

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 II, Pages 208 through 436

18 Thursday, November 15, 2001

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22 Reported by:

23 TRACY LEE MOORELAND

24 CSR No. 10397

25 Job No. 28908

APPEARANCES

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3 For the Plaintiffs Eliezer Williams, et al.:

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APPEARANCES, cont.

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1 BE IT REMEMBERED, that on Thursday, November
2 15, 2001, commencing at the hour of 9:36 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 previously
9 duly sworn to tell the truth, the whole truth, and
10 nothing but the truth, was thereupon examined and
11 interrogated as hereinafter set forth.

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EXAMINATION BY MR. ELIASBERG

14 Q. Good morning, Mr. Brooks.
15 A. Good morning.
16 Q. Are you aware that you're still under oath?
17 A. Yes.
18 Q. Mr. Brooks, yesterday I believe you said that
19 your division had taken on a new responsibility at the
20 end of 2000 with respect to transportation; is that
21 correct?
22 A. The office of school transportation which
23 basically involves training school bus drivers,
24 trainers.
25 Q. I don't think I'm going to explore this in any

1 great detail, but the little yellow buses that I see
 2 carrying kids to and from school, are those owned by the
 3 state, or are those owned by districts, or could they be
 4 either?
 5 A. They're owned by districts or leased by
 6 districts primarily.
 7 Q. Does the State have any responsibility with
 8 respect to busing, other than training bus drivers?
 9 MR. HERRON: Objection. Calls for speculation.
 10 Vague and ambiguous. Calls for a legal conclusion.
 11 THE WITNESS: The State or the Department of Ed
 12 or my division?
 13 Q. BY MR. ELIASBERG: Let's start with your
 14 division. Does your division have any responsibility
 15 with respect to school busing, other than what you've
 16 described, training bus drivers?
 17 MR. SEFERIAN: Objection. Calls for an
 18 inadmissible legal opinion and vague.
 19 THE WITNESS: We train the bus drivers, and if
 20 there's an accident, then we work with the national
 21 highway transportation safety board to review the
 22 reasons for the accident. Again, that relates to how
 23 might we better train school bus drivers to avoid
 24 accidents.
 25 Q. BY MR. ELIASBERG: Okay. Do you or -- do you

1 or anybody on your staff compile numbers as to the
 2 number of students in California in K through 12 public
 3 schools who ride buses to get to school?
 4 A. Not to my knowledge.
 5 Q. Are you aware of anybody in the Department of
 6 Education who compiles those numbers?
 7 A. The school fiscal services division has to
 8 process funding for transportation. They may have the
 9 figures. I don't know.
 10 Q. And do you know if anybody has made any -- let
 11 me start with your staff. Have you or anybody on your
 12 staff made any attempt to find out how many students are
 13 bused from one school -- a neighborhood school to
 14 another school in order to alleviate overcrowding?
 15 MR. SEFERIAN: Objection. Vague as to
 16 "neighborhood school." Overly broad.
 17 MR. HERRON: Vague and ambiguous as phrased.
 18 If I could just ask you, Peter, to please try
 19 and slow down a little. You speak really quickly. It's
 20 hard to follow.
 21 MR. ELIASBERG: Sure.
 22 THE WITNESS: No one on my staff does that.
 23 Q. BY MR. ELIASBERG: Are you aware of anybody in
 24 the State Department of Education who does that?
 25 A. Who compiles figures regarding the number of

1 students who are bused from one location to the other?
 2 Q. In order to alleviate overcrowding.
 3 A. I'm not aware of any such figures or anybody
 4 doing that in the Department. They might, but I'm not
 5 aware of it.
 6 Q. Okay. I want to step back a little bit to, I
 7 guess, what's going to be a popular topic in the next
 8 year or so, the school bond.
 9 I'm just going to cover brief -- briefly
 10 summarize what I understand your testimony was
 11 yesterday.
 12 MR. HERRON: I object to your doing that
 13 because every time you do it, you misconstrue his
 14 testimony. Can't you just ask him a new question? We
 15 know what the topic is now. Can't you just ask him a
 16 question?
 17 MR. ELIASBERG: I appreciate your objection,
 18 but I think it's appropriate for me to ask again.
 19 Q. You testified yesterday that Delaine Eastin had
 20 recommended to the joint committee \$24 billion for a new
 21 bond for new construction and modernization; is that
 22 correct?
 23 A. Yes.
 24 Q. Okay. Did Superintendent Eastin recommend how
 25 that \$24 billion should be divided?

1 MR. HERRON: Objection. Asked and answered.
 2 Calls for speculation.
 3 THE WITNESS: Only between K-12 and higher ed.
 4 Q. BY MR. ELIASBERG: Did you review the materials
 5 that the education coalition prepared that you testified
 6 that Ms. Eastin looked at before she made her
 7 recommendation?
 8 MR. HERRON: Objection. Asked and answered.
 9 THE WITNESS: Yes.
 10 Q. BY MR. ELIASBERG: Okay. I don't believe we
 11 talked about actually the methodology by which those
 12 figures and the education coalition materials were
 13 arrived at.
 14 Do you know what the methodology was by which
 15 they arrived at the figure?
 16 MR. HERRON: "They" being the education
 17 coalition?
 18 MR. ELIASBERG: Education coalition.
 19 THE WITNESS: Not in detail.
 20 Q. BY MR. ELIASBERG: Can you explain at all what
 21 the methodology was?
 22 MR. SEFERIAN: Objection. No foundation.
 23 Calls for speculation.
 24 MR. HERRON: You may provide your
 25 understanding, if you have one.

1 THE WITNESS: I believe they took information
2 that many of the groups have been working -- this isn't
3 a one-time -- one frame in time in looking at this. We,
4 the Department of Education, the education coalition,
5 the office of public school construction, the Department
6 of Finance are constantly evaluating and coming up with
7 estimates of the cost of the need.

8 It heightens, of course, as we get closer to
9 the possibility of a state bond. But we are constantly
10 assessing that need and doing various analyses, and I
11 believe that the education coalition used some of the
12 information that had been previously developed by the
13 various entities, including CASH and the other entities
14 that I mentioned, trying to estimate the need.

15 Q. BY MR. ELIASBERG: Do you know if they assumed
16 or estimated a basic figure of what it costs to build a
17 new school or to build a new seat in their materials?

18 MR. SEFERIAN: Objection. Compound question.

19 THE WITNESS: To build one school? An estimate
20 to build one school?

21 Q. BY MR. ELIASBERG: Did they come up with a
22 basic cost figure and then multiply it, for example, by
23 the number of students they believe needed to be housed?

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

1 THE WITNESS: I do not know whether that was
2 the basis.

3 Q. BY MR. ELIASBERG: Okay. Was that \$24 million
4 figure --

5 MR. HERRON: Billion.

6 Q. BY MR. ELIASBERG: -- \$24 billion figure an
7 understanding of the State's share of new school
8 construction and modernization needs?

9 A. Yes.

10 Q. Did that figure contemplate that there would be
11 a process by which districts would match state funding
12 for new school construction?

13 MR. SEFERIAN: Objection. Calls for
14 speculation. Vague and ambiguous as to "contemplate."

15 MR. HERRON: Asked and answered.

16 THE WITNESS: I believe it did.

17 MR. ELIASBERG: Actually, David, it was not
18 asked and answered. I went back and we did not talk
19 about the methodology with respect to that 24 billion.

20 Q. Did it contemplate the district's providing
21 some match for modernization funds?

22 A. That's my understanding.

23 Q. Do you know whether it contemplated the same
24 80/20 match as currently exists under the school
25 facilities program today?

1 MR. SEFERIAN: Objection. Vague and ambiguous.

2 THE WITNESS: I don't recall for certain, but
3 my assumption would be that that's the way that they
4 would approach it, 80/20.

5 Q. BY MR. ELIASBERG: Was it your understanding
6 that the \$24 billion figure and then the district match
7 would include reducing the number of students on
8 multi-track calendars?

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

11 THE WITNESS: The education coalition figures?

12 MR. ELIASBERG: Uh-huh.

13 THE WITNESS: I don't believe that they
14 factored that in.

15 Q. BY MR. ELIASBERG: Okay. And is it your
16 understanding as to whether they factored in reducing
17 the number of students who were being bused in order to
18 alleviate overcrowding?

19 MR. SEFERIAN: Objection. No foundation.
20 Assumes facts not in evidence. Calls for speculation.

21 THE WITNESS: I did not see that in their
22 methodology.

23 Q. BY MR. ELIASBERG: And did you understand that
24 their methodology -- the 24 billion reflected a number
25 that would enable a substantial reduction in the number

1 of students in portable classrooms?

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

4 THE WITNESS: I do not believe that they
5 factored that.

6 Q. BY MR. ELIASBERG: Mr. Brooks, have you or
7 anybody in your staff made any projections as to what
8 the consequences would -- for example, for the number of
9 unhoused students would be if a smaller bond measure
10 passed?

11 MR. HERRON: Ever?

12 MR. SEFERIAN: Objection.

13 MR. ELIASBERG: No, in the last year.

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

16 THE WITNESS: I don't understand the question.

17 Q. BY MR. ELIASBERG: What I'm trying to see is
18 whether you've sat down not only to try to estimate the
19 need -- I understand that you've done -- but said, for
20 example, if a \$12 billion bond passed, that would leave
21 some number of students unhoused?

22 MR. SEFERIAN: Objection. Calls for an
23 inadmissible opinion. Calls for speculation. No
24 foundation.

25 THE WITNESS: No.

1 MR. SEFERIAN: Vague and ambiguous.
 2 Q. BY MR. ELIASBERG: Have you done any analysis
 3 with any number less than \$24 billion as to what the
 4 consequences would be with respect to the number of
 5 unhoused students?
 6 MR. SEFERIAN: Objection. Vague and ambiguous
 7 as to "consequences." No foundation. Calls for an
 8 inadmissible opinion.
 9 MR. HERRON: Would you read back the question.
 10 (Record read.)
 11 THE WITNESS: Any analysis?
 12 MR. ELIASBERG: Yes.
 13 THE WITNESS: Not to my knowledge.
 14 Q. BY MR. ELIASBERG: Have you or any members of
 15 your staff discussed -- and I'm doing this all within
 16 the last year in the context of discussion about a
 17 possible new bond. Have you or any members of your
 18 staff discussed possible ways to alter the criteria for
 19 eligibility to obtain funding?
 20 MR. SEFERIAN: Objection. Overly broad. Vague
 21 and ambiguous as to "funding."
 22 THE WITNESS: For the state school building
 23 program?
 24 MR. ELIASBERG: That's correct.
 25 THE WITNESS: Yes.

1 Q. BY MR. ELIASBERG: Let's focus on new school
 2 construction. Have you discussed changing any of the
 3 eligibility requirements from what presently exists
 4 under SB 50 for the new bond?
 5 MR. SEFERIAN: Objection. Overly broad.
 6 THE WITNESS: Have we discussed any eligibility
 7 requirements for new construction?
 8 MR. ELIASBERG: Changing any of the current
 9 eligibility requirements for new school construction.
 10 THE WITNESS: Yes.
 11 Q. BY MR. ELIASBERG: What changes have you
 12 discussed?
 13 A. As part of the group that was working with the
 14 conference committee and their staff, we have looked at
 15 ways to eliminate the priority point system and
 16 accommodate low-performing overcrowded schools.
 17 Q. What is the group -- who composes the group
 18 that's working with the conference committee?
 19 A. The two individuals that are leading the group
 20 are Diane Kirkham with the senate education committee,
 21 and Hal Geiogue with the assembly education committee.
 22 Q. Can you spell those names for -- Kirkham we may
 23 have already had.
 24 A. G-e-i-o-g-u-e.
 25 Q. Thanks.

1 MR. ELIASBERG: Could you read back not his
 2 last answer but the one before that.
 3 (Record read.)
 4 Q. BY MR. ELIASBERG: In that answer, how were you
 5 defining low-performing schools?
 6 A. That is an issue that the conference committee
 7 needed to deal with. There were various options.
 8 Q. What were some of those options? What were all
 9 the options that you are aware of?
 10 A. Using the academic performance index, the
 11 deciles.
 12 Q. Was that the only option that you're aware of,
 13 or were there other options discussed?
 14 A. As it relates to specifically low-performing
 15 schools, that's the only option that I recall.
 16 Q. Okay. You used the phrase "overcrowded
 17 schools." How were you -- what did you mean by
 18 "overcrowded"?
 19 A. That was another issue that the conference
 20 committee was wrestling with. There are various ways to
 21 address that.
 22 Q. And what were the ways that were discussed?
 23 A. They discussed looking at the per pupil density
 24 per acre and they looked at Concept 6 and they looked at
 25 multi-track year-around education.

1 Q. Did you have an opinion as to what you thought
 2 the best definition of overcrowded was?
 3 MR. HERRON: He personally?
 4 MR. ELIASBERG: Yes.
 5 THE WITNESS: Yes.
 6 Q. BY MR. ELIASBERG: What was the opinion that
 7 you expressed?
 8 A. That the -- regarding low-performing, you said?
 9 Q. Let's do both. Start with low performing.
 10 A. I agreed that the academic performance index
 11 should be the measure, probably either the first and
 12 second or the first, second and third deciles.
 13 Q. Did you think it was a good idea generally to
 14 attempt to accommodate low-performing schools?
 15 MR. HERRON: Objection. Vague and ambiguous.
 16 Calls for speculation.
 17 THE WITNESS: Would you repeat the question.
 18 Q. BY MR. ELIASBERG: Do you think it's a good
 19 idea to attempt to accommodate low-performing schools?
 20 MR. SEFERIAN: Objection. Overly broad. Vague
 21 and ambiguous as to "accommodate." Vague and ambiguous
 22 as to "low-performing schools." Calls for inadmissible
 23 opinion.
 24 THE WITNESS: Accommodate in what manner?
 25 Q. BY MR. ELIASBERG: You used the word

1 "accommodate" in your answer. What did you mean by the
 2 word "accommodate" in the previous answer?
 3 A. I was responding to your question regarding the
 4 issues that were discussed during the conference
 5 committee regarding how to allocate the state bonds.
 6 Q. What were the discussions as to how to
 7 accommodate low-performing schools?
 8 MR. HERRON: In that context?
 9 MR. ELIASBERG: Yes.
 10 THE WITNESS: To have a \$2 billion set-aside.
 11 Q. BY MR. ELIASBERG: What do you mean by
 12 "set-aside"?
 13 A. That applicants that met whatever definition
 14 for low-performing, overcrowded, that the conference
 15 committee adopted, would be able to access \$2 billion of
 16 whatever the total bond measure was approved by the
 17 voters.
 18 Q. Did you express an opinion as to whether it was
 19 a good idea to set aside any money for low-performing
 20 schools?
 21 A. Yes.
 22 Q. And what was your opinion?
 23 A. I supported it.
 24 Q. Why did you support it?
 25 A. Well, what we're trying to do is establish a

1 level playing field in the state school building
 2 program, and if there are individuals, school districts,
 3 whomever, that believe that the current system doesn't
 4 adequately accommodate the low-performing schools, then
 5 we need to address that issue. And if we have to do
 6 things to get support for the next state bond measure,
 7 we have to bring various people on board to support the
 8 bond measure, then I'm supportive of doing that.
 9 Q. Okay. Do you have an opinion from an
 10 educational -- from the perspective of good education
 11 whether it's a good idea to set aside money in order to
 12 accommodate low-performing schools?
 13 MR. SEFERIAN: Objection. Vague and ambiguous
 14 as to "good education." No foundation. Calls for
 15 speculation. Calls for an inadmissible opinion. Vague
 16 and ambiguous. Overly broad.
 17 MR. HERRON: Can we have the question repeated?
 18 (Record read.)
 19 MR. SEFERIAN: Also vague and ambiguous as to
 20 "low-performing schools."
 21 THE WITNESS: Yes.
 22 Q. BY MR. ELIASBERG: And what is that opinion?
 23 MR. SEFERIAN: Same objections.
 24 THE WITNESS: I think it's the same opinion
 25 that the entire legislature is dealing with in a variety

1 of ways of trying to improve academic performance and
 2 accountability.
 3 In addition to the school facilities program,
 4 there are various other programs that provide hundreds
 5 of millions of dollars to help schools raise the
 6 academic achievement of the students.
 7 Q. BY MR. ELIASBERG: Do you have an opinion as to
 8 whether the condition of school facilities, including
 9 the overcrowding in schools, has an effect on academic
 10 performance?
 11 MR. SEFERIAN: Objection. No foundation.
 12 Calls for speculation. Calls for inadmissible opinion.
 13 Vague and ambiguous.
 14 Would you read the question back.
 15 (Record read.)
 16 MR. SEFERIAN: Vague and ambiguous as to
 17 "school facilities" and "overcrowding."
 18 THE WITNESS: I do.
 19 Q. BY MR. ELIASBERG: And what is that opinion?
 20 MR. SEFERIAN: Same objections.
 21 THE WITNESS: My opinion is that there's no
 22 silver bullet. There's no one factor that is going to
 23 turn around the academic performance of a student or
 24 number of students in the schools.
 25 The quality of the teachers, the quality of the

1 principals, the support of the parents, the community,
 2 the facility, the availability of counselors, there are
 3 numerous factors that impact the academic performance of
 4 students, and merely addressing one is not going to
 5 achieve the desired result.
 6 Q. BY MR. ELIASBERG: What's the basis for your
 7 opinion?
 8 MR. SEFERIAN: Objection. No foundation.
 9 THE WITNESS: Thirty years in education.
 10 Q. BY MR. ELIASBERG: If I asked you this -- I
 11 want to make sure I've covered it. In the discussions
 12 in which -- you stated that there were a couple of
 13 different -- maybe more than a couple different possible
 14 definitions of overcrowded, is that correct, during
 15 these discussions in the context of accommodating
 16 overcrowded schools?
 17 A. Yes.
 18 Q. Did you express an opinion as to which
 19 definition of overcrowded you thought was the
 20 appropriate one?
 21 A. Did I express an opinion to whom?
 22 Q. During any of the meetings with Mr. Geiogoue and
 23 Ms. Kirkham.
 24 MR. SEFERIAN: Objection. Vague and ambiguous.
 25 THE WITNESS: Let me clarify that there were

1 individuals beyond those two.
 2 MR. ELIASBERG: Thank you. I appreciate that.
 3 THE WITNESS: Mr. Reed was one.
 4 The group, you know, would grow and shrink
 5 depending on the time of day or night that we were
 6 meeting, who was available. Sometimes there were 10
 7 people there, sometimes there were 30 people there.
 8 They included representatives from school districts,
 9 they included representatives from -- other assembly and
 10 senate members, so there was a wide range of
 11 stakeholders involved in these meetings.
 12 Q. BY MR. ELIASBERG: Approximately how many
 13 meetings did you attend?
 14 A. During what period of time?
 15 Q. Let's narrow it to the last six months.
 16 MR. SEFERIAN: How many meetings did he attend?
 17 MR. ELIASBERG: Yes.
 18 Q. How many meetings did you attend?
 19 A. During the last six months, there were so many
 20 I can't pin it down.
 21 Q. More than 25?
 22 MR. HERRON: If you're able to provide a
 23 good -- an estimate, you may do so, but don't guess or
 24 speculate.
 25 THE WITNESS: As it relates only to the next

1 bond measure?
 2 MR. ELIASBERG: Yes.
 3 THE WITNESS: The conference committee's
 4 activities?
 5 MR. ELIASBERG: Yes.
 6 THE WITNESS: I couldn't say.
 7 Q. BY MR. ELIASBERG: Were there representatives
 8 from individual school districts at some of these
 9 meetings?
 10 A. Yes.
 11 Q. Were there representatives from CASH at some of
 12 these meetings?
 13 A. Yes.
 14 Q. Do you remember anybody in particular from
 15 CASH?
 16 A. One of the watershed meetings, Tom Duffy, Dave
 17 Walrath and Jim Murdoch.
 18 Q. Do you remember particular districts or persons
 19 from particular districts who attended any of these
 20 meetings?
 21 A. I remember Kevin from LA Unified.
 22 Q. He seems to be a memorable figure. Anybody
 23 else? You couldn't remember anybody else because
 24 Kevin's presence was so overwhelming.
 25 A. I believe Mamie Star from Lodi was in one of

1 the meetings, possibly Connie Baranoff or Kathleen
 2 Moore-Barrata from Elk Grove Unified.
 3 Q. Do you remember if anybody from San Francisco
 4 Unified School District was there?
 5 A. I do not recall anybody from San Francisco.
 6 Q. From Oakland?
 7 A. I do not recall from Oakland. There were also
 8 members that represented large coalitions, CTA, ACSA,
 9 CASBO, CSBA.
 10 Q. How about from West Contra Costa? That's the
 11 last district I'm going to ask you about.
 12 A. I do not remember anybody specifically from
 13 Contra Costa.
 14 Q. Do you remember who from CSBA was there?
 15 A. I don't recall the name.
 16 Q. How about CASBO?
 17 A. I don't recall the name.
 18 Q. Okay. Did Abe make an appearance?
 19 A. I think Abe came to a conference committee.
 20 MR. HAJELA: As few as possible, but, yes, I
 21 was there for a few.
 22 MR. SEFERIAN: Was Mr. Reed there?
 23 THE WITNESS: He was at some of the meetings,
 24 yes.
 25 Q. BY MR. ELIASBERG: And at any of the meetings

1 that you attended, did you express an opinion as to what
 2 you thought the correct or the best definition of
 3 overcrowded should be in the context of the discussions
 4 about accommodating low performing and overcrowded
 5 schools?
 6 A. We were playing with various scenarios, the
 7 option of the lowest two deciles and MTYRE, the lowest
 8 three deciles and 125 acres per pupil -- I mean, pupils
 9 per acre, and 200 acres per pupil (sic).
 10 To me, any of them seemed reasonable because
 11 the way that we cut the figures didn't make too much
 12 difference in terms of the schools and school districts
 13 that were going to be eligible for the \$2 billion.
 14 Whether you used MTYRE or number of pupils per acre, it
 15 came out pretty much the same way, that LA Unified would
 16 get about 40 percent.
 17 Q. I'm going to shift to discussion about criteria
 18 for modernization. At any of these meetings that we've
 19 talked about, was there any discussion about changing
 20 the criteria for modernization?
 21 A. Yes.
 22 Q. I want to follow up on one question. At any of
 23 these meetings was there anybody there from the
 24 governor's office?
 25 A. Yes.

1 Q. Who was that?
 2 A. Rick Simpson from the speaker's office, who is
 3 one step away from the governor's office. There were
 4 people from the secretary of education's office, but I
 5 don't remember who.
 6 Q. Do you remember if the person who attended from
 7 the secretary of -- secretary of education's office took
 8 a position as to what would be -- whether it was a good
 9 idea to accommodate low performing and overcrowded
 10 schools?
 11 MR. HERRON: In the manner he's testified to?
 12 MR. ELIASBERG: Yeah.
 13 THE WITNESS: I do not remember who was there.
 14 I can't put a face to it and who spoke. So, no, I
 15 don't, I don't know whether they took a position or not
 16 in any of the meetings that I was in.
 17 Q. BY MR. ELIASBERG: Do you remember if anyone
 18 during any of those meetings took a position that it was
 19 not a good idea to accommodate low performing or
 20 overcrowded schools?
 21 MR. SEFERIAN: Objection. Vague and ambiguous.
 22 No foundation.
 23 MR. HERRON: Was the question anyone?
 24 MR. ELIASBERG: Anyone who attended those
 25 meetings, that's right.

1 THE WITNESS: There was pretty widespread
 2 agreement that we should get away from priority points,
 3 and this was a way to get away from priority points.
 4 Q. BY MR. ELIASBERG: You've said something that I
 5 want to make sure I button up. Did you express an
 6 opinion as to why you felt it was a good idea to get
 7 away from priority points?
 8 MR. SEFERIAN: Objection. Assumes facts not in
 9 evidence.
 10 THE WITNESS: Yes.
 11 Q. BY MR. ELIASBERG: What position did you
 12 express?
 13 A. Because the priority point system is tearing up
 14 the program. Everybody in Los Angeles says the money is
 15 going every place else, and everybody else outside of
 16 Los Angeles is saying that all the money is going to Los
 17 Angeles, and it seriously jeopardizes the passage of the
 18 next state bond.
 19 Q. And is it your opinion that setting aside a
 20 certain amount of money for low performing and
 21 overcrowded schools doesn't create the kind of
 22 divisiveness that having priority points does?
 23 MR. SEFERIAN: Objection. No foundation.
 24 Incomplete hypothetical. Calls for speculation. Calls
 25 for inadmissible opinion. Vague and ambiguous.

1 MR. HERRON: I think it misconstrues his prior
 2 testimony too.
 3 THE WITNESS: Given the direction that the
 4 conference committee was going and the discussion that
 5 took place among all the stakeholders during that
 6 discussion, that seemed to have quite a bit of support,
 7 seemed to be a good strategy to move forward.
 8 Q. BY MR. ELIASBERG: Let's go to modernization.
 9 At any of the meetings that you attended, meetings that
 10 we've been discussing, was there any discussion about
 11 changing the criteria for obtaining modernization money?
 12 A. Yes.
 13 Q. Okay. What was discussed?
 14 A. The staff of the committee raised the issue to
 15 the committee members that an alternative to the 80/20
 16 split could be 60/40 or 75/25 or some other figure other
 17 than 80/20.
 18 Q. Was there any discussion as to why the criteria
 19 might be changed?
 20 MR. SEFERIAN: Objection. Overly broad.
 21 THE WITNESS: Yes.
 22 Q. BY MR. ELIASBERG: What were people saying?
 23 MR. SEFERIAN: Objection. Overly broad. Calls
 24 for a narrative.
 25 THE WITNESS: "People" being?

1 Q. BY MR. ELIASBERG: Tell me the opinions that
 2 were expressed as to why the criteria should be changed.
 3 MR. SEFERIAN: Same objections.
 4 THE WITNESS: We have a tremendous backlog in
 5 modernization and a finite capacity at the state level
 6 to fund that, and people were trying to -- some people
 7 believed that the 80/20 split is too low in terms of the
 8 local contribution.
 9 Q. BY MR. ELIASBERG: What do you mean by
 10 "tremendous backlog"?
 11 A. Proposition 1A allowed us to allocate funds for
 12 modernization in the two cycles that I mentioned
 13 yesterday. The second cycle that was available that was
 14 supposed to last two years became available July 1st of
 15 2000.
 16 The total amount of money that was supposed to
 17 be available from July of 2000 for the next two years
 18 was allocated within the first month, and we have been
 19 out of modernization funds since that time.
 20 Q. Did you express an opinion as to whether the
 21 criteria for obtaining modernization money, specifically
 22 the 80/20 match, should be changed?
 23 A. In those meetings?
 24 Q. Yes.
 25 A. No.

1 Q. Do you have an opinion?
 2 A. Yes.
 3 Q. What is that opinion?
 4 MR. SEFERIAN: Objection. Calls for
 5 inadmissible opinion. No foundation. Calls for
 6 speculation.
 7 THE WITNESS: I do not think it should be
 8 changed.
 9 Q. BY MR. ELIASBERG: And why is that?
 10 MR. SEFERIAN: Same objections.
 11 THE WITNESS: There are some that say that the
 12 80/20 really isn't an 80/20 split, that the 80
 13 percent -- that the money that they receive from the
 14 state really doesn't fund 80 percent of the project, and
 15 if that is the case, then I don't support having the
 16 locals contribute more.
 17 Q. BY MR. ELIASBERG: You said "some that say."
 18 Are there specific people who would constitute that
 19 some?
 20 MR. SEFERIAN: Objection. Calls for
 21 speculation.
 22 THE WITNESS: I've been in meetings with the
 23 Coalition for Adequate School Housing that they have
 24 analyzed the situation and have expressed that opinion.
 25 Q. BY MR. ELIASBERG: Have you done anything,

1 directed any members of your staff to attempt to
 2 independently determine whether you think that the
 3 position that those people have expressed, that it
 4 doesn't really fund 80 percent, whether that's correct?
 5 MR. SEFERIAN: Objection. Assumes facts not in
 6 evidence. Vague and ambiguous.
 7 THE WITNESS: No.
 8 Q. BY MR. ELIASBERG: I think you said you'd been
 9 in meetings in which members of CASH had expressed that
 10 opinion; is that correct?
 11 A. "That opinion" being?
 12 Q. The opinion that 80/20 -- that the State's 80
 13 percent doesn't really fund 80 percent of the projects.
 14 A. Yes.
 15 Q. Do you remember who those people were?
 16 A. I believe that Tom Duffy was there, and Alex
 17 Murdoch.
 18 Q. And who is Tom Duffy?
 19 A. Tom Duffy is one of the principals for the
 20 Coalition for Adequate School Housing with Murdoch,
 21 Walrath and Holmes.
 22 Q. And, I'm sorry, who was the second person you
 23 named?
 24 A. Alex Murdoch works for Murdoch, Walrath and
 25 Holmes.

