERIAN:
 24 Q. What conversation were you referring to?
 25 A. Conversations with Rob Corley and Lettie

Page 469

1 Boggs. 01:10 PM
 2 Q. Is your opinion regarding the equity of the
 3 California deferred maintenance funding based solely
 4 upon conversations you had with Rob Corley and
 5 Lettie Boggs?
 6 A. No. 01:10 PM
 7 Q. What are the other sources of this
 8 opinion?
 9 A. The depositions that are cited in the
 10 expert report that speak to the California system as
 11 well. 01:11 PM
 12 Q. Were there any of the depositions that you
 13 read where it was stated that the deferred
 14 maintenance system in California, in terms of
 15 allocating financial resources, is inequitable?
 16 A. I don't remember that right now. 01:11 PM
 17 Q. Have you conducted any type of statistical
 18 analysis regarding the equity of the California
 19 deferred maintenance funding system?
 20 A. No, I have not.
 21 MR. HAJELA: Off the record a second. 01:12 PM
 22 (Discussion off the record.)
 23 (A lunch recess was taken from
 24 1:12 P.M. to 2:23 P.M.)
 25 MR. SIMMONS: For the record, I just wanted

Page 470

1 to state that I had asked if, at lunch time, 02:23 PM
 2 Dr. Myers could review the e-mails contained in
 3 Exhibit 13 and see if she was aware of any e-mails
 4 that were part of her e-mail survey that are not
 5 contained in Exhibit 13. And my understanding is
 6 that she feels this is a pretty complete collection, 02:24 PM
 7 and she is not aware of any e-mails that are missing
 8 from this exhibit.
 9 Is that consistent with your understanding?
 10 THE WITNESS: Yes.
 11 MR. SIMMONS: Great. Thank you. 02:24 PM
 12 MR. ELIASBERG: We will do our best to try
 13 to make Dr. Myers available for as long as she can
 14 go to try to get this done, consistent with her
 15 being still somewhat on East Coast time.
 16 Obviously it's going to be a little bit of 02:24 PM
 17 an hour-by-hour thing, but we would like to try to
 18 get this done. I think in the last two hours a lot
 19 of stuff that was covered was thoroughly previously
 20 covered by Shaun, and I think it was material that
 21 Dr. Myers had made very clear is not the focus of 02:25 PM
 22 her expert report.
 23 MR. REED: I will make every effort to see
 24 what we can do to complete it, but I haven't had a
 25 chance to ask a question yet. Whatever the various

Page 471

1 points of view might be about how efficient the time 02:25 PM
 2 has been used up to this point, I don't expect to
 3 suffer the consequences not getting a chance to ask
 4 questions, with the timing of the court reporter,
 5 and the ability of the witness. I am willing to
 6 stay to however long we can tonight. 02:25 PM
 7 MR. SEFERIAN: I disagree with the
 8 characterization of my questions by Mr. Eliasberg,
 9 but I will do everything I can to see we finish as
 10 expeditiously as possible.
 11 MR. SIMMONS: I would also state that I 02:25 PM
 12 think we have had about as much break time as we
 13 have had questioning time today, but that's probably
 14 the reason why it's going slow today rather than any
 15 inefficiency on the part of Mr. Seferian.
 16 MR. REED: Everybody got that off their 02:26 PM
 17 chest?
 18 MR. HAJELA: I feel strongly both ways, if
 19 there is two ways.
 20 EXAMINATION (RESUMED)
 21 BY MR. SEFERIAN: 02:26 PM
 22 Q. Dr. Myers, do you believe you have a
 23 working knowledge about what standards exist at the
 24 State level in California for the maintenance of
 25 school facilities?

Page 472

1 A. No, I don't. 02:26 PM
 2 Q. Have you performed any analysis of whether
 3 a State compliance program with a regularized
 4 inspection regime would be effective in California?
 5 MR. ELIASBERG: Objection, vague.
 6 THE WITNESS: Would you restate the 02:27 PM
 7 question?
 8 BY MR. SEFERIAN:
 9 Q. Yes.
 10 Have you performed any kind of analysis or
 11 some type of finding about whether, if California 02:27 PM
 12 implemented a State compliance program with a
 13 regularized inspection regime, that would be
 14 effective in improving school facility maintenance
 15 in California?
 16 MR. ELIASBERG: Objection, vague. 02:27 PM
 17 THE WITNESS: If you're asking me if I
 18 looked at the State of California system and
 19 rendered an opinion with regards to its
 20 effectiveness, no, I have not.
 21 BY MR. SEFERIAN: 02:27 PM
 22 Q. I would like to ask you to please look at
 23 Exhibit Myers 1. And on page 3 of your expert
 24 report, in paragraph 15, in the first sentence, when
 25 you use the word "successful," how do you use that

Page 473

1 word "successful," or how do you define it in that 02:28 PM
 2 context of the states that appear to be most
 3 successful in providing an equitable long-term
 4 solution for facility maintenance?
 5 MR. ELIASBERG: Asked and answered.
 6 THE WITNESS: I guess, as I stated before, 02:28 PM
 7 I define success as looking at facility conditions
 8 within the state, and determining whether or not one
 9 of the ways is very simply looking at the condition
 10 and determining whether or not those facilities are
 11 in good condition. Another component in that is, is 02:29 PM
 12 there a system in place so that all schools in the
 13 state have an opportunity through the process for
 14 good facilities.
 15 MR. SEFERIAN: Would you please read that
 16 answer? 02:29 PM
 17 (The reporter read the preceding answer.)
 18 BY MR. SEFERIAN:
 19 Q. Do you have any type of system of rating or
 20 ranking the states in terms of whether all the
 21 facilities are in good condition? 02:30 PM
 22 A. If you're asking did I come up with a
 23 rating system to determine facility conditions in
 24 each state, no, I didn't.
 25 Q. Do you have any type of system of rating or

Page 474

1 ranking states in terms of whether all schools have 02:30 PM
 2 the opportunity in the process for good school
 3 facilities?
 4 A. Would you restate that?
 5 Q. Yes.
 6 In your work in this case, have you formed 02:31 PM
 7 any type of rating or ranking of the states in terms
 8 of whether all the schools in any state have the
 9 opportunity in the process to have good facilities?
 10 A. To the extent that Maryland and West
 11 Virginia have a priority rating whereby facilities 02:31 PM
 12 that are in -- that they have determined are in the
 13 worst condition are being prioritized, that would be
 14 the only analysis I would have done in looking at
 15 their information.
 16 Q. What work did Miss Robertson do for you in 02:31 PM
 17 this case?
 18 MR. ELIASBERG: Objection, assumes facts.
 19 BY MR. SEFERIAN:
 20 Q. Did Miss Robertson do any work to assist
 21 you in any of the -- with any of the work that you 02:32 PM
 22 did in this case?
 23 A. She and I are co-authoring the book, so we
 24 are discussing what goes into the maintenance and
 25 operations chapter. She didn't do any "work" on the

Page 475

1 case. 02:32 PM
 2 Q. What was the name of the assistant you had
 3 for work on this case?
 4 A. Fran Van Oyen.
 5 Q. Can you briefly describe the types of work
 6 Miss Van Oyen did in this case? 02:32 PM
 7 A. She did mostly Internet searches.
 8 Q. Anything else that Miss Van Oyen did that
 9 you can recall?
 10 A. She would follow up on lining up calls that
 11 I needed to make, and scheduling those calls with 02:32 PM
 12 some of the persons that I needed to talk with, look
 13 at my schedule and their schedule.
 14 Q. Is it your opinion that California has the
 15 lowest square foot per student in the United States
 16 in school facilities? 02:33 PM
 17 MR. ELIASBERG: Asked and answered.
 18 THE WITNESS: Yes, I did.
 19 BY MR. SEFERIAN:
 20 Q. What is your source for that opinion?
 21 A. Looking at some of the architectural AIA's 02:33 PM
 22 information, as well as American Schools and
 23 University does a survey of state standards and/or
 24 guidelines and/or requirements.
 25 Q. Did all the Maryland school inspections

1 that you perform occur in one day? 02:33 PM
 2 MR. ELIASBERG: Objection to the extent it
 3 misstates her testimony.
 4 THE WITNESS: Yes.
 5 BY MR. SEFERIAN:
 6 Q. Have you seen any documents showing that 02:34 PM
 7 Maryland and West Virginia have inventoried every
 8 school facility building square footage?
 9 A. Yes.
 10 Q. What documents have you seen?
 11 A. The inventory of -- from -- it was a 02:34 PM
 12 summary of inventory of buildings, and square feet
 13 in the buildings, and age of the buildings.
 14 Q. Did you see those summaries for both
 15 Maryland and West Virginia?
 16 A. I believe so. 02:34 PM
 17 Q. What is the Recognized Educational
 18 Facilities Planner?
 19 A. It's an accreditation program that you have
 20 to -- you apply for it, and then get accepted into
 21 the -- as a recognized planner by your years of 02:35 PM
 22 experience and the ongoing continuing education
 23 credits that are required to continue with the
 24 recognition.
 25 Q. Who provided you with the distinction of

1 Recognized Educational Facilities Planner? 02:35 PM
 2 A. The Council of Educational Facilities
 3 Planners International.
 4 Q. Did you take any type of examination to
 5 become a Recognized Educational Facilities Planner?
 6 A. No. 02:35 PM
 7 Q. Do you know the name of the state-level
 8 facilities department in Maryland?
 9 MR. ELIASBERG: Asked and answered.
 10 THE WITNESS: Are you talking about the
 11 name of the person who is in charge of the 02:36 PM
 12 state-level facilities department?
 13 MR. SEFERIAN: No. The name of the
 14 facilities division or the department in Maryland.
 15 THE WITNESS: I get them mixed up. One of
 16 them is Division of Public Works, and I believe 02:36 PM
 17 that's Maryland's.
 18 BY MR. SEFERIAN:
 19 Q. Is Dr. Stenzler the head of the Division of
 20 Public Works in Maryland?
 21 A. He is the head of the Facilities Division, 02:36 PM
 22 if that's what it's called, yes.
 23 MR. REED: If it helps, I think the
 24 letterhead that is the first page of Exhibit 11 will
 25 reveal Mr. Stenzler's agency's name.

1 THE WITNESS: Thank you. 02:37 PM
 2 BY MR. SEFERIAN:
 3 Q. Looking at the first page of Exhibit 11, is
 4 Mr. Stenzler the executive director of the Public
 5 School Construction Program in the state of
 6 Maryland? 02:37 PM
 7 A. Yes. Yes.
 8 Q. To your knowledge, is the Public School
 9 Construction Program of the state of Maryland -- is
 10 that analogous to the California Department of
 11 Education? 02:37 PM
 12 A. I don't have any idea.
 13 Q. Do you have any knowledge about how many
 14 different people in the state of Maryland's Public
 15 School Construction Program conduct school
 16 facilities inspections? 02:38 PM
 17 A. No, I don't.
 18 Q. Do you have any knowledge about how many
 19 people are on the staff in the state of Maryland
 20 Public School Construction Program?
 21 A. I think, if I remember the organizational 02:38 PM
 22 chart, this is part of it. But I think the -- if I
 23 remember, there is two boxes. There is the
 24 governor's office and then there's his office. He
 25 is appointed by the governor. And I think he is in

1 the Division of Public Works. And one piece of that 02:38 PM
 2 is public school construction.
 3 And there is also -- the Public School
 4 Construction Program is in that box or in that
 5 organizational piece, but I believe there are other
 6 organizations in there as well, if I remember right. 02:38 PM
 7 So I'm not really sure how many employees. There is
 8 a lot of them, but I'm not sure how many are in that
 9 particular office.
 10 Q. Do you know which department in Maryland
 11 the people work for who perform the public school 02:39 PM
 12 inspections?
 13 A. Public School Construction Program.
 14 Q. Do you have any estimate of how many people
 15 are on staff in the Maryland's Public School
 16 Construction Program? 02:39 PM
 17 A. No, I don't.
 18 Q. What is the name of the analogous
 19 organization in West Virginia that conducts public
 20 school inspections?
 21 A. I don't remember, but I could look it up in 02:39 PM
 22 the West Virginia information.
 23 Q. Do you know how many inspectors the State
 24 of West Virginia has that perform public school
 25 inspections?

Page 480

1 A. No, I don't. 02:40 PM
 2 Q. Do you have any estimate?
 3 A. Between five and ten.
 4 Q. Can you give any estimate of how many
 5 public school inspectors there are in Maryland?
 6 A. No. 02:40 PM
 7 Q. Can you give any estimate of how many
 8 public school inspectors there are in New Mexico?
 9 A. No, because the program has just started.
 10 Q. Do you know how many public schools there
 11 are in Maryland? 02:40 PM
 12 MR. ELIASBERG: Asked and answered.
 13 THE WITNESS: No, I don't.
 14 BY MR. SEFERIAN:
 15 Q. Do you have any estimate?
 16 A. No. 02:40 PM
 17 Q. Do you have any estimate of how many public
 18 schools there are in West Virginia?
 19 A. No, I don't.
 20 Q. Do you know how many people are on staff in
 21 the California Department of Education? 02:40 PM
 22 A. No, I don't.
 23 Q. Do you know how many staff California
 24 Department of Education School Facilities Planning
 25 Division has?

Page 481

1 A. No, I don't. 02:41 PM
 2 Q. Who are you writing the facilities planning
 3 manual for?
 4 A. The audience I am writing for is the -- are
 5 school facility planners, architects, engineers,
 6 parents, community members, school board members. 02:41 PM
 7 Anybody that works in the school.
 8 Q. Did someone ask you to write the facilities
 9 planning manual?
 10 A. We -- yes.
 11 Q. Who is that? 02:41 PM
 12 A. The Council for Educational Facility
 13 Planners.
 14 Q. I would like to ask you to refer to page 2
 15 of your expert report again, paragraph 11. In the
 16 first sentence where you say, "I conducted a 02:42 PM
 17 multistate survey," do you consider that the
 18 multistate survey that you conducted for this case
 19 is a scientific survey?
 20 A. No.
 21 Q. Would you agree that your experience is 02:42 PM
 22 primarily in facilities planning rather than
 23 maintenance and operations?
 24 A. No.
 25 Q. Why would you not agree with that?

Page 482

1 A. Because I don't know how you differentiate 02:42 PM
 2 facilities planning without thinking about
 3 maintenance and operations because they are
 4 integrally tied.
 5 Q. Would you agree that maintenance and
 6 operations is a different field specialty than 02:42 PM
 7 facilities planning?
 8 MR. ELIASBERG: Objection, vague.
 9 THE WITNESS: No.
 10 BY MR. SEFERIAN:
 11 Q. So it's your testimony that the field of 02:43 PM
 12 facilities planning is essentially the same as the
 13 field of maintenance and operations?
 14 A. My testimony is that in the field of
 15 facilities planning there are a number of areas
 16 included within that field. Just the same, I 02:43 PM
 17 assume, as a lawyer, there are a number of areas
 18 that are included if you're a lawyer.
 19 So to say that one is separate from the
 20 other would not be appropriate because maintenance
 21 of a building is just as critical as knowing the 02:43 PM
 22 square footage of that building, is just as critical
 23 as knowing how to work with the community. They are
 24 all integrally tied.
 25 Q. Do you believe that Indiana has the type of

Page 483

1 state/local partnership that you discuss in your 02:44 PM
 2 report that very clearly defines standard and
 3 operating procedures?
 4 A. Not any longer.
 5 Q. Would you please refer to paragraph 15 your
 6 report on page 3. 02:45 PM
 7 Do you believe that it's important that a
 8 state have guidelines established to include ongoing
 9 maintenance and operations of those facilities
 10 included within the facilities project? .
 11 A. I don't understand. Will you restate? 02:45 PM
 12 Q. Yes.
 13 Do you believe that it's important that a
 14 state establish a process whereby a school district
 15 receiving funding to assist with a facility project
 16 also establish guidelines to include ongoing 02:46 PM
 17 maintenance and operations of those facilities
 18 within the facility project?
 19 A. I think -- as I stated earlier, I think
 20 that it's not the state necessarily that's going to
 21 establish the standards or guidelines. It's the 02:46 PM
 22 partnership between the state and the other
 23 entities. I think it is important to have clearly
 24 defined standards and procedures, but I would not
 25 suggest that it's only the state's responsibility to

Page 484

1 do that. 02:46 PM

2 Q. Do you believe that it's important that

3 guidelines be established to include ongoing

4 maintenance and operations of public school

5 facilities within the facility project?

6 A. I think it's important that guidelines be 02:46 PM

7 established, yes.

8 Q. Does California have those type of

9 guidelines?

