

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

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

9 vs.

No. 312236

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

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15 Deposition of
16 DUWAYNE BROOKS

17 Volume I, Pages 1 through 207
18 Wednesday, November 14, 2001

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21
22 Reported by:
23 TRACY LEE MOORELAND
24 CSR No. 10397
25 Job No. 28907

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1	BE IT REMEMBERED, that on Wednesday, November
2	14, 2001, commencing at the hour of 10:12 a.m., thereof,
3	at the offices of Morrison & Foerster, 400 Capitol Mall,
4	26th Floor, Sacramento, California, before me,
5	TRACY LEE MOORELAND, a Certified Shorthand Reporter in
6	the State of California, there personally appeared
7	DUWAYNE BROOKS,
8	called as a witness herein, who, having been duly sworn
9	to tell the truth, the whole truth, and nothing but the
10	truth, was thereupon examined and interrogated as
11	hereinafter set forth.
12	---o0o---
13	MR. ELIASBERG: You go ahead.
14	MR. HERRON: We have a stipulation regarding
15	objections. Specifically the State and the state agency
16	defendants join in one another's objections, and do so
17	without having to indicate each time an objection is
18	interposed. In other words, any objection the state
19	agency, the defendant's attorney makes, the State joins
20	in, and vice versa.
21	MR. ELIASBERG: So stipulated.
22	EXAMINATION BY MR. ELIASBERG
23	Q. Good morning, Mr. Brooks.
24	A. Good morning.
25	Q. Actually, I guess -- I don't know if you got it

1 already. Would you -- could you spell your first and
 2 last name for the court reporter.
 3 A. D-u-w-a-y-n-e B-r-o-o-k-s.
 4 Q. Is it Mr. Brooks or Dr. Brooks?
 5 A. Mr.
 6 Q. Okay. Let me ask a few background -- go over
 7 the ground rules of the deposition procedure. Have you
 8 been deposed before?
 9 A. No.
 10 Q. Okay. I don't have to ask you how many times
 11 and in what cases. You're a baby to this process.
 12 Let me just quickly go through the basic ground
 13 rules of this. Do you understand that you're under
 14 oath, and the same laws concerning perjury apply here
 15 even though this is a more informal setting than would
 16 be the case in a court of law?
 17 A. Sure.
 18 Q. And you understand that the court reporter is
 19 taking down basically everything that's being said here,
 20 including the answers to your questions? Do you
 21 understand that?
 22 A. Yes.
 23 Q. And unless we say that we're off the record,
 24 the court reporter will be taking everything down.
 25 I need you to understand also that the court

1 reporter, unlike in normal conversation, she can't
 2 record nods of the head and so on, so it may seem a
 3 little bit stiff, but I need you to make a verbal
 4 response each time I ask a question, and that "uh-huh"
 5 is difficult for her to record, so it needs to be a
 6 "yes" or a "no" or a full set of words.
 7 Do you understand that?
 8 A. Yes.
 9 Q. The court recorder is going to transcribe
 10 everything. You will have an opportunity -- after the
 11 deposition is over, my guess is the process will be that
 12 you'll be able to get the transcript from your counsel.
 13 And you will have the opportunity to correct portions of
 14 the transcript if you believe that they're in error, but
 15 I need to let you know that if you make a substantial
 16 change in the transcript, that an attorney, I or another
 17 attorney in court would have the opportunity to comment
 18 on the fact that your answer here as transcribed by the
 19 court reporter was different than what you eventually
 20 agreed to when you signed the transcript.
 21 Do you understand that?
 22 A. Yes.
 23 Q. Okay. In other words, we're trying to get your
 24 best recollection and clearest and most complete answer
 25 here rather than relying on your opportunity to change

1 things when the transcript is reviewed.
 2 A. Sure.
 3 Q. Okay. I'm not going to try to trick you. You
 4 may find my questions difficult to understand or tricky.
 5 If you do, it's not because I'm trying to trick you,
 6 it's because I've had a problem phrasing them. If you
 7 have a problem understanding them, you're not sure what
 8 I mean, feel free to ask me to clarify the question or
 9 say that you don't understand.
 10 The reason for that is if you do give a
 11 response to a question, even if you're unsure of it, the
 12 record will reflect that you answered it. People will
 13 be free to assume that you did understand the question.
 14 We want your complete answer to a question that you
 15 understand, not a question that you're sort of guessing
 16 at the meaning of.
 17 Do you understand that?
 18 A. Yes.
 19 Q. As far as what I'm entitled to, I don't want
 20 you to guess. If you're simply speculating without any
 21 basis in fact or any basis in your experience to know
 22 the answer, I don't want you to do that.
 23 However, I am entitled to an informed answer in
 24 your case, even if you're not necessarily certain of the
 25 exact answer. So we don't want you to just guess, but

1 at the same time we're entitled to your best
 2 recollection based on your knowledge and experience.
 3 Do you understand that?
 4 A. Yes.
 5 Q. If later in the deposition, as sometimes
 6 happens, you think that -- something pops into your
 7 head, you feel you didn't give a complete answer or you
 8 recollect something that you hadn't recollected before,
 9 feel free to stop me and say, "you asked me a question
 10 about this earlier, I'd like to complete my answer."
 11 Because if you don't do that and you just hold onto that
 12 recollection, we'll assume that the answer you gave
 13 earlier that's in the transcript was your complete
 14 answer.
 15 Do you understand that?
 16 A. Yes.
 17 Q. I'm going to propose taking breaks on a
 18 periodic basis, after things have gone for a decent
 19 amount of time. But you're free at any time to say
 20 you're tired or you want to take a break, so you don't
 21 have to wait for me or your counsel to ask for a break.
 22 We want you to be comfortable. This is not supposed to
 23 be a marathon session in which you are under big lights
 24 and you're grilled and you say yes because you're tired.
 25 A. So it's not like the legislature.

1 Q. I've never testified, but it sounds like it's
 2 not like the legislature. We try to be a little nicer
 3 here.
 4 Are you taking any medication or anything that
 5 would affect your ability to answer questions and affect
 6 your memory or knowledge here?
 7 A. No.
 8 Q. Okay. Is there any other reason that you do
 9 not feel that we can proceed with the deposition today?
 10 A. No.
 11 Q. Okay. Mr. Brooks, I'd like first just to go
 12 through your background.
 13 MR. ELIASBERG: Anthony, at some point is it
 14 possible to get Mr. Brooks' vitae?
 15 MR. SEFERIAN: Actually, I can bring it
 16 tomorrow. He did bring it to me. I neglected to bring
 17 it today. I apologize.
 18 MR. ELIASBERG: I think we can go through the
 19 questions relatively quickly, but I may need to go back
 20 after I've seen the resume.
 21 Q. Mr. Brooks, did you attend college?
 22 A. Yes.
 23 MR. HERRON: Hold on and let me see if I have
 24 it.
 25 MR. ELIASBERG: We're going to get copies made.

1 Q. I believe the last question was did you go to
 2 college.
 3 A. Yes.
 4 Q. Where was that?
 5 A. The University of California Santa Barbara.
 6 Q. Did you graduate from there?
 7 A. Yes.
 8 Q. What year did you graduate?
 9 A. 1969.
 10 Q. Okay. What was the degree that you obtained
 11 when you graduated?
 12 A. Had a major in sociology and a minor in
 13 psychology.
 14 Q. While you were at Santa Barbara for your
 15 undergraduate education, did you take any courses in
 16 education?
 17 A. No.
 18 Q. Did you take any courses that related to school
 19 construction or modernization or maintenance?
 20 A. No.
 21 Q. Did you do -- subsequent to graduating from
 22 Santa Barbara, did you do any graduate work?
 23 A. Yes.
 24 Q. Where did you do that?
 25 A. Chapman University.

1 Q. Where is Chapman University?
 2 A. In Orange, California.
 3 Q. And did you obtain a degree from Chapman?
 4 A. Yes.
 5 Q. What degree was that?
 6 A. My life teaching credential.
 7 Q. How many years were you at Chapman?
 8 A. I was in an intern program. I graduated from
 9 Santa Barbara on a Saturday, I started Chapman on a
 10 Monday, was in a self-contained classroom that
 11 September, and completed my credential at night for
 12 about the next three or four months.
 13 Q. Sounds like a trial by fire.
 14 A. It was. Fifth and sixth grade.
 15 Q. And so when did you actually obtain your degree
 16 from Chapman?
 17 A. It had to have been in '70.
 18 Q. When you were at Chapman, am I correct that you
 19 were actually preparing -- the credential was to be a
 20 teacher?
 21 A. Yes.
 22 Q. Did you take any courses there, while you were
 23 there, in school construction or modernization or school
 24 maintenance?
 25 A. No.

1 Q. One other thing I forgot to mention. Typically
 2 in conversation we know what the question is going to
 3 be, and we may start answering before the question is
 4 finished.
 5 In this case it's really difficult for the
 6 court reporter, so please take the unnatural step of
 7 waiting until I'm finished with my question, and I'll
 8 make sure I don't start another question until you've
 9 fully answered yours.
 10 Do you understand that?
 11 A. Yes.
 12 Q. What was -- once you graduated from Chapman,
 13 what job did you begin at that point?
 14 A. I became a fifth grade teacher.
 15 Q. And where?
 16 A. Norwalk-La Mirada Unified.
 17 Q. What were you teaching at that point?
 18 A. Fifth grade.
 19 Q. As a fifth grade teacher, were you basically a
 20 home room teacher who teaches all the subjects?
 21 A. Yes.
 22 Q. How long did you teach there?
 23 A. I taught there for almost three years.
 24 Q. Did you teach fifth grade for all of those
 25 years?

1 A. I taught fifth grade and sixth grade.
 2 Q. Have you done any graduate work -- I'm going to
 3 go back to your jobs in a minute, but I want to make
 4 sure that we've covered your full educational
 5 background.
 6 After getting your degree at Chapman, have you
 7 done any graduate work subsequent to that?
 8 A. Yes.
 9 Q. Can you tell me what that graduate work was?
 10 A. I got a life administrative credential through
 11 Long Beach State.
 12 Q. And when did you do that, the years when you
 13 started and then when you actually obtained the degree?
 14 A. I started probably in '70 or '71, and I
 15 obtained the credential through a competency-based exam
 16 through the educational testing service in probably '72.
 17 Q. Can you explain for me what exactly a life
 18 administrative credential is?
 19 A. It allows me to be an administrator or
 20 supervisor in the public K-12 system.
 21 Q. So is that a requirement -- to have a life
 22 administrative credential, is that a requirement to be
 23 an administrator in California?
 24 MR. SEFERIAN: Objection. Calls for a legal
 25 opinion. Calls for speculation. Calls for an

1 inadmissible opinion.
 2 Q. BY MR. ELIASBERG: Was it your understanding
 3 that you needed to obtain this credential in order to be
 4 an administrator in California?
 5 A. In California public schools, in the State
 6 Department of Education, where?
 7 Q. In California public schools.
 8 A. Yes.
 9 Q. And how about to work in the State Department
 10 of Education, did you understand --
 11 A. Some positions require an administrative
 12 credential, not all.
 13 Q. In obtaining your administrative credential,
 14 did you take any courses in school construction or that
 15 covered subjects having to do with school construction,
 16 modernization or school maintenance?
 17 A. It was 30 years ago, and I do not recollect any
 18 classes that specifically related to school
 19 construction.
 20 Q. Other than -- beyond your life administrative
 21 credential and the graduate degree and the undergraduate
 22 degree that we talked about, have you done any other
 23 graduate work?
 24 MR. SEFERIAN: Objection. Vague and ambiguous
 25 as to "graduate work."

1 MR. ELIASBERG: You can answer.
 2 THE WITNESS: What kind of graduate work do you
 3 mean?
 4 MR. ELIASBERG: Courses at an accredited
 5 institution of higher learning.
 6 THE WITNESS: I'm trying to remember whether I
 7 actually took any courses at Golden Gate. I was
 8 thinking about getting a doctorate degree, but I don't
 9 believe that I have.
 10 Q. BY MR. ELIASBERG: So your recollection is you
 11 thought about it, but you didn't actually take any
 12 courses at Golden Gate?
 13 A. Yes. I can't recall any.
 14 Q. Do you think -- do you remember any other
 15 institution of higher learning where you took any
 16 courses?
 17 A. Formal courses relating to education or --
 18 Q. Let's start with just formal courses relating
 19 to any subject.
 20 A. I took a course at Sac City when the
 21 Tutankhamen exhibit came to San Francisco. Is that the
 22 type of thing you're talking about?
 23 Q. That sounds like fun. Let's limit it to
 24 education. Have you taken any classes, formal classes
 25 in education at any other institutions of higher

1 learning beyond the work you did at Long Beach State and
 2 Chapman?
 3 A. No, not that I can recall.
 4 Q. I believe that the only job you testified to so
 5 far is that you were teaching in La Mirada, and I
 6 believe you said you did that for three years; is that
 7 correct?
 8 A. Little less than three years, yes.
 9 Q. What did you do -- what job did you hold
 10 immediately after that one?
 11 A. I came to work for the State of California with
 12 the State Personnel Board.
 13 Q. And what was your title when you first started
 14 at the State Personnel Board?
 15 A. I was an administrative trainee. Started at
 16 the bottom level making \$600 a month.
 17 Q. I'm impressed that you could live on that.
 18 Maybe things were less expensive back then.
 19 What were your responsibilities as an
 20 administrative trainee?
 21 A. With the State Personnel Board I was assigned
 22 to what was called the delegated testing unit, state
 23 service exam unit, where I would, as an analyst, go out
 24 to the various facilities that the State Personnel Board
 25 had delegated testing to, such as Folsom Prison, and

1 audit their testing procedures to make sure that they
 2 were in compliance with the merit system principles.
 3 Q. Am I correct in understanding that this is
 4 testing for persons who are working for or want to work
 5 for the State of California; is that correct?
 6 A. Yes. Right.
 7 MR. HERRON: Mr. Brooks, I'm going to caution
 8 you as to what Mr. Eliasberg said earlier. You should
 9 definitely let him finish his question before you
 10 respond. I think it's getting a little bit jumbled up.
 11 Q. BY MR. ELIASBERG: Colloquially known as civil
 12 service exams; is that correct?
 13 A. Correct.
 14 Q. Can you tell me what it meant to be an analyst,
 15 or what your responsibilities were as an analyst?
 16 MR. SEFERIAN: Objection. Asked and answered.
 17 MR. ELIASBERG: You can answer.
 18 THE WITNESS: In addition to auditing the
 19 records, I would also conduct civil service examinations
 20 as the chair of the panel.
 21 Q. BY MR. ELIASBERG: What was involved in
 22 conducting the examinations?
 23 MR. HERRON: Objection. Vague and ambiguous.
 24 MR. ELIASBERG: You can answer.
 25 MR. HERRON: You can answer if you understand.

1 If you want him to rephrase, he will.
 2 THE WITNESS: Would you repeat the question.
 3 Q. BY MR. ELIASBERG: I believe you used the
 4 phrase you conducted the examinations.
 5 A. Yes.
 6 Q. And I want to know what you meant by conducted
 7 the examinations?
 8 A. You want to know from the beginning of the
 9 process to the end, because there's preparation and
 10 there's before and after work, or just the examination
 11 itself?
 12 Q. Fair enough. I'd actually like to know about
 13 the whole process from beginning to end.
 14 MR. HERRON: Objection. Relevance.
 15 You may respond.
 16 MR. ELIASBERG: I'm not asking to know every
 17 tiny little thing you do, I'm trying to get a general
 18 understanding from the preparation to the point where
 19 you administered the test.
 20 THE WITNESS: Applicants would submit
 21 applications for various state employment. The
 22 responsibility of the chair was to make sure that the
 23 applicants met the minimum qualifications, to prepare
 24 the panel that was going to do the interviews, which
 25 included typically a state service representative who

1 knew the job, the technical aspects of the job, and
 2 sometimes a public member who would be an objective
 3 third party.
 4 The chair's responsibility was to bring in the
 5 candidates, make sure that questions that were asked
 6 were within the limits of civil service, didn't ask
 7 questions that were discriminatory or out of the realm
 8 of the relevancy to the job, ensure that scores were
 9 given, and that if there were any differences in scores,
 10 that we tried to resolve those differences so you didn't
 11 have somebody giving them a 99 and somebody else giving
 12 them a 75 with no explanation.
 13 Q. BY MR. ELIASBERG: How long did you hold that
 14 position?
 15 A. I did that for about a year.
 16 Q. And what job did you do next?
 17 A. After that I was still with the State Personnel
 18 Board, and I moved to the cooperative personnel services
 19 unit.
 20 Q. I'm sorry, could you say -- the cooperative --
 21 A. Cooperative personnel services.
 22 Q. And what was your title there?
 23 A. I was an analyst.
 24 Q. What were your responsibilities there?
 25 A. My primary responsibilities were to work with

1 merit system entities, because of my background in
 2 education, primarily school districts. And I did
 3 classification and salary surveys for the school
 4 district, and then also worked on merit system
 5 examinations, developing test questions, performance
 6 tests, oral tests, written tests.
 7 Q. What was your understanding of the purpose of
 8 the surveys? You said you did salary surveys. What was
 9 the purpose of those surveys?
 10 A. The entities would contact CPS as technical
 11 experts to help them develop salary schedules for either
 12 their teachers or their classified staff.
 13 Q. And how long did you hold that job?
 14 A. About a year.
 15 Q. Okay. And what did you do next?
 16 A. I went to the State Department of Education.
 17 Q. And what position did you take at the State
 18 Department of Education?
 19 A. I was assistant director of personnel.
 20 Q. How did it come about that you went to the
 21 State Department of Education? To give you an example,
 22 did you apply for the job, did someone ask you to come
 23 over and say we have a good job for you? How did it
 24 come about that you shifted from the Personnel Board
 25 over to the Department of Education?

1 A. I applied.
 2 Q. What were your responsibilities as assistant
 3 director of personnel?
 4 A. Well, I helped the director manage all aspects
 5 of the personnel processes.
 6 Q. And who was the director at the time?
 7 A. Dick Pond, P-o-n-d.
 8 Q. How long did you hold that job?
 9 A. Five years. It's all in here.
 10 MR. ELIASBERG: Why don't we mark this, if you
 11 would. I'm giving the court reporter a three-page
 12 document that's entitled resume, June 24th, 2000, to be
 13 marked as an exhibit.
 14 (*Exhibit SAD-152 was marked.)
 15 MR. ELIASBERG: I'll give Mr. Brooks a copy of
 16 what's been marked SAD Exhibit 152 and -- David, do you
 17 have a copy?
 18 MR. HERRON: I'm set.
 19 MR. ELIASBERG: Anybody who doesn't have a
 20 copy?
 21 MR. HERRON: I think we're starting to double
 22 up, you guys are, just so you know.
 23 MR. ELIASBERG: You mean we've already used
 24 that?
 25 MR. HAJELA: I think what we're going to need

1 to do is all the San Francisco depositions are going to have
 2 to be A's, because there's a lot of doubling up going on
 3 between Sacramento and San Francisco, at least that's my
 4 sense.
 5 (Exhibit SAD-200 was marked.)
 6 MR. ELIASBERG: I think on the record we
 7 previously said that we were marking this document,
 8 three-page document entitled resume as SAD-152. There's
 9 some concern that we may be doing double numbers, so for
 10 the sake of convenience we're going to re-mark that as
 11 SAD-200, and I'm going to give it back to Mr. Brooks.
 12 Do all counsel have copies now? Yes, all
 13 counsel have copies.
 14 Q. Mr. Brooks, while you were at the -- you held
 15 the position of assistant director of personnel at the
 16 Department of Education, did you have any duties or
 17 responsibilities in that job with respect to school
 18 facilities?
 19 A. No.
 20 Q. Okay. And looking at your resume here, it
 21 appears that after holding that job, you then took on
 22 the job as manager of the school nutrition program; is
 23 that correct?
 24 A. Correct.
 25 Q. And it appears that you had that job for about

1 four years?
 2 A. Correct.
 3 Q. In that job did you have any responsibilities
 4 having to do with school facilities?
 5 A. The only tie to facilities was as it related to
 6 the cafeteria operations.
 7 Q. And just with respect to that responsibility
 8 with respect to cafeteria operations, can you tell me
 9 what your responsibilities were as the manager of the
 10 school nutrition program?
 11 A. I primarily administered the federal food
 12 programs, the national school lunch program, the school
 13 breakfast program, which were carried out in the
 14 cafeteria. That was the basic tie to facilities.
 15 Q. And it appears from your resume that in late
 16 1983 you took a new job as executive assistant to the
 17 deputy for field services; is that correct?
 18 A. Correct.
 19 Q. Who was the -- who was the deputy for field
 20 services? Let me start again.
 21 To whom did you report in your position as
 22 executive assistant to deputy for field services?
 23 A. To the deputy.
 24 Q. And who was the deputy?
 25 A. Bob Lawrence.

1 Q. What were your -- actually, skip that question.
 2 In that job as executive assistant to the
 3 deputy for field services, did you have responsibilities
 4 with respect to school facilities?
 5 A. Yes.
 6 Q. Okay. Could you tell me what those
 7 responsibilities were?
 8 A. The deputy was in charge of about five or six
 9 divisions. One of those divisions was the school
 10 facilities planning division. The deputy had two
 11 assistants and he divided the divisions up between his
 12 two assistants, and I had the school facilities division
 13 as one of my assignments for the deputy.
 14 Q. Okay. What were the other divisions that you
 15 had responsibility for beyond school facilities planning
 16 division?
 17 A. I can't remember.
 18 Q. Was there a -- at the time that you were
 19 supervising or you had responsibilities with respect to
 20 the school facilities planning division, who was the
 21 head of that division?
 22 A. Ernie Lehr.
 23 Q. What were your responsibilities in that job
 24 only with respect to the school facilities planning
 25 division?

1 A. Many of the memos that went out, legislation
2 that was analyzed, policies that were developed had to
3 be approved by the deputy, and I would screen all those
4 for the deputy and advise the deputy as to whether or
5 not they were appropriate.

6 Q. Okay. Can you give me an example of -- let's
7 break this down.

8 You talked about policies, legislation and
9 memos. With respect to legislation, can you tell me --
10 am I correct in understanding that if legislation was
11 proposed, for example, by the legislature, that you
12 would review that legislation and then write a memo to
13 the deputy explaining what it was? Is that the kind of
14 thing that you did in your position?

15 MR. HERRON: Objection. Vague and ambiguous.
16 Calls for speculation. Assumes facts not in evidence.

17 Q. BY MR. ELIASBERG: Let's work it differently.
18 With respect to legislation, what roles did you take
19 with respect to legislation that had to do with school
20 facilities?

21 A. The division director or his staff would
22 analyze proposed legislation, send it to the deputy's
23 office. I would review it to make sure that it was
24 consistent with departmental policy and recommend that
25 the deputy agree or disagree with the analysis and the

1 position that the Department was proposing to take.

2 Q. I want to make sure I understand the process.
3 If there were a piece of legislation that had some
4 relationship to school facilities, the division director
5 would first write a memo analyzing that legislation; is
6 that correct?

7 A. Wouldn't actually be a memo. We have a bill
8 analysis form.

9 Q. What was in -- beyond -- what was in the bill
10 analysis form? What were the subjects that would be
11 covered in the bill analysis form?

12 MR. HERRON: Objection. Compound. Vague and
13 ambiguous.

14 You may respond.

15 THE WITNESS: The analysis would indicate what
16 current law says, what the proposal says, what the
17 impact might be in terms of cost to school districts,
18 cost to the state education agency, and a recommended
19 position and/or recommended language to revise the bill.

20 Q. BY MR. ELIASBERG: I believe you said -- and
21 correct me if I'm wrong. I'm not trying to misstate
22 your words -- that you would look at that memo to
23 determine whether it was consistent with department
24 policy; is that correct?

25 A. That is one of the things that we would look

1 for, yes.

2 Q. If the legislature -- how could a bill be
3 inconsistent? Could you give me an example of how a
4 bill could be inconsistent with department policy?

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

7 THE WITNESS: Do you mean inconsistent with
8 policy or with a procedure, or detrimental to the
9 students of California?

10 Q. BY MR. ELIASBERG: Give an example if it was
11 your opinion that a bill -- put it differently.

12 If the division director said that a bill
13 was -- strike that.

14 Did the division director sometimes say that a
15 bill was inconsistent or detrimental to the
16 schoolchildren of the state of California?

17 MR. SEFERIAN: Objection. Vague and ambiguous.

18 THE WITNESS: Did he ever say that?

19 MR. ELIASBERG: During the period of time when
20 you were --

21 THE WITNESS: Yes, there's legislation that's
22 proposed all the time that people don't agree upon or
23 has a cost impact that has a mandated -- unfunded
24 mandated cost that we would object to.

25 Q. BY MR. ELIASBERG: So it was sometimes the

1 position of the division director that bills were
2 inconsistent with the needs of California
3 schoolchildren?

4 MR. SEFERIAN: Objection. Vague and ambiguous
5 as to "needs of California schoolchildren."

6 THE WITNESS: As they relate to what?

7 Q. BY MR. ELIASBERG: I'm just using your words.
8 You talked about bills being inconsistent with the needs
9 of California schoolchildren. I'm trying to understand
10 if that was part of the process, that sometimes a
11 division director would make a conclusion and put in the
12 policy memo that this bill is inconsistent with the
13 needs of California schoolchildren?

14 MR. SEFERIAN: Same objections.

15 THE WITNESS: The division director would
16 recommend an opposed position on certain bills.

17 Q. BY MR. ELIASBERG: Okay. Do you have any
18 recollection of any experience -- any examples of any
19 legislation where the division director said, I think
20 this is a little inconsistent with the needs of
21 California schoolchildren?