1 Q. What is Murdoch Walrath and Holmes?
 2 A. It's basically a lobbying organization that
 3 represents the Coalition for Adequate School Housing.
 4 MR. HAJELA: Do you mean Jim Murdoch or Alex
 5 Murdoch, because I'm confused.
 6 THE WITNESS: Alex. Alex is Jim's son.
 7 MR. HAJELA: Thank you.
 8 Q. BY MR. ELIASBERG: How long have you known
 9 Mr. Duffy?
 10 A. I've known him probably 12 years.
 11 Q. And Mr. Walrath -- Mr. Murdoch?
 12 A. Mr. Murdoch, about the same amount of time.
 13 Well, maybe longer because he has been part of CASH, so
 14 as long as I've been associated with the school
 15 facilities program, so probably more like 15 years.
 16 Q. Do you have an opinion as to whether Mr. Duffy
 17 is knowledgeable about school construction and
 18 modernization?
 19 MR. SEFERIAN: Objection. Assumes facts not in
 20 evidence. No foundation. Calls for speculation. Vague
 21 and ambiguous as to "knowledgeable." Vague and
 22 ambiguous as to "school construction."
 23 THE WITNESS: Yes.
 24 Q. BY MR. ELIASBERG: And what is that opinion?
 25 MR. SEFERIAN: Same objections.

1 THE WITNESS: He's very knowledgeable.
 2 Q. BY MR. ELIASBERG: And what's the basis for
 3 that opinion?
 4 A. His number of years dealing with the program
 5 and as a local superintendent for several years and a
 6 former county business manager.
 7 Q. Do you know where he was a local
 8 superintendent?
 9 A. Moore Park Unified.
 10 Q. Do you know -- that's fine. Strike that.
 11 Do you have an opinion as to whether
 12 Mr. Murdoch is knowledgeable about school construction,
 13 modernization?
 14 MR. SEFERIAN: Objection. No foundation.
 15 Vague and ambiguous as to "knowledgeable" and "school
 16 construction." Calls for an inadmissible opinion. No
 17 foundation.
 18 THE WITNESS: Jim or Alex?
 19 MR. ELIASBERG: The person you previously
 20 mentioned who expressed an opinion about not changing
 21 the 80/20 figure.
 22 MR. SEFERIAN: Same objections.
 23 THE WITNESS: And do I have an opinion
 24 regarding whether they're knowledgeable?
 25 MR. ELIASBERG: Yes.

1 THE WITNESS: Yes.
 2 Q. BY MR. ELIASBERG: And what is that opinion?
 3 A. I believe they are.
 4 Q. And what's the basis for that?
 5 A. Their experience working with school districts.
 6 My analysis of the work that they have produced, I
 7 believe it's credible and valid.
 8 Q. You stated that you would not recommend
 9 reducing the -- or increasing the local's share from --
 10 increasing the local share from 20 percent to some
 11 greater figure in the modernization program?
 12 MR. SEFERIAN: Objection. Overly broad.
 13 THE WITNESS: That is my opinion, not
 14 necessarily the opinion of the Department of Education.
 15 I haven't discussed it with my supervisors.
 16 Q. BY MR. ELIASBERG: Okay. I just want to be
 17 sure. Why is -- what's the basis for that opinion?
 18 A. As I said, it's because I believe that 20
 19 percent is an adequate contribution from the locals.
 20 Q. And why do you think that?
 21 MR. SEFERIAN: Objection. Asked and answered.
 22 Q. BY MR. ELIASBERG: Why do you think it is
 23 adequate?
 24 MR. SEFERIAN: Objection. Asked and answered.
 25 THE WITNESS: If the figures are correct, that

1 the state really is not providing 80 percent, and the
 2 locals are providing more than 20 percent, then we
 3 should not ask them to provide more than they're
 4 currently providing.
 5 Q. BY MR. ELIASBERG: Do you have an opinion as to
 6 whether they have the capacity to provide more?
 7 MR. SEFERIAN: Objection. No foundation.
 8 Calls for speculation. Calls for an inadmissible
 9 opinion.
 10 MR. HERRON: Are you asking him to generalize
 11 about every school district in the entire state?
 12 MR. SEFERIAN: Vague and ambiguous as to
 13 "ability" and "capacity."
 14 MR. ELIASBERG: I'm asking generally whether
 15 school districts have the capacity.
 16 MR. HERRON: He's asking you to generalize as
 17 to every school district in the state. If you feel like
 18 you can do that, go ahead.
 19 MR. SEFERIAN: Objection. Overly broad. Vague
 20 and ambiguous. No foundation.
 21 THE WITNESS: Some do, some don't.
 22 Q. BY MR. ELIASBERG: Do you have a sense as to
 23 what percentage don't?
 24 A. No.
 25 MR. SEFERIAN: Objection. No foundation.

1 Q. BY MR. ELIASBERG: Have you ever attempted to
 2 try to find out?
 3 MR. SEFERIAN: Objection. Vague and ambiguous.
 4 Assumes facts not in evidence. Calls for speculation.
 5 THE WITNESS: Out of the thousand school
 6 districts in the state, which ones have the ability to
 7 do what?
 8 MR. ELIASBERG: To fund greater than a
 9 20-percent share of modernization.
 10 MR. SEFERIAN: Objection. Overly broad. Vague
 11 and ambiguous. Calls for an inadmissible opinion.
 12 Assumes facts not in evidence.
 13 THE WITNESS: No, we haven't attempted to do
 14 that.
 15 Q. BY MR. ELIASBERG: Have you attempted to
 16 contact some sample of the facilities people in the
 17 district and ask them whether they have the capacity to
 18 do more than -- fund more than 20 percent?
 19 MR. SEFERIAN: Objection. Vague and ambiguous.
 20 Assumes facts not in evidence.
 21 THE WITNESS: We are in constant meetings with
 22 school districts who express their opinions on a regular
 23 basis, so there's no need for us to do a formal survey
 24 and try to assess on a case-by-case basis how they feel.
 25 Q. BY MR. ELIASBERG: Let's shift to financial

1 hardship. At the meetings we've been discussing that
 2 you've attended, have you heard any discussion or has
 3 there been any discussion about changing the criteria
 4 for financial hardship?
 5 A. In the meetings that I have attended?
 6 Q. Yes.
 7 A. Yes.
 8 Q. And what has that discussion been?
 9 MR. SEFERIAN: Objection. Calls for a
 10 narrative.
 11 THE WITNESS: There are many people who feel
 12 that the current financial hardship criteria are too
 13 lenient and that they need to be strengthened,
 14 particularly with the passage of Proposition 39 that
 15 allows local school districts to pass local bonds with
 16 55 percent rather than the current two-thirds -- or the
 17 previous two-thirds requirement.
 18 Q. BY MR. ELIASBERG: And are there specific
 19 people that you remember who expressed that opinion?
 20 A. I believe that there are people at the office
 21 of public school construction who first raised the
 22 issue, since they're the ones responsible for
 23 determining who is eligible for financial hardship.
 24 Q. Did you take a position, express an opinion at
 25 any of meetings about whether you thought the criteria

1 for financial hardship should change?
 2 A. No. Are you referring only to financial
 3 hardship now?
 4 Q. Yes.
 5 A. When you talk about hardships --
 6 Q. I want to try to keep them separate. I
 7 understand that there are a few different hardships.
 8 A. And there is one that I failed to mention
 9 yesterday. I've mentioned facility hardship and
 10 financial hardship. There's also an excessive cost for
 11 urban school district hardship, which the state will
 12 provide 50 percent above their regular per pupil grant
 13 for an urban school district that wants to build on a
 14 site that's less than 30 percent of the recommended
 15 acreage for -- by the Department of Education, and
 16 they'll provide an additional 25 percent of the per
 17 pupil grant for modernization of a site that's less than
 18 30 percent of the acreage recommended by the Department
 19 of Education. So there are actually three major
 20 categories under the hardship in Proposition 1A funding.
 21 Q. Thanks very much for bringing that in. I want
 22 to make sure we've covered them all.
 23 I believe you also talked about an
 24 environmental hardship; is that correct?
 25 A. Yes, but as we said yesterday, that's kind of a

1 different program. It's not a separate funding
 2 mechanism, it was a mechanism to try to level the
 3 playing field for those urban school districts that had
 4 difficulty finding clean sites.
 5 Q. At any of these meetings that you attended, did
 6 anyone take a position in support of keeping the
 7 financial hardship criteria the same?
 8 A. Did anyone in any meeting?
 9 Q. Yes.
 10 A. Probably, yes.
 11 Q. Do you have a specific memory of anybody who
 12 did that?
 13 A. I'm sure the school districts don't support
 14 changing it, but I don't remember specifically who.
 15 Q. Do you have an opinion as to whether the
 16 criteria should be changed or not?
 17 A. I still don't --
 18 MR. SEFERIAN: Objection. Vague and ambiguous.
 19 Calls for inadmissible opinion.
 20 THE WITNESS: I still don't have an opinion.
 21 Q. BY MR. ELIASBERG: You don't have an opinion?
 22 A. No.
 23 Q. We talked about modernization, new construction
 24 and financial hardship. Has there been any discussion
 25 about changing the criteria for facilities hardship at

1 any of these meetings?
 2 A. No.
 3 Q. Has there been any discussion about changing
 4 the criteria for excessive costs for, I think you said,
 5 urban school districts hardship?
 6 A. Excessive urban school districts is one of the
 7 components under excessive costs. There's also a
 8 geographic differential under excessive costs.
 9 Q. Has there been any discussion about changing
 10 the criteria for excessive cost hardships?
 11 A. Changing the criteria?
 12 Q. Yes.
 13 A. No, not changing the criteria.
 14 Q. Okay. Has there been discussion about any
 15 alterations of the excessive cost hardship program?
 16 A. Yes.
 17 MR. HERRON: Objection. Asked and answered.
 18 THE WITNESS: Yes.
 19 Q. BY MR. ELIASBERG: And what was that
 20 discussion?
 21 A. Because the excessive costs were lumped into
 22 the hardship pot and the hardship pot had a cap on it,
 23 the bond language said no more than \$500 million can be
 24 provided in each of the two cycles for hardship.
 25 When that hardship money was depleted, there

1 was no opportunity to fund the hardship projects. So
 2 the discussion has been to move the hardship --
 3 particularly the excessive costs out of the hardship pot
 4 and put it into the general either new construction or
 5 modernization pot so that the projects will be allowed
 6 to continue even if the hardship pot's depleted.
 7 Q. Okay. I want to make sure I understand. I'm
 8 going to tell you what my understanding is. Under the
 9 current program, if a district that applies for and
 10 qualifies for excessive cost hardship and is found
 11 eligible for that, if all of the hardship money is gone,
 12 they can't get any funding; is that correct?
 13 MR. SEFERIAN: Objection. Vague and ambiguous.
 14 THE WITNESS: They cannot move forward. They
 15 would go on an approved but unfunded list. So they
 16 would not be able to move forward, but it doesn't impact
 17 their eligibility determination. They just have to wait
 18 until more funds are provided.
 19 Q. BY MR. ELIASBERG: Would the rules of the
 20 facilities program allow them to decide that they want
 21 to bear the excessive costs themselves and that they'll
 22 take funding that doesn't include within it excessive
 23 cost funding?
 24 MR. SEFERIAN: Objection. Vague and ambiguous.
 25 THE WITNESS: I believe it does.

1 Q. BY MR. ELIASBERG: Do you have a position as to
2 whether the excessive cost hardship program should be
3 moved from the hardship pot into another pot?

4 A. Yes.

5 Q. What is your position?

6 MR. HERRON: Mr. Brooks personally, you're
7 asking?

8 MR. SEFERIAN: Objection. Overly broad. Calls
9 for an inadmissible opinion.

10 THE WITNESS: I believe it should be moved
11 because it gives the state allocation board more
12 flexibility to approve projects and let them go forward.

13 Q. BY MR. ELIASBERG: Okay. Is that a position
14 that the division has adopted?

15 MR. SEFERIAN: Objection. Assumes facts not
16 in. Overly broad.

17 THE WITNESS: When you say "the division" you
18 mean the school facilities planning division?

19 MR. ELIASBERG: Yes.

20 MR. SEFERIAN: Same objections. Assumes facts
21 not in evidence.

22 THE WITNESS: It's my position, and I'm the
23 head of the division.

24 Q. BY MR. ELIASBERG: Have you spoken with the
25 superintendent about that position?

1 governor's office has testified in front of the joint
2 committee as to what the governor's office would
3 recommend as to the size of the bond?

4 A. Yes.

5 Q. Who was that person?

6 A. I believe that was Jeff Bell.

7 Q. And who is Mr. Bell?

8 A. He works for the Department of Finance.

9 Q. Okay. And how are you aware, were you there?

10 A. Yes.

11 Q. Okay. And what position did Mr. Bell take?

12 A. Mr. Bell said that the governor would support a
13 \$12 billion bond measure for 2002, a \$7 billion bond
14 measure for 2004, and a \$7 billion bond measure for 2006
15 for K higher ed facilities.

16 Q. Did Mr. Bell explain how the governor's office
17 had come up with the numbers that it was recommending?

18 A. No.

19 Q. Do you know whether he filed any written
20 materials along with his oral testimony?

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

23 THE WITNESS: I did not see him give the
24 committee anything in writing. He did testify orally.

25 Q. BY MR. ELIASBERG: Okay. Do you have any idea

1 MR. SEFERIAN: Objection. Calls for privileged
2 communications.

3 THE WITNESS: Answer?

4 MR. SEFERIAN: Let's go off the record.

5 MR. HERRON: Can we have a couple minutes?

6 MR. ELIASBERG: There's a question pending,
7 but, yeah.

8 MR. ROSENBAUM: Tracy, can you put the time on
9 the record.

10 (Recess taken 10:23 to 10:42.)

11 (Record read.)

12 THE WITNESS: Refresh my memory about what that
13 position was that we were discussing.

14 MR. ELIASBERG: I think you may be asking too
15 much of me. Can you read back one question before?

16 (Record read.)

17 Q. BY MR. ELIASBERG: I believe we were discussing
18 your position with respect to moving the excessive cost
19 program out of the hardship program and into another
20 area.

21 I had asked you your position and then whether
22 it was the division's position, and then I asked whether
23 you had discussed that issue with Superintendent Eastin.

24 A. I have not.

25 Q. Are you aware as to whether anybody from the

1 how Mr. Bell arrived at those numbers?

2 A. No.

3 Q. Okay. I assume you haven't discussed it with
4 Mr. Bell?

5 A. Correct.

6 Q. Did anyone from the secretary of education's
7 office or the secretary testify at that same -- in front
8 of the joint committee about the size of the bond?

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

11 THE WITNESS: Not that I recall.

12 Q. BY MR. ELIASBERG: Okay. Let me just shift
13 your attention to some other state entities and state
14 agencies or other entities that may have something to do
15 with education.

16 Do you know what FCMAT is?

17 A. Yes.

18 Q. And what is FCMAT?

19 A. FCMAT is the fiscal crisis management
20 assistance team. It's a quasi-independent,
21 quasi-education entity that operates out of the Kern
22 County office of education.

23 Q. In the course of your duties, and I'm going to
24 stick only with the resumed -- since you've come back to
25 be chief of the division. In the course of your duties,

1 have you had occasion to communicate with people who are
 2 working with FCMAT?
 3 A. Yes.
 4 Q. And who are those people?
 5 A. The primary person is Tom Henry, who is the
 6 head of FCMAT.
 7 Q. Okay. And how often, if you can -- if you
 8 know, have you communicated with Mr. Henry?
 9 A. Since I've come back this last three years?
 10 Q. Yes.
 11 A. Less than 10 times.
 12 Q. Okay. Just trying to get a little bit of a
 13 time frame around it. Do you remember the first time
 14 since you came back to the division approximately when
 15 that was?
 16 A. That was approximately a year and a half ago.
 17 Q. And did you meet with Mr. Henry in person?
 18 A. Yes.
 19 Q. And where was that meeting?
 20 A. That was in the executive conference room of
 21 the Department of Education.
 22 Q. And were you the only two people at that
 23 meeting?
 24 A. No.
 25 Q. Who else was there?

1 A. The superintendent was there, the deputy
 2 superintendent was there, the chief deputy
 3 superintendent was there, the director of the school
 4 fiscal services division was there.
 5 Q. Okay. Who called the meeting?
 6 MR. SEFERIAN: Objection. Calls for
 7 speculation.
 8 THE WITNESS: The superintendent called the
 9 meeting.
 10 Q. BY MR. ELIASBERG: Okay. And how were you
 11 informed about the meeting?
 12 A. How was I informed?
 13 Q. Did the superintendent call you up on the
 14 phone, did you receive a memo?
 15 A. I don't recall.
 16 Q. Okay. Do you remember if you were informed
 17 beforehand as to what the subject matter of the meeting
 18 was going to be?
 19 A. Yes.
 20 Q. Do you remember what that subject matter was
 21 going to be?
 22 A. Subject matter was Compton Unified.
 23 Q. Okay. Did you -- do you remember about how
 24 long the meeting lasted?
 25 A. Hour, hour and a half.

1 Q. Okay. What was discussed at that meeting?
 2 MR. SEFERIAN: Objection. Calls for
 3 information protected by the official information and
 4 deliberative process privileges. Instruct the witness
 5 not to answer the question.
 6 MR. ELIASBERG: All right. I'll just state for
 7 the record that I don't believe that objection is well
 8 taken, and I think it leaves open the possibility that
 9 we will have to file a motion to compel and reopen the
 10 deposition, so I'd urge you to reconsider.
 11 Are you going to instruct the witness not to
 12 answer?
 13 MR. SEFERIAN: Yes.
 14 THE WITNESS: Do you want to talk for a second?
 15 Okay.
 16 Q. BY MR. ELIASBERG: As a result of that meeting,
 17 did you take any actions?
 18 MR. SEFERIAN: Objection. Overly broad. Vague
 19 and ambiguous.
 20 THE WITNESS: I don't know what you mean.
 21 Q. BY MR. ELIASBERG: Did any discussion at that
 22 meeting prompt you to do anything with respect to
 23 Compton Unified School District?
 24 MR. SEFERIAN: Objection. Overly broad.
 25 Assumes facts not in evidence.

1 THE WITNESS: To do anything with Compton?
 2 Yes.
 3 Q. BY MR. ELIASBERG: What was that?
 4 A. We participated in subsequent reviews of the
 5 school district with FCMAT and the ACLU attorneys
 6 regarding a lawsuit against Compton and the state's
 7 takeover of the school district by appointing a state
 8 administrator.
 9 Q. Okay. Prior to that meeting, had you or any
 10 members of your staff had any involvement with FCMAT
 11 with respect to the Compton Unified School District?
 12 MR. SEFERIAN: Objection. Vague and ambiguous
 13 as to "involvement."
 14 THE WITNESS: Remember, I was in child
 15 nutrition for three years prior to November of '98, so
 16 if you're asking me when I returned in December of '98,
 17 I did not have any prior involvement before the meeting
 18 with Mr. Henry.
 19 Q. BY MR. ELIASBERG: Are you aware of whether any
 20 members of your staff had any involvement?
 21 A. I am not aware whether they did or did not.
 22 Q. Okay. Have you ever read any FCMAT reports
 23 concerning the Compton Unified School District?
 24 A. Yes.
 25 Q. Do you know when you read those reports?

1 A. About the same time frame that we've been
2 discussing, about the last year and a half.
3 Q. Do you remember if you read them before the
4 meeting or after the meeting?
5 A. I read one of the reports before the meeting to
6 prepare for the meeting.
7 Q. Did you form any opinions as to the content of
8 those reports?
9 MR. SEFERIAN: Objection. Overly broad.
10 MR. HERRON: Vague and ambiguous.
11 THE WITNESS: What kind of opinions?
12 Q. BY MR. ELIASBERG: Let me ask you this, do you
13 remember whether any of the materials in those reports
14 concerned the school -- the facilities conditions in
15 schools in the Compton Unified School District?
16 A. Yes, it did.
17 Q. Did you form any opinion as to whether you
18 thought the description of those conditions was
19 accurate?
20 MR. SEFERIAN: Objection. No foundation.
21 Calls for speculation.
22 THE WITNESS: Not having personally been on the
23 campuses at that time, I had no basis to determine
24 whether the content of the report was accurate or not.
25 Q. BY MR. ELIASBERG: Okay. Did you subsequently

1 direct -- did you yourself or did you direct -- I'll
2 break the question down.
3 Did you make any effort after reading the
4 report to try to determine if you thought the
5 descriptions of the conditions were accurate?
6 A. Yes.
7 MR. HERRON: Objection. Assumes facts not in
8 evidence.
9 Q. BY MR. ELIASBERG: What steps did you take?
10 A. I visited the school district.
11 Q. Do you remember when you visited?
12 A. I don't remember the exact date. I believe it
13 was in March of last year or the year before, and it was
14 part of the group with the ACLU attorneys, the state
15 appointed administrator, FCMAT, to do one of their
16 periodic reviews of the conditions of the school and
17 prepare a report.
18 Q. Okay. Just want to make sure I've actually got
19 the right year. When you said March of last year or the
20 year before, do you mean either March of 2000 or 1999?
21 A. Yes, and I don't recall which.
22 Q. Did any members of your staff go with you?
23 A. On the first visit I think I went by myself.
24 Q. Why did you go?
25 A. Because the superintendent asked me to attend.

1 Q. When you were reviewing the reports, did you
2 have an opinion as to the methodology by which -- the
3 methodology that FCMAT was using to write their reports?
4 MR. SEFERIAN: Objection. Vague and ambiguous
5 as to "methodology." Overly broad. Calls for an
6 inadmissible opinion.
7 MR. HERRON: Could we please have that reread.
8 MR. ELIASBERG: I'm going to redo the question.
9 Q. Did you have an opinion as to the methodology
10 that FCMAT used in order to evaluate the facilities in
11 the Compton Unified School District?
12 MR. SEFERIAN: Objection. Calls for
13 inadmissible opinion. Vague and ambiguous. Overly
14 broad.
15 THE WITNESS: Yes.
16 Q. BY MR. ELIASBERG: And what was that opinion?
17 A. I thought it was good.
18 Q. Okay. Why did you think it was good?
19 MR. SEFERIAN: Same objections.
20 THE WITNESS: It seemed to be thorough and
21 comprehensive and addressed the appropriate issues.
22 Q. BY MR. ELIASBERG: Do you have any specifics as
23 to what the appropriate issues were?
24 MR. SEFERIAN: Objection. Vague and ambiguous
25 as to "appropriate issues."

1 THE WITNESS: They looked at the conditions of
2 the schools in terms of whether the trash had been
3 picked up, whether there was any graffiti, whether the
4 windows were broken and repaired, whether the fountains
5 worked, whether the bathrooms were in good repair and in
6 working condition.
7 Q. BY MR. ELIASBERG: Why did you think those were
8 appropriate issues for them to look at?
9 MR. SEFERIAN: Objection.
10 MR. HERRON: At Compton?
11 MR. ELIASBERG: Yes.
12 MR. SEFERIAN: Objection. Assumes facts not in
13 evidence.
14 THE WITNESS: Because those were the issues
15 that were the concern of the district, the teachers, the
16 students, the ACLU.
17 MR. ELIASBERG: Okay.
18 MR. HERRON: Was Mr. Eliasberg there?
19 THE WITNESS: I don't remember him being there.
20 MR. REED: I wasn't there.
21 MR. HERRON: That's a first.
22 Q. BY MR. ELIASBERG: Have you been back to
23 Compton since that visit?
24 A. Yes.
25 Q. Why did you return?

1 A. Oh, probably six months later when the next
2 review occurred.

3 Q. Okay. Let me ask you about the first visit
4 that you made. I understand in March -- leave it at
5 that.

6 Did you have an opinion -- how many schools did
7 you visit when you were there?

8 A. I believe we visited four or five schools.

9 Q. Do you have any memory what any of those
10 schools were?

11 A. We went to Compton High School, we went to
12 Dominguez High School. Is that Dominguez? I don't
13 recall the names other than those.

14 Q. Okay. Do you remember what conditions -- what
15 the conditions were at Compton High School in March?

16 MR. SEFERIAN: Objection. Vague and ambiguous
17 as to the "conditions." Overly broad.

18 THE WITNESS: Yes.

19 MR. ELIASBERG: Let me clarify. With respect
20 to conditions, I'm only talking about facilities
21 conditions.

22 THE WITNESS: Okay.

23 MR. SEFERIAN: Same objections.

24 THE WITNESS: Yes.

25 Q. BY MR. ELIASBERG: And what was that? What did

1 you observe?

2 A. The group, and it was being evaluated by both
3 FCMAT and the ACLU, concluded that Compton had made
4 significant progress in addressing the issues regarding
5 the conditions of the facilities. Everything wasn't
6 perfect, but I believe they got a score of A or B on
7 that review.

8 Q. What was your personal opinion, not the
9 conclusion of the ACLU or FCMAT, but your personal
10 opinion about the conditions at Compton High School?

11 MR. SEFERIAN: Objection. Vague and ambiguous
12 as to "conditions." Overly broad.

13 THE WITNESS: They had some areas that they
14 needed to address, but they were being very diligent
15 about addressing them. They would clean up graffiti and
16 fix broken windows one day, and the next day they'd come
17 back and somebody had vandalized the school the night
18 before, so they had a constant problem, a constant task
19 of trying to keep the school in a clean condition.

20 Q. BY MR. ELIASBERG: Did you make any effort to
21 find out whether they had addressed these problems with
22 a similar diligence in the past?

23 MR. SEFERIAN: Objection. Assumes facts not in
24 evidence. Vague and ambiguous as to "effort." Calls
25 for speculation.

1 MR. HERRON: Who is "they" in your question?

2 MR. ELIASBERG: The employees of the Compton
3 Unified School District.

4 MR. SEFERIAN: Objection. Assumes facts not in
5 evidence. No foundation. Calls for speculation.
6 Overly broad.

7 THE WITNESS: It is my understanding, and it
8 was the statement of the ACLU attorney at the conclusion
9 of that review, that he was very satisfied with the
10 efforts that the district had made, and that they were
11 making significant progress not only in that school, but
12 the other schools that we visited that day.

13 Q. BY MR. ELIASBERG: I guess what I was getting
14 at was did you make any effort to determine what the
15 conditions were prior to the filing of the ACLU lawsuit?

16 MR. SEFERIAN: Objection. Asked and answered.
17 Assumes facts not in evidence. Vague and ambiguous as
18 to "conditions." Overly broad.

19 THE WITNESS: There was discussion during that
20 tour what the facilities looked like prior to the
21 efforts that the district had made to address the
22 problems.

23 Q. BY MR. ELIASBERG: And what was the discussion
24 about what the conditions were?

25 A. That they were worse prior to the time that the

1 visit took place, and that in the interim the district
2 had made significant progress in addressing the
3 problems.

4 Q. Do you have an opinion as to whether the work
5 that FCMAT did had any effect in causing the improvement
6 that you described?

7 MR. SEFERIAN: Objection. Calls for an
8 inadmissible opinion. No foundation. Calls for
9 speculation. Vague and ambiguous as to "work FCMAT
10 did."

11 THE WITNESS: Work, you mean with the school
12 districts?

13 MR. ELIASBERG: Yes.

14 MR. SEFERIAN: Same objections.

15 THE WITNESS: Yes.

16 Q. BY MR. ELIASBERG: What is the basis for that?

17 MR. SEFERIAN: Same objections.

18 Q. BY MR. ELIASBERG: You had an opinion, what was
19 that opinion?

20 A. I thought that they had done a good job.

21 Q. What was the basis for that opinion?

22 A. The progress that had been made.

23 Q. You testified that you were there in March and
24 you went back six months later. Have you been more than
25 those -- to Compton Unified School District more than on

1 those two occasions since you've resumed your positions?
 2 MR. HERRON: If you recall.
 3 THE WITNESS: I can only recall the two
 4 occasions.
 5 Q. BY MR. ELIASBERG: Have you directed any
 6 members of your staff to go to the Compton Unified
 7 School District?
 8 A. Yes.
 9 Q. Okay. Whom did you ask to do that?
 10 A. Jim Bush went one time, and Bedelia Honeycutt,
 11 who is our consultant down there, was there yesterday
 12 with the ACLU, FCMAT doing exactly -- doing another
 13 review.
 14 Q. When did Mr. Bush go?
 15 A. I believe he went with me the second time I
 16 went down.
 17 Q. So he was with you on that --
 18 A. Second time.
 19 Q. Have you spoken to Ms. Honeycutt about her
 20 recent visit to Compton?
 21 A. Yes.
 22 Q. And what did she tell you?
 23 A. I received an e-mail this morning before I came
 24 here, and she said that the tour went very well and that
 25 she would elaborate later.

1 Q. And, I'm sorry, what title does Ms. Honeycutt
 2 hold?
 3 A. She's one of the consultants.
 4 Q. Or a field rep?
 5 A. Field rep, field consultants.
 6 Q. Is it your understanding that your division has
 7 any specific responsibilities with respect to Compton?
 8 MR. SEFERIAN: Objection. Overly broad. Calls
 9 for an inadmissible legal opinion. Vague and ambiguous
 10 as to "responsibilities."
 11 THE WITNESS: Yes.
 12 Q. BY MR. ELIASBERG: Okay. And what's your
 13 opinion?
 14 MR. SEFERIAN: Same objections.
 15 THE WITNESS: The superintendent asked my
 16 opinion regarding whether or not the facilities portion
 17 should be returned to the administration of the school
 18 board as outlined in the law that required the state to
 19 take over the district.
 20 Q. BY MR. ELIASBERG: And did you give her an
 21 opinion?
 22 A. Yes, I did.
 23 Q. And what was your opinion?
 24 A. I don't know that that's appropriate to discuss
 25 in this setting. She subsequently returned control to

1 the school district, so the end result was favorable.
 2 Q. Talked about a couple of meetings with Tom
 3 Henry. Have you met with him on occasions other than
 4 the first meeting we talked about that was called by the
 5 superintendent and on trips to Compton?
 6 A. Yes.
 7 Q. Okay. And what were those occasions?
 8 A. Mr. Henry is part of the master plan for K
 9 higher ed, one of the subcommittees on governance of
 10 school districts, and I'm on the facilities and finance
 11 subcommittee. And on one occasion we had a joint
 12 meeting between those two subcommittees, and Mr. Henry
 13 was in attendance.
 14 Q. Did you meet with Mr. Henry privately or only
 15 in the context of this joint meeting?
 16 A. In the group.
 17 Q. Okay.
 18 MR. SEFERIAN: May we go off the record for
 19 moment?
 20 MR. ELIASBERG: Sure.
 21 MR. ROSENBAUM: Let the record reflect you're
 22 going out of the room. You can't do that in the middle
 23 of a question.
 24 MR. HERRON: There is no question pending.
 25 Mark, you can't talk. Don't talk.