10 A. I don't know.

11 Q. If California had guidelines that included 02:47 PM

12 ongoing maintenance and operations of facilities

13 within the facilities project, would you agree that

14 California had an important part of what you

15 describe as a state/local partnership?

16 MR. ELIASBERG: Objection, vague, 02:47 PM

17 ambiguous, compound, assumes facts, incomplete

18 hypothetical.

19 THE WITNESS: My opinion is based on a

20 combination of things. I have suggested there are

21 four areas that need to be included if you're really 02:47 PM

22 going to address facilities and maintenance and

23 operations effectively based on the models that I

24 have seen that have been successful.

25 So if California has established guidelines

Page 485

1 for ongoing maintenance, I would suggest, if they 02:47 PM

2 have done that, and they are clearly defined, and

3 there is a partnership, then they've got one piece

4 of the puzzle put together.

5 Q. Would you please look at paragraph 16 in

6 your report? 02:48 PM

7 In the first sentence you state that there

8 needs to be an organizational structure established

9 to allow school districts the opportunity to become

10 responsible for their facilities.

11 Have you written anywhere a more specific 02:48 PM

12 description of the organizational structure that

13 needs to be established in that context?

14 MR. ELIASBERG: Objection, compound,

15 misstates what's written in the report.

16 THE WITNESS: If you're asking have I 02:48 PM

17 written, I assume meaning some other publication,

18 about specific organizational structures that need

19 to be established to allow local districts to become

20 responsible, no, I have not.

21 BY MR. SEFERIAN: 02:49 PM

22 Q. Do you have a definition of the

23 organizational structure that you mention in

24 paragraph 16 of your report?

25 A. I think, as I stated earlier, the

Page 486

1 organizational structure would consist of the 02:49 PM

2 partnership between the state and the local and

3 perhaps regional. That would be up to the state to

4 decide how the organization is going to work. But

5 there needs to be a structure in place that everyone

6 is familiar with, and knows the rules, and knows who 02:49 PM

7 you go to, and how the line of communication

8 happens. So that structure needs to be defined in

9 every state differently.

10 Q. I would like to ask you to please look at

11 paragraph 21 of your expert report. 02:50 PM

12 Is all the information in paragraph 21 of

13 your report based upon the Brooks deposition that is

14 cited at the end of that paragraph?

15 A. It's probably a combination of the Brooks

16 deposition, as well as the conversations with Rob 02:50 PM

17 Corley.

18 Q. Are there any other sources for the

19 information in paragraph 21 of your report other

20 than the Brooks deposition and your conversation

21 with Mr. Corley? 02:50 PM

22 MR. ELIASBERG: Objection, misstates her

23 testimony.

24 THE WITNESS: Those would be the two

25 primary ones I can think of right now. As I

Page 487

1 mentioned earlier, I talked with others for 02:51 PM

2 background knowledge. To say that those are the

3 only two that brought me to those statements, those

4 certainly are the primary sources.

5 MR. SEFERIAN: I don't have any other

6 questions. Thank you. 02:52 PM

7 EXAMINATION

8 BY MR. HAJELA:

9 Q. Good afternoon, Dr. Myers.

10 A. Good afternoon.

11 Q. My name is Abe Hajela. I represent the 02:57 PM

12 California School Boards Association. We have

13 intervened in this lawsuit. I believe you know the

14 ground rules by now. We have been at this for two

15 and a half days. So I will just start my

16 questioning. 02:57 PM

17 Previously you testified that your

18 assignment was to look at good facilities models in

19 other states, not to be an expert on California's

20 school facilities program; is that accurate?

21 A. Yes. I was to look at other states' 02:58 PM

22 models, yes.

23 Q. You also testified that you did not

24 specifically examine California's state school

25 facilities program; is that accurate?

Page 488

1 A. Only to the extent of the conversations 02:58 PM
 2 that I had and the information I read, but I did not
 3 specifically do research on California.
 4 Q. And you did not specifically examine
 5 California school districts' facilities programs?
 6 A. Again, only of the ones like the Compton 02:58 PM
 7 Unified District. I looked at their information,
 8 but I didn't look at all their facilities, no.
 9 Q. In your report you discuss some components
 10 of a model facilities program, and I will turn to
 11 those in a minute. 02:58 PM
 12 Did you examine any issues relating to
 13 implementing those components in California?
 14 MR. ELIASBERG: Objection, compound and
 15 vague.
 16 THE WITNESS: If you're asking did I look 02:59 PM
 17 at what I was suggesting as possible measures to
 18 take and then say could that happen in California?
 19 MR. HAJELA: Yes.
 20 THE WITNESS: No, I did not.
 21 BY MR. HAJELA: 02:59 PM
 22 Q. Thank you. Did you consider the cost of
 23 implementing components of the model program in
 24 California?
 25 A. No, I did not.

Page 489

1 Q. Thank you. Let me refer you to your 02:59 PM
 2 report, Exhibit 1. Page 2, paragraph 12, there is a
 3 section titled "Summary of Opinions." And paragraph
 4 12 contains, I believe, your conclusions listed in
 5 sub (a) through (d) of paragraph 12.
 6 Is that accurate? 02:59 PM
 7 A. Yes, that's true.
 8 Q. Are those conclusions based on a specific
 9 examination of the California school facilities
 10 program?
 11 A. No. 03:00 PM
 12 Q. Did you examine whether these conclusions
 13 are specifically applicable to California?
 14 MR. ELIASBERG: Objection, vague.
 15 THE WITNESS: What I was providing was a
 16 range of solutions that was available and utilized 03:00 PM
 17 in other states that possibly California could use.
 18 It's my opinion that states through their own
 19 process need to use the four pieces that I have
 20 suggested, but how they go about doing that was
 21 strictly up to each state to decide. 03:00 PM
 22 BY MR. HAJELA:
 23 Q. Is it fair to say, then, the conclusions
 24 you reach in paragraph 12, that are laid out in sub
 25 (a) through (d), are equally applicable to any state

Page 490

1 in the nation? 03:01 PM
 2 A. I think if you want to have a successful
 3 program, it's important to have these four
 4 components. Not every state that I think is
 5 starting to do a good job has all four. But I think
 6 if you want to be successful, you would have all 03:01 PM
 7 four components.
 8 Q. Okay. Have you, in preparing this report
 9 or since then, ruled out whether California perhaps
 10 does things differently and yet still has a
 11 facilities program that is adequate? 03:01 PM
 12 MR. ELIASBERG: Objection, vague and
 13 ambiguous.
 14 MR. HAJELA: By "differently," I mean
 15 differently than laid out as a model program in this
 16 report. 03:01 PM
 17 MR. ELIASBERG: Same objections.
 18 THE WITNESS: It's my understanding that
 19 California doesn't have all four of these
 20 components. They may have some pieces of them, but
 21 it's my understanding, again from the people I 03:02 PM
 22 talked with in depositions, that they don't have
 23 these four components.
 24 BY MR. HAJELA:
 25 Q. Have you been able to rule out whether

Page 491

1 California nevertheless has an adequate school 03:02 PM
 2 facilities program?
 3 A. Again, based on the opinions of Rob Corley
 4 and Lettie Boggs and the depositions, it appears
 5 there are some issues that need to be addressed.
 6 Q. Have you examined whether school districts 03:02 PM
 7 in California are performing some of the functions
 8 that you delineate in your model program described
 9 in your report?
 10 A. No, I haven't.
 11 Q. I'm going to refer you to page 3, starting 03:02 PM
 12 with paragraph 15, referring to state and local
 13 partnership.
 14 Are you referring to a partnership related
 15 to ongoing maintenance only?
 16 A. I am really looking at, I think in the 03:03 PM
 17 broader sense of the term, that if you're looking at
 18 doing the data gathering, all the facilities,
 19 establishing standards, deciding on who gets money
 20 based on an equitable source or an equitable
 21 criteria. Whether it's new construction or ongoing, 03:03 PM
 22 I think it's a combination of those two things.
 23 Q. Are you aware of the partnership between
 24 the State of California and school districts related
 25 to new construction?

Page 492

1 MR. ELIASBERG: Objection, assumes facts. 03:04 PM
 2 THE WITNESS: No. Again, other than what I
 3 have been told by Rob Corley and Lettie Boggs.
 4 BY MR. HAJELA:
 5 Q. Would you have the same answer for
 6 modernization? 03:04 PM
 7 A. Yes.
 8 Q. For deferred maintenance.
 9 A. Yes.
 10 Q. Let me ask one follow-up.
 11 Based on your conversations with Lettie 03:04 PM
 12 Boggs and Rob Corley and examining the deposition,
 13 what is your understanding about the partnership
 14 between the State of California and school districts
 15 with regard to new construction?
 16 MR. ELIASBERG: Objection, assumes facts 03:04 PM
 17 and misstates her prior many testimony.
 18 THE WITNESS: My understanding -- basically
 19 is that, for instance, with the deferred
 20 maintenance, that school districts apply for
 21 funding. And then the state, you know, through this 03:04 PM
 22 system where we have X amount of dollars, gives
 23 funding back to the school districts that apply
 24 only. With the new construction I know they have a
 25 series of requirements in terms of passing approval

Page 493

1 processes, and there are requirements working with 03:05 PM
 2 the school district. That's basically what I know.
 3 BY MR. HAJELA:
 4 Q. In paragraph 15 you refer to -- in the
 5 first sentence you refer to very clearly defined
 6 standards, standards and operating procedures. 03:05 PM
 7 Do you see that?
 8 A. Yes.
 9 Q. In the next sentence, when you provide an
 10 example, you refer to guidelines. Do you see that?
 11 A. Yes. 03:05 PM
 12 Q. Are you making a distinction between
 13 standards and guidelines?
 14 MR. ELIASBERG: Objection, asked and
 15 answered.
 16 THE WITNESS: I guess in this case, no. 03:06 PM
 17 Sometimes there are differences that standards
 18 really are absolute positive requirements, but in
 19 other times guidelines are absolute positive
 20 requirements, too. So I guess what I'm suggesting
 21 is that there do need to be some basic standards 03:06 PM
 22 and/or guidelines, but I would think things like
 23 rest rooms being cleaned and in good repair, roofs
 24 not leaking, certainly could be a standard probably
 25 more than a guideline because you definitely would

Page 494

1 want that. That would be the distinction I would 03:06 PM
 2 make.
 3 BY MR. HAJELA:
 4 Q. Are you advocating for a clearly defined --
 5 are you -- strike that.
 6 Are you advocating for clearly defined 03:06 PM
 7 standards, meaning mandatory standards?
 8 MR. ELIASBERG: Objection, overbroad and
 9 incomplete.
 10 THE WITNESS: I guess what I am advocating
 11 is clearly defined something, whether it's standard 03:07 PM
 12 or guidelines; that everybody knows these are things
 13 that need to happen in every school in order to have
 14 good facilities; that there are certain things that
 15 we all agree should happen. Whether you call them
 16 standards or guidelines, as long as everybody 03:07 PM
 17 understands them, and they are being accomplished, I
 18 don't really have an issue with what you call it.
 19 You could call it something totally different. You
 20 could call it requirements.
 21 Q. Let's turn to page 6. You talk about 03:07 PM
 22 data-gathering mechanisms, starting with paragraph
 23 23.
 24 Are you aware of what California school
 25 districts are doing to gather data on their schools?

Page 495

1 A. No, I'm not. 03:08 PM
 2 Q. Are you aware of the eligibility forms that
 3 California school districts must complete to
 4 establish eligibility for modernization funds?
 5 A. No.
 6 Q. Same would be true for new construction? 03:08 PM
 7 A. Right, no.
 8 Q. Are you aware of whether California school
 9 districts inspect their schools?
 10 MR. ELIASBERG: Every California district?
 11 MR. HAJELA: Any California school 03:08 PM
 12 district.
 13 THE WITNESS: No, I'm not.
 14 BY MR. HAJELA:
 15 Q. So would you be aware of whether those
 16 inspections were effective? 03:09 PM
 17 MR. ELIASBERG: Assumes facts.
 18 THE WITNESS: I don't know because I don't
 19 know if they inspect them.
 20 MR. HAJELA: That's fair.
 21 Q. You discuss funding for maintenance and 03:09 PM
 22 operations in your report.
 23 Are you aware of any California
 24 requirements relating to setting aside a percentage
 25 of district general funds budgets for maintenance

Page 496

1 and operations? 03:09 PM
 2 A. No.
 3 Q. Are you aware of any California incentives
 4 for districts to set aside a percentage of their
 5 general fund budgets for maintenance and operations?
 6 A. No, I'm not. 03:10 PM
 7 Q. Would the answer be the same for major
 8 maintenance?
 9 A. Yes, no.
 10 Q. Page 8, paragraph 32, you talk about the
 11 state of Maryland's accountability system, and state 03:10 PM
 12 that the general budget of the district is reviewed
 13 to ensure that dollars have been allocated for
 14 maintenance and operation as a line item budget
 15 consistently over the past few years.
 16 Do you see that? 03:11 PM
 17 A. Yes.
 18 Q. The last sentence there.
 19 A. Yes, I do.
 20 Q. And then again in paragraph 35 you talk
 21 about accountability system for the state of West 03:11 PM
 22 Virginia, and you, again, refer to determining
 23 whether the district has set aside funds in its
 24 general budget.
 25 A. Yes.

Page 497

1 Q. In your experience, if a district does not 03:11 PM
 2 set aside sufficient funds for maintenance and
 3 operations, are the conditions of facilities likely
 4 to be impacted?
 5 A. In my experience, if a district does not
 6 regularly set aside money, facility conditions 03:11 PM
 7 continue to deteriorate. Now, if one year -- they
 8 have been doing it for numbers of years all along,
 9 and one year they can't, I would not suggest that.
 10 But if historically they are not setting aside
 11 dollars, and buildings aren't being kept up, it does 03:12 PM
 12 make a difference.
 13 Q. The last sentence of paragraph 35, which
 14 actually comes on page 10, suggests that if the
 15 districts have not set aside sufficient funds, then
 16 state funding may be denied. Is that fair? 03:12 PM
 17 A. Yes.
 18 MR. ELIASBERG: Can I clarify what state
 19 you're talking about so it's clear for the record?
 20 MR. HAJELA: West Virginia.
 21 Q. In your experience are the facilities 03:12 PM
 22 conditions in a school district likely to improve if
 23 the state withholds funding?
 24 A. Again, only looking at what's happened in
 25 West Virginia and Maryland, they don't have very

Page 498

1 many incidences of schools not putting money in 03:13 PM
 2 because they want the state dollars. So it's a
 3 cause and effect, perhaps. It appears that they
 4 realize the importance of the maintenance and
 5 operations monies, and keep that in there, and then
 6 they can get the state dollars. 03:13 PM
 7 Q. Are you aware of any instances when West
 8 Virginia withheld funds from a district because they
 9 had not set aside sufficient dollars for maintenance
 10 and operations?
 11 MR. ELIASBERG: Asked and answered. 03:13 PM
 12 THE WITNESS: I think I said before that
 13 they -- that when I asked Dr. Williams specifically
 14 that question, he said -- my interpretation of what
 15 he said was, yes, we have done it, but not very
 16 often. But I didn't follow up and say how many 03:13 PM
 17 times, and who was it, or any of that.
 18 BY MR. HAJELA:
 19 Q. The next paragraph, paragraph 36 on page
 20 10. Is it accurate to say it is your opinion that 03:14 PM
 21 facilities funding often becomes a low priority,
 22 based on limited resources available and other
 23 competing priorities within the district?
 24 A. Yes, it is my opinion.
 25 Q. Have you studied how districts allocate the

Page 499

1 funds that they redirect from facilities? 03:14 PM
 2 A. Do you mean what -- have I looked at what
 3 do they do? If they had dollars in their budget
 4 originally, where do they end up going?
 5 Q. Yeah. What I am trying to get at, there is
 6 competing priorities. Have you looked at what those 03:14 PM
 7 competing priorities are?
 8 A. Again, from my experience, I pretty much
 9 know typically where the money goes.
 10 Q. Where does the money go?
 11 A. In the largest line item, and that's 03:15 PM
 12 personnel.
 13 Q. Do you have an opinion as to whether it
 14 might be educationally sound to put the money into
 15 personnel rather than facilities?
 16 A. I guess my opinion would be I think both 03:15 PM
 17 are very, very important. And it's sad if a
 18 district has to make a decision to that extent, but
 19 I think both are equally important.
 20 Q. I understand that it's sad that they have
 21 to make that choice, but is it your experience that 03:15 PM
 22 they almost always have to make choices among
 23 competing priorities?
 24 MR. ELIASBERG: Objection, vague and
 25 incomplete hypothetical.

