

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

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

Plaintiffs,)

vs.) No. 312236

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

Defendants.)

DEPOSITION OF
ROBERT CORLEY
VOLUME 1

SAN FRANCISCO, CALIFORNIA
FEBRUARY 10, 2003

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FILE NO.: 9D0122A

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16 EASTIN, State Superintendent)
17 of Public Instruction, STATE)
18 DEPARTMENT OF EDUCATION,)
19 STATE BOARD OF EDUCATION,)
20)
21 Defendants.)
22)
23 _____)
24)
25)

16 Deposition of ROBERT CORLEY, Volume 1, taken on
17 behalf of Defendants, at 275 Battery Street, 27th
18 Floor, San Francisco, California, commencing at 9:45
19 a.m., Monday, February 10, 2003, before Jane H.
20 Stuller, CSR #7223.
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23
24
25

1 I N D E X
2 WITNESS: ROBERT CORLEY
3 Volume 1

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1 ROBERT CORLEY,
2 having first been duly sworn, was
3 examined and testified as follows:
4
5 EXAMINATION
6 BY MR. SEFERIAN:
7 Q. Good morning, Mr. Corley. My name is Tony
8 Seferian, and I represent the Superintendent of
9 Public Instruction, the State Department of
10 Education, and the State Board of Education in the
11 Williams versus California lawsuit.
12 I'd like to show you a document which I'll
13 ask the court reporter to mark as Exhibit 1.
14 (Defendants' Exhibit No. 1 was
15 marked for identification.)
16 BY MR. SEFERIAN:
17 Q. Do you recognize that document?
18 A. Yes. This appears to be a complete copy of
19 my expert report.
20 MR. ELIASBERG: Just generally -- I mean,
21 you're welcome to -- I don't expect that Tony has put
22 in a fake one, but you're welcome to take the time
23 necessary to be familiar, make sure that it appears
24 to be the full document. You don't have to read
25 every page, but you should do that with any document.

1 BY MR. SEFERIAN:

2 Q. Just to be precise, does the document
3 Exhibit 1, contain an attachment, Exhibit A, which
4 says, "Resume Rob Corley, School Facility Planning
5 Consultant"?

6 A. Correct.

7 Q. What is that document, Exhibit A?

8 A. Exhibit A is a resume and history of the
9 work I've done over the years. It's something that
10 -- the particular one here has been used at
11 conferences and attached to reports.

12 Q. And then marked as Exhibit B, within Exhibit
13 1, the document, expert report of Robert Corley, Is
14 that the expert report you prepared for this case?

15 A. Again, without reading every page, it
16 appears to be a complete copy, yes.

17 Q. I'd like to ask you to refer to page 46 of
18 your expert report.

19 If I refer in your deposition to "your
20 report," will you understand that to mean the expert
21 report that you prepared in this case, which is
22 attached as Exhibit B to Exhibit 1 of your
23 deposition?

24 A. Yes.

25 Q. In the middle of page 46 of your report,

1 there's a No. 1 which says, "No system was in
2 place to ensure that schools with severe
3 facility needs participated in the bond
4 programs."

5 What do you mean by that statement?

6 A. Again, we're starting right in the middle of
7 a report, and let me put it in context. The bond
8 programs specifically here referred mainly to
9 Proposition 1A and SB50, which is now known as the
10 school facilities program.

11 What I meant by that statement that is
12 identified as No. 1 on page 46, is that even though a
13 substantial amount of money was made available to
14 school districts throughout the State of California,
15 there was no system to ensure that the schools -- the
16 individual schools with the most severe needs took
17 advantage of it.

18 It was purely a demand-driven program.
19 Applications were prepared -- or the format for
20 applications was made available, but it was entirely
21 up to the school district to identify which
22 facilities got modernized or otherwise repaired with
23 these funds.

24 Also, it was entirely up to the school
25 district to file or not to file an application.

1 Q. As part of your work in this case, have you
2 made a list of which schools with severe facility
3 needs did not participate in the bond programs?

4 A. No, I did not.

5 Q. Are there any legitimate reasons why a
6 school district may not participate in a bond
7 program?

8 MR. ELIASBERG: Objection; vague.

9 THE WITNESS: Go ahead and answer that
10 one?

11 MR. ELIASBERG: Yes. Unless I specifically
12 tell you not to. I just need to make objections for
13 the record, But you can answer when I finish my
14 objection.

15 THE WITNESS: I believe there are various
16 reasons why. A district may -- first of all, the
17 essence of SB50 and the school facilities program is
18 it's a matching program. You have to have local
19 funds to participate. If you're financially unable
20 and meet certain threshold tests, then there's a
21 financial hardship component. So one is financial
22 wherewithal.

23 Another key issue that's out there is the --
24 what I'll generally class -- categorize as the
25 management capabilities of the school districts.

1 There are a thousand, plus or minus, school districts
2 in the State of California. More than that, if you
3 include the county superintendents.

4 Some of them are extremely small. In some
5 school districts, they have a
6 superintendent/principal who spends part of his or
7 her day out on the playground supervising kids. So
8 there's a huge universe of schools out there.

9 Finally, there is an issue that is more
10 prevalent in older and often urban schools, is the
11 modernization funding is simply inadequate to address
12 all the needs.

13 When you prepare modernization plans, you
14 have to bring much of the school up to current codes,
15 including seismic, ADA components -- that's the
16 handicapped access -- and fire and life safety.

17 And sometimes, that is just an overwhelming
18 amount of work to be done. And sometimes won't even
19 fit within the modernization budget.

20 After this report was prepared, after this
21 time in November 2002, the Prop 47 legislation
22 actually has a provision for very old schools, which
23 is a step in the right direction. But there are
24 reasons why districts were unable or, for other
25 reasons, did not access the Prop 1A funds.

1 BY MR. SEFERIAN:

2 Although you haven't made any list, have you
3 made any type of estimate of how many schools with
4 severe facility needs or how many districts with
5 severe facility needs did not participate in the bond
6 programs?

7 A. I have not compiled such a list. As is
8 stated elsewhere in this report, a significant
9 limiting factor is the fact that nobody has that
10 information. There is no statewide inventory. There
11 is no source I could go to to list the oldest school
12 to the newest school.

13 So because the universe is unknown, the
14 state could, but does not, have that information. It
15 involves a level of research that, frankly, is beyond
16 the scope of this report. I am aware of some
17 individual situations where, again, applications may
18 be in process, they may be being considered, but they
19 have not yet been filed.

20 And as further testimony that I point out,
21 in the Proposition 47 bond, several billion dollars
22 were set aside for the, quote, "pipeline projects."
23 And these were projects that are completed -- and the
24 applications were completed, the plans were
25 completed.

1 They were filed with the state, but there
2 was no money to take care of them. And a key part of
3 Prop 47 was clearing that backlog. So clearly,
4 demand exceeded supply.

5 Q. As part of the work that you have prepared
6 for this case, did you attempt to undertake any type
7 of survey or estimate of which districts with severe
8 facility needs, as that term is used on page 46 of
9 your report, did not participate in the bond
10 programs?

11 A. No, I did not conduct a survey of the
12 districts.

13 Q. When you say that one of the reasons that a
14 district may not have participated in a bond program
15 was the management capability of the school district,
16 in your opinion, is that occurrence a factor in very
17 small school districts?

18 MR. ELIASBERG: Objection; vague and
19 ambiguous.

20 BY MR. SEFERIAN:

21 Q. And let me add one thing, Mr. Corley. I
22 forgot to mention earlier, if at any time you don't
23 understand the question that I'm asking, and I
24 haven't made it clear, please let me know, and I'll
25 restate the question in a way that's clear.

1 A. Okay. Well, I'll try and answer that one.
2 If we're not there, ask again. So you asked if lack
3 of management capability is a factor for very small
4 districts. In some cases, it is. However, there are
5 some very small districts that have successfully
6 participated.

7 It is -- and local management capabilities
8 is also a factor in medium and larger districts, as
9 well, including some of the very largest districts in
10 the state.

11 Q. Are you aware of any school districts that
12 didn't -- did not participate in the bond programs,
13 Proposition 1-A and Proposition 47, because of the
14 management capabilities of the school district?

15 A. I'm trying to think who. I -- I -- I'm
16 trying to think who really has not participated.
17 They're -- I'm aware of some small districts in the
18 north part of the state. Other districts simply
19 filed a limited number of applications.

20 Again, it's -- there's a lot of need out
21 there, and much of this report addresses the
22 prevalence of need.

23 But when you look at the number of
24 applications filed and the amount of work done, there
25 is more work to be done.

1 Q. As part of the work that you performed in
2 this case, did you undertake any effort to determine
3 which school districts did not participate in bond
4 programs as a result of the management capabilities
5 of those school districts?

6 A. No. There was no survey taken in -- and
7 again, that's -- the focus here was not on the
8 districts, but rather on the state's role in setting
9 up a system that would audit and supervise and
10 monitor the performance of the local districts.

11 Q. Also on page 46 of your report, you state
12 that incentives and program requirements have led to
13 unanticipated consequences, including overcrowding
14 due to multitrack calendar requirements and referral
15 of needed repairs to meet state funding
16 opportunities.

17 Which incentives are you referring to in
18 that location on page 46 of your report?

19 A. Item No. 2 on page 46 of the report, the
20 incentives, there are actually two different programs
21 with multitrack education. One is the -- referred to
22 in -- people knowledgeable with the program, with a 6
23 percent hit.

24 This is a year-round requirement, and it's a
25 convoluted process. But basically, it requires

1 districts to apply as though they had year-round
2 capacity.

3 The second program is the operational grant
4 program where school districts were given the chance,
5 and at one time, there was actually a requirement to
6 apply for operational funding in lieu of construction
7 funding to operate schools on a multitrack basis. So
8 it was a way of the state reducing its capital outlay
9 requirement in exchange for an on-going revenue
10 stream to pay the higher costs of multitrack. What
11 that did is put a lot of schools on multitrack.

12 Back in the days of the lease/purchase
13 program, priority for funding was given out to
14 schools that were designed for multitrack and
15 operated multitrack. Basically, if you didn't do
16 multitrack, you didn't get state funding. That's the
17 incentive program.

18 Q. What were you referring to when you used the
19 term "6 percent hit"?

20 A. The math is complicated. But if you go to
21 the education code, and I have to look up the exact
22 section, the capacity of your schools are adjusted as
23 though they were operating on a multitrack calendar.

24 And the reason it's the 6 percent hit is 20
25 percent of 30 percent equals 6 percent. And the math

1 better term -- to come in with a single comprehensive
2 modernization program, rather than addressing the
3 most critical needs out of sequence.

4 The administrative requirements of the
5 program do not encourage districts to address their
6 highest priority needs first. There's a requirement
7 that you modernize as much of the building under one
8 set of plans as possible. And part of that is, the
9 state doesn't want to be inundated with many, many
10 little projects.

11 What it means is, a critical shortage of one
12 end of the school may be deferred until you can bring
13 in a comprehensive plan for the entire campus.
14 Again, there are some small exceptions, and there are
15 some variations, but that's generally true.

16 And finally, with the -- because of the
17 other program requirements on code compliance and
18 handicapped compliance, there's a real encouragement
19 to address all of the needs of the campus at one
20 time. To take the plans for DSA, which division of
21 state architect, rather than, again, going out and
22 addressing more than critical needs.

23 Q. In your opinion, are there any benefits to
24 the program requirements that require modernization
25 with a comprehensive plan for the schools?

1 was 30 percent of your K-6 enrollment and the 20
2 percent was the adjustment factor for the multitrack
3 operation. So you do all the arithmetic, you come
4 out with 6 percent.

5 It's called a "hit" because the state took
6 away your eligibility.

7 And I -- just for completeness and accuracy,
8 that requirement did not apply to county
9 superintendents in very, very small districts. There
10 were a few exceptions. High school districts were
11 treated differently. So it wasn't universal for
12 everybody. There were a few exceptions. But the
13 vast majority of people in all unified districts did
14 have that situation.

15 Q. Were there any other incentives you were
16 referring to, on page 46 of your report, other than
17 the 6 percent hit and the operational grant funding?

18 A. Well, if you read the entire item 2, the
19 other program requirements, and some of which apply
20 to the modernization, there is a requirement that
21 schools were not otherwise modernized with state
22 funds. And so doing, would make them ineligible for
23 further work.

24 So there was an incentive, if you want to
25 call it that -- I guess an encouragement would be a

1 A. In an ideal world, doing things
2 comprehensively is always better. In most cases, it
3 would be the best way to do business. However, plans
4 take time to get drawn. They take time -- there has
5 been time which is dead waiting time at DSA. There
6 is plan check time. There is back check time. Then
7 you have to do your funding. Then you have to go out
8 to bid.

9 What it means is, if you have an unsanitary
10 or nonfunctioning restroom or partial restroom. Kids
11 are forced to use that for an extra year, year and a
12 half, two years, maybe three years. In an adult
13 scale, couple of years, what's the difference.

14 But when you're eight, a couple years is
15 one-fourth of your life. And telling a kid that the
16 bathroom in your building is broken, we'll get to it
17 in three years, doesn't do a lot of good. So it's a
18 matter of deferral.

19 In high schools, which are larger plants and
20 more complex, two-, three-, four-year delays are not
21 that uncommon. Figure an average kid is in high
22 school for four years. So you're telling that
23 freshman that, after you graduate, maybe we'll get to
24 the bathrooms or the locker rooms or whatever.

25 Q. When you testified regarding the program

1 requirement that the modernization fund not be used
2 on a projection that had not been modernized with
3 state funds, were you referring to modernization with
4 state funds of a building or the entire school or
5 some combination of those?

6 MR. ELIASBERG: Objection; compound, and
7 misstates the witness' prior testimony.

8 You can answer.

9 THE WITNESS: Part of the education code --
10 this is right out of code -- and it says that a
11 building that has been modernized with state funds is
12 ineligible for school facility program
13 modernization.

14 And you can dig out the code reference if
15 you need the section. That is applied on a
16 building-by-building basis. So if a campus has
17 multiple buildings, it's on each stand-alone building
18 on that campus.

19 BY MR. SEFERIAN:

20 Q. So is it your testimony that as long as a
21 particular building on a school campus has not
22 previously been modernized with state funds, that
23 building might be eligible to receive state funding
24 for modernization, even if another building on the
25 same campus had been modernized with state funds?

1 A. That's -- the statement you just made is
2 consistent with my understanding of the school
3 facility program, yes.

4 Q. Were there any other unanticipated
5 consequences you were referring to on page 46 of your
6 report, in addition to overcrowding due to multitrack
7 calendar requirements and of deferred needed repairs
8 to meet state funding opportunities?

9 A. There -- yeah. We could go on. For
10 example, the class-size reduction program, the state
11 provided the \$40,000 per additional classroom which
12 was adequate to draw up a portable for you, not
13 adequate to build a permanent building. That led to
14 hundreds -- thousands of portable classrooms being
15 dropped on campuses all over the state.

16 Class-size reduction is a good thing. You
17 have smaller classes in kindergarten through third
18 grade. The unintended consequence is, you added that
19 many more buildings which ate up playground space,
20 open space on campuses, and took away opportunity for
21 growth in growing neighborhoods that can't build new
22 schools.

23 So again, it was a good program, and it was
24 generous of the state to provide the funding for the
25 new buildings that were required. However, the

1 unintended consequence is the crowding of existing
2 campuses.

3 Many of the portables put in were dry
4 portables. That have no drinking fountains, no sinks
5 in them. So again, there was no standard or guidance
6 from the state on what kind of room to put in, just
7 here's \$40,000. If you do put in a room, use it for
8 class-size reduction. So nobody turned down the
9 money because class size is a good thing, but it was
10 an unintended consequence.

11 Q. Were there any other unintended consequences
12 that you were referring to on page 46 of your report
13 that you haven't already mentioned?

14 A. Another -- one that isn't directly mentioned
15 here, but is equally important is the funding cycle
16 that has been adopted. It's why the state has
17 produced these masses of funding for the
18 modernization program. But the message to the school
19 community has been, get your plans ready, wait in
20 line, and do the major repairs, do the major
21 rebuilding when we give you funding to do it.

22 And what that has led to is an intentional
23 or unintentional accumulation of major facility
24 repairs and needs until the big modernization comes
25 in. So there has been an observed practice and

1 pattern of not doing major repairs because we're
2 going to modernize when we get state funding. We'll
3 not do the deferred maintenance repairs because we're
4 going to modernize.

5 And it doesn't make sense to go in and do an
6 expensive repair to a bathroom when you're going to
7 modernize in a year. So by the state not having
8 consistent funding, by the requirements that
9 applications be made comprehensively through full
10 code review at DSA, there has been a deferral of
11 repairs and major maintenance items until the time of
12 modernization.

13 And there's a good practical reason for
14 that. But the unintended consequence is that
15 sometimes repairs are deferred to the future instead
16 of the needs being addressed right now.

17 Q. Are there any other unanticipated
18 consequences that you are referring to on page 46 of
19 your report?

20 A. I believe -- the statement here is in the
21 context of funding and allocation models. And if I
22 -- probably if I thought about it, I could think of
23 a new more, but I think we've covered the main ones
24 right now.

25 Again, in 50 pages of legislation, there is

1 lots to talk about, but I don't think we want to beat
2 every single provision to death here. These are the
3 key points that are germane to the section you're
4 asking about.

5 Q. On page 46 of your report, when you say that
6 consequences were unanticipated, who were you
7 referring to in that context?

8 A. Can you be more specific about where -- what
9 reference you're making. In this in item No. 2 on
10 page 46?

11 Q. On page 46 of your report, item 2 --

12 A. Okay.

13 Q. -- when you say that, in part, "incentives
14 in program requirements have led to unanticipated
15 consequences," who were you referring to when you
16 said unanticipated?

17 A. You're asking who did the anticipation of
18 the unanticipated consequences in item 2 on page 46?
19 Unanticipated would be by the legislators drafting
20 and approving the statute. And I would say, by the
21 state administrators who implemented it, as well as
22 the local school officials and others who actually
23 implemented the program.

24 It's a very complex piece of legislation.
25 And I don't fault the legislation. It did a lot of

1 good for the state. But in anything that complex,
2 some things are very direct and clear, and some
3 things are a little otherwise. There are some
4 unanticipated consequences.

5 Q. What is the basis of your statement that the
6 legislators, the administrators and local officials
7 did not anticipate those consequences?