1 MR. ROSENBAUM: Don't tell me I can't talk. I
 2 can talk.
 3 MR. HERRON: You have no business to even be at
 4 this deposition. If you're going to continue to talk,
 5 if you're going to continue to cause problems, if you're
 6 going to continue to talk to him and pass him little
 7 notes, you're leaving.
 8 MR. ROSENBAUM: You have absolutely no business
 9 making that statement.
 10 MR. HERRON: You have no business being at this
 11 deposition. You're here because we're letting you. You
 12 have the right to have one attorney.
 13 MR. ROSENBAUM: I can have as many attorneys
 14 here as I want.
 15 MR. HERRON: Bullshit.
 16 (Recess taken 11:03 to 11:05.)
 17 MR. ELIASBERG: Can you read back the last
 18 question and answer?
 19 (Record read.)
 20 MR. HERRON: Note that there was no question
 21 pending when we left the room, and we took you up on
 22 your offer at the start of this deposition that we could
 23 break whenever we wanted. There was a break requested
 24 and we went.
 25 And I just want to make it clear that I do not

1 appreciate, nor do I think it is justified, that
 2 Mr. Rosenbaum is even here. He's here because of our
 3 good graces. So I am going to encourage you not to
 4 interfere any further with the deposition. If you want
 5 to pass Mr. Eliasberg notes, that's your choice, but
 6 you're here only because we're allowing you to be here,
 7 not because you have any right to be. And I don't
 8 appreciate the constant comments that you've made or the
 9 interferences that you've made in the deposition. I
 10 think you're interfering, and it's not appropriate.

11 MR. ROSENBAUM: There hasn't been any
 12 interferences.

13 MR. HERRON: Sure there have.

14 MR. ROSENBAUM: Let me finish my sentence.

15 MR. HERRON: You don't have the right to talk.

16 MR. ROSENBAUM: I don't agree with that and I
 17 think --

18 MR. HERRON: I don't care if you agree or not,
 19 Mr. Rosenbaum.

20 MR. ROSENBAUM: That is beneath the dignity of
 21 this witness and the dignity of this process.

22 MR. HERRON: You don't have the right to talk,
 23 and I would invite you not to say anything on the
 24 record. We're going to have one plaintiff's counsel
 25 asking questions, and it's not going to be you.

1 Q. Did you subsequently ask him about why he
 2 wanted to -- at any time about why he wanted to expand
 3 the role of FCMAT?

4 A. No.

5 Q. Do you have an opinion as to whether it's a
 6 good idea for FCMAT's role to be expanded to do
 7 preventative work?

8 MR. SEFERIAN: Objection. Calls for
 9 speculation. Calls for an inadmissible legal opinion.
 10 Vague and ambiguous as to "preventative work" and "good
 11 idea" and "expanded." Overly broad.

12 THE WITNESS: Yes.

13 Q. BY MR. ELIASBERG: And what is that?

14 MR. SEFERIAN: Same objections.

15 THE WITNESS: I believe that any resources we
 16 can make available to school districts to help them
 17 should be explored, whether it's through FCMAT, whether
 18 it's through the county offices of education, whether
 19 it's through state agencies, whether it's through
 20 private consulting, that whatever we can do to make
 21 those resources available to school districts is a
 22 positive thing.

23 Q. BY MR. ELIASBERG: Have you heard any
 24 subsequent discussions about -- with anyone, not just
 25 with Mr. Henry, about expansion of the role of FCMAT?

1 MR. ROSENBAUM: I'm going to respond to every
 2 personal attack.

3 MR. HERRON: That's not an attack, it's a
 4 perfectly professional comment. If you're going to
 5 continue in this way, we are going to ask that you
 6 leave, so you're advised. Go ahead.

7 Q. BY MR. ELIASBERG: Mr. Brooks, do you remember
 8 whether Mr. Henry talked at all during this -- the joint
 9 meeting of the two subcommittees on the master plan?

10 A. Yes.

11 Q. What do you remember he discussed?

12 A. He discussed the role of FCMAT.

13 Q. When you say "the role of FCMAT," was he
 14 talking about it generally, or with respect to Compton?

15 A. Generally.

16 Q. What did he say was the role of FCMAT?

17 A. He basically said that the role of FCMAT is to
 18 go in and to help school districts resolve problems, and
 19 he expressed a concern or a desire that the role be
 20 expanded so that they could go in and work in a
 21 preventative mode with school districts before they got
 22 into trouble and needed to be taken over by the state.

23 Q. Did he explain why he wanted to have the role
 24 of FCMAT expanded?

25 A. He did not explain why.

1 A. Any discussion about anything with anybody?

2 Q. Have you heard any discussion about the
 3 expansion of the role of FCMAT with anyone?

4 MR. SEFERIAN: Objection. Vague and ambiguous.

5 MR. HERRON: You mean beyond what it presently
 6 is as set forth in statute, is that your question?

7 MR. ELIASBERG: Beyond the role that it
 8 presently plays, yes.

9 THE WITNESS: Any discussions that have
 10 occurred subsequent to the joint meeting between the
 11 governance committee and the finance committee?

12 MR. ELIASBERG: Uh-huh.

13 THE WITNESS: Yes.

14 Q. BY MR. ELIASBERG: When was that discussion?

15 A. We've had several meetings subsequent to that
 16 joint meeting, the finance and facility committee, and
 17 during those subsequent meetings, the ideas that were
 18 previously discussed were revisited.

19 Q. When you say we have had several subsequent
 20 meetings, who is we?

21 A. The finance and facilities subcommittee of the
 22 joint committee to develop a master plan for K higher
 23 ed.

24 Q. And had those meetings been joint meetings of
 25 those two subcommittees or individual meetings?

1 A. Of the finance and the facilities?
 2 Q. Yes.
 3 A. We start out jointly, and then we break into
 4 subgroups.
 5 Q. And since you first heard Mr. Henry raise the
 6 issue of expanding the role of FCMAT, how many of these
 7 joint meetings have there been?
 8 A. Joint meetings? The fiscal and the finance --
 9 I mean, the facilities and the finance? Approximately
 10 four or five. There's one today that I'm missing
 11 because of this.
 12 Q. I apologize, unless it's something that you
 13 wanted to get out of.
 14 A. I'd rather be there than here.
 15 Q. I can't imagine why. The first time that that
 16 issue was discussed, again, the expansion of the role of
 17 FCMAT after the meeting at which Mr. Henry first
 18 mentioned it, do you remember what the subject of the
 19 discussion was?
 20 A. Yes.
 21 Q. What was it?
 22 A. We all felt that whatever resources we could
 23 provide to school districts in a preventative mode as
 24 opposed to coming in after the fact once they've been in
 25 trouble and taking over and trying to correct the

1 problem would probably be a good strategy.
 2 Q. Okay. Did anyone respond to the comments that
 3 you made?
 4 MR. SEFERIAN: Objection. Assumes facts not in
 5 evidence. Misstates the witness' testimony.
 6 THE WITNESS: There were probably comments, but
 7 I don't know who or what they said.
 8 Q. BY MR. ELIASBERG: Has that joint group made
 9 any specific recommendations about expanding the role of
 10 FCMAT?
 11 A. We are developing them. They're supposed to be
 12 submitted to the legislature within the -- by sometime
 13 after the first of the year.
 14 (Mr. Reed left the room.)
 15 Q. BY MR. ELIASBERG: Do you have an opinion as to
 16 whether those recommendations will include any
 17 recommendation to expand the role of FCMAT?
 18 MR. SEFERIAN: Objection. Calls for
 19 speculation. Overly broad.
 20 THE WITNESS: That recommendation probably
 21 falls more under the governance committee than the
 22 finance and facilities committee. I do not know whether
 23 the governance committee will go forward with that
 24 recommendation.
 25 Q. BY MR. ELIASBERG: Who is the chair of the

1 governance -- is that a subcommittee or a committee?
 2 A. It is a subcommittee of the joint legislative
 3 committee for the master plan.
 4 (Mr. Reed entered the room.)
 5 Q. BY MR. ELIASBERG: And who is the chair of
 6 that, the governance committee?
 7 A. I've only met with them once. I don't know, I
 8 think they are co-chairs. I think one of the chairs is
 9 the president of one of the colleges in the Bay Area,
 10 but I don't know.
 11 Q. Other than the occasions that we've discussed,
 12 your meeting with Mr. Henry and the meeting called by
 13 Superintendent Eastin, your meeting with him at Compton,
 14 your meetings that had been part of the joint committee
 15 process, have you had -- have you met with Mr. Henry on
 16 other occasions?
 17 A. Not that I recall.
 18 Q. Have you met with any other members of FCMAT
 19 since you've resumed your position at which issues
 20 having to do with school facilities were discussed?
 21 A. There were other members of FCMAT at the
 22 meetings that I previously described, but I haven't had
 23 any meetings other than those.
 24 Q. And are those meetings that Mr. Henry also
 25 attended?

1 A. Yes.
 2 Q. Have you read any FCMAT reports -- well, in the
 3 course of your duties, have you -- other than the
 4 Compton reports on FCMAT, have you read other FCMAT
 5 reports?
 6 A. Yes.
 7 Q. Do you remember what those reports were?
 8 A. I believe FCMAT did a report on San Francisco,
 9 but I'm not certain.
 10 Q. Are there any other FCMAT reports that you
 11 remember reading?
 12 A. Not that I remember, no.
 13 Q. Have you ever directed members of your staff
 14 that there were FCMAT reports that they should read or a
 15 member of your staff should read?
 16 MR. SEFERIAN: Objection. Assumes facts not in
 17 evidence. Overly broad.
 18 THE WITNESS: Not that I recall.
 19 Q. BY MR. ELIASBERG: Do you remember if you've
 20 read a FCMAT report on West Contra Costa County?
 21 A. I don't remember a FCMAT report on West Contra
 22 Costa County since I returned from child nutrition
 23 division.
 24 Q. Do you remember looking at a FCMAT report on
 25 Oakland, Oakland Unified School District?

1 A. It might have been Oakland rather than
 2 San Francisco, the one that I mentioned before that I
 3 said I thought was San Francisco.
 4 Q. Do you remember any of the content of that
 5 report?
 6 A. Not really.
 7 MR. HERRON: The which?
 8 MR. ELIASBERG: The content of the report that
 9 he does remember reading.
 10 MR. HERRON: Oh.
 11 THE WITNESS: That I vaguely remember I might
 12 have read?
 13 MR. ELIASBERG: Yes. Fair enough. Thanks for
 14 that clarification.
 15 THE WITNESS: No.
 16 Q. BY MR. ELIASBERG: Do you remember why you read
 17 that report?
 18 MR. SEFERIAN: Objection. Calls for
 19 speculation. No foundation.
 20 THE WITNESS: I try to read everything that
 21 arrives in my in-basket.
 22 Q. BY MR. ELIASBERG: Do you have any
 23 understanding of why a FCMAT report would arrive in your
 24 in-basket?
 25 MR. SEFERIAN: Objection. Calls for

1 speculation. No foundation.
 2 THE WITNESS: If there was something in there
 3 that related to facilities, I would get it.
 4 Q. BY MR. ELIASBERG: Has the superintendent, or
 5 anybody else in the Department of Education, ever
 6 directed you to look at any FCMAT reports?
 7 MR. SEFERIAN: I'll object to the extent the
 8 question calls for communications between the
 9 superintendent and the witness.
 10 THE WITNESS: Any reports?
 11 MR. ELIASBERG: FCMAT reports.
 12 THE WITNESS: Yes.
 13 Q. BY MR. ELIASBERG: And what reports are those?
 14 A. Compton.
 15 Q. Any others?
 16 A. Not that I recall.
 17 Q. Mr. Brooks, you mentioned this yesterday, so I
 18 know you're familiar with it. What is CCR?
 19 A. Coordinated Compliance Review System.
 20 Q. And is there a unit or a division in the
 21 Department of Education that's in charge of the
 22 coordinated compliance review?
 23 A. Yes.
 24 Q. Do you know what that unit or division is?
 25 A. I believe it's the division that is headed by

1 Wade Brynelson, B-r-y-n-e-l-s-o-n.
 2 Q. Do you happen to know the name of that unit or
 3 division?
 4 A. No.
 5 Q. Since you've resumed your role as the chief of
 6 the school facilities planning division, have you looked
 7 at any CCR reports?
 8 MR. SEFERIAN: Objection. Vague and ambiguous
 9 as to CCR reports.
 10 THE WITNESS: Not total reports.
 11 Q. BY MR. ELIASBERG: Do you remember portions of
 12 reports that you've looked at?
 13 A. Yes.
 14 Q. And what was the subject of those portions?
 15 A. I believe that they related to federal class
 16 size reduction program.
 17 Q. Do you remember how many? I understand you're
 18 saying you only read a portion of a report, but how many
 19 reports were there of which you looked at portions?
 20 A. There was a small number. I was just trying to
 21 look at an example to see what was reported.
 22 Q. Okay. Did you do that on your own initiative,
 23 or did somebody ask you to look at that report?
 24 MR. SEFERIAN: Objection. Compound question.
 25 THE WITNESS: I looked at it because I wanted

1 to.
 2 Q. BY MR. ELIASBERG: Have you ever looked at any
 3 CCR reports that have talked about conditions in school
 4 facilities?
 5 MR. HERRON: Ever, is that the question?
 6 MR. ELIASBERG: Since you've resumed your
 7 position as a school facilities planning division chief.
 8 MR. SEFERIAN: Objection. Vague and ambiguous
 9 as to "CCR reports." Assumes facts not in evidence.
 10 THE WITNESS: Not total reports.
 11 Q. BY MR. ELIASBERG: Even portions of reports
 12 that have discussed school facilities?
 13 MR. SEFERIAN: Same objections.
 14 MR. ELIASBERG: I'd appreciate it if you'd let
 15 me finish my question before you object. I know you
 16 want to get your objection on the record, but you're not
 17 letting me finish my question before you start to
 18 object.
 19 MR. SEFERIAN: I apologize. I'm trying to wait
 20 until you finish and get my objection before -- after
 21 you finish and before the witness speaks, and I
 22 apologize if I've been cutting you off.
 23 THE WITNESS: I'll wait longer to answer.
 24 MR. ELIASBERG: That works best, and I'll try
 25 to do the same.

1 THE WITNESS: Would you repeat the question.
 2 (Record read.)
 3 THE WITNESS: No.
 4 Q. BY MR. ELIASBERG: During your previous tenure
 5 as the chief of the school facilities planning division,
 6 did you look at CCR reports or portions of CCR reports
 7 that discussed school facilities conditions?
 8 MR. HERRON: At any time between '87 and '95?
 9 MR. ELIASBERG: Yeah.
 10 MR. SEFERIAN: Objection. Vague and ambiguous
 11 as to "CCR reports."
 12 THE WITNESS: No.
 13 Q. BY MR. ELIASBERG: Mr. Brooks, are you familiar
 14 with WASC?
 15 A. Yes.
 16 Q. And what is WASC?
 17 A. I think it's the Western Association of School
 18 Accreditation, or something like that.
 19 Q. Okay. And do you know what WASC does?
 20 MR. SEFERIAN: Objection. Overly broad. Calls
 21 for speculation.
 22 THE WITNESS: I have a vague knowledge of what
 23 they do.
 24 Q. BY MR. ELIASBERG: And what is that vague
 25 knowledge?

1 A. I believe that they visit schools and go
 2 through an accreditation process.
 3 Q. Have you ever participated in the accreditation
 4 process?
 5 MR. HERRON: By WASC?
 6 MR. ELIASBERG: The WASC accreditation process.
 7 Thanks.
 8 THE WITNESS: I have not personally.
 9 Q. BY MR. ELIASBERG: Have you asked members of
 10 your staff to do that?
 11 A. I haven't asked them, they've volunteered.
 12 Q. And who volunteered?
 13 A. Patricia Penn.
 14 Q. Do you remember approximately when that was?
 15 A. Five, six, seven years ago.
 16 Q. Is Patricia Penn a field rep or a field
 17 consultant?
 18 A. Yes.
 19 Q. Is she a consultant for a particular geographic
 20 area?
 21 A. Yes.
 22 Q. Did you have a discussion with her about why
 23 she was volunteering?
 24 A. Yes.
 25 Q. And what did she tell you?

1 A. She's interested in staying in touch with what
 2 goes on in schools.
 3 Q. And did you give her permission or tell her it
 4 was okay to participate in the process?
 5 A. Yes.
 6 Q. Do you know what role she played?
 7 A. She was one of the team members. WASC
 8 frequently asked the State Department of Education for
 9 staff to participate with them in these reviews, and
 10 it's on a voluntary basis.
 11 Q. Do you know if she actually did participate?
 12 A. Yes.
 13 Q. And do you know in what schools or what
 14 districts she participated in?
 15 A. Since it was seven or eight years ago, no, I do
 16 not.
 17 Q. Do you remember whether she reported back to
 18 you in either written form or just talked with you about
 19 the process?
 20 A. About the process of the review that she was
 21 involved with?
 22 Q. Yes.
 23 A. Yes, she did discuss it with me.
 24 Q. And do you remember that discussion?
 25 A. Not in detail.

1 Q. Do you remember if she expressed an opinion
 2 whether it was an effective or a good process?
 3 A. Yes.
 4 Q. Do you remember what her opinion was?
 5 A. She thought it was a valuable process, and she
 6 continued doing it for two or three years in a row.
 7 Q. Do you know approximately how many times she's
 8 done it?
 9 MR. SEFERIAN: Objection. Calls for
 10 speculation.
 11 THE WITNESS: My recollection is three or four.
 12 Q. BY MR. ELIASBERG: Do you know if any other
 13 members of your staff have volunteered to participate in
 14 a WASC accreditation process?
 15 A. I do not remember any other members, but over
 16 the course of the last 12, 15 years there might have
 17 been.
 18 Q. Let's just focus solely on the last couple of
 19 years since you've resumed as the chief. Have you -- if
 20 I've asked you this, I apologize.
 21 Have you read any WASC accreditation reports
 22 since you've been the chief of the school facilities
 23 planning division, since you've resumed as chief?
 24 MR. SEFERIAN: Objection. Vague and ambiguous
 25 as to "WASC accreditation reports."

1 THE WITNESS: No.
 2 Q. BY MR. ELIASBERG: Have you ever asked any
 3 members of your staff to read WASC accreditation
 4 reports?
 5 MR. SEFERIAN: Same objection.
 6 THE WITNESS: No.
 7 MR. ELIASBERG: Let's take a break. This is a
 8 totally logical time to do it.
 9 (Recess taken 11:23 to 11:36.)
 10 Q. BY MR. ELIASBERG: Mr. Brooks, I want to ask
 11 you just a couple more questions about WASC. Do you
 12 know if part of the WASC accreditation process involves
 13 evaluating the condition of school facilities?
 14 MR. SEFERIAN: Objection. Calls for
 15 speculation.
 16 THE WITNESS: I don't believe it does.
 17 Q. BY MR. ELIASBERG: Okay. And what's the basis
 18 for your understanding?
 19 A. If it did, I'd probably get reports about it
 20 and I would review those reports or have staff review
 21 those reports.
 22 Q. Okay. Talk to you for a minute about deferred
 23 maintenance. Do you have an understanding of what I
 24 mean by the term deferred maintenance?
 25 MR. SEFERIAN: Objection. Calls for

1 speculation.
 2 Q. BY MR. ELIASBERG: Have you heard the term
 3 deferred maintenance before?
 4 A. Yes.
 5 Q. And what is your understanding of that term?
 6 A. I don't have a very good grasp of deferred
 7 maintenance. I think a lot of people don't. I think it
 8 means different things to different people.
 9 Q. Okay. Is your understanding -- well, does your
 10 division have any responsibilities with respect to
 11 deferred maintenance?
 12 A. No.
 13 MR. SEFERIAN: Objection. Calls for an
 14 inadmissible legal opinion. Vague and ambiguous as to
 15 "responsibilities" and "deferred maintenance."
 16 THE WITNESS: No.
 17 Q. BY MR. ELIASBERG: Are there any units or
 18 divisions in the Department of Education that do have
 19 the responsibility with respect to deferred maintenance?
 20 MR. SEFERIAN: Same objections.
 21 THE WITNESS: Yes.
 22 Q. BY MR. ELIASBERG: What units or divisions?
 23 A. The school fiscal services division.
 24 Q. Only if you know, do you know what role they
 25 play or what their responsibilities are with respect to

1 deferred maintenance?
 2 MR. SEFERIAN: Same objections.
 3 THE WITNESS: Yes.
 4 Q. BY MR. ELIASBERG: What role is that?
 5 A. They review the fiscal reports that school
 6 districts submit and transmit that information to the
 7 office of public school construction to determine what
 8 amount school districts are eligible for to receive from
 9 OPSC for deferred maintenance.
 10 Q. Who is the head of the fiscal services
 11 division?
 12 A. Jan Sterling, S-t-e-r-l-i-n-g.
 13 Q. Do you know if there is a particular person in
 14 that division whose task is overseeing the deferred
 15 maintenance program?
 16 MR. SEFERIAN: Objection. Calls for
 17 speculation.
 18 THE WITNESS: Yes.
 19 Q. BY MR. ELIASBERG: And who is that person?
 20 A. Rich Zeisler, Z-e-i-s-l-e-r.
 21 Q. Do you know what his title is?
 22 A. I believe his civil service title is Staff
 23 Services Manager I or II.
 24 Q. Have you ever met with Mr. Zeisler?
 25 A. Yes.

1 Q. Have you ever -- during any of those meetings,
 2 have you ever discussed the deferred maintenance program
 3 with Mr. Zeisler?
 4 A. Yes.
 5 Q. When was the first time you met with
 6 Mr. Zeisler? Was it since you've resumed your position
 7 as the chief of the SFPD?
 8 A. Yes.
 9 Q. And approximately when was that first meeting?
 10 A. Probably two years ago.
 11 Q. Did you meet alone, or were there other people
 12 present?
 13 A. There was one other person present.
 14 Q. And who was that?
 15 A. Jim Bush.
 16 Q. Do you remember what was discussed about the
 17 deferred maintenance program at that meeting?
 18 A. Yes.
 19 Q. What was the discussion?
 20 A. Mr. Zeisler was applying for a job in my
 21 division and we asked him what knowledge he had
 22 regarding facilities related issues and he described his
 23 role relating to deferred maintenance.
 24 Q. And what did he tell you his role was?
 25 MR. SEFERIAN: Objection. It's improper for

1 you to ask questions about a person's job interview. I
2 think that's confidential.

3 MR. ELIASBERG: Are you instructing him not to
4 answer?

5 MR. SEFERIAN: Well, I'd like to speak with my
6 client.

7 MR. ELIASBERG: Let the record reflect there's
8 a question pending. And that Mr. Seferian and his
9 client are leaving the room.

10 (Recess taken 11:41 to 11:42.)

11 MR. SEFERIAN: I'm going to instruct the
12 witness not to answer questions that call for him to
13 reveal information that was disclosed to him in the
14 context of a personnel interview.

15 MR. ELIASBERG: I want to make very clear that
16 I'm only interested in asking you, Mr. Brooks, about
17 what Zeisler told you his role was with respect to the
18 deferred maintenance program.

19 I'm going to ask the question again.

20 Q. What did Mr. Zeisler tell you was his role with
21 respect to the deferred maintenance program?

22 MR. SEFERIAN: I'm going to object that it's
23 confidential information, calling for information
24 disclosed in a personnel interview, which I believe is
25 confidential, and instruct the witness not to answer.

1 MR. ELIASBERG: I'm just going to put on the
2 record I don't believe the objection is well taken and
3 we reserve the right to file a motion to compel and
4 reserve to reopen to address this topic.

5 Q. Subsequent to that meeting, have you met with
6 Mr. Zeisler?

7 A. Yes.

8 Q. When was that?

9 A. There were several meetings where Mr. Zeisler
10 was involved working with CASH and others to try to get
11 a sufficient amount of deferred maintenance funds in the
12 state budget, but I don't recall when those meetings
13 were.

14 Q. Do you remember -- do you remember
15 approximately how many meetings there were on the
16 subject of attempting to get a sufficient amount of
17 deferred maintenance funds?

18 A. Two, maybe three.

19 Q. Do you remember who attended those meetings
20 besides yourself and Mr. Zeisler?

21 A. I believe Audrey Edwards from the office of
22 public school construction was involved.

23 Q. Do you remember anyone who was specifically
24 aligned with or associated with CASH who attended those
25 meetings?

1 A. No.

2 Q. Where did those meetings take place?

3 A. The one meeting I'm remembering was in the CASH
4 conference room, so someone from CASH must have been
5 there, but I don't remember who it was.

6 Q. They don't give you free run of the place? You
7 don't have to answer that.

8 A. We get along pretty well, but --

9 Q. Do you remember anything that Mr. Zeisler said
10 in those meetings about the deferred maintenance
11 program?

12 A. Yes.

13 Q. What did he say?

14 A. We were trying to make sure that we had
15 accurate information to go to the governor's office and
16 request funding for 100 percent of the deferred
17 maintenance funds, so we wanted to make sure that we all
18 knew what information came into the school fiscal
19 services division, what it represented.

20 Q. What do you mean "100 percent of the deferred
21 maintenance funds"?

22 A. School districts apply for deferred maintenance
23 funds through the office of public school construction,
24 and the amount that they get is based on whatever is in
25 the governor's budget, and they oftentimes do not get

1 100 percent of what is being requested.

2 Q. Are you aware of any statute or regulation that
3 says -- let me step back.

4 Is it your understanding this program is a
5 matching program where districts put forth a certain
6 amount of money and then the state matches those funds
7 or some portion of those funds?

8 A. Yes.

9 Q. Do you know what the match is, dollar for
10 dollar?

11 A. It is not dollar for dollar. My understanding
12 is that the school districts have to put aside a
13 percentage of their operating budget, I believe it's 3
14 percent, in a restricted maintenance account in order to
15 receive the money from the state.

16 Q. And is it your understanding that the state
17 matches some or all of that 3 percent if they set it
18 aside?

19 A. Yes. And if the state does not match it, then
20 they can subsequently remove it from the restricted
21 account and use it for other purposes.

22 Q. Do you know what the match ratio is?

23 A. It changes from year to year based on the state
24 budget.

25 Q. Okay. Do you know if --

1 A. I'm sorry, you said the match ratio?
 2 Q. Yes.
 3 A. I believe it's dollar for dollar.
 4 Q. Is it your testimony that the actual amount of
 5 match changes based on the State's budget?
 6 A. The percentage of the match, whether it's 100
 7 percent or 90 percent or 80 percent of what school
 8 districts request changes based on the allocation in the
 9 annual state budget.
 10 Q. Do you know whether all districts in the state
 11 of California request at least some money from the state
 12 for deferred maintenance purposes?
 13 MR. HERRON: Every year?
 14 MR. ELIASBERG: Every year.
 15 MR. SEFERIAN: Objection --
 16 MR. ELIASBERG: Since you've resumed your
 17 position.
 18 MR. SEFERIAN: Objection. No foundation.
 19 Calls for speculation.
 20 THE WITNESS: I do not know whether every
 21 school district has applied because that information
 22 does not come through my office, it goes through the
 23 school fiscal services division and over to the office
 24 of public school construction.
 25 Q. BY MR. ELIASBERG: Okay. Do you know if the

1 office of public school construction makes any attempt
 2 to ascertain which districts have applied and which
 3 districts have not?
 4 MR. SEFERIAN: Objection. Calls for
 5 speculation.
 6 THE WITNESS: I do not know whether they have
 7 attempted that or not.
 8 Q. BY MR. ELIASBERG: Okay. Do you know if
 9 there's any requirement that districts have that if they
 10 don't apply for deferred maintenance funding, that they
 11 need to file a report with any state entity?
 12 MR. SEFERIAN: Objection. Vague and ambiguous
 13 as to "requirement."
 14 THE WITNESS: It's my understanding that they
 15 have to file an annual five-year deferred maintenance
 16 plan in order to receive the deferred maintenance
 17 funding.
 18 If they apply for state funds and receive funds
 19 for a state project, I believe they also have to file
 20 with their application, or subsequent to that time, a
 21 plan that demonstrates that they will maintain the
 22 facility in good condition so that the State's
 23 investment in the facility is maintained.
 24 Q. BY MR. ELIASBERG: Do you see all or any of the
 25 five-year plans that districts file?