22 MR. HERRON: Objection. Asked and answered.
23 You may respond.

24 THE WITNESS: Do I have any recollection 25
25 years ago of any particular bill? Would you repeat the

1 question, please.
 2 Q. BY MR. ELIASBERG: Sure. If you don't, that's
 3 fine. I'm just trying to see if you have any memory of
 4 an experience in which the division director put in a
 5 policy memo and said this piece of legislation is
 6 inconsistent with the needs of California
 7 schoolchildren?
 8 A. No, I do not recall any specific bill.
 9 Q. Okay. What was your working relationship with
 10 Mr. Lehr?
 11 MR. HERRON: Objection. Vague and ambiguous.
 12 THE WITNESS: It was fine.
 13 Q. BY MR. ELIASBERG: Did you feel like he was
 14 competent and did his job well?
 15 MR. HERRON: Objection. Relevance.
 16 THE WITNESS: Most of the time.
 17 Q. BY MR. ELIASBERG: Do you have particular --
 18 any particular memories of times when you thought that
 19 he didn't do his job well?
 20 MR. SEFERIAN: Objection. Vague and ambiguous
 21 as to not doing his job well. Irrelevant.
 22 THE WITNESS: Did I disagree with him on
 23 occasion, yes.
 24 Q. BY MR. ELIASBERG: Did you think the positions
 25 he took were -- when you disagreed with him, did you

1 feel that the positions he was taking were
 2 irresponsible, or did you just disagree with him?
 3 MR. SEFERIAN: Objection. Compound question.
 4 THE WITNESS: I just disagreed.
 5 MR. ELIASBERG: For the sake of the court
 6 reporter -- obviously counsel are making objections
 7 here -- same issue, you need to let them finish their
 8 objections before you answer so she can get that all
 9 down.
 10 Q. How many years were you in that position of
 11 executive assistant to the deputy for field services?
 12 Appears here that it was about a year and a half. Is
 13 that correct?
 14 A. No. No, it was longer than that.
 15 Q. I'm looking at page 2 here. The dates I see
 16 there are 9/83 to March of 1985.
 17 A. It just seemed longer than that.
 18 Q. I can understand how that works.
 19 Is it correct that your next job was the chief
 20 of the executive planning and analysis -- chief of
 21 executive planning and analysis in the California
 22 Department of Education?
 23 A. Yes.
 24 Q. Why did you leave your previous job to take
 25 that job?

1 A. I believe the deputy director left, and it was
 2 a promotion.
 3 Q. During the time that you were the executive
 4 assistant to the deputy, is it your recollection that
 5 Mr. Lehr was the head of the school facilities planning
 6 division for all of that period?
 7 A. Yes.
 8 Q. Okay. As the executive assistant -- I'm sorry,
 9 the chief of the executive planning and analysis -- is
 10 that a division, executive planning and analysis? Is
 11 that the correct terminology?
 12 A. It was more like a unit.
 13 Q. Did you have any responsibility with respect to
 14 school facilities in that position?
 15 A. No.
 16 Q. And it appears from this that you were there
 17 for two years exactly?
 18 A. Yes.
 19 Q. That's consistent with your recollection.
 20 Your next position was to take on the position
 21 of assistant superintendent, director of the school
 22 facilities planning division; is that correct?
 23 A. Yes.
 24 Q. Why did you leave the previous job to take on
 25 that position?

1 A. Promotion.
 2 Q. As assistant superintendent and director of the
 3 school facilities planning division, to whom were you
 4 reporting?
 5 A. I reported to the deputy director.
 6 Q. Who was the deputy director during that period?
 7 A. At that time it was Diane Kirkham.
 8 Q. Is that true for the whole period that you had
 9 that position?
 10 MR. HERRON: You mean '87 through '95?
 11 MR. ELIASBERG: Yes, the whole time that you
 12 had the position of assistant superintendent from '87
 13 through '95.
 14 THE WITNESS: I believe so.
 15 Q. BY MR. ELIASBERG: And you may have already
 16 said it. I'm sorry if I didn't catch it. What was
 17 Diane Kirkham's title?
 18 A. She was a deputy director.
 19 Q. Was she the deputy director of something, or
 20 just the deputy director of the State Department of
 21 Education?
 22 A. She was deputy director of something. I don't
 23 recall her specific title.
 24 Q. Can you tell me your responsibilities as the
 25 assistant superintendent and the director of the school

1 facilities planning?
 2 MR. HERRON: Are you talking only during that
 3 time period?
 4 MR. ELIASBERG: Thank you.
 5 Right now I understand you've come back to, if
 6 not the exact same position, a similar position. I'm
 7 trying to understand your responsibilities from the
 8 period of '87 to '95.
 9 THE WITNESS: Primarily responsibilities were
 10 to administer a staff that was responsible for various
 11 aspects of the state school facilities program.
 12 Q. BY MR. ELIASBERG: How large was the staff,
 13 approximately?
 14 MR. SEFERIAN: At what time period?
 15 THE WITNESS: When I started?
 16 Q. BY MR. ELIASBERG: Sure. Let's start with when
 17 you first took the position. How large was the staff?
 18 A. When I started I believe there were 10 people.
 19 Q. Approximately how large was the staff when you
 20 finished in '95?
 21 A. Approximately 15 to 18.
 22 Q. Back when you had 10 people, what were the
 23 title or titles of the people beneath you? I'm trying
 24 to figure out what the different jobs were of the people
 25 on that staff who reported to you.

1 A. The professional staff were called field
 2 representatives, school administration, and then there
 3 were clerical staff at the beginning.
 4 Q. Of that 10 people, how many of those were field
 5 representatives?
 6 A. I don't recall exactly. Probably seven, six or
 7 seven.
 8 Q. Let's jump to -- well, April '95 when you
 9 finished there, of that staff of 15 to 18, were some of
 10 that staff field representatives?
 11 A. Yes.
 12 Q. Were there any other titles besides clerical
 13 people on that staff?
 14 A. Yes, we added either two or three associate
 15 governmental program analysts, and we also had an
 16 architect on staff.
 17 Q. I'm sorry, could you repeat -- they were
 18 associate governmental --
 19 A. Program analysts.
 20 Q. And you added one architect; is that correct?
 21 A. Actually, the architect was there from the
 22 beginning.
 23 Q. Okay. Do you remember who that architect was?
 24 A. The first person was Michael Chambers.
 25 Q. Do you remember during the period you were

1 there somebody replaced Michael Chambers; is that
 2 correct?
 3 A. Ellen Aaleston.
 4 Q. For the court reporter, can you spell Ellen
 5 Aaleston?
 6 A. It's A-a-l-e-s-t-o-n, I believe.
 7 Q. You didn't know that you were coming here for a
 8 spelling contest as opposed to a deposition.
 9 A. Right.
 10 Q. I just want to try to figure out what the
 11 various members of your staff did from this period of
 12 '87 to '95.
 13 What were the responsibilities of the field
 14 reps?
 15 A. Primary responsibilities were to assist the
 16 local school districts in the school facilities program.
 17 At that time it was called the state school building
 18 lease purchase program.
 19 Q. What was your understanding of what assisting
 20 consisted of?
 21 A. We would help them identify proposed school
 22 sites for new school construction, and we would assist
 23 them in the preparation and review and approval of plans
 24 for new schools and modernizing existing schools.
 25 Q. To make sure we have common terminology, my

1 understanding under the lease purchase program was that
 2 districts who were hoping to obtain state funding, or at
 3 least partial state funding for a new school facility,
 4 would make an application for that funding; is that
 5 correct?
 6 A. Would make an application?
 7 Q. That was part of the process. That was part of
 8 the process of obtaining funding was to file an
 9 application with the State; is that correct?
 10 A. They would file an application with the State.
 11 Q. Did you initiate -- you talked about assisting.
 12 Let's break it down into specific categories. Helping
 13 them identify proposed school sites. Would you go to a
 14 district, would you initiate contact with a district and
 15 say, we'd like to help you find a school site, or would
 16 districts come to you and say, we'd like to work with
 17 one of the members of your staff to identify a school
 18 site?
 19 MR. SEFERIAN: Objection. Compound question.
 20 Vague and ambiguous as to "you." Vague and ambiguous as
 21 to "initiate contact."
 22 THE WITNESS: The districts would come to my
 23 division and request assistance.
 24 Q. BY MR. ELIASBERG: You also talked about
 25 assisting them with the preparation and review of plans

1 for a new school facility; is that correct?

2 A. Correct.

3 Q. Did districts initiate contact with your
4 division, members of your division? I'll leave it at
5 that.

6 Did districts initiate contact with you for
7 help in preparation and review of plans for new schools?

8 MR. SEFERIAN: Objection. Vague and ambiguous
9 as to "you."

10 THE WITNESS: They would generally contact our
11 division.

12 Q. BY MR. ELIASBERG: Were there ever occasions
13 when you would come to them, you being members -- you or
14 members of your staff at the school facilities planning
15 division without them saying -- contacting you and
16 saying we'd like to help?

17 MR. HERRON: Objection. Calls for speculation.

18 MR. SEFERIAN: Objection. Vague and ambiguous.

19 Q. BY MR. ELIASBERG: In your experience do you
20 ever remember occasions where the districts would
21 contact you -- confusing there.

22 Were there ever occasions that you remember
23 where you or a member of your staff initiated the
24 contact with a district in order to assist them with the
25 preparation and review of plans for new school

1 used the phrase?

2 A. I was referring to the technical definition as
3 it relates to the school facilities program.

4 Q. Okay. Let's use that definition. Do you have
5 any specific memory of a district -- I'm sorry, any
6 specific memory of anyone on your staff or you
7 initiating contact with a district to discuss anything
8 having to do with modernization?

9 MR. HERRON: Objection. Vague and ambiguous.
10 Calls for speculation.

11 THE WITNESS: I do not remember any specific
12 instance. The consultants may have on their own
13 contacted school districts.

14 MR. ELIASBERG: It's been almost an hour. And
15 I had a big cup of coffee this morning. Let's take a
16 short five-minute break.

17 (Recess taken.)

18 Q. BY MR. ELIASBERG: You doing okay, Mr. Brooks?

19 A. I'm doing fine.

20 MR. ELIASBERG: Can you do me a favor and read
21 back the last question and last answer.

22 (Record read.)

23 Q. BY MR. ELIASBERG: Mr. Brooks, I notice in that
24 question I used the term modernization, and I believe
25 you previously gave a definition.

1 construction?

2 MR. SEFERIAN: Objection. Vague and ambiguous
3 as to "initiate contact."

4 THE WITNESS: As it relates to the development
5 of plans for new construction?

6 MR. ELIASBERG: That's correct.

7 THE WITNESS: I do not recall any specific
8 instance where we initiated a contact with the school
9 district.

10 Q. BY MR. ELIASBERG: Do you remember any specific
11 instance where you initiated contact with the school
12 district about identifying proposed school sites?

13 MR. SEFERIAN: Objection. Vague and ambiguous
14 as to "you."

15 THE WITNESS: No.

16 Q. BY MR. ELIASBERG: And do you have any
17 recollection of a specific instance where you or members
18 of your staff initiated a contact with a district about
19 modernization?

20 MR. HERRON: Objection. Vague and ambiguous.

21 THE WITNESS: What do you mean by
22 "modernization"?

23 Q. BY MR. ELIASBERG: Do you have an understanding
24 of the term "modernization" as you used it?

25 What did you mean by "modernization" when you

1 When we're using the term modernization, what
2 is your understanding of that term?

3 A. Well, the current term as it relates to the
4 school facilities program is any facility that's more
5 than 25 years old.

6 Q. Because I'm talking about your responsibilities
7 between 1987 and 1995, when you use the term
8 modernization, with respect to your job in that tenure,
9 what did you mean by modernization?

10 A. Basically the same, except I think at that
11 time, in order to be eligible for modernization funds,
12 the facility had to be 30 years old or older.

13 Q. And where is that -- to your understanding,
14 where is that requirement set forth? Where was that
15 requirement set forth in the period between 1987 and
16 1995?

17 MR. SEFERIAN: Objection. Calls for an
18 inadmissible opinion.

19 THE WITNESS: I believe that it was in the
20 state school building lease purchase law or the office
21 of public school construction regulations.

22 Q. BY MR. ELIASBERG: One other definition I
23 believe you previously talked about, the State's lease
24 purchase program. What did you mean by that?

25 A. That's the program that preceded the current

1 state school facilities program.
 2 Q. Okay. And not just temporally, before the
 3 current program, what was the previous program?
 4 A. It was called the state school building lease
 5 purchase program.
 6 Q. And was that set forth in a statute or
 7 regulation, as far as you know?
 8 MR. SEFERIAN: Objection. Calls for
 9 inadmissible opinion.
 10 THE WITNESS: My recollection is that it was
 11 part of the bond measure, the state general obligation
 12 bond measure that established the funding for the
 13 program, and it's in the Education Code.
 14 Q. BY MR. ELIASBERG: Is that one specific bond
 15 measure or a number of bond measures?
 16 MR. HERRON: Objection. Vague and ambiguous.
 17 Vague as to time.
 18 THE WITNESS: I believe that the state school
 19 building lease purchase program covered more than one
 20 state bond.
 21 Q. BY MR. ELIASBERG: Do you know -- I'll leave it
 22 at that. Just wanted to be clear so we're all trying to
 23 speak the same language.
 24 I'm referring you only to the period of time
 25 when you were the director of the school facilities

1 planning division between 1987 and 1995. I believe that
 2 you said you had field representatives on your staff; is
 3 that correct?
 4 A. Yes.
 5 Q. We've talked a little bit about what the
 6 responsibilities of the field representatives were. Did
 7 you also have an architect on your staff?
 8 A. Yes.
 9 Q. Okay. What were the responsibilities of the
 10 architect?
 11 A. At that time, the architect was kind of a
 12 jack-of-all-trades and I assigned him various functions.
 13 Primarily he was responsible for working with the field
 14 representatives if they had questions while they
 15 reviewed the proposed new construction or modernization
 16 programs, but he also took on extra assignments, such
 17 as when the Whittier earthquake hit and we had to
 18 process applications for FEMA assistance.
 19 Q. What kind of tasks did he take on with respect
 20 to the process of requesting money from FEMA?
 21 A. He had to review the applications when they
 22 were submitted and make sure that they met the federal
 23 requirements for requesting FEMA reimbursement.
 24 Q. And help me understand, whose applications were
 25 they, were they applications from your department, were

1 they applications from school districts?
 2 A. From school districts.
 3 Q. Okay. Is it correct that the process worked
 4 that the school district first filed an application with
 5 the school facilities planning division; is that
 6 correct?
 7 A. Yes, for the Whittier earthquake.
 8 Q. And then the architect would review those plans
 9 to ensure that they complied with the FEMA requirements;
 10 is that correct?
 11 MR. SEFERIAN: Objection. Vague and ambiguous
 12 as to "plans."
 13 THE WITNESS: The applications that were
 14 submitted?
 15 MR. ELIASBERG: Yes, that the applications
 16 complied with the FEMA requirements.
 17 THE WITNESS: Yes.
 18 Q. BY MR. ELIASBERG: And then would your office
 19 then send those app -- if you found out that -- if the
 20 architect concluded that a plan did not comply with the
 21 FEMA application -- did not comply with the FEMA
 22 requirements, what was the next step that was taken?
 23 A. The first step would be for the architect to
 24 work with the school district to make sure that they'd
 25 completed it accurately and understood, you know, what

1 the requirements were. We would try to assist them in
 2 making their application eligible, and if not, then if
 3 there was a portion that they had applied for that was
 4 ineligible, he would advise them to take that off of the
 5 application request.
 6 Q. And assuming then that after working with the
 7 district the architect concluded that the application
 8 now meets the FEMA requirements, what was the next step?
 9 A. We would submit the application to FEMA for
 10 payment.
 11 Q. In a general sense, I'm not trying to get you
 12 to give me every chapter and verse with respect to FEMA,
 13 but what was your understanding of what FEMA was looking
 14 for, what was the purpose of its requirements?
 15 What I'm trying to get at is were they looking
 16 to see whether there was a sufficient amount of damage?
 17 What were the requirements that they were trying to --
 18 asking for?
 19 MR. SEFERIAN: Objection. Calls for
 20 speculation. No foundation. Vague and ambiguous.
 21 Compound question.
 22 THE WITNESS: The primary thing that they were
 23 looking for was whether or not the damage that was being
 24 claimed was related to the earthquake.
 25 Q. BY MR. ELIASBERG: With regard to your field

1 representatives, did they have any particular -- were
 2 there any educational requirements that you or the
 3 division or the Department of Education generally
 4 required of them in order for them to be eligible for
 5 the job of field rep?
 6 A. Yes.
 7 Q. What were those educational requirements?
 8 A. The educational requirements were an
 9 administrative credential or a master's degree
 10 substitution.
 11 Q. What is a master's degree substitution?
 12 A. If they possess a master's degree, that could
 13 substitute for the administrative credential.
 14 Q. Did it need to be a master's degree in a
 15 particular subject, or could it be any master's degree?
 16 MR. SEFERIAN: Objection. No foundation.
 17 Calls for speculation.
 18 THE WITNESS: I don't specifically recall.
 19 Q. BY MR. ELIASBERG: Did you review -- let me lay
 20 a foundation here.
 21 During the period of time between '87 and '95,
 22 did anybody apply to your office to fill a vacant field
 23 rep position?
 24 MR. HERRON: Objection. Calls for speculation.
 25 THE WITNESS: Yes, we had vacancies.

1 Q. BY MR. ELIASBERG: Did you review the
 2 applications?
 3 A. Generally the personnel office reviewed the
 4 applications and told us whether or not the individual
 5 met the minimum qualifications.
 6 Q. Did you have any say in determining who got
 7 hired to fill an open position for field rep?
 8 A. Yes.
 9 Q. In exercising your say, did you look at the
 10 applications that were filed?
 11 A. Yes.
 12 Q. Were there other -- beyond the educational
 13 requirements that you just discussed, did the Department
 14 or the division have any rules or regulations requiring
 15 any other specific training or educational background
 16 that a field representative had to have to be qualified?
 17 MR. SEFERIAN: Objection. No foundation.
 18 Calls for speculation.
 19 THE WITNESS: Did the Department or the what?
 20 MR. ELIASBERG: Or your division.
 21 Q. Were there specific rules that said you have to
 22 have obtained this degree or this credential beyond what
 23 you've already talked about?
 24 A. As it relates to a credential or a degree, no.
 25 Q. When you looked at the applications, were there

1 any particular qualifications that you were looking for
 2 for the position of field rep?
 3 A. Yes.
 4 Q. What were those?
 5 A. I wanted to maintain a work force that had a
 6 combination of educators and facilities planners.
 7 Q. What do you mean by "facilities planners"?
 8 A. Individuals that had been in school districts
 9 performing the duties of a facilities planner.
 10 Q. Okay. What are the duties of a facilities
 11 planner in a school district generally?
 12 MR. SEFERIAN: Objection. No foundation.
 13 Calls for speculation. Vague and ambiguous.
 14 THE WITNESS: Can you be more specific?
 15 MR. ELIASBERG: I believe you used the term --
 16 actually, if you would read back his last answer because
 17 I don't want to put words in your mouth.
 18 (Record read.)
 19 Q. BY MR. ELIASBERG: I'm just asking you what you
 20 meant by that phrase "duties of a facilities planner".
 21 MR. HERRON: Objection. You're not asking him
 22 that, you're asking him to speculate.
 23 Answer the question to the extent you can.
 24 THE WITNESS: It varies from district to
 25 district.

1 Q. BY MR. ELIASBERG: Were there particular duties
 2 that you would have wanted to see, that you would have
 3 wanted to see that an applicant had exercised as a
 4 facilities planner in a district?
 5 A. Yes.
 6 Q. And what were those?
 7 A. The candidates that I considered to be most
 8 competitive were those that had experience with the
 9 state school facilities program.
 10 Q. Just to be sure, what do you mean by "the state
 11 school facilities program"?
 12 A. During this period of time it was the lease
 13 purchase program.
 14 Q. Okay. Why was it that you wanted them to have
 15 that experience?
 16 A. Because that's one of the primary functions of
 17 our office, to carry out the requirements of a portion
 18 of that program, and to the degree that the candidates
 19 had worked in that program from the opposite side, they
 20 knew what the requirements were and they brought a
 21 perspective of the practitioner to the state agency so
 22 that we could better understand what the needs of the
 23 school districts were.
 24 Q. Did you think it was important that they
 25 understand the needs of the school district?

1 MR. HERRON: Objection. Asked and answered the
2 question before.

3 MR. SEFERIAN: Objection. Argumentative.
4 Vague and ambiguous. Vague and ambiguous as to "needs
5 of the school districts."

6 MR. HERRON: You may respond.

7 THE WITNESS: I feel that the staff that I
8 have, if they have an understanding of what goes on in
9 the school district, we're in a better position to
10 assist them.

11 Q. BY MR. ELIASBERG: I want to jump back quickly
12 to the architect that you mentioned. You talked about
13 the architect doing, primarily working with field reps
14 on the review of plans; is that correct?

15 A. Yes.

16 Q. You also said that the architect took some
17 responsibilities with respect to reviewing applications
18 around the Whittier earthquake?

19 A. Yes.

20 Q. Are there any other particular responsibilities
21 that you remember the architect taking on, the architect
22 on your staff, during the period between 1987 and 1995?

23 A. There were some, but I don't specifically
24 recall what they were.

25 Q. Do you know if there is any document or

1 Q. Okay. From 1995 to almost the end of 1998 you
2 were the director of child nutrition and food
3 distribution division; is that correct?

4 A. Yes.

5 Q. Okay. Why did you shift from school facilities
6 planning to the distribution division?

7 A. The new superintendent was elected. She asked
8 each of the division directors whether they were
9 interested in staying where they were or moving to
10 another assignment. And I had been in that position
11 about eight years, and I told her that I would be
12 interested in an assignment that had a larger division,
13 so she gave me the largest division in the Department.

14 Q. To the extent you remember, why were you
15 interested in taking on the responsibilities of running
16 a larger division?

17 A. Because I had not done that and I wanted to see
18 if I was capable of doing it.

19 Q. Do you have any other -- remember any other
20 reasons why you told the superintendent that you would
21 be interested in leaving the school facilities planning
22 division and taking on another job?

23 A. Those were the two main reasons.

24 Q. I'm sorry, I want to make sure. I understand
25 one of them was that you wanted to go to a larger

1 memorandum that would set forth what some of the other
2 tasks that the architect might have taken on were?

3 A. I don't think anything that currently exists.

4 Q. Okay. In 1995 you left the position as the
5 director of school facilities planning division and went
6 to take on the position of director of child nutrition
7 and field distribution division; is that correct?

8 A. Yes.

9 Q. Let me jump back. I believe I heard -- and I
10 wasn't trying to eavesdrop. I heard you mention to
11 Mr. Seferian that there may have been a mistake on your
12 resume.

13 Have you reviewed this document?

14 A. Yes.

15 Q. Are there any particular mistakes or anything
16 you'd like to correct here, because we would like the
17 resume to be correct because it's going to be an
18 exhibit.

19 A. The date that I received my administrative
20 credential, that doesn't look right to me. I can go
21 back and double-check.

22 Q. Okay. And are there any other things that you
23 notice that you think are incorrect here in terms of
24 your dates or responsibilities or titles?

25 A. And the rest of it looks correct to me.

1 division. What was the second reason?

2 A. That I'd been here about eight years.

3 Q. As the director of the child nutrition and food
4 distribution division, did you have any responsibilities
5 with respect to school construction, modernization,
6 school maintenance?

7 A. One of the units that I administered as a
8 division director was one of the units that I'd
9 previously supervised as a unit manager, the national
10 school lunch, school breakfast program. So to the
11 extent that there were cafeterias operating in the
12 schools, as I mentioned when I was manager of that unit,
13 the same responsibilities were there, only at a much
14 higher level as the division director.

15 Q. Just want to focus in on that a little bit.

16 What management responsibilities did you take on with
17 respect to the national school lunch program and the
18 school breakfast program?

19 A. I don't understand the question.

20 Q. You said you had some responsibilities over the
21 lunch program and the breakfast program. What tasks did
22 you do with respect to those programs?

23 A. In what capacity?

24 Q. In your capacity as the director of child
25 nutrition and food distribution division.

1 A. I supervised the -- actually, I was like the
 2 third-line supervisor for the manager of that unit.
 3 Q. Who was that manager, if you remember?
 4 A. Valerie Fong.
 5 Q. How do you spell the last name?
 6 A. F-o-n-g.
 7 Q. Other than your responsibilities with respect
 8 to school cafeterias, did you have any other
 9 responsibilities with respect to school facilities as
 10 the director of child nutrition and food distribution
 11 division?
 12 A. No.
 13 Q. Are you aware from your work at the child
 14 nutrition and food distribution division whether anybody
 15 in the Department of Education inspected school
 16 cafeterias?
 17 MR. SEFERIAN: Objection. Vague and ambiguous
 18 as to "inspected."
 19 THE WITNESS: Can you define "inspected"?
 20 MR. ELIASBERG: Sure. That would be visited
 21 them and looked at them to see if they met some set of
 22 criteria, rules, regulations or standards that had been
 23 set forth -- that are set forth in either California law
 24 or federal law.
 25 THE WITNESS: Any rules or regulations is kind

1 of broad. Can you narrow it?
 2 Q. BY MR. ELIASBERG: For example, did they
 3 inspect to see whether there were a sufficient number --
 4 a sufficient amount of equipment to feed the capacity of
 5 the school?
 6 MR. SEFERIAN: Objection. Vague and ambiguous
 7 as to "they."
 8 THE WITNESS: Who would do the inspection?
 9 Q. BY MR. ELIASBERG: That's what I'm asking you,
 10 was there anybody? Are you aware of whether there was
 11 anybody in the State Department of Education who did
 12 that kind of inspection?
 13 A. At one time there was a unit that provided
 14 federal funds for equipment, and so in response to your
 15 question did anybody look at the kitchen to see whether
 16 there was adequate equipment, the people in that unit
 17 would take a look at the kitchens when the school
 18 districts applied for federal funds to purchase
 19 equipment to ensure that they needed them and that they
 20 were ordering what was appropriate.
 21 Q. Are you aware of whether anybody in the
 22 California Department of Education inspected school
 23 facilities to see if they met rules and regulations
 24 having to do with food preparation?
 25 MR. SEFERIAN: Objection. Vague and ambiguous

1 as to "inspected." Vague and ambiguous as to "school
 2 facilities."
 3 MR. HERRON: Asked and answered in part.
 4 You may respond.
 5 THE WITNESS: Food preparation in what sense,
 6 the amount, the quality?
 7 MR. ELIASBERG: Whether the food preparation
 8 met food safety requirements.
 9 THE WITNESS: Yes.
 10 Q. BY MR. ELIASBERG: I'm sorry, there were people
 11 who did that?
 12 A. Yes.
 13 Q. What were the titles of the people who did that
 14 inspection?
 15 A. They were called child nutrition consultants.
 16 Q. What division or unit within the Department of
 17 Education were those child nutrition consultants in?
 18 A. There was a unit called the field services
 19 division.
 20 Q. Do you know why they conducted those
 21 inspections?
 22 MR. SEFERIAN: Objection. No foundation.
 23 Calls for speculation. Calls for an inadmissible
 24 opinion.
 25 THE WITNESS: The federal regulations required

1 that the meals that were served meet minimum nutritional
 2 standards. Child nutrition consultants were primarily
 3 dietitians and nutritionists who would go out and review
 4 the menus to make sure they met the minimum federal
 5 requirement and that the meals were eligible for federal
 6 reimbursement.
 7 Q. BY MR. ELIASBERG: What's the basis for your
 8 answer? How do you know that?
 9 A. Because I went with them on occasion and
 10 observed them.
 11 Q. Were the child nutrition consultants under you?
 12 Were those people that you had supervisory
 13 responsibility for in your position in child nutrition
 14 and food distribution division?
 15 A. Pardon me?
 16 Q. Were the child nutrition consultants persons
 17 who were under you? You were a supervisor. Were those
 18 people under you in your role as director of the child
 19 nutrition and food distribution division?
 20 MR. SEFERIAN: Objection. Vague and ambiguous
 21 as to "under you."
 22 THE WITNESS: There were three levels of
 23 supervision between me and them.
 24 Q. BY MR. ELIASBERG: But did they report either
 25 directly or indirectly to somebody who reported to you?