8 A. That would be my personal opinion based on
9 my participation in it. I was pretty actively
10 involved in SB50 when it was drafted. The reality
11 is, the bill never appeared in print before it was
12 voted on. I mean, it was literally revised the last
13 day of the session and voted on.

14 Following that, the state allocation board
15 and their staff held extensive series of hearings and
16 public participation venues to get input on the
17 regulations that actually implemented it.

18 And I have to commend the staff, Bruce
19 Hancock, Phil Shearer, Dave Zian, the whole group --
20 there's Phil Shearer -- S-H-E-A-R-E-R -- and Dave
21 Zian -- Z-I-A-N -- and many others, who listened for
22 literally hours as people debated what the words on
23 the page meant.

24 These were long tedious sessions, but they
25 held in there and really tried to implement the

1 letter of the law in the spirit as best they could.
2 These are very dedicated people.

3 Q. Is it your opinion that none of the
4 legislators involved in the drafting of SP-50 and
5 none of the state administrators and other local
6 officials anticipated any of the consequences we've
7 been discussing on page 46 of your report?

8 MR. ELIASBERG: Objection to the extent it
9 calls for speculation.

10 THE WITNESS: Well, I think your question
11 was, did any of them anticipate any of the
12 consequences? And no, I do not support that at all.
13 They worked very hard on crafting the legislation. I
14 will testify that there are some unanticipated
15 consequences that I don't think anyone, including
16 Rick Simpson, understands every aspect of this law.

17 And it was written, it's a collaborative
18 process. But, no, I did not agree with your
19 statement, but I will say there are some
20 unanticipated consequences.

21 BY MR. SEFERIAN:

22 Q. When you say in item 2 on page 46 of your
23 report that there was overcrowding due to multitrack
24 calendar requirements, were you referring to the --
25 the 6 percent hit and the operational grant funding

1 that you testified to earlier?

2 MR. ELIASBERG: Objection; misstates his
3 prior testimony.

4 THE WITNESS: The overcrowding due to
5 multitrack as stated in item 2 on page 46 is a
6 combination of the two items you mentioned: The 6
7 percent hit and the op grant -- or operational
8 grant.

9 There is also, again going back to previous
10 -- prior programs, the priority system which again
11 did not mandate that you design and operate schools
12 on a year-round calendar. However, if you did not
13 reach that level of priority, the cold facts were,
14 you would never get state money.

15 So it was a voluntary program, but the
16 consequences were exclusion from the funding cycle.
17 So it's a fig leaf to say it was voluntary. It's --
18 the reality was, if you wanted state funding, you had
19 play the game.

20 The overcrowding -- again, multitrack -- in
21 theory, multitrack schools are not overcrowded
22 because some of the kids are always on vacation. The
23 practical day-to-day reality is that is not true.
24 That's a theoretical construct.

25 The reality of multitrack is quite

1 different. So I think we need to distinguish between
2 the theoretic possibility and the reality of
3 operating that school, and what conditions are like
4 in a multitrack school.

5 Q. In what sense were you using the word
6 "overcrowding" in item 2 on page 46 of your report?

7 A. Overcrowding has -- is a complex term. The
8 way it's used in this statement on page 46 is -- best
9 explain this -- the overcrowding of the campus is due
10 to the requirement that an effective multitrack
11 program has to have a certain number of students in
12 order to make the different tracks work.

13 So if a school were -- an elementary school,
14 for example, were designed for 500 kids, it could not
15 easily change to a multitrack calendar. The number
16 of kids per track per grade just don't work out. The
17 school needs to grow, which means the campus -- the
18 physical acreage, the core facilities, the bathrooms,
19 the parking spaces, the library. All that stuff
20 tends to be overcrowded because you've had to add
21 rooms and add classrooms, basically, to allow the
22 multitrack to operate.

23 The other form of crowding is that some
24 activities aren't broken out by track, for example,
25 faculty meetings. You want the whole faculty

1 together, not the faculty that happens to be working
2 today and exclude those that happen to be on vacation
3 today. Parent meetings, again, are broken up.

4 There are many aspects to the overcrowding
5 situation. So the individual classrooms are not
6 necessarily overcrowded, but the overall school, in
7 almost every case, tends to be quite crowded.

8 Single track schools are different. Single
9 track is a different thing entirely. But multitrack
10 is -- is also generally implemented as a response to
11 crowding, so here we get into this chicken-or-egg
12 thing. The reason to go on multitrack is because
13 you're crowded. The reason that the incentive
14 program was there is because you were crowded, and
15 you wanted state construction money to build more
16 schools.

17 If you're not crowded, you don't go on
18 multitrack. You may go on single track, but you
19 don't go on multitrack. I think Los Angeles
20 Unified's experience, they put schools on single
21 track to be consistent with the district-wide
22 calendar. And as the crowding got worse, they had to
23 switch to multitracking. It's not uncommon around
24 the state.

25 Q. As part of the work that you performed in

1 this case, did you conduct any analysis specifically
2 linking the incentives and program requirements
3 referred to on page 46 of your report to consequences
4 in specific school districts in California?

5 MR. ELIASBERG: Objection; vague and
6 ambiguous.

7 THE WITNESS: I'm not sure I really
8 understand your question. Can you do that again?

9 BY MR. SEFERIAN:

10 Q. Sure. As part of the work that you
11 performed in this case, did you undertake to study
12 whether the incentives and program requirements
13 referred to on page 46 of your report that led to
14 unanticipated consequences led to specific
15 consequences in any certain school districts?

16 MR. ELIASBERG: Same objections.

17 THE WITNESS: The conclusion stated here is
18 not the result of any specific separate stand-alone
19 research. Concurrent with this project and in
20 projects done in recent years -- for example, I did a
21 fairly detailed study of the conditioned in the Lodi
22 Unified School District which has a number of schools
23 on multitrack in concept 6 multitrack calendars.

24 That multitracking was a direct result of
25 the state incentive program and requirements under

1 the lease/purchase program. They are now actively
2 trying to get off multitrack and have successfully
3 passed a local bond and are building a number of new
4 schools, and have a clear plan to get off
5 multitrack. But the fact they're on multitrack is a
6 direct consequence of the state program
7 requirements.

8 Elk Grove Unified, which is a very well run,
9 very well managed district, has a number of
10 multitrack schools, specifically and uniquely because
11 of the state program requirements. And their -- the
12 staff there is very blunt. They prefer not to be
13 multitrack. But the state made them do it, so they
14 did it.

15 The reason they did it is, they looked down
16 the road -- this is an extremely fast growing
17 community -- you're from Sacramento, you know the
18 area. They knew they needed schools this year, next
19 year, the year after, the year after, the year
20 after. If they didn't employ the year-round
21 technique in the early years, they would lose
22 eligibility in outer years and have a crisis down the
23 road.

24 So even though they would prefer not to be
25 on multitrack, the state program made them do it, so

1 they did it. They -- survival was more important
2 than optimizing their facilities. I mean, the same
3 situation applies to Los Angeles.

4 The Oxnard School District, where I've done
5 quite a bit of work, they implemented year round for
6 both educational theory reasons and severe crowding.
7 They learned it was not the best program. But by
8 then, the severe crowding overwhelmed their ability
9 to get off. So again, they're working as hard as
10 they can. They'd like to get off. They simple
11 cannot.

12 BY MR. SEFERIAN:

13 Q. In the school districts you mentioned in
14 your last answer, including Lodi, Elk Grove, Los
15 Angeles, Oxnard, were there other causes of
16 overcrowding than the school facility programs
17 multitrack calendar requirements?

18 A. You're asking about the causes of
19 overcrowding. Again, just being really clear for the
20 record, no state rule caused overcrowding. That's
21 the -- crowding is too many kids and too few places
22 to put them. That's crowding.

23 Did the state regulations and practices
24 contribute to the districts' lack of ability to build
25 enough rooms to house the kids who were showing up on

1 their doorstep. I think that's a more appropriate
2 analysis. The, you know, development of new houses,
3 birth rate, these things cause enrollment which, if
4 you don't have enough places to put them, that's what
5 causes the crowding.

6 What the state incentives and regulations
7 and statutes and practices have done is, they have
8 constrained the ability of districts to provide
9 enough spaces to put the kids. Other contributing
10 factors, which are mentioned in this whole section,
11 but not in item 2 as much, is the flow of funding
12 from the state, which has been highly unpredictable.
13 And on again, off again, which has made it very hard
14 to plan your future and build the facilities you need
15 to have them ready when the kids show up.

16 (Recess.)

17 BY MR. SEFERIAN:

18 Q. In your opinion, what is the relationship
19 between the school overcrowding, as that term is used
20 in page 46 of your report, and the multitrack
21 incentives and program requirements?

22 A. It would be a continuation of your previous
23 question about the linkage between the two things.
24 Let me try my best to summarize all this.

25 The lease/purchase program, which is the

1 predecessor to the school facilities program, had the
2 priority point system. And that came out of AB-87
3 and some other legislation. That actually, defacto,
4 required districts to commit to multitrack
5 operation. That was then rolled into the school
6 facility program with the year-round adjustments.

7 So the connection between the program
8 requirements and the overcrowding for multitrack, I'm
9 going to -- it's kind of best to answer the question
10 here is, program requirements directly led to the
11 multitrack operation.

12 And the multitrack operation is a resulting
13 of both existing undercrowding in the attendance --
14 overcrowding, not undercrowding -- in the attendance
15 area, and the fact that rooms were not built because
16 of the year-round incentives and requirements, such
17 as the priority point system, led to a deficiency in
18 the number of classrooms in various attendance areas,
19 which is the proximate cause of the overcrowding we
20 see today.

21 Q. On page 46 of your report, when you say the
22 state's funding program has been inadequate in three
23 respects, over what period of time were you referring
24 to?

25 A. I would say, generically, since the

1 beginning of the lease/purchase program, which I
2 believe was 1976, to the present.

3 Q. On page 46 of your report in item 3, when
4 you say: Inconsistent and insufficient state funding
5 has led to inefficient facility construction and
6 renovation program by school districts -- by local
7 school districts, which have exacerbated existing
8 problems, what period of time were you referring to
9 with regard to inconsistent?

10 A. The -- I give the same answer I gave to your
11 previous question, which is really since the
12 beginning of the lease/purchase program. There would
13 be a burst of funding and an absence of funding. And
14 then there would be some money on the streets and
15 then no money on the streets.

16 And it's been difficult for districts to
17 have any kind of rational planning process when you
18 scurry around and prepare your applications, but you
19 never know if there's money there you need it at the
20 school or not.

21 Q. Would you agree that there has been a
22 general obligation facilities bond on the ballot in
23 California every two years since 1982?

24 A. I can't answer that question without
25 consulting some reference material. There have been

1 a number of bonds on the ballot, yes, but I can't
2 confirm your -- your statement.

3 Q. As you sit here today, do you have any
4 reason to disagree with the statement that there has
5 been a general obligation facilities bond on the
6 ballot in 1982 and 1984, 1986 and 1988, 1990, 1992,
7 1994, 1996, 1998 and 2002?

8 A. As I sit here today, I cannot confirm or
9 disagree with that statement. I simply don't recall
10 every election. There have clearly been multiple
11 state bond issues given to the state's voters and the
12 school districts are extremely grateful for that.

13 But if you look at -- again, referring back
14 to page 46, what the statement is talking about is
15 many of the people who got funded by Prop 1A were the
16 overhang from Prop 203. The people who were eligible
17 got their plans in, and then were forced to stand in
18 line for two years.

19 And then they got funded. That money got
20 spent, and then they had to stand in line again.
21 That money got spent, and now it's being picked up by
22 Prop 47. Again, it's -- no lack of gratitude to the
23 state for providing this funding. It's been great.

24 However, you have this on again, off again,
25 on again, off again, and then the rules change

1 made. But the end result is, there's been an awful
2 lot of times when there was -- the cupboard was bare.

3 Q. On page 46 of your report in item 3, when
4 you used the word "insufficient," have you performed
5 any estimate or calculation of the extent to which
6 the state's facilities funding program has been
7 insufficient?

8 MR. ELIASBERG: Is that limited to any
9 period of time, or is that just over history?

10 BY MR. SEFERIAN:

11 Q. Let me ask you this: In performing your
12 work for this case, did you perform any estimate or
13 calculation of the extent to which the state's
14 facilities funding program has been insufficient, as
15 that word is used in page 46, item 3 of your report?

16 A. I did not perform any separate study.
17 However, during the time this report was put
18 together, there were a number of estimates put --
19 published, released or assembled -- I guess is the
20 best word -- by people with more information than I
21 had readily available, such as the Assembly Education
22 Committee.

23 This was during the period of time when
24 what's now Prop 47 was being debated. The Department
25 of Education, Department of Finance, CSBA, CASH, the

1 sometimes right in the middle of the game.

2 Q. If I ask you to assume that there has been a
3 general obligation bond on the ballot in -- almost
4 every two years since 1982, would you agree that that
5 has been a consistent source of funding for K-12
6 facilities?

7 A. You asked a two-part question, so I'll
8 answer it in two parts. If you were to postulate
9 that there has been an election -- a bond election on
10 the ballot every two years, I would agree that that
11 showed some consistency. I don't know if that's
12 true. And I know there have been a number of bonds.

13 What the statement on page 46 is addressing
14 is -- is the flow of funds out for the programs.
15 Again, some of these bonds -- I know at least one did
16 not pass. It was defeated by the voters. And other
17 times there -- the program has been out of money, so
18 that there is no flow of funds to the people building
19 the schools and modernizing the schools.

20 This isn't about -- the statement really
21 isn't about the frequency of elections, but the
22 availability of funding to the people who show up and
23 knock on the door and say, We have a need. And
24 that's obviously a very complex system, and I'm -- I
25 don't mean to diminish the efforts the state has

1 two education committees, all came up with
2 estimates. Private groups, Steve English's group,
3 came up with its own estimate.

4 So while I personally did not do that, there
5 was really no need to, because there were probably a
6 dozen different estimates of need, they all converged
7 in the \$20 billion range in the short term, and
8 possibly higher in the long term. So the need is
9 staggering when you look at it. So there was no
10 shortage of estimates of need out there.

11 Q. What I'm asking is, on page 46 in item 3 of
12 your report, when you used the word "insufficient"
13 state funding, have you come up with any figure of
14 the extent to which the state's funding for school
15 facilities has been insufficient?

16 MR. ELIASBERG: Asked and answered.

17 THE WITNESS: As -- the reason that I chose
18 and used the word "insufficient" on page 46, is that,
19 at the time this was prepared, there was
20 approximately two and a half billion dollars' worth
21 of unfunded applications sitting there. This is a
22 pattern that goes back over 20 years.

23 So the fact that the state has frequently
24 run out of money for programs, and forced eligible
25 needy applicant's to stand in line for an uncertain

1 funding date in the future, showed -- to me, in my
2 opinion, my personal experience, shows a pattern of
3 insufficient funding. Because when you run out and
4 you run out and you run out again, something is
5 insufficient.

6 BY MR. SEFERIAN:

7 Q. Speaking just in terms of dollar amounts?

8 A. Uh-huh.

9 Q. In your work for this case, did you perform
10 any estimate or calculation of the extent to which
11 the state's facilities program has been insufficient
12 as referred to on page 46, item 3 of your report?

13 MR. HAJELA: Tony, that question only works
14 if you pick a date and a time.

15 THE WITNESS: I'm going to try and answer
16 your question.

17 The -- in preparing this report, as I just
18 said in my previous answer, that it's been a periodic
19 -- there will be a bond. There will be some
20 projects funded. They run out of money. Then
21 there's no funding -- no funding. There'll be
22 another funding event, and then some more projects,
23 and they're out of money again.

24 At the time this report was written and
25 submitted, the estimate that I used in my personal

1 in the short term, which short term were you talking
2 about?

3 A. Up to ten years in the future.

4 Q. Can you explain that answer of how the \$20
5 billion and then ten years relates to each other?

6 A. That, again, we are going back in time a
7 couple of years to the time all this stuff happened.
8 The -- the estimate was in the ballpark of 20 to -- I
9 think 24 billion was another estimate, over
10 approximately the next decade would be needed to meet
11 the eligible applications from school districts
12 throughout the state.

13 I think we are seeing now that that amount
14 may be insufficient. The number maybe in the \$30
15 billion range. And if you look at the last bond
16 issue, I think they came out with a \$25 billion,
17 which includes the higher education, as well.

18 But not to quote Barry Goldwater, but a
19 billion -- a billion is a lot of money. So whether
20 the real -- you know, whether it's 20 or 22 or \$24
21 billion, it is a heck of a lot of need. Those are --
22 realistically, those are unimaginable numbers. So
23 what it says is, there's a huge, huge, huge problem.

24 Q. And your answer, when you referred to the
25 figures of 20 to 24 billion and \$30 billion range,

1 judgment to base this -- the conditions in 2002 was
2 the one prepared by the California Department of
3 Education.

4 And again, they are the official agency, and
5 they have an excellent staff who spent some time
6 putting together numbers. So I relied on them
7 because I feel they have access to better numbers
8 than I have. And they're -- the estimate they
9 prepared made sense. In my professional judgment, it
10 -- it reflected the reality of the situation of the
11 State of California.

12 I can't verify if every decimal point was
13 exactly correct, but it clearly was a reasonable and
14 well researched estimate, so there was no reason for
15 me to go out and develop a separate estimate.

16 BY MR. SEFERIAN:

17 Q. Which estimate prepared by the State of
18 California Department of Education are you referring
19 to?

20 A. I think they call it the Fingertip Facts,
21 and it's available on their website. And it was
22 widely distributed at conferences and meetings. And
23 it was used throughout the discussions on Prop 47 and
24 the other bills.

25 Q. When you mentioned the figure of \$20 billion

1 are those figures that you, yourself, have
2 calculated, or are you relying on statistics from the
3 Department of Education or other sources?

4 A. Those are all numbers that have been
5 prepared by other people. But I also look at the
6 flow of applications into the state allocation board
7 after Proposition 1A passed. You know, when you're
8 receiving 2 or \$3 billion worth of applications a
9 year, it adds up pretty darn quick. Clearly, it's a
10 big problem. Inescapably, there is a lot of need out
11 there.