Page 500

1 THE WITNESS: I don't know that I would 03:15 PM
 2 characterize that districts always have to. On the
 3 other hand, having been in the business for more
 4 than twenty-two years, I never had an opportunity to
 5 work in a district that had plenty of money and
 6 didn't have to prioritize. There are always 03:15 PM
 7 priority issues. It seems like they are getting to
 8 be bigger priority issues than what they used to be.
 9 But I certainly have seen it happen over and over
 10 again where they have to prioritize.
 11 MR. HAJELA: Thanks. 03:16 PM
 12 Q. On page 11 of your report you have a
 13 section on Equitable Funding.
 14 Do you have an opinion regarding whether
 15 adequate funding is also a critical component of a
 16 model school's facility program? 03:16 PM
 17 A. Do I think -- if you're asking do I think
 18 there needs to be money in the -- it's not just
 19 about a system in place? It's also money to help
 20 with that system?
 21 Q. Yes. 03:16 PM
 22 A. Yes.
 23 Q. And you refer specifically here to equity
 24 in funding, which I take as meaning a fair
 25 distribution. And I am asking, is it also important

Page 501

1 that the amount of funding be adequate? 03:17 PM
 2 A. I think it needs to be reasonable. I think
 3 the problem in any state is going to require a
 4 number of years to alleviate the problem, if you
 5 ever can alleviate it. I certainly think there
 6 needs to be reasonable funds allocated every year 03:17 PM
 7 and continue to help the problem.
 8 Q. Do you have an opinion as to whether
 9 California adequately funds new construction of
 10 school facilities?
 11 A. No, I don't. 03:17 PM
 12 Q. Do you have the same answer for
 13 modernization?
 14 A. Yes. No.
 15 Q. Are you aware of any states that adequately
 16 fund new construction? 03:17 PM
 17 A. Ohio. And, again, I guess you have to
 18 define adequate. They are certainly doing a really
 19 good job of giving school districts dollars to build
 20 facilities, and in some cases in many school
 21 districts the school only has to come up with ten or 03:18 PM
 22 fifteen percent of the local money, and the rest
 23 comes from the state. So they have a pretty
 24 specific formula in place and are giving money to
 25 the districts. I would also suggest West Virginia

Page 502

1 and Maryland. But again, I don't -- you know, I 03:18 PM
 2 don't know that I would want to qualify adequate,
 3 but they certainly are providing dollars.
 4 Q. If you know for Ohio, do you know what the
 5 sources of state funds are?
 6 What I mean by that is, is it a statewide 03:18 PM
 7 bond? Do they fund out of the state general fund?
 8 A. This was from a court case, and I believe
 9 it's from the state. In fact, I know it's from the
 10 state, but I don't know if it's from bonding or how
 11 they do that. It was pretty complicated. 03:19 PM
 12 Q. How about for West Virginia?
 13 A. I don't know.
 14 Q. And Maryland?
 15 A. I don't know.
 16 Q. Page 12, paragraph 46. You note that 03:19 PM
 17 California state funding for deferred maintenance
 18 has fluctuated. Do you see that?
 19 A. Yes.
 20 Q. Is it fair to say that you are citing this
 21 as an example of a problem? 03:19 PM
 22 A. Yes.
 23 Q. In your opinion, what should California do
 24 to remedy that problem?
 25 MR. ELIASBERG: Objection to the extent it

Page 503

1 calls for a legal conclusion. 03:19 PM
 2 THE WITNESS: I don't know what they could
 3 do legally. That would be up to somebody else to
 4 decide. Certainly there need to be appropriate
 5 monies allocated for maintenance. And to think that
 6 you can continue to decrease that amount each year 03:20 PM
 7 doesn't make sense to me when you have facility
 8 issues. So it seems to me there needs to be
 9 adequate funding there, whatever that means.
 10 MR. HAJELA: Thank you.
 11 Q. I think in paragraph 48 you note that the 03:20 PM
 12 state does not assist financially with ongoing
 13 maintenance. Do you see that?
 14 A. Yes.
 15 Q. Do you have an opinion regarding how states
 16 should assist school districts with ongoing 03:20 PM
 17 maintenance?
 18 MR. ELIASBERG: Object to that as vague.
 19 THE WITNESS: I don't really know because I
 20 think it has to be all part of the process of when
 21 you have established what you think your state needs 03:21 PM
 22 to do, it depends on how you're going to allocate
 23 funds. And if it makes sense in some states where
 24 there is lots and lots of needs for ongoing
 25 maintenance issues, then maybe they need to allocate

1 more funds there. It's very difficult to say there 03:21 PM
 2 is one way to do this. So I really don't have an
 3 opinion that they ought to be done this way or that
 4 way, but certainly it needs to be addressed.
 5 BY MR. HAJELA:
 6 Q. I just have a couple of general questions, 03:21 PM
 7 and then I will be done. In your report you discuss
 8 clear standards as a component of a model school
 9 facilities program; is that fair?
 10 A. I think I say clearly defined, maybe.
 11 Q. Yeah, clearly defined standards. 03:22 PM
 12 Is it fair to say it takes financial
 13 resources to implement standards?
 14 MR. ELIASBERG: Objection, incomplete
 15 hypothetical.
 16 THE WITNESS: I think it takes all four of 03:22 PM
 17 the components I suggested, and one of those was
 18 equitable funding. So certainly standards are part
 19 of it, but funding is part of it as well.
 20 BY MR. HAJELA:
 21 Q. In your opinion, would a state school 03:22 PM
 22 facilities program be successful if clearly defined
 23 standards are created, but the state does not
 24 provide sufficient resources to implement the
 25 standards?

1 A. Do I think that the state can -- I'm sorry. 03:23 PM
 2 Ask me.
 3 MR. HAJELA: Do you mind reading that back,
 4 please?
 5 (The reporter read the pending question.)
 6 THE WITNESS: I think you have to have all 03:23 PM
 7 of the components, and certainly the standards are
 8 one, the data gathering is another, the partnership
 9 is another, and the funding is another. So I think
 10 it takes all of those.
 11 And I think your other point about clearly 03:23 PM
 12 sufficient -- what was -- for funding, I think it's
 13 going to -- it's going to take overtime to get
 14 enough dollars because of -- there is just a lot of
 15 facilities. So I would think, if there was an
 16 effort made to have funds put in on a regular basis, 03:24 PM
 17 whatever that amounts to, to define what that is, I
 18 have would have no idea.
 19 BY MR. HAJELA:
 20 Q. If I understand what you're saying, you
 21 have talked about four components of a successful 03:24 PM
 22 system. One component was deficient, for example,
 23 funding. Then is it likely that that program will
 24 be successful?
 25 A. If one component is omitted completely,

1 it's very likely it probably won't be successful. 03:24 PM
 2 If it's deficient, it's probably going to have a
 3 harder time. It depends on how deficient is
 4 deficient, how you define deficient.
 5 Q. Just a couple more. I think previously you
 6 testified that school facility conditions in West 03:25 PM
 7 Virginia were improving based on their state school
 8 facilities program; is that accurate?
 9 A. Yes.
 10 Q. Do you know in West Virginia if there is
 11 any correlation between the improvement in school 03:25 PM
 12 facilities and available resources for school
 13 facilities?
 14 A. I would speculate there is a correlation, a
 15 positive correlation.
 16 Q. I think you also testified Ohio facilities 03:25 PM
 17 were getting better. Is that true?
 18 A. Yes.
 19 Q. For Ohio do you know if there is a
 20 correlation between facilities getting better and
 21 additional available resources? 03:26 PM
 22 A. Facility conditions are definitely getting
 23 better because of the resources that are available,
 24 yes.
 25 MR. HAJELA: Thank you. I think that's it.

1 Thanks for your patience. 03:26 PM
 2 (Discussion off the record.)
 3 EXAMINATION
 4 BY MR. REED:
 5 Q. Dr. Myers, did you speak with Lettie Boggs
 6 at Mr. Eliasberg's suggestion? 03:30 PM
 7 A. I don't know if it was his suggestion or
 8 Rob Corley's.
 9 Q. Did you and Mr. Eliasberg ever speak about
 10 Lettie Boggs?
 11 A. I think he may have referenced her. 03:31 PM
 12 Q. How did he describe her? Did he describe
 13 her having any particular role in this litigation?
 14 A. I think he characterized her as somebody
 15 who has been in the facilities -- in the schools
 16 working in facilities and would have a lot of 03:31 PM
 17 knowledge that could give me a good overview.
 18 Q. When you spoke with Miss Boggs, did she
 19 describe herself as somebody who was acting as an
 20 expert in this case in any capacity?
 21 A. In this case? 03:31 PM
 22 Q. Yes.
 23 A. No.
 24 Q. Did she say anything about having been
 25 requested or asked by anybody in plaintiffs' counsel

Page 508

1 team as to whether she would be willing to testify 03:31 PM
 2 as an expert in this case?
 3 A. No.
 4 Q. Did anyone suggest that you speak with Tom
 5 Duffy?
 6 A. I think Mr. Eliasberg suggested I might. 03:32 PM
 7 Q. What did you say in that regard?
 8 A. That he was another person in the state
 9 that might be able to give me some background
 10 information.
 11 Q. Did he say anything else? 03:32 PM
 12 A. Not that I remember.
 13 Q. Did you ever speak with Mr. Duffy?
 14 A. I don't know if I did or not.
 15 Q. If you did, it wasn't memorable?
 16 A. Yeah. 03:32 PM
 17 Q. I will be sure to tell him.
 18 A. Please don't. I don't know who he is.
 19 Q. In your conversation with Miss Boggs, did
 20 she ever express to you her opinion with respect to
 21 whether the state provides sufficient funding to 03:32 PM
 22 school districts to engage in an appropriate level
 23 of maintenance and operations for public school
 24 facilities?
 25 A. Not that I remember.

Page 509

1 Q. Did the subject come up? 03:32 PM
 2 A. We talked more about process. I was trying
 3 to get an overview of the process and how it works.
 4 So I don't know that we got into the specifics of
 5 dollars and how much the state gives. Certainly her
 6 position was -- I mean, I guess I would infer they 03:33 PM
 7 don't give enough money because she was there to try
 8 to get more money for the district.
 9 Q. Did she say anything else with respect to
 10 the amount of funding that is available for
 11 maintenance and operations? 03:33 PM
 12 A. I don't remember.
 13 Q. Did Mr. Corley, in your conversations, say
 14 anything to you with respect to his opinion
 15 regarding whether the state provides districts with
 16 sufficient funding to engage in maintenance and 03:33 PM
 17 operations of school facilities?
 18 A. Yes.
 19 Q. What did he say in that regard?
 20 A. I remember that we talked about that there
 21 wasn't enough money to go around for what needed to 03:34 PM
 22 happen for maintenance and operations for the
 23 facilities.
 24 Q. Is there a reason why your report talks
 25 about equitable funding as opposed to the adequacy

Page 510

1 of funding when it comes to maintenance and 03:34 PM
 2 operations of school facilities?
 3 A. Yes.
 4 Q. Why is that?
 5 A. Because I think that there is a difference
 6 between equity and adequate. You can have adequate 03:34 PM
 7 funding and still not be equitable. If every
 8 district in the state doesn't have the opportunity
 9 to access those funds, then I think it's very
 10 difficult for that to be equitable.
 11 Q. If they are different concepts, is it your 03:34 PM
 12 opinion that this equity is a necessary element of a
 13 successful program, but adequacy is not?
 14 A. I think it takes both, but I guess my
 15 hesitancy is to define adequate.
 16 Q. Why are you hesitant to do that? 03:35 PM
 17 A. Because probably what I think would be
 18 adequate as a facilities planner might be something
 19 totally different than somebody else looking at the
 20 numbers. I guess what I'm suggesting is whatever
 21 the amount of money is that the state allocates, it 03:35 PM
 22 ought to be equitably distributed.
 23 Now, I'm not suggesting that there is
 24 enough or that's an issue. But, I mean, I think
 25 that is an issue. But my suggestion was, whatever

Page 511

1 amount of money has been allocated, it needs to be 03:35 PM
 2 more equitably distributed.
 3 Q. Do you recall testifying yesterday that in
 4 conversation with Mr. Williams -- or is it
 5 Dr. Williams?
 6 A. Dr. Williams. 03:36 PM
 7 Q. -- that the work in West Virginia required
 8 considerable effort and money?
 9 A. I don't remember saying that, but it
 10 certainly did.
 11 Q. Do you know how much money it cost in West 03:36 PM
 12 Virginia to put into place the program that
 13 Dr. Williams described to you?
 14 A. No.
 15 Q. Do you have any understanding with respect
 16 to like a percentage increase or any degree of 03:36 PM
 17 increase that went into the state's funding for
 18 maintenance and operations of facilities?
 19 A. No, I don't.
 20 Q. Do you have any understanding as to how it
 21 was funded by the state of West Virginia? 03:36 PM
 22 A. No, I don't.
 23 Q. Paragraph 27 of your expert report, on page
 24 7. Are you with me?
 25 A. Um-hum.

1 Q. You are describing in this paragraph the 03:37 PM
2 financial resource guideline, and the last sentence
3 you say, "An example of such a financial resource
4 guideline would" -- I believe you meant to say, "be
5 establishing a percentage of the replacement value
6 of the facility that must be set aside for annual 03:37 PM
7 ongoing maintenance."

8 When you say "annual ongoing maintenance,"
9 are you referring to maintenance and operations, as
10 you have otherwise used that term in your deposition
11 over these last three days? 03:37 PM

12 A. I think here what I am referring to is
13 actual physical maintenance of systems within the
14 building. Oftentimes operations include personnel
15 costs. And so in this I am suggesting there needs
16 to be a percentage put in there to make sure there 03:38 PM
17 is money to fix the rest rooms, and fix the windows,
18 and change the filters, and those kind of things.
19 That's how I am referring to ongoing maintenance
20 here.

21 Q. Is that distinct from deferred maintenance, 03:38 PM
22 as you have used that term?

23 A. Yes.

24 Q. What percentage would you recommend as a
25 guideline for such a financial resources guideline?

1 A. I think it would depend on whether we are 03:38 PM
2 talking about ongoing maintenance of a new facility
3 or whether we are talking about maintenance of a
4 building that hasn't had any work done to it and
5 needs a lot of work.

6 In other words, a new building I would 03:38 PM
7 think the standard of two to four percent would be
8 reasonable. Those are national standards.
9 Somewhere in that amount. I'm not sure. I wouldn't
10 say that two to four percent of a maintenance -- of
11 a line item budget would be good for a building 03:39 PM
12 where the rest rooms aren't working, and the heating
13 system needs to be replaced, and the roof, and so
14 forth. Things like that where it's much more than
15 just ongoing maintenance. There are so many other
16 things happening. 03:39 PM

17 Q. I am trying to make sure we are consistent
18 with the terminology. In your last answer, when
19 you're describing roofs needing replacement, and I
20 believe you said heating systems need replacement,
21 wouldn't those repairs go into the category of 03:39 PM
22 deferred maintenance, as you have otherwise used in
23 your deposition?

24 A. They would if there are dollars available
25 to do that. But what -- I guess what I'm thinking,

1 just knowing some of the school districts that I 03:39 PM
2 have worked with, what happens is, whatever money is
3 in that line item goes for the crisis situations
4 that have to be handled. And typically it's ongoing
5 maintenance, but the truth is it's deferred
6 maintenance. The boiler blows up in a school 03:40 PM
7 district, and the money that is in that line item
8 now has to go for that because the building is in
9 such disrepair, and there is no place to gather that
10 money or to find the money.

11 Q. Do I understand you to say that for an 03:40 PM
12 older school a school district may need a guideline
13 in excess of four percent in order to cover what
14 might otherwise be deferred maintenance on this
15 facility?

16 A. Yes. I'm not sure the two to four percent, 03:40 PM
17 the national standard average, is necessarily
18 appropriate if the building is an old building that
19 is not -- that is in need of major repairs.

20 Q. Are you aware of any state that has a
21 guideline that links a requirement -- strike that. 03:40 PM

22 Are you aware of any state guideline in the
23 country that requires the setting aside of a
24 particular percentage of the replacement value of a
25 facility as opposed to a percentage of some other

1 fund or amount? 03:41 PM

2 A. Some of them require replacement and others
3 require the general fund, and I don't know which
4 states require what. There are some.

5 Q. Is there a reason that you recommend here,
6 as the guideline you set forth in paragraph 27, a 03:41 PM
7 percentage of the replacement value of the facility
8 as opposed to a percentage of the general fund?