1 A. They reported to somebody who reported to
2 somebody else who reported to somebody else who reported
3 to me.
4 Q. Okay. To the extent that you know, if there
5 had been -- well --
6 MR. HERRON: Ask him if ketchup is a vegetable.
7 THE WITNESS: Don't go there.
8 Q. BY MR. ELIASBERG: Referring to your resume, it
9 states here that in December of 1998 you once again
10 became director of the school facilities planning
11 division; is that correct?
12 A. Correct.
13 Q. Why did you leave your job as the director of
14 the child nutrition and food distribution division?
15 A. I hated it.
16 Q. Why did you hate it?
17 A. We don't have enough time.
18 Q. What's the No. 1 reason why you hated it?
19 A. It was a killer of a job. I'd spend hours and
20 hours at work supervising that large number of people.
21 There were several personnel problems. I spent 75
22 percent of my time on personnel problems. The federal
23 government was horrible to work for. We weren't working
24 for them, but they were horrible to work with. They
25 would send auditors in and you'd have to deal with the

1 auditors who weren't always, in my opinion, of the
2 highest integrity.
3 Q. I'm just curious, can you think of a specific
4 example of where your job became difficult because you
5 felt that one of the auditors you were dealing with was
6 not of the highest integrity? And I promise I'm only
7 going to ask you one.
8 A. Can I think of a situation?
9 Q. An example.
10 A. Yes.
11 Q. Could you describe that example.
12 A. The federal -- how do I put this in simplistic
13 form? The federal government felt that we weren't
14 pursuing aggressively enough community-based
15 organizations that were filing false claims for child
16 nutrition reimbursement.
17 Q. And you previously referred to having problems
18 because you had doubts about the integrity of some of
19 the auditors; is that correct?
20 MR. HERRON: Objection. Misconstrues his
21 testimony.
22 THE WITNESS: I felt that the audit
23 organization, the office of the inspector general with
24 the United States Department of Agriculture was not
25 operating at the highest level of integrity.

1 Q. BY MR. ELIASBERG: Why did you choose -- I
2 understand at least some of the reasons you set forth
3 for why you left the child nutrition and food
4 distribution.
5 Why did you choose to go back to school
6 facilities planning as opposed to some other job within
7 the Department of Education?
8 A. There was no other job in the Department of
9 Education that attracted me.
10 Q. You previously described your staff and the
11 roles of your staff when you were head of that division
12 from '87 to '95. What I want to do is see whether those
13 roles changed in any particular ways. Let's start with
14 the field service representatives. Again, I'm going to
15 go back and look at my notes. I'm not trying to put
16 words in your mouth or misconstrue your testimony. I'm
17 going to read back what I understood you to say that the
18 responsibilities of the field reps were in 1987 to 1995.
19 If I'm incorrect or got it wrong, please tell me.
20 You said that they assisted local districts
21 in -- with respect to the lease purchase program,
22 specifically they helped ID proposed school sites,
23 assisted them in the preparation and review of plans for
24 new schools, and assisted them with respect to
25 modernization; is that correct?

1 A. And approved the proposed school sites and
2 proposed plans.
3 Q. Did the -- I guess I can ask you in the
4 present. Do the responsibilities of the field
5 representatives in the school facilities planning
6 division now differ in any significant way from the
7 responsibilities that you just set forth that they had
8 between 1987 and 1995?
9 A. It differs for some of them.
10 Q. Could you explain? When you say it differs for
11 some of them, for whom does it differ?
12 A. During the time that I was -- in between the
13 time that I was there and left and returned, the
14 division had been given additional assignments, such as
15 the class size reduction program, the federal qualified
16 zone academy program, and a child care revolving fund
17 portable program.
18 Q. Sorry to make you do this. You just named
19 three programs, one was the class size reduction
20 program, the other was the federal qualified -- what was
21 the rest of that?
22 A. Qualified zone academy program, QZAP.
23 Q. And the last one was?
24 A. Child care revolving fund portable program.
25 Q. When you use the term "class size reduction

1 program," what do you mean by that?
 2 A. That's the State's program that gives school
 3 districts funding in grades K through 3 if they maintain
 4 20 students to 1 in their class sizes.
 5 Q. And the "federal qualified zone academy
 6 program," what do you mean by that?
 7 A. That is a federal program that gives lenders to
 8 school districts tax credits for specified construction
 9 projects.
 10 Q. What are these specified construction projects
 11 for which lenders can get tax credits?
 12 MR. HERRON: Objection. Vague and ambiguous.
 13 Calls for a narrative.
 14 MR. SEFERIAN: Objection. Calls for an
 15 inadmissible opinion.
 16 THE WITNESS: The basic requirement is that --
 17 I can't recall. I can't recall what the specific
 18 program is, what the terminology is. I have a staff
 19 member who administers this program.
 20 Q. BY MR. ELIASBERG: Who is that staff member?
 21 A. John Dominguez.
 22 Q. And the child care revolving fund portable
 23 program, what is that?
 24 A. That provides state funds to child care
 25 entities that want to purchase portables for child care

1 programs.
 2 Q. When you say "child care entities," does that
 3 include -- could a school be a child care entity?
 4 A. Yes.
 5 Q. Could an education starting at -- could the K,
 6 kindergarten -- I'm having a hard time framing this
 7 question.
 8 What I'm trying to figure out is whether the --
 9 if a school is -- can be a child care entity. Could
 10 normal K through 12 education be considered part of
 11 being a child care entity, or is the school taking on a
 12 completely different function when it is acting as a
 13 child care entity as opposed to when it's acting as an
 14 educator for K through 12?
 15 MR. HERRON: Objection. Vague and ambiguous.
 16 Compound.
 17 THE WITNESS: What do you mean by "different
 18 function"?
 19 Q. BY MR. ELIASBERG: Could a school that does
 20 nothing other than provide K through 12 education, would
 21 they be eligible to be -- eligible to get a child care
 22 revolving fund portable?
 23 MR. SEFERIAN: Objection. Calls for
 24 speculation.
 25 THE WITNESS: The eligibility determination is

1 made by the child development division, not by my
 2 division. They're bifurcated administrative
 3 responsibilities. The child development division
 4 determines who is eligible. They send us a list. We
 5 work with them on getting a portable.
 6 Q. BY MR. ELIASBERG: I believe you said earlier
 7 that some of your field reps had taken on -- take on
 8 different responsibilities now than they had between
 9 1987 and 1995 because of these three new programs; is
 10 that correct?
 11 A. Correct.
 12 Q. Let's just focus on these. Do the field
 13 reps -- do you assign field reps to deal specifically
 14 with these programs and not the other tasks that you
 15 previously described field reps doing?
 16 MR. HERRON: Objection. Vague and ambiguous.
 17 THE WITNESS: There is one field rep who does
 18 not have a field assignment, a geographic field
 19 assignment, but helps out my divi -- my assistant
 20 director with administrative work.
 21 The other field reps, who primarily work on the
 22 school facilities program, have taken on additional
 23 responsibilities. One has the class size reduction,
 24 another one has the QZAP program.
 25 Q. BY MR. ELIASBERG: I want to make sure I

1 understand. You have one field rep who focuses
 2 primarily on class size reduction alone as part of his
 3 or her job?
 4 A. No, the field rep who focuses on class size
 5 reduction also has a field assignment.
 6 Q. And the field assignment consists of the
 7 responsibilities that you previously discussed having to
 8 do with the school facilities program?
 9 A. Primarily the review and assistance to school
 10 districts on sites and plans.
 11 Q. The field rep who has responsibilities with
 12 respect to the class size reduction program, what are
 13 his or her responsibilities with respect to that
 14 program?
 15 A. That person works with the school districts to
 16 make sure that they understand the program requirements,
 17 prepares reports for the Department and reports that
 18 have to go to the fiscal services division to make the
 19 payments for the class size reduction program.
 20 Q. Okay. You said that that person prepares
 21 reports that go to the -- did you say to the Department
 22 of Education?
 23 A. The Department of Education school fiscal
 24 services division.
 25 Q. Okay. What are those reports? What's the

1 content of those reports?
 2 A. The school districts report the number of
 3 classrooms that they have that meet the 20 to 1. That's
 4 an Option 1. There are also provisions for an Option 2
 5 funding, which means that for half of the day the
 6 students are instructed at 20 to 1 in English and
 7 reading. So they have to report to our office the
 8 number of classrooms, the number of grade levels by
 9 school that meet the law to receive the class size
 10 reduction funding.
 11 Q. Okay. And it is your division rather than the
 12 districts themselves that send those reports to the
 13 fiscal services division; is that correct?
 14 A. The school districts send us the -- submit the
 15 information to us and we transmit it to the school
 16 fiscal services division.
 17 Q. Okay. That rep who works in the class size
 18 reduction program, does he work -- he or she work with
 19 the districts to help them prepare the reports or simply
 20 review the reports once they're completed?
 21 MR. SEFERIAN: Vague and ambiguous.
 22 MR. HERRON: Asked and answered.
 23 MR. SEFERIAN: Vague and ambiguous as to
 24 "help." Compound question.
 25 THE WITNESS: That individual with one other

1 staff member answers questions for the school districts
 2 that they have regarding filling out the applications,
 3 what constitutes 20 to 1.
 4 Q. BY MR. ELIASBERG: And what's the name of that
 5 person who is presently the field rep who is working in
 6 the class size reduction program?
 7 A. Fred Yeager.
 8 Q. Could you spell that for the record?
 9 A. Y-e-a-g-e-r.
 10 Q. And do you supervise Mr. Yeager?
 11 A. He reports to the assistant division director
 12 who reports to me.
 13 Q. And who is the assistant division director?
 14 A. Jim Bush, B-u-s-h.
 15 Q. How often, on an average basis, do you meet
 16 with Mr. Yeager, if at all?
 17 MR. SEFERIAN: Vague and ambiguous as to
 18 "meet."
 19 MR. HERRON: Calls for speculation.
 20 THE WITNESS: If there are hot issues, 10 to 20
 21 times a day.
 22 Q. BY MR. ELIASBERG: If there aren't hot issues?
 23 MR. HERRON: Same objections.
 24 THE WITNESS: If there's nothing going on, I
 25 won't meet with him at all that day.

1 Q. BY MR. ELIASBERG: Does Mr. -- has Mr. Yeager
 2 at any time when you've been supervising him said, here
 3 is a particular school district that I'm dealing with
 4 and this is what I'm doing?
 5 MR. SEFERIAN: Objection. Vague and ambiguous.
 6 THE WITNESS: Has he ever talked to me about a
 7 school district?
 8 Q. BY MR. ELIASBERG: I'm just trying to
 9 understand whether he tells you on more than an
 10 occasional basis about the districts he's dealing with
 11 and what he's doing in his dealings with districts?
 12 A. As it relates to class size reduction?
 13 Q. Yes.
 14 A. There are certain times during the year, this
 15 is one, where school districts, one that has about
 16 700,000 pupils, has to go to the State Board of
 17 Education to get a waiver to class size reduction Option
 18 1 funding for sites that have 200 students or more per
 19 acre. During the period of time when we're preparing
 20 the Board item, we talk very frequently.
 21 Q. What is the purpose of that waiver?
 22 A. It allows the school district to receive Option
 23 1 funding and not have 20 to -- students at 20 to 1 that
 24 are getting instruction all day at 20 to 1.
 25 Q. Are they required to -- required to have the

1 students be getting instruction at 20 to 1 for part of
 2 the day?
 3 MR. SEFERIAN: Objection. Calls for an
 4 inadmissible opinion.
 5 MR. HERRON: Vague and ambiguous in the use of
 6 the word "they."
 7 Q. BY MR. ELIASBERG: The districts that are
 8 applying for a waiver in order to be eligible for that
 9 waiver, must they be spending part of the day
 10 instructing their students in classrooms where there's a
 11 20 to 1 ratio?
 12 A. There are only two districts that are eligible,
 13 Los Angeles and Orange County, Santa Ana Unified in
 14 Orange County.
 15 The way that LA meets their waiver is that they
 16 do provide instruction that meets the Option 2 funding,
 17 which is meeting 20 to 1 for at least half a day for
 18 their English language programs. I don't know that
 19 that's the only way that the law allows the district to
 20 meet the waiver, but that's how LA is doing it.
 21 Q. Do you have an understanding as to why this
 22 waiver process exists?
 23 MR. SEFERIAN: Objection. Calls for
 24 speculation. Vague and ambiguous. No foundation.
 25 Calls for an inadmissible opinion.

1 THE WITNESS: The legislature recognized that
 2 school sites that had more than 200 students per acre
 3 might find it difficult to fully implement class size
 4 reduction because of the facilities impact, so the law
 5 allows the district to request this waiver for up to six
 6 years, but they have to put together a mitigation plan
 7 that shows how they're going to fully meet the 20 to 1
 8 class size reduction at Option 1 by the end of those six
 9 years. And it requires them to bring that plan to the
 10 State Board of Education annually to have the waiver
 11 renewed on the basis that they're making significant
 12 progress in meeting the benchmarks in that mitigation
 13 plan.
 14 Q. BY MR. ELIASBERG: In your previous answer you
 15 used the term "facilities impact." What did you mean by
 16 that?
 17 A. That when you have a school that has 34 kids in
 18 a classroom and you want to reduce it to 20, you need
 19 more classrooms to accomplish that.
 20 Q. I just want to ask a dumb question. Tell me if
 21 I'm right. Is it your understanding that if there are
 22 more than 200 students per acre, it would be more
 23 difficult for schools to reduce from 34 to 20?
 24 MR. SEFERIAN: Objection. Incomplete
 25 hypothetical. Calls for an inadmissible opinion. Calls

1 for speculation. Lacks foundation. Vague and ambiguous
 2 as to "more difficult."
 3 THE WITNESS: I believe that the legislature
 4 needed to establish a threshold, and they picked 200
 5 students per acre. I don't know why they picked 200
 6 versus 225 or 175.
 7 Q. BY MR. ELIASBERG: That's very helpful. I
 8 understand you're saying you don't know why they chose
 9 that exact number.
 10 Is it your understanding that as a school
 11 campus becomes more densely populated, more students per
 12 acre, it becomes more difficult to reduce classes from
 13 above 20 students to 1 teacher down to 20 to 1; is that
 14 correct? Is that your understanding?
 15 MR. SEFERIAN: Objection. Compound question.
 16 Vague and ambiguous as to "more difficult." Vague and
 17 ambiguous as to "more densely populated." Calls for
 18 speculation. Incomplete hypothetical.
 19 MR. HERRON: And asked and answered the
 20 question before.
 21 You may respond again.
 22 THE WITNESS: Many school districts found it
 23 difficult to reach the 20 to 1. The more students you
 24 have on a campus, the more classrooms you need.
 25 MR. ELIASBERG: Let's go off the record.

1 (Recess taken.)
 2 Q. BY MR. ELIASBERG: Mr. Brooks, do you know how
 3 many school districts have received funding to go to --
 4 class size reduction funding?
 5 A. I don't know the number. The last that I think
 6 that was shared with me was like 98 percent of the
 7 eligible grade levels in the state. It was a fairly
 8 high number.
 9 Q. Just so I understand, when you say "the
 10 eligible grade levels," that's K through 3; is that
 11 correct?
 12 A. Yes.
 13 Q. We had that little cover-up. Let's just make
 14 sure we got it on the record.
 15 Are the eligible grade levels K through 3?
 16 A. Yes.
 17 Q. So to the best of your knowledge, approximately
 18 2 percent have not received funding for class size
 19 reduction; is that correct?
 20 A. I believe that's the figure that I last saw.
 21 Q. Do you know -- within any particular district,
 22 do you know whether all the schools in the district, all
 23 the elementary schools received class size reduction
 24 funding, or whether only some of them received class
 25 size reduction funding?

1 MR. HERRON: Objection. Vague and ambiguous.
 2 Calls for speculation.
 3 Q. BY MR. ELIASBERG: You've talked about the
 4 percentages of districts that have received class size
 5 reduction funding. Do you know the percentages of
 6 elementary schools in the state of California that have
 7 received class size reduction funding?
 8 A. No.
 9 Q. Do you have any estimate based on knowledge
 10 rather than pure speculation as to what that percentage
 11 is?
 12 MR. SEFERIAN: Objection. Asked and answered.
 13 THE WITNESS: No.
 14 Q. BY MR. ELIASBERG: If a district received
 15 funding, is there any process by which you figure out
 16 whether that district actually implemented class size
 17 reduction for the schools for which it received funding?
 18 MR. SEFERIAN: Objection. Vague and ambiguous
 19 as to "funding." Vague and ambiguous as to "you."
 20 Calls for speculation.
 21 MR. ELIASBERG: I'll respond to Mr. Seferian's
 22 objection.
 23 Q. Is there any process by which anybody in your
 24 division attempts to ascertain whether those districts
 25 actually implemented class size reduction for the

1 schools for which they received funding?
 2 MR. SEFERIAN: Objection. Vague and ambiguous
 3 as to "implemented." Vague as to time.
 4 THE WITNESS: The district annually
 5 self-certifies the number of classes. I do not know
 6 whether that is checked in the coordinated compliance
 7 review or not.
 8 Q. BY MR. ELIASBERG: What do you mean by
 9 "coordinated compliance review"?
 10 A. The Department of Education has staff who go
 11 out and review the school districts for compliance with
 12 various programs, and so that the school district
 13 doesn't have somebody in there every day reviewing a
 14 different program, the Department has organized a
 15 coordinated compliance review process so that all the
 16 programs are reviewed essentially within the same --
 17 within a time frame.
 18 Q. Are you aware of any other process, other than
 19 coordinated compliance review, by which someone in the
 20 Department may attempt to ascertain whether districts
 21 that have received funding for class size reduction had
 22 implemented it at those schools which receive funding?
 23 MR. HERRON: Objection. Vague and ambiguous.
 24 Calls for speculation.
 25 THE WITNESS: Each school district undergoes an

1 annual independent audit. The annual independent
 2 auditor reviews the school district's books and if
 3 there's an audit exemption, they notify the State
 4 Controller's office. The State Controller's office
 5 notifies the appropriate department and program, and
 6 then we would be notified through that process if the
 7 annual independent audit indicated that there was a
 8 falsification.
 9 Q. BY MR. ELIASBERG: Who conducts these
 10 independent audits?
 11 MR. SEFERIAN: Objection. Vague and ambiguous.
 12 Q. BY MR. ELIASBERG: Do you know who conducts
 13 these independent audits?
 14 A. The school districts hire independent auditors.
 15 Q. What did you mean by an "audit exception"?
 16 A. If a district -- if the auditor finds that the
 17 district has inappropriately claimed funds,
 18 inappropriately self-certified or has done something
 19 that is not in compliance with the laws, rules and
 20 regulations of the program that they're operating.
 21 Q. Do you know the methodology that the
 22 independent auditors use?
 23 A. I do not.
 24 Q. Have you ever received, either from the auditor
 25 or from somebody else in the Department, a notice of

1 audit exception with respect to class size reduction?
 2 MR. HERRON: I take it we're focusing on the
 3 post 12/98 time frame?
 4 MR. ELIASBERG: Yeah. Thank you, David.
 5 That's exactly right. I'm talking about in the last two
 6 years that you've been -- three years.
 7 MR. SEFERIAN: Objection. Vague and ambiguous
 8 as to "notice of audit exception."
 9 THE WITNESS: One of the staff who works on the
 10 program received a complaint from a teacher that she had
 11 been directed to falsify the attendance documents. I do
 12 not recall what school district that was.
 13 Q. BY MR. ELIASBERG: You were told this by
 14 somebody on your staff; is that correct?
 15 A. Yes.
 16 Q. What did you do?
 17 A. We investigated.
 18 Q. And what kind of investigation did you conduct
 19 or did people in your division conduct?
 20 MR. SEFERIAN: Objection. Calls for
 21 speculation. No foundation.
 22 THE WITNESS: The staff contacted the school
 23 district, and I believe that they contacted school
 24 fiscal services division and our legal office.
 25 Q. BY MR. ELIASBERG: Do you know what steps, if

1 any, were taken with respect to -- after that?
 2 MR. SEFERIAN: Objection. Calls for
 3 speculation.
 4 THE WITNESS: I believe it's still under
 5 investigation.
 6 Q. BY MR. ELIASBERG: Have you ever -- let me
 7 start with you, and then I'll talk about your staff.
 8 Have you ever attempted to ascertain the number
 9 of schools, elementary schools in the state of
 10 California that have implemented class size reduction
 11 during the period since 12/98 that you've held this
 12 current job?
 13 A. Have I ever attempted?
 14 Q. Yeah.
 15 A. My staff have.
 16 Q. Who on your staff has done that?
 17 A. Fred Yeager and Lynn Piccoli, P-i-c-c-o-l-i.
 18 Q. P-i-c-c-o-l-i?
 19 A. Yes.
 20 Q. Okay. Did you direct Mr. Yeager and
 21 Ms. Piccoli to do this?
 22 A. We do it automatically. And the State Board of
 23 Education specifically requested the information, and so
 24 I directed them to prepare a special report for the
 25 State Board of Education.

1 Q. How did you find out about the State Board of
2 Education's request or direction?
3 A. They contacted my office and asked for the
4 information.
5 Q. When you say "they," was there a particular
6 person on the State Board who did?
7 A. I believe it was the executive director, at
8 that time, Greg Geeting, G-e-e-t-i-n-g.
9 Q. Did Mr. Geeting contact you by e-mail or paper,
10 or did he contact you -- how did Mr. Geeting contact
11 you?
12 A. I believe the initial contact was either by
13 e-mail or phone, and we talked after that to make sure
14 we were putting together exactly what the State Board
15 wanted.
16 Q. In any of those contacts did Mr. Geeting
17 explain to you why the State Board of Education wanted
18 this information?
19 A. One of the Board members was interested in
20 combination classes and wanted to know how many grade
21 levels in class size reduction were combination classes.
22 Q. Can you explain what you mean by "combination
23 classes"?
24 A. First and second; first, second and third;
25 kindergarten, first. More than one grade level.

1 Q. Do you know who that Board member was?
2 A. I believe it was Mary Ann Joseph.
3 Q. And when did Mr. Geeting first contact you on
4 this subject?
5 MR. HERRON: Objection. Calls for speculation.
6 THE WITNESS: I would just be guessing.
7 Q. BY MR. ELIASBERG: Let me see if I can narrow
8 it a little bit. Do you know what year Mr. Geeting
9 contacted you?
10 A. It was approximately a year or more ago. I'm
11 terrible with time.
12 Q. Has your staff -- well, how did you -- did you
13 meet with Mr. Yeager and Ms. Piccoli to discuss how you
14 were going to go about gathering the information for the
15 State Board of Education?
16 A. I did not meet with them. I knew that we had
17 the information based on the applications that are
18 submitted on an annual basis, and I merely directed them
19 to prepare a document, a report that shows by -- shows
20 the number of grades in total and clearly identifies
21 those that are combination classes.
22 Q. So the report that was prepared specifically
23 identifies the number of combination classes that are 20
24 to 1 classes; is that correct?
25 MR. SEFERIAN: Objection. Calls for

1 speculation.
2 THE WITNESS: It shows the total number of
3 classes that are participating -- at that time that were
4 participating in the class size reduction program, and
5 it specifically identifies those that are combination
6 classes.
7 Q. BY MR. ELIASBERG: Does this report identify
8 the schools at which these classes -- let me do it
9 differently.
10 Does the report simply give totals, or does it
11 identify particular schools where there are class size
12 reduction combination classes?
13 MR. SEFERIAN: Objection. Calls for
14 speculation.
15 THE WITNESS: The report submitted to the State
16 Board was a one pager. It showed totals only.
17 Q. BY MR. ELIASBERG: Do you know when that was
18 submitted to the State Board?
19 A. About the same time that they requested it.
20 Within the last year or more.
21 Q. Do you have a copy of that report, or does
22 anybody on your staff have a copy of that report?
23 MR. SEFERIAN: Objection. Calls for
24 speculation.
25 THE WITNESS: We can probably dig it up.