12 Q. What is the basis of your statement that the
13 number may now be in the 30 billion range?

14 A. Again, this is numbers that have been
15 prepared by other people, including CASH and
16 Department of Education. What they're looking at is
17 the cost of schools, particularly in urban areas, has
18 skyrocketed. The cost of land around the state, and
19 especially is high growth areas, is climbing. The
20 \$100 million high school is a reality now.

21 And, you know, a \$100 million for one school
22 is just a staggering amount of money. So you can
23 burn through a billion dollars real fast. Land has
24 been a million dollars an acre in part of the Orange
25 County for a long time, and it's not coming down in

1 price. Even in districts where I'm working, land has
2 more than doubled in price in the last few years. So
3 you add up all the pieces just on new construction,
4 it -- it -- it's a huge number.

5 And then on modernization, there's
6 additional funding opportunities for very, very old
7 buildings because of widespread understanding that
8 the previous grant amounts simply were inadequate for
9 older schools.

10 So what it means is that, there will be more
11 money flowing out as these older schools are brought
12 in and modernized.

13 Q. Do you believe that estimates of school
14 facilities need prepared by CASH and the Department
15 of Education are reliable figures?

16 A. Yes.

17 Q. In forming the opinions that you have in
18 this case, have you prepared any estimates of school
19 facilities needs yourself, apart from figures
20 prepared by others such as CASH or the Department of
21 Education?

22 Have you done any type of calculations or
23 estimates yourself?

24 A. Personally, I have made those calculations,
25 but it wasn't done specifically for this report. I

1 have participated with several school districts in
2 lobbying for changes in the funding formula. And in
3 doing so, did a number of calculations on what the
4 real cost is to address overcrowding in --
5 specifically in built-out urban communities.

6 And specifically looking at how to get
7 schools off multitrack when land is scarce or you --
8 you have multiple small parcels instead of large
9 parcels. So I have done those kind of calculations,
10 yes.

11 Q. Where have you done those calculations, or
12 in what documents are those calculations contained?

13 MR. ELIASBERG: Objection; assumes facts.

14 THE WITNESS: Those are in various white
15 papers prepared for the lobbyists who actually did
16 the meetings with legislators and legislative staff.
17 BY MR. SEFERIAN:

18 Q. Those are calculations you prepared for
19 attempts to change the facilities funding formula; is
20 that right?

21 A. In some cases. And in some cases, they were
22 background in briefing papers. But again, all in the
23 context of addressing the funding allocation models.

24 Q. Have any of those calculations that you've
25 prepared for changes in the funding formula, has that

1 been published?

2 A. No. They were not intended for publication.

3 Q. Have you prepared any calculations,
4 specifically for your work in this case, regarding
5 estimates of school facilities needs in California?

6 A. As I've said previously, no. If anything,
7 we had too many estimates of need out there. During
8 these long and very large debates over the new bond
9 program that became Prop 47, there was no shortage of
10 estimates of need. So there was no need for me to
11 separately prepare an estimate.

12 You know, there was literally an array of
13 estimates of need out there by people who had spent
14 more time than me working on it. So it would not
15 have been important, or important to my discussion,
16 or even useful for me to go out and prepare any other
17 supplemental data.

18 Q. In doing your work for this case, was there
19 one set of estimates or one or more sets of estimates
20 that you particularly relied on in forming your
21 opinions on this case?

22 A. As I said previously, the -- probably, the
23 Touch Stone estimate was the one from the Department
24 of Education.

25 Q. Can you describe how inconsistent and

1 insufficient state funding resulted in inefficient
2 facility construction and renovation programs by
3 local school districts?

4 MR. ELIASBERG: Asked and answered.

5 THE WITNESS: That's -- obviously is kind
6 of broad, but let me -- let me explain the statement
7 that's No. 3 on page 46 of my report.

8 As I said in response to some of your
9 earlier questions, the word "inconsistent" is used in
10 this statement because the flow of funds from the
11 state being made available to school districts has
12 been inconsistent over time.

13 It's been inconsistent in that sometimes
14 funds are available and applications are -- are
15 funded in a timely manner. And other times, there is
16 no money at the state level, so applications are
17 either processed and stockpiled; or otherwise are
18 partially funded, or different responses have been
19 given.

20 The inconsistency refers to the predictable
21 flow of funds when an application is made. Sometimes
22 there is money, sometimes there is not. Because the
23 application process is long and drawn out,
24 oftentimes, school districts don't know when they
25 begin the process whether there will be money when

1 they get to the end of the line and actually submit
 2 their funding request.
 3 So the inconsistency has led to
 4 inefficiencies in the school construction and
 5 modernization program. Because sometimes you will
 6 begin the process of designing a school only to find
 7 out that there is no money there to buy the land or
 8 build the school.
 9 In the meantime, you have the kids, so you
 10 have to put in portable or expand another school, or
 11 do some other remedy; which, in turn, affects your
 12 eligibility for state funding; which, in turn,
 13 depletes your capital reserve to do your local
 14 manage.
 15 So because the districts cannot depend on
 16 the state being there when we have a need, and they
 17 must serve the students who come -- show up on their
 18 doorstep, sometimes inefficient practices, such as
 19 adding more portables to an already crowded school,
 20 are the only avenue you have for survival.
 21 In the ideal world, you would be able to buy
 22 land in advance, design your school, get the school
 23 up and be there concurrent with need. Because of
 24 this on again, off again funding experience,
 25 sometimes you get there, the switch is off, you have

1 Architect and you own the property.
 2 Now, under Prop 47, there's a critically
 3 overcrowded school program which hasn't actually
 4 rolled out yet, but does partially address this. But
 5 a school district has to borrow money or somehow come
 6 up with the funding, to pay the architect to do the
 7 planning, to draw the plans, to get them down to the
 8 state, to get them checked, back checked and approved
 9 before he can even knock on the door and ask for
 10 money.
 11 Then you have to come up with your site
 12 purchase money, so either you get a site optioned or
 13 bought. It is not an -- an easy process and does
 14 lead to inefficiencies because it's this constant
 15 juggling act of addressing today's needs while
 16 planning for tomorrow's permanent fix, in the midst
 17 of a constant battle over funding uncertainty.
 18 Q. In the work that you have done for this
 19 case, have you made any determination about how the
 20 inconsistent and insufficient state funding you
 21 referred to on page 46 of your report in item 3 has
 22 led to insufficient facility construction and
 23 renovation of programs in particular local school
 24 districts?
 25 MR. ELIASBERG: Objection; vague and

1 to wait, but you still have to house the kids.
 2 In terms of insufficient, again, that goes
 3 back to the fact sometimes there is no money, and
 4 sometimes the funding you do get is insufficient to
 5 build the kind of school you need. The grants that
 6 are given out are appreciated, but frankly it's, at
 7 best, a bare-bones school. So especially in urban
 8 areas and other areas with very high construction
 9 costs, it's a real struggle to get your school
 10 built.
 11 And again, the rules have changed. So we
 12 have this state program evolving over time, and it's
 13 difficult to make plans down the road when the rules
 14 change, and you don't know which program you're going
 15 to be funded under. Don't -- there are other aspects
 16 to the inefficiency angle we could talk about, but
 17 that's a couple of very clear examples.
 18 BY MR. SEFERIAN:
 19 Q. What are you referring to in the other
 20 examples?
 21 A. The current program, for example, requires a
 22 school district to front load the cost of planning a
 23 new school. You can only apply for state money when
 24 you have a complete set of plans that has been
 25 completely approved by the Division of State

1 ambiguous.
 2 THE WITNESS: Let me try to answer that
 3 one. I think you're asking, are there specific
 4 examples of how the inconsistent and insufficient
 5 state funding has led to problems in specific school
 6 districts; is that correct?
 7 BY MR. SEFERIAN:
 8 Q. Yes. Let's start with that question.
 9 A. Okay. Well, how can I -- last week, I was
 10 in the Oxnard School District where we -- they
 11 actually had to defer construction of needed
 12 classroom buildings because the state could not and
 13 did not reimburse them for the money they had to
 14 spend to rebuilt and open a new school. They
 15 depleted their cash account.
 16 This is a district completely bonded out.
 17 It cannot sell more bonds because of the bonding
 18 limits. And it used every dime it had of its
 19 developer fees to open a new school because the state
 20 was out of money. Then they had to defer very
 21 important design and construction projects because
 22 they were broke because they spent all their money to
 23 open Ramona.
 24 Now, the state has finally issued the
 25 check. Now, they have some money. Now, they're

1 moving ahead. But the facilities program stalled due
2 to the inability of the state to deliver on its
3 promises. This was a fully eligible, fully funded
4 school. The state was out of cash, and the pain was
5 felt at the local level.

6 Lodi is in exactly the same boat. They had
7 four projects totally stalled. They have severe
8 overcrowding in some of their schools because the
9 state could not come through with the cash it
10 promised them.

11 After Prop 47, they're getting the cash.
12 The cash is flowing again. People are happy again.
13 But meanwhile, there is this intense pressure because
14 of the accumulated crowding during that dry spell.
15 Again, on again, off again, on again. It's
16 devastating.

17 And in this Washington Unified, you know, we
18 had to build Bridgeway Elementary in two phases,
19 which is expensive, and inefficient, and disruptive
20 to kids because we never -- we did not know if the
21 state would ever come through with a check. We got
22 the notice a couple weeks ago.

23 We're finally going to get our money.
24 School is going to open. It was entirely built with
25 local funds, even though the state promised a 50/50

1 partnership. The inefficiency is having to break
2 that school in two phases, two plan checks, two trips
3 to DSA, two inspectors, two everything. It's not --
4 you know, it's no way to run a -- run a program.

5 Q. In terms of the work you've done in this
6 case, have you made any estimate or determination,
7 statewide, relating inconsistent and insufficient
8 state funding to inefficient facility construction in
9 particular districts, as referred to on page 46 of
10 your report?

11 A. I'm not sure I really understand your
12 question. In terms of statewide survey of individual
13 districts, no, that was far, far beyond the scope of
14 this study.

15 I do know that in preparing for what became
16 Prop 47, which was passed in November 2002, there was
17 approximately \$3 billion worth of unfunded
18 applications sitting around in Sacramento. So that
19 list, the, quote, "unfunded list," is the testimony
20 that supports this on a statewide basis.

21 That was not a work product of my own. That
22 was published by the state, and it's a very
23 authoritative list. And I did rely on that to say
24 that this problem is statewide, and is, in fact,
25 extremely significant. And it goes on -- I forget

1 how many pages. And one of the work list is, I
2 think, 19 pages long, single spaced. That's a lot of
3 schools.

4 Q. Do you recall which -- was there one or more
5 unfunded lists that you relied on for your work in
6 this case?

7 MR. ELIASBERG: Objection; misstates his
8 prior testimony.

9 THE WITNESS: The --
10 BY MR. SEFERIAN:

11 Q. Let me ask you this: Did you rely on one or
12 more unfunded lists, in any way, in forming your
13 opinions in this case?

14 A. I referred to the -- the, quote, "unfunded
15 list" prepared by OPSC at the time this report was
16 prepared. And I frankly forget when this one -- I
17 think it was August. So there was either the July
18 allocation board -- it's a monthly report. It's
19 updated constantly.

20 So you simply have to just look at the most
21 current report. It's printed in their agenda
22 packet. It's widely distributed around the state.
23 It's readily available to anybody.

24 Q. For the record, when you say, "quote,
25 unfunded list," can you be more specific on what that

1 list is?

2 A. What the --

3 Q. Or the name of it?

4 A. I believe the official name is the Workload
5 List, and it's -- it's on the OPSC website. And
6 again, it's printed and distributed in their monthly
7 agenda packets.

8 And there are -- just for clarity, there are
9 two workload lists. There's one in process that has
10 not yet been -- that's stuff that's just come in the
11 front door that they're working on.

12 Then there's the unfunded list, the stuff
13 that has been processed and approved, but is
14 unfunded. So it would be referring to the unfunded
15 list, not the one of work in progress.

16 Q. Can you elaborate at all -- on page 46 of
17 your report, you say that the state has provided
18 substantial funds for construction and modernization
19 of school facilities.

20 How does that statement relate to the other
21 opinions cited on page 46?

22 MR. ELIASBERG: Objection; vague.

23 THE WITNESS: The -- the two state -- or
24 the statement you just read, I think is an honest
25 reflection that the state has provided a significant

1 amount of money, billions of dollars -- literally
2 billions of dollars for construction and
3 modernization of school facilities.

4 So two inches below that on the same page,
5 it says that money has come out inconsistently and
6 apparently is insufficient because there is still
7 more demand than there is funding.

8 So while I acknowledge and respect the
9 amount that has come out, and every bit has helped,
10 you know, thank you voters of California, the
11 delivery has been inconsistent over time for a
12 variety of reasons that we've walked about already.

13 And apparently, it is insufficient because
14 there, today, are -- the backlog list in the billions
15 of dollars has recently been funded. Everybody
16 assumes that the current \$13 billion will be used up
17 before the next bond. And at the end of the 2004
18 bond, should it pass, everybody pretty much expects
19 that one to run out.

20 So while I cannot deny that a lot of money
21 has been provided, the need remains equal or -- and
22 we -- I believe, greater than the funding that's been
23 proposed.

24 BY MR. SEFERIAN:

25 Q. What is the basis of your statement that the

1 states just through my interest in this field. I can
2 also state that in the discussion of the different
3 bond issues and the school facilities program, that
4 references from other states do come up.

5 But California appears to have many unique
6 features, a unique legacy of our tax structure here.

7 Q. Have you ever conducted a comprehensive
8 review or study of how other states finance the
9 construction of school facilities?

10 A. No. I'm a specialist in California affairs
11 and not nationwide comparisons. There are academic
12 studies that have been published on that topic.

13 Q. And in performing your work in this case,
14 did you review or rely on any academic studies on
15 that topic of how other states finance the
16 construction of school facilities?

17 A. I did not rely on any other studies. I'm
18 generally aware they were out there, but it wasn't
19 the core of my report. Therefore, I did not -- I'm
20 aware of their existence, rather than their content.
21 It really wasn't core to what my report is about.

22 Q. What are the unique features of California's
23 school facility construction program?

24 A. That's a big question. So the two I would
25 hit on are, No. 1, the tax limitation structure that

1 -- the need is greater than the funding that has
2 been proposed?

3 A. Well, the next bond measure for 2004 -- we
4 have a 2002, 2004 bond measure, and the 2002 has been
5 approved by the voters. The 2004, obviously, has
6 not. Again, when you're getting 2 to \$3 billion
7 worth of applications a year, if -- you're going to
8 run out of that money pretty soon.

9 Q. What is the authority for the preparation of
10 the first two paragraphs of a background section of
11 your report beginning on page 46?

12 A. You ask about the first two paragraphs, this
13 is my personal knowledge and familiarity over many
14 years with the -- the state programs.

15 Q. On the bottom of page 46 of your report,
16 when you say the state responded with the school
17 building laws of 1949 and 1952, were you intending to
18 imply any criticism of that response?

19 A. No. I believe that's a simple statement of
20 fact and --

21 Q. In performing your work in this case, have
22 you performed any survey or study of how other states
23 finance the construction of school facilities?

24 A. I did not undertake that study for this
25 purpose, but I am generally aware of efforts in other

1 is the offspring of Proposition 13; and second of
2 all, the strong state presence in funding. That is
3 not common to all states.

4 Q. When you say "strong state presence in
5 funding," what do you mean by that?

6 A. Many states rely on local property taxes.
7 But again, because of the tax limitation structure in
8 this state, the unavoidable consequences that there
9 has to be some kind of program to pick up for schools
10 that cannot pass taxes on their own.

11 Q. In your previous answer, when you referred
12 to the tax limitations due to Proposition 13, what
13 were you referring to specifically?

14 A. The -- again, I want to make clear that this
15 report is not about the taxing structure of the
16 state, and I'm not an expert on property taxes and
17 all that stuff. This is more on conditions in
18 schools, rather than the interesting role that -- the
19 California taxation.

20 But there is the Prop 13 limitations on
21 taxes. There was a long period of time when -- when
22 bonds for any purpose were prohibited. If you go
23 back to 1978 until I think it's Prop 86, you could
24 not pass school bonds. And that is a contributing
25 factor to the conditions we're still seeing today.

1 That's where the accumulated deficit in facilities in
2 funding came from, in part -- not exclusively, but in
3 part.

4 Q. On page 47 of your report in the second
5 paragraph when you refer to the January 1987
6 revisions, do you have any criticisms of the January
7 1987 state and building program revisions that
8 required a local contribution of approximately 25
9 percent on new construction projects?

10 A. Well, 1987 was a long time ago, but that was
11 an effort by Governor Ducmageon to partially reduce
12 the state's obligations. And, in part, to try and
13 get the local districts back in paying for their own
14 schools.

15 The specific problem there was the 20 -- the
16 25 percent was a somewhat arbitrary number. And the
17 intent was, in some quarters, that it be picked up
18 through developer impact fees, which were
19 concurrently implemented through a B2926 and some
20 other statutes.

21 The gap there was modernization. And the
22 problem with impact fees on new construction, it has
23 nothing to do with modernization. So we've had this
24 lopsided system since the late '80s. It's
25 unfortunate, but developer fees are not meant to

1 believe, was the largest bond measure in -- if not
2 the nation's history, clearly California history, and
3 it was a major commitment of resources to the needs
4 of the schools in California. I would agree with
5 that.

6 I forgot the rest of your question. There
7 was some other stuff.

8 BY MR. SEFERIAN:

9 Q. Do you believe that Proposition 1A was a
10 major commitment by the State of California in terms
11 of resources, policy and financing?

12 MR. ELIASBERG: Objection; vague and
13 ambiguous, compound.

14 THE WITNESS: Proposition 1A was a major
15 commitment of resources. It was a multi-billion
16 dollar program. As far as policy, it was a policy
17 change. I'm -- and I guess it's very difficult for
18 me to answer your question because it was a major
19 change in policy for the state.

20 And it reinforced a -- it implied, and I
21 believe reinforced, a commitment by the State of
22 California to partner with local school districts.
23 And in that sense, yes, it was a major policy
24 commitment.

25 BY MR. SEFERIAN:

1 remedy the facts -- the effects of very old schools
2 that need modernization is.

3 Again, the statement on page 47 that you
4 have cited, January 1987, is not a criticism of the
5 state, it's just an objective statement that in that
6 year in that month, the program changed. Happened a
7 long time ago.