9 MR. ELIASBERG: Misstates. It's a example,
10 not a recommendation.

11 THE WITNESS: I don't really have an 03:41 PM
12 opinion which you use. I mean, what's used, whether
13 it's replacement value or general fund. I haven't
14 studied that to know if one or the other is better,
15 and there is a big discussion about that currently.

16 BY MR. REED: 03:41 PM

17 Q. There is a discussion about that right now?

18 A. Yes.

19 Q. When you say there is a discussion, where
20 is that discussion held?

21 A. Again, the school business officials, the 03:42 PM
22 ones that deal with the budgets and the facility
23 planners, it's kind of an ongoing, you know, what
24 makes most sense, and what works for you, and --

25 Q. When you have used the replacement value of

1 the facility, do you include the land costs within 03:42 PM
2 that amount for the guideline you set forth as an
3 example, or is that just the construction cost?

4 A. Typically it's whatever the insurance
5 number is for replacing that facility is what I have
6 seen. That's the replacement value. 03:42 PM

7 Q. Do you have any understanding as to what it
8 costs to build a typical high school in Los Angeles
9 Unified School District?

10 A. No, I don't.

11 Q. Do you have an understanding as to what it 03:42 PM
12 costs, let's say, on a per-seat basis to build a
13 high school seat in L.A. Unified?

14 A. No, I don't.

15 Q. Do you have an idea as to what that number
16 would be in Indiana? 03:43 PM

17 A. Yes.

18 Q. What is this number in Indiana?

19 A. You're asking me the square-foot cost?

20 Q. Per seat.

21 A. I know it by square foot. 03:43 PM

22 Q. Let's deal in a high school unit -- high
23 school that would hold three thousand pupils on a
24 two-semester basis.

25 What would that facility cost in

1 in my head. Knowing what you know about school 03:44 PM
2 facilities planning, what the square-footage
3 requirements would be of a three-thousand-student
4 high school --

5 A. Yeah. In Indiana a three-thousand-student
6 high school -- I am going to give you an average. 03:44 PM
7 You would have six hundred seventy-five thousand
8 square feet. That's about two hundred twenty-five
9 square feet per student. Again, that's an average.

10 And I said at a hundred and -- what did I
11 say? A hundred and sixty, because I'm thinking of 03:45 PM
12 auditorium, swimming pool, locker rooms, which are
13 higher-ticket items versus classrooms. Let's say a
14 hundred fifty. I don't know how to do this. \$10
15 million. No, that's not right. Let's see. Six
16 hundred seventy-five thousand square feet. That's 03:45 PM
17 about a hundred million.

18 This is soft costs; is that right?

19 MR. ELIASBERG: I'm a little nervous about
20 doing those numbers on the fly. If you think you've
21 got the numbers right. 03:46 PM

22 BY MR. REED:

23 Q. Six hundred seventy-five thousand times a
24 hundred fifty dollars is a hundred one million
25 dollars. So it would be your expectation, then,

1 construction cost alone in Indiana? 03:43 PM

2 A. We would probably be looking at about --
3 again, these are just guesses at this point, because
4 I haven't worked in Indiana for a little while. On
5 that I am estimating. Probably about a hundred and
6 twenty to a hundred and fifty dollars a square foot. 03:43 PM

7 MR. ELIASBERG: Can you give me the
8 parameters? Three thousand --

9 MR. REED: Three-thousand-seat high school.

10 MR. ELIASBERG: And not multitrack.

11 MR. REED: Not multitrack. It would house 03:44 PM
12 three thousand students in a two-semester basis.

13 MR. ELIASBERG: You didn't specify urban or
14 rural.

15 MR. REED: I am looking for the Indiana
16 average, if there is a difference between what that 03:44 PM
17 would cost.

18 THE WITNESS: It's a big difference in
19 northern Indiana, with Gary and Michigan City,
20 versus southern Indiana. It would certainly be
21 higher in northern Indiana because of union 03:44 PM
22 influence.

23 BY MR. REED:

24 Q. You gave me a square-footage number, which
25 I'm sorry is not a unit I can grapple with very well

1 that the guideline that you describe in paragraph 27 03:46 PM
2 for a three-thousand-pupil high school in Indiana,
3 the guideline would generate a number of two to four
4 percent of the hundred-million-dollar number to be
5 set aside on an annual basis for ongoing
6 maintenance? 03:47 PM

7 A. In the new high school, yes, if you did a
8 general fund number.

9 Q. No. I'm trying to deal with the guideline
10 you have here.

11 A. Oh, that's replacement value. 03:47 PM

12 Q. Twenty-seven. Two to \$4 million a year for
13 ongoing maintenance, at a high school in Indiana, is
14 the number that -- the guideline is the standard --

15 A. I probably put it --

16 Q. Let me finish the question. 03:47 PM

17 Two to \$4 million is the approximate amount
18 that you would recommend under this guideline to be
19 set aside by an Indiana school district for the
20 ongoing maintenance of three-thousand-pupil high
21 school? 03:47 PM

22 A. I wouldn't make a recommendation. But for
23 six hundred seventy-five thousand square feet, with
24 the kind of specialty areas that are in there, I
25 would say it would be much lower because of the size

Page 520

1 of it. I wouldn't make a recommendation for that. 03:48 PM
 2 Q. What recommendation would you make?
 3 A. I probably wouldn't make one. I would say
 4 there needs to be money set aside, and we look
 5 specifically -- like if it's a pool, that is a very
 6 high-dollar item. 03:48 PM
 7 Q. In trying to advise a school district that
 8 is trying to set into place a standard or guideline
 9 for appropriate financial resources for maintenance
 10 and operations, would you not recommend they use a
 11 percentage of the replacement cost of a facility for 03:48 PM
 12 that purpose?
 13 A. I wouldn't recommend replacement cost or
 14 general fund. I don't have a preference on those.
 15 Q. If a school district asked you and said,
 16 "We would like to use the replacement cost model," 03:49 PM
 17 what would you recommend be the appropriate
 18 percentage for them to use for the -- for what
 19 percentage of a replacement -- what percentage of
 20 the replacement cost of a three-thousand-student
 21 high school they should have in their budget for 03:49 PM
 22 maintenance and operations?
 23 MR. ELIASBERG: Objection, incomplete
 24 hypothetical.
 25 THE WITNESS: I don't know that right now I

Page 521

1 could tell you that because I haven't -- I would 03:49 PM
 2 have to have more information from the school to
 3 know that. You know, what are the other schools
 4 like, and is this brand-new, and what kind of a
 5 swimming pool is it; what kind of a system does it
 6 have; what kind of air-handling systems does it 03:49 PM
 7 have. There is just -- I don't have enough
 8 information to make a recommendation just generally.
 9 If a school district asked me specifically, I would
 10 have to have a lot more information to give them a
 11 specific number. 03:50 PM
 12 BY MR. REED:
 13 Q. Is it fair to say the two- to four-percent
 14 guideline doesn't necessarily apply in the
 15 hypothetical I gave you?
 16 MR. ELIASBERG: Objection, vague and 03:50 PM
 17 ambiguous.
 18 THE WITNESS: In the hypothetical you gave
 19 me, it might not. I don't know.
 20 Another point, Indiana builds school
 21 buildings and has more square foot per student than 03:50 PM
 22 most anybody else in the United States. That might
 23 not be the best example of schools, but just. . . .
 24 BY MR. REED:
 25 Q. I was trying to find an example of a school

Page 522

1 that you may be more familiar with. 03:50 PM
 2 Would you have a different answer for Ohio?
 3 A. Oh, yes.
 4 Q. The example I gave you in Ohio, the two to
 5 four percent might be the right number?
 6 A. The square foot per student would certainly 03:50 PM
 7 be different. The cost would be different because
 8 Ohio costs are different. Texas would be totally
 9 different.
 10 Q. If the costs are different, does that mean,
 11 in your mind, that a different percentage would be 03:51 PM
 12 set aside?
 13 A. Again, I need to look at -- have more
 14 information.
 15 Q. If in L.A. Unified School District the
 16 construction cost of a three-thousand-pupil high 03:51 PM
 17 school is roughly a hundred million dollars, would
 18 you have a recommendation for L.A. Unified School
 19 District with respect to how much money it should
 20 have in its general fund available for maintenance
 21 and operations in a three-thousand-student high 03:51 PM
 22 school?
 23 MR. ELIASBERG: Incomplete hypothetical.
 24 THE WITNESS: Again, I would have to know
 25 about what that facility includes and the systems;

Page 523

1 how many custodians they have hired; what they are 03:51 PM
 2 paying them. There is a lot of -- that's part of
 3 operations.
 4 BY MR. REED:
 5 Q. But again, trying to stick with the
 6 terminology you're using in paragraph 27, where you 03:52 PM
 7 use the word "ongoing maintenance."
 8 A. You said maintenance and operations.
 9 Q. I'm sorry. You're right. Thank you.
 10 What would you recommend to L.A. Unified --
 11 assuming it would cost a hundred million dollars to 03:52 PM
 12 replace a three-thousand-pupil high school, what
 13 would your recommendation be with respect to how
 14 much money it should have in its budget for ongoing
 15 maintenance for that high school?
 16 A. The recommended number that I speak to on 03:52 PM
 17 page 9 is for maintenance and operations.
 18 Q. Page 9.
 19 A. Yes. In my expert report it includes both
 20 maintenance and operations, two to four percent, and
 21 that's as the replacement value. 03:52 PM
 22 Q. Your recommendation, then -- let me change
 23 it a little bit.
 24 For L.A. Unified, then, to be consistent
 25 with the recommended percentage, it would need to

Page 524

1 have two to \$4 million in its budget for maintenance 03:53 PM
 2 and operations for each three-thousand-student high
 3 school, assuming the replacement value of a
 4 three-thousand-student high school is approximately
 5 a hundred million dollars?
 6 A. Again, I'm not going to recommend that. 03:53 PM
 7 The National Resource Council is suggesting that,
 8 and that is a standard across the industry, but I
 9 don't feel comfortable saying that's what they need
 10 because I don't have enough information.
 11 Q. What else would you need to know? 03:53 PM
 12 A. I need know how much -- how many custodians
 13 you're hiring; how much you pay your custodians. I
 14 need to know the kind of systems. You could put
 15 very cheap systems in that require a lot of
 16 maintenance, or you can put more sound systems that 03:54 PM
 17 aren't as -- you know, more maintenance free. What
 18 kind of wall systems did you use. What kind of roof
 19 did you use. What about the grounds, the site
 20 considerations.
 21 So there are a lot of things that relate to 03:54 PM
 22 the facility itself that dictate how much it costs
 23 to keep it up. What kind of windows. You know,
 24 single pane versus double pane; large windows; small
 25 windows; rest rooms. Did they use, you know, rest

Page 525

1 rooms that are institutional, or did they go cheap 03:54 PM
 2 and -- all those things factor into what maintenance
 3 costs.
 4 Q. All of those things could drive the
 5 decision for a recommendation by you of a number
 6 that is somewhere outside of that two- to 03:54 PM
 7 four-percent range, depending on the facility?
 8 A. Possibly, yes.
 9 Q. Would you expect your answer to then
 10 vary -- your recommendation to a school district to
 11 vary based on what facility was being described or 03:54 PM
 12 discussed?
 13 A. If somebody was talking to me specifically,
 14 as a consultant on a particular facility, I would
 15 not -- I would say, you know, I need to know more
 16 information. But if somebody said to me, "I just 03:55 PM
 17 want to know from your experience and working across
 18 the country, you know, with all the budgets you have
 19 seen, what have you seen generally as an average,"
 20 that is where this number comes from. It's
 21 basically looking at budgets across the country and 03:55 PM
 22 then just basically doing the math. That's really
 23 what this number amounts to.
 24 Q. Although you do describe it as the general
 25 consensus of experts in the field for a recommended

Page 526

1 percentage; correct? 03:55 PM
 2 A. Yes.
 3 Q. Do you believe that the number -- that the
 4 recommended percentage of dollars would be different
 5 in, say, Gary, Indiana, versus Bloomington or
 6 someplace in southern Indiana? 03:55 PM
 7 A. Yes.
 8 Q. What would that difference be? Larger?
 9 Smaller?
 10 A. Different. I don't know. Again, I don't
 11 know if Gary puts in air conditioning units that are 03:56 PM
 12 like the Holiday Inn version versus a central
 13 system; if they use drywall versus masonry; if they
 14 use terrazzo floors versus cheap carpet. All those
 15 things factor into that. I just know they would be
 16 different. 03:56 PM
 17 Q. Would you expect there to be differences in
 18 the State of California, say, between what experts
 19 in the field would recommend the percentage should
 20 be set aside for maintenance and operations in L.A.
 21 Unified versus, say, Clovis Unified or someplace in 03:56 PM
 22 the high dessert versus someplace at the coast?
 23 A. If you're asking do I think there ought to
 24 be differences --
 25 Q. Do you think there would be differences?

Page 527

1 A. I don't know. I really don't know. I am 03:56 PM
 2 not familiar enough with the facilities.
 3 Q. You describe in your report that funding of
 4 maintenance and operations needs to be a priority of
 5 school districts. Is that an accurate statement?
 6 A. Yes. 03:57 PM
 7 Q. How do you define priority?
 8 A. I think it needs to be one of the things
 9 that is definitely considered. It needs to be on
 10 the level of people thinking about it, and should be
 11 as people are addressing the issues related to how 03:57 PM
 12 do we deal with our money. That ought to be part of
 13 what they are discussing.
 14 Q. Is it somewhere in the top-ten priorities
 15 for funding of a school district? Top five? Top
 16 twenty? 03:58 PM
 17 Do you have any estimation of what you
 18 would recommend to a school board with respect to
 19 where the priority for maintenance and operations
 20 should be?
 21 MR. ELIASBERG: Objection, incomplete 03:58 PM
 22 hypothetical.
 23 THE WITNESS: As a facilities planner, I
 24 think it needs to be one of the top priorities that
 25 is being addressed. I'm not suggesting it's No. 1

Page 528

1 or 2, but it certainly should be considered strongly 03:58 PM
 2 in facilities, in the general fund budget.
 3 MR. REED: Could you read that answer back?
 4 (The reporter read the preceding answer.)
 5 BY MR. REED:
 6 Q. Let me give you a hypothetical school 03:59 PM
 7 district that, let's say, has a general fund budget
 8 of \$5.8 billion a year. Let's call it L.A. Let's
 9 assume that it devotes approximately five percent of
 10 its general fund or three hundred million dollars to
 11 ongoing and deferred maintenance, excluding 04:00 PM
 12 custodial salaries.
 13 Do you have any opinion, sitting here
 14 today, as to whether that is too much, too little,
 15 or just about right?
 16 A. I have no opinion. 04:00 PM
 17 Q. I'm just going to throw some numbers out
 18 here, hypothetical numbers, and intentionally round,
 19 but just to see if you can help us tease out this
 20 issue.
 21 Let's assume that in this budgetary year 04:00 PM
 22 the school board has the follow things that it's
 23 defined as priorities. The three hundred million
 24 dollars for maintenance and deferred maintenance. A
 25 hundred million dollars of money to reduce class

Page 529

1 sizes by hiring additional teachers. A hundred 04:01 PM
 2 million dollars to fund additional textbook
 3 purchases to ensure that every student in the
 4 district had a textbook that they could take home
 5 with them to do homework.
 6 Fifty million dollars to create a new math 04:01 PM
 7 literacy program to attempt to raise test scores in
 8 elementary schools. Fifty million dollars to fund
 9 an intensive early childhood education program,
 10 based on recent research that indicates that early
 11 intervention drastically increases performance in 04:01 PM
 12 high school -- I'm sorry, retention rates among
 13 public school students. And a new \$10 million
 14 initiative the superintendent wants to use for a new
 15 program to attract and retain experienced teachers.
 16 Now assume there is a hundred-plus people 04:02 PM
 17 in Sacramento who say to the school district that
 18 they have to cut a hundred million dollars out of
 19 their budget this year.
 20 Do you have a recommendation to the school
 21 district as to where within those -- I'm sorry. 04:02 PM
 22 Close out the hypothetical.
 23 Assume all other expenditures within the
 24 general fund budget are called for under the
 25 collective bargaining agreement for salaries for

Page 530

1 classified and certificated teachers. 04:02 PM
 2 What would your recommendation be to the
 3 school board with respect to where within the
 4 expenditures that I described it should find that
 5 hundred million dollars?
 6 MR. ELIASBERG: Objection, improper 04:03 PM
 7 hypothetical.
 8 THE WITNESS: I would have no idea. I
 9 don't have enough information to even begin to --
 10 you know, for instance, the three hundred million, I
 11 don't know where that came from, you know, how many 04:03 PM
 12 buildings you have, what the condition of the
 13 buildings are, what that's going to amount to; the
 14 other issues in terms of teachers and everything.
 15 You know, I wouldn't even begin to try to suggest
 16 because I don't have enough information. 04:03 PM
 17 BY MR. REED:
 18 Q. Sitting here today, assuming that that
 19 number was simply derived as -- again, this is for
 20 the purposes of the hypothetical.
 21 Assuming that three hundred million dollars 04:03 PM
 22 for maintenance and deferred maintenance was simply
 23 derived as the recommended percentage by experts of
 24 the percentage of the general funds to be set aside
 25 for those purposes.