1 Q. BY MR. ELIASBERG: Would that report identify
2 specifically -- I understand that that report includes
3 information about combination classes that are on class
4 reduction.
5 Does that report reveal the number of schools
6 or classes in the state of California in elementary
7 schools that have not implemented class size reduction?
8 MR. SEFERIAN: Objection. Calls for
9 speculation.
10 THE WITNESS: That report does not include that
11 information. It's a one-page summary.
12 Q. BY MR. ELIASBERG: Is there a report that does
13 reveal that information?
14 MR. SEFERIAN: Objection. Calls for
15 speculation.
16 MR. HERRON: Vague and ambiguous.
17 THE WITNESS: The report that we have shows the
18 districts and the classrooms and the schools that are on
19 class size reduction. Since we're at about 98 percent,
20 you could probably extrapolate those that are not. I'm
21 not aware of a report that shows those that are not.
22 Q. BY MR. ELIASBERG: Just want to be clear. I
23 think I understand from your answer what your response
24 is, but I want to be clear.
25 Have you ever made an effort to ascertain which

1 schools or classrooms in elementary schools have not
 2 implemented class size reduction?
 3 MR. HERRON: You mean him personally?
 4 MR. ELIASBERG: Let me start with you.
 5 THE WITNESS: I have not. My staff might have
 6 that.
 7 Q. BY MR. ELIASBERG: Who on your staff might have
 8 it, to the extent you know?
 9 MR. SEFERIAN: Objection. No foundation.
 10 Calls for speculation.
 11 THE WITNESS: If anybody on my staff has it,
 12 it's Fred Yeager or Lynn Piccoli.
 13 Q. BY MR. ELIASBERG: And I gather you've never
 14 asked Mr. Yeager or Ms. Piccoli for that information?
 15 A. I have not.
 16 Q. Do you know if Mr. Yeager -- whether anybody in
 17 your division has prepared a report that shows how many
 18 districts have implemented Option 2 class size reduction
 19 as opposed to Option 1?
 20 A. Yes, we have that information because we fund
 21 both Option 1 and Option 2 at different rates, so we
 22 have to know who is at which to tell the fiscal people
 23 how much to pay which entities.
 24 Q. Okay. Do you know why some districts
 25 exercise -- I want to use the right terminology --

1 choose to go on or do go on Option 2 as opposed to
 2 Option 1?
 3 MR. SEFERIAN: Objection. No foundation.
 4 Overly broad. Calls for speculation.
 5 THE WITNESS: I do not know for sure. I can
 6 assume why.
 7 Q. BY MR. ELIASBERG: Have you ever spoken to a --
 8 someone at a school district to attempt to ascertain why
 9 they went to Option 2 as opposed to Option 1?
 10 A. I have not.
 11 Q. Okay. Your assumption, what would be the basis
 12 for your assumption? I want to see whether it's just
 13 speculation or where it's coming from.
 14 A. My basis -- my assumption would be based upon
 15 those districts that actually have implemented Option 1
 16 but have indicated the difficulties in doing so.
 17 They've overcome the difficulties. And I would assume
 18 that other districts are facing the same difficulties
 19 and for various reasons have been unable to overcome
 20 those difficulties.
 21 Q. Do you know what those difficulties are in
 22 implementing class size reduction?
 23 MR. SEFERIAN: Objection. Overly broad. Calls
 24 for speculation. No foundation.
 25 THE WITNESS: The two primary reasons cited are

1 ones that we've discussed before, and that is the
 2 availability of facilities and the availability of
 3 credentialed teachers.
 4 Q. BY MR. ELIASBERG: Have you ever directed
 5 members of your staff to do a survey, speak to perhaps
 6 all the districts or some subset of districts to attempt
 7 to determine what that particular district's reason was
 8 for not implementing class size reduction?
 9 MR. HERRON: Objection. Vague and ambiguous.
 10 MR. SEFERIAN: Overly broad. Calls for
 11 speculation.
 12 THE WITNESS: I have not directed them to do so
 13 because we get calls regularly from school districts
 14 that are having difficulty and we provide advice on --
 15 staff provides advice on how to overcome those
 16 difficulties.
 17 Q. BY MR. ELIASBERG: When you say we receive
 18 calls, have you received calls personally?
 19 A. No.
 20 Q. Who do you know to have received calls on this
 21 issue?
 22 A. My staff who run the class size reduction
 23 program.
 24 There are two things. You said if something
 25 comes up later that I want to share. I wanted to share

1 with you that I also administer year-around education.
 2 When you talked about what other functions, I have
 3 year-around education. As of December 1st I was also
 4 given the office of school transportation.
 5 Q. You mean as of last December you've already
 6 been given it?
 7 A. Yes.
 8 (Lunch recess taken.)
 9 (Mr. Hajela and Mr. Reed not present.)
 10 Q. BY MR. ELIASBERG: How are you, Mr. Brooks?
 11 A. Good.
 12 Q. And you understand you're still under oath?
 13 A. Yes.
 14 Q. I want to just finish up, actually. We had
 15 discussed the responsibilities of your staff when you
 16 were previously head of the school facilities planning
 17 division, and I want to make sure I've covered the
 18 current responsibilities and also all of the people who
 19 were on your staff.
 20 I know that you still have field reps working
 21 for you; is that correct?
 22 A. Yes.
 23 Q. Do you have an architect or more than one
 24 architect who is currently working for you?
 25 A. Just one.

1 Q. Are there other members of your staff now,
2 since you've retaken the position, besides the field
3 service reps and the architect?
4 A. There's support staff, clerical staff, and
5 there's also one associate information systems analyst.
6 Q. What are the responsibilities of that person?
7 A. They do our computer programs.
8 Q. And tell me again what is the size of your
9 current staff.
10 A. If you add the office of school transportation,
11 we're right around 30.
12 Q. And how many members of your staff are assigned
13 to the office of school transportation?
14 A. About 10.
15 Q. We were talking before the break about class
16 size reduction and, again, if I misstate a number or a
17 previous answer, let me know. I believe that you said
18 approximately 98 percent of the districts in the state
19 of California were receiving class size reduction funds;
20 is that correct?
21 A. That's my understanding based on the last chart
22 that I saw.
23 Q. Okay. Is it your understanding that -- strike
24 that.
25 Can a school district receive class size

1 reduction funding if less than 100 percent of the
2 elementary schools in that district don't meet the 20 to
3 1 ratio?
4 MR. SEFERIAN: Objection. Incomplete
5 hypothetical. Calls for speculation. Calls for an
6 inadmissible legal opinion. Vague and ambiguous as to
7 "class size reduction funding."
8 MR. HERRON: Could we please have the question
9 reread.
10 (Record read.)
11 MR. SEFERIAN: Same objections.
12 THE WITNESS: My understanding is that they can
13 apply on a class-by-class basis.
14 Q. BY MR. ELIASBERG: Okay. Is it your
15 understanding that they could apply on a
16 school-by-school basis also, such that some schools in
17 the district could be on class size reduction and other
18 schools couldn't be?
19 A. If they can apply class by class and some
20 classes in a school are eligible, then certainly entire
21 schools may or may not be eligible.
22 Q. Can you describe for me all the reports that
23 are prepared by members of your staff concerning class
24 size reduction.
25 A. No, I don't have that level of detail.

1 Q. Can you list for me the ones -- not all, but
2 ones that you know, reports that are prepared by members
3 of your staff concerning class size reduction?
4 MR. HERRON: Objection. Vague and ambiguous.
5 Calls for a narrative. Calls for speculation.
6 THE WITNESS: There are two that I'm aware of,
7 one is the report that tells the number of classes that
8 are on class size reduction, the other is the fiscal
9 data that we send to the school fiscal services
10 division.
11 Q. BY MR. ELIASBERG: And as to the first report
12 which you said tells us the number of classes on class
13 size reduction, by number of classes, do you mean number
14 of classes throughout the state?
15 A. Yes.
16 Q. Just so there's no confusion, I used the word
17 reports. Are you aware of any other documentation
18 besides those reports that are prepared by members of
19 your staff concerning class size reduction?
20 A. I don't understand documentation.
21 Q. Memos, other pieces of paper that might not be
22 called a report but are written documents.
23 MR. HERRON: Objection. Vague and ambiguous.
24 Calls for speculation.
25 THE WITNESS: Such as letters to school

1 districts responding to requests, or as we said before,
2 there was information to the State Board of Education.
3 I mean, in the daily administration of the program
4 there's e-mails back and forth, there's all kinds of
5 communication regarding class size reduction.
6 (Mr. Hajela and Mr. Reed entered the room.)
7 Q. BY MR. ELIASBERG: Let me focus just for a
8 minute on the Board of Education. Have you ever been
9 directed by the Board of Education, you or anyone in
10 your division, to prepare a report concerning class size
11 reduction other than the report we discussed earlier
12 that had to do with combination classes?
13 MR. SEFERIAN: Objection. Calls for
14 speculation. Vague and ambiguous as to "directed."
15 MR. HERRON: Vague and ambiguous as phrased.
16 THE WITNESS: Class size reduction is a big
17 topic.
18 Q. BY MR. ELIASBERG: Are you aware of any -- I
19 think you previously mentioned that there were some
20 charts that set forth some information about class size
21 reduction.
22 Can you tell me of any charts that you know of
23 that contain information about class size reduction that
24 have been prepared by members of your staff?
25 MR. HERRON: Same objections as to the last

1 question.

2 THE WITNESS: The one chart that I recall is
3 the one prepared for the State Board of Education.

4 Q. BY MR. ELIASBERG: Was that the chart that had
5 to do with combination classes?

6 A. Yes.

7 Q. I believe you previously said that you were
8 aware of two difficulties that districts had in
9 attempting to implement class size reduction; is that
10 correct?

11 MR. SEFERIAN: Objection. Misstates the
12 witness' testimony.

13 THE WITNESS: I said there were two primary
14 reasons.

15 Q. BY MR. ELIASBERG: One had to do with
16 facilities; is that correct?

17 MR. SEFERIAN: Objection. Asked and answered.

18 THE WITNESS: Yes.

19 Q. BY MR. ELIASBERG: And I just want to be sure
20 that we're on the same page on this. And the other was
21 lack of credentialed teachers; is that correct?

22 A. Yes.

23 Q. Okay.

24 MR. HERRON: I'll object belatedly. I think
25 that misconstrues his prior testimony.

1 Q. BY MR. ELIASBERG: Are you aware of anybody in
2 the Department of Education who has done a study?

3 A. There is a consortium that's administered by
4 our research division that is required to annually
5 conduct a study of class size reduction.

6 Q. Have you reviewed that -- have you reviewed any
7 of those annual studies?

8 A. Not in detail.

9 Q. What do you mean by "not in detail"?

10 A. They're thick and I don't go through them page
11 by page. I look at the summary statements.

12 Q. Okay. Do you recall seeing in the summary
13 statements whether they discuss numbers or percentages
14 of districts that have had difficulty implementing class
15 size reduction for -- because of facilities problems?

16 MR. SEFERIAN: Objection. Vague and ambiguous.
17 Overly broad. Vague and ambiguous as to "facilities
18 problems."

19 THE WITNESS: Would you repeat the question.

20 Q. BY MR. ELIASBERG: Sure. In your memory from
21 reviewing the reports, do you remember if those -- if in
22 the summaries they ask the number of districts or the
23 percentage of districts who have had difficulty
24 implementing class size reduction for facilities
25 reasons?

1 Q. BY MR. ELIASBERG: Do you feel that I have
2 misconstrued your prior testimony?

3 MR. SEFERIAN: Objection. Argumentative.
4 Asked and answered.

5 THE WITNESS: There are two primary reasons
6 given for difficulties in implementing class size
7 reduction. They are the availability of classrooms and
8 the availability of fully-credentialed teachers.

9 Q. BY MR. ELIASBERG: Okay. And you said that
10 members of your staff have -- or districts have told
11 members of your staff about these problems; is that
12 correct?

13 MR. SEFERIAN: Objection. Mischaracterizes the
14 witness' testimony.

15 MR. HERRON: Argumentative.

16 THE WITNESS: School districts contact my staff
17 for help on implementing class size reduction.

18 Q. BY MR. ELIASBERG: Have you or any member of
19 your staff ever done a survey to try to determine how
20 many districts had problems implementing class size
21 reduction for facilities reasons?

22 MR. SEFERIAN: Objection. Vague and ambiguous
23 as to problems. Overly broad. Calls for speculation.

24 MR. HERRON: Vague and ambiguous as phrased.

25 THE WITNESS: We have not done a study.

1 MR. HERRON: Same objections.

2 THE WITNESS: I remember looking at a chart. I
3 don't remember whether it contained the specific
4 information that you mentioned.

5 Q. BY MR. ELIASBERG: Have you or any members of
6 your staff prepared a memo or a report setting forth
7 suggestions to districts as to how they might implement
8 class size reduction if they're having facilities
9 constraints?

10 MR. SEFERIAN: Objection. Compound question.
11 Vague and ambiguous as to "facilities constraints."
12 Calls for speculation.

13 THE WITNESS: Yes.

14 Q. BY MR. ELIASBERG: Who prepared that memo or
15 report?

16 A. It was probably prepared in combination with
17 Fred Yeager and Lynn Piccoli.

18 Q. Do you know what the title of the memo or
19 report is?

20 A. No.

21 Q. Is it available on your website, do you know?

22 MR. SEFERIAN: Objection. Calls for
23 speculation.

24 THE WITNESS: I believe it's available.

25 Q. BY MR. ELIASBERG: Do you have a hard copy of

1 that memo?
 2 MR. HERRON: He personally?
 3 MR. ELIASBERG: Yes. Or in your control.
 4 THE WITNESS: In my files?
 5 MR. ELIASBERG: Yes.
 6 THE WITNESS: Yes.
 7 Q. BY MR. ELIASBERG: Have you or any members of
 8 your staff attempted to determine the socioeconomic
 9 status of the districts that have not implemented class
 10 size reduction?
 11 MR. HERRON: Objection. Vague and ambiguous in
 12 the use of the term "socioeconomic status of the
 13 districts."
 14 MR. SEFERIAN: Compound question.
 15 THE WITNESS: Can you define "socioeconomic"
 16 for me?
 17 Q. BY MR. ELIASBERG: Sure. Have you attempted to
 18 assess the -- using measures such as the percentage of
 19 students who receive reduced priced or free school
 20 meals, have you attempted to determine -- look at the
 21 districts that have not implemented class size reduction
 22 with respect to the percentages of students who get free
 23 or reduced price meals?
 24 MR. SEFERIAN: Objection. Vague and ambiguous
 25 as to "you."

1 MR. HERRON: And as phrased.
 2 MR. ELIASBERG: By "you" I mean you or any
 3 members of your staff.
 4 THE WITNESS: I have not directed staff.
 5 Mr. Yeager may have done some analysis on his own, but
 6 I'm not familiar with it.
 7 Q. BY MR. ELIASBERG: Do you know -- if he did an
 8 analysis, do you know whether it would be his normal
 9 practice to set that kind of analysis down in a
 10 document?
 11 MR. SEFERIAN: Objection. Calls for
 12 speculation.
 13 THE WITNESS: His normal practice is to keep it
 14 on the computer, unless somebody requests it.
 15 Q. BY MR. ELIASBERG: Okay. Do you know if you or
 16 any members of your staff have attempted to look at the
 17 racial or ethnic composition of the students in the
 18 district that have not -- in districts that have not
 19 implemented class size reduction?
 20 MR. HERRON: Objection. Vague and ambiguous as
 21 phrased.
 22 THE WITNESS: We have not.
 23 Q. BY MR. ELIASBERG: Are you aware of whether any
 24 of the districts that are not receiving class size
 25 reduction funding, whether any of those districts

1 applied for funding but didn't receive it because they
 2 were deemed ineligible?
 3 MR. SEFERIAN: Objection. Calls for
 4 speculation. No foundation.
 5 THE WITNESS: I have no knowledge of that.
 6 Q. BY MR. ELIASBERG: Do you know if anyone in
 7 your department would know the answer to that question?
 8 MR. SEFERIAN: Objection. Calls for
 9 speculation.
 10 THE WITNESS: I can't think of anybody who
 11 would.
 12 Q. BY MR. ELIASBERG: Do you know of anybody else,
 13 other than people in your division, in the Department of
 14 Education who would know that?
 15 MR. SEFERIAN: Objection. Calls for
 16 speculation.
 17 THE WITNESS: The individuals that do the
 18 annual report in the research and development division
 19 may have that information.
 20 Q. BY MR. ELIASBERG: If you know, is there a
 21 particular individual or individuals there who would be
 22 most likely to have that information?
 23 A. Yes.
 24 Q. And who is that?
 25 A. Bill Padia is the division director, P-a-d-i-a.

1 Q. Have you initiated contact with any of the
 2 districts that are not receiving class size reduction
 3 funding to ask them why they're not?
 4 MR. SEFERIAN: Objection. Overly broad. Vague
 5 and ambiguous. Vague and ambiguous as to "you."
 6 MR. HERRON: Asked and answered.
 7 THE WITNESS: I personally have not.
 8 Q. BY MR. ELIASBERG: Do you know if any members
 9 of your staff have initiated contact with districts that
 10 are not receiving class size reduction in an attempt to
 11 find out why they're not?
 12 MR. SEFERIAN: Objection. Calls for
 13 speculation. No foundation.
 14 THE WITNESS: Yes.
 15 Q. BY MR. ELIASBERG: And who? You're saying yes
 16 that members of your staff have done that?
 17 A. Yes.
 18 Q. And is that Mr. Yeager and Ms. Piccoli?
 19 A. The one individual that I'm specifically aware
 20 of is the individual that operates the federal class
 21 size reduction program, which is totally different from
 22 the state class size reduction program.
 23 Q. Can you tell me briefly, if you can, what's the
 24 difference? Is it simply a different pot of funding?
 25 MR. SEFERIAN: Objection. No foundation.

1 Calls for speculation.
 2 THE WITNESS: No, the program requirements are
 3 totally different.
 4 Q. BY MR. ELIASBERG: So I want to make sure that
 5 I'm getting this correct. A member of your staff has
 6 contacted districts to find out why they are not
 7 involved in the federal class size reduction program; is
 8 that correct?
 9 A. Correct.
 10 Q. But are you aware of any members of your staff
 11 who have contacted districts to find out why they're not
 12 involved in the California class size reduction program?
 13 A. I'm not aware if they've done that.
 14 Q. Are you aware of anybody in -- anyone else in
 15 the Department of Education who has done that?
 16 A. No.
 17 Q. Have you directed any members of your staff to
 18 do that?
 19 A. No.
 20 Q. Since you've been -- I'm trying to -- in your
 21 current tenure as the director of the school facilities
 22 planning division have you been involved in any
 23 discussions with members of your staff or anyone else
 24 about difficulties that districts are having
 25 implementing class size reduction?

1 MR. HERRON: Objection. Asked and answered.
 2 (Mr. Reed left the room.)
 3 THE WITNESS: Yes.
 4 Q. BY MR. ELIASBERG: With whom have you had those
 5 discussions?
 6 A. With the individuals that operate the programs.
 7 Q. By that do you mean Mr. Yeager and Ms. Piccoli?
 8 A. Your question refers only to state class size
 9 reduction?
 10 Q. Let's focus in on the state.
 11 A. Yes, those two primarily.
 12 Q. Have you had those discussions with other
 13 people in the Department of Education other than
 14 Mr. Yeager and Ms. Piccoli?
 15 MR. SEFERIAN: Objection. Vague and ambiguous
 16 as to "those discussions."
 17 THE WITNESS: Can you define "those
 18 discussions"?
 19 MR. ELIASBERG: Sure, discussions about
 20 difficulties the districts are having implementing class
 21 size reduction.
 22 THE WITNESS: I can't specifically recall any,
 23 but there must have been some because it is a large
 24 program and we discuss those issues on a regular basis.
 25 Q. BY MR. ELIASBERG: When you say "we discuss

1 those issues on a regular basis," to whom are you
 2 referring to?
 3 A. Me and my staff and my supervisor.
 4 Q. And by your supervisor, you're talking about --
 5 I'm not sure that I've established this. Who are your
 6 supervisors currently?
 7 A. I report to Susan Lange as the deputy.
 8 Q. And whom does Ms. Lange report to?
 9 A. She reports to Leslie Faucette as a chief
 10 deputy.
 11 Q. And what is Ms. Lange's title?
 12 A. She's the deputy superintendent for finance,
 13 technology and administration.
 14 Q. And what's Ms. Faucette's title?
 15 A. She's the chief deputy superintendent.
 16 Q. Has either Ms. Lange or Ms. Faucette asked you
 17 or directed you to do a survey of the districts, first
 18 of all, to try to ascertain exactly which districts are
 19 not receiving class size reduction funding?
 20 A. No.
 21 MR. SEFERIAN: Objection. Compound question.
 22 Vague and ambiguous as to "survey."
 23 Q. BY MR. ELIASBERG: And have they directed you
 24 to attempt to figure out which schools are not receiving
 25 class size reduction funding?

1 MR. SEFERIAN: Same objections.
 2 THE WITNESS: No.
 3 Q. BY MR. ELIASBERG: Has either of them directed
 4 you to prepare a memorandum or report discussing why
 5 some districts are not participating in the state class
 6 size reduction program?
 7 MR. SEFERIAN: Objection. Assumes facts not in
 8 evidence. Compound question.
 9 THE WITNESS: No.
 10 Q. BY MR. ELIASBERG: Just want to quickly step
 11 back. You earlier said there were two class size
 12 reduction options, Option 1 and Option 2; is that
 13 correct?
 14 A. Yes.
 15 Q. Of the 98 percent of districts that are
 16 receiving class size reduction funding, do you know how
 17 many of those districts are receiving Option 1 funds as
 18 opposed to Option 2 funds?
 19 MR. SEFERIAN: Objection. Calls for
 20 speculation.
 21 THE WITNESS: No.
 22 Q. BY MR. ELIASBERG: Do you know if anybody in
 23 your division knows that?
 24 MR. SEFERIAN: Objection. Calls for
 25 speculation.

1 THE WITNESS: Yes.

2 Q. BY MR. ELIASBERG: I have a feeling I know your
3 answer, but would that be Mr. Yeager and Ms. Piccoli, or
4 one of them and not the other?

5 A. Probably both of them.

6 Q. Do you know if they have compiled that
7 information in a chart or a memorandum or any document
8 setting forth which districts are receiving Option 1
9 funds and which districts are receiving Option 2 funds?

10 MR. SEFERIAN: Objection. Calls for
11 speculation.

12 THE WITNESS: I thought we answered this one
13 too.

14 MR. HERRON: Objection. Asked and answered.

15 MR. ELIASBERG: David is very quick.

16 THE WITNESS: I'm not aware of any. They might
17 have compiled that on their own.

18 Q. BY MR. ELIASBERG: Do you know if they know
19 down at the school level whether schools are receiving
20 Option 1 funding or Option 2 funding?

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

23 THE WITNESS: I believe the report does go down
24 to that level of detail.

25 Q. BY MR. ELIASBERG: I want to make sure. When

1 you say "the report," what report are you referring to?

2 A. The application -- the report that's prepared
3 to notify the school fiscal services division of which
4 districts receive what amount of money based on Option
5 1, Option 2.

6 Q. And do you know if Mr. Yeager or Ms. Piccoli
7 has attempted to -- I'll break it down into specifics --
8 determine the SES as previously mentioned, based on, for
9 example, percentages of students who are receiving free
10 and reduced priced lunches of those districts that are
11 receiving Option 1 funding versus Option 2 funding?

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

14 MR. HERRON: Vague and ambiguous.

15 THE WITNESS: As I said before, I'm not aware
16 of any report that they've developed.

17 Q. BY MR. ELIASBERG: Just want to touch quickly
18 again on the -- you spoke about the process of getting
19 waivers. I believe you said that districts that are
20 of -- districts that have schools of a density of more
21 than 200 students per acre may be eligible to get a
22 waiver of the 20 to 1 ratio and still receive class size
23 reduction funding; is that correct?

24 MR. HERRON: Objection. Misconstrues prior
25 testimony.

1 (Mr. Reed entered the room.)

2 THE WITNESS: What I said was that they are --
3 with the State Board waiver, they can receive Option 1
4 funding for class size reduction.

5 Q. BY MR. ELIASBERG: Are they not eligible to
6 receive Option 2 funding?

7 MR. SEFERIAN: Objection. Calls for an
8 inadmissible legal opinion. Calls for speculation.

9 THE WITNESS: The one school district that
10 is -- that has been granted the waiver to the Option 1
11 funding is receiving Option 1 funding by implementing
12 Option 2 in the schools that are eligible for the
13 waiver.

14 Q. BY MR. ELIASBERG: And which district is that?

15 A. Los Angeles Unified.

16 Q. Do you know -- when the waiver is applied for,
17 does the district ask for the waiver with respect to
18 specific schools, or just generally to be allowed to do
19 that on a districtwide basis?

20 MR. SEFERIAN: Objection. Vague and ambiguous.

21 MR. HERRON: Calls for speculation.

22 THE WITNESS: Specific schools.

23 Q. BY MR. ELIASBERG: Do you know how many schools
24 within the district have applied for the waiver?

25 MR. SEFERIAN: Objection. Calls for

1 speculation.

2 THE WITNESS: Initially 101, and they dropped
3 one school and now they're applying for 100.

4 Q. BY MR. ELIASBERG: I believe you also said that
5 one of the criteria is that they file a report with the
6 legislature explaining how they intend to mitigate --
7 actually, I'm going to ask you a question that I've
8 asked you before, but I don't want to misstate your
9 prior testimony.

10 What does the district need to do in its
11 application in order to obtain the waiver? What
12 requirements are there to obtain the waiver?

13 MR. SEFERIAN: Objection. Overly broad. Calls
14 for an inadmissible opinion. Calls for a narrative.

15 THE WITNESS: Initially the district has to
16 prepare a mitigation plan for the schools that they're
17 requesting a waiver. That plan has to identify how,
18 over the course of six years, they will bring those
19 schools into compliance with the Option 1 funding.

20 Annually they must return to the State Board of
21 Education to get a renewal of that waiver by
22 demonstrating that they're making sufficient progress
23 towards meeting the benchmarks in their mitigation plan.

24 Q. BY MR. ELIASBERG: Do you review any of the
25 mitigation plans or any of the other documents that the

1 district files with the State Board of Education?
 2 MR. SEFERIAN: Objection. Overly broad.
 3 MR. HERRON: Do you mean Dwayne Brooks
 4 personally?
 5 MR. ELIASBERG: You or any members of your
 6 staff.
 7 MR. SEFERIAN: Objection. Calls for
 8 speculation. Vague and ambiguous as to "review."
 9 THE WITNESS: Yes.
 10 Q. BY MR. ELIASBERG: Does the Board actually send
 11 those documents to you and request that you review them?
 12 A. Who is the Board?
 13 Q. My understanding was that those -- for example,
 14 that they need to file documents with the Board in order
 15 to show that they're making sufficient progress in their
 16 mitigation plan.
 17 A. The sequence is they give us the documentation
 18 and we prepare the item for the State Board.
 19 Q. Okay. Thank you for clarifying that. What
 20 criteria do you use for determining whether a district
 21 is making sufficient progress?
 22 MR. SEFERIAN: Objection. Incomplete
 23 hypothetical. Overly broad. Calls for speculation.
 24 THE WITNESS: We look at their benchmarks and
 25 determine whether or not they've met the benchmarks, and

1 if they haven't met the benchmarks, then we determine
 2 whether or not they have demonstrated other progress.
 3 For instance, they have detailed project completion time
 4 lines that show milestones prior to the benchmarks, and
 5 if they show adequate progress towards meeting those
 6 intermediate milestones, even though they might not have
 7 met the benchmarks, then we recommend the Board approve
 8 their renewal.
 9 Q. BY MR. ELIASBERG: Have you ever recommended
 10 that the Board not grant the renewal?
 11 MR. SEFERIAN: Objection. Vague and ambiguous
 12 as to "you." Vague and ambiguous as to "renewal."
 13 Vague and ambiguous as to "Board."
 14 THE WITNESS: No.
 15 MR. ELIASBERG: Just take a one-minute break.
 16 (Recess taken.)
 17 (Mr. Rosenbaum not present.)
 18 Q. BY MR. ELIASBERG: I'd like to shift your focus
 19 a little bit, Mr. Brooks.
 20 A. Good. Get into some new territory.
 21 Q. Back to child nutrition.
 22 A. Oh, no. You're mean.
 23 Q. Bad joke. Sorry. I want to make sure we've
 24 got a common terminology. Are you familiar with the
 25 term SB 50?

