

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

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I N D E X

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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.  
12 ---o0o---  
13 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 unhousted 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 unhousted?

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 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 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 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 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 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 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 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 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 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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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---  
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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,

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

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

1 ESQUIRE DEPOSITION SERVICES  
2 Certified Shorthand Reporters  
3 1801 I Street, Suite 100  
4 Sacramento, California 95814

5 MORRISON & FOERSTER  
6 ATTN: LEECIA WELCH, ESQ.  
7 429 Market Street  
8 San Francisco, CA 94105-2482

9 Re: Williams vs State  
10 Deposition of: Duwayne Brooks, Vol. 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,

22 TRACY LEE MOORELAND, CSR  
23 Esquire Deposition Services  
24 Ref. No. 28908

25