1 MR. SEFERIAN: Objection. No foundation.
 2 MR. HERRON: Vague as to time.
 3 MR. ELIASBERG: Since you've resumed your
 4 position as chief of SFPD.
 5 THE WITNESS: Since they don't go through my
 6 division, I don't receive them on a regular basis, but I
 7 am sure that I have reviewed some five-year plans just
 8 to make sure that I know what's contained in them and
 9 what's going to the OPSC.
 10 Q. BY MR. ELIASBERG: Do you have any estimate,
 11 again, since you've resumed your position, as to
 12 approximately how many of those plans you've reviewed?
 13 MR. SEFERIAN: Objection. Calls for
 14 speculation. No foundation.
 15 THE WITNESS: No, I have no estimate.
 16 Q. BY MR. ELIASBERG: Can you estimate as to
 17 whether it's more than 100?
 18 MR. SEFERIAN: Objection. Asked and answered.
 19 No foundation. Calls for speculation.
 20 THE WITNESS: I can't estimate.
 21 Q. BY MR. ELIASBERG: Why do you look at the
 22 plans?
 23 A. As I said, I want to make sure I know what's
 24 contained in the plans and know what the process is,
 25 because we try to stay on top of what OPSC is doing,

1 what the districts are doing, whether or not state
 2 funding is adequate to meet the districts' needs.
 3 Q. Has your review of those plans -- based on your
 4 review of those plans, have you formed an opinion as to
 5 whether the state funding is adequate?
 6 MR. SEFERIAN: Objection. Calls for an
 7 inadmissible opinion. Vague and ambiguous as to
 8 "adequate." No foundation. Calls for speculation.
 9 Incomplete hypothetical.
 10 THE WITNESS: It changes from year to year
 11 based on the state budget. Sometimes the state budget
 12 is able to fund 100 percent, sometimes it's not.
 13 Q. BY MR. ELIASBERG: Do you have an opinion as to
 14 whether if the state is able to fund at 100 percent,
 15 that that is a sufficient amount of money for a district
 16 to properly maintain its facilities?
 17 MR. SEFERIAN: Objection. Vague and ambiguous
 18 as to "properly maintain its facilities." Incomplete
 19 hypothetical. Calls for an inadmissible opinion.
 20 MR. HERRON: Calls for speculation as well.
 21 THE WITNESS: If a district says this is my
 22 total need and the state funds their total need, I would
 23 assume that that's adequate.
 24 Q. BY MR. ELIASBERG: Have you ever -- strike
 25 that.

1 You said that in some years the state funds up
2 to 100 percent. Do you know what the range is to how
3 low the percentage has been, let's say, in the last five
4 years?
5 MR. HERRON: Objection. Asking him to
6 speculate.
7 THE WITNESS: No, I did not tell you over the
8 last five years what percentage was funded through the
9 state budget each year.
10 Q. BY MR. ELIASBERG: Do you know if any members
11 of your staff know that?
12 MR. SEFERIAN: Objection. Calls for
13 speculation.
14 THE WITNESS: I doubt that any members of the
15 staff could say off the top of their head. We have that
16 information in the office, I just can't say off the top
17 of my head for the last five years what percentage was
18 appropriated.
19 Q. BY MR. ELIASBERG: Under the new school
20 facilities program are districts required to set aside a
21 certain amount of funds for ongoing and major
22 maintenance in order to receive funds for new school
23 construction?
24 MR. SEFERIAN: Objection. Vague and ambiguous
25 as to "ongoing" and "major maintenance." Calls for an

1 inadmissible opinion.
2 THE WITNESS: As I said previously, as part of
3 the process to obtain funds through the school
4 facilities program, the district has to agree to
5 maintain the facility. The exact percentage that's
6 required, I can't tell you. That's operated by the
7 office of public school construction.
8 Q. BY MR. ELIASBERG: Okay. The percentage
9 requirement that is required of the districts, are you
10 aware of how the decision was made to set it at that
11 percentage?
12 A. Why the legislature chose 3 percent?
13 Q. Yes.
14 MR. SEFERIAN: Objection. Calls for
15 speculation. Overly broad.
16 THE WITNESS: I do not know for certain. I
17 assume that there was some kind of standard that's
18 utilized to determine what an adequate amount of the
19 general fund is needed to maintain facilities.
20 Q. BY MR. ELIASBERG: Did any member of the
21 legislature or his or her staff ask you your opinion as
22 to what would be an appropriate figure?
23 A. The legislation was recently changed. It was
24 changed during the period of time that I was in the
25 child nutrition division, so I was not personally asked

1 by any members of the legislature. During the time that
2 the legislation was being developed, I wasn't in this
3 position.
4 Q. Do you know if the person who held the job
5 prior to your resuming it was asked by the legislature
6 or any members of the staff?
7 A. Not to my knowledge. I do not know.
8 Q. Who was head of SFPD prior to your resuming the
9 position?
10 A. Ann Evans.
11 Q. And how long did Ms. Evans hold the position?
12 A. For three years, for the period of time that I
13 was gone.
14 Q. Okay. Is there any requirement that -- let me
15 strike that.
16 Mr. Brooks, as part of your responsibilities,
17 do you visit school sites?
18 MR. HERRON: Objection. Asked and answered in
19 part.
20 MR. SEFERIAN: Objection. Overly broad.
21 THE WITNESS: Yes.
22 Q. BY MR. ELIASBERG: Okay. How often would you
23 say you visit school sites in a year on average since
24 you've resumed your position as chief?
25 MR. HERRON: You mean he himself, right?

1 MR. ELIASBERG: Yes, personally. You
2 personally.
3 THE WITNESS: Let me say that the first eight
4 years that I was there I had a policy that I went out
5 every month, I rotated every month. I went out with a
6 field representative and kind of shadowed them for the
7 day.
8 Since I returned to the division and since it
9 has grown and since we were given class size reduction,
10 office of school transportation, a couple of federal
11 programs, I have not been able to carry out that policy,
12 so I would say currently that I visit school sites as
13 much as I can. Probably one every two or three months.
14 Q. BY MR. ELIASBERG: Now I'm going to break up
15 between your past tenure and your present tenure.
16 During your past tenure as the chief, I believe
17 you said you went out about every month with the field
18 reps and visited school sites?
19 A. At least.
20 Q. At least that often. On those occasions did
21 you generally visit one site, or did you go to a number
22 of school sites?
23 A. Typically a number of school sites.
24 Q. And any estimate about what that number would
25 be?

1 MR. HERRON: On average?
 2 MR. ELIASBERG: Yeah.
 3 THE WITNESS: It varied. What I would do is
 4 shadow the consultant, whatever they were doing on that
 5 particular day, I would go out with them. Sometimes
 6 they would go to one or two sites, sometimes they'd go
 7 to four or five. It all depended on what their activity
 8 was, their schedule for that day.
 9 Q. BY MR. ELIASBERG: Did you visit different
 10 geographic areas throughout the state?
 11 A. Yes, I rotated each month going out with a
 12 different field consultant, and each one has a different
 13 geographic area.
 14 Q. Okay. So did you at any time during that first
 15 tenure see schools in San Francisco County, visit
 16 schools in San Francisco County?
 17 A. I'm sure I did.
 18 Q. And in Los Angeles County?
 19 A. Absolutely.
 20 Q. San Diego County?
 21 A. Absolutely.
 22 Q. San Diego and Imperial County?
 23 A. I went out to El Cajon. I went out to
 24 districts that you have to get there by flying into Yuma
 25 and driving across the desert.

1 Q. Do you remember if you went to the Bakersfield
 2 area?
 3 A. Yes.
 4 Q. And how about West Contra Costa County?
 5 A. I went to every geographic region in the state.
 6 Q. Why did you have this policy of going out with
 7 the consultants?
 8 MR. SEFERIAN: Objection. Asked and answered.
 9 THE WITNESS: The policy was to ensure that I
 10 knew what was going on, that I knew what our field reps
 11 were dealing with on a day-to-day basis, that I stayed
 12 in contact with the real world and practical things that
 13 were going on in the school districts. Gave me an
 14 opportunity to make myself available to individuals in
 15 the school districts. They could ask me questions,
 16 share ideas. It allowed me to stay on top of the
 17 issues.
 18 Q. BY MR. ELIASBERG: I understand you made a lot
 19 of visits. I'm trying to get a sense of what the
 20 general practice was when you made these visits.
 21 As a general rule when you were making visits
 22 to school sites with field reps, did you tour the school
 23 facility?
 24 A. Yes.
 25 Q. Did you attempt to look in at least some

1 classrooms?
 2 A. Absolutely.
 3 Q. Okay. And did you attempt to ascertain whether
 4 the HVAC system was working properly?
 5 MR. SEFERIAN: Objection. Overly broad.
 6 THE WITNESS: Did I climb on the roof and look
 7 into the air conditioning systems, no. Did I talk to
 8 teachers about whether or not they felt that the
 9 classrooms met their educational needs, did I walk into
 10 the classrooms and see whether they were hot or cold,
 11 yes.
 12 Q. BY MR. ELIASBERG: Okay. Based on the visits,
 13 and, again, I'm focusing now on your prior tenure --
 14 A. Okay.
 15 Q. -- do you know whether the majority of schools
 16 in California at the time, during that tenure, had
 17 classrooms where the temperatures were comfortable?
 18 MR. SEFERIAN: Objection. Overly broad. Vague
 19 and ambiguous as to "comfortable." No foundation.
 20 Calls for speculation.
 21 THE WITNESS: I can only tell you about the
 22 classrooms that I visited.
 23 Q. BY MR. ELIASBERG: Okay. I appreciate that.
 24 Of the classrooms that you visited, were the majority of
 25 the classrooms kept at comfortable temperatures?

1 MR. SEFERIAN: Objection. Vague and ambiguous
 2 as to "comfortable temperatures." No foundation. Calls
 3 for speculation.
 4 THE WITNESS: Yes.
 5 Q. BY MR. ELIASBERG: Okay. Would you say that
 6 the majority of classrooms were kept in a range between
 7 68 and 80 degrees?
 8 MR. SEFERIAN: Objection. No foundation.
 9 Calls for speculation. Calls for an inadmissible
 10 opinion.
 11 THE WITNESS: Depended on what time of the year
 12 I went. If it was in the summertime, they were kept at
 13 a different level than when I went in the wintertime. I
 14 did not experience any classrooms that I went into that
 15 were so uncomfortable that you couldn't stand it.
 16 Q. BY MR. ELIASBERG: Do you have a sense of how
 17 hot or how cold a classroom would be before you would
 18 find it to be so uncomfortable that you couldn't stand
 19 it?
 20 MR. SEFERIAN: Objection. Argumentative.
 21 MR. HERRON: Incomplete and improper
 22 hypothetical. It's vague and ambiguous as phrased.
 23 Can we have it reread, please.
 24 (Record read.)
 25 MR. SEFERIAN: Objection. Relevance.

1 MR. HERRON: Of the ones he visited?
 2 MR. ELIASBERG: Yes. I want to make it very
 3 clear, I'm only talking about your experience visiting
 4 classrooms.
 5 THE WITNESS: Would you repeat it again.
 6 (Record read.)
 7 THE WITNESS: Oh, I would say if it hit 120
 8 degrees, it would probably be uncomfortable. If it were
 9 32 degrees, it would probably be uncomfortable.
 10 Q. BY MR. ELIASBERG: Did you ever visit any
 11 classrooms where the temperature got down to 50 degrees,
 12 as far as you could tell?
 13 MR. SEFERIAN: Objection. Calls for
 14 speculation. No foundation.
 15 THE WITNESS: In the summertime or the
 16 wintertime?
 17 MR. ELIASBERG: Either time.
 18 MR. SEFERIAN: Same objections.
 19 THE WITNESS: I have no basis to determine the
 20 actual degrees in the classroom. I'm a hot-blooded
 21 person so a room that would feel hot to me could feel
 22 cold to somebody else. It's an individual-by-individual
 23 sensitivity, I would guess.
 24 Q. BY MR. ELIASBERG: Did you speak with teachers
 25 who told you that they felt that their classrooms were

1 actually leaking?
 2 A. Only after the earthquake and there was
 3 structural collapse and it was raining.
 4 Q. Do you remember whether the majority of the
 5 schools that you visited, again, during that eight-year
 6 period, had water-stained roofs?
 7 MR. SEFERIAN: Objection. No foundation.
 8 Calls for speculation.
 9 MR. ELIASBERG: I'm sorry, water-stained
 10 ceilings. Just based on your observations.
 11 MR. SEFERIAN: Same objections.
 12 MR. HERRON: Do you want him to repeat it?
 13 THE WITNESS: Yeah.
 14 Q. BY MR. ELIASBERG: I'm trying to determine
 15 whether the roofs that you saw, whether the majority of
 16 them had water stains on them or not -- I'm sorry,
 17 ceilings.
 18 MR. SEFERIAN: Objection. Calls for
 19 speculation.
 20 THE WITNESS: I would say that the majority did
 21 not. There were several. I'd also say that my living
 22 room has water stains that have been repaired. Again, I
 23 don't know when the stain might have occurred, whether
 24 it was continuing to leak, or whether it had been
 25 repaired.

1 too hot or too cold?
 2 A. Yes.
 3 Q. Okay. Do you have a sense of how many teachers
 4 made that kind of complaint?
 5 MR. SEFERIAN: Objection. Calls for
 6 speculation. Misstates the witness' testimony.
 7 THE WITNESS: No.
 8 Q. BY MR. ELIASBERG: Do you have a sense of
 9 whether the majority of the teachers who you spoke to
 10 expressed that kind of complaint?
 11 A. It was not the majority.
 12 Q. In visiting schools, as you toured the sites,
 13 did you attempt to determine whether the roof leaked or
 14 not?
 15 MR. SEFERIAN: Objection. Assumes facts not in
 16 evidence.
 17 THE WITNESS: Did I witness water stains? I
 18 did not climb on the roof and determine whether they
 19 were adequately sealed. I could look at the ceiling and
 20 determine whether or not there had been water stains,
 21 but I couldn't determine how old they were, whether they
 22 were a week old or two years old.
 23 Q. BY MR. ELIASBERG: Did you ever visit -- do you
 24 remember ever visiting a school where you actually saw
 25 water dripping down from the roof, where the roof was

1 Q. BY MR. ELIASBERG: When you visited schools --
 2 let me put it differently.
 3 When you visited classrooms in schools, did you
 4 ever do that when the classes were in session?
 5 A. Yes.
 6 Q. Did you ever see classes that you felt had too
 7 many students in them?
 8 MR. SEFERIAN: Objection. Vague and ambiguous
 9 as to "too many students." No foundation.
 10 THE WITNESS: I do not recall any classrooms
 11 that I would say that they were so overcrowded that
 12 instruction was not taking place.
 13 Q. BY MR. ELIASBERG: Do you have an opinion as to
 14 when a classroom would be so overcrowded that
 15 instruction would not take place?
 16 MR. SEFERIAN: Objection. Incomplete
 17 hypothetical. No foundation. Calls for an inadmissible
 18 opinion. Calls for speculation. Overly broad.
 19 THE WITNESS: It's difficult to assign a
 20 specific number because it depends on the grade level,
 21 it depends on the activity, it depends on the subject
 22 matter.
 23 Q. BY MR. ELIASBERG: Okay. Did you ever speak
 24 with any teachers in the course of your visits who
 25 said -- told you that they felt their classrooms were

1 too crowded?
 2 A. No teacher ever told me that.
 3 Q. Okay. Did you ever discuss with teachers, did
 4 you ever ask them during the course of your visits
 5 whether they felt that their classrooms were large
 6 enough or had -- were appropriately loaded with the
 7 number of students?
 8 MR. SEFERIAN: Objection. Vague and ambiguous.
 9 Compound question.
 10 THE WITNESS: Large enough in terms of the
 11 physical size of the classroom?
 12 MR. ELIASBERG: Let's break it down. Yeah,
 13 first of all, large enough in terms of the physical
 14 size.
 15 THE WITNESS: Did I ever speak to teachers?
 16 MR. ELIASBERG: And ask them in sum or
 17 substance, do you feel your classroom is appropriately
 18 sized or large enough.
 19 THE WITNESS: Yes.
 20 Q. BY MR. ELIASBERG: Did you ever ask them
 21 whether they felt they had too many students in the
 22 class for the size of the classroom that they had?
 23 MR. HERRON: That statement or words to that
 24 effect?
 25 MR. ELIASBERG: Yes, sum or substance.

1 THE WITNESS: Not specifically that question.
 2 Q. BY MR. ELIASBERG: Did you ask them a question
 3 that would be related to the size of the classroom or
 4 the number of students in the class being too many for
 5 the class?
 6 A. The size of the classroom.
 7 Q. In sum or substance what was the question that
 8 you would ask the teachers?
 9 A. Whether they feel that the size of the
 10 classroom is sufficient.
 11 Q. And what was their response?
 12 A. Well, I got different responses from different
 13 teachers.
 14 Q. Did some tell you that the class was too small?
 15 MR. HERRON: Objection. Asked and answered.
 16 THE WITNESS: The classroom itself?
 17 MR. ELIASBERG: Yes, I'm sorry, the classroom
 18 was too small.
 19 THE WITNESS: Yes.
 20 Q. BY MR. ELIASBERG: Of the teachers that you
 21 spoke to, did the majority tell you that they felt the
 22 classroom was too small or that the classroom was
 23 appropriately sized?
 24 A. Most of the teachers were reluctant to say
 25 anything negative.

1 Q. How did you know that they were reluctant?
 2 A. Because they asked me whether I really wanted
 3 to know. And I said, yes, give me your honest answer.
 4 Q. Did you feel that the answer they gave you was
 5 honest?
 6 A. Yes.
 7 MR. SEFERIAN: Objection. Calls for
 8 speculation.
 9 Q. BY MR. ELIASBERG: Okay. When you visited
 10 school sites with your field reps, again, back in the
 11 eight-year period when you were first chief of the
 12 school facilities planning division, did you go into the
 13 bathrooms or go into some bathrooms?
 14 A. Yes.
 15 Q. Okay. Why did you do that? That was a really
 16 bad question. I don't want that one memorialized. Can
 17 we strike that one.
 18 Did you go for purposes not of your own health
 19 and sanitation but to inspect the bathrooms?
 20 A. Yes.
 21 Q. Why were you making that inspection?
 22 A. Because I wanted to know what the conditions of
 23 the facilities were.
 24 Q. Do you remember seeing bathrooms that you
 25 thought were not appropriately maintained?

1 A. Yes.
 2 MR. HERRON: Objection. Vague and ambiguous.
 3 THE WITNESS: Yes.
 4 Q. BY MR. ELIASBERG: And what's your
 5 understanding of not appropriately maintained, or how
 6 are you using that?
 7 A. Some of the bathrooms had doors that were
 8 missing, some had graffiti on the walls, some didn't
 9 have toilet paper and towels.
 10 Q. Based on your observations of the bathrooms
 11 that you visited, were the majority of -- did the
 12 majority of schools have bathrooms that were
 13 appropriately maintained or not appropriately
 14 maintained?
 15 A. The majority were appropriate.
 16 Q. Did you attempt to ascertain whether the school
 17 had -- let me ask you this question first.
 18 Did you ever, in your experience, find that any
 19 of the bathrooms were locked?
 20 A. Any bathroom at any time?
 21 Q. Yes.
 22 A. Yes.
 23 Q. When you found that, did you attempt to figure
 24 out why it was locked?
 25 MR. SEFERIAN: Objection. Assumes facts not in

1 evidence. Relevance.
 2 THE WITNESS: Yes.
 3 Q. BY MR. ELIASBERG: Do you remember any specific
 4 occasion on which you found a locked bathroom?
 5 A. I cannot cite a school, a particular school.
 6 Q. But you do remember finding at least a locked
 7 bathroom; is that correct?
 8 MR. SEFERIAN: Objection. Relevance.
 9 THE WITNESS: Yes.
 10 Q. BY MR. ELIASBERG: And what did you do to
 11 attempt to ascertain why it was locked?
 12 MR. SEFERIAN: Objection. Assumes facts not in
 13 evidence.
 14 THE WITNESS: I asked the individual that was
 15 taking me around the school why it was locked.
 16 Q. BY MR. ELIASBERG: Do you remember what the
 17 response or responses were?
 18 MR. HERRON: In each case, each instance where
 19 this happened?
 20 MR. ELIASBERG: As many of them as you
 21 remember.
 22 THE WITNESS: The response was fairly common,
 23 and that was either for the safety of the students or to
 24 prevent vandalism. They felt it was necessary to lock
 25 the bathrooms during a certain period of time throughout

1 the day.
 2 Q. BY MR. ELIASBERG: Did you ever tell the person
 3 who was taking you around that it was not appropriate to
 4 lock the bathrooms or they shouldn't lock them?
 5 MR. SEFERIAN: Objection. Argumentative.
 6 THE WITNESS: It wasn't my position to tell
 7 them that it was appropriate or inappropriate. They're
 8 there on a daily basis, they know what happens at that
 9 school every day. And it's a local decision to
 10 determine, based on student safety and other factors,
 11 how that campus should be operated.
 12 Q. BY MR. ELIASBERG: Okay. Did you ever at any
 13 of the school sites you visited make an attempt to
 14 ascertain whether there were sufficient numbers of
 15 toilets or urinals for the number of students that were
 16 in the school?
 17 MR. SEFERIAN: Objection. Calls for an
 18 inadmissible opinion. Vague and ambiguous as to
 19 "sufficient number."
 20 THE WITNESS: Without knowing a specific
 21 number, because I don't have that technical expertise
 22 and knowledge about what sufficient would be, I would
 23 ascertain whether or not they felt that what they had
 24 was adequate.
 25 Q. BY MR. ELIASBERG: How would you ascertain

1 that?
 2 A. I would ask them.
 3 MR. ELIASBERG: I think this is -- it's a
 4 little bit before we talked about breaking, but this is
 5 a logical time, so let's take a break.
 6 (Lunch recess taken 12:12 to 1:21.)
 7 (Mr. Rosenbaum not present.)
 8 Q. BY MR. ELIASBERG: Afternoon, Mr. Brooks.
 9 A. Good afternoon.
 10 Q. Did you get a chance to get some lunch?
 11 A. Yes.
 12 Q. Okay. And you're aware that you're still under
 13 oath?
 14 A. Yes.
 15 Q. Okay.
 16 A. Did the lunch question refer to that too?
 17 Q. You know, if you didn't eat lunch and you lie
 18 about it, I don't think there's any penalty.
 19 A. I had a banana. Does that constitute lunch?
 20 What constitutes lunch?
 21 Q. Talk to you a little bit about your
 22 interaction, if any, with officials, people that have
 23 responsibility for facilities at local school districts.
 24 Let me lay a background here.
 25 Is there generally in school districts a

1 particular individual who has the responsibility for the
 2 construction and maintenance and modernization of the
 3 school facilities?
 4 A. Generally, yes.
 5 Q. And does that person generally have a
 6 particular title?
 7 MR. HERRON: You're asking him whether one
 8 person holds all three functions?
 9 MR. ELIASBERG: Let me make sure that's clear.
 10 Thank you, David.
 11 Q. Is the person who generally has responsibility
 12 for modernization also the person that generally has
 13 responsibility for the other tasks?
 14 A. Depends on the size of the school district. In
 15 some school districts the director of facilities is the
 16 support, the principal, the janitor and the bus driver.
 17 In other school districts, such as the larger ones, they
 18 separate the construction from the modernization or
 19 maintenance functions, and there are all different
 20 degrees in the middle.
 21 Q. Okay. So there's a range. At the largest
 22 district, let's take LAUSD, do you know how many people
 23 at senior level have oversight responsibility for
 24 modernization, new construction and maintenance of
 25 school facilities?

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

3 THE WITNESS: I know the heads of those
4 departments. I do not know how many people are below
5 them.

6 Q. BY MR. ELIASBERG: Okay. And what are those
7 departments?

8 A. Kathy Littmann, L-i-t-t-m-a-n-n, is responsible
9 in LA Unified for the construction program. Lynn
10 Roberts is the director of the maintenance part of the
11 operation.

12 Q. And do you have an understanding as to whether,
13 in general, people who have responsibilities in the area
14 of school construction or modernization or school
15 maintenance at the district level have particular
16 qualifications or need particular qualifications to hold
17 that job?

18 MR. HERRON: Objection. Calls for speculation.
19 Vague and ambiguous as phrased. Compound.

20 THE WITNESS: The school districts that
21 practice merit system principles would have minimum
22 qualifications for their various jobs, and I would
23 assume that most school districts are in the merit
24 system approach.

25 Q. BY MR. ELIASBERG: Within the merit system

1 A. I don't know all of the courses that are
2 required. I have a member of my staff going through
3 that program right now.

4 Q. Are there specific courses that you do know are
5 required?

6 A. Yes.

7 Q. What are those?

8 A. They discuss financing, they discuss
9 demographics. I'm sure they go into education codes
10 that are applicable.

11 Q. Are there persons in school districts in
12 California with whom you've had interaction who have
13 responsibilities for facilities either modernization,
14 new school construction, maintenance, or all of those,
15 who you feel are extremely well qualified?

16 MR. SEFERIAN: Objection. Calls for
17 speculation.

18 THE WITNESS: Well qualified to do what?

19 MR. ELIASBERG: To do the jobs that they hold.

20 MR. SEFERIAN: Objection. Overly broad.

21 THE WITNESS: In my personal opinion I think
22 there are a lot of people out there that are doing a
23 very good job in their school districts.

24 Q. BY MR. ELIASBERG: Do you have an opinion as to
25 what qualifications are necessary in order to do the job

1 approach, do you know if generally there's certain
2 academic requirements?

3 MR. HERRON: Same objections as to the last
4 question.

5 THE WITNESS: I wouldn't have a clue what the
6 various requirements are in the thousand school
7 districts for their employees.

8 Q. BY MR. ELIASBERG: Are there particular
9 academic credentials or are you aware of particular
10 academic programs that are designed to train people to
11 be -- work in school districts with responsibility for
12 school facilities?

13 MR. HERRON: Objection. Calls for speculation,
14 I believe.

15 THE WITNESS: Yes, I'm aware of such programs.

16 Q. BY MR. ELIASBERG: Is there -- a person who
17 finishes such a program, is there a particular
18 credential or degree that one obtains?

19 A. There is a school facilities planners
20 certificate that's available through, I believe it's
21 Irvine or UC Riverside.

22 Q. Do you know how many years it takes to get that
23 certificate or what -- let me do it this way.

24 Do you know what coursework is required to get
25 that certificate?

1 of -- the jobs within school districts that have
2 responsibility for school facilities?

3 MR. SEFERIAN: Objection. Overly broad in
4 terms of different districts.

5 MR. HERRON: Vague and ambiguous as phrased.

6 THE WITNESS: The jobs vary so much, as I said.
7 They could be the principal as well as the facilities
8 planner, and so the qualifications would vary
9 significantly.

10 MR. ELIASBERG: What I'm trying to get at is
11 the qualifications necessary not to be the principal or
12 the bus driver, but to handle the needs associated with
13 facilities.

14 MR. HERRON: Objection. Vague and ambiguous.

15 MR. SEFERIAN: Objection. Overly broad.

16 THE WITNESS: And your question is?

17 Q. BY MR. ELIASBERG: I'm asking you if you have
18 an opinion that there are particular qualifications that
19 you think are necessary in order to handle the
20 responsibilities in the district associated with school
21 facilities?

22 A. Yes.

23 Q. What are those?

24 MR. HERRON: Is this for new school
25 construction, maintenance?

1 MR. ELIASBERG: Any of the three that I've laid
2 forth, maintenance, new school construction,
3 modernization.

4 THE WITNESS: There's a variety of experiences
5 that would qualify individuals to be school facilities
6 planners. We've had excellent superintendents, former
7 superintendents and principals because they know the
8 educational requirements. There are people who can come
9 from the construction business because they know that
10 part of the operation. There are people who are very
11 familiar with the state program and know how to access
12 and maximize state funds and generate local funds.

13 There's a wide variety of skills and expertise
14 that would lead to a good facilities plan, besides the
15 obvious things like organization, leadership,
16 supervision.

17 Q. BY MR. ELIASBERG: In your experience dealing
18 with individuals at district levels who have
19 responsibilities for new school construction or
20 modernization or maintenance, have you ever come to the
21 opinion that some of -- that you don't believe that some
22 of those people are particularly well qualified to do
23 their jobs?

24 MR. SEFERIAN: Objection. Overbroad.
25 (Mr. Rosenbaum entered the room.)

1 A. Just an example.

2 Q. I understand that you say that there are a
3 variety of different causes for not, using your phrase,
4 getting the job done.

5 Is it your opinion that there are some
6 districts, and I'm not asking you to name particular
7 districts, but that there are some districts in the
8 state that do not get the job done in terms of new
9 construction, modernization and proper maintenance of
10 facilities?

11 MR. SEFERIAN: Objection. Lacks foundation.
12 Vague and ambiguous as to "get the job done." Overly
13 broad.

14 MR. HERRON: Vague as to time.

15 THE WITNESS: Can you clarify what you mean by
16 "get the job done"?

17 Q. BY MR. ELIASBERG: I was actually using a
18 phrase that you had previously used. Do you remember
19 using that phrase?

20 A. No.

21 MR. ELIASBERG: Okay. Can you search back for
22 "get the job done."

23 (Record read.)

24 Q. BY MR. ELIASBERG: Does that help you?

25 A. You're using my definition then?

1 THE WITNESS: I would say there are people who
2 I disagree with their methods and their approaches.
3 They may be extremely successful.

4 So it depends on your definition of qualified.
5 If your definition is they get the job done, then they
6 probably do. If your definition is the method that they
7 use to get the job done, then I don't agree in every
8 case with the way that they carry out their functions.