1 A. Yes.
 2 Q. And what's your understanding of what SB 50 is?
 3 A. SB 50 is the law that implemented the current
 4 state school facilities program.
 5 Q. And what is the current state school facilities
 6 program?
 7 MR. SEFERIAN: Objection. Overly broad. Calls
 8 for a narrative.
 9 Q. BY MR. ELIASBERG: When you use the term, what
 10 are you referring to, implemented the current state
 11 school facilities program?
 12 A. The program that school districts can apply to
 13 to receive funding from Proposition 1A.
 14 Q. Is it correct in general terms Proposition 1A
 15 was the measure that allowed the bond to be passed which
 16 is now the source for SB 50?
 17 A. Proposition 1A was the bond measure that the
 18 voters approved that gave the state authority to fund
 19 school facilities using the bond money.
 20 Q. Okay. I think we now have common terminology.
 21 How much money did the bond provide for new school
 22 construction for K-12 schools in California?
 23 MR. SEFERIAN: Objection. Vague and ambiguous
 24 as to "bond." Overly broad.
 25 THE WITNESS: You mean Proposition 1A?

1 MR. ELIASBERG: By bond I mean Proposition 1A.
 2 THE WITNESS: The total amount that the voters
 3 approved was 9.2 million (sic). The amount for K-12 was
 4 6.7 billion, 9.2 billion and 6.7 billion. And I don't
 5 recall off the top of my head how much was for new
 6 construction. There was money for new construction
 7 modernization, class size reduction, hardship.
 8 Q. BY MR. ELIASBERG: Do you know approximately
 9 how much of it, percentage terms or dollar terms, was
 10 set aside for new school construction as opposed to the
 11 other things you talked about, modernization, class size
 12 reduction?
 13 MR. SEFERIAN: Objection. Calls for
 14 speculation. Asked and answered.
 15 THE WITNESS: My recollection is about \$3
 16 billion.
 17 Q. BY MR. ELIASBERG: One more terminology. Are
 18 you familiar with the term hardship application?
 19 A. Yes.
 20 Q. What's your understanding of what a hardship
 21 application is?
 22 A. There are various types of hardships. There's
 23 a financial hardship and there's an environmental
 24 hardship.
 25 Q. What is a financial hardship?

1 A. Financial hardship is a school district that's
 2 unable to pay their local match.
 3 Q. By "local match," what do you mean?
 4 A. The proposition required for new construction a
 5 50/50 match, and for modernization an 80/20 match.
 6 Q. So those districts that file financial hardship
 7 applications are saying that they can't meet either the
 8 50/50 match or the 80/20 match; is that correct?
 9 MR. SEFERIAN: Objection. Overly broad.
 10 THE WITNESS: Yes.
 11 Q. BY MR. ELIASBERG: What is an environmental
 12 hardship?
 13 A. An environmental hardship is a provision in the
 14 bill that allows a school district who is acquiring
 15 property in which the Department of Toxic Substances
 16 Control says that it will take more than six months to
 17 go through the process. The district can apply for an
 18 environmental hardship to not lose their place in line
 19 or to move through the process sooner than having to
 20 wait for the Department of Toxic Substances Control to
 21 complete their review and issue them a letter of no
 22 further action.
 23 Q. So am I correct in understanding that
 24 environmental hardship doesn't relieve a district of an
 25 obligation to match, it simply enables them to keep a

1 place in line that they might otherwise lose?
 2 A. It was placed in the bill to recognize that
 3 certain school districts have difficulty going through
 4 the school site selection process, and to -- in an
 5 effort to try to level the playing field between those
 6 school districts and other school districts, to not
 7 penalize them for that delay.
 8 Q. Do you have an understanding as to why there is
 9 a financial hardship process?
 10 MR. SEFERIAN: Objection. Overly broad. Calls
 11 for speculation. No foundation.
 12 THE WITNESS: Why there's a financial hardship
 13 process?
 14 MR. ELIASBERG: Yes.
 15 MR. SEFERIAN: Objection. Vague and ambiguous
 16 as to "hardship process."
 17 THE WITNESS: Financial hardship process in the
 18 state school building program?
 19 MR. ELIASBERG: Yes.
 20 THE WITNESS: It's my understanding that the
 21 legislature understood that there were some school
 22 districts that needed to be assisted through the program
 23 that didn't have the means locally to come up with their
 24 match, and they didn't want them to be disadvantaged or
 25 totally frozen out of the opportunity to access the

1 state bond funds.
 2 Q. BY MR. ELIASBERG: Do you know -- I want to
 3 focus in on your knowledge. Do you know what the
 4 legislature's basis was for concluding that there are
 5 some districts that would not be able to meet their
 6 portion of the match?
 7 MR. SEFERIAN: Objection. Overly broad. No
 8 foundation. Calls for speculation. Calls for an
 9 inadmissible opinion.
 10 THE WITNESS: I cannot get in the mind of the
 11 legislature on that issue.
 12 Q. BY MR. ELIASBERG: Do you have an opinion as to
 13 whether there are districts that are unable to meet
 14 their portion of the match?
 15 MR. SEFERIAN: Objection. Overly broad. Vague
 16 and ambiguous as to "unable."
 17 THE WITNESS: There are school districts that
 18 have been approved for financial hardship, so there are
 19 obviously some that can't come up with their match.
 20 Q. BY MR. ELIASBERG: Have you or any member of
 21 your staff ever looked at the districts that have been
 22 approved for financial hardship and attempted to analyze
 23 the socioeconomic status of the students in those
 24 districts?
 25 MR. SEFERIAN: Objection. Overly broad.

1 Compound question. Vague and ambiguous. Vague and
 2 ambiguous as to "looked at."
 3 THE WITNESS: No.
 4 Q. BY MR. ELIASBERG: Do you know if anybody in
 5 the Department has undertaken that analysis?
 6 MR. SEFERIAN: Objection. Calls for
 7 speculation.
 8 THE WITNESS: The Department of Education is
 9 not responsible for determining eligibility for
 10 financial hardship.
 11 (Mr. Rosenbaum entered the room.)
 12 Q. BY MR. ELIASBERG: Do you know if anybody in
 13 the state allocation board has undertaken that analysis?
 14 MR. SEFERIAN: Objection. Calls for
 15 speculation. No foundation.
 16 THE WITNESS: The state allocation board being
 17 one of the seven members?
 18 MR. ELIASBERG: Any member of the state
 19 allocation board or any member of the staff of the
 20 office of public school construction who has undertaken
 21 that analysis.
 22 MR. SEFERIAN: Objection. Calls for
 23 speculation.
 24 THE WITNESS: There are two answers to that
 25 question. If you're talking about the Board or the

1 staff, the answer is yes or probably.
 2 Q. BY MR. ELIASBERG: You're going to have to help
 3 me when you say -- do you know if any member of the
 4 state allocation board has undertaken the analysis to
 5 look at what the socioeconomic status of the students in
 6 the districts -- for those districts that have been
 7 approved for financial hardship?
 8 A. I'm not aware personally of any of the other
 9 members of the Board doing that.
 10 Q. Are you aware of anybody in the office of
 11 public school construction that has done that analysis?
 12 A. I have not seen an analysis. It is possible
 13 that during the course of trying to put together the
 14 next state bond that someone in OPSC might have done
 15 that, but I'm not aware of it.
 16 Q. In the pot of money, if I can use that term,
 17 that was in Proposition 1A, do you know if any of it --
 18 there was a specific portion set aside for financial
 19 hardship applications?
 20 MR. SEFERIAN: Objection. Calls for
 21 speculation.
 22 THE WITNESS: Yes, there was.
 23 Q. BY MR. ELIASBERG: Do you know approximately
 24 what the size of that set-aside was?
 25 A. I believe that initially it was \$500 million in

1 each of the two cycles.
 2 Q. Can you explain for me what each of the two
 3 cycles were?
 4 A. The way the bond was set up, half of the
 5 money -- a portion -- specified amount of the money was
 6 made available to the allocation board to be apportioned
 7 from the time that the bond passed to July 1st of the
 8 year 2000. That was Cycle 1.
 9 The structure of the language in the bill then
 10 had another amount of money that was available to the
 11 state allocation board for allocation in the second
 12 cycle, which was July 1st, 2000 until the money was
 13 exhausted.
 14 Q. Out of that pot, 2 times 5 -- you said in each
 15 cycle there was approximately \$500 million set aside for
 16 hardship applications; is that correct?
 17 A. Correct.
 18 Q. Was there any attempt to further divide that
 19 pot into hardship applications seeking modernization
 20 funds as opposed to hardship applications seeking new
 21 construction funds?
 22 MR. SEFERIAN: Objection. Calls for
 23 speculation.
 24 THE WITNESS: I do not recall it being broken
 25 down that way. There is another hardship. There's a

1 facility hardship. So there's financial, facility and
 2 the environmental hardship.
 3 Q. BY MR. ELIASBERG: It's your understanding --
 4 understand I'm limiting it to your understanding -- that
 5 there was no attempt to subdivide among the different
 6 hardship applications for modernization versus hardship
 7 applications for new construction in terms of that pot
 8 of money?
 9 MR. HERRON: Objection. Asked and answered the
 10 question before. Vague and ambiguous. Also object to
 11 the extent it calls for speculation.
 12 THE WITNESS: I don't recall the language in
 13 the bond dividing it that way. My recollection is that
 14 it was \$500 million maximum.
 15 Q. BY MR. ELIASBERG: Can you tell me what a
 16 facilities hardship is?
 17 A. Facility hardship is basically a health or
 18 safety issue.
 19 Q. And what do you mean by it's basically a health
 20 or safety issue?
 21 A. If there's a facility that is about to fall
 22 down because of structural problems, the school district
 23 can come to the allocation board and ask for that
 24 facility to be replaced because it causes a health or
 25 safety problem to the kids.

1 Q. Okay. Is that hardship akin to the
 2 environmental hardship in the sense that it enables the
 3 district to save a place in line, as it were, is that
 4 how the facilities hardship works?
 5 A. No.
 6 Q. Does the facility hardship enable a district to
 7 obtain money that it might not ordinarily be able to
 8 obtain based on the number of unhoused students it had?
 9 MR. SEFERIAN: Objection. Vague and ambiguous
 10 as to "unhoused students."
 11 MR. HERRON: Calls for speculation.
 12 THE WITNESS: Yes.
 13 Q. BY MR. ELIASBERG: Focusing for a minute on the
 14 schools with the districts that applied for money for
 15 new school construction, do you know how many --
 16 approximately how many districts filed eligibility
 17 applications for new school construction funds?
 18 MR. SEFERIAN: Objection. Calls for
 19 speculation.
 20 MR. ELIASBERG: For funding from -- starting
 21 with the passage of -- after Prop 1A had passed and SB
 22 50 had passed.
 23 THE WITNESS: No.
 24 Q. BY MR. ELIASBERG: Do you have any idea?
 25 A. No.

1 Q. Do you know where -- is there any document or
 2 do you know any person who would know that information?
 3 A. Yes.
 4 Q. Where could I obtain that information?
 5 A. The office of public school construction.
 6 Q. Okay. Is there a specific person or persons in
 7 OPSC who would most likely have that information?
 8 MR. SEFERIAN: Objection. Calls for
 9 speculation.
 10 THE WITNESS: The executive director.
 11 Q. BY MR. ELIASBERG: And who is that?
 12 A. Louisa Park.
 13 Q. I'm really not trying to suggest that you don't
 14 know what you should know, but I want to make sure that
 15 I know what you are knowledgeable about and what you
 16 aren't.
 17 Do you know approximately how much money, total
 18 amount of money was sought by those districts who were
 19 eligible for new school construction funds?
 20 MR. SEFERIAN: Objection. Calls for
 21 speculation. Asked and answered.
 22 THE WITNESS: At what point in time?
 23 MR. ELIASBERG: Well, starting with people who
 24 filed starting after the passage of Proposition 1A and
 25 SB 50.

1 MR. SEFERIAN: Objection. Vague and ambiguous
 2 as to "people." Asked and answered. Calls for
 3 speculation.
 4 MR. ELIASBERG: I'm sorry, districts.
 5 THE WITNESS: That figure changes every day.
 6 Q. BY MR. ELIASBERG: I'm trying to figure out the
 7 total amount of funds sought by districts. Taking all
 8 of the applications into account, how much money was
 9 sought?
 10 MR. HERRON: For new school --
 11 MR. ELIASBERG: For new school construction.
 12 MR. SEFERIAN: Objection. Asked and answered.
 13 THE WITNESS: That figure changes every day.
 14 Applications are submitted to OPSC on a daily basis.
 15 Q. BY MR. ELIASBERG: What I'm trying to
 16 establish -- if it can't be figured out, I'd appreciate
 17 your letting me know.
 18 Starting with the passage of SB 50 and
 19 Proposition 1A, once both of those had been passed, all
 20 applications filed since that time period up to today,
 21 how much total has been sought by districts in those
 22 applications?
 23 MR. SEFERIAN: Objection. Asked and answered.
 24 Vague and ambiguous as to "applications." Calls for
 25 speculation. No foundation.

1 THE WITNESS: The last report that I saw from
 2 OPSC brought the figure to about \$3.8 billion total new
 3 construction and modernization. I don't recall how it
 4 was broken down.
 5 MR. HAJELA: Peter, can I ask a clarifying
 6 question there because I didn't understand the answer
 7 there completely.
 8 MR. ELIASBERG: Sure. I have no objection.
 9 MR. HAJELA: I'm just wondering, is that 3.8
 10 the number of applications that are approved but
 11 unfunded?
 12 THE WITNESS: It's the approved but unfunded
 13 and the applications that are in the workload queue
 14 which are expected to come to the Board within the next
 15 few months.
 16 MR. HAJELA: Thank you.
 17 Q. BY MR. ELIASBERG: That actually helped
 18 clarify. Let's get some terminology. What do you mean
 19 by "approved but unfunded"?
 20 A. The applications have gone through the entire
 21 review and approval process, have been submitted to the
 22 state allocation board, and have been determined to meet
 23 all of the requirements, but there are inadequate funds
 24 to fund that project so they go on an approved but
 25 unfunded list.

1 Q. I think the confusion that maybe I was creating
 2 with you was I was trying to figure out all of the
 3 applications, including those that were funded and the
 4 approved but unfunded list. But I think now we've
 5 clarified it to my satisfaction.
 6 Do you know how much money is being sought by
 7 districts that have filed an initial application but
 8 have not yet reached the stage where they are approved
 9 but not funded?
 10 MR. SEFERIAN: Objection. Calls for
 11 speculation. Vague and ambiguous as to "application."
 12 THE WITNESS: I do not.
 13 Q. BY MR. ELIASBERG: Do you know anybody who
 14 would know that information?
 15 A. Would you repeat the question.
 16 Q. You've said that there are approximately -- and
 17 I understand you don't know the exact dollar figure --
 18 approximately \$3.8 billion in approved but unfunded
 19 applications for both new school construction and
 20 modernization; is that correct?
 21 A. Approved but unfunded, plus a portion that's in
 22 the workload, what they call the queue, that will be
 23 going to the allocation board in the next few months.
 24 Q. What is the difference between an application
 25 that is approved and unfunded and an application that's

1 in the queue?
 2 A. The approved but unfunded has gone to the state
 3 allocation board in a regularly scheduled monthly
 4 meeting and been approved by the Board and placed on an
 5 unfunded list.
 6 The queue are the applications that the office
 7 of public school construction staff are currently
 8 working on. The district has submitted the application
 9 and told OPSC that we have all of the required approval.
 10 The OPSC staff has to confirm that, agendize it for a
 11 monthly state allocation board meeting, get the Board to
 12 approve it, and then they go on the approved but
 13 unfunded list.
 14 Q. And the 3.8 billion figure includes both
 15 approved but unfunded, and also those that are in the
 16 queue; is that correct?
 17 A. As of the last time that I checked with OPSC.
 18 It changes every day.
 19 Q. Approximately when was the last time you
 20 checked?
 21 A. The last allocation board meeting, the end of
 22 last month.
 23 Q. You used a phrase which I heard for the first
 24 time, which is those that are in the queue. Are there
 25 applications that are not still with the district but

1 have gone in to somebody at the state level, either in
 2 your office or the SAB or the OPSC, that are not in the
 3 queue?
 4 MR. SEFERIAN: Objection. Calls for
 5 speculation. Vague and ambiguous.
 6 THE WITNESS: Yes.
 7 Q. BY MR. ELIASBERG: What is an app -- what
 8 steps -- I'm basically trying to understand what's
 9 happened to -- where is an application that is not in
 10 the queue but is not sitting on the desk of somebody at
 11 a school district who is filling it out?
 12 MR. SEFERIAN: Objection. Vague and ambiguous.
 13 THE WITNESS: It's either at the State
 14 Department of Education, the Department of Toxic
 15 Substances Control, or the division of the state
 16 architect.
 17 Q. BY MR. ELIASBERG: And it is in one of those
 18 offices in order to get their approval or their stamp of
 19 approval before it goes into the queue?
 20 A. It could be in one or more of those offices.
 21 The review process occurs simultaneously.
 22 Q. Do you have any estimate of the amount sought
 23 total for those applications that are in the division of
 24 state architect, Office of Toxic Substance Control or
 25 the Department of Education but that are not yet in the

1 queue?
 2 MR. SEFERIAN: Objection. Calls for
 3 speculation. Vague and ambiguous as to "application."
 4 Compound question.
 5 THE WITNESS: I have an estimate.
 6 Q. BY MR. ELIASBERG: And what is that estimate?
 7 A. The estimate is about \$19 billion. That
 8 includes the applications that are currently submitted,
 9 as well as the office of public school construction's
 10 estimate of the five-year need as determined by school
 11 districts when they submit their application to SPSC.
 12 Q. And on what did you rely to arrive at that
 13 estimate, what information?
 14 MR. SEFERIAN: Objection. Assumes facts not in
 15 evidence.
 16 THE WITNESS: It was information provided by
 17 the office of public school construction.
 18 Q. BY MR. ELIASBERG: Was there a specific person
 19 in that office who provided that information to you?
 20 A. I believe that the person who was in the
 21 meeting when that was discussed was either Bruce
 22 Hancock, H-a-n-c-o-c-k, or Phil Shearer, S-h-e-a-r-e-r.
 23 Q. Just want to be clear about the category of
 24 those applications or the group that is approved but
 25 unfunded.

1 Is there money still available out of the Prop
 2 1A funds to go -- that could go to some of these
 3 districts that are presently approved but unfunded?
 4 MR. SEFERIAN: Objection. Calls for
 5 speculation. Vague and ambiguous as to available. No
 6 foundation.
 7 THE WITNESS: Yes.
 8 Q. BY MR. ELIASBERG: Do you know how much --
 9 approximately how much money is available?
 10 MR. SEFERIAN: Same objections.
 11 THE WITNESS: Yes.
 12 Q. BY MR. ELIASBERG: What is that figure?
 13 A. The office of public school construction
 14 reported to the allocation board at the last meeting
 15 that there was a little less than \$900 million remaining
 16 from Proposition 1A and Prop 203, which was the
 17 proposition prior to Prop 1A.
 18 Q. Do you know, Of the applications that fall
 19 within the group that you call approved but unfunded,
 20 plus the applications that are in the queue, how many of
 21 those applications or what percentage of those
 22 applications are financial hardship applications?
 23 MR. SEFERIAN: Objection. No foundation.
 24 Calls for speculation.
 25 THE WITNESS: I don't know.

1 Q. BY MR. ELIASBERG: Do you know if there is
2 anybody who does know?
3 MR. HERRON: Objection. Calls for speculation.
4 THE WITNESS: Yes.
5 Q. BY MR. ELIASBERG: And who is that person?
6 A. The office of public school construction would
7 know.
8 Q. Would that, again, be Bruce Hancock and Phil
9 Shearer or Louisa Park?
10 A. Louisa.
11 MR. HERRON: Objection. Calls for speculation.
12 THE WITNESS: Louisa Park is the executive
13 director. The individual who administers the financial
14 hardship part of the program is Dave Zion, Z-i-o-n.
15 Q. BY MR. ELIASBERG: Are you aware of how many or
16 what percentage of those applications are facilities
17 hardship applications?
18 MR. SEFERIAN: Objection. No foundation.
19 Calls for speculation. Vague and ambiguous as to "those
20 applications."
21 MR. ELIASBERG: Let me clarify. I want the
22 record to be clear.
23 Q. Of those applications that are currently in the
24 approved but unfunded group that you earlier described
25 and those applications also that are in the queue, how

1 many of those are facility hardship applications or what
2 percentage of them?
3 MR. SEFERIAN: Objection. Calls for
4 speculation.
5 THE WITNESS: Of those that are in the queue or
6 approved but unfunded, I do not have an estimate.
7 Q. BY MR. ELIASBERG: Do you know if anybody at --
8 do you know if there's anybody at the office of public
9 school construction or elsewhere in the State Department
10 of Education or the department of general offices who
11 would have an estimate?
12 MR. SEFERIAN: Objection. Calls for
13 speculation.
14 THE WITNESS: Of the financial hardship
15 projects that are in the queue or approved but unfunded?
16 MR. ELIASBERG: Exactly.
17 THE WITNESS: Probably OPSC.
18 Q. BY MR. ELIASBERG: I want to make sure I'm
19 clear. You've mentioned the names of some people who
20 you think might have this information. Do you know if
21 those people have prepared actual summaries or charts or
22 documents that set forth all of this information?
23 MR. SEFERIAN: Objection. Calls for
24 speculation.
25 THE WITNESS: I have asked Mr. Hancock to give

1 me an estimate of the amount of financial hardship
2 projects that we can anticipate in the near future.
3 That estimate is about \$45 million. That does not
4 coincide with your question regarding how many are in
5 the queue or approved but unfunded.
6 Q. BY MR. ELIASBERG: Did Mr. Hancock provide you
7 with that \$45 million estimate?
8 A. Yes.
9 Q. And are you aware of the basis for his
10 estimate?
11 MR. SEFERIAN: Objection. Calls for
12 speculation. No foundation.
13 THE WITNESS: No.
14 Q. BY MR. ELIASBERG: Did you ask him what the
15 basis was?
16 A. No.
17 MR. ELIASBERG: Okay. This is a good time to
18 take a short break.
19 (Recess taken.)
20 THE WITNESS: One thing I want to correct.
21 Susie Lange reports to Scott Hill, who is the other
22 chief deputy.
23 Q. BY MR. ELIASBERG: I believe you said that
24 Leslie --
25 A. To Leslie Faucette.

1 Q. Is Leslie Faucette in that mix somehow?
2 A. There are two chief deputies, and we work very
3 closely with both of them.
4 Q. So technically Susie Lange is reporting to
5 Scott Hill?
6 A. On the organizational chart the line goes from
7 Susie to Scott Hill.
8 Q. Before the break we were talking about numbers
9 that are quite a bit bigger than my salary, so I want to
10 make sure that I understand what the components of them
11 are.
12 You had previously given, and correct me if I'm
13 wrong, a figure of \$19.8 billion. Did you use that
14 figure?
15 A. No.
16 Q. No?
17 A. In what regard?
18 Q. My understanding is that I was asking you about
19 a bunch of different categories of applications, one of
20 which was approved but unfunded, another was
21 applications that were in the queue, another was
22 applications that had been filed and were in the hands
23 of some offices in the Department of Education or the
24 Department of General Services but were not yet in the
25 queue, and I believe you also included within that -- we

1 also discussed a projection of eligibility going out
 2 five years.
 3 I understood the components of that to make up
 4 a \$19.8 billion figure.
 5 MR. ROSENBAUM: 19.
 6 MS. SCHECHTER: No point.
 7 MR. ELIASBERG: Okay. \$19 billion figure.
 8 Q. Am I incorrect on that?
 9 A. The \$19 billion figure is the estimate.
 10 Q. Okay. You talked about current eligibility, I
 11 believe you said, projected out five years; is that
 12 correct?
 13 A. In terms of the \$19 billion?
 14 Q. Yes.
 15 A. That's my understanding of what OPSC did to
 16 come up with that figure.
 17 Q. Can you explain what current eligibility means
 18 in that context, current eligibility projected out five
 19 years?
 20 MR. SEFERIAN: Objection. No foundation.
 21 Calls for speculation.
 22 THE WITNESS: My understanding is that it means
 23 an unhoused child.
 24 Q. BY MR. ELIASBERG: And what is the definition
 25 of an "unhoused child"?

1 A. It gets pretty technical because there are some
 2 exclusions. It's, in essence, a child that does not
 3 have a seat in a school, but there are various
 4 exclusions that are folded into the mix to determine it.
 5 Q. Okay. Is that current eligibility based solely
 6 on districts that have filed applications attempting to
 7 establish their eligibility?
 8 MR. HERRON: Objection. Vague and ambiguous.
 9 Calls for speculation.
 10 THE WITNESS: That eligibility meaning what?
 11 We still referring to the \$19 billion figure?
 12 MR. ELIASBERG: Which I understand includes
 13 within -- well, yes. It's a figure that looks at the
 14 current -- the cost to house the currently eligible
 15 projected out five years.
 16 MR. SEFERIAN: Objection. Vague and ambiguous.
 17 Calls for speculation. No foundation.
 18 Q. BY MR. ELIASBERG: I'm not trying to confuse
 19 you. It may appear that I am, but I'm not. My
 20 understanding is that the 19 billion is totalling up the
 21 current applications and includes within it the cost of
 22 housing students who are not only currently unhoused but
 23 are projected to be unhoused based on this five-year
 24 projection; is that correct?
 25 MR. SEFERIAN: Okay. Vague and ambiguous as to

1 "applications." Calls for speculation.
 2 THE WITNESS: That's my understanding of the
 3 basis for the figure that OPSC prepared.
 4 Q. BY MR. ELIASBERG: Okay. Have you or anyone in
 5 your office attempted to contact districts who have not
 6 filed applications for new school construction or
 7 modernization to determine whether they have any or
 8 project having needs -- project having needs because
 9 they will have unhoused students?
 10 MR. SEFERIAN: Objection. No foundation.
 11 Compound question. Vague and ambiguous as to "needs."
 12 Calls for speculation.
 13 MR. HERRON: I'm sorry, could we have that,
 14 please, reread.
 15 MR. ELIASBERG: Let me strike it.
 16 Q. Have you or anyone in your office contacted
 17 districts that have not filed applications for funds for
 18 new school construction or modernization to determine
 19 whether they have modernization needs or have unhoused
 20 students?
 21 MR. SEFERIAN: Objection. Compound question.
 22 Vague and ambiguous as to "funds" and "needs."
 23 THE WITNESS: I have not, and I'm not aware of
 24 any of my staff who have.
 25 Q. BY MR. ELIASBERG: Are you aware of whether

1 anybody at the OPSC or the SAB has done that?
 2 MR. SEFERIAN: Objection. Calls for
 3 speculation. No foundation.
 4 THE WITNESS: I'm not aware of any such
 5 contacts.
 6 Q. BY MR. ELIASBERG: Anybody else in the
 7 Department of Education who has done that?
 8 MR. SEFERIAN: Objection. Vague and ambiguous.
 9 Calls for speculation.
 10 THE WITNESS: I'm not aware of anyone else in
 11 the Department of Education.
 12 Q. BY MR. ELIASBERG: Do you know if there are any
 13 districts that currently have unhoused students who have
 14 not applied for funds for new school construction?
 15 MR. SEFERIAN: Objection. No foundation.
 16 Calls for speculation. Vague and ambiguous as to
 17 "unhoused students."
 18 MR. HERRON: Asked and answered, in part.
 19 MR. SEFERIAN: Vague and ambiguous as to
 20 "funds."
 21 THE WITNESS: Do I have personal knowledge of a
 22 specific school district, is that what you're saying?
 23 MR. ELIASBERG: Let me start there.
 24 MR. SEFERIAN: Same objections.
 25 THE WITNESS: I'm not aware of any specific

1 school district. We're talking about a moving train,
2 and school districts that don't have unhoused kids today
3 may have unhoused kids tomorrow, next week, next month.
4 Q. BY MR. ELIASBERG: You talked earlier about --
5 I think you used the phrase unhoused child. Under the
6 current school facilities program, are students who are
7 in multi-track schools where the school is receiving
8 multi-track year-around op grants considered unhoused?