Page 531

1 A. But if you have three hundred buildings -- 04:03 PM
 2 I mean, I don't know. I will just use this. If you
 3 had three hundred buildings, and you're going to
 4 spend a million on each building, is that going to
 5 be enough to do anything? I don't know. I really
 6 can't give you an answer because I have no idea. 04:04 PM
 7 When we put together a master plan for a
 8 large district, you have to look at all of that
 9 information over a series of months to gather that
 10 kind of data. So it would be silly of me to try to
 11 pretend like I could answer that question right now. 04:04 PM
 12 Q. Do you think it would be equally silly for
 13 the state to mandate five percent as the amount that
 14 has to be set aside in the general fund budget in
 15 that circumstance, assuming the state has none of
 16 the information with respect to the individual 04:04 PM
 17 facilities within the district, and their age, and
 18 things of that nature?
 19 A. Again, I think one of the issues that we
 20 are talking about here is pulling one little piece
 21 out of the whole package what I am suggesting needs 04:04 PM
 22 to happen. I don't think the two to four percent is
 23 going -- is the answer. I think it's going to
 24 require all four components to make a process
 25 successful.

1 So the state putting in any particular 04:05 PM
 2 number and saying that's going to make a difference,
 3 I would suggest that that -- I am not suggesting
 4 that is the answer. There are lots of things that
 5 have to be included. As I mentioned, the
 6 partnership, the data gathering, equitable funding, 04:05 PM
 7 the inspections, and so forth, all those things are
 8 an integral part of that.

9 To pull out this one piece and say, okay,
 10 we are going to put that money in there, now it's --
 11 everything is going to be fine, that doesn't make 04:05 PM
 12 sense to me. So if what you're asking, if the state
 13 just did that, is that okay. And I'm saying, no,
 14 that's not what I am suggesting.

15 Q. You state in paragraph 36 of your report
 16 that "If there is no system of checks and balances 04:05 PM
 17 in place with specific standards and guidelines to
 18 follow, then the likelihood of facilities becoming a
 19 low priority in terms of funding is great. Most
 20 often this is not intentional, but rather is based
 21 on limited resources, and prioritizing is often 04:06 PM
 22 related to the 'voices' speaking on behalf of all
 23 the dollars needed to operate a school district."

24 In the hypothetical I am using, I am trying
 25 to explore that prioritization. And just assuming

1 that you are a voice speaking on behalf of 04:06 PM
 2 maintenance and operations in my hypothetical, where
 3 would you put it on the list? Say, rank it higher
 4 or lower with respect to the priority for funding
 5 when compared to money for textbooks so the kids
 6 have enough to take home with them? 04:07 PM

7 A. Again, I don't have enough information to
 8 make that decision because I don't know what the
 9 situation is with textbooks. Do they have them at
 10 school, and they need them for home, too, because
 11 they don't have lockers anymore? Do any of them do 04:07 PM
 12 it online?

13 There is -- I don't know what that means.
 14 To try to -- to say this is better than that, I
 15 don't know because I don't even know if the three
 16 hundred million you have suggested is going to make 04:07 PM
 17 a darn bit of difference in the scheme of how much
 18 you really need, or maybe it is a lot. I don't
 19 know. I'm sorry. I don't have enough information.

20 Q. What else would you need to know?

21 A. Like I said, I would need to have a full 04:07 PM
 22 understanding of all of your schools, and all their
 23 conditions, and how much it's going to cost not only
 24 for ongoing maintenance, but for deferred
 25 maintenance. I would need to know about the

1 textbook situations, and all the ramifications that 04:07 PM
 2 came up with that number, and the other programs you
 3 talked about, which I don't remember.

4 I would have to be able to sit down, as
 5 anybody would, as they put that together, and say
 6 how did you come up with those numbers? What does 04:08 PM
 7 this mean? What happens if we don't do this? You
 8 know, if we don't do it this year, then what? You
 9 know, it's not something that you probably did, or
 10 whoever. If that would be the case, you certainly
 11 wouldn't do that in a few minutes, let alone days, 04:08 PM
 12 probably.

13 Q. Is it correct, then, that you assume that,
 14 in the hypothetical I have given you, there might be
 15 some set of circumstances with respect to the
 16 current condition of the facilities, an analysis of 04:08 PM
 17 what might actually be put off for next year's
 18 budget in terms of the maintenance or deferred
 19 maintenance program, and the general condition of
 20 the facilities that are out there; might be
 21 possible, in the hypothetical, for the school board 04:08 PM
 22 to determine the entire hundred million dollars
 23 could come out of maintenance without violating the
 24 principles that you set forth in your report as
 25 important to a successful program?

1 A. I guess, if I were looking at districts 04:09 PM
 2 that had all new facilities, let's say, within the
 3 last three years, every building is new, you know,
 4 and looking at the continuous historical data about
 5 ongoing maintenance, and we have kept this up, and
 6 kept that up, and I was able to see this building 04:09 PM
 7 needs this and this and this, that there might be a
 8 situation where you might not need all of that
 9 money. But, you know, I don't know that that's the
 10 case. So it would be tough for me to say.

11 Q. Do you have an opinion as to whether the 04:09 PM
 12 decision about where that hundred million dollars
 13 should come from ought to be made by the state, or
 14 by the school board, or some combination of the two?

15 A. Again, I think the -- there you're talking
 16 about general funds, I believe. And there I assume 04:09 PM
 17 you're assuming that you're not going to be getting
 18 state assistance for that three hundred million,
 19 that that's all out of general funds.

20 Q. Correct.

21 A. I think it's a decision that the local 04:10 PM
 22 district has to make if they are not getting state
 23 assistance at all. But our premise is that there
 24 are lots of things that have to happen for the
 25 facilities.

Page 536

1 MR. REED: It's a great place for a break. 04:10 PM
 2 (There was a brief recess.)
 3 BY MR. REED:
 4 Q. Dr. Myers, it's your testimony that in
 5 Maryland and West Virginia the state sets priorities
 6 for which facilities will get repaired within the 04:23 PM
 7 school districts?
 8 A. Yes.
 9 Q. How do they do that? Through a point
 10 system in general; correct?
 11 A. Yes. 04:23 PM
 12 Q. Do they make a determination as to which
 13 districts will get priority or which schools will
 14 get priority?
 15 A. Which particular schools.
 16 Q. Is that a system that you would recommend 04:24 PM
 17 to the State of California?
 18 A. No.
 19 Q. Why?
 20 A. Because, again, I think you have to look
 21 specifically at the unique needs in the state of 04:24 PM
 22 California. And that system works certainly for
 23 Maryland, but I wouldn't suggest that that's the
 24 system that might work for you.
 25 Q. Are there downsides to that system?

Page 537

1 MR. ELIASBERG: Objection, vague. 04:24 PM
 2 THE WITNESS: I didn't really investigate
 3 downsides, I guess. The -- Maryland is certainly
 4 much smaller than California. So there might be
 5 other ways of addressing the issue in California.
 6 BY MR. REED: 04:24 PM
 7 Q. Do you think that a system in which the
 8 state sets priorities on a numeric point system for
 9 which school facilities will be repaired in a given
 10 year contains the risk that facilities that are
 11 truly not a district's top priority for repair will 04:25 PM
 12 not get repaired in a year?
 13 MR. ELIASBERG: Objection, calls for
 14 speculation.
 15 THE WITNESS: I guess it depends on what
 16 that system consists of. If the system itself is 04:25 PM
 17 flawed, in the point system or whatever they
 18 established, then there certainly would be risks
 19 that, you know, schools that are not priorities for
 20 districts. Again, that goes back to that whole
 21 issue of partnership, because if the state and the 04:25 PM
 22 local are working together, that wouldn't occur, I
 23 wouldn't think, because there would be conversations
 24 about these are our schools and so forth.
 25 Let me give you an example. If a school in

Page 538

1 the district is no longer being used as an 04:25 PM
 2 attendance center for elementary, but now is an
 3 attendance center for disciplined children -- I
 4 can't -- alternative education center. And on paper
 5 it may appear, because it's an older facility, that
 6 its priorities may be higher for some reason or 04:26 PM
 7 another than another school.
 8 There may be discussion between the local
 9 district and the state, saying, you know, that's not
 10 our top priority because there is only ten kids in
 11 this building. And now our long-term goal is to 04:26 PM
 12 tear it down within three years, dah, dah, dah, dah.
 13 I think that's why you can't assume that a
 14 system is going to be perfect in every situation.
 15 So there has to be a partnership there.
 16 BY MR. REED: 04:26 PM
 17 Q. So the partnership you're describing is
 18 partly a partnership between local districts in the
 19 state and defining the priority system to begin
 20 with, or a partnership with respect to how the
 21 priorities get applied, or both? 04:26 PM
 22 A. Both. I think it would take a situation
 23 where you've got various entities sitting at the
 24 same table talking about how do we go about doing
 25 this. You know, what's unique with a large urban

Page 539

1 district versus a small district, et cetera. You 04:27 PM
 2 know, how is this point system or whatever we have
 3 decided we are going to do work, and then using some
 4 examples to say does it really work.
 5 So I think it's that kind of ongoing, you
 6 know, work with it -- how is it going to work in our 04:27 PM
 7 state -- that's going to be required. I don't think
 8 you're going to be able the pull one system from
 9 somewhere else and say let's use it right here.
 10 Q. And by "pulling one system," do you mean
 11 you don't think one system necessarily could work 04:27 PM
 12 across the state of California?
 13 A. I don't think -- if you took Maryland's
 14 process of how they inspect facilities, and collect
 15 information, and fund, and so forth, and just tried
 16 to say that's the system we are going to use, I 04:28 PM
 17 don't think -- I don't think that would be
 18 appropriate. I think you might look at some of the
 19 pieces of that system that they are using, and say
 20 we might use this with adaptations, or we might use
 21 that with adaptations. But California has its own 04:28 PM
 22 unique needs.
 23 Q. I guess my question is whether you think
 24 that there is a system, whatever that system is, but
 25 that it is possible to design a system that will

Page 540

1 work well up and down the state of California. 04:28 PM
 2 MR. ELIASBERG: Objection, vague.
 3 THE WITNESS: I think it's possible to
 4 design a system that could work in California. But,
 5 again, it would take a lot of working in all of the
 6 various areas to make sure that that system was 04:28 PM
 7 equitable.
 8 BY MR. REED:
 9 Q. And you could -- you think it's possible to
 10 design a system that would set priorities in a way
 11 that work equally well in Ukiah, as it does in 04:28 PM
 12 San Francisco, as it does in Los Angeles?
 13 A. I think it could be designed to allow that
 14 to occur.
 15 Q. The clearly defined standards that you
 16 described in your report, is it your opinion that 04:29 PM
 17 it's possible to define those standards for general
 18 applicability statewide?
 19 A. I think there are some minimum standards
 20 that could be defined statewide.
 21 Q. Do you think there are district-to-district 04:29 PM
 22 differences or school-to-school differences with
 23 respect to those standards?
 24 MR. ELIASBERG: Objection, vague and
 25 ambiguous.

Page 541

1 THE WITNESS: If you're asking do I think 04:29 PM
 2 that a set of standards could not be applied across
 3 all districts and all schools? I think there are
 4 some that should be applied to all schools.
 5 BY MR. REED:
 6 Q. Do you think that the Maryland standards 04:29 PM
 7 that you studied are equally applicable to every
 8 school in Maryland?
 9 A. I don't know all of the pieces. I couldn't
 10 say to you every line item that is on that standard
 11 to tell you whether or not that's true. 04:30 PM
 12 Q. Do you think, for example, that a state
 13 should have a minimum standard with respect to
 14 whether bathrooms should have doors on the stalls?
 15 A. That's a specific issue. Again, it depends
 16 upon the design parameter. If the building was 04:30 PM
 17 designed so that you didn't have bathrooms, I mean,
 18 there are a lot -- then that standard wouldn't apply
 19 there.
 20 Q. If the bathrooms were designed so they did
 21 not have stalls? 04:31 PM
 22 A. I'm sorry. Didn't have doors. Again,
 23 that's something that would have to be decided by
 24 the state.
 25 Q. I guess that's question. Do you think that

Page 542

1 that is an issue that is appropriate for the state 04:31 PM
 2 to decide, whether or not a bathroom with stalls
 3 ought to have doors on the stalls?
 4 A. I misspoke. I don't mean state. I mean
 5 through that partnership, as you're sitting down
 6 developing those standards. There ought to be 04:31 PM
 7 reasonable standards established by working with the
 8 various school districts of small and large, saying,
 9 yeah, but it doesn't work here because, so that
 10 you're aware of the exceptions, so that you're not
 11 developing something in a vacuum that perhaps in 04:31 PM
 12 some state that's a requirement. I know in some
 13 school districts they have certain requirements, but
 14 it may not be a state requirement.
 15 Q. In your work in consulting with school
 16 districts and your work with schools, have you ever 04:32 PM
 17 run into a school which decided to take the stalls
 18 (sic) off of its bathroom doors (sic) in response to
 19 an assault that happened on campus in a bathroom?
 20 A. To take the stalls off the --
 21 Q. The doors off the stalls. 04:32 PM
 22 A. I have seen some schools that have the
 23 doors off of the stalls.
 24 Q. Did you ever run into a circumstance in
 25 which you were led to believe that the reason the

Page 543

1 doors were off the stalls was because the site 04:32 PM
 2 administration determined that that was an
 3 appropriate response to an assault that took place
 4 in the bathroom?
 5 A. Not that I remember.
 6 Q. Do you think that would be a reasonable 04:32 PM
 7 response; to use a hypothetical, parents requested
 8 of the administration that stalls (sic) come off the
 9 bathroom doors (sic) after a student was assaulted
 10 in a bathroom?
 11 A. I don't know. I mean, I'm not in a 04:33 PM
 12 position to make that decision. I don't know.
 13 Q. I guess as between the administration on
 14 that campus and individuals in the state government,
 15 who do you think in your model ought to be in
 16 control of this decision about whether the doors 04:33 PM
 17 come off the bathroom stalls when the parents
 18 requested?
 19 MR. ELIASBERG: Objection, assumes facts,
 20 incomplete hypothetical.
 21 THE WITNESS: Again, if the standards 04:33 PM
 22 established with partnerships, and questions are
 23 being asked like this doesn't make sense in our
 24 school district, it would be my assumption, or at
 25 least my experience, that no one from the state or

Page 544

1 the local person is going to say, "Well, we can't do 04:33 PM
 2 this because." You know, I think in any situation
 3 where they are guidelines established, there are
 4 always exceptions.
 5 So, you know, my opinion is that it
 6 shouldn't be so dogmatic that if there are good 04:34 PM
 7 reasons, good compelling reasons, that make sense
 8 for security safety and security, but to
 9 automatically say that everybody in the state has to
 10 do this or doesn't have to do this, I think there
 11 needs to be some sense of reason here. 04:34 PM
 12 Q. Do you think that the Maryland system you
 13 reviewed has that kind of flexibility?
 14 A. I don't know.
 15 Q. If the standard is established and is
 16 maintained through an inspection that has an exceed, 04:34 PM
 17 satisfactory, doesn't -- unsatisfactory, or not
 18 applicable sort of standard score, in the
 19 circumstance I have just described in which the
 20 stall doors are missing off of the bathroom stalls,
 21 assuming the state standard is that all bathrooms 04:35 PM
 22 shall have appropriate privacy for bathroom stalls,
 23 wouldn't the school in that circumstance get an
 24 unsatisfactory mark?
 25 A. I don't know. I mean, my speculation would

Page 545

1 be there would be comments about why the stall doors 04:35 PM
 2 were off. Whether or not the school would get an
 3 unsatisfactory, you know, are there points, are
 4 there not points, what does that mean in the scheme
 5 of things, you know, if they have done -- if the
 6 checklist is fifty things wrong or fifty things that 04:35 PM
 7 need to happen, and there is one comment about it's
 8 off, and there is purposeful reasons for that to be
 9 off, I can't tell you what would happen.
 10 Q. I would like to have you refer to a
 11 document that I believe was distributed this 04:36 PM
 12 morning. It's begins with the Bates No. 0253 and
 13 goes through 0259.
 14 MR. SIMMONS: I think it's over here
 15 waiting to be marked.
 16 (Deposition Exhibit 16 was marked for 04:36 PM
 17 identification.)
 18 MR. REED: I will give you a moment to
 19 review it, Dr. Myers.
 20 THE WITNESS: Okay.
 21 BY MR. REED: 04:38 PM
 22 Q. Was this document contained in the box that
 23 you maintained with respect to this project?
 24 Do you recall it being in there?
 25 A. No.