8 Q. On page 47 of your report, in the second
9 full paragraph, why did you use the term "big change"
10 in reference with Proposition 1A and Senate Bill 50?

11 A. I used the phrase "big change" because it
12 really was a big change. It was a watershed event.
13 Prior to that day, there was the lease/purchase
14 program. When Prop 1A passed, it implemented the
15 school facilities program which was meant as a
16 comprehensive new program. It was not an incremental
17 change to the prior program, but was a comprehensive
18 cover-to-cover brand new program.

19 Q. Do you agree that Proposition 1-A and Senate
20 Bill 50 demonstrated a major resource, policy and
21 financial commitment by the State of California to
22 improving public school facility conditions?

23 MR. ELIASBERG: Objection; compound.

24 THE WITNESS: Let's see... You asked if --
25 let me state that, Proposition 1A, at the time, I

1 Q. Was the policy change implemented by
2 Proposition 1-A and Senate Bill 50 a commitment by
3 the state to improve public school facility
4 conditions?

5 A. The uses of funds --

6 MR. ELIASBERG: Wait, Robert. Object to
7 the extent it calls for speculation into the
8 motivation or desires of legislators.

9 MR. SEFERIAN: Let me restate the question.

10 Q. Do you agree that the policy change enacted
11 in Proposition 1A and Senate Bill 50 demonstrated a
12 commitment by the state to improve public school
13 facility conditions?

14 MR. ELIASBERG: Objection; still calls for
15 speculation as to the motives of the state.

16 You can answer.

17 THE WITNESS: By enacting the bill and
18 putting the bond on the ballot for the voters to
19 approve, the state did take a step toward meeting the
20 needs of schools around the state. The amount of
21 money says it was a -- a large commitment. Clearly,
22 billions of dollars went out the door to fix up
23 schools.

24 Whether it was adequate to meet all the
25 need, whether it was a stable long-term system, we

1 can debate that point. I do agree that it was a -- a
2 very generous commitment. But even now, four years
3 after the fact -- more than four years after the
4 fact, there still are many, many needs out there.

5 MR. ELIASBERG: We've been going about an
6 hour. Do you want to take 10 minutes, and then go
7 till 12:30 or so for lunch or look at 12:30? Does
8 that sound good?

9 MR. SEFERIAN: Okay.

10 MR. ELIASBERG: Rob, is that good for you?

11 THE WITNESS: Does that screw up the
12 scheduling?

13 MR. ELIASBERG: If we go at 12:00, it tends
14 to be -- there tends to be crowds at any place that
15 we go and have lunch. So that's ten minutes now, and
16 we'll go in another 50 minutes from now.

17 THE WITNESS: I'm here for you guys.

18 MR. ELIASBERG: All right.

19 (Recess.)

20 THE WITNESS: Can I add something to an
21 earlier statement?

22 Is that appropriate or is there a time for
23 that?

24 BY MR. SEFERIAN:

25 Q. Sure.

1 THE WITNESS: So again, just for the
2 record, it does get represented in a later section.

3 BY MR. SEFERIAN:

4 Q. Did you prepare any separate documents with
5 those rough estimates, or are all those calculations
6 reflected in your report?

7 A. I believe they're -- it's all just what you
8 see in the later section of this report. No, I
9 didn't do any separate publications.

10 Q. Are there any other documents that show the
11 estimates you prepared that are on pages 67 and 68 of
12 your report?

13 A. No. They were not published separately
14 anywhere.

15 Q. Were they -- were those estimates turned
16 over to the plaintiffs' counsel in this case?

17 A. Again, I think the only estimate is what is
18 presented in this report. There is no stand-alone --
19 there is no other document. This is it. There's
20 probably a scratch sheet of paper somewhere that got
21 tossed, but --

22 Q. What was your conversation with Peter
23 Eliasberg during the break?

24 A. Just -- he mentioned that there was in -- in
25 following up on your earlier question, he mentioned

1 A. Peter reminded me during the break, you
2 asked if I had done any independent calculations
3 about the need for funding out there. And as stated
4 in the report in a later section, that we can refer
5 to if you're interested, as part of this project and
6 for some others that I've worked on at the same time,
7 I did do some rough estimates of need.

8 And again, those numbers tended to match
9 very closely estimates developed by others. So since
10 there was so many competing estimates out there
11 anyway, there was no value in me throwing out my own
12 statement to the world.

13 But you asked did I do any survey. There
14 was data on ages of schools provided by -- I believe
15 it was Department of Ed. And just doing some
16 straight line estimating, came up with a number that
17 fit within the universe of other published data.

18 So just, if you come across that reference
19 later in the written report, you'll just put it in
20 context.

21 MR. ELIASBERG: Just for clarification,
22 it's on page 67 and 68.

23 THE WITNESS: That's right.

24 MR. ELIASBERG: On the bottom of 67 over to
25 68.

1 there was in -- in the later section, he reminded me
2 that it was an estimate -- that I had independently
3 developed an estimate that was presented in the
4 expert report in that later section that we haven't
5 gotten to yet. So just to clarify the earlier
6 response given to your earlier question.

7 Q. Did you have any other conversations with
8 Mr. Eliasberg during our last break?

9 A. Just about lunch.

10 Q. Do you have any opinion about whether
11 Proposition 1A and Senate Bill 50 represent a stable
12 long-term solution to the state's facilities needs in
13 public schools?

14 A. Your question is whether Proposition 1A is a
15 stable long-term solution, and I would have to say,
16 no, it's not. It's a finite amount of money that --
17 not completely, but largely has already been
18 expended. SB50 does lay part of the groundwork for
19 an ongoing system. But in terms of a stable ongoing
20 solution, no.

21 Proposition 1A was a one-time bond. The
22 money has gone out the door. The need is still
23 there.

24 Q. Apart from Proposition 1A providing a finite
25 amount of money, in what other respects is it not a

1 stable long-term solution to the state's public
2 school facilities conditions?

3 A. Well, let's take the two parts of your
4 question. A stable funding program has to have a
5 stable source of revenue. And as you will read in my
6 expert report, the legislative analyst, the joint
7 committee on the education master plan led by Senator
8 Alfred, others have said that, ultimately, the state
9 needs to come up with a stable ongoing predictable
10 flow of funds to meet this ongoing need.

11 It appears the essence of SB50 is that there
12 will be periodic bond issues on a statewide basis to
13 replenish the state funding treasury. That's not a
14 stable ongoing system. So in terms of an ongoing
15 system, again, there has to be some predictable
16 continuous flow of funds that will apply year after
17 year after year.

18 Q. In what respect are the periodic state bond
19 issues not stable if the state's bond issues are
20 passed every two years?

21 MR. ELIASBERG: Objection; compound,
22 assumes facts.

23 THE WITNESS: Well, let's take your
24 question head on. It's -- it's very difficult to say
25 that a system is stable and ongoing when every few

1 last 20 years has been approved with the exception of
2 one bond?

3 A. I can't agree with that statement because I
4 just don't know enough history about it. I do -- I
5 do recall one bond did fail. As far as the others, I
6 think your statement is generally correct. Yes,
7 there is -- people of California have very generously
8 supported the schools.

9 And it's a 50 percent passage rate, which is
10 easy. Easier than a two-thirds for 55 percent. But
11 again, it's -- the fact bonds have been passed in the
12 -- in the prior 20 years is not a prediction of how
13 they're going to be passed in the future 20 years,
14 so --

15 Q. If you assume that the state will put
16 periodic bond issues on the ballot, and those issues
17 will be passed by the voters, would you describe that
18 as a stable long-term solution to the state's public
19 school facility financing?

20 MR. ELIASBERG: Incomplete hypothetical,
21 assumes size of bonds.

22 THE WITNESS: I think you're posing a
23 hypothetical there. I would not categorize that as a
24 stable ongoing system. It may be the best we can do,
25 but it's not a stable ongoing system because it

1 years you have to ask the voters to vote yes on a
2 significant bond measure. There is no predictability
3 of the future. You cannot tell me whether the 2004
4 bond will pass or it will fail, or it will get pulled
5 off the ballot due to some other fiscal emergency.

6 As the essence of the whole need for a
7 stable ongoing system is that it is not dependent on
8 periodic approval by the voters. The state does not
9 run the bond campaign.

10 Private contributions, you know, CASH and
11 other groups, the Building Industry Association are
12 out beating the bushes, raising money to put the ads
13 and yard sign out there saying, please vote yes on
14 our bond. The state has no role, at all, in that.

15 So I don't see how the state can claim it
16 has a stable system when it relies on private
17 individuals to make private contributions to run a
18 bond issue that may or may not pass. That's not
19 there. It's generous and the frame -- the skeleton
20 is there. But the dollars that pay the bills that
21 get the schools built and modernized are not there.
22 They're just not predictable more than a couple years
23 out.

24 BY MR. SEFERIAN:

25 Q. Would you agree that every state bond in the

1 depends on future wins of future voters based on
2 future circumstances.

3 It's -- that is not stable. It may be,
4 unfortunately, as good as it gets right now. In
5 which case, we just say it's a functioning system,
6 but it's not a stable and ongoing system.

7 BY MR. SEFERIAN:

8 Q. But if you assume, for the purposes of this
9 question, that the state puts periodic bond issues on
10 the ballot, and those bond issues successfully pass,
11 would you describe that as a stable long-term
12 solution to the state's public school facilities
13 conditions?

14 MR. ELIASBERG: Objection; incomplete
15 hypothetical.

16 THE WITNESS: I would not know. I cannot
17 agree with that statement. If you were to -- let me
18 pose a hypothetical back, which was -- if you had a
19 sequence of bonds and the skate guaranteed that if
20 any bond failed, the state would issue revenue bonds
21 to provide the ongoing consistent cash flow, and then
22 try again, that would have a guarantee that the money
23 would be there.

24 But what you're saying is, I have to gamble
25 every two years that the well won't be dry. That's

1 not stable and ongoing. No, that's not.

2 BY MR. SEFERIAN:

3 Q. Did Proposition 47 put the -- I'll withdraw
4 that question.

5 Have you conducted any analysis or estimate
6 of the extent to which Proposition 1A addressed the
7 public school facility needs in California?

8 MR. ELIASBERG: Objection; vague and
9 ambiguous, overly broad.

10 THE WITNESS: Your question is, have I
11 conducted any analysis of that? Just a very informal
12 analysis that is part of my ongoing awareness of the
13 situation in California. The fact the money ran
14 out. There was this -- the incident, the Gadenas --
15 priority -- priority point situation where school
16 districts had applications, yet could not be funded.

17 So even though the Proposition 1A did a lot
18 of good, there was a lot of time where people were
19 standing in line, not building their projects, not
20 modernizing their schools because, for all the good
21 it did, it was not a complete fix. That's why they
22 came back for another bond issue in this last
23 election.

24 I don't mean to diminish the value. Schools
25 got built. Places got modernized. A lot of good got

1 you attempt to make any type of determination about
2 the extent to which, in some quantifiable way in
3 terms of projects or schools, that Proposition 1A met
4 California's public school facility needs?

5 MR. ELIASBERG: Objection; vague.

6 THE WITNESS: In connection with this case,
7 as is stated in the report before you, Proposition 1A
8 did provide a significant amount of money for school
9 projects. As stated in the report before you, it
10 also failed to meet the needs of even the people who
11 had applied, let alone the people who were in the
12 process of applying.

13 So while it did address a lot of needs, it
14 left a lot of needs unmet, which is testament to the
15 side of need rather than any criticism of Proposition
16 1A. At the time, it was the biggest bond issue ever
17 in the State of California. And I cannot fault the
18 legislature for sizing it that way. I think
19 everybody has been surprised at the amount of need
20 out there.

21 BY MR. SEFERIAN:

22 Q. In the work that you have performed for this
23 case, did you make any attempt to determine, when you
24 say it left a lot of needs unmet, the extent to which
25 the needs were unmet by Proposition 1A?

1 done, and we thank the voters of the State of
2 California for that. They generously opened their
3 wallets.

4 But it has to be said that everything ground
5 to a halt. They completely ran out of modernization
6 money. The secretary increment got spent in one day,
7 and there were people left hungry. So as good as it
8 was and as generous as it was, it did not meet the
9 needs.

10 BY MR. SEFERIAN:

11 Q. In your work for this case, have you
12 attempted, in any way, to quantify the extent to
13 which Proposition 1A addressed public school facility
14 needs in California?

15 MR. ELIASBERG: Vague, and asked and
16 answered.

17 THE WITNESS: I'm not really clear on your
18 question. By quantified, how it met the needs other
19 than to acknowledge a certain amount of money was
20 provided to applicant's and those projects did get
21 built, there is not -- you know, I guess I'm not
22 really clear on your question. Why don't you ask it
23 again.

24 BY MR. SEFERIAN:

25 Q. In performing your work for this case, did

1 A. Well, there is -- in referring to the
2 very-well publicized unfunded applications which were
3 a key component of Proposition 47, the multi-billion
4 dollar unfunded list that was well known, printed,
5 distributed, analyzed several different ways. In
6 addition there is the districts who were still in the
7 process of applying, and there are other districts
8 that have been reticent to apply because they knew
9 the state was out of money.

10 When Proposition 47 became a reality, many
11 applications started showing up another DSA. Again,
12 it is very expensive to apply for state funding
13 because you have to front load all the costs
14 yourself. And we're talking several hundred thousand
15 dollars to get a complete set of plans drawn for an
16 elementary school.

17 So you have to gamble at least a quarter of
18 a million dollars, and you're supposed to own the
19 land. So sometimes millions of dollars that the
20 state, in the future, will have money when you need
21 it.

22 So -- again, these are published lists by
23 the appropriate state agencies. It's not
24 speculative. It well known and distributed and
25 printed in their monthly agenda packet.

1 Q. So when you say Proposition 1A left a lot of
2 needs unmet, are you referring to the unfunded list
3 at the Office of Public School Construction?

4 A. That's a significant part of it. There is
5 also people who aren't even on that list. There's
6 the workload list of applications newly received at
7 the office. And then there is my own knowledge of
8 districts that have not applied because they know
9 there is no money there, and they don't have the cash
10 to prepare the applications to get in line.

11 Q. Have you prepared any estimate or
12 determination of which districts have not applied for
13 state facilities funding because they believe there
14 would not be state funding available?

15 MR. ELIASBERG: Listed all of them or a
16 list of any of them?

17 BY MR. SEFERIAN:

18 Q. Have you made any list of school districts
19 or estimates of the number of districts that have not
20 applied for state facilities funding because the
21 districts believed that they would not receive money
22 from the state, public schools?

23 A. I have not made a comprehensive list. I
24 know from my personal contacts with different
25 individuals all around the state, that it's fairly

1 widespread. People now after Prop 47 are willing to
2 get the applications going. I think the inflow of
3 applications is testament to that.

4 But when you have several sets of plans
5 funded and sitting on a shelf, why spend your
6 precious cash resources to develop another set to go
7 sit on the shelf. So it's been a very frustrating
8 process for a lot of facility directors around the
9 state. Again, it's just the inconsistency and the
10 start/stop nature of the state funding program.

11 Q. Did you make any estimate of the number of
12 districts that did not apply for state facilities
13 funding because they believe there would not be state
14 funding available?

15 MR. ELIASBERG: Asked and answered.

16 THE WITNESS: In the context of this
17 report, it -- it is not in the central component, and
18 I did not make an estimate of the number of them out
19 there. All I have is anecdotal information from
20 personal contacts in different areas of the state.
21 Again, this is widely discussed at statewide
22 meetings. It's not secret.

23 BY MR. SEFERIAN:

24 Q. How was the amount of the Proposition 1A
25 bond arrived at?

1 MR. ELIASBERG: Objection to the extent it
2 calls for speculation.

3 If you know, you can present.

4 THE WITNESS: I do not have complete
5 knowledge of that. The understanding I have of the
6 situation is that it was a compromise arrived at in
7 the legislature. Different groups have brought
8 forward different amounts of money. And somehow in
9 the legislative process, the dollar value was
10 attached to the bond.

11 I do know there was an attempt to make it as
12 large as possible. You would have to ask the people
13 who were in the room at the time.

14 BY MR. SEFERIAN:

15 Q. What was the amount of the Proposition 1A
16 bond that went toward K-12 public schools?

17 A. You're stretching my memory. My
18 recollection is 6.8. I would have to actually look
19 that one up. It's been four years.

20 Q. Was the -- was the amount of the Proposition
21 1A bond roughly the same as the amount of general
22 obligation facility bonds that have been passed by
23 the state in the ten years before that?

24 A. I -- I do not know the answer to that
25 question. I'd have to go look it up.

1 Q. In your work in this case, have you
2 undertaken any studies comparing the amount of
3 facilities financing by California per student or per
4 school as compared with any other states?

5 A. No. The report I've prepared is about
6 conditions in California schools.

7 Q. On page 47 of your report in the second-full
8 paragraph, what did you mean when you said that a
9 keystone of this program is shared financial
10 responsibility?

11 MR. ELIASBERG: I'm sorry. Where is this
12 again?

13 MR. SEFERIAN: On page 47 in the
14 second-full paragraph.

15 MR. ELIASBERG: Oh, I'm sorry. I see it.
16 Thank you.

17 THE WITNESS: The language of SB50, which
18 is embodied in the education code, sets forth a
19 program of matching funds by the local district.
20 Modernization has one match amount. New construction
21 has a different match amount. There are a few other
22 programs that have a completely different basis.

23 There is also a hardship funding program for
24 districts that are unable to meet their -- there's a
25 financial hardship program for districts that cannot

1 meet their local match. But a keystone of the -- of
2 the program is that the state pays an amount, the
3 local pays an amount. And that is a very clear
4 policy statement in the act and is part of the school
5 facilities program.

6 BY MR. SEFERIAN:

7 Q. Do you have any estimates of the shared
8 financial responsibility system for new and
9 modernized school partnership between skate and local
10 school districts?

11 MR. ELIASBERG: Objection; vague and overly
12 broad.

13 THE WITNESS: The statement on page 47 is
14 not a criticism of the program. It's just a
15 description of the way the legislature sought to
16 implement it.

17 BY MR. SEFERIAN:

18 Q. Did you have any criticisms of the
19 legislature's implementation of a system of shared
20 financial responsibility between state and school
21 districts for new and modernized schools?