9 MR. SEFERIAN: Objection. Calls for
10 inadmissible opinion. Vague and ambiguous as to
11 "multi-track schools." Vague and ambiguous as to "op
12 grants." No foundation. Calls for speculation.

13 THE WITNESS: The school district has the
14 option of determining the number of students that they
15 will claim for the operational grant, which then is
16 deducted from their eligibility.

17 Q. BY MR. ELIASBERG: Have you or any of your
18 staff made an attempt to figure out what it would cost
19 to build enough schools -- let me do this differently.

20 I understand your testimony that if a district
21 is receiving operational grants, multi-track operational
22 grants for a student, they cannot claim that student as
23 unhoused for the purposes of applying for funding for
24 new school construction; is that correct?

25 MR. SEFERIAN: Objection. Misstates the

1 question.

2 THE WITNESS: Yes.

3 Q. BY MR. ELIASBERG: And what is -- was it you
4 who did that, or somebody on your staff?

5 A. My staff.

6 Q. And who did that analysis?

7 A. Fred Yeager.

8 Q. Okay. And what was the -- do you know what the
9 amount was?

10 MR. SEFERIAN: Objection. Calls for
11 speculation.

12 THE WITNESS: At the time that we did the
13 analysis, which was several months ago, it was about \$3
14 billion.

15 Q. BY MR. ELIASBERG: Is that 3 billion over and
16 above the \$19 billion figure that we were talking about
17 earlier?

18 MR. SEFERIAN: Objection. Vague and ambiguous.

19 THE WITNESS: I'm trying to determine whether
20 there's any overlap in the methodology. There could be
21 some overlap in the methodology and how the figures
22 shook out, but I believe it's probably over and above
23 that figure.

24 Q. BY MR. ELIASBERG: Okay. Have you or any
25 member of your staff attempted to do an -- I'm sorry.

1 witness' testimony.

2 MR. HERRON: Argumentative.

3 THE WITNESS: There are some exemptions.

4 Q. BY MR. ELIASBERG: Can you tell me what those
5 exemptions are?

6 MR. SEFERIAN: Objection. Calls for an
7 inadmissible opinion.

8 THE WITNESS: I cannot tell you all of them. I
9 can tell you that if there are students that are in
10 classrooms that are less than 700 square feet, if there
11 are students that are in portables that exceed a certain
12 percentage of the permanent facilities, those students,
13 as of SB 50 being implemented, can be claimed for
14 operational grants and not be deducted from the school
15 district's eligibility.

16 Q. BY MR. ELIASBERG: Okay. Have you or any
17 member of your staff ever attempted to figure out
18 approximately how much money would be required to build
19 the schools necessary to move the students who are
20 currently on multi-track -- in multi-track schools off
21 to the more traditional calendar, the cost of building
22 the schools necessary to do that?

23 MR. SEFERIAN: Objection. Calls for an
24 inadmissible opinion. Incomplete hypothetical. Vague
25 and ambiguous as to "traditional schools." Compound

1 Did Mr. Yeager memorialize that \$3 billion
2 figure and his methodology in any document or report?

3 A. Yes.

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

6 Q. BY MR. ELIASBERG: Do you have a copy of that?

7 A. Yes.

8 Q. Do you happen to know what the title of that
9 report is, if there is a title?

10 A. It was a one pager that we put together for the
11 State Board of Education. I don't know what the title
12 is.

13 Q. Do you remember, did some member of the State
14 Board of Education request of you or your staff to
15 prepare that?

16 A. Yes.

17 Q. Do you remember who made that request?

18 A. No, I don't.

19 Q. Do you remember approximately when the request
20 was made?

21 A. Approximately a year ago.

22 Q. Do you know what methodology Mr. Yeager used to
23 arrive at the figure he arrived at?

24 MR. SEFERIAN: Objection. Calls for
25 speculation.

1 THE WITNESS: I did at one time. I don't
 2 recall.
 3 Q. BY MR. ELIASBERG: Okay. Do you remember if
 4 the methodology is set forth in the document, or whether
 5 it simply gives the conclusion?
 6 MR. SEFERIAN: Objection. Calls for
 7 speculation.
 8 MR. HERRON: Compound.
 9 THE WITNESS: In the one pager the methodology
 10 is not described, but I'm sure he has documented the
 11 method that he used.
 12 Q. BY MR. ELIASBERG: Okay. Mr. Brooks, have you
 13 or any member of your staff ever done an analysis to
 14 attempt to determine what the cost of construction would
 15 be in order to reduce the number of students in portable
 16 classrooms down to zero?
 17 MR. HERRON: Objection. Vague and ambiguous.
 18 THE WITNESS: Not down to zero.
 19 Q. BY MR. ELIASBERG: Okay. Do I understand you,
 20 that you've done an analysis of the cost of reducing the
 21 number of students in portable classrooms by some
 22 percentage?
 23 A. Yes.
 24 Q. And what was that analysis? I'm not asking for
 25 the number yet, I'm trying to understand. You did an

1 analysis of the cost of reducing the students in
 2 portables to what percentage?
 3 MR. HERRON: Hold on. Objection. Compound.
 4 There were a couple of questions there. Do you
 5 want him to answer the last one?
 6 MR. ELIASBERG: I'm trying to understand what
 7 the analysis was that you or a member of your staff did
 8 with respect to the cost of reducing the percentage of
 9 students in portables.
 10 THE WITNESS: We looked at the number of
 11 nonpermanent portables.
 12 Q. BY MR. ELIASBERG: What's your definition of a
 13 "nonpermanent portable"? Just so we're all on the same
 14 page, what's your definition of a portable as you're
 15 using that term here?
 16 A. It's a facility that's movable as opposed to a
 17 permanent facility.
 18 Q. And what's your definition of a nonpermanent
 19 portable?
 20 A. We estimated that 75 percent of the portables
 21 out there would be what we'd like to eliminate.
 22 Q. And why is it -- what is it about that 75
 23 percent that makes those the ones that you would like to
 24 eliminate?
 25 MR. SEFERIAN: Objection. Vague and ambiguous.

1 MR. HERRON: Misconstrues his testimony.
 2 MR. ELIASBERG: Let me rephrase.
 3 Q. Are there some portables that you believe are
 4 preferable to others?
 5 MR. SEFERIAN: Objection. Vague and ambiguous
 6 as to "preferable." Overly broad.
 7 THE WITNESS: Preferable to other portables?
 8 MR. ELIASBERG: I heard you use the phrase, I
 9 believe, portables that you would prefer to eliminate.
 10 MR. SEFERIAN: Objection. Misstates the
 11 witness's testimony.
 12 MR. ELIASBERG: Can you just go back and read
 13 back Mr. Brook's answer where he used the -- I think in
 14 the same sentence "eliminate" and "portables."
 15 (Record read.)
 16 Q. BY MR. ELIASBERG: Can explain what you mean by
 17 what we would like to eliminate?
 18 A. If we were to get students out of portables,
 19 what would the cost be to get them out of portables and
 20 into permanent facilities.
 21 Q. And why do you want to do that?
 22 MR. SEFERIAN: Objection. Misstates the
 23 witness' testimony. Assumes facts not in evidence.
 24 Vague and ambiguous as to "you."
 25 THE WITNESS: There are many school campuses

1 that have portables on them that are taking up
 2 playground space, that they're overcrowded.
 3 Q. BY MR. ELIASBERG: When you say they're taking
 4 up playground space and they're overcrowded, is that the
 5 same thing, or are those two reasons why you might want
 6 to eliminate those portables?
 7 MR. SEFERIAN: Objection. Misstates the
 8 witness' testimony.
 9 THE WITNESS: Both situations occur in the real
 10 world out there.
 11 Q. BY MR. ELIASBERG: Approximately, do you know
 12 how many portables are currently being used in schools,
 13 K through 12 public schools in California?
 14 MR. SEFERIAN: Objection. Calls for
 15 speculation. No foundation.
 16 THE WITNESS: An accurate figure does not
 17 exist.
 18 Q. BY MR. ELIASBERG: Do you know approximately
 19 what the figure is?
 20 MR. SEFERIAN: Objection. Lacks foundation.
 21 Calls for speculation. Vague and ambiguous as to that
 22 figure.
 23 THE WITNESS: Several years ago when we tried
 24 to determine that figure, the best estimate at the time
 25 was about 75,000.

1 Q. BY MR. ELIASBERG: Do you know how that figure
2 was arrived at?
3 MR. SEFERIAN: Objection. Calls for
4 speculation.
5 THE WITNESS: Yes.
6 Q. BY MR. ELIASBERG: How was that figure arrived
7 at?
8 A. We contacted the portable manufacturers, and we
9 contacted the office of public school construction.
10 Q. How long ago did you do that?
11 A. That figure was developed probably two or three
12 years ago.
13 Q. Do you have any knowledge as to whether that
14 figure is larger today?
15 MR. SEFERIAN: Objection. No foundation.
16 Calls for speculation. Overly broad. Calls for an
17 opinion. Vague and ambiguous as to that figure.
18 THE WITNESS: I would assume that it's larger
19 today.
20 Q. BY MR. ELIASBERG: What's the basis of your
21 assumption?
22 A. Increase in student population.
23 Q. Did you prepare -- I believe you said you were
24 trying to estimate the cost of building permanent
25 facilities and reducing the number of students who were

1 in portables; is that correct?
2 MR. SEFERIAN: Objection. Misstates the
3 witness' testimony. Vague and ambiguous as to "you."
4 THE WITNESS: We were trying to determine the
5 cost of putting students into permanent facilities and
6 getting them out of portable classrooms.
7 Q. BY MR. ELIASBERG: When you say "we," to whom
8 are you referring?
9 A. Me and my staff.
10 Q. Who on your staff worked on that process of
11 trying to figure out the cost?
12 A. Fred Yeager.
13 Q. Anybody else on your staff on a nonclerical
14 basis?
15 A. No, primarily Fred.
16 Q. Why were you doing this report or doing this
17 analysis?
18 MR. SEFERIAN: Objection. No foundation.
19 Vague and ambiguous as to "you."
20 MR. ROSENBAUM: The question is fine.
21 Q. BY MR. ELIASBERG: Why were you and Mr. Yeager
22 doing this analysis?
23 MR. SEFERIAN: Objection. Vague and ambiguous
24 as to "this analysis."
25 THE WITNESS: Well, for the same reason that we

1 were trying to figure out what it would cost to take all
2 students off of multi-track year-around.
3 Q. BY MR. ELIASBERG: What reason was that?
4 A. To see what it would cost to build permanent
5 facilities in a nonmulti-track -- on a nonmulti-track
6 year-around basis throughout the state.
7 Q. Was there a reason why you were trying to
8 figure out what that would cost?
9 MR. SEFERIAN: Objection. Vague and ambiguous
10 as to "you."
11 THE WITNESS: We were preparing for a state
12 bond measure.
13 Q. BY MR. ELIASBERG: And did any member of the
14 Board of Education ask you to prepare --
15 A. No.
16 Q. -- this cost?
17 A. No.
18 Q. Did any member of the Department of Education
19 ask you to prepare this cost?
20 MR. SEFERIAN: Objection. Vague and ambiguous
21 as to "you."
22 THE WITNESS: No.
23 Q. BY MR. ELIASBERG: Did anyone in the governor's
24 office ask you to prepare this cost analysis?
25 A. No.

1 Q. Did you prepare this analysis on your own
2 initiative?
3 A. Yes.
4 Q. Okay. Why did you think it would -- what
5 purpose did you think it would serve with respect to the
6 coming bond?
7 MR. HERRON: The analysis that was conducted?
8 MR. ELIASBERG: Yes.
9 MR. SEFERIAN: Objection. Argumentative.
10 Asked and answered.
11 THE WITNESS: The bond is used to construct
12 permanent facilities. We were trying to determine if
13 anybody were placed in a permanent facility, what the
14 cost would be.
15 Q. BY MR. ELIASBERG: And I'm sorry if I asked you
16 this. Do you remember the figure that you and
17 Mr. Yeager arrived at, the cost?
18 A. I was waiting for you to get to that one. Yes,
19 I do.
20 Q. I was trying to keep you in suspense. And do
21 you remember what that figure was?
22 A. Yes.
23 Q. What was it?
24 A. \$18 billion.
25 Q. Mr. Brooks, was this figure memorialized in a

1 document?

2 MR. SEFERIAN: Objection. Vague and ambiguous

3 as to "this figure." Calls for speculation.

4 Q. BY MR. ELIASBERG: Was the \$18 billion figure

5 memorialized in a document?

6 A. Yes.

7 Q. Was the methodology that you and Mr. Yeager

8 used to arrive at that figure memorialized in a

9 document?

10 MR. SEFERIAN: Objection. Assumes facts not in

11 evidence. Calls for speculation.

12 THE WITNESS: Not in the document.

13 Q. BY MR. ELIASBERG: Was it -- did you or

14 Mr. Yeager set down on paper anywhere the methodology

15 that you used?

16 MR. HERRON: A description of the methodology?

17 MR. ELIASBERG: Yes, or simply the

18 multiplication of this number of portables, this cost.

19 Q. Are there documents by which somebody could

20 figure out how you arrived at the \$18 billion figure?

21 MR. SEFERIAN: Objection. Calls for

22 speculation.

23 THE WITNESS: Yes, I believe we could document

24 the methodology.

25 Q. BY MR. ELIASBERG: You said you did this

1 analysis a couple of years ago, correct?

2 MR. SEFERIAN: Objection. Vague and ambiguous

3 as to "this analysis." Asked and answered.

4 MR. HERRON: Misstates the witness' testimony.

5 MR. ELIASBERG: Let me ask again. You may have

6 already told me.

7 Q. Approximately how many years ago did you do

8 this?

9 A. Approximately two or three.

10 Q. And did you create the documents

11 contemporaneously with finishing the analysis?

12 MR. SEFERIAN: Objection. Vague and ambiguous

13 as to "these documents."

14 Q. BY MR. ELIASBERG: I'm just trying to

15 understand if you and Mr. Yeager came to some

16 conclusions and then didn't put them on paper until a

17 year later, or did you do it around the same time?

18 MR. SEFERIAN: Objection. Compound question.

19 THE WITNESS: The same time.

20 Q. BY MR. ELIASBERG: Okay. To whom did you give

21 this document, if anybody?

22 A. It was in the same document that we prepared

23 the analysis for the multi-track year-around, and I

24 believe we shared that with the State Board of

25 Education.

1 Q. If there's no common practice, you can tell me,

2 but is there a general practice when you share something

3 with the State Board of Education, is there a particular

4 person you send it to or a means by which you distribute

5 it to the State Board of Education?

6 MR. SEFERIAN: Objection. Vague and ambiguous

7 as to "you." Compound question.

8 THE WITNESS: Yes.

9 Q. BY MR. ELIASBERG: And what is that process?

10 A. We submit the documents to the staff of the

11 State Board of Education and they put it in an agenda.

12 Q. I'll break it down. You said there's a

13 specific, I think, one-page document that set down the

14 figure. Is that something that you have in your files?

15 A. Yes.

16 Q. And the documents that I believe you said would

17 support -- explain the methodology or the way you

18 arrived at that conclusion, are those documents in your

19 files?

20 MR. SEFERIAN: Objection. Misstates the

21 witness' testimony.

22 THE WITNESS: I said that we could probably

23 document the methodology. I don't have in my possession

24 a document that does that.

25 Q. BY MR. ELIASBERG: Do you know, is there

1 anybody else on your staff who does have that document

2 or documents?

3 MR. SEFERIAN: Objection. Calls for

4 speculation. No foundation.

5 THE WITNESS: Mr. Yeager might.

6 Q. BY MR. ELIASBERG: Did you send this document

7 to anybody else? And let me give you some specific

8 examples. Did you forward this document to the

9 superintendent of public instruction?

10 MR. SEFERIAN: Objection. Vague and ambiguous

11 as to "this document."

12 MR. ELIASBERG: I'm referring to the one-page

13 document.

14 THE WITNESS: The process would have included

15 briefing the superintendent on items that were going

16 before the State Board of Education.

17 Q. BY MR. ELIASBERG: Do you remember when you did

18 that briefing?

19 MR. SEFERIAN: Objection. Assumes facts not in

20 evidence.

21 THE WITNESS: Would have been around the time

22 that we prepared the document two to three years ago.

23 Q. BY MR. ELIASBERG: Did you provide that report

24 to anybody in the governor's office?

25 MR. SEFERIAN: Objection. Calls for

1 speculation.

2 THE WITNESS: I did not provide that report to

3 anybody in the governor's office.

4 Q. BY MR. ELIASBERG: Do you know if Mr. Yeager or

5 anybody on your staff provided it?

6 MR. SEFERIAN: Objection. Calls for

7 speculation.

8 THE WITNESS: Mr. Yeager certainly would not

9 have without my knowledge.

10 Q. BY MR. ELIASBERG: I figured that was the case.

11 Do you recall if anybody in the governor's

12 office asked you for that document?

13 A. I do not recall getting such a request.

14 Q. Did you provide that document to the secretary

15 of education?

16 MR. SEFERIAN: Objection. Vague and ambiguous

17 as to --

18 MR. ELIASBERG: California secretary of

19 education.

20 MR. SEFERIAN: Vague and ambiguous as to

21 "document."

22 THE WITNESS: Not to my knowledge.

23 Q. BY MR. ELIASBERG: Do you remember if the

24 secretary of education requested that document from you?

25 A. I do not remember such a request.

1 Q. Did you ever have any discussions about this

2 document or the analysis in this document with members

3 of the Board of Education?

4 MR. SEFERIAN: Objection. Vague and ambiguous

5 as to "this document."

6 THE WITNESS: Discussions with the Board? It

7 was presented to them in a regular board meeting.

8 Q. BY MR. ELIASBERG: What do you mean by -- how

9 was it presented to them?

10 A. It was an agenda -- an item on their agenda.

11 Q. And do you remember giving a presentation

12 explaining what the document was and what was in it?

13 A. Yes, I'm sure we did.

14 Q. And do you remember if it was you who did that,

15 or Mr. Yeager?

16 A. Probably would have been both of us.

17 Q. Do you remember any questions that any members

18 of the Board asked you?

19 A. No.

20 Q. Did any members of the Board ask you why you

21 had done this, why you prepared this document?

22 MR. SEFERIAN: Objection. Calls for

23 speculation.

24 THE WITNESS: The Board requested an update on

25 school facilities issues. They did not request

1 specifically the content of the document, they requested

2 an update on school facilities issues, and that is what

3 we chose to brief them on.

4 Q. BY MR. ELIASBERG: Okay. Do you remember any

5 other subjects that you chose to brief them on in

6 response to that request that they made of you?

7 MR. SEFERIAN: Objection. Vague and ambiguous.

8 MR. HERRON: Could we have that reread, please.

9 (Record read.)

10 MR. SEFERIAN: Objection. Vague and ambiguous

11 as to "they."

12 MR. HERRON: You might want to try that one

13 again.

14 Q. BY MR. ELIASBERG: At the time that you briefed

15 them about that document and the cost of building

16 permanent buildings to bring students out of portables,

17 do you remember any other subjects that you briefed them

18 on having to do with school facilities?

19 A. In that same document?

20 Q. I'm actually talking about the briefing itself.

21 At the time that you were talking to them on that

22 subject, the cost of building permanent schools to move

23 kids off of portables, do you remember any other topics?

24 MR. SEFERIAN: Objection. Calls for

25 speculation.

1 THE WITNESS: I believe we used the same

2 document as the basis for the briefing, and it had new

3 construction needs and modernization needs as well on

4 the one pager.

5 Q. BY MR. ELIASBERG: When the Board requested

6 this briefing from you on school facilities issues, why

7 did you choose to address the subject of the cost of

8 moving students out of portables?

9 MR. SEFERIAN: Objection. Calls for

10 speculation.

11 MR. HERRON: Asked and answered.

12 THE WITNESS: Because it was part of the

13 development of a figure to identify the need for new

14 construction.

15 MR. HAJELA: Peter, can I again ask a real

16 quick clarifying question?

17 MR. SEFERIAN: I'd prefer, in fairness to the

18 witness, for you to go another time, please.

19 MR. HAJELA: That's fine.

20 MR. ROSENBAUM: We're all very sensitive to

21 Mr. Brooks' time and we're also sensitive to how many

22 depositions have to be done in this case, and I want to

23 say for the record that the objections you're making

24 when a questioner says do you know or do you recall,

25 that's not a basis for a speculation question. And when

1 a witness talks about a document, and I listened to
2 Mr. Brooks' words, he used the word document, and the
3 questioner then refers to the document in the next
4 sentence, that is not a basis for a vagueness objection.

5 I am very close to recommending that your
6 objections be put in front of a magistrate because they
7 are delaying the deposition and they are improperly
8 interfering with it. You're welcome to put on any
9 appropriate objection you want, but I find your
10 objections not to be appropriate in the context of
11 facilitating this deposition.

12 MR. SEFERIAN: I believe all the objections are
13 appropriate and properly made and I have a sound basis.
14 And I've not commented upon the numerous delays that
15 you've occasioned by communicating with the counsel who
16 is questioning the witness.

17 MR. HERRON: I mean, I just have to add, thanks
18 for the lesson on objections, but I don't think you're
19 right at all. I don't think it's delaying the
20 deposition and, quite frankly, you shouldn't be speaking
21 on the record. There's one attorney who can be speaking
22 on the record. It's him. Let's keep it to that,
23 please.

24 MR. ROSENBAUM: Would you like a break?

25 MR. HERRON: Yeah, why don't we take five.

1 THE WITNESS: Prop 1A was passed in November of
2 '98. I returned to the division December of '98.

3 Q. BY MR. ELIASBERG: So it would have been
4 difficult for you to do that. So sometime after
5 December of '98 is when you did this work with
6 Mr. Yeager on the portables.

7 Are you aware of discussion of a new bond for
8 school construction, school modernization?

9 MR. HERRON: You mean currently?

10 MR. ELIASBERG: Yes.

11 THE WITNESS: Yes.

12 Q. BY MR. ELIASBERG: Has the State Board of
13 Education asked you or your staff to do any analyses
14 relevant to the possibility of the putting of a new bond
15 on the ballot?

16 A. No.

17 Q. Have you or any members of your staff
18 independently undertaken a specific analysis relevant to
19 the passage -- not relevant, but that are prompted by
20 the possibility of a new bond being on the ballot?

21 MR. SEFERIAN: Objection. Calls for
22 speculation.

23 THE WITNESS: Yes.

24 Q. BY MR. ELIASBERG: And what are those?

25 A. What are what?

1 (Recess taken.)

2 Q. BY MR. ELIASBERG: You doing okay, Mr. Brooks?

3 A. Yeah.

4 Q. Okay. It is your memory that you and
5 Mr. Yeager did this work with figuring out the cost of
6 moving students out of portables and into permanent
7 classrooms prior to the passage of Prop 1A and SB 50?

8 A. I don't believe it was.

9 Q. You believe it was after the passage of Prop
10 1A?

11 A. I believe it was.

12 Q. Okay. Did you do any analysis -- prior to the
13 passage of Prop 1A, did the school board ask you for any
14 particular -- to look at any particular issues with
15 school construction needs and the cost of those school
16 construction needs?

17 MR. SEFERIAN: Objection. Vague and ambiguous
18 as to "you."

19 MR. ELIASBERG: Let's say in the year prior to
20 the passage of Prop 1A.

21 And I want to clarify. Unless I say
22 differently, when I say you, I mean you and members of
23 your staff. And if it's not, then I'll specify other
24 people, other departments or you specifically, but
25 otherwise it's you and members of your staff.

1 Q. What are those analyses? You said yes. My
2 question was have you done any analyses prompted by the
3 fact that there is the possibility of a new bond being
4 on the ballot. What are those analyses?

5 A. The analysis of the need for new construction,
6 modernization, fund the backlog.

7 Q. What do you mean by "fund the backlog"?

8 A. The \$3.8 billion figure that's rising that we
9 discussed earlier, the approved but unfunded and the
10 projects in the queue and the projects that are likely
11 to be submitted to the state requesting state funding.

12 Q. And with respect to that back -- I'm sorry,
13 were you finished?

14 A. Uh-huh.

15 Q. With respect to that approved but unfunded and
16 the people in the queue and so on, what are you
17 attempting to figure out with respect to that, or what
18 are you attempting to put down and analyze?

19 MR. SEFERIAN: Objection. Assumes facts not in
20 evidence.

21 MR. HERRON: Vague and ambiguous.

22 THE WITNESS: We're attempting to identify the
23 need for facilities so that we can go to the legislature
24 and try to get a bond that is of sufficient size to meet
25 those needs.

1 Q. BY MR. ELIASBERG: Okay. Have you completed
2 that analysis?
3 A. Yes.
4 Q. Okay. And have you set forth that analysis
5 in -- again, you or any members of your staff have you
6 forth that analysis in any document or report?
7 A. Yes.
8 Q. Is there a title to that document or report?
9 A. The superintendent of public instruction gave
10 testimony before the joint legislative conference
11 committee, and included in her testimony was a figure.
12 Q. And am I to understand that that figure is
13 based on the analysis that you gave her?
14 A. It is based on analysis of a combination of
15 individuals that were involved in developing the
16 analysis, not just us.
17 Q. Who else was involved?
18 MR. SEFERIAN: Objection. Calls for
19 speculation.
20 Q. BY MR. ELIASBERG: Who else that you know was
21 involved?
22 A. The education coalition.
23 Q. And for, I think, probably -- for the record,
24 what does the education coalition consist of?
25 A. Well, I'll probably miss some of them, but it's

1 basically the CTA, ACSA, CSBA.
2 Q. What does ACSA stand for?
3 A. Association of California School
4 Administrators.
5 Q. Have you seen the materials or the documents
6 that the education coalition prepares?
7 MR. SEFERIAN: Objection. Vague and ambiguous.
8 Vague as to time.
9 THE WITNESS: Yes.
10 Q. BY MR. ELIASBERG: Generally what were the
11 content or subject matter of those materials?
12 MR. SEFERIAN: Objection. Overly broad. Calls
13 for a narrative.
14 MR. HERRON: I take it you mean in connection
15 with this upcoming proposed bond?
16 MR. ELIASBERG: Thank you, Dave. That's
17 exactly right.
18 THE WITNESS: They were attempting to identify
19 the need for new construction and modernization, fund
20 the backlog.
21 Q. BY MR. ELIASBERG: So both the material that
22 you were preparing and the material of the coalition,
23 both groups were attempting to figure out what the size
24 of the need was; is that correct?
25 A. Yes.