Page 546

1 Q. Do you recall having ever seen it before? 04:38 PM
 2 A. No.
 3 Q. Did you ever have a conversation with
 4 Mr. Corley with respect to whether Los Angeles
 5 Unified School District has any sort of facilities
 6 inspections on its campuses? 04:39 PM
 7 A. I don't remember the conversation.
 8 Q. You don't remember this subject coming up
 9 at all with Mr. Corley?
 10 A. No. I was focusing on the overview. So it
 11 may have, but I don't remember it. 04:39 PM
 12 Q. Did you ever have a conversation with
 13 Mr. Eliasberg with respect to whether Los Angeles
 14 Unified School District has a program in place for
 15 inspecting its campuses on an annual basis?
 16 A. Yes. 04:39 PM
 17 Q. What did Mr. Eliasberg tell you about that
 18 program?
 19 A. From what I remember, he said they did have
 20 a program established.
 21 Q. Did he suggest to you one way or the other 04:39 PM
 22 as to whether you ought to evaluate that program?
 23 A. No.
 24 Q. Did you ever, in the course of preparing
 25 your report, consider looking at L.A. Unified's

Page 547

1 program and comparing it to, say, the Maryland or 04:40 PM
 2 West Virginia programs you were familiar with?
 3 A. No, because that wasn't what I was asked to
 4 do for this expert report. So I was trying to stay
 5 focused on that.
 6 Q. I'm just going to ask you. Since you 04:40 PM
 7 haven't reviewed it, I'm not going to give you a pop
 8 quiz on whether you think it's a good or bad
 9 program. Assume that this program has all the
 10 elements of a facilities inspection checklist that
 11 the Maryland program has. 04:40 PM
 12 Do you think that it is a problem -- let me
 13 rephrase that.
 14 Do you think the fact that L.A. Unified has
 15 a program is an element towards meeting the factors
 16 that you describe in your opinion as necessary for 04:40 PM
 17 an appropriate facilities maintenance program?
 18 MR. ELIASBERG: Objection, vague.
 19 THE WITNESS: It's my feeling that if L.A.
 20 has this kind of an inspection program that is
 21 appropriate, that that certainly is one piece of the 04:41 PM
 22 four pieces that I have suggested need to be
 23 included in a comprehensive facilities program.
 24 I would also say that school districts that
 25 are doing that, you know, that have pieces of the

Page 548

1 components that I'm suggesting as the process is -- 04:41 PM
 2 as the evolution of the process happens, then those
 3 districts are going to already be doing that. And
 4 those that aren't doing it then will be an
 5 opportunity for them to begin that process. So if
 6 they are doing the inspection process, then I would 04:41 PM
 7 suggest they probably have one piece identified.
 8 Q. You testified in your report, though, that
 9 the state should set the standards and the state
 10 should do inspections; is that correct?
 11 A. I said through state and local 04:42 PM
 12 partnerships.
 13 Q. Assuming this is a solo venture by L.A.
 14 Unified, and L.A. Unified doesn't report the results
 15 of these inspections to the state, and the state has
 16 not dictated any elements of this form, assuming the 04:42 PM
 17 content of the form otherwise meets the criteria of
 18 the Maryland form, do you think that the form and
 19 the program that the school district has is
 20 insufficient in some way due to that lack of state
 21 supervision or input on the form? 04:42 PM
 22 MR. ELIASBERG: Objection, ambiguous.
 23 THE WITNESS: Again, what my opinion is
 24 based on is looking at successful models in other
 25 states that have comprehensive ongoing maintenance

Page 549

1 and operations programs. And I have suggested there 04:42 PM
 2 are four components for that to be successful.
 3 So to suggest that if L.A. is doing this,
 4 this inspection process, and doing their own thing,
 5 but are not -- you know, the whole data gathering,
 6 the funding, and so forth, I am suggesting it takes 04:43 PM
 7 all of those pieces to be the most successful.
 8 BY MR. REED:
 9 Q. One of those pieces is a state/local
 10 partnership; right?
 11 A. One of those pieces is, yes, right. 04:43 PM
 12 Q. I'm trying to find out why that's important
 13 to you in this context. If the form asks all the
 14 questions that are otherwise appropriate to L.A.
 15 Unified, and the district is every year implementing
 16 the form and using it for all the purposes, let's 04:43 PM
 17 say, Maryland uses its form, why does the state need
 18 to be involved?
 19 A. Because I think just -- there are a lot of
 20 school districts in California, from my
 21 understanding. And the -- it would be my 04:44 PM
 22 understanding what you're trying to do or what I
 23 would hope you're trying to do is develop at least
 24 minimum standards across the state.
 25 So that in those circumstances that don't

Page 550

1 have the opportunity of having an L.A. Unified, that 04:44 PM
 2 has some kinds of an inspection process, that at
 3 least we know that there is some kind of a safeguard
 4 in the state that at least -- that everybody -- that
 5 is just as important for the little districts as the
 6 big districts to have an inspection process. 04:44 PM
 7 Where I could see L.A. Unified helping is
 8 that with this process you could come to the table
 9 with, this is what we are doing, and this is what
 10 works for us, as you work with the state in
 11 developing a form so that everyone has that 04:44 PM
 12 opportunity for inspection.
 13 Q. Is it then your opinion that the reason the
 14 state needs to be involved is in order to ensure the
 15 districts whose forms are inadequate or who don't
 16 have a form otherwise meet some minimum standard? 04:45 PM
 17 A. It's my opinion that in the states that are
 18 most successful in addressing facility conditions
 19 throughout the state, that there is a process, and
 20 that process includes a number of things. So,
 21 therefore, the state needs to be involved in that to 04:45 PM
 22 ensure that there are some minimum standards for
 23 everyone.
 24 Q. Let's be clear. For that statewide process
 25 to work, assuming everybody got a form, including

Page 551

1 L.A., that met some minimum standard, in your 04:46 PM
 2 opinion it is not necessary for the state to
 3 actually be the entity that does the inspections of
 4 school campuses to ensure compliance with those
 5 standards; is that correct?
 6 A. I have seen models where the state doesn't 04:46 PM
 7 actually do the inspection, that's correct.
 8 Q. And sometimes the local district does its
 9 own inspections.
 10 A. That's true. That's true.
 11 Q. I'm going to refer you to Myers 9. The 04:46 PM
 12 first four pages, I think we established earlier,
 13 are notes of one or more conversations you had with
 14 Mr. Corley; correct?
 15 A. Yes.
 16 Q. I want to focus you on the first page with 04:47 PM
 17 the No. 1715. The last two lines there, I believe
 18 your writing says, "Priority points with unhoused
 19 students. L.A. Unified is so biased."
 20 Is that what you understand your
 21 handwriting to be? 04:47 PM
 22 A. That's what the handwriting says, I
 23 believe.
 24 Q. What did you mean by L.A. Unified is so
 25 biased?

Page 552

1 A. I have no idea. 04:48 PM
 2 Q. Do you remember Mr. Corley discussing L.A.
 3 Unified in your conversation?
 4 A. No.
 5 Q. Do you have any understanding as to whether
 6 Mr. Corley believes one way or the other that L.A. 04:48 PM
 7 Unified got its fair share or less than or more than
 8 its fair share of state school construction money?
 9 MR. ELIASBERG: Just objection, vague as
 10 the time.
 11 MR. REED: At the time you had your 04:48 PM
 12 conversation.
 13 THE WITNESS: I have no idea what that
 14 statement means. I don't remember the conversation
 15 specifically about L.A.
 16 BY MR. REED: 04:48 PM
 17 Q. I apologize if this was covered before. On
 18 page 1721, four lines up from where the label that
 19 affixes a number to the form, it looks like you
 20 wrote "most 'suggest' dollars but no require."
 21 What did you mean by that? 04:49 PM
 22 A. I think this was one of the summary
 23 comments I was writing with regards to thinking
 24 about some of the information that I gathered; that
 25 most of the people that I talked with, the

Page 553

1 colleagues talked about the importance of dollars 04:49 PM
 2 being put aside, but unfortunately, most states
 3 didn't require it, I think.
 4 Q. Don't most states suggest that money be put
 5 aside, but no require a specific dollar amount?
 6 A. I think what I meant was most of the people 04:49 PM
 7 that I talked to suggested it, I believe.
 8 MR. REED: I'm going to hand the court
 9 reporter another exhibit and ask her to mark it next
 10 in order.
 11 (Deposition Exhibit 17 was marked for 04:50 PM
 12 identification.)
 13 BY MR. REED:
 14 Q. Have you had a chance to look at it?
 15 A. Yes.
 16 Q. Dr. Myers, do you recall this document, 04:53 PM
 17 which appears to be a printout of a Los Angeles
 18 Times article from October 30th, 2001?
 19 Do you recall this article lurking
 20 someplace in that box of documents that you had for
 21 this project? 04:53 PM
 22 A. No, I don't.
 23 Q. Do you recall ever having seen it before?
 24 A. No.
 25 Q. I want to refer you to page -- the second

Page 554

1 page designated 0225. Just below the midway point 04:53 PM
 2 of the page is a heading called "Finding Money for
 3 All Repairs Will Be Hard."
 4 Do you see that section?
 5 A. Yes. I'm sorry. Yes.
 6 Q. The second paragraph under the heading 04:54 PM
 7 says, "Lynn Roberts, Director of Maintenance and
 8 Operations for Los Angeles Unified, said 'Difficulty
 9 will arise when schools try to find money to pay for
 10 of all of the repairs that are discovered.'"
 11 Do you recall having a conversation with 04:54 PM
 12 anybody with respect to whether L.A. Unified had
 13 enough money to make repairs that it felt were
 14 necessary?
 15 A. No, I don't.
 16 Q. Do you have any information one way or the 04:54 PM
 17 other as the whether the quote that is attributed to
 18 Miss Roberts here is accurate or not?
 19 A. No.
 20 MR. ELIASBERG: The contents of the quote
 21 or whether she actually said that? 04:55 PM
 22 MR. REED: Whether the contents of the
 23 quote are accurate, whether that is a truthful
 24 statement.
 25 THE WITNESS: I don't know.

Page 555

1 MR. REED: I next want to refer you to a 04:55 PM
 2 document that should have been in the stack you got
 3 this morning. It bears the initial Bates No. 1790,
 4 and I will ask the court reporter to mark it as the
 5 next in order.
 6 (Deposition Exhibit 18 was marked for 04:55 PM
 7 identification.)
 8 BY MR. REED:
 9 Q. Would you take a moment to look at it,
 10 Dr. Myers?
 11 Have you had a chance to look at it? 04:57 PM
 12 A. Yes.
 13 Q. What is this?
 14 A. These are -- this is me sitting in a hotel
 15 room one night and thinking about this case and
 16 trying to remember -- I kind of started this. This 04:58 PM
 17 was over several days of just adding information as
 18 I thought about it, points, some of which were -- I
 19 am focusing on other states, but there were other
 20 issues that were also addressed. This was trying to
 21 give some sense of order to some of the stuff that I 04:58 PM
 22 had gathered because my pile was getting very, very
 23 big. As you can see, there is things like notes to
 24 do and kind of some talking to myself.
 25 Q. Have you drafted all of the text that is on

Page 556

1 these -- 04:58 PM
 2 A. Yes.
 3 Q. -- five pages?
 4 A. Yeah.
 5 Q. Do you recall the approximate frame when
 6 you drafted them? 04:58 PM
 7 How about in relationship to when you first
 8 drafted the report, before or --
 9 A. Oh, way before. This was over several
 10 months of -- as I started gathering information, I
 11 realized I had a lot of stuff. So I just kind of 04:59 PM
 12 started this on my computer and just kept adding to
 13 comments here and there.
 14 Q. So you constructed these five pages over an
 15 extended period of time in bits and pieces?
 16 I'm trying to interpret your last comment. 04:59 PM
 17 A. Yeah. I didn't sit down one night and do
 18 this, no. I mean, I would think some of something,
 19 and then go into that and add something else.
 20 Q. I wanted to refer you to the third page,
 21 the designation 1792. This is amongst your more 04:59 PM
 22 brilliant work, which is why I want to make sure I
 23 have got it on the record. Sorry. I will be
 24 serious.
 25 The fourth paragraph that appears on this

Page 557

1 page, the complete one, says, "L.A. Unified may have 05:00 PM
 2 some good ideas for how to do inspections."
 3 What did you mean there?
 4 A. I wish I could support more of that. I
 5 don't remember.
 6 Q. It's indisputably true, but -- no. You 05:00 PM
 7 don't know -- does that refresh your recollection
 8 about whether you had reviewed any of the
 9 documentation that exists within your papers about
 10 L.A. Unified program?
 11 A. No, I'm sorry. No. 05:00 PM
 12 Q. Could that be a quote of something that
 13 somebody else said to you that you lifted from your
 14 notes and put into here?
 15 A. Possibly, because, again, I was kind of
 16 pulling notes together. It might have been. This 05:00 PM
 17 has been a year and a half ago. And as I said, my
 18 focus was on other states. So I was gathering
 19 background information, but that wasn't my primary
 20 reason for looking at California.
 21 Q. Are there any school systems within the 05:01 PM
 22 state of Indiana, that you're aware of, that use a
 23 multitrack year-round calendar?
 24 MR. ELIASBERG: Can you just ask if she is
 25 familiar, just to clarify to make sure she is

Page 558

1 familiar with that term so there is no ambiguity on 05:01 PM
 2 the record?
 3 BY MR. REED:
 4 Q. Do you know what the term "multitracking
 5 year-round calendar" means?
 6 A. I assume you mean students come to school 05:01 PM
 7 either morning or afternoon or want one day or the
 8 next day, and they go all year-round?
 9 Q. I suppose that could be a variation. In
 10 California multitracking has usually different
 11 variations, where a student body is broken into 05:01 PM
 12 groups which then rotate on or off the campus, such
 13 that the campus is actually used throughout the
 14 year, and there is no traditional holiday break in
 15 which the campus is vacant.
 16 Are you familiar with those kind of 05:02 PM
 17 rotating calendars?
 18 A. Yes. Right. San Diego was doing that.
 19 Q. Are you familiar with any school
 20 districts -- okay.
 21 Have you done any work personally with any 05:02 PM
 22 school districts, other than San Diego Unified, that
 23 have used a multitracking year-round calendar?
 24 A. Right now I can't think of any that I have
 25 done multitracking. I have done year-round, but not

Page 559

1 the combination. 05:02 PM
 2 Q. You have done a multitracking that is not
 3 year-round that actually has traditional summer
 4 vacation?
 5 A. Um-hum.
 6 Q. Some sort of double-session work? 05:02 PM
 7 A. Yes.
 8 Q. One student body is there in the morning,
 9 and the other in the afternoon?
 10 A. Right.
 11 Q. Do you have an opinion, sitting here today, 05:03 PM
 12 as to whether a district, which employs a multitrack
 13 year-round calendar, would have, all other things
 14 being equal, maintenance and operations costs that
 15 are less than, equal to, or more than an equivalent
 16 school that operated in a traditional two-semester 05:03 PM
 17 basis?
 18 A. From my experience I have an opinion.
 19 Q. What is that?
 20 A. It would just seem logical that the more
 21 the facilities is used, the more opportunities it 05:03 PM
 22 has for wear and tear. So it makes sense to me that
 23 if the school is being used three hundred sixty days
 24 out of the year, or whatever, versus, you know,
 25 having three or four months off, that probably it's

Page 560

1 getting more use, and maintenance issues possibly 05:03 PM
 2 could be increased. But that's just from my
 3 background, just from my experience.
 4 Q. Do you have an opinion as to whether, all
 5 other things being equal, an elementary school is
 6 less expensive, the same cost, or more expensive to 05:04 PM
 7 maintain than a high school?
 8 MR. ELIASBERG: Improper hypothetical.
 9 THE WITNESS: It would be hard to say
 10 because I need to know the kind of elementary; what
 11 kind of materials were used in the buildings. 05:04 PM
 12 MR. REED: Let's hold everything constant.
 13 The same year of construction, the same general
 14 materials, the same general student body size. The
 15 only difference being one student body is
 16 adolescents and the others are five to ten-year 05:04 PM
 17 olds.
 18 THE WITNESS: Assuming the high school has
 19 locker rooms, more students, more rest rooms, other
 20 specialized facilities, I mean, if I put some of
 21 those assumptions in there, and an elementary only 05:04 PM
 22 had traditional classrooms with a few specialized
 23 facilities, and they certainly wouldn't be at the
 24 same level as a high school, my experience would
 25 suggest that the high school would cost more to

Page 561

1 maintain. 05:05 PM
 2 BY MR. REED:
 3 Q. By "specialized facilities," you mean
 4 things like science labs, and pools, and gymnasiums?
 5 A. Yes.
 6 Q. Going back to the exhibit we were just 05:05 PM
 7 discussing, Exhibit 18, the next page, 1793. Six
 8 paragraphs down is a phrase "things I think now."
 9 Do you know what you meant by that phrase?
 10 A. I think what I was trying to do is to begin
 11 to assimilate some of my thinking, having spent a 05:06 PM
 12 lot of time reading and talking and visiting. And
 13 so I was trying to begin to think what are some
 14 things that I think need to happen. I believe
 15 that's what -- at least the first two paragraphs
 16 following that suggest. 05:06 PM
 17 Q. The next sentence that follows that, the
 18 first sentence of the next paragraph, says,
 19 "Inspection process, must be standardized throughout
 20 the state and must be timely and provide
 21 constructive recommendations." 05:06 PM
 22 Is it still your opinion that an inspection
 23 process must be standardized throughout the state?
 24 A. I think there needs to be some basic
 25 standards, yes.