22 A. If you're asking for my opinion of the local
23 match requirement that is part of SB50, it would be
24 my opinion that, in general, it is -- it can be an
25 acceptable system provided that there is the

1 financial hardship component. Some districts, due to
2 very unique local circumstances, do not have local
3 funding. And they cannot be organized by the
4 statewide program.

5 But with that proviso, it -- it can be a
6 balance system of state and local contributions word.

7 Q. Currently, there is a financial hardship
8 component to the school facility program; is that
9 right?

10 A. Yes, there is.

11 Q. So would it be your opinion that the system
12 of shared financial responsibility between the state
13 and local districts is an acceptable system of public
14 school facility financing?

15 MR. ELIASBERG: Are you referring to
16 current bond, past bond --

17 THE WITNESS: Yeah. Can you clarify the
18 question?

19 BY MR. SEFERIAN:

20 Q. Do you believe the current school facility
21 program that has a system of shared financial
22 responsibility with the financial hardship component
23 is an acceptable system for financing new and
24 modernized public schools in California?

25 MR. ELIASBERG: Objection; incomplete.

1 THE WITNESS: What I will say is, it's the
2 system we have. Is it a perfect system, is it an
3 ideal system? That, I cannot comment on. That would
4 be a separate question.

5 But the system we have is a functioning
6 system. Maybe it isn't ideal, it has problems, but
7 it's -- it's on the ground. It's functioning. And
8 it's the realty we deal with today. So while there
9 are individual components of it I don't like, I think
10 some of the rules in the hardship program are a
11 little unfair to the districts that are forced into
12 the circumstances, it does allow the system to keep
13 on functioning.

14 So with that limitation, it does meet the
15 requirement that there be a financial hardship
16 component for those who cannot afford otherwise to
17 pay the local requirement.

18 BY MR. SEFERIAN:

19 Q. Speaking broadly, do you believe that a
20 system of shared financial responsibility for school
21 facilities funding between the state and local
22 districts, if there's a financial hardship component,
23 is an acceptable way to fund public school
24 facilities?

25 MR. ELIASBERG: Objection; incomplete

1 hypothetical, assumes facts.

2 THE WITNESS: I believe your question is,
3 is a partnership state and local system acceptable?
4 And I would say, yes, it is acceptable. The
5 acceptability of it depends on the exact details of
6 the system that's being created. But just in a
7 theoretical sense, local participation, state
8 participation, yes, that's an agreeable basis to
9 implement a system. Again, the devil is in the
10 details.

11 But if your question is just a very broad
12 level -- conceptual level of some kind of
13 partnership, yes, I would agree with your general
14 statement.

15 BY MR. SEFERIAN:

16 Q. Why do you say that?

17 A. Why would I say that a partnership system is
18 good?

19 Q. Yes.

20 A. It is workable.

21 Q. Speaking of a very broad level, why do you
22 say that a state and local partnership system for
23 facilities financing can be workable?

24 A. The facilities situation in California is
25 very complex. And we have our -- we have a need that

1 has many components. And parts of the components of
2 need are accumulated deficit of modernization,
3 ongoing maintenance, major maintenance, and new
4 construction that built up almost over a generation,
5 starting in the late '70s until the late 90s really.

6 We have that huge unresolved problem out
7 there. Local financial resources cannot solve that
8 alone. If every school in California were completely
9 modernized and caught up, and there were no capacity
10 deficit, in most cases, the local districts could go
11 forward on their own and not require a state
12 partnership.

13 But we have this huge -- you know, tens of
14 billions of dollars problem that's hanging around
15 from prior -- prior years. That's why a partnership
16 program is utterly essential. School districts, in
17 general, are doing an okay job of keeping up with
18 current demand. As new houses are built, they can
19 crank out the new school as they need it.

20 High schools and middle schools are a
21 problem. But it's this accumulated backlog -- I
22 don't have the exact numbers, but at one time Los
23 Angeles Unified had 100,000 students of eligibility
24 for new construction. I mean, think about that.
25 That is a staggering number.

1 percent and not a crumb more. And these schools,
2 when you look at them, are deficient. You have to
3 cut something out to make the budget work. And the
4 skate, in implementing this rigorously enforces the
5 rule that you shall not spend one penny more than
6 your allocation. And there are brutal cuts made in
7 these projects.

8 So when you compare a locally funded state
9 matching school and a hardship school, the
10 differences are immediately apparent. And this has
11 been a practice of the state going back to the
12 lease/purchase program. The joke use to be, you
13 could have grass on the field or you would have a
14 gym.

15 There are many schools in California that
16 don't have an adequate lunch room because the state
17 didn't fund them for years. So the practice and
18 pattern of the state underfunding school projects
19 because of imposed budgetary constraints, goes back
20 many, many years and is a contributing factor to the
21 facilities problem that we're trying to resolve
22 today.

23 Literally, schools are built with no grass
24 because they couldn't afford grass or sprinklers.
25 It's silly, but that's the way the game was placed.

1 How did they -- one district had 100,000
2 students behind their need. So that is why a state
3 partnership is utterly essential. And it's not that
4 the locals have no obligation, but it's this
5 accumulated many, many year old problem is the
6 killer. And that's why these massive state bonds are
7 needed and more needed in the future to deal with
8 this unresolved issue.

9 Q. What did you mean when you said some of the
10 hardship rules are unfair?

11 A. I could go for a long time on that. Some of
12 the hardship rules that I'm referring to, the debt
13 requirement rule, requires a very significant ratio
14 of debt before one qualifies as a hardship district.
15 The financial limitations that are imposed, a
16 hardship district -- let me back up a little bit
17 here.

18 The new construction program is on the books
19 as a 50/50 matching program. The reality is that the
20 state grant is inadequate. And virtually every
21 single school district out there building
22 supplements, their local share, to get a minimally
23 adequate school.

24 The hardship districts are constrained to
25 putting out the state share, plus the matching 50

1 Q. What are the specific rules regarding
2 hardship that you believe aren't fair?

3 A. One is the constraints imposed on other
4 district financial resources. These are very, very
5 rigorous rules. Basically, they take all the money
6 the district has, and prevent them from supplementing
7 the project, in any way. Any money they find is
8 taken as -- is captured by the state as part of the
9 match.

10 The eligibility rules are probably a little
11 overly restrictive. Again, different districts are
12 in different circumstances. So those would be the
13 main ones right there.

14 Q. What do you believe should be the rules
15 regarding the constraints imposed on other resources
16 in terms of the hardship component?

17 MR. ELIASBERG: Objection; vague.

18 THE WITNESS: We're straying from the
19 purpose of the expert report here and getting into
20 the hardship which is a specific part of a specific
21 funding program at the state. And I'm not sure that
22 the context here really gets into a full discussion
23 of it.

24 The hardship program, the fundamental
25 problem is inadequacy of the state grant. And the

1 fact that other districts subsidize it to -- are
2 required, out of necessity, to supplement the state
3 grant, and hardship districts are precluded from
4 that, is really a fundamental inequity in the whole
5 program. But the root cause of that is the
6 inadequacy of the state grant. And that's no
7 secret. It's just the way it is.

8 BY MR. SEFERIAN:

9 Q. Have you performed -- let me start over.
10 Have you reached and conclusions or opinions
11 in this case regarding whether specific rules
12 regarding hardship in the school facilities program
13 should be changed?

14 A. In the context of this expert report, it's a
15 very minor part of it. It's -- yes, different rules,
16 I feel, should be changed. And I think we've
17 discussed some of the concepts already. It's -- the
18 program, it's a necessary part to have the financial
19 hardship for -- because some districts do not have
20 their local share.

21 How that project -- the financial hardship
22 program should operate is a whole thesis in itself,
23 and I'm not sure how much information you want to get
24 at this point. There should be more financial
25 flexibility for the districts in that circumstance.

1 There should be more acknowledgment of the real cost
2 of building a school. And there should be access to
3 districts to keep the projects rolling, being able to
4 keep a flow of applications going without, again,
5 depending on the state's on again, off again funding
6 system.

7 What the outcome is by the state capturing
8 all the available funds, the district is out of money
9 until it starts another project to actually get the
10 next project rolling. So they're at a time
11 disadvantage. And this whole ability not to keep new
12 projects flowing through the pipeline is a real
13 burden on the hardship districts.

14 Q. In addition to saying there should be more
15 financial flexibility for hardship districts, have
16 you formed any opinions more specific than that about
17 how the hardship rules should be changed?

18 A. Again, I think we're going beyond the scope
19 of the whole expert report. But, yes, we can get --
20 I don't know how specific you want to get here. It's
21 been a topic of conversation for -- ever since the
22 rules were written in 1998.

23 The ability to commit money to future
24 projects would be a key reform. The ability to
25 supplement projects for specific circumstances of the

1 school district. The way joint use is treated in
2 hardship projects. And again, we can keep on going,
3 but it's -- off the top of my head, those are some
4 that come -- come to mind.

5 Q. Have you performed any analysis about how
6 the proposed changes to the hardship provisions in
7 the state facility program would affect the
8 allocation of funds in the program?

9 MR. ELIASBERG: Objection; assumes facts,
10 vague.

11 THE WITNESS: You mentioned the proposed
12 changes to the hardship. I'm not familiar with the
13 changes you're talking about. In terms of how would
14 it affect the allocation of funds, I guess I --
15 rephrase the question. I'm not sure really what
16 your -- what your question is.

17 BY MR. SEFERIAN:

18 Q. With regard to the changes which, in your
19 opinion, should be made to the hardship rules in the
20 school facility program, have you conducted any
21 analysis about what the effect would be at on the
22 allocation of funds under the school facility program
23 of those changes?

24 A. No. I have not costed out those changes in
25 any detail at all. I do not believe it would be a

1 significant effect because the financial hardship is
2 a very narrow group of districts. There are not a
3 lot of players in there. Those districts are
4 strongly encouraged to go out and try for a local
5 bond. And one by one they're getting off the
6 financial hardship.

7 It's not a permanent status for these
8 districts. So I do not believe it would be a very
9 expensive change. It would be millions of dollars
10 obviously. But it's -- in the context of a
11 multibillion dollar program, it's not a significant
12 fluctuation in the program.

13 For the affected kids and the affected
14 school, it would be a very significant change. They
15 get their schools quicker, and a better school when
16 they do get it.

17 Q. Do you believe that the estimated cost of
18 school construction put out by the Department of
19 Education, for example, in the facilities facts, is
20 an accurate estimation of the cost of building public
21 schools in California?

22 A. I don't have complete knowledge of how they
23 came up with their estimate. I believe the
24 Department of Education -- it has been represented to
25 me that the Department of Education used the current

1 funding formulas in current law to come up with their
2 projections.

3 It is my opinion that the current funding
4 formula is inadequate to build the school that
5 Californian's want and deserve. And therefore, the
6 estimate developed by the Department of Education
7 would include that inadequate funding as a base. And
8 therefore, it is likely to fall short of the true
9 need.

10 Now, whether or not the state officials
11 agree the current formulas are inaccurate, we can
12 have that debate somewhere else. But in answer to
13 your specific question, I believe the Department of
14 Ed did use the current formulas in current law.

15 MR. HAJELA: Tony, are you asking him
16 whether the cost perceived is accurate or the total
17 amount is accurate?

18 MR. SEFERIAN: Either one.

19 MR. ELIASBERG: Actually, I think he has
20 answered that question. But if you want to ask
21 another one. I just want you to clarify, put a
22 specific question on the table if you want. That's
23 okay. I don't need an answer.

24 BY MR. SEFERIAN:

25 Q. In performing your work for this case or in

1 Education on the cost to build a school. The
2 perceived grant amounts come from a different
3 department. They're over in the Department of
4 General Services.

5 So, no, I have not specifically analyzed
6 their estimates of the cost of need. In anecdotal
7 information and conversations with the Department of
8 Education employees, they have acknowledged that the
9 amount is -- is not adequate, but they say it's --
10 that's the program, the way the law is written. They
11 provide input to the legislative process, but they
12 don't get to vote.

13 MR. ELIASBERG: It's about 12:30, so you
14 when you come to a logical breaking point, why don't
15 we break for lunch.

16 MR. SEFERIAN: Okay.

17 Q. Are you familiar with estimates that the
18 Department of Education has prepared in terms of the
19 amount of money that it costs to build a single
20 public school in California?

21 A. I'm familiar with the educational
22 specifications that they have prepared recently. And
23 when you look at the physical requirements, there's a
24 disconnect between what they say a school should be
25 and what the Office of Public School Construction

1 other work you performed, have you prepared estimates
2 of the cost of building public schools in California
3 that differ from the estimates put out by the
4 Department of Education?

5 A. I believe your question is dealing with the
6 total need because that's the estimate that the
7 Department of Education came out with. As I
8 previously answered, I did a generalized estimate of
9 need which was consistent with the Department of
10 Education.

11 And it's -- again, you have to have some
12 assumptions. And so just -- they did the best they
13 could. It seems to be a reasonable estimate. And
14 other than that, I did not pursue the totality of
15 statewide need other than to acknowledge that it's a
16 huge sum. It's in the tens of billions of dollars,
17 and it's a big need that has to be met somehow.

18 Q. Speaking just in terms of the Department of
19 Education's estimate for the amount of funding it
20 costs to build one school, have you prepared any
21 estimates of that cost in connection with your work
22 in this case or in any of the other work you have
23 done?

24 A. I -- I don't believe we have entered into
25 the record that -- any estimates by the Department of

1 says you can spend. You know, there's a gap.

2 So I have never seen the Department of Ed
3 produce a figure that a new elementary should be this
4 amount of money. I don't believe they have done
5 that. I don't think that is part of their charge.

6 But I am familiar with the educational
7 specifications and program requirement manuals that
8 they have provided, which are very detailed and
9 provide an -- a curriculum-based model for designing
10 a school.

11 As an example, it says, "The curriculum says
12 you shall teach high school science." Therefore,
13 they describe what an adequate high school science
14 lab should include. It's a direct linkage between
15 program, graduation requirements, state standards and
16 facilities.

17 Q. When you mentioned comments with California
18 Department of Education employees, which employees
19 were you referring to?

20 A. Pretty much -- there are lots of them. I
21 mean, I'm involved in a number of statewide
22 organizations that are -- of which state department
23 employees are -- are either presenters, speakers or
24 participants.

25 Do you want names -- or I'm not sure what

1 your question really means. It would be from the
2 facilities planning group.

3 Q. In reference to the answer you gave
4 previously where you talked about conversations with
5 Department of Education employees, in reference to
6 the amount being inadequate, which employees have you
7 had those conversations with?

8 MR. ELIASBERG: Are you talking about the
9 specific school, the estimate cost perceived being
10 inadequate?

11 MR. SEFERIAN: Yes.

12 THE WITNESS: Again, during development of
13 AB-16, AB-14, the different legislations. I've had
14 conversations with Duane Brooks, who is the director,
15 Jim Bush is the assistant director, Michael O'Neal
16 which is their environmental specialist. And, you
17 know, John Domingus, who was an urban specialist; Tom
18 Pane, their year-round resource person; Shannon
19 Heart, who is their other year-round specialist; Fred
20 Yaeger who is their legislative liaison; Allan
21 Osletten, who is now retired. But I can't even spell
22 that one for you. Alan is not there anymore.

23 I'm trying to think who else is on staff
24 there. Sue Pendleton, who also recently retired.
25 And again, it's a very collegial open group. They're

1 kind of a brain trust on this issue. We have
2 frequent conversations with them on all kinds of
3 issues.

4 BY MR. SEFERIAN:

5 Q. Which of those Department of Education
6 employees that you mentioned told you, as you
7 mentioned earlier, that, in their opinion, the
8 estimates of costs perceived were inadequate?

9 A. I would have a hard time pinning it down to
10 any of them because the comment, I think, is
11 universal, that it's just really hard to build a
12 school on this budget. I mean, you can go to CASH
13 conference in a week and take a vote, I think you'll
14 get 100 percent, yes, that the current grant is
15 inadequate.

16 MR. SEFERIAN: Off the record.

17 (Recess taken at 12:40 p.m., to be resumed
18 at 1:50 p.m.)
19
20
21
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23
24
25

1 AFTERNOON SESSION

2 FEBRUARY 10, 2003 2:00 P.M.

3 EXAMINATION (Continued)

4 BY MR. SEFERIAN:

5 Q. Mr. Corley, did you speak with anyone about
6 the deposition during the lunch break?

7 A. No.

8 Q. Did you read any documents regarding this
9 case during the lunch break?

10 A. No.

11 MR. SEFERIAN: I'd like to show you a
12 document which I'll ask the court reporter to mark as
13 Exhibit 2 to your deposition.

14 (Defendants' Exhibit No. 2 was
15 marked for identification.)

16 BY MR. SEFERIAN:

17 Q. Do you recognize the document which has been
18 marked as Exhibit 2?

19 (Witness examining document.)

20 A. This appears to be the fingertip facts from
21 the Department of Education. So I -- I've seen this
22 in a different format, but it's substantially the
23 same document, yes.

24 Q. What format have you seen the school
25 facility fingertip facts in?

1 A. Just in a printed format, I think
2 stylistically is the only difference.

3 Q. Printed up on a -- where did you see it
4 printed?

5 A. At a conference it was distributed.

6 MR. HAJELA: I'll just put on the record,
7 there's a document entitled "School Facility
8 Fingertip Facts" is one that's evolved over time.
9 And just for the record, other witnesses, including
10 state officials, have testified about this document.
11 And there's going to be confusion because the numbers
12 are different.

13 And so the last version I saw didn't project
14 from '02 to '07. It projected from '00 to '05. So I
15 just want to state that for the record, so the
16 numbers aren't going to match up going back and
17 forth.

18 THE WITNESS: Right. And I have to agree
19 that this is an evolving document and it's been out
20 in for -- I don't know how many years, but many, many
21 different formats. This one is dated November 2002,
22 so I believe is the most current.