9 Q. BY MR. ELIASBERG: Are there any persons in the
10 districts that you've dealt with who have responsibility
11 for facilities who you felt don't get the job done?

12 MR. SEFERIAN: Objection. Vague and ambiguous
13 as to "get the job done."

14 THE WITNESS: That don't build schools?

15 MR. ELIASBERG: That don't build schools, that
16 don't get schools modernized, that don't keep schools
17 well maintained.

18 MR. SEFERIAN: Objection. Overly broad.

19 THE WITNESS: I would be reluctant to name
20 names because their success or failure may be due to
21 circumstances beyond their control, such as an overly
22 oppressive superintendent or inept school board.

23 Q. BY MR. ELIASBERG: I appreciate that, and I
24 actually don't want you to name names. Do you feel that
25 there are --

1 Q. Yes.

2 A. And the question again was?

3 Q. Is it your opinion, based on your experience in
4 both of your tenures -- actually, let's stick with the
5 present tenure, that there are districts who do not get
6 the job done with respect to new facilities
7 construction, modernization and proper maintenance of
8 their buildings?

9 MR. HERRON: Objection. Vague and ambiguous.
10 Calls for speculation. Incomplete and improper
11 hypothetical.

12 THE WITNESS: There are some districts that
13 take longer than others, and there are varying degrees
14 of successfulness out there. I'm not aware of any
15 individual or any school district that I would say is
16 totally inept or incapable or unable to get the job
17 done.

18 Q. BY MR. ELIASBERG: Based on your experience,
19 including your visiting schools, do you feel that there
20 are districts that don't do -- that do the job with
21 respect to maintenance of facilities, but don't do it
22 very well?

23 MR. SEFERIAN: Objection. Overly broad. Vague
24 and ambiguous as to "don't do it very well." Calls for
25 speculation.

1 MR. HERRON: Asked and answered.
 2 THE WITNESS: My opinion of the individuals in
 3 the school districts is that they're committed, they're
 4 interested, they're concerned, they're doing the best
 5 they can with the resources that they have.
 6 Q. BY MR. ELIASBERG: Let me shift from a specific
 7 person or persons who have the responsibility. Based on
 8 your experience, including your visits to school
 9 facilities, are you of the opinion that -- or have you
 10 seen school facilities that you believe are not very
 11 well maintained?
 12 MR. SEFERIAN: Objection. Compound question.
 13 Calls for inadmissible opinion. Vague and ambiguous as
 14 to "not very well maintained." Vague as to time.
 15 THE WITNESS: I have seen facilities that are
 16 not very well maintained.
 17 Q. BY MR. ELIASBERG: When you've seen those --
 18 let's be specific.
 19 In any of the facilities that you've seen that
 20 you felt were not very well maintained, when you say
 21 that, did you make any effort to ascertain why the
 22 conditions in the facilities were the way they were?
 23 A. Yes.
 24 MR. SEFERIAN: Objection. Assumes facts not in
 25 evidence.

1 Q. BY MR. ELIASBERG: Let me step back and make
 2 sure we're in the same ballpark here. What did you mean
 3 when you said "not very well maintained"?
 4 A. They are in conditions that certainly could be
 5 improved.
 6 Q. Do you have specific examples of the kinds of
 7 conditions that could have been improved?
 8 A. There are portables that are leaking and
 9 rotting, windows that need to be fixed, bathrooms that
 10 need to be maintained better.
 11 Q. Were there any other conditions besides the
 12 ones you just listed that you can think of?
 13 A. Lack of technology.
 14 Q. What do you mean by "lack of technology"?
 15 A. One plug in the room so that even if they had
 16 computers, there would be no power source to plug the
 17 computers in, poor maintenance of the playgrounds, poor
 18 maintenance of the asphalt in the parking lots.
 19 Q. How did you -- on what basis did you conclude
 20 that the maintenance of the asphalt in the parking lot
 21 was poor?
 22 A. Potholes.
 23 Q. Okay. And on what basis do you conclude that
 24 the maintenance of the playgrounds was poor?
 25 MR. SEFERIAN: Objection. Overly broad.

1 THE WITNESS: Limited grass area and inadequate
 2 or no playground equipment.
 3 Q. BY MR. ELIASBERG: Okay. When you saw a school
 4 or schools like this, did you make any effort to
 5 ascertain how long the conditions that you mentioned had
 6 been in existence?
 7 MR. SEFERIAN: Objection. Assumes facts not in
 8 evidence. Overly broad.
 9 THE WITNESS: Not in every case.
 10 Q. BY MR. ELIASBERG: In the cases that -- where
 11 did you attempt to do that, what did you do to attempt
 12 to ascertain that?
 13 MR. SEFERIAN: Objection. Overly broad.
 14 THE WITNESS: I would ask the individuals that
 15 I was touring the school with how long the conditions --
 16 the facility had been in that condition.
 17 Q. BY MR. ELIASBERG: And what answers did they
 18 give you?
 19 MR. SEFERIAN: Objection. Overly broad. Calls
 20 for a narrative.
 21 THE WITNESS: They obviously varied.
 22 Q. BY MR. ELIASBERG: Do you remember the range of
 23 periods of time was?
 24 MR. HERRON: You want a for example?
 25 Q. BY MR. ELIASBERG: Do you happen to remember

1 approximately the longest period of time somebody said
 2 the conditions had existed like that was?
 3 A. Well, the worst condition was in Compton where
 4 they had portables that had been there for 50 years.
 5 Q. Were there other times when it seemed to you a
 6 long period of time that these conditions that you were
 7 asking about had existed?
 8 MR. SEFERIAN: Objection. Vague and ambiguous
 9 as to "long."
 10 THE WITNESS: Long to me would be a week or two
 11 weeks or a month, to somebody else it might be several
 12 months or a year.
 13 Q. BY MR. ELIASBERG: Why would long to you be, I
 14 think you said, a week or a couple weeks or a month?
 15 A. Depends on severity of the problem, but if
 16 there's a severe problem that goes unattended, then it
 17 needs to be addressed immediately.
 18 Q. And why is that?
 19 MR. SEFERIAN: Objection. Overly broad. Vague
 20 and ambiguous.
 21 MR. HERRON: And why is what?
 22 MR. ELIASBERG: Why is it that it needs to be
 23 addressed promptly, I think was the word you used.
 24 MR. SEFERIAN: Same objections.
 25 THE WITNESS: Because it may cause -- pose a

1 health or safety problem.
 2 Q. BY MR. ELIASBERG: Any other reasons?
 3 A. It may impair the learning process.
 4 Q. How would it impair the learning process?
 5 MR. HERRON: Objection. Calls for speculation.
 6 Vague and ambiguous as phrased. I'd appreciate you
 7 taking another try at that one.
 8 MR. ELIASBERG: If you can answer the question,
 9 go ahead. If you can't, I'll try to rephrase.
 10 MR. HERRON: If you understand.
 11 THE WITNESS: How would it impair the learning
 12 process?
 13 MR. ELIASBERG: Uh-huh.
 14 MR. SEFERIAN: Objection. Calls for an
 15 inadmissible opinion.
 16 MR. HERRON: I'll have to add incomplete and
 17 improper hypothetical too.
 18 THE WITNESS: One way that it could impair the
 19 learning process is, as the superintendent has often
 20 said, the facilities that we provide our students sends
 21 them signals regarding how we value education. They see
 22 nice, new shiny malls, they see the way the facilities
 23 can be, and if our schools are not constructed and
 24 maintained in a manner that sends the right message to
 25 kids about the way we value education, then they won't

1 value education.
 2 Q. BY MR. ELIASBERG: Do you agree with the
 3 opinion expressed by Superintendent Eastin?
 4 MR. SEFERIAN: Objection. Calls for
 5 speculation.
 6 THE WITNESS: Yes.
 7 Q. BY MR. ELIASBERG: I believe you said that in
 8 some cases you attempted to ascertain how long the
 9 conditions had existed. Did you also attempt to
 10 ascertain the cause of the conditions?
 11 A. Yes.
 12 Q. Do you remember what you discovered in any of
 13 those instances?
 14 MR. SEFERIAN: Objection. Overly broad.
 15 THE WITNESS: In most cases the reason was lack
 16 of funding.
 17 Q. BY MR. ELIASBERG: How did you discover that?
 18 A. I asked.
 19 Q. In the cases in which you didn't attempt to
 20 ascertain how long the conditions existed -- I don't
 21 want to put words in your mouth. Did you say that in
 22 some cases you didn't attempt to ascertain how long the
 23 conditions existed?
 24 A. Yes.
 25 Q. Did you direct any members of your staff or

1 anybody in the Department of Education to attempt to
 2 ascertain how long the conditions had existing?
 3 MR. SEFERIAN: Objection. Assumes facts not in
 4 evidence.
 5 MR. HERRON: In each and every instance, are
 6 you asking?
 7 MR. ELIASBERG: In any instances.
 8 THE WITNESS: If the question is did I in every
 9 case that I looked at say how long has this been in this
 10 condition or whether I directed my staff in every case
 11 to ask how long has this been in this condition, the
 12 answer is no.
 13 Q. BY MR. ELIASBERG: In cases in which you
 14 visited a school and you concluded -- it was your
 15 opinion that it was not very well maintained, did you
 16 subsequently return to that school in order to ascertain
 17 whether the conditions had improved?
 18 MR. SEFERIAN: Objection. Vague and ambiguous
 19 as to "not very well maintained."
 20 THE WITNESS: In some schools, I returned. It
 21 may have been for various reasons. It may not have been
 22 for the specific purpose of determining whether or not
 23 the condition existed as previously.
 24 Q. BY MR. ELIASBERG: In some cases did you go
 25 back for that reason?

1 A. No.
 2 Q. Did you ask anybody on your staff to go back to
 3 update you on what the condition of those schools was?
 4 MR. SEFERIAN: Objection. Overly broad.
 5 Assumes facts not in evidence.
 6 MR. HERRON: Vague and ambiguous. Asked and
 7 answered in part.
 8 THE WITNESS: When I would observe a condition
 9 like that, I would use that -- come back to Sacramento,
 10 use that information as justification to lobby the
 11 legislature, or whomever has the ability to address that
 12 issue, use that information to lobby for either changes
 13 to the laws, rules, regulations, adequate resources, or
 14 contact personally or direct my staff to contact the
 15 local school district representatives to find out what
 16 they were doing to correct the problem and how long it
 17 was going to take them to correct the problem.
 18 Q. BY MR. ELIASBERG: And did you in all those
 19 cases get reports back from your staff telling you what
 20 the local school districts has reported?
 21 MR. SEFERIAN: Objection. Overly broad.
 22 Vague.
 23 THE WITNESS: Since I expect them when I give
 24 them an assignment to let me know the results of that
 25 assignment, I would say that, yes, in all cases I

1 received reports from my staff regarding what they
2 found.
3 Q. BY MR. ELIASBERG: Do you remember if any of
4 them reported back to you and said, we haven't found any
5 improvement in the conditions that you -- that we're
6 looking at?
7 MR. SEFERIAN: Objection. Overly broad. Vague
8 as to time. Vague and ambiguous.
9 THE WITNESS: I do not recall that occurring.
10 Generally when we identify a problem, particularly a
11 major problem, and we confront the local school district
12 who is responsible for fixing that problem, we get
13 results. There's at least improvement if not total
14 remediation of the problem.
15 Q. BY MR. ELIASBERG: I believe you said that you
16 had seen portables at Compton Unified School District
17 that were 50 years old or more?
18 A. That's what we were told.
19 Q. Did you -- did you look at the conditions of
20 any of those 50-year-old-plus portables?
21 A. Yes.
22 Q. And what was it that you found?
23 A. They were rotting.
24 Q. Do you have any idea or did you attempt to find
25 out how long they'd been rotting for?

1 MR. SEFERIAN: Objection. Compound question.
2 Assumes facts not in evidence. Overly broad.
3 THE WITNESS: Yes, they'd been there for 50
4 years.
5 Q. BY MR. ELIASBERG: What I'm trying to
6 understand is whether they had been -- whether they
7 started rotting the day that they were put down, or
8 whether you tried to figure out when it was that they
9 went from being portables in good condition to portables
10 that were rotting?
11 MR. SEFERIAN: Objection. Calls for
12 speculation. No foundation.
13 THE WITNESS: It really didn't matter to me
14 whether they'd been rotting for 10 years or five years
15 or one year, they were conditions that needed to be
16 replaced so that those students had an adequate
17 educational environment.
18 So I came back to Sacramento and I contacted
19 the division of the state architect and I contacted the
20 office of public school construction, and we attempted
21 to find funding for that district to replace those
22 facilities.
23 Q. BY MR. ELIASBERG: Were you successful in doing
24 that?
25 A. No, unfortunately we were not.

1 Q. Subsequent to your visit to Compton, actually,
2 at any time in any of your tenures as the chief of the
3 SFPD, did you ever attempt to do an inventory of the
4 condition of the portables in the state of California?
5 MR. SEFERIAN: Objection. Assumes facts not in
6 evidence. Overly broad. Vague and ambiguous as to
7 "inventory."
8 THE WITNESS: What do you mean by "condition"?
9 MR. ELIASBERG: Well, to look at whether, for
10 example, they were rotting, whether they were leaking,
11 whether they were suitable as a place to obtain an
12 appropriate education.
13 MR. SEFERIAN: Same objections.
14 THE WITNESS: We have lobbied the legislature
15 several times, supported the establishment of an
16 automated school facilities inventory system that for a
17 brief time operated in the office of public school
18 construction but was not funded and so it was defunct.
19 And the other reason it was defunct was because
20 the school districts were not mandated to complete the
21 inventory. And typically when we asked the school
22 districts to complete surveys, particularly the largest
23 ones in the state refused to complete the surveys unless
24 they were mandated to do so.
25 But I still advocate and lobby for such a

1 system so that we can know at the state level the
2 condition of all facilities in the state, how old they
3 are, what kind of condition they're in, what they're
4 used for, classroom, recreation, whatever.
5 Q. BY MR. ELIASBERG: Why do you continue to lobby
6 for that system?
7 A. The main reason or one of the main reasons is
8 when it comes time to lobby for state bonds, if we have
9 a better handle on the condition of the facilities, we
10 can better argue our case for a larger state bond.
11 Q. Have you ever -- what was your understanding as
12 to when this -- sorry, I did not get the acronym. The
13 systematic --
14 A. Automatic (sic).
15 Q. Automatic. What was the name of the previous
16 system that you said had become defunct?
17 A. Automated. Automated school facilities
18 inventory.
19 Q. When was that automated school facilities
20 inventory begun?
21 A. Approximately six or seven years ago.
22 Q. Do you know if that was set forth -- whether it
23 was a statute that put that inventory into place?
24 MR. SEFERIAN: Objection. Calls for
25 speculation.

1 THE WITNESS: I do not remember whether it was
2 in statute or the state budget, which may be a technical
3 matter because the state budget technically is a
4 statute.

5 It provided funding -- one-year funding to --
6 it might not have even provided funding to OPSC, but
7 there was a mandate for OPSC to establish an automated
8 school facilities inventory system. They attempted to
9 do that. They contacted all the schools. They got a
10 very poor response from the schools, and the schools
11 that they did get a response from, there was no
12 requirement to annually report and maintain the data
13 that was in the system as current data, and so it
14 eventually fell apart.

15 Q. BY MR. ELIASBERG: Do you know if the data that
16 was reported from the districts is -- actually, do you
17 have any of that data?

18 A. I do not.

19 Q. Do you know if anybody in the -- on your staff
20 has that data?

21 A. Anybody on my staff would not. We didn't
22 administer that operation.

23 Q. Do you know if anyone at the office of public
24 school construction or any other state entity has that
25 data?

1 Q. And you've had those discussions -- discussions
2 about facilities inventory with CASH?

3 A. Yes.

4 Q. And with CASBO?

5 A. I'm sure that CASBO was included in some of the
6 meetings where we were discussing what we'd like to see
7 in terms of improvements in the programs.

8 Q. Have you had discussions about this with CTA or
9 any representatives from CTA?

10 A. I do not recall CTA being in any of the
11 discussions.

12 Q. In any of the discussions that you've had, do
13 you remember anyone from CASH taking a position as to
14 whether this was a good idea or not?

15 A. The consensus is that we do need such a system.
16 OPSC agrees, CASH agrees. Although I can't give you the
17 specific name of someone who uttered those words, they
18 support the establishment of such a system for the
19 reasons that I indicated.

20 Q. And do you know if anybody at CASBO expressed
21 an opinion?

22 A. I do not know of anybody in any organization
23 that specifically uttered the words "we support that
24 system."

25 Q. Have you spoken with anybody in the governor's

1 A. If anyone has, it's OPSC. I do not personally
2 know whether they maintain it.

3 Q. Okay. Correct me if I'm wrong. I believe you
4 said you've lobbied to bring that system or some similar
5 system back into operation; is that correct?

6 A. Correct.

7 Q. With whom have you lobbied?

8 A. We have discussed that -- the establishment of
9 that system with the various education groups, with
10 CASH, as we've developed state bond language.

11 Also I'm lobbying to have that part of the
12 recommendations to the legislature through the master
13 plan for K higher ed that we fund and mandate the
14 reestablishment of that inventory system.

15 Q. When you said the various education groups, do
16 you mean the -- I don't want to go through the whole
17 list. But specifically are you talking about the --
18 Abe's organization?

19 A. As one.

20 Q. And ACSA?

21 A. Yes.

22 Q. Would you include the PTA as one of those
23 groups?

24 A. They typically are not in our -- on our
25 discussions regarding facilities.

1 office about the establishment of this kind of an
2 inventory?

3 A. No.

4 Q. Has anyone -- have you spoken with anyone at
5 the Board of Education or on the Board of Education, the
6 State Board about the establishment of an inventory?

7 A. No.

8 Q. Have you spoken with your superior, Susan
9 Lange, about the establishment of the inventory?

10 MR. SEFERIAN: Objection. To the extent it
11 calls for privileged communications.

12 THE WITNESS: We typically don't get into that
13 level of detail.

14 Q. BY MR. ELIASBERG: I just want to make sure I'm
15 clear. It is your best recollection that you have not
16 discussed it with Susan Lange?

17 MR. SEFERIAN: Same objection.

18 THE WITNESS: Yes.

19 Q. BY MR. ELIASBERG: Have you had discussions
20 about an inventory system with Superintendent Eastin?

21 MR. SEFERIAN: Objection to the extent it calls
22 for privileged communication.

23 THE WITNESS: We do not get into that level of
24 detail.

25 Q. BY MR. ELIASBERG: Have you set forth -- have

1 you and your staff talked about how -- discussed how you
 2 think that inventory should be set up?
 3 A. No. The assumption is we would go back to the
 4 inventory that OPSC originally established rather than
 5 reinvent the wheel, start from there and probably tweak
 6 it to try to make it current and update it, but we
 7 haven't gotten into that of a detailed discussion yet.
 8 Q. Do you feel you have a good understanding of
 9 how that system was supposed to work, what the
 10 mechanisms were to gather the information?
 11 MR. SEFERIAN: Objection. Compound question.
 12 THE WITNESS: How OPSC went about issuing the
 13 questionnaire and collecting the data?
 14 Q. BY MR. ELIASBERG: Let me break it down. How
 15 did OPSC attempt to get information about the condition
 16 of school facilities?
 17 A. They developed a questionnaire.
 18 Q. Okay. And have you seen a copy of that
 19 questionnaire?
 20 A. I have.
 21 Q. Do you have a copy of that?
 22 A. I do not think that I still have that in my
 23 files.
 24 Q. Do you know if any members of your staff have a
 25 copy?

1 A. I don't believe so, but certainly OPSC does. I
 2 would think OPSC would.
 3 Q. Do you recollect what kinds of questions were
 4 on the questionnaire?
 5 A. In general, the categories. It was a
 6 multipaged questionnaire and it was seven or eight years
 7 ago, so I couldn't tell you what the individual
 8 questions were.
 9 Q. Sure. Do you remember some of the general
 10 categories though?
 11 A. Well, we were trying to get a handle on the age
 12 of the buildings, on the -- I believe they even asked
 13 for the materials that the buildings were constructed
 14 of. We also wanted to know the uses of the building,
 15 whether they were primarily instructional or
 16 noninstructional. I think OPSC was interested in
 17 whether the buildings had ever been modernized, and if
 18 so, when. Those are the major issues that I can recall.
 19 Q. Do you know if there were any specific
 20 questions as to particular conditions, such as, for
 21 example, the condition of the roofs?
 22 (Mr. Reed left the room.)
 23 THE WITNESS: There might have been.
 24 Q. BY MR. ELIASBERG: But you're not certain?
 25 A. I'm not certain.

1 Q. Okay. Do you remember if there were any
 2 questions having to do with the temperatures of the
 3 classrooms?
 4 A. I do not recall that that was a question.
 5 Q. Any questions having to do with HVAC generally?
 6 A. There might have been some questions regarding
 7 the age of the mechanical systems.
 8 Q. What steps have you taken, specific steps -- I
 9 know you've said you've lobbied. What specific steps
 10 have you taken to try to get this facilities inventory
 11 back in operation again?
 12 MR. SEFERIAN: Objection. Vague and ambiguous
 13 as to "you." Assumes facts not in evidence. Vague and
 14 ambiguous as to "inventory."
 15 MR. ELIASBERG: In this case, Mr. Brooks, I'm
 16 talking about you personally, not members of your staff.
 17 MR. SEFERIAN: Same objections.
 18 MR. HERRON: Objection. Asked and answered.
 19 THE WITNESS: I'm often in meetings where
 20 issues are discussed regarding how to improve the school
 21 facilities program either with staff from the various
 22 state agencies, OPSC particularly, staff of the
 23 legislature, legislators themselves, state allocation
 24 board members, conferences where there are large numbers
 25 of school facilities planners in existence, the master

1 plan for K higher ed. There are a variety, a multitude
 2 of venues where we have the opportunity to present ideas
 3 for the improvement of the program.
 4 Q. BY MR. ELIASBERG: And just to be clear, one of
 5 those venues was the -- I believe you said -- there were
 6 two subcommittees that you discussed earlier.
 7 A. Finance and facilities.
 8 Q. And have you brought this issue up in those
 9 meetings?
 10 A. Yes, I have.
 11 Q. Do you remember if Mr. Henry was present when
 12 you brought this up?
 13 A. He was present, as I said, at only the one
 14 meeting where we had the joint governance. That was an
 15 all-day meeting. There were several topics that were
 16 discussed, and I cannot say for certain that during that
 17 particular day that we discussed that issue in that
 18 venue. Certainly in the other meetings with the finance
 19 and facilities committee members I brought that up.
 20 Q. At those particular meetings, not other
 21 meetings that you may have had, but the particular
 22 finance and facilities subcommittee meetings, did
 23 anybody at the meetings you remember express an opinion
 24 as to whether this is a good idea?
 25 A. Yes.

1 Q. Do you remember who expressed those opinions?
 2 A. Mr. Duffy, who is the chair of the committee,
 3 as well as many of the other members. There was no
 4 opposition.
 5 Q. Okay. I assume Mr. Duffy expressed an opinion
 6 in support of this inventory?
 7 A. Yes.
 8 (Mr. Reed entered the room.)
 9 Q. BY MR. ELIASBERG: Do you have an opinion as to
 10 whether -- I think you've discussed tweaking the
 11 previous system rather than reinventing the wheel.
 12 Do you have any specific examples of how, in
 13 your opinion, the system should be tweaked to make it
 14 work?
 15 A. No.
 16 MR. SEFERIAN: Objection. No foundation.
 17 Q. BY MR. ELIASBERG: Have you -- do you have an
 18 opinion as to whether the district response to the
 19 questionnaire should be mandated?
 20 MR. SEFERIAN: Objection. No foundation.
 21 Calls for speculation.
 22 THE WITNESS: Based on the complete failure of
 23 the effort to collect and maintain that data in the
 24 past, it probably would be a good idea to mandate --
 25 either mandate the completion of the questionnaire or

1 provide some kind of incentive on a voluntary basis, but
 2 a carrot to encourage the districts to complete it.
 3 Q. BY MR. ELIASBERG: At these subcommittee
 4 meetings has the specific issue about whether the
 5 inventory should be mandated or mandatory, has that
 6 issue come up?
 7 A. We have not completed our recommendations to
 8 the legislature, so to this point that level of detail
 9 has not been discussed.
 10 Q. And has there been any discussion about ways to
 11 incentivise the program?
 12 MR. HERRON: Objection. Vague and ambiguous.
 13 THE WITNESS: "The program" being?
 14 MR. ELIASBERG: To create an incentive to have
 15 districts fill out the facilities inventory.
 16 MR. HERRON: Same objection.
 17 THE WITNESS: The group that's there is dealing
 18 with macro policy issues. We have discussed in terms of
 19 macro policy major structural changes to governance and
 20 finance, the pros and cons of incentives versus the
 21 carrots and the sticks.
 22 The large group has not gotten into the level
 23 of detail with the specific automated school facilities
 24 inventory, but, in general, with all of the issues that
 25 we're discussing, we're trying to find ways that are

1 going to be most effective to encourage the school
 2 districts to -- school districts and the legislature and
 3 whomever else is part of the problem.
 4 Q. BY MR. ELIASBERG: Mr. Brooks, have you asked
 5 any member of your staff to look into any particular
 6 issues with respect to how a school facilities inventory
 7 might work going forward?
 8 MR. SEFERIAN: Objection. Assumes facts not in
 9 evidence. Vague and ambiguous.
 10 THE WITNESS: It's premature.
 11 Q. BY MR. ELIASBERG: Let me ask you one question
 12 about Compton school districts. You previously
 13 testified that you'd seen rotting portables at Compton.
 14 Do you know if those portables are still in the
 15 school district and being used as classrooms?
 16 MR. SEFERIAN: Objection. Calls for
 17 speculation.
 18 THE WITNESS: I have not been down there since
 19 the last time I saw them on the campus, so I can't say
 20 for certain that they've been removed.
 21 As I mentioned, we tried to get the district
 22 funding and we were unsuccessful, so unless they've come
 23 up with some funds at the local level to replace those,
 24 I assume they're still there.
 25 Q. BY MR. ELIASBERG: When was the last time you

1 visited Compton?
 2 A. About a year ago.
 3 MR. ELIASBERG: Okay. I think this is a good
 4 time for a break.
 5 (Recess taken 2:01 to 2:14.)
 6 (Mr. Rosenbaum not present.)
 7 Q. BY MR. ELIASBERG: Are you doing okay,
 8 Mr. Brooks?
 9 A. Yep.
 10 Q. I'm going to give to the court reporter a
 11 three-page document that is entitled school facilities
 12 fingertip facts, and ask her to mark it.
 13 (Exhibit SAD-201 was marked.)
 14 MR. ELIASBERG: She's marked that document as
 15 SAD Exhibit No. 201, which I'm giving a copy of that to
 16 Mr. Brooks, and I'll distribute copies to counsel.
 17 Mr. Brooks, take as long as you want to review
 18 that document.
 19 (Mr. Rosenbaum entered the room.)
 20 THE WITNESS: Okay.
 21 Q. BY MR. ELIASBERG: Have you seen this document
 22 before, Mr. Brooks?
 23 A. I have seen the information on this document.
 24 Somebody has taken our document and reformatted it.
 25 Q. Okay. Based on your review, is all the same

1 information included, and the only difference between
 2 this and the document you have seen is formatting?
 3 A. No.
 4 Q. What other differences are there between the
 5 document you have seen?
 6 A. At the bottom of page 1 where it says total of
 7 new school construction needs per county, per county, I
 8 would say, is inaccurate. I don't know where that was
 9 transcribed.
 10 Q. What do you think it should say?
 11 MR. HERRON: If you're able to say.
 12 THE WITNESS: What this is is a number of new
 13 schools needed by K-8, 9-12 and total, and I don't
 14 recall exactly what the original document says, but this
 15 is incorrect, that it's not per county, the figure
 16 that's here.
 17 Q. BY MR. ELIASBERG: What do you understand --
 18 A. This is the total state.
 19 Q. Okay. When you say "total state," are you
 20 referring to the bottom line of the document you have in
 21 front of you where it says total? And I'm talking about
 22 Exhibit 201 here where it says total and across from
 23 that 344 and 69.
 24 A. The 201, 143, 344 in terms of over the next
 25 five years the number of new schools that we'll need

1 based on 20 classrooms per K-8 and 65 per 9-12.
 2 Q. That's your understanding of the total number
 3 of schools that --
 4 A. Per state, not per county.
 5 Q. Okay. I understand that you have not seen this
 6 exact document, but you have seen much of this
 7 information before.
 8 Did you play any -- when did you first see this
 9 information put together on a document?
 10 A. We developed it. We developed the document.
 11 Q. When you say "we," who are you referring to?
 12 A. Me and my staff.
 13 Q. And who on your staff worked with you to
 14 develop it?
 15 MR. SEFERIAN: Objection. Assumes facts not in
 16 evidence.
 17 THE WITNESS: Pardon me?
 18 MR. SEFERIAN: Assumes facts not in evidence.
 19 THE WITNESS: The staff person that works with
 20 me on this is Steve Yeager.
 21 Q. BY MR. ELIASBERG: And what role did you
 22 personally play in the development of the document?
 23 A. I look at the way that the information is
 24 presented, I look at the categories that we're
 25 presenting, and I inform Mr. Yeager to make revisions

1 based on what I think is going to be the most accurate
 2 portrayal of the information.
 3 Q. And when was this document prepared? Let me
 4 step back.
 5 I see at the top of the document, Exhibit 201,
 6 that it says January 2001. Do you understand what the
 7 January 2001 date signifies?
 8 A. Yes.
 9 Q. What is that?
 10 A. It signifies the last time this was updated.
 11 We update it annually. In fact, we're coming up.
 12 Mr. Yeager told me today that he has an update for the
 13 current year.
 14 Q. Approximately when do you start preparing each
 15 annual update?
 16 MR. HERRON: Objection. Assumes facts not in
 17 evidence. Calls for speculation.
 18 THE WITNESS: The Department of Finance
 19 demographics unit annually updates their public K-12
 20 enrollment. They typically do that in October of every
 21 year. We wait for them to give us those figures, and we
 22 use their figures to update our projections based on the
 23 Department of Finance's demographics unit enrollment
 24 projections. We also update the information regarding
 25 year-around education based on CBEDS data that each

1 school district submits.
 2 We also try to do the best job we can in terms
 3 of estimating figures. For instance, the number of
 4 classrooms that are over 25 years old, Mr. Yeager told
 5 me that we recently received a survey that the
 6 department of health services conducted regarding the
 7 age of school buildings, and we will be using their
 8 information to make a better estimate, for instance, of
 9 item 5e, the number of schools that are -- or classrooms
 10 over 25 years old.
 11 Q. BY MR. ELIASBERG: And when this update was
 12 completed in January 2001, did you or members of your
 13 staff distribute this document to anybody within the
 14 Department of Education?
 15 A. Yes.
 16 Q. And do you know to whom you distributed it to?
 17 A. It goes to all of our staff. I'd probably send
 18 Susie a copy. We send it to members of the legislature
 19 who are looking for estimates of need. We share it with
 20 individuals in the education community, those people
 21 that we dialogue with on a regular basis throughout the
 22 year, trying to come up with the best figures possible
 23 for the school facilities needs.
 24 Q. When you referred to "Susie," did you mean
 25 Susan Lange?