Page 562

1 Q. Basic minimums? 05:06 PM
 2 A. Yes.
 3 Q. Does that mean, in your opinion, a school
 4 district can, as long as they satisfy that minimum,
 5 otherwise use their own inspection process?
 6 A. Again, that would be set up in the process 05:07 PM
 7 that you establish in California. If that becomes
 8 one of your parameters, it would be all right with
 9 me.
 10 Q. There is some confusion I am trying to
 11 avoid. 05:07 PM
 12 Are you saying, then, that would be okay,
 13 as long as the state, in partnership with all the
 14 local districts, decided there could be
 15 district-to-district variation in the inspection
 16 process, assuming some minimum standard was 05:07 PM
 17 otherwise met?
 18 A. I think there would need to be basic
 19 standards, and then from that there might be
 20 developed some criteria that speaks specifically to
 21 unique areas or unique facilities. To assume that 05:07 PM
 22 an urban school district is going to be exactly like
 23 suburban or rural, you know, they may have some
 24 unique pieces that need to be addressed that would
 25 need to be a part of those standards. But, again,

Page 563

1 that's part of the process of sitting down and 05:08 PM
 2 talking about what we need versus what you need.
 3 For instance, everyone -- in my opinion,
 4 one of the standards ought to be rest rooms ought to
 5 work. Rest rooms should function in every building.
 6 That would be a standard; that windows aren't 05:08 PM
 7 broken; that heating systems. I mean, there are
 8 some things like that that I would have a hard time
 9 saying it doesn't have to happen here, but it should
 10 happen there. It seems there are some that could be
 11 across the board for any school district. 05:08 PM
 12 Q. Any others that you would add to that list
 13 that you think ought to be across the board?
 14 A. I think there is a lot of them, but, again,
 15 I would go back and look at all the reports from the
 16 various states and what you have done. Yours would 05:08 PM
 17 be an excellent one to begin with.
 18 Q. Oh, shucks.
 19 A. It is a good one.
 20 Q. The next sentence in that paragraph says,
 21 "Tied with the inspection must also be a mechanism 05:09 PM
 22 for enforcement, and perhaps an avenue for dollars
 23 to assist with the maintenance."
 24 Do you believe that statement to still be
 25 true?

1 A. Yes, I do. 05:09 PM
 2 Q. What mechanism for enforcement do you think
 3 an inspection ought to entail?
 4 A. Again, looking at some the other models
 5 where it relates to if the inspection process
 6 doesn't occur or if -- yeah, if it -- I think there 05:09 PM
 7 needs to be an accountability somehow, otherwise
 8 what's the point of doing this. But I don't know
 9 because I don't know the State of California or your
 10 funding mechanism well enough to give you any
 11 suggestions on that. 05:09 PM
 12 Q. Well, the enforcement mechanism that you
 13 testified to thus far was a withholding of state aid
 14 to a school district, is one enforcement mechanism,
 15 correct, that you identified in your survey?
 16 A. Yes. Right. 05:10 PM
 17 Q. Are there any others that you identified?
 18 A. I don't believe so.
 19 Q. Are there any others that you're aware of
 20 or otherwise recommend as amongst the options the
 21 State of California should consider? 05:10 PM
 22 A. You mean how you go about withholding state
 23 dollars. You know, I would think there would be
 24 lots of way ways to look at that, but I don't know
 25 right now how you would do that because, again, I

1 don't know your system. 05:10 PM
 2 Q. Outside of a withholding of dollars through
 3 some mechanism, are there any other kinds of
 4 enforcement that you would recommend?
 5 A. Probably dollars get people's attention
 6 more than anything else. So I'm not recommending 05:10 PM
 7 anything, but my experience suggests that dollars
 8 seem to get lots of people's attention of getting
 9 things accomplished.
 10 Q. Better than corporal punishment? I'm
 11 sorry. 05:11 PM
 12 "Perhaps an avenue for dollars to assist
 13 with the maintenance" is the last phrase in that
 14 sentence.
 15 Is that still your opinion, that tied with
 16 the inspection should perhaps be an avenue for 05:11 PM
 17 dollars to assist with the maintenance?
 18 A. I don't think you can put forth a process
 19 and require school districts to do something from
 20 the state and then not have dollars. I think it
 21 states all of it working together. 05:11 PM
 22 Q. Correct me if I'm wrong, but I don't
 23 believe you put anywhere in your final report that
 24 opinion that there ought to be dollars tied with an
 25 inspection.

1 A. Well, it's No. 4 of my conclusions, the 05:11 PM
 2 issue of funding, where I talk about funding, and it
 3 takes funding, as well as all of these other things
 4 to make it happen. I'm not sure I said it exactly
 5 like that, but. . . .
 6 Q. On page -- I'm sorry. Did you want to add 05:12 PM
 7 to your answer at all by reference to your report?
 8 A. Well, just paraphrasing, it says there must
 9 be a system to address equitable funding. You have
 10 all these other things, and you also have to have
 11 the funding issue, too. 05:12 PM
 12 Q. On the same page, 1793 of Exhibit 18, down
 13 below the paragraph where you say, "Tom Duffy," with
 14 his phone numbers, is the phrase "We are talking
 15 about solvable problems. Other states have done
 16 it." 05:13 PM
 17 Do you see that text?
 18 A. Um-hum.
 19 Q. What other states have done it?
 20 A. Maryland and West Virginia. Ohio is
 21 starting to. Arizona is starting to, and some of 05:13 PM
 22 the others that I have mentioned the last couple of
 23 days, Massachusetts. Again, they are just starting
 24 the model. But Maryland and West Virginia certainly
 25 have been involved in inspections.

1 Q. Do you have any understanding with respect 05:13 PM
 2 to what the -- have you ever tried to compare the
 3 per-pupil expenditures in public education from the
 4 state of Maryland versus the state of California?
 5 A. No.
 6 Q. Same question with respect to West 05:14 PM
 7 Virginia.
 8 A. No.
 9 Q. Do you have any understanding with respect
 10 to relative levels of support in California versus
 11 Maryland when it comes to voters approving school 05:14 PM
 12 facilities bonds?
 13 A. No.
 14 Q. Same question with respect to West
 15 Virginia.
 16 A. No. 05:14 PM
 17 Q. Did I ask --
 18 A. You asked Maryland.
 19 Q. Do you have any understanding as to how
 20 West Virginia funds public education?
 21 A. No. 05:14 PM
 22 Q. Same question with respect to Maryland.
 23 A. No. We discussed those things when I was
 24 there, but to share that with you now, I couldn't.
 25 Q. You don't know how much of it comes from

Page 568

1 local property taxes, versus sales taxes, versus 05:14 PM
 2 income taxes? Things of that nature?
 3 A. No.
 4 Q. I believe you state in your report that in
 5 New Mexico, I believe it's in paragraph 15 -- this
 6 is the second sentence. "For instance, in 05:15 PM
 7 New Mexico, when a school district is receiving
 8 state or local funding to assist with a facility
 9 project that is either a new or renovated facility,
 10 guidelines have been established to include ongoing
 11 maintenance and operations of those facilities, and 05:15 PM
 12 those dollars must be included within the facility
 13 project."
 14 Is it still your understanding that that is
 15 the rule in New Mexico?
 16 A. That's my understanding. 05:15 PM
 17 Q. Is it your understanding that in
 18 New Mexico, if local bond funds are used to instruct
 19 a new school, that some section -- some amount of
 20 local bond funds are actually set aside for
 21 maintenance and operations? 05:16 PM
 22 A. No. I mean, I don't know that.
 23 Q. You don't know how the mechanism works?
 24 A. No. No.
 25 Q. Do you have any understanding as to

Page 569

1 whether, in the state of California, it would be 05:16 PM
 2 lawful for a school district to use local general
 3 obligation bond funds for maintenance of school
 4 facilities?
 5 A. I would have no idea if it's legal.
 6 MR. ELIASBERG: It's been about an hour. 05:16 PM
 7 Our main goal is to try to get done. What's your
 8 thought here?
 9 MR. REED: Let's go off the record.
 10 (Discussion off the record.)
 11 BY MR. REED: 05:16 PM
 12 Q. Again, on page 1793 of Exhibit 18, at the
 13 top, the third paragraph says, "Is the 3% monitored?
 14 If it were, there might not be as much of a need for
 15 such an intensive inspection process."
 16 What did you mean there? 05:24 PM
 17 A. I'm going to speculate what I think I said.
 18 MR. ELIASBERG: You really shouldn't. If
 19 you're guessing, you shouldn't guess. If you have a
 20 reasonable basis for making it, you can do it. But
 21 don't guess. 05:25 PM
 22 BY MR. REED:
 23 Q. Let me ask it this way. Do you agree with
 24 that statement?
 25 A. Not just that statement, no.

Page 570

1 Q. Why not? 05:25 PM
 2 A. Because I think the three percent was just
 3 kind of an arbitrary number, and I don't know if
 4 that's a right number or not. But I think what I
 5 was commenting on here was that if an amount is put
 6 into a budget, that it's regularly -- that you know 05:26 PM
 7 that whatever that money is, if it's indeed enough,
 8 depending on whether it's a new building or an older
 9 building, and that money is actually being spent on
 10 ongoing maintenance, then you may not have to -- you
 11 might not have to do -- the inspection process might 05:26 PM
 12 not have to be every year, for instance, because you
 13 can tell the money is actually being spent on
 14 ongoing maintenance every year. So whether it's
 15 three percent or not, I don't know.
 16 Q. It's a building-specific issue for you, or 05:26 PM
 17 district-wide issue?
 18 MR. ELIASBERG: Objection, vague.
 19 THE WITNESS: I guess, as I was just
 20 talking about it, I was thinking about building.
 21 BY MR. REED: 05:26 PM
 22 Q. Are there any circumstances under which you
 23 believe that a local district might appropriately
 24 determine that it should not have a bathroom open in
 25 a building, in a school building?

Page 571

1 MR. ELIASBERG: A single bathroom or no 05:27 PM
 2 bathrooms open?
 3 MR. REED: A bathroom in a building, a
 4 single bathroom in building.
 5 Q. I believe you said a standard would be that
 6 each building should be a bathroom; is that correct? 05:27 PM
 7 A. I think I said each building should have
 8 rest rooms that work.
 9 Q. Rest rooms that work.
 10 Do you think there is any circumstance in
 11 which a district could reasonably determine that a 05:27 PM
 12 building did not need to have a bathroom that
 13 worked?
 14 A. I can't think of -- I can think -- if
 15 you're asking do I think every bathroom needs to be
 16 open in a facility -- 05:28 PM
 17 Q. If you're comfortable with that question,
 18 let's ask that.
 19 A. My experience has been I have seen some
 20 schools where there are certain bathrooms that are
 21 locked certain times of the day because of the 05:28 PM
 22 security or no supervision available. There are
 23 always rest rooms available, but there are certain
 24 areas in the building, when it was designed, that
 25 they were designed in poorly located spaces. And

Page 572

1 there may be times when those rooms are locked, but 05:28 PM
 2 there are also rest rooms available that are working
 3 in other parts of building. So I have seen
 4 instances where that's been the case.
 5 Q. Where that has been the case, it's your
 6 opinion that that school violated that minimum 05:28 PM
 7 standard that you think could exist?
 8 A. I think what I said before, my minimum
 9 standard is that in every school there needs to be
 10 rest rooms that are in working condition for
 11 students to use, and adults. I don't think I said 05:29 PM
 12 how many or -- but I said there needs to be rest
 13 rooms that are working.
 14 Q. But it's not inconsistent with that
 15 standard, in your mind, for a school to close some
 16 rest rooms for, to use your example, a security 05:29 PM
 17 concern; is that correct?
 18 A. Like I said, I have seen that, and that,
 19 again, would be one of those unique circumstances
 20 that would seem appropriate.
 21 Q. Would you agree that that circumstance 05:29 PM
 22 involved a trade-off that the school district had to
 23 make with respect to dollars that it determined it
 24 would spend on security on that campus?
 25 A. I don't know. Often times, from my

Page 573

1 experience, it's not a matter of trade-off. It's 05:30 PM
 2 just we have had too many problems about things
 3 happening in this bathroom. And so to try to
 4 alleviate that, we are not going to use the
 5 bathroom. We are going to use the bathrooms down
 6 here rather than those. That's been my experience. 05:30 PM
 7 It's not a case of we have to hire somebody.
 8 Q. Would it be a violation of the standard
 9 articulated about working bathrooms in schools for a
 10 school district to determine that it needed to close
 11 half of the bathrooms on its campus because the 05:30 PM
 12 maintenance costs to keep those bathrooms in clean,
 13 decent, sanitary circumstances was prohibitive, if
 14 they were going to use that money, for, say,
 15 textbooks?
 16 MR. ELIASBERG: Objection, incomplete 05:30 PM
 17 hypothetical, vague.
 18 THE WITNESS: I wouldn't even want to
 19 render an opinion on that. I would have to know
 20 lots of other things about that.
 21 BY MR. REED: 05:31 PM
 22 Q. Let's assume for purposes of my
 23 hypothetical that a school district had, for a
 24 particular campus, a finite allotment of dollars,
 25 and it had to make a decision with those dollars

Page 574

1 with respect to whether it was going to purchase 05:31 PM
 2 textbooks, or whether it was going to hire custodial
 3 staff sufficient to keep all of the bathrooms on the
 4 campus open, clean, safe and sanitary.
 5 Would the school district violate the
 6 standard that you would recommend, minimum standards 05:31 PM
 7 regarding bathrooms, if it chose to close half the
 8 bathrooms on the campus and use the money it
 9 received to purchase textbooks?
 10 MR. ELIASBERG: Objection, improper
 11 hypothetical. 05:31 PM
 12 THE WITNESS: Again, I need more
 13 information to make that decision. And once again,
 14 I would suggest to you that would be a unique
 15 circumstance that would be addressed with whomever
 16 the agencies are that are doing the inspection. 05:32 PM
 17 If you've got -- you know, how many kids
 18 are in the facility; do they go home for lunch.
 19 There is just lots of other things that, say,
 20 closing half the bathrooms, and what's half the
 21 bathrooms; how many bathrooms is that. There's just 05:32 PM
 22 a lot of issues. What's their schedule; does
 23 everybody go to the bathroom at the same time.
 24 Those are things that all play in that
 25 decision, I would think. So I would hope that

Page 575

1 through the inspection process that those would be 05:32 PM
 2 investigated. You know, why are they closed; does
 3 it make sense.
 4 BY MR. REED:
 5 Q. Does that mean that there could be facts
 6 out there, circumstances that might in fact make 05:32 PM
 7 that decision to close half the bathrooms on the
 8 campus not a violation of the minimum standard that
 9 you would articulate?
 10 A. I don't know that I would say, okay, it's
 11 half the bathrooms, or it's two-thirds, or it's 05:32 PM
 12 one-third, but certainly there would be
 13 circumstances that would say, you know, we have done
 14 this for very good reasons, and these are the
 15 reasons, and dah, dah, dah. But again, that goes
 16 back to addressing the unique circumstances. 05:33 PM
 17 Q. I did forget about two other exhibits. One
 18 you were given this morning has the Bates No. 1795.
 19 I will ask the court reporter to mark it next in
 20 order.
 21 (Deposition Exhibit 19 was marked for 05:33 PM
 22 identification.)
 23 BY MR. REED:
 24 Q. Dr. Myers, I don't have many questions
 25 about the actual text of this exhibit, but I am more

1 interested in knowing if you recall it, know what it 05:34 PM
 2 is, know when you got it, and know whether you
 3 relied on it in any way. Take as long as you need
 4 to look at it to satisfy yourself you can answer
 5 those questions.