23 BY MR. SEFERIAN:

24 Q. Did you rely on one or more version of the
25 school facility fingertip facts document prepared by

1 the Department of Education in preparing your
 2 opinions in this case?
 3 A. I referred to an earlier version of the
 4 fingertip facts. Not the November, it was a spring
 5 or summer version.
 6 The word "rely" is probably overstated. I
 7 did refer to it, but it not an essential component of
 8 my findings or report. It was one of many individual
 9 references that were consulted, but not -- "rely" is
 10 too strong a term.
 11 Q. But you did consult, at least, one version
 12 of the school facility fingertip fact in preparing
 13 your report in this case.
 14 Would that be accurate?
 15 A. Yes.
 16 Q. Do you consider the information that appears
 17 in the school facility fingertip facts form to be
 18 accurate?
 19 MR. ELIASBERG: Objection; vague.
 20 THE WITNESS: I would consider it to be an
 21 accurate statement of the position of the Department
 22 of Education. It's a reasonable judgment made by
 23 qualified people who work in the field. So I -- I
 24 cannot extrapolate and say this is absolutely the
 25 entire situation of the State of California. This is

1 the Department of Ed's official position on that.
 2 And then in stating that too, it's made very
 3 clear that some of the conclusions in here are based
 4 on assumption made by the Department of Education.
 5 For example, I forgot whether they're going to
 6 replace -- when they talk about facility need,
 7 it's -- I'm not clear if they're actually
 8 anticipating eliminating all multitrack or continuing
 9 multitrack.
 10 So what this -- this is a general statement
 11 of the situation, enrollment trends and costs; but
 12 I'm not sure that it's comprehensive and all
 13 inclusive. So, just to be clear on what this is and
 14 isn't.
 15 But it is an official statement of the
 16 Department of Ed. I take it in that context for what
 17 it is.
 18 Q. You believe that the information contained
 19 in the school facility fingertip facts is reliable
 20 enough for experts in the field to make judgments and
 21 policy conclusions regarding financing of public
 22 school facilities in California?
 23 MR. ELIASBERG: Objection; vague and
 24 ambiguous, and calls for speculation.
 25 THE WITNESS: I can't speak for other

1 people. I would look at this as one source among
 2 many. And it's of adequate source -- and again, it's
 3 the official position of the Department of
 4 Education. So I do give it a great deal of
 5 credibility, but I would not say it's conclusive or
 6 all inclusive of all of the facts that are out
 7 there.
 8 Of course, this is the Department of
 9 Education. This is their summary. So it's to be
 10 referred to, but it's not the final word.
 11 BY MR. SEFERIAN:
 12 Q. What other sources regarding school
 13 facilities information in California would you regard
 14 as credible?
 15 A. Other sources would come from Department of
 16 Finance. Department -- the OPSC, the Office of
 17 Public School Construction. There are groups such as
 18 CSPA, the School Boards Association, the ACSA and
 19 CASBO, which are C-A-S-B-O, which is -- and then
 20 A-C-S-A is the other one. Which are statewide
 21 organizations of professionals in education.
 22 And then CASH produces its own analysis,
 23 which is the Coalition for Adequate School Housing,
 24 which is an advocacy group.
 25 So one has to take all these pieces of data

1 and piece together a mosaic and then interpret it.
 2 And this Department of Education document is one
 3 piece of that mosaic.
 4 Q. Of the sources you mentioned is -- the
 5 Department of Finance, the OPSC, CSBA, ACSA, CASBO
 6 CASH, Department of Education, are there any of those
 7 sources that you regard as more credible or reliable
 8 than any others?
 9 A. I would tend to use the official state
 10 departments. Again, there -- they do a very credible
 11 job. And the Department of Education, Department of
 12 Finance and OPSC, are the official agencies. I think
 13 the others are basically interpretations and
 14 expansions on the base data that come from those
 15 organizations.
 16 I know CASH, in particular, has done some
 17 original research.
 18 Q. What was your involvement with SB50?
 19 A. For many years, I've been a member of the
 20 CASH legislative advisory committee. And as such,
 21 our group discussed and debated the many drafts of
 22 SB50.
 23 I've lobbied portions of the bill on behalf
 24 of several school district clients by providing
 25 information to the office because I'm not a

1 registered lobbyist and generally watch these
2 discussions as closely as possible.
3 Many e-mails and faxes were flying during
4 the development of that bill. And then after it was
5 enacted and -- as Proposition 1A passed, then I
6 attended several of the implementation hearings that
7 were held by the OPSC and the allocation board to
8 actually develop the regulations to enact the
9 program.

10 Q. Did you testify before any governmental
11 bodies with regard to SB50?

12 A. With regard to SB50, before the
13 implementation process, the hearings that were
14 conducted after implementation. And I frankly don't
15 recall if I sent any letters in support or opposition
16 to SB50 as it was developed.

17 Q. Did you testify before implementation?

18 A. It was at the implementation process. The
19 implementation committee of the SAB held a number of
20 hearings around the state. I attended Sacramento,
21 Ontario and -- it seems like there was another one.
22 Two in Sacramento, I think.

23 Q. And you testified before that SAB committee?

24 A. Yes.

25 Q. In which locations?

1 A. Sacramento and Ontario.

2 Q. Do you recall the general nature of your
3 testimony before the SAB implementation committee
4 regarding SB50?

5 A. Not without referring to notes from that
6 time. All the issues concerned implementation and
7 detail of implementation.

8 Q. On page 47 of your report when you refer to
9 the shared financial responsibility, do you believe
10 that shared financial responsibility for a new and
11 modernized school between the state and local
12 districts helps promote accountability --

13 MR. ELIASBERG: Objection.

14 BY MR. SEFERIAN:

15 Q. -- by the school districts?

16 MR. ELIASBERG: I'm sorry. Objection;
17 vague and ambiguous in particular as to
18 "accountability."

19 THE WITNESS: The authors of SB50 reported
20 that they wanted the shared participation to promote
21 accountability. That's actually part of the text of
22 the statute. Personally, I do not believe that's
23 true. Possibly, in some indirect way, there is some
24 additional accountability.

25 It suggests that local schools are not

1 accountable. And I -- my experience has been that
2 the local school boards sitting there looking at the
3 teachers, principals and parents involved tend to be
4 quite accountable. They're watched very closely by
5 their cities and counties.

6 I think the accountability part is really
7 cost accountability. And I think they saw a problem
8 that really doesn't exist. There's some myths that
9 school districts are wasting state money, and I've
10 never seen it. They've always run short and had to
11 supplement the state.

12 BY MR. SEFERIAN:

13 Q. Do you believe that local school boards are
14 accountable to teachers, parents and other community
15 members?

16 A. Yes.

17 Q. Do you believe that the shared financial
18 responsibility for a new and modernized school
19 between the state and local districts promotes
20 efficiency?

21 MR. ELIASBERG: Objection; vague as to
22 efficiency.

23 THE WITNESS: The question is whether the
24 shared accountability promotes efficiency. I suppose
25 you could find some reasons. I think any efficiency

1 that arises from the matching share requirement, it
2 would be incidental and almost inadvertent.

3 In the end, the financial arrangement is not
4 key to the operation of the modernization new
5 construction program. In fact, it's often the other
6 way where the shared requirement created an
7 inefficiency by having one party waiting for the
8 other side's financing to show up. So I do not see
9 that as a great gain from SB50, no.

10 BY MR. SEFERIAN:

11 Q. In what way are school districts accountable
12 to teachers, parents and other community members?

13 A. A myriad of ways. Ultimately the community
14 can vote them out of office or even conduct a recall
15 if things get really out of hand.

16 The accountability tends to be making
17 decisions in public that are witnessed and watched by
18 the teacher unions, the teachers at large and
19 interested community members. It forces decisions
20 out in the public, and the reasoning is questioned.

21 I've been on the receiving end of those
22 questions. And I've -- many school boards are
23 televised. I know -- personally I've been on -- I'll
24 be on TV at the school board one night, then next day
25 I'll go out to lunch and somebody will say, Hey, I

1 saw you on TV. What's this thing they're talking
2 about?

3 People in the community actually watch
4 school board meetings. And it's democracy in action
5 up close and personal.

6 Q. Do you believe that it's important for
7 school district officials to be held accountable for
8 decisions made regarding school facility financing?

9 A. Is it important for school officials to be
10 held accountable? Yes, it is. Accountability is
11 inherent in the job. And -- and actually many parts
12 of current statutes hold them accountable.

13 For example, on Proposition 39, you must
14 have a bond oversight committee. That's the 55
15 percent vote on bonds. You must have a citizens'
16 oversight committee. It's not optional. Even though
17 many districts with two-thirds vote have oversight
18 committees as well.

19 In my work in school facilities, we are
20 constantly held accountable, believe me.

21 Q. In the second full photograph on page 47,
22 what were the major changes that you were referring
23 to in the process of levying school facility impact
24 fee on new housing?

25 A. SB50 created a -- let me roll back a little

1 of the local school district to raise the fees to pay
2 the 50 percent local share of the new construction
3 costs, is -- I don't have criticisms of that general
4 concept, but there are some technical details that
5 still need to be worked out. But frankly, that's far
6 beyond the scope of this project.

7 Q. On page 47 of your report in the third full
8 paragraph, why did you refer to passage of
9 Proposition 39 as a "watershed event"?

10 A. Proposition 39 allowed the 55 percent vote
11 on school bonds. And what this has done is open the
12 door to allow many school districts to pass the bonds
13 that otherwise came close when two-thirds vote was
14 required. This has put a significant amount of money
15 out there for local districts to participate in the
16 state program and to build projects independent of
17 the state program. So it --

18 And I don't know the complete history of the
19 law, but I believe it's the first time, since the
20 state constitution was written, that less than
21 two-thirds allows local bonds to pass. State bonds
22 are at 50 percent, but local bonds had a two-thirds
23 requirement.

24 Q. How did Proposition 39 assist local school
25 districts to finance facility projects independent of

1 bit.

2 AB2926 in 1986 created the school facility
3 fees. And that's a particular section of the
4 education code, section 17620.

5 SB50 in 1998 created what are generally
6 known as level 2 and level 3 fees, which were brand
7 new and created by that bill. Those are a major
8 change in that they are pegged to the actual cost of
9 required to meet the local matching share of -- the
10 school facility program.

11 The level 1 fees which were created in 1986
12 are capped at a specific dollar amount. So even if
13 it's not enough money, that's all you're going to
14 get.

15 The level 2 fees float to give you enough to
16 participate in the school facilities program and then
17 there are some variations on that.

18 Q. Do you have any criticisms of the SB50
19 changes to the process of levying school facility
20 impact fees on new housing.

21 A. It is not central to the report I prepared
22 for you, but, yes, there are some problems with the
23 law. There's some ambiguities, some poor choices of
24 wording.

25 But the fundamental structure, the ability

1 the school facilities program?

2 A. What -- Proposition 39 bonds can be used for
3 all kinds of school construction and renovation
4 projects. It's not required that they be used only
5 as part of a match with state projects.

6 So a district has the ability now to go and
7 finish out a school. It could build a school
8 completely on its own. It gives the local school
9 district some autonomy. If the problem --

10 Let me take that answer and bring it back to
11 the case we're discussing here, is that not every
12 school district is the same. And a school district
13 with a lot of needs, will take their Prop 39 bonds,
14 which is limited to the amount you can sell at any
15 one vote, and use it to participate in the state
16 program.

17 Their neighboring district that doesn't have
18 a backlog of problems, gets to spend the money on a
19 new gym, a new swimming pool or a new auditorium or
20 whatever it wants.

21 So the effect of Prop 39 is different in
22 different districts. So some districts use it to
23 catch up and try and get back to square one. Others
24 that are already caught up, use it to excel. But
25 that's a different issue in that it's just the real

1 politics of Prop 39.

2 Q. In connection with your work in this case,
3 did you perform any statewide analysis of the effect
4 of Proposition 39 as it would work in different
5 school districts?

6 MR. ELIASBERG: Vague and ambiguous.

7 THE WITNESS: I did not take a systematic
8 statewide evaluation. But using theoretic models of
9 rich district with few needs, poor district with many
10 needs, the differences, in effect, are immediately
11 apparent and dramatic.

12 BY MR. SEFERIAN:

13 Q. Did you use those models regarding
14 Proposition 39 to make any statewide assessment of
15 the effects of Proposition 39 on the availability of
16 individual districts to improve their school
17 facilities?

18 A. I don't think it's possible with the data
19 available. Again, a -- let's return to the report
20 here. A key conclusion in this report is that there
21 is no statewide analysis of the needs of districts in
22 schools. There are approximately 8,000 schools out
23 there. Nobody knows the conditions of all those
24 campuses. We simply cannot answer that question
25 because we don't have the data.

1 of all the schools in the state. They've already
2 spent a couple of years on it, and it isn't done
3 yet. OPSC is working on it.

4 The reality is the state does not have the
5 data anywhere. If they have it, nobody has ever
6 disclosed it. But there was an attempt made to do an
7 inventory on -- Duane Brooks talks about it. The
8 effort fell short, so -- that was years ago.

9 MR. SEFERIAN: I'd like to ask you to look
10 at another document which I'll ask the court reporter
11 to mark as Exhibit 3.

12 (Defendants' Exhibit No. 3 was
13 marked for identification.)

14 BY MR. SEFERIAN:

15 Q. Do you recognize the document that is marked
16 as Exhibit 3?

17 (Witness examining document.)

18 A. This appears to be the online version of
19 school services fiscal report, which is a periodic
20 newsletter that comes out.

21 Q. Have you seen the school services fiscal
22 report before?

23 A. Oh, yes.

24 Q. Are you familiar with the School Services of
25 California, Inc.

1 If the Department of Education had it, if
2 OPSC had it, if the governor had it, if somebody had
3 it, it would be different. But the reality is nobody
4 knows the answer to your question. And it's far
5 beyond the scope of this.

6 I know the Department of Education is
7 working on it. They've worked on it for two years
8 and have maybe half the data in their database.
9 There's pages and pages and pages of blanks. So it's
10 -- the fundamental, analytical, restraint is that
11 nobody has the database.

12 One of the recommendations in this report is
13 that somebody create it. Because if we have it, then
14 we can do just what they're asking. But right now,
15 nobody has it, and it simply does not exist.

16 And then a state that spends 50 billion or
17 so year on education it just is ridiculous to me that
18 nobody knows. It's a real constraint on answering
19 the very questions you're trying to ask.

20 Q. What do you mean when you said that the
21 Department of Education is working on it?

22 A. The Department of Education is working on a
23 research project to develop a database to evaluate,
24 for example, the critical overcrowded schools. Just
25 getting the names, addresses, capacities and acreage

1 A. Yes.

2 Q. Are you familiar with -- generally, with
3 what that organization does?

4 A. Yes. They've been around a long time.

5 Q. What do they do generally?

6 A. They're a management consulting and lobbying
7 firm based in Sacramento. They are intimately
8 involved with legislation and all aspects of school
9 finance. They're a very credible firm.

10 Q. Would you feel comfortable relying on
11 information such as the School Services of California
12 fiscal report as credible data?

13 A. As I said earlier with respect to the
14 Department of Ed, it's one source among many. There
15 have been examples where they put a little extra spin
16 on some of their conclusion. When they're -- this
17 appears to include election results, and they -- they
18 tend to be very accurate. So I would give it
19 credibility, but not absolute credibility. I'd
20 doublecheck things.

21 Q. Would you agree that Proposition 39 was a
22 successful attempt by the State of California to
23 direct more money to the construction of public
24 school facilities?

25 MR. ELIASBERG: Objection; vague.

1 THE WITNESS: Proposition 39 was passed by
2 the voters of the State of California, not by the
3 state itself. Some enabling legislation was passed
4 by Jack O'Connell. But the -- yes. It has put more
5 money on the table for schools. That was the intent
6 and it has delivered on that.

7 What it has done is put local money on the
8 table, and in doing so, is changing the calculus with
9 respect to state funding. But what this has allowed
10 is local districts to have easier access to local
11 dollars to deal with problems and to build the
12 schools that communities want. It's --

13 I hesitate to say it was a victory for the
14 state, but it has been a victory to some local
15 communities that struggle to pass school bonds.

16 BY MR. SEFERIAN:

17 Q. Would you agree that the 55 percent vote of
18 approval of Proposition 39 has resulted and will
19 result in significant amounts of additional funds for
20 public school facility construction in California?

21 A. In the short term, Prop 39 has enabled more
22 bonds to pass. I am not confident that at over the
23 long haul, it will materially be different. Time
24 will tell on that one. But right now, I guess the
25 short-term effect has been very positive, but we --

1 we must be very careful to isolate the first round of
2 results.

3 These are people who over the years have
4 come close on bonds. They all rushed out and tried
5 again. That doesn't mean that's the way it will be
6 for the long term.

7 There are other communities that failed at
8 55 percent specifically, and we have to deal with
9 those cases.

10 And finally, I would like to bring back that
11 the election that you're discussing here, which was
12 November 2002, many of these districts there was
13 unusually large number of school bond votes because
14 there was a statewide bond on the ballot that was
15 expected to pass. It was the anticipation of
16 matching state funds that drove districts to run out
17 and try and pass a local bond.

18 If the state had not had the money, I think,
19 I would have seen far fewer people trying it, the
20 partnership. It's the duality of the funding that
21 enables the entire project to get built, rather than
22 one or the other.

23 So what this says is that a -- when the
24 state has funds, local districts will do what they
25 can that's possible to pass bonds to participate in

1 the state program. When the state money dries up,
2 local measures dry up also. Because why pass a bond
3 if there is no matching state money.

4 Q. A school district is able to pass local bond
5 and fund construction projects even if there's not
6 state matching funds for that particular election,
7 correct?

8 MR. ELIASBERG: Objection; incomplete
9 hypothetical, assumes facts.

10 THE WITNESS: Yes. I mean a school
11 district within certain circumstances, assuming they
12 had bonding capacity left and assuming they have
13 other issues like plans, could go out and pass a bond
14 and completely stay out of the state program. That
15 -- that does happen.

16 I'm not sure that one is caused -- I'm not
17 sure you could make the causal link between the two
18 events. Obviously, when there's state matching
19 money, there's greater leveraging of the local
20 resources, and there's a much higher incentive.

21 I think there's a bit of fear on the part of
22 some school officials that they'll go out and pay 100
23 percent of the costs with local funds, while the
24 district next door the following year gets matching
25 state funds. And the taxpayers question why they're

1 paying twice as much, unfortunately, as their
2 neighboring district.

3 So you have to look at the individual facts
4 and the individual community. Everybody is going to
5 be different.

6 Q. Are you aware of any information that
7 suggests that the local bond passage rate in November
8 2002 will not continue in the future?