1 A. Yes.
 2 Q. Do you send it to members of the State Board of
 3 Education?
 4 A. Not specifically. If they request such
 5 information, we certainly will.
 6 Q. Do you have any recollection as to whether
 7 anyone from the State Board of Education did request
 8 this document?
 9 MR. SEFERIAN: Objection. Vague.
 10 MR. ELIASBERG: By "this document," I'm
 11 referring to Exhibit 201.
 12 THE WITNESS: I don't remember anybody
 13 specifically requesting this document.
 14 We also give it to our public relations folks.
 15 And the information is contained in a facts sheet, a
 16 departmentwide facts sheet that's distributed by -- I
 17 don't know their distribution list, but it's updated
 18 every year.
 19 Q. BY MR. ELIASBERG: Do you send it to the
 20 secretary of education? By you I mean or any members of
 21 your staff.
 22 MR. HERRON: Objection. Calls for speculation.
 23 THE WITNESS: I do not specifically send it.
 24 If they ask for the information, we will, but we don't
 25 initiate the contact.

1 Q. BY MR. ELIASBERG: Do you remember if the
 2 secretary for education or anybody in that office asked
 3 for the document?
 4 A. This document is widely circulated, and I would
 5 assume that over the course of a year that someone from
 6 the secretary's office has requested this document, and
 7 we've provided it to them.
 8 Q. In the column that's listed No. 1 on
 9 Exhibit 201, the estimated public K-12 enrollment
 10 growth, it states underneath that that it's based on the
 11 California Department of Finance October 2000 estimates
 12 of graded enrollment?
 13 A. Correct.
 14 Q. Does anybody else within the state -- any other
 15 state entity other than the California Department of
 16 Finance do an estimate of grade enrollment?
 17 MR. HERRON: Objection. Calls for speculation.
 18 THE WITNESS: Yes.
 19 Q. BY MR. ELIASBERG: Who else?
 20 A. The Department of Education has a demographics
 21 unit that I don't know whether they do an independent
 22 assessment or whether they take the Department of
 23 Finance figures and analyze them, because the
 24 superintendent likes an independent analysis.
 25 Q. During the preparation of this document, did

1 you or any members of your staff request that the
 2 Department of Education demographics unit do projections
 3 of enrollment growth?
 4 MR. SEFERIAN: Objection. Calls for
 5 speculation.
 6 THE WITNESS: We asked that they review the --
 7 the Department of Finance's figures.
 8 Q. BY MR. ELIASBERG: Why did you do that?
 9 A. To see whether or not we agreed.
 10 Q. Okay. And did they report back to you on their
 11 review?
 12 A. In essence they were saying that the
 13 projections were -- had a sound analytical basis.
 14 Q. Did they propose any different numbers or
 15 different projections?
 16 MR. HERRON: Objection. Vague and ambiguous.
 17 MR. ELIASBERG: They being the Department of
 18 Education's demographics unit.
 19 THE WITNESS: Yes, there were slight
 20 differences that they proposed.
 21 Q. BY MR. ELIASBERG: Do you remember whether the
 22 total projection that they made was higher or lower for
 23 enrollment growth?
 24 A. In certain years it was higher, in other years
 25 it was lower.

1 Q. Do you remember whether the five-year total was
 2 significantly higher or significantly lower than the
 3 figure that's set forth here, which is 5,946,148?
 4 MR. SEFERIAN: Objection. Calls for
 5 speculation.
 6 MR. HERRON: Misstates what the document is
 7 saying as well.
 8 THE WITNESS: There was not sufficient
 9 disagreement for us to change our use of the Department
 10 of Finance's figures.
 11 Q. BY MR. ELIASBERG: Okay. Since you've prepared
 12 that document, have you heard anybody criticize these
 13 numbers and say that they are inaccurate?
 14 A. Yes.
 15 Q. And who has made that criticism?
 16 A. Superintendent Eastin thinks that the
 17 Department of Finance consistently lowballs the numbers.
 18 Q. Has Ms. Eastin told you that herself, or how
 19 have you heard that?
 20 MR. SEFERIAN: Objection to the extent it calls
 21 for privileged communications.
 22 THE WITNESS: She's mentioned that to me.
 23 Q. BY MR. ELIASBERG: Did she give you any sense
 24 of how much she felt these numbers were lowballed?
 25 MR. SEFERIAN: Objection to the extent it calls

1 for privileged communications.
 2 THE WITNESS: She used one year's example where
 3 she felt that the Department of Finance significantly
 4 underprojected the number of students that would enter
 5 the system. We went back at her request and looked at
 6 the last 15 years, because the Department of Finance
 7 puts together a chart that shows the last, say, 10 years
 8 and projects out seven or eight years, however that
 9 works out.

10 We did an analysis of their projection. We
 11 went back five years, did an analysis of their
 12 projections when they actually got actual data, and did
 13 that for five successive years and found that they were
 14 pretty darn close, but she still doesn't believe us.

15 Q. BY MR. ELIASBERG: You did that analysis in
 16 response to her statement to you that she didn't
 17 believe --

18 A. Yes.

19 Q. Did she explain to you why -- other than the
 20 examples that she gave of a particular number, did she
 21 explain to you why she thought the department
 22 consistently -- what was the basis for her opinion?

23 MR. SEFERIAN: Objection to the extent it calls
 24 for privileged communications.

25 THE WITNESS: She did not say why.

1 underneath the title that says new construction needs
 2 2000-05, there's the following two sentences: Based on
 3 construction needs for each county, each county is
 4 underlined, and the historical funding provided in the
 5 school facilities program school, school facilities
 6 program is also underlined; total need for both state
 7 and local funds.

8 Can you explain to me what's your understanding
 9 of the meaning of "construction needs"?

10 A. New construction.

11 Q. How did you determine what the number was that
 12 constituted the construction needs?

13 A. This is where you'll find various figures
 14 floating around. You'll see \$19 billion, you'll see \$18
 15 billion, you'll see \$24 billion, you'll see \$40 billion.
 16 And this is one of the things that I think we as the
 17 education community need to get a handle on because
 18 there are various ways to make these projections.

19 This projection is based on taking the
 20 Department of Finance's demographics unit projections
 21 for the number of new students that will come in over
 22 the course of the period, in this instance 2000, 2001 to
 23 2005, 2006, taking the cost to house each of those
 24 students and multiplying those two factors to come up
 25 with \$19 billion. What this assumes, then, is that

1 MR. ELIASBERG: I appreciate that. David
 2 pointed out I had stated the number was 5,946,148, and I
 3 believe that I stated that was a projection of growth.
 4 It is not.

5 Q. What I meant to say is that's a projection of
 6 what the estimated enrollment will be; is that correct?

7 A. Since you've reformatted that and you've got
 8 the columns all messed up, it's --

9 Q. May the record reflect that this came off your
 10 website, Mr. Brooks. I didn't try to reformat it.

11 A. I'm going to have to go back and fix that.

12 Yeah, they're projecting that for 2000, 2001
 13 school year that the enrollment is the 5,946,148 and
 14 that in 2005, '6 the enrollment is the 6,134,412.

15 Q. Is there a particular person in the California
 16 Department of Finance or particular unit that does these
 17 projections?

18 A. Yes.

19 Q. And what unit is that?

20 A. The demographics unit.

21 Q. And who is the head of that unit?

22 A. I do not know.

23 Q. I'd like to shift your attention to the line
 24 Roman II or the column that's Roman II that's entitled
 25 new construction needs 2000-05 on Exhibit 201. And

1 every student that is currently in the system is
 2 adequately housed.

3 The figures that you see, for instance, that
 4 Superintendent Eastin supported and the education
 5 coalition came up with for the conference committee of
 6 \$24 billion takes a different methodological approach,
 7 and they take -- as the office of public school
 8 construction did, they take the applications that are in
 9 house and their five-year projections of unhoused
 10 students and use that figure.

11 Q. And that yields a higher figure?

12 A. Yes.

13 Q. That's one factor that contributes to a higher
 14 figure. What are the other factors that contribute to
 15 the higher figure?

16 MR. SEFERIAN: Objection. No foundation.

17 MR. HERRON: Calls for speculation.

18 Q. BY MR. ELIASBERG: To the extent you know, what
 19 are the other factors?

20 MR. HERRON: I've got to step out for just a
 21 moment. You guys keep going. I'll be right back.
 22 (Mr. Herron left the room.)

23 THE WITNESS: Well, the \$24 billion figure
 24 includes funding the backlog, for one thing. I think
 25 those are probably two of the major differences in the

1 figures.

2 The \$24 billion figure does not include higher
3 ed. I think that that's just the K-12, and that higher
4 ed is added to -- I don't remember.

5 Q. BY MR. ELIASBERG: I want to make sure I'm
6 clear on the terms. There's a difference between not
7 including -- there's a difference between taking backlog
8 into account and accounting for those students who are
9 currently unhoused?

10 A. Yes. The major difference, however, is that if
11 we're using the Department of Finance's figures and
12 we're only basing this \$19 billion on the number of new
13 students who are projected to enter the system, you've
14 got all these students that are currently in the system
15 that using that methodology we're assuming they're
16 adequately housed. And so our figure is going to be
17 less than the \$24 billion figure, quite less because, as
18 this says, this is the need for both state and local,
19 whereas the \$24 billion figure is only the state
20 contribution.

21 Q. Okay. One of the things that is not taken into
22 account in this projection is the approved but unfunded
23 list; is that correct?

24 A. Sure.

25 Q. This projection, by that I mean --

1 THE WITNESS: Which numbers?

2 MR. ELIASBERG: The construction costs.

3 THE WITNESS: The Department of Finance does
4 not arrive at those figures. We put those figures
5 together in conjunction with the office of public school
6 construction.

7 Q. BY MR. ELIASBERG: And how did you and the
8 office of public school construction come up with those
9 figures?

10 A. We look at the per pupil grant that the state
11 gives for the program and use that as the basis.

12 Q. By "the per pupil grant," you mean the per
13 pupil grant that's set forth in the current school
14 facilities program?

15 A. Correct.

16 Q. Do you know whether that per pupil grant
17 reflects the actual cost of construction of a seat for
18 an unhoused student?

19 MR. SEFERIAN: Objection. No foundation.
20 Calls for speculation. Vague and ambiguous as to
21 "seat." Overly broad.

22 THE WITNESS: Many in the school education
23 community claim that it does not.

24 MR. ELIASBERG: I'm sorry, I didn't hear your
25 response.

1 A. The \$19 billion.

2 Q. And by that I mean the projection set forth in
3 Exhibit 201.

4 A. Right.

5 Q. I believe you said that there is a
6 multiplication of the number of new students by the cost
7 to house a new student; is that correct?

8 A. Right.

9 Q. What is the basis by which you determine what
10 the cost to house a new student is?

11 (Mr. Herron entered the room.)

12 MR. SEFERIAN: Objection. No foundation.

13 MR. ELIASBERG: On this exhibit, 201.

14 THE WITNESS: If you look at Roman numeral VII,
15 that's the methodology. We take the number of -- the
16 construction cost per student for elementary, middle and
17 high school, and using the Department of Finance's
18 figures which are broken down on a grade level basis,
19 kindergarten through 12th grade, and we apply the
20 construction costs, the average per the school
21 facilities program.

22 Q. BY MR. ELIASBERG: Do you know how the
23 Department of Finance arrives at those numbers?

24 MR. SEFERIAN: Objection. No foundation.

25 Calls for speculation.

1 THE WITNESS: Many in the school education
2 community claim that it does not cover the actual cost
3 of construction.

4 Q. BY MR. ELIASBERG: Who in the school community
5 that you're aware of claim that it does not accurately
6 cover the cost of construction?

7 A. Talk to almost any school facility planner.
8 The Coalition for Adequate School Housing was doing a
9 study on the actual cost versus the state per pupil
10 grant. I don't know that they completed the study. But
11 they initiated that study on the basis of their
12 constituents telling them that the cost is not
13 adequately covered.

14 Q. Has anyone in the legislature ever asked you or
15 members of your staff to attempt to determine what the
16 actual cost of construction per student is?

17 MR. SEFERIAN: Objection. Vague and ambiguous.

18 THE WITNESS: Not that I recall.

19 Q. BY MR. ELIASBERG: And has anyone from the
20 governor's office asked you to do that, you or members
21 of your staff?

22 MR. HERRON: Objection. Assumes facts not in
23 evidence.

24 THE WITNESS: They typically would not ask us,
25 they would ask the office of public school construction

1 who is responsible for this part of the program.
 2 Q. BY MR. ELIASBERG: Do you know if anybody in
 3 the legislature has asked the office of public school
 4 construction to do that?
 5 A. I do not have personal knowledge of that.
 6 Q. If you know, do you understand that the
 7 legislature would ask the head of the office of public
 8 school construction to do that if the legislature were
 9 going to ask them to do that kind of a study?
 10 MR. SEFERIAN: Objection. Calls for
 11 speculation.
 12 THE WITNESS: The legislature is a large body
 13 of individuals. I don't know what you mean by the
 14 "legislature."
 15 Q. BY MR. ELIASBERG: Fair enough. I can let that
 16 go. Do you personally have an opinion as to whether the
 17 per pupil grant accurately reflects the cost of building
 18 the -- the actual cost of housing an unhoused student?
 19 MR. SEFERIAN: Objection. No foundation.
 20 Calls for inadmissible opinion. Calls for speculation.
 21 Vague and ambiguous as to "housing." Overly broad.
 22 THE WITNESS: I have no analytical basis to
 23 come to that conclusion.
 24 Q. BY MR. ELIASBERG: Do you have an opinion at
 25 all?

1 MR. SEFERIAN: Same objections.
 2 MR. HERRON: Asked and answered.
 3 MR. SEFERIAN: Asked and answered.
 4 MR. HERRON: The question before.
 5 THE WITNESS: I have no analytical basis to
 6 come to that conclusion.
 7 Q. BY MR. ELIASBERG: Have you spoken with members
 8 of CASH about what their -- have members of CASH told
 9 you what they believe to be an accurate figure for the
 10 actual cost of construction of a seat?
 11 MR. HERRON: Objection. Vague and ambiguous.
 12 Vague as to time.
 13 THE WITNESS: I have been in meetings with the
 14 CASH organization and their members where they were
 15 developing -- where they were analyzing the actual cost
 16 compared to the per pupil grant. They did not complete
 17 that work because we were hit with the Godinas lawsuit,
 18 and we had to redirect resources, time and effort to
 19 address that concern.
 20 Q. BY MR. ELIASBERG Referring you back to column
 21 2 on Exhibit 201 on page 1. Below the heading new
 22 construction needs, 2000 through 2005, the last sentence
 23 of the smaller type reads, total needs for both state
 24 and local funds.
 25 A. Uh-huh.

1 Q. What does that mean?
 2 A. It means that it isn't just the state
 3 contribution, that it is the state and local. With the
 4 new construction, it's 50/50. So it would be the total
 5 need to build for those number of new students that the
 6 Department of Finance is projecting will enter the
 7 system.
 8 Q. Let me shift your attention to column 3 on
 9 Exhibit 201. On the first page of Exhibit 201, the
 10 large heading is modernization and deferred maintenance
 11 needs 2000-2005. Do you see that?
 12 A. Uh-huh.
 13 Q. And below that there are two subcolumns,
 14 modernization is subcolumn A, and deferred maintenance
 15 subcolumn B.
 16 What is meant on this document by
 17 modernization?
 18 A. The term as used in the state school facilities
 19 program, which are buildings that are more than 25 years
 20 old.
 21 Q. It says that the modernization needs, I
 22 believe, reading across from modernization to total, it
 23 says total of \$7.00 billion?
 24 A. Over that five-year period, yes.
 25 Q. And how was that \$7 billion figure calculated?

1 MR. HERRON: Objection. Calls for speculation.
 2 MR. SEFERIAN: Objection. No foundation.
 3 THE WITNESS: I believe Mr. Yeager took the
 4 figures that we had from previous estimates and
 5 calculated an increase based on the number of facilities
 6 that were likely to attain 25 years of age since the
 7 last time that we developed the figure, and applied a
 8 factor.
 9 Q. BY MR. ELIASBERG: I'm not sure I understand.
 10 Is it your testimony that Mr. Yeager looked at the
 11 previous estimates for the modernization needs for the
 12 state and then added a figure for -- based on the number
 13 of new buildings -- or buildings that he estimated would
 14 become 25 years old during this five-year period?
 15 MR. HERRON: I object on the basis that it
 16 calls for speculation.
 17 If you know what he did, you can say.
 18 THE WITNESS: Yes, that's what we did.
 19 Q. BY MR. ELIASBERG: Do you know what the
 20 estimate of the number of schools that would need
 21 modernization was for this five-year period? I'm just
 22 looking for the number of schools.
 23 A. We did not use a number. He used a percentage,
 24 and I don't recall what the percentage was that he
 25 calculated.

1 Q. It was a percent of the total number of school
2 buildings in the state?
3 A. I assume that's what he did.
4 Q. Do you have an understanding of how he arrived
5 at the particular percentage he chose?
6 MR. SEFERIAN: Objection. Calls for
7 speculation.
8 THE WITNESS: In essence he estimated the
9 number of buildings that were one year older, that might
10 have been 24 years old last year or 25 years old last
11 year and are now 26 years old.
12 Q. BY MR. ELIASBERG: And after coming up with an
13 estimate of the number of buildings, what did he
14 multiply that number by to arrive at the \$7.00 billion
15 figure, if you know?
16 MR. HERRON: I think that calls for speculation
17 despite how you phrased it. Vague and ambiguous.
18 THE WITNESS: Consistent with the way that we
19 developed the figure for new construction, I'm fairly
20 certain that he used the figure in the state school
21 building program for the modernization grants.
22 Q. BY MR. ELIASBERG: Is that the per pupil grant?
23 A. For modernization.
24 Q. Have you ever heard anyone in CASH criticize
25 the amount -- the per pupil modernization amount in the

1 school facilities program as being insufficient?
2 A. Yes.
3 Q. And who made that criticism?
4 A. I do not recall the actual person, but as I
5 testified previously, when we were discussing changing
6 the 80/20 contribution level for the new state bond,
7 that CASH and their members claimed that the state does
8 not actually provide 80 percent, and that was the basis,
9 as I stated before, why I did not support changing the
10 80/20 split.
11 Q. Do you know if anyone at CASH is conducting an
12 analysis to try to support the position that you've
13 heard them express, that the 80/20 doesn't really --
14 that 80/20 doesn't really cover 80 percent of the
15 state's portion of actual modernization costs?
16 MR. HERRON: Objection. Asked and answered.
17 THE WITNESS: I believe they are.
18 Q. BY MR. ELIASBERG: Do you know who at CASH is
19 doing that?
20 A. I do not know for certain, but it would
21 probably be Tom Duffy and Alex Murdoch.
22 Q. Do you have any idea if they told you when they
23 expect to be completed with that?
24 A. They have not told me.
25 Q. In subcolumn B, deferred maintenance, what does

1 deferred maintenance refer -- I'm sorry, in Exhibit 201.
2 A. I believe that refers to the figure, as we
3 talked about previously, that's reported to the
4 department's school fiscal services division and
5 requested by the school districts.
6 Q. I want to shift to subcolumn IV on Exhibit 201,
7 which is headed new classrooms needed, 2000-05, and
8 underneath that in italic text it says based on 25
9 pupils per K-6 class and 27 per 7 through 12 class.
10 A. Uh-huh.
11 Q. Do you understand why these projections used a
12 25 pupil per K-6 class figure?
13 A. Yes.
14 Q. Why is that?
15 A. That's what the state school facilities program
16 uses. It's what's called loading standards.
17 Q. Do you know if that 25 pupils per K-6 class
18 accurately reflects the average class size in K through
19 6 schools?
20 MR. SEFERIAN: Objection. No foundation.
21 Calls for speculation. Overbroad.
22 THE WITNESS: I don't believe that when the
23 legislature developed that figure and put it into SB 50
24 that they were necessarily trying to come up with the
25 average class size throughout the state.

1 Q. BY MR. ELIASBERG: Do you have an understanding
2 as to why they -- what they were trying to do when they
3 chose that figure?
4 MR. SEFERIAN: Objection. Calls for
5 speculation.
6 THE WITNESS: I wasn't there when the
7 legislature was being developed because I was in the
8 child nutrition division, but I am told that the
9 legislature took the figure from the previous state
10 lease purchase program and tried to factor in things
11 such as class size reduction, and came up with this
12 figure. Many times figures that appear in legislation
13 are compromises.
14 Q. BY MR. ELIASBERG: Do you have any opinion as
15 to whether 25 -- whether the average class size for
16 classes K through 6 is 25?
17 MR. SEFERIAN: Objection. No foundation.
18 Calls for speculation.
19 THE WITNESS: I have no such opinion.
20 Q. BY MR. ELIASBERG: Do you know if anybody in
21 the State Department of Education has done a survey to
22 attempt to figure out what the average class size is for
23 K through 6 schools?
24 MR. SEFERIAN: Objection. Assumes facts not in
25 evidence.

1 MR. ELIASBERG: Just to give you a temporal
2 frame, any time within the last three years.
3 MR. SEFERIAN: Same objections.
4 THE WITNESS: I know that there are figures
5 regarding the average class size because we use them to
6 compare California with other states in the nation. I
7 don't know who in the department develops that figure.
8 Q. BY MR. ELIASBERG: Have you personally done any
9 of the comparisons of class size between California and
10 the rest of the nation?
11 MR. SEFERIAN: Objection. Assumes facts not in
12 evidence.
13 THE WITNESS: I have not.
14 Q. BY MR. ELIASBERG: Has anyone on your staff
15 done that?
16 MR. SEFERIAN: Objection. Calls for
17 speculation.
18 THE WITNESS: You mean, for example, contacting
19 other states or collecting data? We don't do it because
20 it's done by somebody else, so there's no need for us to
21 duplicate that effort.
22 Q. BY MR. ELIASBERG: Do you know who does it, who
23 the someone else is who does do it?
24 MR. HERRON: Objection. Asked and answered.
25 THE WITNESS: As I indicated before, I don't

1 know where that figure comes from in the department. It
2 could be the demographics unit, it could be the CBEDS
3 unit.
4 Q. BY MR. ELIASBERG: I want to shift your
5 attention to the second page of Exhibit 201.
6 A. Moving right along.
7 Q. Doing my best, Mr. Brooks. Roman numeral VI
8 where the column heading is year-around education
9 1999-00, what is your understanding of the term
10 year-around education as it is used here?
11 A. Year-around education is a schedule that is not
12 the nontraditional nine months on and three months off,
13 and there are various year-around education schedules.
14 Q. And what are the various year-around education
15 schedules?
16 MR. SEFERIAN: Objection. Lacks foundation.
17 MR. HERRON: Calls for a narrative.
18 THE WITNESS: The two major categories are
19 multi-track and single track. Multi-track year-around
20 education includes various schedules, such as 60/20,
21 45/15, Concept 6, Modified Concept 6, and a variety of
22 modified nontraditional which runs the gamut based on
23 whatever the school district wants to do that is not a
24 nine month on and three month off.
25 Q. BY MR. ELIASBERG: So I'm clear on this Concept

1 6 -- you've heard the term Concept 6 calendar before?
2 A. Since I mentioned it, yes, I've heard it.
3 Q. And Concept 6 falls within the multi-track
4 version of year-around education rather than the single
5 track?
6 A. Yes.
7 Q. Do you know how the numbers were arrived at to
8 determine how many students were enrolled in year-around
9 education?
10 A. Yes.
11 Q. And how was that done?
12 A. Comes off of the CBEDS data.
13 Q. Is that the same for the division between the
14 single track, figuring out how many of them are on
15 single track as opposed multi-track?
16 A. Yes.
17 Q. Does the CBEDS data break down multi-track
18 between Concept 6 and perhaps other multi-track
19 calendars?
20 MR. SEFERIAN: Objection. No foundation.
21 THE WITNESS: I'm not sure that the CBEDS data
22 does it. My year-around education consultant has that
23 figure by school district by school by calendar they're
24 on, and I assume that he gets that from the CBEDS. We
25 used to do a survey every year and then it was folded

1 into CBEDS.
2 Q. BY MR. ELIASBERG: And who was that consultant?
3 A. Tom Payne, P-a-y-n-e.
4 Q. And Mr. Payne has this information on
5 documents, as far as you know?
6 A. Yes. And you're deposing him next week.
7 Q. Actually, I am not.
8 A. Somebody is.
9 Q. Let me turn to the last page, the third page of
10 Exhibit 201, the Roman numeral VIII, which is headed
11 state general obligation bond history.
12 A. Uh-huh.
13 Q. There are four years listed 1982, 1984, 1985
14 and 1988. It is your understanding that 1988 was the
15 last general obligation bond prior to Proposition 1A?
16 MR. SEFERIAN: Objection. Misstates the
17 document.
18 THE WITNESS: It actually listed from '82 to
19 '98.
20 MR. ELIASBERG: Excuse me. I'm sorry, I was
21 only looking at one column. You're correct.
22 Q. This listed all the general obligation bonds,
23 is that your understanding, between 1982 and 1988?
24 A. Correct.
25 MR. HERRON: 1998.

1 MR. ELIASBERG: '98. I'm sorry.
 2 Q. And is 1998 Proposition 1A?
 3 A. Yes.
 4 Q. And so prior to Proposition 1A, the March '96
 5 was the last bond?
 6 A. That's what it looks like.
 7 Q. Okay. Do you know whether there were any
 8 approved but unfunded schools -- new construction
 9 applications after the 2.25 billion -- let me start --
 10 when was the 2.5 -- \$2.25 billion from the 1996 bond
 11 exhausted?
 12 MR. HERRON: Objection. Asked and answered.
 13 MR. SEFERIAN: Objection. No foundation.
 14 THE WITNESS: I was not in the school
 15 facilities planning division at that time, I was the
 16 director of child nutrition division, so I have no
 17 knowledge of that.
 18 I believe that was Proposition 203, and there's
 19 actually some money left over, so technically it has not
 20 been exhausted.
 21 Q. BY MR. ELIASBERG: Do you know if there was an
 22 approved but unfunded list for new construction for
 23 people who applied for bond money under Proposition 203?
 24 MR. SEFERIAN: Objection. No foundation.
 25 MR. HERRON: Could we have that read again,

1 please.
 2 (Record read.)
 3 MR. HERRON: Vague as to time. Vague and
 4 ambiguous as phrased.
 5 THE WITNESS: I do not know for certain,
 6 however, the approved but unfunded list was implemented
 7 consistent with the legislation that triggered the
 8 establishment of the priority point system which went
 9 into effect September 29th of 2000, I believe that it
 10 was, and therefore there would not have been an approved
 11 but unfunded list prior to that time, to my knowledge.
 12 Q. BY MR. ELIASBERG: Do you know if there were
 13 any districts that applied for new construction money
 14 after the passage of the 1996 bond, but prior to the
 15 passage of Proposition 201 who did not receive state
 16 funding?
 17 MR. HERRON: Objection. Asked and answered in
 18 part.
 19 THE WITNESS: I do not know for certain because
 20 I was director of child nutrition at that time.
 21 Q. BY MR. ELIASBERG: Do you have a basis of
 22 knowledge?
 23 MR. HERRON: Don't speculate.
 24 THE WITNESS: I do not.
 25 MR. ELIASBERG: This is a good time to take a

1 break.
 2 (Recess taken 2:57 to 3:22.)
 3 Q. BY MR. ELIASBERG: Mr. Brooks, I want to shift
 4 your attention to a report written by the LAO entitled a
 5 new blueprint for California school facility finance.
 6 Are you familiar with that report?
 7 A. Yes.
 8 Q. Do you know who at the LAO office, or if it was
 9 more than one person, who all the people were, who wrote
 10 that report?
 11 MR. HERRON: Why don't you show him the
 12 document.
 13 THE WITNESS: I do not know all of the people
 14 who wrote the report. I know that Mary Ann, her last
 15 name is Mahoney --
 16 MR. HAJELA: I think it's O'Malley.
 17 THE WITNESS: -- O'Malley, was the primary,
 18 principal staff on that.
 19 Q. BY MR. ELIASBERG: Do you know anyone else who
 20 had a significant role in writing the report?
 21 A. I do not.
 22 Q. Did Ms. O'Malley consult you during her process
 23 of preparing the report?
 24 A. No, and it upset me very much.
 25 Q. Why did it upset you?