1 Q. Was there anybody else who submitted materials
2 to the superintendent of public instruction that
3 provided the basis for her testimony at the joint
4 committee?
5 MR. SEFERIAN: Objection. Calls for
6 speculation.
7 THE WITNESS: I'm sure we conferred with
8 various entities, such as the office of public school
9 construction and staff within the state senate and state
10 assembly education committees. We tried to pool
11 everybody's body of knowledge.
12 Q. BY MR. ELIASBERG: In the end, was there one
13 set of materials, sort of a joint set of materials given
14 to the superintendent, or did different groups, like
15 your group and the education coalition, independently
16 provide her with materials?
17 MR. SEFERIAN: Objection. Calls for
18 speculation.
19 MR. HERRON: Compound.
20 THE WITNESS: We basically shared the education
21 coalition figures with the superintendent.
22 Q. BY MR. ELIASBERG: Make sure I understand.
23 What do you mean we shared them with the superintendent?
24 A. When we were working with her on developing her
25 testimony, we gave her the figures that were developed

1 by the education coalition.
2 Q. Did you also give her figures separate from
3 those that you had developed with members of your staff?
4 A. No.
5 Q. Did you agree or feel that the numbers that the
6 education coalition arrived at were correct?
7 MR. SEFERIAN: Objection. Overly broad. Calls
8 for an inadmissible opinion. Vague and ambiguous as to
9 "correct." Vague and ambiguous.
10 THE WITNESS: There are various ways to slice
11 the pie and determine what the total need is. Based on
12 the -- based on the way that they chose to do it, we
13 accepted that.
14 Q. BY MR. ELIASBERG: Was it your opinion that
15 they chose the proper methodology to do it, to come to
16 figure out what the need was?
17 MR. SEFERIAN: Objection. No foundation.
18 Calls for speculation.
19 Q. BY MR. ELIASBERG: In your opinion, was it a
20 reasonable conclusion that they reached?
21 A. Yes.
22 Q. I think we were talking about whether you had
23 prepared, you and your staff had prepared any materials
24 or analyses prompted by the possibility of there being a
25 bond measure, a school facilities bond measure on the

1 new ballot.
 2 Did anyone in the Department of Education
 3 outside of your division ask you to prepare any kind of
 4 analysis with respect to this new bond?
 5 MR. HERRON: Haven't we been down this road? I
 6 object as asked and answered. You may respond.
 7 THE WITNESS: Yes.
 8 Q. BY MR. ELIASBERG: Who was that?
 9 A. The staff to the conference committee.
 10 Q. Did they ask you -- what did they ask you to
 11 prepare?
 12 A. They wanted us to comment on what we thought
 13 the total need would be and what the level of the bond
 14 measure should be.
 15 Q. And did anyone in the governor's office ask you
 16 to prepare any analysis or memorandum?
 17 A. No.
 18 Q. Okay. Did anyone from the secretary of
 19 education's office ask you to prepare any analysis?
 20 MR. SEFERIAN: Objection. Asked and answered.
 21 THE WITNESS: No.
 22 Q. BY MR. ELIASBERG: With respect to the work you
 23 did with regard to the cost of moving students out of
 24 portables, did you at that time or subsequent to then do
 25 any analysis of which schools had lost playground space

1 as a result of putting up portables?
 2 A. No.
 3 Q. Did you attempt to identify particular schools
 4 or districts that had lost space?
 5 MR. SEFERIAN: Objection. Vague and ambiguous
 6 as to "lost space."
 7 THE WITNESS: No.
 8 Q. BY MR. ELIASBERG: I think I know, but I'm just
 9 trying to complete the record. Did you attempt to
 10 figure out the SES or the racial and ethnic nature,
 11 makeup of the districts that had a significant number of
 12 portables?
 13 MR. SEFERIAN: Objection. Vague and ambiguous
 14 as to "significant number of portables." Vague as to
 15 time.
 16 MR. HERRON: Asked and answered as well.
 17 THE WITNESS: No.
 18 Q. BY MR. ELIASBERG: Did the Board of Education
 19 ask you to do any analysis like that?
 20 A. No.
 21 Q. Did anyone in the governor's office ask you to
 22 do that?
 23 A. No.
 24 Q. And did anyone in the secretary of education's
 25 office ask you to do that?

1 MR. SEFERIAN: Objection. Asked and answered.
 2 THE WITNESS: No.
 3 Q. BY MR. ELIASBERG: Okay. Since you arrived at
 4 that figure we discussed before, I think the number was
 5 \$18 billion, have you attempted to update that analysis?
 6 MR. HERRON: Could we have the question reread.
 7 (Record read.)
 8 MR. HERRON: I'll object as vague and
 9 ambiguous.
 10 THE WITNESS: The figure was 19 billion, and
 11 the answer is yes.
 12 Q. BY MR. ELIASBERG: And when did you attempt to
 13 update that?
 14 A. When the conference committee was announced and
 15 started to convene.
 16 Q. And what steps did you take in order to update
 17 that figure?
 18 A. We basically looked at the education coalition
 19 documents and determined whether or not we would support
 20 those.
 21 Q. And did the education coalition documents make
 22 an estimate for the number of portables that were in
 23 California public schools?
 24 MR. SEFERIAN: Objection. Calls for
 25 speculation.

1 THE WITNESS: I wasn't referring to the
 2 portables. I was referring to the estimate that we
 3 established regarding the need for the amount of the
 4 next state bond measure.
 5 Q. BY MR. ELIASBERG: Perhaps there's some
 6 confusion. You testified earlier that you and
 7 Mr. Yeager came up with a figure, and I believe the
 8 number was 18 billion, to dramatically reduce the number
 9 of students who were in portables and put them in
 10 permanent classrooms. And I believe you testified you
 11 did that about two or three years ago; is that correct?
 12 A. Yeah. If you're talking about that \$18 billion
 13 regarding the portables, no, we have not attempted to
 14 update that.
 15 Q. Has anyone asked you to update that?
 16 A. No.
 17 Q. Anyone in the Department of Education?
 18 A. No.
 19 Q. Or the Board of Education?
 20 A. No.
 21 Q. Anyone in the governor's office asked you to do
 22 that?
 23 A. No.
 24 Q. Has the size of California -- if you know, has
 25 the size of California's student population increased in

1 the two to three years since you did that analysis?
 2 A. Yes.
 3 Q. Do you know approximately how much larger it is
 4 now than it was, let's say, three years ago?
 5 MR. SEFERIAN: Objection. No foundation.
 6 MR. HERRON: You really are asking him to
 7 speculate even though you phrase it differently.
 8 MR. SEFERIAN: Vague and ambiguous as to
 9 "student population."
 10 Q. BY MR. ELIASBERG: If you have no idea, that's
 11 fine. If you have looked at figures that give you a
 12 basis for knowing how much larger the population is in
 13 the last 30 years, I would want your answer. If you
 14 don't know the demographics, that's fine.
 15 A. I do not know in the last three years what the
 16 increase is.
 17 Q. Do you know what it is over the last five
 18 years?
 19 A. No.
 20 Q. Is there any figure within the last, let's say,
 21 seven or eight years that you could break it down and
 22 say you know the increase for that period of time?
 23 MR. SEFERIAN: Objection. Vague and ambiguous
 24 as to increase.
 25 THE WITNESS: No.

1 Q. BY MR. ELIASBERG: Do you have an opinion as to
 2 whether the implementation of class size reduction has
 3 resulted in the use of more portables?
 4 MR. SEFERIAN: Objection. No foundation.
 5 Calls for speculation.
 6 THE WITNESS: Yes.
 7 MR. HERRON: I believe it's asked and answered.
 8 Go ahead.
 9 THE WITNESS: Yes.
 10 Q. BY MR. ELIASBERG: What is your conclusion?
 11 A. That it probably has.
 12 Q. What's the basis of that conclusion?
 13 A. Well, as we said before, if you've got 34 kids
 14 in a classroom and you reduce to 20, then you need more
 15 classrooms. And the fastest way to establish classrooms
 16 is to bring portables on. It's much faster than
 17 constructing new schools.
 18 Q. Let me just take a minute. Let me ask you one
 19 other question with respect to class size reduction. Do
 20 you know whether there were any districts or any schools
 21 who implemented class size reduction by moving -- using
 22 libraries at schools as classrooms?
 23 MR. SEFERIAN: Objection. No foundation.
 24 Calls for speculation.
 25 THE WITNESS: Yes.

1 Q. BY MR. ELIASBERG: Yes, you know or, yes,
 2 schools did that?
 3 A. Yes, schools did that.
 4 Q. Do you have any -- you or anyone on your staff
 5 have any estimate as to the number of schools that did
 6 that?
 7 MR. SEFERIAN: Objection. Calls for
 8 speculation.
 9 THE WITNESS: The consortium report that I
 10 referenced before looked at that issue. It's contained
 11 in that document.
 12 Q. BY MR. ELIASBERG: Do you know if the
 13 consortium report also looked at moving students into
 14 multi-purpose rooms for use as classrooms?
 15 A. Yes.
 16 MR. SEFERIAN: Objection. Vague and ambiguous
 17 as to "multi-purpose rooms."
 18 Q. BY MR. ELIASBERG: And your answer is the
 19 consortium board did do that?
 20 A. Yes.
 21 Q. Have you attempted -- other than the analysis
 22 in the consortium report, are you aware of any other
 23 analysis that's been done that's attempted to determine
 24 how many schools or how many districts have moved
 25 students into libraries or other spaces that weren't

1 being previously used as classrooms, such as libraries
 2 or other spaces?
 3 MR. SEFERIAN: Objection. Vague as to time.
 4 Compound question. Vague and ambiguous.
 5 THE WITNESS: Would you repeat the question.
 6 Q. BY MR. ELIASBERG: Sure. Are you aware of
 7 anything, any other analysis or report since the
 8 implementation of class size reduction other than the
 9 consortium report that's attempted to determine the
 10 number of schools or the number of districts that moved
 11 students into libraries or multi-purpose rooms in order
 12 to implement class size reduction?
 13 MR. SEFERIAN: Same objections.
 14 THE WITNESS: I'm trying to recall whether the
 15 division did an independent survey, and I'm not
 16 recalling clearly yes or no.
 17 Q. BY MR. ELIASBERG: When you say "the division"
 18 do you mean your --
 19 A. School facilities planning division.
 20 Q. Do you know -- since you're not certain, do you
 21 know who within your division would know if that
 22 analysis was done?
 23 MR. SEFERIAN: Objection. Calls for
 24 speculation.
 25 THE WITNESS: Probably Fred Yeager or Lynn

1 Piccoli.

2 Q. BY MR. ELIASBERG: Are you aware of whether

3 anybody outside of your division, and I'll include

4 within that the State Board of Education, anyone outside

5 of your division in the Department of Education or in

6 the legislature or in the governor's office asked you

7 and your staff to do that analysis?

8 A. No, I don't recall any request.

9 Q. At the time classroom size reduction was put

10 into law, am I correct that you were not the head of the

11 school facilities planning division; is that right?

12 A. Yes.

13 Q. I'm asking you for your knowledge during the

14 period you're not there. If you don't know the answer,

15 that's fine.

16 Do you know whether anybody in the school

17 facilities planning division did any projections prior

18 to the implementation or prior to the passage of class

19 size reduction as to, one, how many more portables would

20 be used by school districts in order to implement class

21 size reduction?

22 MR. SEFERIAN: Objection. No foundation.

23 Calls for speculation.

24 THE WITNESS: I'm not aware of any such study.

25 Q. BY MR. ELIASBERG: Are you aware of whether

1 anybody in the Department of Education outside of your

2 division did such a study?

3 A. I'm not aware of any such study.

4 Q. Okay. Are you aware of whether any study was

5 done to attempt to project the number of libraries or

6 multi-purpose rooms that would be used in order to

7 implement class size reduction?

8 MR. HERRON: You're asking him about a time

9 when he wasn't in the facilities planning division.

10 MR. ELIASBERG: I understand. If you don't

11 know, you don't know.

12 Q. I'm trying to see if you subsequently found out

13 about a report that was done even though it was not done

14 when you were head of the division.

15 A. I'm not aware of any such studies.

16 Q. Are you aware of any study that was done by

17 anybody in the Department of Education?

18 A. Only the consortium.

19 Q. Okay. Mr. Brooks, I want to shift a little bit

20 here to talk about some of the other agencies or

21 divisions, units within the state that have some

22 responsibility with respect to school facilities.

23 Let me just -- one last question or short

24 series of questions. Were you present when Ms. Eastin,

25 Superintendent Eastin testified in front of the joint

1 committee on the proposed new school bond?

2 A. Yes.

3 Q. Did she at that time set forth a figure as to

4 what she believed the need, school facilities need was

5 in California?

6 A. Yes.

7 Q. What was that figure?

8 A. \$24 billion.

9 Q. Had you spoken with her prior to her -- in the

10 couple weeks or even months prior to her giving that

11 testimony?

12 A. Yes.

13 Q. And had you discussed what figures she would

14 tell the committee was needed?

15 MR. SEFERIAN: Objection. I think you're

16 asking for privileged information, information protected

17 by the official information and deliberative process

18 privileges.

19 THE WITNESS: The figure is public record. The

20 testimony was provided to the joint committee. The

21 figure was 24 billion. That's what we discussed.

22 That's what she testified to.

23 Q. BY MR. ELIASBERG: Okay. And are you aware of

24 what figure she said would be approp -- I want to

25 separate out the categories.

1 She said the need was 24 billion. Did she give

2 a figure as to what they thought an appropriate bond

3 measure would be?

4 A. Same amount.

5 Q. I'm going to shift gears a little bit to other

6 divisions or agencies that may have some responsibility

7 with respect to school facilities.

8 I'm talking currently. Under what I believe

9 you called the current school facilities program, what

10 other agencies -- let's start with the Department of

11 Education. What other units or divisions at the

12 Department of Education have responsibility with respect

13 to the current school facilities program?

14 MR. SEFERIAN: Objection. Overly broad. Vague

15 and ambiguous as to "responsibility." Calls for an

16 inadmissible legal opinion.

17 MR. HERRON: Could I have the question reread,

18 please.

19 (Record read.)

20 THE WITNESS: Are you referring to the primary

21 program of new construction, modernization? They also

22 administer -- OPSC administers a portable program.

23 MR. ELIASBERG: Let's start with the primary,

24 putting together both the school -- the new school

25 facilities construction and modernization.

1 THE WITNESS: Just my division.
 2 Q. BY MR. ELIASBERG: Just your division?
 3 A. Correct.
 4 Q. Are you -- what other agencies, if any in the
 5 state -- state agencies, outside of the Department of
 6 Education, have responsibilities with respect to the
 7 school facilities program, and by that I mean the
 8 primary program, the modernization and facilities
 9 construction?
 10 MR. HERRON: Objection. Vague and ambiguous.
 11 Call for speculation.
 12 THE WITNESS: State agencies only?
 13 MR. ELIASBERG: Let's start there, yes.
 14 THE WITNESS: The office of public school
 15 construction, state allocation board, the division of
 16 the state architect, and the Department of Toxic
 17 Substances Control. I believe the state clearinghouse
 18 receives and process the EIRs.
 19 Q. BY MR. ELIASBERG: Now you're talking jargon
 20 that I don't know. What is the state clearinghouse?
 21 A. It's an agency under the governor's
 22 administration that receives environmental impact
 23 reports from the locals. I don't know much about it
 24 because we don't deal that much with it.
 25 Q. To the extent you know anything, what, if

1 anything, do they do besides just receiving the
 2 environmental impact statements?
 3 MR. SEFERIAN: Objection. Calls for
 4 speculation.
 5 THE WITNESS: I believe that they distribute
 6 the documents to various state agencies that they
 7 believe might have an interest in reviewing them.
 8 Q. BY MR. ELIASBERG: If you know, what agencies
 9 would those be?
 10 A. I do not know.
 11 Q. Let's talk about the office of public school
 12 construction. Who is the head of the office of public
 13 school construction?
 14 MR. HERRON: Objection. Asked and answered
 15 twice now.
 16 THE WITNESS: Louisa Park.
 17 Q. BY MR. ELIASBERG: And how large is the staff
 18 of OPSC?
 19 MR. SEFERIAN: Objection. Calls for
 20 speculation.
 21 THE WITNESS: I don't know the specific figure.
 22 Q. BY MR. ELIASBERG: Okay. And am I correct that
 23 the OPSC is basically the staff to the state allocation
 24 board?
 25 A. Yes.

1 Q. And what is your understanding of the
 2 responsibilities of the OPSC?
 3 MR. SEFERIAN: Objection. Calls for an
 4 inadmissible legal opinion. Overly broad. Calls for a
 5 narrative.
 6 THE WITNESS: The school districts submit
 7 applications to the office of public school
 8 construction. OPSC determines whether they're eligible.
 9 OPSC is the final dropping off place before the
 10 applications are submitted to the state allocation board
 11 for approval. They determine that all of the laws,
 12 rules, regulations have been complied with before they
 13 submit it to the state allocation board.
 14 Once the state allocation board approves the
 15 project for funding, the office of public school
 16 construction is responsible for administering the
 17 distribution of funds, auditing the programs to make
 18 sure that the funds have been spent in accordance with
 19 the program rules and regulations.
 20 Q. BY MR. ELIASBERG: How do they go about
 21 determining whether districts are eligible?
 22 MR. SEFERIAN: Objection. Calls for a
 23 narrative.
 24 THE WITNESS: School districts file an
 25 application, have staff that review the application and

1 compare it to the rules and regulations. I don't know
 2 the nuts and bolts over there.
 3 Q. BY MR. ELIASBERG: As you understand it, are
 4 the criteria for eligibility set forth in the program
 5 itself and the regulations for the program, school
 6 facilities program?
 7 MR. SEFERIAN: Objection. No foundation.
 8 THE WITNESS: They're set forth in SB 50 and
 9 the regulations that the Board adopts to implement
 10 SB 50.
 11 Q. BY MR. ELIASBERG: Is there a head of the state
 12 allocation board?
 13 A. There is a chair.
 14 Q. And who is the chair?
 15 A. The official chair is the director of the
 16 Department of Finance or his or her designee.
 17 Q. And who is the director of the Department of
 18 Finance?
 19 A. Tim Gage, G-a-g-e.
 20 Q. And does Mr. Gage designate his role in the
 21 SAB, or does he do it himself?
 22 MR. HERRON: You mean delegate?
 23 MR. ELIASBERG: Yeah.
 24 Q. Does he delegate it or do it himself?
 25 A. He generally delegates it.

1 Q. To whom does he delegate it?
 2 A. Annette Porini, P-o-r-i-n-i.
 3 Q. And how many members are there on the state
 4 allocation board?
 5 A. Seven.
 6 Q. And are there any particular criteria or
 7 qualifications necessary to be a member of the state
 8 allocation board?
 9 MR. SEFERIAN: Objection. Calls for an
 10 inadmissible legal opinion.
 11 THE WITNESS: The Board is comprised of the
 12 director of the Department of Finance, the state
 13 superintendent of public instruction, the director of
 14 the Department of General Services, two state Senators
 15 who are appointed by the head of the senate, and two
 16 state assembly members who are appointed by the Speaker
 17 of the Assembly.
 18 Q. BY MR. ELIASBERG: Other than Mr. Gage, are
 19 other members of the state allocation board entitled to
 20 designate somebody else to sit for them on the Board?
 21 A. The three state agencies can designate a
 22 representative. The legislators may not.
 23 Q. And has Ms. Eastin designated you to sit as her
 24 rep on the state allocation board?
 25 A. Yes.

1 Q. And how long have you been doing that for?
 2 A. Well, the last three years that I've come back
 3 and about a year or so before when I was in the
 4 position, so about four years total.
 5 Q. Do you know if -- during the period that you
 6 were in child nutrition services, did Ms. Eastin also
 7 designate the person who followed you as the head of the
 8 school facilities planning division as her designee?
 9 A. Yes.
 10 Q. What is your understanding of the
 11 responsibilities of the state allocation board?
 12 MR. SEFERIAN: Objection. Calls for a legal
 13 opinion. Overly broad.
 14 THE WITNESS: The primary role is to administer
 15 the administration of state bond funds.
 16 Q. BY MR. ELIASBERG: How do you go about
 17 administering the state bond funds?
 18 MR. HERRON: Objection. Compound.
 19 THE WITNESS: The Board has to approve the
 20 allocation of funds, and the Board also has to approve
 21 any regulations that are developed to implement the law
 22 authorizing the bond funds.
 23 Q. BY MR. ELIASBERG: You also mentioned that the
 24 division of state architect has a role to play in the
 25 current school facilities program. Who is the head of

1 the -- who is the state architect?
 2 A. Steve Castellaneous, C-a-s-t-e-l-l-a-n-e-o-u-s.
 3 Q. And what is the responsibility of the division
 4 of state architect, what role do they play with respect
 5 to the school facilities program?
 6 MR. SEFERIAN: Objection. Overbroad. Vague
 7 and ambiguous as to "responsibility." Calls for an
 8 inadmissible legal opinion.
 9 MR. HERRON: Calls for speculation.
 10 THE WITNESS: Their primary role is to review
 11 the application for fire and light safety, structural
 12 safety and handicap access. They also recently have
 13 decided that they are responsible for ensuring
 14 compliance with Title 24, the plumbing code, heating,
 15 air conditioning, ventilation, electrical.
 16 Q. BY MR. ELIASBERG: I'm sorry, did you say that
 17 that's a responsibility that they've recently taken on?
 18 A. Yes.
 19 Q. Do you know approximately when they took on
 20 that responsibility?
 21 MR. SEFERIAN: Objection. Calls for
 22 speculation.
 23 THE WITNESS: Soon after Mr. Castellaneous was
 24 designated as the state architect.
 25 Q. BY MR. ELIASBERG: Do you know when

1 Castellaneous was designated?
 2 A. He's been there about a year.
 3 Q. Okay. If you know, do you know what the state
 4 architect does with respect to overseeing the Title 24
 5 requirements?
 6 MR. SEFERIAN: Objection. Calls for
 7 speculation.
 8 THE WITNESS: They review the plans to ensure
 9 that they comply with Title 24, and if they don't, they
 10 mark them up and they send them back to the local school
 11 district architect to correct.
 12 Q. BY MR. ELIASBERG: Do you know -- this
 13 responsibility for reviewing compliance with Title 24,
 14 was this done by another agency prior to
 15 Mr. Castellaneous taking over as state architect?
 16 A. I believe that they have always been
 17 responsible for ensuring compliance with Title 24. The
 18 area that they have been focusing on recently is
 19 plumbing code relating to bathrooms.
 20 Q. Do you know why they've recently started
 21 focusing on that?
 22 MR. SEFERIAN: Objection. Calls for
 23 speculation. No foundation.
 24 THE WITNESS: I do not.
 25 Q. BY MR. ELIASBERG: Have you ever discussed with

1 Mr. Castellaneous the work that the DSA does with
 2 respect to Title 24 requirements?
 3 A. Yes.
 4 Q. Okay. When was that?
 5 A. On more than one occasion since he's been
 6 appointed.
 7 Q. Okay. So within the last year or so since he's
 8 been appointed; is that correct?
 9 A. Yes.
 10 Q. Do you remember the substance of those
 11 conversations?
 12 A. The substance was to ensure that we eliminated
 13 duplication, overlap or any holes between our review
 14 process. Since he was new, he wanted to make sure that
 15 he was aware of what our responsibilities were, and we
 16 wanted to make sure that we were aware of what his
 17 responsibilities were.
 18 Q. In your current tenure at the school facilities
 19 planning division, have you or any members of your
 20 staff, I guess it would be the field reps, done any
 21 review of school district plans to see whether they
 22 complied with Title 24?
 23 MR. SEFERIAN: Objection. Calls for
 24 speculation. Overly broad. Calls for an inadmissible
 25 legal opinion. Assumes facts not in evidence.