6 Do you know what this is? 05:34 PM

7 A. No.

8 Q. Do you recall ever having seen it before?

9 A. I don't recall, no.

10 Q. Is it safe to say did you not rely on this
 11 document in rendering your opinion? 05:34 PM

12 A. Yes.

13 MR. REED: The last document I'm going to
 14 have you look at that you got this morning has the
 15 Bates No. 1037. It's a two-page document. I will
 16 ask the court reporter to mark it as Exhibit 20. 05:35 PM

17 (Deposition Exhibit 20 was marked for
 18 identification.)

19 BY MR. REED:

20 Q. Dr. Myers, do you recall having seen this
 21 document before? 05:36 PM

22 A. Yes.

23 Q. What do you understand it to be?

24 A. It's an article about bathroom problems in
 25 a high school.

1 Q. In Charleston County, West Virginia? 05:36 PM

2 A. I don't know. Is that where it is? Yes.

3 Q. Do you know where you got this article?

4 A. I think it was, again, from my research or
 5 my assistant pulling things off from different
 6 states. 05:36 PM

7 Q. Did you ever discuss the contents of this
 8 article with anyone within the West Virginia
 9 education system that you met with or spoke with?

10 A. No.

11 Q. Did it influence your opinion one way or 05:37 PM
 12 the other with respect to whether the West Virginia
 13 system was working to make sure that schools were in
 14 decent shape in terms of maintenance?

15 A. No.

16 Q. Why not? 05:37 PM

17 A. Because, again, I think what I'm suggesting
 18 is that there needs to be a system in place to allow
 19 that to happen, and it's not going to happen
 20 overnight in all of the schools. West Virginia went
 21 from a few years ago being the worst conditions for 05:37 PM
 22 school facilities in the United States to moving up
 23 the ladder. And they still have a long way to go, I
 24 believe, but they certainly are doing a lot for
 25 improvement, and part of that has to do with

1 establishing the process and having the funding. 05:37 PM

2 Q. So the news article says that "Parents at
 3 Springfield Elementary even report worm-like
 4 creatures growing in urinals."

5 Is that you that underlined that "worm-like
 6 creatures growing the urinals"? 05:38 PM

7 A. Probably.

8 Q. Is it then your opinion that one can have
 9 all the elements of an effective maintenance system
 10 in place, such as you recommend in your report, and
 11 nevertheless have on occasion instances such as are 05:38 PM
 12 described in this report?

13 MR. ELIASBERG: Objection.

14 MR. REED: On particular school campuses in
 15 the state?

16 THE WITNESS: Again, I think it's an 05:38 PM

17 ongoing process. Typically school facilities didn't
 18 get in the condition they are in in one or two or
 19 ten years. So it's going to take many, many, many
 20 years in states to get every facility up to a
 21 standard. But at least they are starting with 05:38 PM

22 prioritizing the worst. This obviously must not be
 23 the worst. So you can imagine what the worst must
 24 have been. It's my opinion that there needs to be a
 25 process established, realizing that it's not going

1 to happen overnight, and it's going to be very long, 05:39 PM
 2 especially in states where they have lots of
 3 schools.

4 MR. REED: Now the real last document,
 5 1707, also given to you this morning. I will ask
 6 the reporter to mark it as Myers 21. 05:39 PM

7 (Deposition Exhibit 21 was marked for
 8 identification.)

9 BY MR. REED:

10 Q. What is this document?

11 A. This is a summary of what I had been 05:40 PM
 12 working on, kind of a status report for one of the
 13 phone calls that I had with Mr. Eliasberg so he
 14 would have some sense of information that I was
 15 gathering through the process. So I sat down and
 16 just typed out a bunch of the things that I had been 05:41 PM
 17 looking at, at that point in the process of
 18 gathering data.

19 Q. Do you recall the approximate time in which
 20 you did that?

21 A. No, I have no idea. 05:41 PM

22 Q. Before the report was prepared?

23 A. Oh, yes. Oh, yes.

24 Q. To the best of your recollection, you
 25 drafted all of the text that is on the typewritten

Page 580

1 pages? 05:41 PM
 2 A. Yes.
 3 Q. What is the handwritten notes that appear
 4 on the very last page of 1714?
 5 A. I think these were some notes that I was
 6 taking to myself, places that I wanted to check on, 05:41 PM
 7 what they were doing in other areas for operations
 8 and maintenance. I was on an airplane, and I had
 9 these. And I just started writing down some things
 10 I wanted to think about, I wanted to investigate,
 11 and some of the other areas I wanted to look into, 05:41 PM
 12 organization.
 13 Q. Am I correct you were jotting these down on
 14 an envelope or mailing label?
 15 A. Yeah. It was something I had in my purse,
 16 and I pulled it out. 05:42 PM
 17 Q. Your back-of-the-envelope sketch. Page 2
 18 of this document 1701 says, "Los Angeles Unified
 19 School District keep promise of 'clean bathrooms.'"
 20 Clean bathrooms is in quotation.
 21 Do you recall writing that section? 05:42 PM
 22 A. Yes.
 23 Q. Where did you get the information that you
 24 put into the bullets there under that section?
 25 A. I don't remember. I don't remember.

Page 581

1 Q. What was the importance to you, this 05:42 PM
 2 particular information?
 3 Where did you include it in the status
 4 report?
 5 MR. ELIASBERG: Objection, compound.
 6 THE WITNESS: I don't know that it was 05:43 PM
 7 necessarily important. It was just another piece of
 8 data that I had gathered. I wouldn't suggest that
 9 everything on here I thought was equally important,
 10 but it's just I was trying to give them some sense
 11 of the stuff that I had been looking at. 05:43 PM
 12 BY MR. REED:
 13 Q. Did you have an opinion, at the time you
 14 wrote this, as to whether L.A. Unified had an
 15 appropriate system in place for dealing with
 16 bathroom conditions within the district? 05:43 PM
 17 A. No.
 18 Q. Did you have an opinion one way or the
 19 other on that issue?
 20 A. No.
 21 Q. Following up on the West Virginia article 05:43 PM
 22 on that particular bathroom, Exhibit 20.
 23 Do you think that it is possible to look at
 24 a snapshot of a school at a moment in time, or a
 25 collection of schools within a district, and make a

Page 582

1 determination based on nothing more than the 05:44 PM
 2 conditions of the grounds of the particular school
 3 or schools within a district at one moment in
 4 history, and determine whether that district has an
 5 appropriate mechanism in place for dealing with
 6 maintenance and operations? 05:44 PM
 7 A. If you mean do I think if somebody walked
 8 through the building and made that determination, or
 9 do you mean if a process was put in place whereby a
 10 checklist was formulated and agreed upon, that these
 11 are the things that we think are critical in every 05:44 PM
 12 school, and then an investigation was done of each
 13 of buildings?
 14 I think there is differences of what you're
 15 suggesting.
 16 Q. There are. I think what I am trying to 05:45 PM
 17 suggest is, if one were to simply do a survey of ten
 18 campuses and discover that on the following three
 19 there are broken windows, and on the following two
 20 there are bathrooms are out of order, and the others
 21 there were no significant problems reported. 05:45 PM
 22 Knowing nothing more than that, do you
 23 believe that it is possible for someone to render an
 24 opinion with respect to whether the school district
 25 in charge of those schools has an appropriate

Page 583

1 mechanism in place for dealing with maintenance and 05:45 PM
 2 operations of its facilities?
 3 A. No. With that, no. I mean, I don't think
 4 you could render an opinion on that little
 5 information.
 6 Q. You would need to know what systems were in 05:45 PM
 7 place; correct? What systems the district itself
 8 had --
 9 A. Right. Right. There may be reasons why
 10 they haven't been fixed. They may be on a long-term
 11 maintenance plan. There may be a lot of extenuating 05:46 PM
 12 circumstances that they aren't done yet, and that's
 13 part of the investigation, which I would hope it
 14 would be in the report.
 15 Q. Is it possible, also, in that circumstance,
 16 there are limited resources, and the district has 05:46 PM
 17 determined to focus those resources first in what it
 18 considers more priority repairs?
 19 MR. ELIASBERG: Objection, calls for
 20 incomplete hypothetical.
 21 THE WITNESS: Whether it's a priority or 05:46 PM
 22 not, I think they need to be identified and there
 23 needs to be some plan put in place to get them up to
 24 a standard that's been established.
 25 BY MR. REED:

Page 584

1 Q. Paragraphs 40 to 42 of your report. In the 05:46 PM
 2 Equitable Funding section on page 11, in particular
 3 in paragraph 42, you state that there is, and I'm
 4 quoting, "Another related problem is that unless a
 5 school district has a person hired on the staff to'
 6 chase' the state funding, there is little hope that 05:47 PM
 7 local districts will be given dollars to assist with
 8 maintenance issues in their district."
 9 Based on that, do you have the opinion that
 10 larger school districts with more staff are
 11 disproportionately favored in the California system 05:47 PM
 12 when it comes to funding for maintenance?
 13 A. I don't have any idea. I don't think large
 14 necessarily means the personnel are there. You
 15 know, if what you're suggesting is do I think they
 16 can afford to hire somebody versus a smaller 05:47 PM
 17 district, I wouldn't -- I wouldn't necessarily say
 18 that's true.
 19 Q. Do you have an opinion as to whether
 20 Los Angeles Unified School District has -- is likely
 21 to have the staff in place to allow it without 05:48 PM
 22 assistance from the state to understand what the
 23 greatest needs are within L.A. Unified School
 24 District for maintenance and repair of its school
 25 buildings?

Page 585

1 MR. ELIASBERG: Can you read that question 05:48 PM
 2 back?
 3 (The reporter read the pending question.)
 4 THE WITNESS: I don't have an opinion about
 5 L.A., but I have worked in other large urban
 6 districts. My experience has been that it's very 05:49 PM
 7 difficult, because they are so short staffed, to be
 8 able to do those kind of inventories and keep them
 9 up. And typically they hire -- go outside and hire
 10 somebody to do those master plan studies, but I
 11 don't know about L.A. 05:49 PM
 12 Q. In any of those larger urban districts that
 13 you have worked with, has it been necessary for the
 14 state to identify for that school district what its
 15 master plan ought to be?
 16 A. Yes, in some cases. 05:49 PM
 17 Q. Which cases?
 18 A. In Ohio. The state worked with the local,
 19 and they brought in a team and evaluated all the
 20 facilities and helped them prioritize.
 21 Q. Which local? How many locals? 05:49 PM
 22 A. The whole state.
 23 MR. REED: I don't have any further
 24 questions.
 25 MR. ELIASBERG: I'm okay with your

Page 586

1 stipulation. Actually, let me check it in terms of 05:50 PM
 2 the number of days.
 3 (Discussion off the record.)
 4 MR. SIMMONS: We just have noticed, in the
 5 course of reviewing our exhibits, that we appeared
 6 to have skipped an exhibit number. So we don't have 05:57 PM
 7 an Exhibit No. 15. We have Exhibit 14, and then it
 8 skips to Exhibit 16.
 9 Also, I will read a stipulation into the
 10 record that will govern the entire three days of the
 11 Myers deposition, Dr. Myers' deposition. That 05:57 PM
 12 stipulation is as follows: May we stipulate that
 13 copies of documents attached to the deposition may
 14 be used as originals?
 15 May we stipulate that the original of the
 16 deposition be signed under penalty of perjury; that 05:57 PM
 17 the original be delivered to the office of Mr. Peter
 18 Eliasberg; that the reporter is relieved of
 19 liability for the original of the deposition; that
 20 the witness will have 45 days from the date
 21 of the court reporter transmittal letter to 05:58 PM
 22 Mr. Eliasberg to sign and correct the deposition,
 23 and that Mr. Eliasberg shall notify all parties in
 24 writing of any changes in the deposition, and that
 25 if there are no such changes communicated within

Page 587

1 that time, that any unsigned and uncorrected copy 05:58 PM
 2 may be used for all purposes, as if signed and
 3 corrected?
 4 Can we stipulate to that?
 5 Also, Mr. Eliasberg will make the original
 6 transcript available, if needed, at any hearing or 05:58 PM
 7 the trial of the case. And if the original
 8 transcript is not so made available for any reason,
 9 that an unsigned copy can be used as if it were the
 10 original.
 11 MR. ELIASBERG: So stipulated. 05:58 PM
 12 MR. SIMMONS: So stipulated.
 13 MR. REED: So stipulated.
 14 (TIME NOTED: 5:58 P.M.)
 15
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1 I declare under penalty of perjury
2 under the laws of the State of California
3 that the foregoing is true and correct.
4 Executed on _____, 2003,
5 at _____, _____.

6
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10 _____
11 SIGNATURE OF THE WITNESS
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1 IN WITNESS WHEREOF, I have subscribed my name
2 this 7th day of February, 2003.
3
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6

7 _____
8 JO ANN BRUSCELLA, CSR No. 4295
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1 STATE OF CALIFORNIA) ss:
2 COUNTY OF SAN FRANCISCO)
3
4 I, JO ANN BRUSCELLA, CSR No. 4295, do hereby
5 certify:
6
7 That the foregoing deposition testimony of
8 NANCY RUTH MYERS, Ed.D., was taken before me at the
9 time and place therein set forth, at which time the
10 witness was placed under oath and was affirmed by me
11 to tell the truth, the whole truth, and nothing but
12 the truth; that the testimony of the witness and all
13 objections made by counsel at the time of the
14 examination were recorded stenographically by me,
15 and were thereafter transcribed under my direction
16 and supervision, and that the foregoing pages
17 contain a full, true and accurate record of all
18 proceedings and testimony to the best of my skill
19 and ability.
20 I further certify that I am neither counsel for
21 any party to said action, nor am I related to any
22 party to said action, nor am I in any way interested
23 in the outcome thereof.
24
25

1 INDEX
2 VOLUME III
3
4 FRIDAY, JANUARY 24, 2003
5
6 WITNESS EXAMINATION
7
8 NANCY RUTH MYERS, Ed.D.
9
10
11 (By Mr. Simmons) 375
12 (By Mr. Seferian) 404
13 (By Mr. Hajela) 487
14 (By Mr. Reed) 507
15
16
17
18
19
20
21
22
23
24
25

DEPOSITION EXHIBITS		
NANCY RUTH MYERS, Ed.D.		
NUMBER	DESCRIPTION	IDENTIFIED
4	Chain of e-mails, the first of which is dated 12/21/01 from Young to Myers	379
5	Document entitled "Operations and Maintenance Data Collection, February 7, 2002"	383
6	Document entitled "School Maintenance"	384
7	Handwritten notes	387
8	Handwritten notes	388
9	Handwritten notes	389
10	Document entitled "Building Maintenance Survey"	393
11	Letter dated 2/7/01 from Stenzler to Hairston and attached Building Maintenance Survey-Inspection Report	394

DEPOSITION EXHIBITS		
NANCY RUTH MYERS, Ed.D.		
NUMBER	DESCRIPTION	IDENTIFIED
17	Document entitled "Los Angeles Times, Copyright 2001/The Times Mirror Company Tuesday, October 30, 2001, California; Metro Desk"	553
18	Document entitled "Summary of Information from Review of Literature for Maintenance and operations"	555
19	Document entitled "School Portrait #1: Jefferson High School"	575
20	Article entitled "Special Report, Bathroom problems overflowing"	576
21	Document entitled "Summary of Research Regarding Standards for Maintenance and Operations for Public Schools and Other Public and Private Institutions"	579

DEPOSITION EXHIBITS		
NANCY RUTH MYERS, Ed.D.		
NUMBER	DESCRIPTION	IDENTIFIED
12	Document entitled "Top Ten Education Bills for the 2001 Legislative Session"	402
13	E-mail chain, the first of which is dated 2/6/02 from Furey to Myers	403
14	Document entitled "Additional Materials Provided to Expert Nancy Myers"	435
15	(No Exhibit 15 was marked.)	
16	Interoffice Memorandum dated 3/27/01 from Robert to Members, Board of Education, and attached document entitled "Safe and Clean School Environment, Adopted February 27, 2001," and "Annual Campus/Facilities Inspection Form"	545