9 MR. ELIASBERG: Objection; calls for
10 speculation.

11 THE WITNESS: I think we would be
12 speculating, frankly, on that. It's my gut feeling
13 that the rate of passage will start to go down. Many
14 of the bonds here were promoted as they were the
15 first bond ever passed by that district. It's been
16 years and years and years, so these areas have an
17 extremely low property tax rate for bonds, and
18 they're simply getting on board.

19 The other thing is that there was the clear
20 promise of state funding. Because the way Prop 47
21 was worded is if it failed, it would come right back
22 on the March ballot. So the districts were highly
23 motivated to pass this in anticipation of getting the
24 state funding.

25 Finally, districts that had been deemed

1 eligible and actually been funded for state money,
2 but never got the cash, were very motivated because
3 they could tell their voters finally we're going to
4 have -- finally we're going to get the state money
5 we've been promised. With the bond, now we can build
6 the projects we need.

7 There was a great deal of distrust and
8 cynicism about the state. Districts were getting
9 approvals for funding, but no money. And it was -- a
10 year had gone by. More than a year in some cases,
11 and where's the cash. People in the community were
12 asking. And there was -- it was a difficult sell.
13 But the fact that there was a huge school bond on the
14 ballot -- it looked like a day of sunshine after a
15 long drought. Bad metaphor, but we'll let it go, you
16 know.

17 Finally, there is a great deal of optimism
18 that the state program would become viable once
19 again.

20 MR. ELIASBERG: It's been a long cloudy
21 drought.

22 THE WITNESS: We've been at this a few
23 hours. Wait till Wednesday, then you'll see some
24 real gems.

25 BY MR. SEFERIAN:

1 has been clobbered by this recession. And I would
2 suspect if the same bonds hit the ballot today, many
3 of them would not pass because people are worried
4 right now.

5 Last time, it was just how do we cash in our
6 options. Now it's, can we pay the mortgage. So the
7 political climate has changed dramatically due to the
8 state budget crisis, the recession that the Bay Area,
9 in particular, is experiencing.

10 I'm not -- it would be just too speculative
11 to say. I think the overriding national economic
12 trends and the local economic trends are far more
13 important.

14 Q. Is it your understanding that before the
15 passage of Proposition 39, approximately 60 percent
16 of local school bonds were approved?

17 A. I do not recall the exact percentage. But
18 it was something -- 50 percent, 60 percent, something
19 in that range.

20 Q. Would you agree that in November 2002
21 approximately 86 percent of the local school bond
22 measures were passed?

23 A. That's -- that's a conclusion that Bob
24 Blattner has in the report here.

25 Q. Do you have any facts that would allow you

1 Q. Would you agree the huge school bonds that
2 will be on the ballot in 2004 will also increase the
3 likelihood of passage of local school bonds for
4 public schools under Proposition 39?

5 A. Very much. And it will be interesting in
6 hindsight to see if 2002 has an upsurge in bonds and
7 passage rates. 2003 may come down or may stay the
8 same. 2004 may go up, and we'll see what happens
9 afterwards.

10 Right now, it's too new to know. But my
11 assumption would be that 2004 will be very much like
12 2002. Is that when there's a big state bond and
13 projects are getting funded and people are feeling
14 good about work being completed, there's more bonds
15 on the ballot and more will pass.

16 It's when the system isn't working well, as
17 in the case when the state ran out of money, that's
18 when people will have reservations and doubts and get
19 cynical.

20 Q. So would you expect the local bond passage
21 rate of 2004 to roughly approximate what it was in
22 2002?

23 A. That will be completely speculative.
24 There's a recession going on. In 2002 a lot of bonds
25 passed in the Bay Area. The Bay Area, Silicon Valley

1 to disagree with the statement that approximately 86
2 percent of local bonds were passed November 2002?

3 A. No. That's what it says right here, so I'll
4 accept that.

5 Q. Would you agree that the local bond approved
6 in November of 2002 represented an additional
7 approximately 9.4 billion for public school facility
8 projects?

9 A. I -- I have no independent knowledge of
10 that. The report you distributed as Exhibit 3 says
11 that, so I would except that as a true statement.

12 You said 9.4 billion?

13 Q. Yes.

14 A. Yes.

15 Q. If you assume that an addition \$9.4 billion
16 in public school facility funds were passed as a
17 result of Proposition 39, in your opinion, would that
18 make a significant contribution to improving the
19 condition of public school facilities in California?

20 A. I -- you might be mixing apples and oranges
21 there, so it would be -- I will agree that \$9 billion
22 will certainly help out. I want to point out that
23 the \$9 billion includes K-12 and community colleges.
24 It's not all K-12.

25 Also much of that money is going to new

1 construction, not all of which is the same as
2 projects in OPSC. So some of that is local
3 districts.

4 For example, building the football stadium
5 that was not possible to be built under the state
6 grant program because you ran out of money because
7 the grant was inadequate. It was building the gym at
8 the middle school because this middle school grant is
9 very inadequate.

10 But, yes, of course, it will help out. Put
11 a billion dollars towards any problem, is going to
12 fix something. And I do know some districts that are
13 replacing old portable classes with new permanent
14 construction, and doing changes like that to upgrade
15 the stock of facility. There still is a huge problem
16 out there and a huge shortfall.

17 Q. Do you agree that the total generated under
18 Proposition 39 is approximately \$18.6 billion since
19 the initiative for allowing 55 percent passage was
20 passed in November 2000?

21 MR. ELIASBERG: Objection; vague and
22 ambiguous.

23 Are you talking more than would have been
24 passed if Prop 55 hadn't come into effect -- I'm
25 sorry -- 39.

1 those two together. I can't really agree with that.
2 I do think there is some generalized linkage. But I
3 think really you're looking at two very different
4 things. People actually vote on separate ballots.

5 One thing is \$13 billion statewide somewhere
6 out there in the atmosphere. The other is a list of
7 projects my district will build in my community. And
8 I -- just from working on many, many elections, I'm
9 aware that people treat them -- the electorate treats
10 them very, very differently.

11 BY MR. SEFERIAN:

12 Q. Would you agree that the electorate was more
13 likely to support any local bond measure enacted
14 since Proposition 39, both because of the 55 percent
15 thresholds and the presence of the Proposition 47
16 bond in 2002?

17 MR. ELIASBERG: Objection; compound. Calls
18 for speculation. Vague and ambiguous.

19 THE WITNESS: I think you asked a two-part
20 question here. The first part is: Are voters more
21 likely to support it because of the 55 percent
22 threshold? I do not know if that's true. I do know
23 it's galvanized some opposition to bond.

24 But if you would fail at 62 percent and pass
25 at 55 percent, the success rate has gone up, but I'm

1 THE WITNESS: 39.

2 MR. ELIASBERG: -- prop 39 hadn't come into
3 effect -- if that's how many bonds have passed since
4 that initiative went into effect.

5 If you can answer it, go ahead.

6 THE WITNESS: I do not know the sum of all
7 bonds passed under Prop 39. I frankly don't know.
8 Also I'd point out that some of the bonds in this
9 report are not Prop 39 bonds. They're the
10 traditional GO -- general obligation -- two-thirds
11 vote bonds, so -- but if you have data to support the
12 \$18 billion number, I have no reason to disagree with
13 it.

14 But I can't support it, because I don't
15 really know. I'd have to do some research and add up
16 the totals.

17 BY MR. SEFERIAN:

18 Q. Would you agree that the increased
19 participation of local communities in assessing their
20 bonded capacity under Proposition 39 almost certainly
21 helped passage of the statewide \$13 billion school
22 bond?

23 MR. ELIASBERG: Objection; calls for
24 speculation.

25 THE WITNESS: I don't know if you can tie

1 not sure that more people are likely to support bond.

2 The second part is -- of your question was:
3 Are people more likely to support a local bond if
4 there's matching state money? I do believe, in
5 general, that's true, because what they see is I pay
6 \$1, the state pays \$1, I get \$2 for my \$1 out of my
7 pocket.

8 The perception of greater value seems to be
9 a resonating fact with the voters. And that's based
10 on voters surveys in different communities and just
11 talking with voters and being on citizen committees
12 and the like. It seems to be instrumental in some
13 voter -- local voters' mind on local bonds.

14 It's kind of like a double coupons at the
15 supermarket. It makes you feel better about what
16 you're going to buy anyway.

17 BY MR. SEFERIAN:

18 Q. Would you agree that next year there will be
19 a \$10 billion bond on the ballot in the primary
20 election, and if that does not pass, it will also
21 appear in the general election ballot?

22 A. I will -- I will agree that the legislation
23 calls for that. I also believe we're in the middle
24 of a state fiscal emergency and we have a governor
25 doing some erratic things, so additional legislation

1 could be passed. It -- that could take it off the
 2 ballot.
 3 But the current plan, the current program,
 4 the current statute does call for the bonds as you've
 5 described in 2004. But I -- I lack some of the
 6 certainty that it's actually going to happen. Maybe
 7 I'm getting cynical. But there's this \$35 billion
 8 item floating around that we would -- we live in
 9 uncertainties times.

10 Q. Would you agree that since 1998, if you
 11 consider state bond passage and local bond passage,
 12 that California has spent or committed over \$36
 13 billion for public school facilities?

14 MR. ELIASBERG: Objection; vague as to
 15 California.

16 THE WITNESS: I -- I do not have in my
 17 possession the numbers to support or disagree with
 18 the number you've thrown out. But I -- if you
 19 believe that's a true number, it doesn't -- it -- a
 20 lot of money has gone towards schools in the past few
 21 years, yes, without a doubt.

22 You have to remember too, on Prop 47 not
 23 that much money has gone out the door. I mean, the
 24 checks are in the proverbial mail right now for work
 25 that largely was done last year. Much of the money

1 has yet to go through the process, so it's -- a lot
 2 of this is in process stuff.

3 But, yes, it's -- the voters of California
 4 and the voters of the local communities in California
 5 have been very generous. They recognizes that there
 6 is a huge, huge problem. And I think they -- the
 7 shocking news stories that have been popping up all
 8 over the place, in Los Angeles and Sacramento and
 9 San Francisco and Oakland, just reinforce the voters
 10 that there really is a problem out there. That's
 11 part of the reason that we're seeing the support for
 12 local bonds and statewide initiatives.

13 BY MR. SEFERIAN:

14 Q. In addition to the bond funds, school
 15 districts also assess fees on the construction of new
 16 residential and commercial projects, correct?

17 A. Correct.

18 Q. Did you support an enact Proposition 47?

19 MR. ELIASBERG: Objection to the extent --
 20 are you talking about whether voted for it? I think
 21 his vote is a private matter. Can you clarify
 22 "support." I'll appreciate it.

23 THE WITNESS: Can you rephrase the
 24 question.

25 BY MR. SEFERIAN:

1 Q. Did you publicly campaign for or against
 2 Proposition 47?

3 A. Yes. At a local level I supported the
 4 passage of that statewide bond because of the
 5 pressing needs out there.

6 Tony, you just asked a question about
 7 developer fees. Let me make an important note here.
 8 Much of this report, if not all of this report, deals
 9 with conditions in existing schools. Developer fees
 10 are restricted by mitigation fee act, by
 11 long-standing statute, to addressing the needs of --
 12 created by the projects that are subject to that
 13 fee.

14 So if I have modernization and clean-up
 15 needs in the school, I cannot -- I'm prohibited by
 16 law from levying a fee on somebody building a new
 17 house to clean up the existing broken bathroom. I
 18 simply cannot do that. They're totally separate.

19 If I have existing overcrowding of existing
 20 -- of existing kids who live in existing houses
 21 today, I can't tap the new home builder down the
 22 street to pay for that existing problem. I tap the
 23 new home builder to build a school for the kids out
 24 of the new houses. That's the nexus requirement.

25 But we have statutory California case law

1 and federal case law that's absolutely clear --
 2 there's not even a lot -- litigation in the law, so
 3 absolutely clear on this, that you cannot use
 4 developer fees on new projects, commercial,
 5 agricultural, residential, anything to remedy the
 6 existing effects of other people's problem.

7 So I want to make the record really clear on
 8 that. Even though it is out there, even though
 9 there's millions of dollars floating around every
 10 year, it really isn't germane to the discussion
 11 here. It does prevent overcrowding in the future by
 12 adding new facilities as new houses and businesses
 13 get built. But it doesn't go back and remedy what's
 14 already there. And there's just absolutely no way
 15 the funds can flow.

16 So -- just so the record is clear on that
 17 point. I acknowledge the money is out there, but we
 18 need to make sure that everybody understands that
 19 there's some very, very stringent statutory
 20 prohibitions on using it inappropriately. You simply
 21 can't spend it on modernization. So you know that, I
 22 know that, but just for the record.

23 Q. Would you agree that Proposition 47 contains
 24 a critically overcrowded schools program that will
 25 reduce crowding in many areas? I'm referring to the

1 top of page 48 of your report in asking that
2 question.

3 A. Yes. The critically overcrowded schools
4 program is -- I think, a -- if you will, a mid-course
5 correction by the school facilities program to
6 address the unique needs of very overcrowded
7 campuses, predominately in urban areas, but not
8 exclusively in urban areas.

9 Now, it -- not a penny of that money has
10 been spent. The first application window is still
11 open. We really don't know how it's going to work.
12 But it was fairly carefully designed to address the
13 key barriers for a certain class of schools.

14 I think it will have a positive effect. But
15 again, we don't have evidence yet, but we're --
16 personally I'm very optimistic that it will be a
17 great help to many urban areas.

18 Q. When you say you're optimistic that the
19 critically overcrowded schools program will be a
20 great help to many urban area, do you have areas in
21 mind when you say that?

22 A. I guess I need to define urban as -- urban
23 has many variations and many faces. It would be
24 areas of Los Angeles. I'm thinking Oakland,
25 San Francisco. There's actually a list of schools

1 and your set of plans in hand before you make your
2 application, does give you a window of time to
3 prepare your plans and acquire the site.

4 Q. The critically overcrowded schools program
5 was specifically designed to reduce public school
6 facility crowding, correct?

7 MR. ELIASBERG: Objection to the extent it
8 calls for speculation.

9 THE WITNESS: I -- let's see here. I
10 believe the real purpose is a little bit broader than
11 that. Ideally it will be used to reduce crowding on
12 some school sites. It also is being used to
13 eliminate long bus trips, for example, in areas such
14 as Los Angeles, where students are bused many, many
15 miles every day out of their neighborhoods to attend
16 school.

17 So in addition to reducing immediate
18 crowding on some sites, it's to eliminate bus trips.
19 It's to enable some schools to get off of
20 multitrack. It also helps areas such as Los Angeles
21 get off Concept 6, which is an educationally
22 detrimental program. So it has many aspects.

23 It -- I also need to point out that the
24 critically overcrowded schools program is there
25 because of intensive lobbying by a lot of school

1 that are eligible for this program. It also includes
2 suburban areas that some people may not think of.

3 The trigger event is the number of people
4 per acre of the school. So irrespective of the
5 location of the school, if that threshold is met, it
6 will qualify. Sacramento has some eligible schools.
7 Long Beach, San Diego has a number. Other schools in
8 East Bay.

9 Again, I'm truly optimistic, and I hope it
10 will work. I hope it comes through. I know Glendale
11 is one that's been stymied in their ability to build
12 schools. And I know they're counting on this funding
13 to get a high school built that they so desperately
14 need.

15 Q. Would you agree that the critically
16 overcrowded schools program was specifically designed
17 by the State of California to provide funding to
18 areas like urban centers where land acquisition is
19 time consuming and difficult?

20 A. Your question is whether this program was
21 designed to meet needs in urban centers where land
22 acquisition is a real problem, yes. I mean, that's
23 the essence of the school facilities program. It
24 allows you to identify the need and get funding
25 reserved, rather than having the land in your site

1 districts. It was not a state initiated program. It
2 was proposed by local officials who have to deal with
3 reality and was incorporated into legislation after
4 quite a bit of lobbying.

5 MR. ELIASBERG: You want to take a short
6 break?

7 (Recess.)

8 BY MR. SEFERIAN:

9 Q. Do you agree that the critically overcrowded
10 schools program will reduce public school facility
11 crowding by allowing many new schools to be built?

12 A. I believe that the critically overcrowded
13 schools program will make a significant
14 contribution. I don't know really how much of an
15 effect it will have. The accumulated backlog of
16 needs in certain areas is just so tremendous that I'm
17 really not sure how this program is going to work.

18 So, yes, it's a positive step. And, yes, it
19 will definitely help in some cases. It's just too
20 early to tell if this is going to resolve the
21 crowding problems in many areas.

22 By way of example, you might have a very,
23 very overcrowded area, Belmont High School attendance
24 area, and we use this program to build a new high
25 school. All you do is get kids off the bus.

1 You don't address the underlying crowding at
2 Belmont High School. That will take a second new
3 campus. And again, we just don't know if they can
4 deliver the product.

5 So I'm optimistic. I'm hopeful. But I'm
6 not ready to accept this as a solution, but it
7 clearly is part of the solution.

8 Q. Why are you not ready to the accept the
9 critically overcrowded school program as a solution?

10 MR. ELIASBERG: Objection; misstates his
11 prior testimony.

12 THE WITNESS: Your question asks why I have
13 doubts about the critically overcrowded school
14 program. I have reservations about accepting this as
15 a solution for two reasons. One, it's just too new
16 to know. We haven't had the first project funded
17 under this.

18 Second of all, I -- I'm not sure that all
19 the districts with this degree of crowding will be
20 able to find sites that are clean enough, located
21 well enough. We just don't know yet.

22 Again, I'm very optimistic. I'm very
23 hopeful. But I'm not ready to say that just because
24 this piece of law was passed, that the problem is
25 resolved. But I am hopeful that it will make a

1 threshold that becomes the eligibility test. So
2 again, there are some issues to be resolved.

3 It's a brand new program that hasn't been
4 tested yet, so I'd like to give it a chance, and
5 let's evaluate it after this window closes in May --
6 the applicant's window and see what happens.

7 A specific criticism I do have is that any
8 funds not allocated to eligible schools by May, are
9 returned to the general new construction pot of money
10 and are not held for a second round of critically
11 overcrowded school applications.

12 In the event some districts simply miss the
13 window for whatever reason, they're locked out. They
14 have to come back in 2004. So I'm not sure if some
15 districts are struggling to prepare their
16 application, or -- again, we just don't know. It's
17 just too new to know.

18 Q. Are you aware of any districts as of now
19 that are struggling to prepare their critically
20 overcrowded schools program applications?