1 MR. HERRON: It's asked and answered as well.
 2 (Mr. Rosenbaum left the room.)
 3 THE WITNESS: Our Title 5 regulations
 4 incorporate by reference some aspects of Title 24,
 5 reminding the school districts that they have to comply
 6 with Title 24, but we do not administer Title 24.
 7 Q. BY MR. ELIASBERG: Can you explain to me what
 8 you mean by "administer Title 24"?
 9 A. It is not the Department of Education's
 10 responsibility to ensure compliance with Title 24.
 11 Q. Is it your understanding from your discussions
 12 with Mr. Castellaneous that it's his opinion that it's
 13 the DSA's responsibility to ensure compliance with Title
 14 24?
 15 MR. SEFERIAN: Objection. Asked and answered.
 16 THE WITNESS: I don't know whether he believes
 17 that it's their responsibility to enforce every aspect
 18 of Title 24. I know that there are provisions of
 19 Title 24 that he assumed responsibility for.
 20 Q. BY MR. ELIASBERG: Do you know what the
 21 particular provisions are?
 22 A. The one that we have specifically discussed is
 23 the bathrooms, the plumbing code.
 24 Q. Did Mr. Castellaneous explain to you why he was
 25 specifically taking on responsibility for those portions

1 of Title 24 that had to do with bathrooms?
 2 A. No.
 3 Q. Did you ask him why he was doing that?
 4 A. No.
 5 Q. Okay.
 6 MR. HAJELA: Peter, when you're done with this
 7 line of questioning, I just need to make a phone call.
 8 MR. ELIASBERG: I assume the plan is to end at
 9 5:00, but we've been going -- why don't we take a
 10 five-minute break now, come back and finish.
 11 (Recess taken.)
 12 (Mr. Rosenbaum not present.)
 13 Q. BY MR. ELIASBERG: You doing okay, Mr. Brooks?
 14 A. I'm fine.
 15 Q. There's light at the end of the tunnel because
 16 we'll break at 5:00 or a couple of minutes before or
 17 after.
 18 I want to make sure that I'm clear about
 19 something that you talked about just before the break.
 20 You said that since Mr. Castellaneous has become the
 21 state architect, his office is -- ensures -- reviews
 22 plans for compliance with Title 24, and in particular
 23 the plumbing provisions of Title 24; is that correct?
 24 A. That's my understanding.
 25 Q. Do you know, prior to Mr. Castellaneous' taking

1 that position, who assumed responsibility or what office
 2 assumed responsibility for that ensuring compliance with
 3 Title 24?
 4 MR. HERRON: Objection. Asked and answered.
 5 THE WITNESS: The entire Title 24? No, I
 6 don't.
 7 MR. ELIASBERG: The plumbing provisions of
 8 Title 24.
 9 MR. SEFERIAN: Objection. Calls for
 10 speculation.
 11 MR. HERRON: Same objection.
 12 (Mr. Rosenbaum entered the room.)
 13 THE WITNESS: Our review form includes as part
 14 of the check off -- actually, let me back up.
 15 Our Title 5 regulations state that the plan
 16 will be in compliance with the plumbing code, and if it
 17 is not, then we notify the school district that it does
 18 not appear to be in compliance with the plumbing code,
 19 but we do not enforce the plumbing code. We have had
 20 the building standards commission and executive director
 21 tell us specifically that we are not responsible for the
 22 plumbing code.
 23 Q. BY MR. ELIASBERG: What is exactly entailed in
 24 enforcing the plumbing code, if you know?
 25 MR. SEFERIAN: Objection. Calls for

1 inadmissible opinion. Overly broad.
 2 THE WITNESS: I don't understand "enforcing the
 3 plumbing code."
 4 Q. BY MR. ELIASBERG: What I'm trying to
 5 understand is that you said that you reviewed plans to
 6 see whether they are in compliance with Title 5 and its
 7 incorporation of the plumbing code, but you said that
 8 you don't enforce the code.
 9 A. Correct.
 10 Q. So I'm trying to understand what the
 11 distinction is between reviewing the plans and saying
 12 you're not in compliance. What's the difference between
 13 that and enforcing the code?
 14 MR. SEFERIAN: Objection. Overly broad. Vague
 15 and ambiguous.
 16 THE WITNESS: We would notify the district if
 17 they're not in compliance with the plumbing code. We
 18 would not "not approve" their plan on that basis.
 19 Q. BY MR. ELIASBERG: Is there anyone that you're
 20 aware of in the State Department of Education or in any
 21 state agency that would ensure that the district
 22 actually was in compliance with the plumbing code?
 23 MR. SEFERIAN: Objection. Calls for
 24 inadmissible opinion.
 25 THE WITNESS: A state division including the

1 with Title 24 or any other code that might govern HVAC?
 2 MR. SEFERIAN: Objection. Overly broad.
 3 MR. HERRON: Calls for speculation.
 4 THE WITNESS: We do not administer Title 24.
 5 Q. BY MR. ELIASBERG: Do you know whether the
 6 state architect or anybody in the state architect's
 7 office reviews the school district plans to see whether
 8 they -- particularly with respect to HVAC to see whether
 9 they're up to any code that might govern HVAC?
 10 MR. SEFERIAN: Objection. No foundation.
 11 Calls for speculation.
 12 THE WITNESS: It's my understanding that the
 13 state architect does that. I do not know for certain.
 14 Q. BY MR. ELIASBERG: Do you understand whether
 15 the state architect was doing that prior to
 16 Mr. Castellaneous taking the job as the state architect?
 17 MR. SEFERIAN: Objection. Asked and answered.
 18 Calls for speculation.
 19 THE WITNESS: I do not know.
 20 Q. BY MR. ELIASBERG: I believe you testified
 21 earlier that your field services reps review plans,
 22 school district plans for new school facilities; is that
 23 correct?
 24 A. Yes.
 25 MR. HERRON: Field consultants? I'm not sure

1 division of the state architect?
 2 MR. ELIASBERG: Yes.
 3 THE WITNESS: It's my understanding that
 4 there's an on-site inspector when the school is being
 5 constructed, and that on-site inspector is responsible
 6 for ensuring that the codes are complied with.
 7 Q. BY MR. ELIASBERG: Okay. And that on-site
 8 inspector is from the division of state architect's
 9 office?
 10 MR. SEFERIAN: Objection. Calls for
 11 speculation.
 12 THE WITNESS: I believe that the district has
 13 an on-site inspector and that the division of the state
 14 architect has what they call an IOR or inspector of
 15 record. I do not know how they interact or the nuts and
 16 bolts of that process.
 17 Q. BY MR. ELIASBERG: Are there provisions of
 18 Title 24 that govern HVAC, the provisions of Title 24
 19 that govern HVAC?
 20 MR. SEFERIAN: Objection. Calls for an
 21 inadmissible opinion. Calls for speculation.
 22 THE WITNESS: I'm not familiar with Title 24.
 23 I do not know.
 24 Q. BY MR. ELIASBERG: Do you or anyone on your
 25 staff review school district plans for their compliance

1 we're using the right term.
 2 THE WITNESS: Yes.
 3 MR. HERRON: I want to make sure we're using
 4 the right term.
 5 THE WITNESS: Their civil service title is
 6 field representative, school administration. They'll be
 7 called field consultants or consultants. They're not
 8 consultants that are hired from the outside, they are
 9 civil service employees, and they go by the title
 10 consultant, field consultant, field rep.
 11 Q. BY MR. ELIASBERG: If I use the term field rep,
 12 you'll know what I'm talking about.
 13 What are the field reps looking for when
 14 they're reviewing the plans?
 15 A. The primary categories are educational
 16 appropriateness and student safety.
 17 Q. Are there particular statutes and regulations
 18 that set forth criteria in the area of educational
 19 appropriateness?
 20 MR. SEFERIAN: Objection. Calls for an
 21 inadmissible legal opinion.
 22 THE WITNESS: Statute is Education Code Section
 23 17251 that states that the responsibility of the
 24 Department of Education will be -- is to develop
 25 standards for use by school districts in site selection

1 and the plan design of new schools. That Ed Code
 2 section is carried out in Title 5 regulations where we
 3 list the criteria that we will use to review the plans
 4 that were submitted.
 5 Q. BY MR. ELIASBERG: Are you particularly
 6 referring to the Title 5 regs that I believe begin at
 7 about 14000; is that correct?
 8 A. That's about right.
 9 Q. Do you know the process that a representative
 10 would use, how a representative goes about making sure
 11 that the plans are consistent with the Title 5 regs that
 12 you referred to?
 13 A. Yes.
 14 Q. And what is that process?
 15 A. School districts submit the plans. Many times
 16 before they submit the plans the field representatives
 17 will go out in an advisory capacity and work with the
 18 school districts to make sure that they understand what
 19 it is that we'll be reviewing so they're not wasting
 20 their time putting something together that's not going
 21 to be approvable.
 22 The plans come to the office. We have an
 23 analyst that reviews the package for completeness to
 24 ensure that everything is there before it's sent to the
 25 consultant for final review and sign-off. If at any

1 time during the process it looks like the plans are
 2 incomplete or not in compliance, we'll contact the
 3 district either directly or their architect, depending
 4 on what they prefer, and we will work out any problems
 5 that we see in the plans until they're brought into
 6 compliance.
 7 Q. Can a district get approval from your office
 8 for their plans if your consultant concludes that they
 9 are not in compliance with any of the Title 5
 10 regulations?
 11 MR. SEFERIAN: Objection. Incomplete
 12 hypothetical. Overly broad.
 13 THE WITNESS: Theoretically the applicant can
 14 appeal a field representative's decision to first the
 15 assistant division director and then to myself.
 16 Q. BY MR. ELIASBERG: But would the district
 17 eventually need the approval of either the field
 18 representative or you or -- I'm sorry, there was one
 19 intermediate step -- somebody in your office has to
 20 approve that before they -- your office would say that
 21 the plans were in compliance, before they get the
 22 approval of your division?
 23 A. If a field representative told a district that
 24 the plan was not in compliance and the school district
 25 appealed to either my assistant division director or

1 myself and we disagreed with the field representative,
 2 then the plan could be approved over the objections of
 3 the consultant. That, in the entire time that I've been
 4 there, has never happened. We've always been able to
 5 work out an agreement.
 6 (Mr. Hajela left the room.)
 7 Q. BY MR. ELIASBERG: Is there anybody outside of
 8 your division who reviews plans for their -- whether
 9 plans comply with the Title 5 regs, anybody in the
 10 Department of Education outside of your division who
 11 does that review, or is it only done in your division?
 12 A. Only my division.
 13 Q. Okay. Do you or any members of your staff
 14 review not only plans but whether the regs are being
 15 complied with at the construction site itself?
 16 A. No.
 17 Q. Okay. Is there anyone who ensures -- let me
 18 make sure I'm clear on this. I know that you said that
 19 DSA or the district itself may have somebody on the site
 20 itself to ensure that certain codes are complied with?
 21 MR. HERRON: That's not what he testified to.
 22 I object on that basis.
 23 Q. BY MR. ELIASBERG: Am I misstating your
 24 testimony, Mr. Brooks?
 25 A. There are on-site inspectors that ensure that

1 the codes are complied with and that the school is built
 2 in accordance with the approved plans. There may be,
 3 and I'm not aware of the process, there may be a way
 4 on-site to enact change orders, but I don't know how
 5 that process works.
 6 Q. Is anyone on-site -- is there anyone on-site
 7 from your office or any other state department who is
 8 ensuring that the building itself, as opposed to just
 9 the plans, comply with the Title 5 regulations?
 10 MR. HERRON: Objection. Asked and answered.
 11 MR. SEFERIAN: Objection overbroad. Incomplete
 12 hypothetical. Vague and ambiguous.
 13 THE WITNESS: Assuming that the inspector of
 14 record is considered an employee of the division of the
 15 state architect, the division of the state architect has
 16 that responsibility.
 17 (Mr. Hajela entered the room.)
 18 Q. BY MR. ELIASBERG: After a building is built,
 19 completed and finished, do you know if there's anybody
 20 from the state architect's office or -- well, anybody
 21 from the State, employed anywhere by the State of
 22 California, who monitors schools to ensure that they
 23 continue to comply with the Building Code?
 24 MR. SEFERIAN: Objection. Overly broad. Vague
 25 and ambiguous as to "monitor." Vague and ambiguous as

1 to "Building Code." Calls for speculation.
 2 THE WITNESS: Any specific component of the
 3 building code?
 4 MR. ELIASBERG: Let's start with Title 24.
 5 Well, that is the whole -- how about the provisions of
 6 the building code that govern bathrooms.
 7 MR. SEFERIAN: Same objections.
 8 THE WITNESS: They would review them for what
 9 purpose?
 10 Q. BY MR. ELIASBERG: After the school is built,
 11 now it's fully-constructed building. Let's just use a
 12 hypothetical. Building has been in operation for a
 13 year. Does anyone return from the division of state
 14 architect or does anybody else working for the State go
 15 back to those buildings to ensure that the buildings
 16 continue to be in compliance with the provisions of
 17 Title 25?
 18 MR. ROSENBAUM: 24.
 19 MR. HERRON: Objection. Incomplete and
 20 improper hypothetical. Vague and ambiguous. Calls for
 21 speculation.
 22 THE WITNESS: I'm not aware of any state agency
 23 that goes back and periodically checks on whether or not
 24 they are -- continue to be in compliance with Title 24.
 25 Q. BY MR. ELIASBERG: Does anyone from your

1 testify about what's in the statutes and regulations and
 2 what the intent is behind that? Isn't that sort of an
 3 improper question?
 4 MR. ELIASBERG: I'm asking to see what his
 5 understanding is. I understand that I can look at the
 6 statute myself. I'm trying to see what his knowledge
 7 is. You'll see where I'm going with it.
 8 MR. SEFERIAN: Objection. Calls for an
 9 inadmissible legal opinion.
 10 THE WITNESS: The Title 5 regulations contain a
 11 provision relating to designing schools in a manner that
 12 does not impede the delivery of the educational program
 13 as it relates to sound.
 14 There's no specific criteria that's listed in
 15 Title 5. That's left to the architects to ensure that
 16 it's designed in a manner that doesn't interfere with
 17 the delivery of the educational program.
 18 Q. BY MR. ELIASBERG: You used the words, I think,
 19 impede delivery. Were those your words, or are those
 20 words that you believe are in the regulations
 21 themselves?
 22 A. Those are my words. I'm paraphrasing the
 23 regulations. I haven't memorized them.
 24 Q. Fair enough. What do you mean by "impede
 25 delivery"?

1 office, a field rep or anyone else from your staff go to
 2 buildings after they've already been built to see
 3 whether they're continuing to remain in compliance with
 4 the Title 5 regs beginning at Section 14000?
 5 MR. SEFERIAN: Objection. Asked and answered.
 6 Overly broad.
 7 THE WITNESS: The Title 5 regulations and
 8 Education Code Section 17521 only relates to the
 9 construction of the new schools. What a school district
 10 does after the design of the school has been approved is
 11 the decision of the local school district.
 12 Q. BY MR. ELIASBERG: Are there provisions in
 13 Title 5 that are intended to ensure that the sonic
 14 environment in the school is appropriate for education?
 15 MR. HERRON: Objection. Vague and ambiguous.
 16 Calls for a legal conclusion.
 17 MR. SEFERIAN: Objection. Vague and ambiguous
 18 as to "sonic environment."
 19 THE WITNESS: What is a sonic environment?
 20 MR. ELIASBERG: Attempt to ensure that
 21 classrooms aren't so noisy that students have a hard
 22 time learning.
 23 MR. SEFERIAN: Objection. Vague and ambiguous
 24 as to -- calls for speculation as to "intended."
 25 MR. HERRON: I mean, are you asking him to

1 A. That would interfere with the instructional
 2 program.
 3 Q. Okay. Do you have an understanding of --
 4 what's your understanding of the purpose of those
 5 regulations?
 6 MR. SEFERIAN: Objection. Calls for
 7 inadmissible legal opinion. Calls for speculation.
 8 MR. HERRON: Which regulations?
 9 MR. ELIASBERG: The regulations having to do
 10 with the -- that Mr. Brooks, I believe, testified were
 11 designed to --
 12 MR. HERRON: It's asked and answered the
 13 question before.
 14 MR. SEFERIAN: Will you please read the
 15 question.
 16 (Record read.)
 17 MR. SEFERIAN: Objection. Calls for
 18 speculation as to "purpose."
 19 THE WITNESS: As I said, the Title 5
 20 regulations are established to ensure the educational
 21 appropriateness and student safety of the facilities
 22 that are being built.
 23 Q. BY MR. ELIASBERG: Do you know if -- you said
 24 Title 5 governs the plans, the plan that's being
 25 developed for new school facilities; is that correct?

1 A. Title 5 are the regulations that implement the
2 legislative authority for the Department of Education to
3 establish standards for site selection and design of
4 schools.

5 Q. And is it your understanding that your division
6 has any responsibility with respect to ensuring -- or
7 has any responsibility with the condition -- with
8 respect to the condition of school facilities after they
9 have been planned and built?

10 MR. SEFERIAN: Objection. Calls for
11 inadmissible legal opinion. Vague and ambiguous as to
12 "condition." Vague and ambiguous as to
13 "responsibility." Calls for speculation. No
14 foundation.

15 THE WITNESS: The Department of Education has
16 no legal authority regarding the condition of the
17 facilities after they're built. We do assist school
18 districts, we assist parents, teachers, students in
19 resolving issues if they feel there is a problem. We
20 will function as a resource and a referral to the
21 appropriate state agency that has responsibility, if
22 there is one.

23 Q. BY MR. ELIASBERG: Okay. How do you go about
24 helping districts resolve these issues?

25 MR. HERRON: Objection. Calls --

1 MR. SEFERIAN: Objection. Overly broad.

2 THE WITNESS: If we get a complaint, we will
3 contact the school district and we will let them know
4 that we received the complaint. We will try to identify
5 an appropriate state or local agency that has the legal
6 authority to deal with that issue, and we will work with
7 the school district and that authority to try to resolve
8 the issue.

9 We'll also cycle back to the individual who
10 filed the complaint, make sure that they know that we
11 have looked into it, what we're doing, if it looks like
12 it's being resolved, and hopefully it's resolved to
13 everybody's satisfaction.

14 Q. BY MR. ELIASBERG: Okay. Is there a process --
15 is there someone in your office who is designated to
16 receive complaints that are sent by districts or parents
17 or even students concerning school facilities?

18 MR. HERRON: Vague and ambiguous.

19 MR. SEFERIAN: Objection. Overly broad.

20 Q. BY MR. ELIASBERG: Have you tapped one
21 particular person, said it's your job to at least do the
22 initial intake on letters and calls having to do with
23 complaints and conditions at schools?

24 MR. SEFERIAN: Objection. Overly broad. Vague
25 and ambiguous as to "complaints."

1 THE WITNESS: You mean one person that all
2 complaints come through on a centralized basis?

3 MR. ELIASBERG: Yes.

4 THE WITNESS: No.

5 Q. BY MR. ELIASBERG: And have you tapped a group
6 of people or people who have the specific title to do
7 that?

8 A. Yes.

9 Q. Who are those people?

10 A. In most cases it's the consultant who has the
11 assigned geographic area. We have also designated two
12 people as kind of our environmental specialists so that
13 they work with the Department of Toxic Substances
14 Control, the Department of health services, the Air
15 Resources Board, the Department of Pesticide Regulation,
16 any other state agency that might get involved in an
17 environmental issue that comes up.

18 Q. Do you ask the consultants to send you copies
19 or to inform you about complaints that they receive
20 about conditions in school districts?

21 MR. SEFERIAN: Objection. Overly broad. Vague
22 and ambiguous as to "complaints."

23 THE WITNESS: Depends on the severity.

24 Q. BY MR. ELIASBERG: Have you given them criteria
25 as to how they should figure out what to send to you and

1 what not to bother you with?

2 MR. SEFERIAN: Objection. Vague and ambiguous.

3 THE WITNESS: Yes, my criteria is no surprises.

4 Q. BY MR. ELIASBERG: Can you explain to me what
5 you mean by "no surprises"?

6 A. That means if something is going to jump up and
7 bite me in the back, I want to know about it before it
8 happens.

9 Q. Can you think of an example of a complaint that
10 was referred to you that you felt met that criteria for
11 it needed to come to you to avoid surprises?

12 MR. HERRON: You mean a backbiting complaint?

13 MR. ELIASBERG: Yes. Let's say in the last
14 year.

15 THE WITNESS: Yes.

16 Q. BY MR. ELIASBERG: And what was that?

17 A. Can you kind of narrow the focus of the
18 complaint, because I spend a lot of my time dealing with
19 complaints.

20 Q. Have you received any backbiting complaints on
21 the issue of overcrowding?

22 MR. SEFERIAN: Objection. Vague as to time.
23 Overly broad.

24 MR. HERRON: Vague and ambiguous as phrased.

25 THE WITNESS: On overcrowding?

1 MR. HERRON: Are you really looking for an
2 example of a backbiting-type complaint?

3 MR. ELIASBERG: Yeah. I was trying to help
4 Mr. Brooks by giving him a specific area.

5 THE WITNESS: As it relates to the review of
6 plans? Because that's where we kind of started out.
7 Are we shifting gears now?

8 MR. ELIASBERG: I'm not focused now on just the
9 review of complaints, any complaints that your office
10 may have received about conditions. Let's not focus it
11 on the review of plans, but on schools that have already
12 been built.

13 THE WITNESS: Okay. We received complaints
14 regarding the presence of toxins on several sites in Los
15 Angeles Unified School District, and what we do is we
16 partner with the Department of Health Services, the
17 Department of Toxic Substance Control, whichever state
18 agency has the specialized expertise and legal authority
19 to deal with that issue, and we make sure that we get
20 back to the complainant and we let them know what the
21 State is doing to address the issue.

22 Q. BY MR. ELIASBERG: Forget for a minute whether
23 it should have been referred to and met the no surprise
24 criteria, have you -- in the years since you've resumed
25 your position, have any of your consultants passed on to

1 witness' testimony.

2 THE WITNESS: It relates to the size of the
3 school sites, to whether or not that school will contain
4 a gymnasium, adequate playground space, a library. The
5 policy addresses alternative ways for the school
6 district to meet Title 5 by partnering with parks and
7 recreation, local fitness institutes like 24-Hour
8 Fitness, anything that can be used as an alternative to
9 trying to identify 10 acres for an elementary school or
10 50 acres for a high school.

11 We look at things like -- we've developed a
12 policy that allows and folds into our regulations,
13 accommodations for underground parking, multi-level
14 schools, playgrounds on the roof, everything that we can
15 to try to accommodate the needs of the large urban
16 school district, and that policy was developed in
17 coordination with LA Unified School District facilities
18 staff.

19 Q. BY MR. ELIASBERG: And who was the individual
20 who LAUSD hired away from you?

21 A. His name was Ray Godfrey.

22 Q. And what was his title when he was working with
23 you?

24 A. He was technically a retired annuitant -- I
25 mean, a visiting educator. We have both we have to use

1 you a complaint about overcrowding in any districts in
2 the state of California?

3 MR. SEFERIAN: Objection. Overly broad. Vague
4 and ambiguous as to "complaint."

5 THE WITNESS: We have been working with LA
6 Unified for probably a year and a half regarding the
7 overcrowded conditions on their school sites.

8 We hired an individual to work specifically and
9 exclusively with LA Unified to help them address their
10 concerns. They hired that person away from us, and in
11 the interim my assistant division director has been
12 going down to LA Unified about two days a week for the
13 last six months helping them address their overcrowded
14 situation. During that period of time he developed what
15 we call an urban school district policy that allows us
16 to make significant -- apply significant flexibility to
17 the Title 5 regulations to recognize the particular
18 problems that LA Unified and other large urban districts
19 have in trying to identify adequate school sites and
20 build facilities to meet their student's needs.

21 Q. BY MR. ELIASBERG: Can you give me some
22 examples of -- I think you said Title 5 problems. Can
23 you give me some examples of what the Title 5 problems
24 would be?

25 MR. SEFERIAN: Objection. Misstates the

1 to augment our staff because we don't have sufficient
2 permanent staff to meet all of the need.

3 Q. And is the assistant division director you
4 referred to, is that Jim Bush?

5 A. Correct.

6 (The deposition concluded at 4:48 p.m.)

7
8 ---oOo---

9
10 Please be advised that I have read the foregoing
11 deposition. I hereby state there are:

12
13 (check one) _____ NO CORRECTIONS
14 _____ CORRECTIONS ATTACHED

15
16 _____
Date Signed

17
18 _____
DUWAYNE BROOKS

19 Case Title: Williams vs State, Volume I
20 Date of Deposition: Wednesday, November 14, 2001

21 ---oOo---

1 DEPONENT'S CHANGES OR CORRECTIONS
 2 Note: If you are adding to your testimony, print the
 3 exact words you want to add. If you are deleting from
 4 your testimony, print the exact words you want to
 5 delete. Specify with "Add" or "Delete" and sign this
 6 form.
 7 DEPOSITION OF: DUWAYNE BROOKS, VOL. I
 8 CASE: WILLIAMS VS STATE
 9 DATE OF DEPOSITION: WEDNESDAY, NOVEMBER 14, 2001
 10 I, _____, have the following
 11 corrections to make to my deposition:

8	PAGE	LINE	CHANGE/ADD/DELETE
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
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21	_____	_____	_____
22	_____	_____	_____
23	_____	_____	_____
24	_____	_____	_____
25	DUWAYNE BROOKS	_____	DATE

1 ESQUIRE DEPOSITION SERVICES
 2 Certified Shorthand Reporters
 3 1801 I Street, Suite 100
 4 Sacramento, California 95814
 5 Mr. Duwayne Brooks
 6 Department of Education
 7 660 J Street, Suite 350
 8 Sacramento, CA 95814
 9 Re: Williams vs State, Volume I
 10 Date Taken: Wednesday, November 14, 2001
 11 Dear Mr. Brooks:
 12 Your deposition is now ready for you to read, correct,
 13 and sign. The original will be held in our office for
 14 45 days from the last day of your deposition.
 15 If you are represented by counsel, you may wish to
 16 discuss with him/her the reading and signing of your
 17 deposition. If your attorney has purchased a copy of
 18 your deposition, you may review that copy. If you
 19 choose to read your attorney's copy, please fill out,
 20 sign, and submit to our office the DEPONENT'S CHANGE
 21 SHEET located in the back of your deposition.
 22 If you choose to read your deposition at our office, it
 23 will be available between 9:00 a.m. and 4:00 p.m.
 24 Please bring this letter as a reference.
 25 If you do not wish to read your deposition, please sign
 here and return within 45 days of the date of this
 letter.

 DUWAYNE BROOKS DATE
 Sincerely,
 TRACY LEE MOORELAND, CSR
 Esquire Deposition Services
 Job No. 28907
 cc: Kevin Reed, Esq. Anthony Seferian, Esq.
 David Herron, Esq. Abe Hajela, Esq.
 Peter Eliasberg, Esq. Mark Rosenbaum, Esq.
 Lori Schechter, Esq.

1 REPORTER'S CERTIFICATE
 2
 3 I certify that the witness in the foregoing
 4 deposition,
 5 DUWAYNE BROOKS,
 6 was by me duly sworn to testify the truth, the whole
 7 truth, in the within-entitled cause; that said
 8 deposition was taken at the time and place therein
 9 named; that the testimony of said witness was reported
 10 by me, a duly certified shorthand reporter and a
 11 disinterested person, and was thereafter transcribed
 12 into typewriting.
 13 I further certify that I am not of counsel or
 14 attorney for either or any of the parties to said cause,
 15 nor in any way interested in the outcome of the cause
 16 named in said deposition.
 17 IN WITNESS WHEREOF, I have hereunto set my hand
 18 this 27th day of November, 2001.
 19
 20
 21
 22
 23 TRACY LEE MOORELAND, CSR 10397
 24 State of California
 25

1 ESQUIRE DEPOSITION SERVICES
 2 Certified Shorthand Reporters
 3 1801 I Street, Suite 100
 4 Sacramento, California 95814
 5 MORRISON & FOERSTER
 6 ATTN: LEECIA WELCH, ESQ.
 7 429 Market Street
 8 San Francisco, CA 94105-2482
 9 Re: Williams vs State
 10 Deposition of: Duwayne Brooks, Vol. I
 11 Date Taken: Wednesday, November 14, 2001
 12 Dear Ms. Welch:
 13 We wish to inform you of the disposition of this
 14 original transcript. The following procedure is being
 15 taken by our office:
 16 _____ The witness has read and signed the
 17 deposition. (See attached.)
 18 _____ The witness has waived signature.
 19 _____ The time for reading and signing
 20 has expired.
 21 _____ The sealed original deposition is
 22 being forwarded to your office.
 23 _____ Other:
 24 Sincerely,
 25 TRACY LEE MOORELAND, CSR
 Esquire Deposition Services
 Ref. No. 28907