1 A. Seemed like the LAO went into closed doors,
 2 didn't consult anybody, and came out with a blueprint
 3 that had some major flaws in it.
 4 Q. I'm going to give this document, which is --
 5 it's marked as having 24 pages, it's called an LAO
 6 report, a new blueprint for California school facility
 7 finance, I'm going hand it to the court reporter and ask
 8 her to mark it as Exhibit 202.
 9 (Exhibit SAD-202 was marked.)
 10 MR. ELIASBERG: I've given a copy to all
 11 counsel and the witness.
 12 MR. HERRON: What do you want him to do?
 13 MR. ELIASBERG: I'm not asking you to read the
 14 whole thing. I want you to review it to make sure
 15 you're familiar with the report.
 16 THE WITNESS: I've read the document.
 17 MR. HERRON: Before, not right now.
 18 THE WITNESS: I'm a speed reader. Yes, before.
 19 Q. BY MR. ELIASBERG: Do you remember when you
 20 read the document?
 21 A. Shortly after it was distributed.
 22 Q. Okay. And I believe you said that you were
 23 upset that you were not consulted; is that correct?
 24 A. Facetiously upset.
 25 Q. Okay. On page 1 really right at the beginning

1 by the column that says background there's a paragraph,
2 it's two sentences that read, about one in three
3 California schoolchildren attends an overcrowded school
4 or a school needing modernization. Statewide the cost
5 to correct these problems total about 30 billion.
6 That's on the first page of Exhibit 202.

7 Do you have any understanding of how LAO
8 arrived at the \$30 billion number?

9 MR. SEFERIAN: Objection. No foundation.
10 Calls for speculation.

11 THE WITNESS: I do not.

12 Q. BY MR. ELIASBERG: After the report, did you
13 ever speak to Ms. O'Malley and ask her what the basis
14 for her number was?

15 A. I did not ask her the basis of that number.

16 Q. Okay. On the first page of the report there
17 are bullet recommendations, on Exhibit 202. The first
18 one is predictable state funding, just as the state
19 supports school operations on an ongoing basis, the
20 state should appropriate funds for capital outlay
21 annually.

22 Do you see that?

23 A. The first diamond there?

24 Q. Yes.

25 A. Yes.

1 Q. Do you agree with that recommendation?

2 MR. SEFERIAN: Objection. Argumentative.
3 Overly broad. Calls for speculation. Vague and
4 ambiguous.

5 THE WITNESS: I have advocated that the
6 problems that emanate from the Godinas lawsuit and many
7 of the other problems could be resolved if the state
8 school facilities program provided an adequate, reliable
9 source of state funds that fairly ensured that when a
10 project was ready to be funded, that the state's portion
11 of the funds were there.

12 Q. BY MR. ELIASBERG: In the answer you just gave,
13 what did you mean by "adequate"?

14 A. Yet to be defined.

15 Q. Have you made any attempt to define it?

16 MR. HERRON: Objection. Asked and answered.

17 MR. SEFERIAN: Objection. Overly broad.
18 Vague.

19 THE WITNESS: No, unless we say that the
20 estimates that we have made for the need would be
21 synonymous with adequate.

22 Q. BY MR. ELIASBERG: And what did you mean by
23 "reliable" in that statement?

24 A. Reliable in the sense that when the project was
25 ready to be funded, the state portion of the funds would

1 be there. That way we can avoid the first come, first
2 serve, who is going to sop up all the money first.
3 Districts can put their projects together on a time
4 frame that meets their needs but provides a fair degree
5 of assurance that when they're ready to come to the
6 state to get the state's portion, that there will be
7 money there to fund their project.

8 Q. Did you agree with the method of state funding
9 that is recommended in this -- in Exhibit 202?

10 MR. SEFERIAN: Objection. No foundation.
11 Calls for speculation. Vague and ambiguous as to
12 method. Calls for an inadmissible opinion.

13 MR. HERRON: Asked and answered. You're asking
14 him to answer a question about a 24-page document that
15 he hasn't read for some time and which you've not given
16 him a chance to read now. If you have a specific
17 portion you want him to look at or a specific
18 proposition, fine, but I think you're asking for too
19 much. The question is improper.

20 You can respond if you know what he's asking.
21 If you'd like him to refine his question or if you'd
22 like to take time to read each and every page of this
23 document, you can.

24 THE WITNESS: There are many components in
25 their proposal, and I assume that they used different

1 methodologies to develop those various components. Some
2 I agree with, and some I do not.

3 Q. BY MR. ELIASBERG: Can you -- do you have
4 specific examples of proposals that you disagree with?

5 A. Yes.

6 Q. And what are those?

7 A. I disagree with their proposal to establish a
8 transition that would put forth to the voters state
9 bonds that would only be accessible to a small number of
10 school districts in an effort to level up those school
11 districts that have the greatest need to start their
12 second phase of the program, which is to allocate on a
13 per pupil basis across the state a certain amount of
14 funds per school district.

15 And the reason that I don't agree with that is
16 because I don't think that the majority of the voters in
17 the state are going to pass a statewide bond measure to
18 allocate funds to a very small percentage of the
19 districts in the state, so I think it's a flawed
20 recommendation.

21 Q. Okay. Were there -- as you sit here today --
22 and I'm not going to take you through the document and
23 read it. As you sit here today, are there particular
24 recommendations that you're aware of that are set forth
25 in this report that you agreed with?

1 MR. SEFERIAN: I'll object to that question. I
2 think it's totally unfair to ask him to recall and give
3 you an answer on what recommendations he agrees within a
4 22-page document that he read six months ago. I think
5 that's calling for speculation and it's not fair to the
6 witness.

7 Q. BY MR. ELIASBERG: I'm not trying to be unfair
8 to you. I'm simply asking you if there are specific
9 recommendations that you clearly remember from this
10 document as you sit here today that you know you agree
11 with?

12 MR. HERRON: I object. I think you are being
13 unfair to him. I think you're trying to be unfair. I
14 think you should withdraw the question or at least it
15 should be understood that he hasn't read this for six
16 months and any response he's providing is based on his
17 memory of having read this document that long ago.

18 MR. ELIASBERG: I think that's on the record
19 now.

20 MR. HERRON: Good.

21 THE WITNESS: The one recommendation that I
22 agree with is, as I previously stated, the concept that
23 there should be a stable, reliable source of funds.
24 That is threaded in their proposal, in one of their
25 recommendations, to provide an annual allocation to

1 being requested.

2 In terms of reliable, no, we do not have --
3 state general obligation bond funds do not provide a
4 reliable, stable source of funds. And in the facilities
5 and finance committee in the development of the master
6 plan for K-12, we are going to propose alternatives to
7 augment the state general obligation bonds to better
8 reach a level of adequacy in funding.

9 Q. BY MR. ELIASBERG: Are there any alternatives
10 that you personally have proposed in those committee
11 meetings?

12 A. Yes.

13 Q. And what are those?

14 A. I have proposed that we revisit the provisions
15 of Proposition 13.

16 Q. And why have you proposed that?

17 A. In order to augment the state's funding of the
18 school facilities program.

19 Q. And is it your opinion that Proposition 13
20 restricts the state's ability to do that?

21 MR. HERRON: Objection. Calls for a legal
22 opinion.

23 MR. SEFERIAN: Objection. Overly broad. Calls
24 for an inadmissible opinion.

25 THE WITNESS: Yes.

1 school districts.

2 Whether the amount that they're proposing is
3 adequate, I don't know. Whether the source of funding
4 that they're proposing in the state general fund is
5 going to accomplish the goal of providing a reliable
6 source of funds, I doubt it, as evidenced by our
7 complete turnaround last year with a \$12 billion
8 surplus, and this year with a \$14 billion deficit.

9 Q. BY MR. ELIASBERG: Have you attempted in the
10 last -- since you've resumed your position as the chief
11 of the school facilities planning division to put down
12 on paper your thoughts as to what would be an adequate
13 and reliable process of school funding --

14 MR. SEFERIAN: Objection --

15 MR. ELIASBERG: -- state school funding.

16 MR. SEFERIAN: -- assumes facts not in
17 evidence. Vague and ambiguous as to "adequate" and
18 "reliable."

19 MR. HERRON: Asked and answered in part.

20 THE WITNESS: In terms of adequate, as I
21 indicated, if you assume that -- if the state totally
22 funds the various estimates, picks whatever estimate is
23 floating around out there that you feel is appropriate,
24 if the state funds those estimates, then that would be
25 adequate for the period of time that those funds are

1 Q. BY MR. ELIASBERG: And why is that?

2 MR. SEFERIAN: Same objections.

3 THE WITNESS: Because it restricts the local's
4 ability to generate funds at the local level.

5 Q. BY MR. ELIASBERG: And how does it do that?

6 MR. SEFERIAN: Objection. Calls for an
7 inadmissible legal opinion. No foundation.

8 THE WITNESS: I'm not intimately familiar with
9 the provisions Proposition 13, but it does limit the
10 increase in property taxes that can be levied each year
11 to no more than 2 percent.

12 Q. BY MR. ELIASBERG: Have you made any specific
13 proposals as to how to go about revisiting Proposition
14 13?

15 MR. HERRON: In those committee meetings?

16 MR. ELIASBERG: Yes.

17 THE WITNESS: Yes.

18 Q. BY MR. ELIASBERG: What proposals did you make?

19 A. The proposal was that we should revisit
20 Proposition 13 and see if we can carve out a portion of
21 it that would be exempted from the proposition that
22 relates specifically to school facilities construction
23 and modernization. So that we're not totally undoing
24 Proposition 13, we're just saying there's an override
25 for this particular category to be presented to the

1 voters to vote upon.
 2 Q. Just so I'm clear, "this particular category"
 3 is what?
 4 A. School facilities needs.
 5 Q. Have you made any other proposals during any of
 6 those committee meetings you referred to previously as
 7 to how to go about revisiting Prop 13 or how to
 8 otherwise ensure that there is a reliable system of
 9 state funding for school facilities?
 10 MR. SEFERIAN: Objection. Compound question.
 11 MR. HERRON: Asked and answered.
 12 Do you want it repeated?
 13 THE WITNESS: No. Inside and outside of those
 14 meetings?
 15 MR. ELIASBERG: Let's start with inside the
 16 meetings.
 17 THE WITNESS: We discussed several options,
 18 lots of options regarding sales tax, property tax,
 19 special taxes. I did not propose those. If you're
 20 asking what I proposed, I did not --
 21 MR. HERRON: Is that the question?
 22 MR. ELIASBERG: I did ask you. I appreciate
 23 that. I asked you what you proposed.
 24 THE WITNESS: I did not propose -- no, I did
 25 not propose anything else.

1 Q. BY MR. ELIASBERG: Other than the -- what
 2 you've already discussed, you did not propose any other
 3 ways of ensuring a reliable system of state school
 4 construction and modernization finance?
 5 MR. SEFERIAN: In the committee meetings?
 6 MR. ELIASBERG: Yes.
 7 THE WITNESS: I participated in the discussion
 8 of the analysis of the various other methods, such as
 9 sales taxes, transportation, a variety of taxes and
 10 other methods, critiquing what the experts who were
 11 brought into the committee were sharing with the
 12 committee members.
 13 Q. BY MR. ELIASBERG: Who were those experts?
 14 A. We had people from state college and university
 15 economic departments, we had an individual from the
 16 Board of Equalization. There were a couple of other
 17 experts that the chairs invited. I don't remember
 18 exactly who they were.
 19 Q. I understand that you expressed some critiques
 20 of those proposals. Nevertheless were there any
 21 proposals that overall you supported?
 22 MR. HERRON: Objection. Vague and ambiguous.
 23 MR. SEFERIAN: Overly broad.
 24 MR. HERRON: Asked and answered in part.
 25 THE WITNESS: Philosophically I supported any

1 of the proposals that would provide more funds to the
 2 program.
 3 Q. BY MR. ELIASBERG: Did you feel -- were there
 4 any of those proposals that you thought would succeed in
 5 that goal?
 6 MR. SEFERIAN: Objection. No foundation.
 7 THE WITNESS: The one that I thought had the
 8 most merit was revisiting Proposition 13.
 9 Q. BY MR. ELIASBERG: Outside of those committee
 10 meetings, have you discussed that issue with other
 11 members of the -- of the Department of Education?
 12 MR. HERRON: That issue?
 13 MR. ELIASBERG: That issue, revisiting
 14 Proposition 13.
 15 THE WITNESS: Yes.
 16 Q. BY MR. ELIASBERG: With whom have you had those
 17 discussions?
 18 A. I've discussed that with Susan Lange and our
 19 chief of governmental affairs, Teri, T-e-r-i, Burns.
 20 Q. Was that one discussion among the three of you?
 21 A. E-mail.
 22 Q. And did Ms. Lange express any position on
 23 whether it was a good idea to revisit Proposition 13?
 24 MR. SEFERIAN: Objection to the extent it calls
 25 for privileged communications.

1 THE WITNESS: She suggested I discuss it with
 2 the chief of governmental affairs.
 3 Q. BY MR. ELIASBERG: Did you subsequently discuss
 4 it with Ms. Burns?
 5 A. Through e-mail.
 6 Q. Okay. What did Ms. Burns say to you in her
 7 e-mail?
 8 A. She thought it was a poor time to attempt it.
 9 Q. Did she explain to you why she thought it was a
 10 poor time to attempt it?
 11 A. Yes.
 12 Q. Why is that?
 13 A. It's an election year.
 14 Q. Did you keep copies of the e-mails that you
 15 sent to Ms. Lange?
 16 MR. HERRON: Objection. Misconstrues his
 17 testimony. He said e-mail.
 18 Q. BY MR. ELIASBERG: Let me clarify. Did you
 19 e-mail with Ms. Lange about the issue of revisiting
 20 Proposition 13?
 21 A. Yes.
 22 Q. You sent her an e-mail?
 23 A. Yes.
 24 Q. Did she send you one in return?
 25 A. I believe so.

1 Q. To the best of your recollection, did you keep
 2 copies of either of those two e-mails?
 3 MR. SEFERIAN: Objection. Calls for
 4 speculation.
 5 THE WITNESS: I don't recall.
 6 Q. BY MR. ELIASBERG: And did you send an e-mail
 7 to Ms. Burns to raise the issue of revisiting
 8 Proposition 13?
 9 A. Yes.
 10 Q. And did you keep a copy of the e-mail you sent
 11 to her?
 12 A. I don't recall.
 13 Q. Do you know if she kept a copy?
 14 A. Whether she kept a copy of mine? I have no
 15 idea.
 16 Q. I'm going to shift your attention a little bit
 17 from the issue of revisiting Proposition 13.
 18 MR. HERRON: Are we done with this exhibit?
 19 MR. ELIASBERG: Yes, we are.
 20 Q. Do you or members of your staff do anything to
 21 solicit complaints about school conditions from students
 22 in California public schools?
 23 MR. SEFERIAN: Objection. No foundation.
 24 Vague and ambiguous as to "solicit." Vague and
 25 ambiguous as to "complaints." Vague as to time.

1 THE WITNESS: Would you repeat the question.
 2 Q. BY MR. ELIASBERG: Sure. Since you've resumed
 3 your position as chief of the division, do you or any
 4 members of your staff make any attempts to make it known
 5 to students that you are open to receiving comments or
 6 complaints about conditions in school facilities?
 7 MR. SEFERIAN: Objection. Vague and ambiguous.
 8 Overly broad.
 9 THE WITNESS: The Department of Education, as
 10 does all state agencies, has on its website a comment,
 11 complaint site where anybody is invited to pose a
 12 comment or a complaint, and we get those on a regular
 13 basis as they relate to facilities.
 14 Q. BY MR. ELIASBERG: Do you know if the
 15 Department of Education makes an effort to tell students
 16 at schools that there is a complaint form available to
 17 them on the Department of Education website?
 18 A. I do not know whether anybody in the Department
 19 does that.
 20 Q. Other than putting the complaint form on the
 21 website, do you know of any other efforts that the
 22 Department makes in order to notify students or parents
 23 or teachers that they can complain to the Department
 24 about school facilities conditions?
 25 MR. SEFERIAN: Objection. Compound question.

1 MR. HERRON: Also been asked and answered in
 2 part before.
 3 THE WITNESS: The Department has a uniform
 4 complaint process where anybody can file a complaint
 5 through the proper procedures. I do not know what the
 6 requirements are for notifying parents, teachers,
 7 students about their rights and about the uniform
 8 complaint process procedure.
 9 Q. BY MR. ELIASBERG: Do you have a written
 10 procedure as to how complaints that come into your
 11 office, your division about school facilities conditions
 12 are supposed to be handled?
 13 MR. SEFERIAN: Objection. Overly broad. Vague
 14 and ambiguous as to "your office." Compound question.
 15 THE WITNESS: There is nothing in writing, but
 16 the -- my staff and I meet every Monday morning for two
 17 to three hours, including the staff who are
 18 out-stationed come up to discuss issues, concerns that
 19 have come to my attention or other issues that have come
 20 to their attention, and we have a standard method of
 21 responding to those complaints.
 22 Q. BY MR. ELIASBERG: And what is that standard
 23 method?
 24 A. The approach is first to take every complaint
 25 seriously, including the one that I got today from a

1 person who said that there were nails that were not
 2 fully driven into a shed on a playground and wanted us
 3 to investigate, which we will follow-up.
 4 Take each complaint seriously, contact the
 5 school district to find out what they're doing. Make
 6 them aware of the complaint, first of all, find out what
 7 they're doing, determine whether or not they need any
 8 assistance in resolving the complaint. If there are
 9 other state agencies that are appropriate, such as
 10 Department of Health Services, Department of Toxic
 11 Substances Control, whatever that have the legal
 12 authority and the technical expertise to assist the
 13 school district, we act as a resource and a referral to
 14 bring them together to resolve the problem.
 15 We cycle back to the complainant. We let them
 16 know what we have done, what the district's response is
 17 to their complaint, whether we feel that the district is
 18 doing what they should to resolve the complaint, and
 19 continue working to resolve it as we can as a resource
 20 and referral.
 21 We notify the complainant that the appropriate
 22 action on their part is to first talk to the site
 23 administrator and then to the superintendent, and then
 24 to the school board to try to resolve their complaint,
 25 and if that doesn't work, then obviously they have

1 access to litigation or whatever they want to do.
2 We tell them that if they believe that there is
3 any criminal activity involved, that if it relates to a
4 program that's administered by the State Department of
5 Education, that we will investigate and get back to
6 them.

7 If it is an issue that should be resolved at
8 the local level, that's the responsibility of the local
9 school district. If they feel that there is criminal --
10 something criminal done, then they can contact the local
11 district attorney or other local law enforcement.

12 Q. Do you or members of your staff keep a record
13 of all the complaints that are filed in your -- all the
14 complaints that come to your division concerning school
15 facilities conditions?

16 MR. SEFERIAN: Objection. Vague and ambiguous
17 as to "complaints that come to your division." Overly
18 broad. Vague as to time.

19 THE WITNESS: Not all the complaints.

20 Q. BY MR. ELIASBERG: Are there certain criteria
21 you use to determine whether you're going to keep a
22 record of the complaint or not keep a record of it?

23 MR. SEFERIAN: Objection. Vague and ambiguous.

24 THE WITNESS: It depends on the severity and
25 how long it takes to resolve the complaint.

1 Q. Have you read portions of it?

2 MR. HERRON: You mean the first amended or the
3 original?

4 Q. BY MR. ELIASBERG: I'm going to separate the
5 two. There was a complaint filed in the case and the
6 first amended complaint. I'm referring to the original
7 complaint. Did you read portions of that complaint?

8 A. Portions of it probably, yes.

9 Q. Okay. Did you read any portions of the first
10 amended complaint?

11 A. I can't keep them straight.

12 Q. Okay. Do you remember any of the content of
13 the portions that you did read?

14 MR. SEFERIAN: Objection. Vague and ambiguous
15 as to "portions."

16 THE WITNESS: Of the complaint?

17 MR. ELIASBERG: Yes.

18 Q. What do you remember?

19 MR. SEFERIAN: Objection. Calls for a
20 narrative.

21 THE WITNESS: In essence, my understanding of
22 the complaint is that the --

23 MR. HERRON: He's not asking you that.

24 Let's reread the question, please.

25 (Record read.)

1 Q. BY MR. ELIASBERG: There's a written document
2 that comes to you that contains a complaint. Do you, in
3 some instances, keep copies of those documents?

4 MR. SEFERIAN: Objection. Vague and ambiguous
5 as to "you." Lacks foundation. Calls for speculation.
6 Overly broad.

7 THE WITNESS: Yes, in some instances.

8 Q. BY MR. ELIASBERG: In some instances do you or
9 members of your staff keep copies of e-mailed complaints
10 you receive about school facilities conditions?

11 MR. SEFERIAN: Objection. Assumes facts not in
12 evidence.

13 THE WITNESS: In some instances, yes.

14 Q. BY MR. ELIASBERG: Do you remember has your
15 staff ever received complaints by people from the
16 outside, parents, teachers, students calling you up on
17 the telephone?

18 MR. HERRON: Objection. Asked and answered.

19 MR. SEFERIAN: Objection. Compound question.

20 THE WITNESS: Yes, although the apparently
21 preferred method these days is e-mail.

22 Q. BY MR. ELIASBERG: Mr. Brooks, have you read
23 the complaint that was filed in this case?

24 A. I don't believe that I've read the full
25 complaint.

1 THE WITNESS: Only the topics, not the specific
2 words.

3 Q. BY MR. ELIASBERG: Do you remember the topics?

4 A. Yes.

5 Q. What were those?

6 A. They related to busing, they related to
7 year-around education, condition of facilities,
8 certificated teachers, instructional materials.

9 Q. With respect to busing, did you make any
10 effort -- I'm talking about just you, not members of
11 your staff. Did you make any effort to ascertain
12 whether the statements in the complaint about busing
13 were true?

14 MR. SEFERIAN: Objection. Vague and ambiguous
15 as to "complaint." Vague and ambiguous as to "busing."
16 Lacks foundation. Calls for speculation. Overly broad.
17 Incomplete hypothetical.

18 THE WITNESS: The complaints that I remember
19 reading did not fall within my jurisdiction regarding
20 busing.

21 Q. BY MR. ELIASBERG: What do you remember about
22 the complaints about busing?

23 MR. SEFERIAN: Objection. Vague and ambiguous.

24 MR. HERRON: I'll instruct you not to answer
25 the question to the extent that it calls for any

1 communication made with any attorney as well.
 2 THE WITNESS: Okay. When I read it, my
 3 recollection is that there was a concern regarding the
 4 distance involved in busing students, was one of the
 5 primary concerns.
 6 Q. BY MR. ELIASBERG: And you concluded that that
 7 was not an issue that was within your jurisdiction?
 8 MR. SEFERIAN: Objection. Calls for
 9 speculation.
 10 MR. HERRON: Asked and answered.
 11 THE WITNESS: Yes, it does not fall within my
 12 area of responsibility.
 13 Q. BY MR. ELIASBERG: Have you discussed -- and I
 14 want to make sure that I'm eliminating the issue having
 15 to do with attorney/client privilege. Have you
 16 discussed this case with anybody other than your
 17 counsel?
 18 A. Yes.
 19 Q. With whom have you discussed this case?
 20 A. My staff primarily.
 21 Q. Do you remember, were there particular members
 22 of your staff that you remember speaking about this case
 23 with?
 24 MR. HERRON: And understand, he's not asking
 25 you to disclose any attorney/client communications. So

1 if, for example, an attorney was present and your staff
 2 was too, he's not asking for those communications.
 3 THE WITNESS: Your question again was?
 4 Q. BY MR. ELIASBERG: What members of your staff
 5 have you discussed this case with?
 6 A. Those members that had knowledge of the areas
 7 of complaint that fall within my jurisdiction.
 8 Q. Do you remember who the actual staff members
 9 were?
 10 A. Yes.
 11 Q. Who are they?
 12 A. Jim Bush, who is the assistant director; Fred
 13 Yeager and Lynn Piccoli, who handled class size
 14 reduction; Tom Payne, who handles year-around education;
 15 a former architect, Ellen Aaleston, who now has since
 16 retired.
 17 Q. When did you first discuss this case with
 18 members of your staff?
 19 A. Upon reading the complaint.
 20 Q. Do you remember what the -- what was discussed?
 21 A. They were instructed to read the complaints and
 22 develop responses relating to the allegations.
 23 MR. HERRON: I'm going to remind you again, you
 24 shouldn't disclose anything that was communicated to you
 25 by counsel.

1 THE WITNESS: Okay.
 2 MR. ELIASBERG: Can you read back his last
 3 answer, please.
 4 (Record read.)
 5 Q. BY MR. ELIASBERG: Did you give them any
 6 direction as to what you were looking for in the
 7 responses?
 8 A. Yes.
 9 MR. SEFERIAN: Objection. Assumes facts not in
 10 evidence.
 11 Q. BY MR. ELIASBERG: And what were those
 12 directions?
 13 A. Be truthful.
 14 Q. Did you ask them to prepare written documents?
 15 A. No.
 16 Q. Did you ask them to communicate to you orally
 17 their reports as to their responses to the allegations?
 18 A. Yes.
 19 Q. Have they done that?
 20 A. Yes.
 21 Q. Has Mr. Bush done that?
 22 A. Yes.
 23 Q. Do you remember when he did that?
 24 A. No.
 25 Q. Do you remember what he told you?

1 A. We talk all the time.
 2 MR. HERRON: He's asking for your recollection.
 3 If you don't know, you can simply play say so.
 4 THE WITNESS: No, I don't recall specifically.
 5 Q. BY MR. ELIASBERG: Do you remember generally?
 6 I don't want you to speculate as to what he might have
 7 said, but do you have any memory of what Mr. Bush told
 8 you with respect to the responses to the allegations?
 9 MR. SEFERIAN: Objection. Asked and answered.
 10 THE WITNESS: No.
 11 Q. BY MR. ELIASBERG: Did you speak with
 12 Mr. Yeager on this particular subject, his bringing
 13 responses to the allegations?
 14 A. Yes.
 15 Q. Do you remember when that was?
 16 A. No.
 17 Q. Do you remember what Mr. Yeager told you?
 18 A. Yes.
 19 Q. What was that?
 20 A. It was in response to the request for documents
 21 and interrogatories.
 22 MR. SEFERIAN: I'm going to -- can we go off
 23 the record?
 24 MR. ROSENBAUM: No.
 25 MR. SEFERIAN: I'd like to speak to my client,

1 so I'm asking to go off the record.
 2 (Recess taken 3:56 to 4:02.)
 3 MR. ELIASBERG: Can you read the prior question
 4 and the objection.
 5 (Record read.)
 6 MR. SEFERIAN: I'm going to object to the
 7 question as calling for information protected by the
 8 attorney/client privilege.
 9 THE WITNESS: I've been instructed not to
 10 respond.
 11 MR. ELIASBERG: I just want to put on the
 12 record that I don't think that's an appropriate
 13 objection, but I understand the objection and the
 14 instruction.
 15 Q. Did Ms. Piccoli report back to you as to her
 16 responses to the allegations in the complaint?
 17 A. Yes.
 18 Q. What did she tell you?
 19 MR. SEFERIAN: Object to the question to the
 20 extent it calls for information protected by the
 21 attorney/client privilege.
 22 THE WITNESS: I cannot respond.
 23 Q. BY MR. ELIASBERG: Did Mr. Payne come back to
 24 you and report back to you with his responses? And this
 25 is just a yes or no whether he reported back to you his

1 responses.
 2 A. Yes.
 3 Q. And what did he tell you?
 4 MR. SEFERIAN: The same objection.
 5 THE WITNESS: The same response.
 6 Q. BY MR. ELIASBERG: And did Ms. Aaleston report
 7 back to you as to her responses?
 8 A. Yes.
 9 Q. Okay. And what did she tell you?
 10 MR. SEFERIAN: Objection. Calls for
 11 information protected by the attorney/client privilege.
 12 THE WITNESS: I cannot respond.
 13 Q. BY MR. ELIASBERG: What was your understanding
 14 of the areas that Mr. Bush was going to look into?
 15 MR. SEFERIAN: Objection to the extent it calls
 16 for information protected by the attorney/client
 17 privilege.
 18 THE WITNESS: I cannot respond.
 19 Q. BY MR. ELIASBERG: I'm just asking you as to
 20 what your understanding was, what you thought Mr. Bush
 21 was going to look into.
 22 MR. HERRON: If what he thought came from an
 23 attorney, then --
 24 MR. ELIASBERG: I was just clarifying. I
 25 wanted to make sure he was clear about what the question

1 was, that's all.
 2 MR. HERRON: All right.
 3 MR. ELIASBERG: I assume that if I were to ask
 4 the same questions for Mr. Yeager, Ms. Piccoli,
 5 Mr. Payne and Ms. Aaleston, is it correct to assume you
 6 would make the same objections?
 7 MR. SEFERIAN: Yes.
 8 Q. BY MR. ELIASBERG: Other than your attorneys,
 9 have you discussed this deposition with anyone in the
 10 Department of Education?
 11 A. Can you define "discussed"?
 12 Q. Just talked about what you expected to be
 13 asked. Really I want to know if the subject of this
 14 deposition and the fact that you were going to be
 15 deposed came up in any discussion.
 16 MR. HERRON: Other than I'm going to a
 17 deposition, I'll be back at 5:00?
 18 MR. ELIASBERG: Any substantive discussions
 19 about what you expected to be asked, what you thought
 20 the subject matter of the deposition might be.
 21 THE WITNESS: No substantive discussions, no.
 22 Q. BY MR. ELIASBERG: Did you talk with Ms. Lange
 23 about her deposition?
 24 A. Nothing substantive.
 25 Q. Did she tell you, for example, what kinds of

1 questions she was asked?
 2 A. No.
 3 Q. Have you read any deposition transcripts that
 4 have been prepared for this case?
 5 A. No.
 6 Q. Have you read any summaries of deposition
 7 transcripts in this case?
 8 A. No.
 9 Q. Do you know what an interrogatory is?
 10 A. Vaguely.
 11 Q. Can you tell me what your understanding of an
 12 interrogatory is?
 13 A. Well, I remember getting interrogatories that
 14 we had to respond to.
 15 Q. I'm sorry, I missed that because of your cough.
 16 Could you repeat your answer, please.
 17 A. I remember receiving interrogatories through
 18 our attorneys, which they requested a response.
 19 Q. And did you give them a response?
 20 A. Yes.
 21 MR. SEFERIAN: I'm going to instruct the
 22 witness not to reveal the content of any attorney/client
 23 communications in response to any of the questions, and
 24 object to any questions to the extent they call for
 25 communications between attorney and client in this case.

1 MR. ELIASBERG: Are you instructing him not to
2 answer the previous question?
3 MR. HERRON: It's an unnecessary question,
4 Peter. It has nothing to do with the case.
5 Are we almost done?
6 MR. SEFERIAN: Will you read the question,
7 please.
8 (Record read.)
9 Q. BY MR. ELIASBERG: Mr. Brooks, do you know what
10 a request for production of documents is?
11 MR. HERRON: This is an unnecessary question,
12 Peter. Move on to something else. Come on.
13 MR. ELIASBERG: I appreciate your opinion,
14 David, but I'm going to ask the question.
15 MR. HERRON: It's harassing. You're going for
16 attorney/client privileged information. You have no
17 right to it. You're wasting our time. I request that
18 you withdraw the question.
19 Q. BY MR. ELIASBERG: Do you know what a request
20 for production of documents is?
21 MR. HERRON: Objection. Calls for a legal
22 conclusion.
23 THE WITNESS: Yes.
24 Q. BY MR. ELIASBERG: Okay. Have you received any
25 request for production of documents in this case or seen

1 any?
2 MR. SEFERIAN: I'm going to object that it's
3 calling for information protected by the attorney/client
4 privilege.
5 THE WITNESS: Yes, I've received requests
6 through the attorneys for the production of documents.
7 Q. BY MR. ELIASBERG: Mr. Brooks, I'm not
8 interested in hearing about the discussions that you had
9 with Mr. Herron or Mr. Seferian or any of your
10 attorneys.
11 How did you go about -- did you take any steps
12 after you received the request for production of
13 documents?
14 A. Yes.
15 Q. And what did you do?
16 A. We gathered the documents that were requested.
17 Q. When did you do that?
18 A. I think that there were several times that
19 document requests came through, and each time they came
20 through, we responded.
21 Q. I want to touch upon the subject -- you talked
22 about backlog, previously used the phrase backlog.
23 Are you aware of -- has anyone attempted to
24 ascertain how long districts have waited between the
25 time that they've applied for and been -- let me narrow

1 the time frame.
2 Let's say over the period of the last five
3 years, have you attempted to figure out how long
4 districts have waited between the time they have been
5 approved for new construction funding and the time that
6 they've actually received that funding?
7 MR. SEFERIAN: Objection. Calls for
8 speculation. Vague and ambiguous as to "you." Assumes
9 facts not in evidence.
10 MR. HERRON: Are you talking about on an
11 average in the last five years?
12 Q. BY MR. ELIASBERG: Whether you've attempted to
13 determine it on an average or looked at specific --
14 picked specific school districts and figured it out?
15 Any attempt to figure out the length of time that
16 districts have waited between the time they've been
17 approved for funds and actually received the funds?
18 MR. SEFERIAN: Same objections.
19 THE WITNESS: The backlog and the waiting list
20 has only been in existence a relatively short period of
21 time.
22 Q. BY MR. ELIASBERG: How long has it been in
23 existence?
24 A. We implemented the priority point system in
25 September of, I believe it was 2000, and subsequent to

1 that is when the approved but unfunded list was
2 generated.
3 Q. Referring back to periods not just with respect
4 to Proposition 1A, but I think it would be two prior
5 bonds in the five-year period we talked about, have you
6 looked at whether any districts have had to wait
7 substantial periods of time between the time they've
8 been approved for funds and the time they've actually
9 received the funds for new school construction?
10 MR. SEFERIAN: Objection. Vague and ambiguous
11 as to "substantial."
12 THE WITNESS: You're talking about they've
13 applied under a prior bond, those bond funds have been
14 exhausted and they've had to reapply under the next
15 bond?
16 Q. BY MR. ELIASBERG: Would the process be there,
17 would -- they wouldn't go into a waiting list, they
18 would have to reapply, is that your understanding of the
19 program?
20 A. Unless there were a grandfather provision.
21 Q. Do you know if the previous bond had a
22 grandfather provision?
23 MR. HERRON: The one that was previous to 1A?
24 MR. ELIASBERG: Yes, previous to 1A.
25 THE WITNESS: I was in the division of child

1 nutrition at that time, I was not the director of school
 2 facilities planning. So, no, I do not know the
 3 mechanics of that particular bond.
 4 Q. BY MR. ELIASBERG: Okay. Do you know what the
 5 last bond measure was that passed during your prior
 6 tenure as the division -- as the chief of the school
 7 facilities planning division?
 8 A. The bond prior to, no, I don't know the name of
 9 the bond. I don't remember the number.
 10 Q. Do you remember whether -- the last bond that
 11 was passed during your prior tenure, whether that had a
 12 grandfather provision such that if funds ran out after
 13 your application had been approved but before you
 14 received funding, that you were put on a list for the
 15 next bond fund?
 16 A. That was more than five years ago, and, no, I
 17 do not recall.
 18 Q. Have you or any members of your staff ever
 19 attempted to contact districts to get some sense of
 20 whether any of them have waited for six months or more
 21 after they've been approved for funding but before they
 22 receive it because funds have run out?
 23 MR. HERRON: Objection. Calls for speculation.
 24 He's already answered that question in part.
 25 THE WITNESS: Members of my staff are

1 constantly in communication with the school districts in
 2 their areas of responsibility, so I would assume that
 3 some members of my staff have had those conversations
 4 with the school districts that they assist.
 5 Q. BY MR. ELIASBERG: Have any of those members of
 6 your staff reported those conversations to you?
 7 A. Not that I recall.
 8 Q. And are you aware of anybody in the Department
 9 of Education, on your staff or outside, who has
 10 attempted to do a survey or systematic study of whether
 11 there are districts that have waited for more than six
 12 months between the time they've been approved for
 13 funding and actually received funding because funding
 14 has run out?
 15 MR. SEFERIAN: Objection. Overly broad.
 16 Vague.
 17 MR. HERRON: I can barely hear you.
 18 THE WITNESS: A systematic study of school
 19 districts that have waited more than six months? I have
 20 not -- I'm not aware of any study.
 21 Q. BY MR. ELIASBERG: Are you aware of any study
 22 that's been done to determine whether districts -- the
 23 period of time generally that districts have waited on
 24 occasions where they've applied for funding and then the
 25 funding has run out?

1 MR. HERRON: Objection. Asked and answered
 2 several times.
 3 You may respond again.
 4 THE WITNESS: I am not personally aware. There
 5 probably are such studies because the office of public
 6 school construction and others who worked on the -- on
 7 putting together the need for bond measures have
 8 probably done that type of analysis. I'm not aware of
 9 it.
 10 Q. BY MR. ELIASBERG: Have you heard the phrase
 11 before, in the context of the school facilities program,
 12 "major maintenance"?
 13 A. Yes.
 14 Q. And what is your understanding of the meaning
 15 of that?
 16 A. My understanding is, as we discussed before,
 17 that the word deferred maintenance has various meanings
 18 to different people, and the facilities community is
 19 searching for a term that more accurately describes
 20 what's meant by deferred maintenance. One term that has
 21 been proposed is major maintenance.
 22 (Mr. Rosenbaum left the room.)
 23 Q. BY MR. ELIASBERG: Have you ever heard the term
 24 "ongoing maintenance"?
 25 A. Yes, I've heard the term.

1 Q. And what is your understanding of what that
 2 term means?
 3 MR. HERRON: In the context of facilities?
 4 MR. ELIASBERG: Yes, in the context of school
 5 facilities.
 6 MR. SEFERIAN: Objection. Overly broad. Vague
 7 and ambiguous.
 8 THE WITNESS: My understanding of ongoing
 9 maintenance would be the day-to-day maintenance of the
 10 facilities, as opposed to major maintenance which could
 11 be analogous to deferred maintenance.
 12 Q. BY MR. ELIASBERG: Do you have an understanding
 13 of where the district obtains funds in order to pay for
 14 their ongoing maintenance?
 15 MR. SEFERIAN: Objection. Overly broad.
 16 MR. HERRON: Vague and ambiguous in the use of
 17 the term the "district."
 18 THE WITNESS: School districts in general,
 19 where they get funds for ongoing maintenance?
 20 MR. ELIASBERG: That's correct.
 21 MR. HERRON: All the same objections. Calls
 22 for speculation.
 23 MR. SEFERIAN: Vague as to time.
 24 THE WITNESS: There's probably a variety of
 25 sources that they use.

1 Q. BY MR. ELIASBERG: What's your understanding of
2 what those sources are?
3 A. My understanding -- although I don't know for
4 sure, so I probably shouldn't speculate.
5 MR. SEFERIAN: Don't speculate.
6 MR. HERRON: Please do not.
7 MR. ELIASBERG: Let me take a short break
8 (Recess taken 4:18 to 4:32.)
9 (Mr. Rosenbaum now present.)
10 Q. BY MR. ELIASBERG: Mr. Brooks, I just want to
11 go back briefly to something you said earlier. You
12 talked before about setting up a stable, adequate and
13 reliable system of state funding for school facilities
14 construction; is that correct?
15 A. Yes.
16 Q. Okay. Can you tell me all the reasons why you
17 think that should be done?
18 MR. HERRON: Objection. Asked and answered.
19 We've been down this road.
20 You can respond again.
21 Calls for a narrative.
22 THE WITNESS: I'll give you the primary reasons
23 which probably cover what you're getting at. I think
24 that it will provide a service to the school districts,
25 eliminate a lot of the fighting that's going on about

1 who gets the state funds so that districts can move at a
2 pace that allows them to design and construct
3 appropriate facilities that meet their needs without
4 having to worry about we've got to rush to get to "X"
5 point to beat everybody else to the money that's
6 available.
7 Q. BY MR. ELIASBERG: Are those all the primary
8 reasons?
9 A. Yes.
10 Q. Are you aware of any districts that you believe
11 have actually rushed in order to make sure they got the
12 money?
13 MR. SEFERIAN: Objection. Vague and ambiguous.
14 THE WITNESS: I'm not aware of any specific
15 districts. Anecdotally every district will tell you
16 that they are moving as quickly as they can to try to
17 get into the queue to get to the front of the line.
18 Q. BY MR. ELIASBERG: Do you have any opinion as
19 to whether there are negative consequences to the
20 districts attempting to move as quickly as they can to
21 get to the front of the line?
22 MR. SEFERIAN: Objection. Calls for an
23 inadmissible opinion.
24 THE WITNESS: Yes.
25 Q. BY MR. ELIASBERG: And what are the negative

1 consequences?
2 MR. SEFERIAN: Same objection.
3 THE WITNESS: The potential consequences are
4 that they're go so fast that they won't do an adequate
5 job of designing and building. Once they get their
6 sites and their plans, then they've got their money and
7 they can go forward. But that they will not do an
8 adequate job of searching for sites and developing
9 plans.
10 Q. BY MR. ELIASBERG: And what's the basis for
11 your opinion?
12 A. The basis is just common sense, that anybody
13 that rushes through something and doesn't consider all
14 the issues is likely to overlook something or do
15 something in a sloppy manner, just like doing your
16 homework.
17 Q. I always did it fast.
18 A. But was it correct?
19 Q. That's a whole other question. I'm just trying
20 to get at issues having to do with the causes of the
21 need for building new schools.
22 Have you or anyone in your division ever
23 undertaken an investigation in an attempt to determine
24 what the reasons are -- let me do it this way.
25 Have you ever focused on one particular

1 district and attempted to figure out what the reasons
2 are that that district has needs for new schools?
3 MR. SEFERIAN: Objection. Vague and ambiguous
4 as to "needs."
5 THE WITNESS: We have not focused on one
6 particular school. There are several schools that come
7 to us and tell us that they're increasing at an alarming
8 rate and they need new facilities to accommodate the
9 expected students.
10 Q. BY MR. ELIASBERG: Do you have any other --
11 other than increase -- I gather that would be an
12 increase in student population.
13 Would you have an understanding as to what
14 caused that increase in student population in that
15 district?
16 MR. SEFERIAN: Objection. No foundation.
17 Calls for speculation. Calls for inadmissible opinion.
18 THE WITNESS: Yes.
19 Q. BY MR. ELIASBERG: And what is that?
20 MR. SEFERIAN: Same objections.
21 THE WITNESS: New housing developments and/or
22 an infill of multiple families moving into existing
23 single-family dwellings.
24 Q. BY MR. ELIASBERG: Do you have an opinion as to
25 whether any districts have new -- particular new

1 construction needs because they failed to adequately
 2 plan for population -- student population increases?
 3 MR. SEFERIAN: Objection. No foundation.
 4 Calls for speculation.
 5 THE WITNESS: No, I don't.
 6 Q. BY MR. ELIASBERG: I'm sorry, I want to make
 7 sure. You have no opinion or you're not aware of any
 8 districts?
 9 MR. SEFERIAN: Objection. Asked and answered.
 10 MR. HERRON: Compound.
 11 THE WITNESS: I'm not aware of any districts.
 12 My knowledge of the districts out there are that they do
 13 a very good job of planning to accommodate the students.
 14 Q. BY MR. ELIASBERG: You told us that you've been
 15 in discussions where there have been recommendations
 16 about how to improve the state school facilities
 17 program, and you listed a few of those.
 18 Are there any other recommendations that you
 19 remember hearing about that you haven't told us about
 20 here?
 21 MR. SEFERIAN: Objection. Overly broad.
 22 THE WITNESS: Any other recommendations
 23 regarding?
 24 MR. ELIASBERG: Improving the state school
 25 facilities program.

1 MR. SEFERIAN: Objection. Overly broad. Vague
 2 as to time.
 3 THE WITNESS: Since it's a topic of constant
 4 discussion, I'm sure that I've been in meetings,
 5 conferences, phone calls, variety of venues where people
 6 have suggested the various ways of improving the state
 7 schools building program, and I can't recall every one
 8 of those.
 9 Q. BY MR. ELIASBERG: Okay. I'm not trying to get
 10 you to repeat answers you've already given. You've
 11 already discussed some of the suggestions you've made,
 12 particularly in the joint committee meetings.
 13 Are there any other recommendations -- since
 14 you've resumed your position as chief of the school
 15 facility planning division, are there any other
 16 recommendations that you've made as to how the school
 17 facilities program could be improved that you haven't
 18 discussed with us here today?
 19 MR. HERRON: Here today, or here over these
 20 last two days?
 21 MR. ELIASBERG: Thank you, David. Over these
 22 last two days.
 23 MR. SEFERIAN: Objection. Vague and ambiguous
 24 as to "recommendations."
 25 THE WITNESS: I am sure --

1 MR. HERRON: Calls for clairvoyance.
 2 THE WITNESS: I'm sure that there are, but I
 3 can't recall.
 4 Q. BY MR. ELIASBERG: As you sit here today, are
 5 there any recommendations that you have that you haven't
 6 already discussed as to how, in your opinion, the school
 7 facilities program could be improved?
 8 MR. SEFERIAN: Objection. Overly broad.
 9 THE WITNESS: Yes.
 10 Q. BY MR. ELIASBERG: And what is that
 11 recommendation or recommendations?
 12 A. The proposals that were developed by the joint
 13 committee, conference committee on school facilities
 14 contained several recommendations other than ones that
 15 we've specifically discussed over the last two days that
 16 I could support.
 17 Q. And what are some of the specific proposals?
 18 A. The major proposal is a large bond measure
 19 consistent with the governor's proposal to try to pass
 20 legislation that covers either four or six years of a
 21 bond for 2002, a bond for 2004, possibly a bond for
 22 2006, to get those bills passed in one legislative
 23 session that would allow the placement of a state
 24 general obligation bond on a ballot to be placed before
 25 the voters without having to go back through the

1 legislature, first get the legislation passed to be sent
 2 to the governor to put on the ballot before the voters.
 3 I believe that the set-aside of a large sum of
 4 money, \$2 billion, as proposed -- they didn't formally
 5 adopt it, but as the discussion with the conference
 6 committee was going -- for overcrowded, low-performing
 7 schools, is a good way to resolve some of the issues
 8 that have come up as a result of Proposition 1A.
 9 I believe that if we include some small amount
 10 of set-asides for things such as energy conservation,
 11 joint use, other provisions, that will encourage school
 12 districts to purchase sites and design plan -- design
 13 schools that are more efficient and economical and
 14 effective. I support the legislature funding the
 15 Department of Toxic Substances Control through the
 16 general fund rather than requiring school districts to
 17 pay them a fee for their review and approval. Those are
 18 some of the other things that have been discussed.
 19 Q. And are those things that you generally are in
 20 accord with, recommendations that you're in accord with?
 21 A. Yes.
 22 Q. You just used a phrase or so many words,
 23 "efficient and economical and effective" in the context
 24 of school buildings. What did you mean by "efficient"
 25 in that context?

1 A. Efficient in terms of energy conservation, life
 2 cycle, planning, allows the district to adequately carry
 3 out its local educational program.
 4 Q. What do you mean by "life cycle"?

5 A. Life cycle means that you don't take a look at
 6 the first cost of a piece of equipment that you put in
 7 the building, you look at the savings over time, over
 8 the life of that equipment. And while the first cost
 9 may be initially higher than some other form of
 10 equipment, over the long run you will be saving money by
 11 installing that equipment.

12 Q. Do you think that the present school facilities
 13 planning division -- I'm sorry, school facilities
 14 program encourages districts to do this kind of life
 15 cycle approach to construction and modernization?

16 MR. SEFERIAN: Objection. Overly broad.

17 THE WITNESS: I do know I've had conversations
 18 with the state architect and that there are efforts,
 19 such as the collaborative for high performance schools,
 20 the California Energy Commission, and other entities
 21 that are actively promoting that concept, and that the
 22 current state school facilities program certainly does
 23 not discourage that.

24 Q. BY MR. ELIASBERG: Have you ever heard a
 25 discussion -- and we'll limit it to the last three years

1 or so that you've been the head of the -- resumed your
 2 position as the head of the division -- recommending
 3 that the state not take any role at all with respect to
 4 school facilities construction, modernization,
 5 maintenance?

6 MR. HERRON: Objection. Vague and ambiguous.

7 THE WITNESS: I recall such statements being
 8 made. I don't recall by whom or in what context.

9 Q. BY MR. ELIASBERG: Did you have any opinion as
 10 to whether that was a good idea?

11 A. Yes, I did have an opinion.

12 Q. And what was your opinion on that?

13 A. I don't agree with that.

14 Q. And why don't you agree with it?

15 A. Because I think that the provision of school
 16 facilities is appropriately a state and local
 17 partnership, and under the current program of you come
 18 up with some funds and we'll match it, I think is a good
 19 way to fund a very difficult problem.

20 Q. Why do you think that's a "difficult problem"?

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

23 THE WITNESS: Define "difficult problem."
 24 You're going to say you're using my terms.

25 MR. ELIASBERG: You're too quick for me,

1 Mr. Brooks.

2 THE WITNESS: The problem of adequate funding
 3 to meet the needs that all of the various studies that
 4 people have done indicate that we need for school
 5 facilities.

6 MR. ELIASBERG: I think I'm done with my
 7 questions.

8 MR. HERRON: That's it then?

9 MR. ELIASBERG: For me, yes.

10 MR. ROSENBAUM: Thanks very much, Mr. Brooks.

11 THE WITNESS: You're welcome.

12 (Discussion held off the record.)

13 EXAMINATION BY MR. HAJELA

14 Q. I want to go back briefly to get a clearer
 15 picture of how the State goes about funding school
 16 district projects.

17 It's my understanding from your previous
 18 testimony that eligibility is established presumably by
 19 districts sending forms into the State; is that correct?

20 A. They apply to the office of public school
 21 construction.

22 Q. Okay. What I'm getting at is it's my
 23 understanding that it's a two-step process, first
 24 there's some eligibility that's established, and then
 25 secondly there's applications specific to projects for

1 new construction and modernization?

2 A. I believe the district has the option to do
 3 either or both.

4 Q. Okay. When a project either for new
 5 construction or modernization is approved by the state
 6 allocation board, is it your understanding that that
 7 project has met all the state requirements necessary for
 8 funding?

9 MR. SEFERIAN: Objection. Calls for an
 10 inadmissible legal opinion.

11 THE WITNESS: Yes, unless there's an exception,
 12 such as the environmental hardship. I believe then they
 13 haven't technically met all of the requirements, but
 14 they have promised to do so, and the Department of Toxic
 15 Substances Control monitors to ensure that they complete
 16 the voluntary clean-up program.

17 Q. BY MR. HAJELA: Okay. So the State itself has
 18 waived those requirements, at least temporarily?

19 A. Let's go back just a minute. Did you say an
 20 apportionment or an allocation that they received?

21 Q. I believe I said allocation. If apportionment
 22 is the correct term, let's use that one.

23 A. Basically I would say yes to your question.
 24 But once the allocation board has approved the
 25 application that signifies that they have met all of the

1 requirements. Again, I think there's a caveat in there
2 regarding environmental hardships.

3 Q. If I understood your prior testimony, then, is
4 it true that the State does not have adequate resources
5 to fund all these projects that have, for the most part,
6 met the State's requirements?

7 MR. SEFERIAN: Objection. No foundation.
8 Calls for speculation. Calls for an inadmissible
9 opinion.

10 MR. HERRON: Incomplete and improper
11 hypothetical.

12 THE WITNESS: The State currently is
13 establishing an approved but unfunded list which cannot
14 be accommodated with the remaining funds from
15 Proposition 1A.

16 Q. BY MR. HAJELA: I apologize if you testified to
17 this before. Do you have any idea how many projects
18 there are in this approved but unfunded list?

19 A. I don't know the number of projects. I know
20 that the dollar amount exceeds \$4 billion in
21 modernization and new construction backlog.

22 Q. Based on your -- let me back up a second.

23 You previously testified, I believe, that some
24 of the duties of the folks in your division include
25 assisting school districts in the process of getting

1 MR. HERRON: Objection. Vague and ambiguous.
2 Calls for speculation. Incomplete and improper
3 hypothetical. Calls for a legal conclusion.

4 THE WITNESS: Those schools would need to
5 reevaluate their overall facilities needs, and without
6 state funding, they may have to use their local funds in
7 one particular project to ensure that their highest
8 priority project is completed, which means that another
9 project that they expected to build if they did get
10 state funding would have to wait.

11 Q. BY MR. HAJELA: Okay. I'm going to switch
12 gears a little bit. I believe you testified that the
13 current state schools facilities program was created and
14 funded by Prop 1A in 1998; is that correct?

15 A. November of '98 the voters passed Prop 1A.

16 Q. Are you aware of any other source of funding
17 for the state school facilities program other than the
18 Prop 1A funds?

19 A. The office of public school construction tells
20 us that there are some funds remaining from
21 Proposition 203, but those funds can only be allocated
22 in accordance with the language that the voters approved
23 in Proposition 203.

24 Q. I apologize. I'm going through my notes here.
25 I think Peter picked up most of these. I just want to

1 projects through the various state requirements?

2 A. Yes.

3 Q. Based on your knowledge and experience in the
4 field of education, including your knowledge and
5 experience as director of the facilities planning
6 division, do you think it's fair to say that it is
7 difficult for school districts to build or modernize
8 schools when they do not receive state matching funds?

9 MR. SEFERIAN: Objection. Overly broad. Calls
10 for an inadmissible opinion. Vague and ambiguous as to
11 "difficult." Calls for speculation. Lacks foundation.

12 THE WITNESS: There are some districts, such as
13 San Diego Unified, which is the second largest district
14 in the state, who periodically chooses to be in the
15 state program and out of the state program, so there are
16 some districts that have adequate sources locally to
17 meet their school facilities need.

18 The majority of the school districts probably
19 don't have the same resources that San Diego Unified has
20 and without state assistance would find it difficult to
21 meet their facilities needs.

22 Q. BY MR. HAJELA: So is it fair to say those
23 districts would not be able to build or modernize their
24 schools in a timely fashion if the state runs out of
25 money?

1 turn to another issue again briefly, and this is my last
2 set of questions.

3 Do you recall discussing the role of FCMAT
4 specifically with Compton, in your prior testimony?

5 A. Do I recall FCMAT's role with Compton or
6 discussing their role with Compton?

7 Q. I'm trying to remind you that we had discussed
8 this earlier in the last couple days.

9 A. Yes.

10 Q. I don't want to put words in your mouth, but I
11 don't want to go through that whole line of questioning
12 again.

13 So is it fair to say that it was your opinion
14 that FCMAT's involvement with the Compton school
15 district was beneficial to them in clearing up some of
16 the problems you discussed in your school facilities
17 program?

18 MR. SEFERIAN: Objection. Calls for an
19 inadmissible legal opinion.

20 Will you please read the question.

21 (Record read.)

22 MR. SEFERIAN: Vague and ambiguous as to
23 "involvement," "problems" and "beneficial." Overly
24 broad.

25 THE WITNESS: I believe that the work that

1 FCMAT did with Compton improved the condition of the
2 facilities in that district.

3 Q. BY MR. HAJELA: Is it your opinion that it
4 would be beneficial for all school districts to receive
5 the type of review that FCMAT does, for example, the
6 review they did in Compton?

7 MR. SEFERIAN: Objection. Calls for an
8 inadmissible opinion. Overly broad. No foundation.
9 Calls for speculation. Vague and ambiguous as to
10 "beneficial."

11 MR. HERRON: It's an incomplete and improper
12 hypothetical.

13 You may nonetheless respond.

14 THE WITNESS: I don't believe that the
15 thoroughness that FCMAT went into with Compton is
16 necessarily needed in all school districts.

17 You have school districts that have various --
18 that are in various stages of condition, and obviously
19 not every one of them is going to need the same amount
20 of assistance or the same degree of scrutiny that
21 Compton needed that was provided by FCMAT.

22 MR. HAJELA: That's all. Thank you very much.
23 (The deposition concluded at 4:58 p.m.)

24 ---oOo---
25

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. II
8 CASE: WILLIAMS VS STATE
9 DATE OF DEPOSITION: THURSDAY, NOVEMBER 15, 2001
10 I, _____, have the following
11 corrections to make to my deposition:

8	PAGE	LINE	CHANGE/ADD/DELETE
9			
10	---	---	_____
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22	---	---	_____
23	---	---	_____
24	---	---	_____

25 DUWAYNE BROOKS _____ DATE

1
2 Please be advised that I have read the foregoing
3 deposition. I hereby state there are:

4
5 (check one) _____ NO CORRECTIONS
6 _____ CORRECTIONS ATTACHED

7
8 _____
9 Date Signed

10
11 _____
12 Duwayne Brooks

13 Case Title: Williams vs State, Volume II
14 Date of Deposition: Thursday, November 15, 2001
15 ---oOo---

16
17
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23
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25

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 29th day of November, 2001.

19
20
21
22

23 _____
24 TRACY LEE MOORELAND, CSR 10397
25 State of California

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 II
10 Date Taken: Thursday, November 15, 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,

21 TRACY LEE MOORELAND, CSR
22 Esquire Deposition Services
23 Job No. 28908

24 cc: Kevin Reed, Esq. Anthony Seferian, Esq.
25 David Herron, Esq. Abe Hajela, Esq.
Peter Eliasberg, Esq. Mark Rosenbaum, Esq.

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7 429 Market Street
8 San Francisco, CA 94105-2482

9 Re: Williams vs State
10 Deposition of: Duwayne Brooks, Vol. II
11 Date Taken: Thursday, November 15, 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:

Sincerely,

24 TRACY LEE MOORELAND, CSR
25 Esquire Deposition Services
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