21 A. Everyone I've talked to is struggling to
22 prepare them right now. I've talked with people who
23 are doing Oakland's applications. And they are
24 struggling to get the data together.

25 I know L.A. is working frantically and

1 dent.

2 I think, too, we really don't know how big
3 this problem is. For example, the OPSC eligibility
4 documents don't analyze how many kids are bussed out
5 an attendance area and are enrolled in a different
6 school.

7 So when I look at the kids in East L.A. who
8 are going to school in Granada Hills, 40 miles away,
9 we just are not sure how many kids will opt to attend
10 in their neighborhood and be able to attend in their
11 neighborhood, or whether there's land in their
12 neighborhood that is clean enough to go to school
13 on. It's a very complex issue.

14 BY MR. SEFERIAN:

15 Q. As of this date, do you have any criticisms
16 of the critically overcrowded schools program?

17 A. As the law was being drafted, and I --
18 still, I do have some reservations about some aspects
19 of the program. For example, the radius test on
20 where the new schools can be located. The
21 eligibility thresholds, there's schools that are 110
22 kids per acre that are pretty darn overcrowded, and
23 yet are not eligible for this program at all.

24 Second of all, the eligibility generated is
25 quite restricted. It's the increment over the

1 promised to have as many as they possibly can.

2 I had a meeting with the people in Oxnard,
3 they're on it.

4 I think Lodi is looking at some.

5 San Maria is looking at some. So we are --
6 people are very aware of this.

7 I think Anaheim is looking. So people are
8 working on this and trying and -- and Santa Ana also,
9 I know is working on this. They're having
10 significant problems in their facility department
11 right now, so there are potential barriers to
12 participation in this program.

13 Q. What problems are Anaheim having with their
14 facility program?

15 A. It was Santa Ana, not --

16 Q. What problems were Santa Ana having this
17 facility program?

18 A. There I'd refer to the Orange County
19 Registrar. There was a series of articles that came
20 out very recently. Basically, there is -- I think
21 the property management firm that's been directing
22 their efforts for the past couple of years. People
23 are questioning some of the decisions that are being
24 made. And generally, it's internal management
25 problems at the district level.

1 Again, I hope that those problems do not
2 affect their ability to participate in this program
3 because they do have some tremendously overcrowded
4 schools.

5 Q. After what period of time do you believe
6 you'll be able to make a more complete evaluation of
7 the critically overcrowded schools program?

8 A. Probably by July. Applications are due in
9 May. Give the staff a month to look at them, and
10 then we'll see where it comes out. See who actually
11 even applied. Who got in. Who's eligible.

12 It's a brand new program. Never existed
13 before in history. And it's cold started in
14 November, and the window is closing in May, so it's
15 very, very short timeline. And people are still
16 learning all the details of the program. The
17 regulations are not yet final. They're not emergency
18 adoption. So we're -- again, I'm optimistic, but
19 let's see what happens.

20 Q. Based on what you know as of this date,
21 understanding you can't make a full evaluation till
22 later, do you believe that the critical overcrowded
23 schools program will enable some schools to switch
24 from multitrack year-round education school
25 districts?

1 state's guidelines are eligible. So without blaming
2 the prior administrations, this is a chance to set
3 things right for the kids at that school.

4 So there are multitrack districts that would
5 die to get off multitrack who can't because they're
6 not eligible. And -- but I'm optimistic for the kids
7 in those schools that will get relief somehow through
8 this program.

9 Q. Which districts are you aware of that are
10 crowded but will not be eligible for the critical
11 overcrowded schools program?

12 A. Top of my head, I can say Santa Marie is a
13 key one.

14 Oxnard has very little eligibility. They
15 just have two campuses that are eligible. They would
16 love to download their schools and get of multitrack,
17 but they can't. Finding land there is very difficult
18 because of the airport and the costal zone and the ag
19 lands and the liquifaction and the water. All kinds
20 of reasons.

21 Montebello is another one where they have
22 very crowdod overenrolled schools, but they don't
23 qualify for this program. Almost, but not quite.
24 And you know, the list can go on.

25 Magnolia in Orange County is another one.

1 A. Your question is whether the COS program
2 will allow some districts to get off the multitrack.
3 I do not know the answer to that question. I don't
4 think so. I don't think that it's within the
5 capability of that program to eliminate multitrack
6 where it's deeply entrenched.

7 In a case like Oakland, which is getting off
8 multitrack anyway and just has the last few schools,
9 it might allow them to make the last step. But
10 they've eliminated most multitrack all on their own.

11 Many of the multitrack districts are not
12 that crowdod and are not eligible. One of the
13 perverse issues with critically overcrowded is -- I'm
14 thinking specifically like Oxnard where they
15 deliberately have, by matter of choice, created
16 multitrack schools. But they bought enough acreage
17 to serve the number of students on campus. By doing
18 the right thing, they made themselves ineligible for
19 this program.

20 And districts that did the wrong thing, you
21 -- took small campuses and put them on multitrack
22 and packed them in the portable become eligible for
23 this specific program.

24 So the districts that followed the state's
25 guidelines are not eligible. Those who broke the

1 Orange in Orange County -- Orange Unified.
2 Lancaster, Homedale.

3 Q. Any others you can think of right now?

4 A. I -- how many do you want? I mean, Sacs --
5 Sacramento City is on that list. Lodi is on that
6 list. Stockton Unified is on that list. Fresno,
7 Merced City, and elsewhere in the Bay Area.

8 Q. Do you believe that the critically
9 overcrowded schools program will enable some schools
10 to switch from the Concept 6 calendar?

11 A. This would be the same answer as before. I
12 believe if -- in certain cases, if the schools are
13 built in the neighborhoods, it would enable the
14 district to make that choice.

15 Without knowing more about the program and
16 exactly who will apply, it's not possible to answer
17 your question directly.

18 But in theory, it should make -- it should
19 provide schools in overcrowded areas that would allow
20 them to go from Concept 6 to four track or some other
21 -- or even traditional calendar.

22 Q. Did you have any involvement in the
23 formation of the critically overcrowded schools
24 program?

25 A. In association with in Ralph Ochoa's law

1 firm, we had proposed a program somewhat similar,
2 worked with the urban schools coalition that then
3 became part of CSPA and the urban schools group
4 within CASH, the year round group which is active in
5 Sacramento, trying to get some kind of program, and
6 bits of our proposal joined with parts of their
7 proposal, and critically overcrowded school program
8 was written.

9 I think the legislative staffers took a
10 piece from everybody's program and put it together.

11 What the program is -- like with all
12 legislation, it's not anybody's vision. It's a
13 compromise to meet the political requirements of the
14 setting. And again, I want to say I'm very happy it
15 got enacted. I'm very optimistic it's going to
16 work.

17 I don't think it's a solution to all the
18 problems. But I sincerely hope that it's well
19 subscribed and schools get built and kids get off on
20 the Concept 6, get off the buses. Go to school in
21 their neighborhoods. It's a tremendous opportunity.
22 And I really, really want to see it succeed, so I
23 don't mean to bash the program at all.

24 Q. Did you say you worked with Ralph Ochoa's
25 law firm in making proposals that led to the critical

1 overcrowded schools popped out.

2 Q. Who else did you work with on this proposal
3 that was circulated regarding overcrowded schools?

4 A. I know Sandra Rosales of Oxnard was very
5 much involved. We worked with Ian Padilla of CASH.
6 Tom Duffy of CASH. Diane Kirkum. Hal Geo of the
7 assembly education committee. Assemblyman Runner's
8 office was quite involved. Jackie Goldberg's staff.
9 Maldef -- M-A-L-D-E-F -- and the urban schools
10 coalition. Did the streets. Even Abe was involved.
11 We called CSBA and begged for help.

12 Q. When new schools are built, form the
13 critically overcrowded schools program, some students
14 from existing schools will begin attending those new
15 schools, correct?

16 A. That's the proposal, yes.

17 Q. And if fewer students are attending the
18 existing schools, when they begin attending new
19 schools created by the critically overcrowded schools
20 program, that will result in less wear and tear on
21 existing schools, correct?

22 MR. ELIASBERG: Objection; incomplete
23 hypothetical.

24 THE WITNESS: I'd like to say you're
25 correct, however, there's some -- the world is not

1 overcrowded --

2 A. No. That would be an overstatement. We
3 circulated a proposal that in some parts was similar
4 and then -- as did many, many other people. There
5 were proposal -- a dozen proposals floating around.

6 The Senate Committee members who were more
7 or less putting all the pieces together took bits and
8 pieces of everybody's and made a new proposal that
9 really is theirs. CASH had a strong role in this.

10 Q. What was the name of the proposal that you
11 worked on prior to -- regarding the overcrowded
12 schools?

13 A. I don't think it had a name. It was just a
14 white pager we were circulating. It was a discussion
15 paper.

16 Q. Where is that document now?

17 A. It --

18 Q. Who was it distributed to?

19 A. We distributed it to members of education
20 committee and the staff, and to many of the other
21 activist groups trying to build an alliance of people
22 who would push on this topic.

23 Our goal was to get it into the discussion
24 to make it into the final bill. We succeeded when
25 this other proposal that's now called critically

1 confined to two school sites. And if you have an
2 overcrowded school and you build a new school and
3 other kids get off the bus and go to the new school,
4 you didn't fix the first school. So in theory, yes,
5 it will be fewer kids and less demand on the original
6 school.

7 But my fear is that there's such an
8 incredible backlog of need, when you do build that
9 new school, it can be largely filled by kids getting
10 off a school bus. Which really doesn't solve the
11 problem at the first school, so then you have to
12 build another school.

13 And because this program has a very, very
14 tiny application window and then the money is taken
15 away and given to other folks, I don't know if the
16 schools will actually deliver.

17 So in theory, I would agree with you. In
18 theory, though, I'm aware that in most of the
19 districts we're discussing, the backlog is so big one
20 new school, two new schools won't solve the problem.
21 Every little bit will help. Absolutely, positively,
22 every little bit will help.

23 But will it solve the problem and allow the
24 other school to get off multitrack, I -- that's a
25 real reach. Will it help them get off Concept 6 and

1 maybe on four track, well, that's hopeful. But
2 there's a whole distance between point A and point B
3 because of the multitude of problem schools in
4 certain areas and the magnitude of the problem.

5 So again, I've very optimistic. I'm
6 positive some new schools will get built. I'm
7 positive they will have great benefit to that
8 community. But will it soft over all problem, no.

9 We look at the Belmont High School, it's
10 5,000 kids a day are bussed out of the neighborhood.
11 They need two schools. They need two high schools
12 right now. And then they need another one to get the
13 other school downloaded. So they go really from one
14 high school to four high schools. And you really
15 deal with just that one neighborhood, in one isolated
16 part of Los Angeles.

17 And then you go across the freeway into a
18 different neighborhood, and you've got another
19 problem. So I --

20 That's the reason I hesitate to endorse what
21 you're proposing. Will it help, absolutely. But
22 will it solve the problem, unfortunately, it's a
23 bigger animal than I think we're realizing at that
24 point.

25 But you've got to take the first step to

1 So unfortunately, places like Los Angeles
2 have a real devil's choice.

3 Q. As of this date or in connection with your
4 work in this case, did you perform any calculations
5 regarding the extent to which the critically
6 overcrowded schools program will reduce crowding in
7 any particular school district?

8 A. No. The actual data has been very
9 sporadic. An eligibility list comparing different
10 options was prepared by the Department of Ed and
11 circulated to the education committees and did review
12 that data. Nobody really knows, because nobody knows
13 who's going to apply and how it will be used.

14 Again, this is a brand new program. The
15 first dollar hasn't gone out the door yet. So we
16 really don't have any analytical basis yet.

17 In looking at places like San Francisco that
18 has scads of eligibility under this program, and --
19 again, they have extremely small school sites here,
20 so they have extremely large amounts of eligibility.
21 We don't know what -- if they even want to build that
22 -- all these new schools. I mean, we really don't
23 know.

24 There's a local participation factor here.
25 So again, we just don't know the answers to some of

1 finish the journey, so let's take the first step.

2 BY MR. SEFERIAN:

3 Q. Are you aware of any data that shows that if
4 new schools are built with the funds from the
5 critically overcrowded schools program, those new
6 schools will be filled largely with students who are
7 currently being bussed?

8 A. I do not know of any data that talks about
9 how any of the new COS schools will be filled because
10 nobody has seen any data yet. There's -- I don't
11 believe any applications have actually been received
12 in Sacramento. I'm postulating that kids getting of
13 a bus will get priority over kids on a different kind
14 of multitrack. We don't know yet.

15 In the applications, the districts are
16 supposed to tell. But I do know we have a tremendous
17 state budget deficit that transportation is hugely
18 deficit funded before we got in state fiscal crisis
19 and will likely be more deficit funded.

20 So I would say that priority of the school
21 district will be get the kids off the bus because
22 it's a money loser. In addition to being abusive of
23 kids, it's a total money loser. And a district that
24 is in severe financial pinch will try and cut its
25 costs.

1 these questions.

2 What would be really nice is if we had a
3 statewide database that had more information on each
4 and every school in the state, then we could make
5 more reasonable judgments.

6 Again, I hate to keep harping on that, but
7 if the state had better management information on
8 what it -- what schools are out there and how they're
9 operated and what facility they have, we could do
10 some pretty easy analysis to come up with answers.

11 But having a database that is less than half
12 complete, even then is totally empty on issues like
13 restrooms and green space and hard space and stuff
14 like that, we just don't know.

15 The topography of individual school sites
16 makes a big difference. You can have one school site
17 that's dead flat, that's entirely usable. You can
18 have another that's steeply sloping where most of it
19 is unusable. So what are the acres, we just don't
20 know a lot of data. I'd hope some day we can have
21 that.

22 Q. Do you agree that the Proposition 47
23 statewide bond contained approximately \$3.3 billion
24 for modernization?

25 A. That's the figure I recall, yes.

1 Q. What types of projects will be funded with
2 modernization funds?

3 MR. ELIASBERG: Objection to the extent it
4 calls for speculation.

5 THE WITNESS: I'm not clear on your --
6 modernization funds would fund modernization
7 projects. Whatever is eligible for modernization.
8 BY MR. SEFERIAN:

9 Q. What types of projects would typically be
10 included in the modernization funding project?

11 A. To respond to your question what kinds of
12 projects would be done typically, I'd look at
13 projects that are currently underway that have been
14 funded that typically involve powering communications
15 ungrade, plumbing upgrades, new water pipes, new
16 sewer pipes, new toilet fixtures. Bathrooms are
17 frequently remodeled with new ADA compliant doors,
18 fixtures and stalls.

19 A lot of the money in modernization is
20 actually going to ADA compliance and code
21 compliance. I don't have a percentage. I'd be
22 speculating.

23 What is apparent in almost every case -- it
24 is apparent in every case I'm aware of,
25 hypothetically there's other cases, the needs of the

1 was done with other funding sources. The paint job
2 is incomplete. The toilets, one was replaced and
3 upgraded, the others were not. The playground was
4 never touched.

5 Other districts where I'm working and pretty
6 involved with the modernization program, the shopping
7 list of what didn't get done is as long as what did
8 get done. It's not to say anybody is ungrateful or
9 resentful of what did get done. It's just sometimes
10 just getting the basic utilities systems to work, ate
11 up all the money. So it's really nice that the
12 lights come on. But -- and the heaters works.

13 But, boy, the holes in the walls are still
14 there, they just got patched and painted. They
15 didn't really get fixed right, but there's only so
16 many dollars. You just run out of money, so . . .

17 Q. The statewide bond that will go before the
18 voters next year, 2004, will also contain funding for
19 modernization, correct?

20 A. Yes. I believe it's a reduced amount
21 compared to the 2002 bond.

22 Do you know the amount of modernization in
23 the 2004 bond?

24 Q. I was going to ask you if that's in your
25 report.

1 schools far outweigh the amount of money available.
2 So there's a tremendous accumulated backlog of need.
3 The money clearly is helping. Schools are getting
4 painted. New doors, new casework, new locks, new
5 windows. Air conditioning, new heaters, new roofs,
6 new paving. All the kinds of stuff.

7 But often there is a whole long list of
8 things that are left undone. This is particularly
9 true in older schools that have just a lot more
10 needs.

11 Q. What data supports the statement that the
12 modernization needs of schools far outweigh the
13 amount of money available?

14 A. I don't have an official report that would
15 say that. I can testify based on my personal
16 knowledge of my son's school, which was just
17 modernized, just finished. The punch list is still
18 underway.

19 I was PTA president there for two users, so
20 I know it pretty well. They did a lot, but a lot
21 didn't get done. I mean, a lot did not get done.

22 We're grateful that the 50-year-old heaters
23 were taken out and replaced with new heaters. That
24 was very nice. Many of the cabinets were not
25 replaced. The windows were not replaced. The roof

1 A. It is in the report somewhere. I used to
2 remember the stuff off the top of my head.

3 MR. ELIASBERG: It's on page 65.

4 THE WITNESS: Peter, you're fast. You
5 actually read this thing, didn't you?

6 There it is right there.

7 MR. ELIASBERG: Analysis on modernization.
8 It's on 67 and 68.

9 THE WITNESS: I'm sorry. Tony, I
10 misspoke.

11 There's the backlog of modernization of \$1.9
12 billion for 2002, and new modernization of 1.4
13 billion. In 2004 it's 2.25 billion for modernization
14 with no backlog.

15 BY MR. SEFERIAN:

16 Q. And that's on page 65 of your report?

17 A. That's on page 65. So even though there's
18 less, it's the \$1.9 billion carryover that got funded
19 in 2002. So it's -- again, that's a lot of very much
20 needed work is getting done, and the people in
21 California should be proud of the fact that if
22 they're not fixing everything, at least, some of it's
23 getting done.

24 Q. The 3.3 billion in modernization funds from
25 the 2002 bond and the 2.2 billion in 2004 bond, will

1 go directly to address the facility conditions in
2 older existing schools, correct?

3 MR. ELIASBERG: Objection; vague.

4 THE WITNESS: Older is defined as eligible,
5 yes. That's 25 years and 20 years for portables.
6 And as I've earlier said, it will address them, but
7 not resolve them. But you can't spend \$3 billion and
8 not make a difference. It definitely will make
9 things better, but there's a lot of work left to be
10 done.

11 BY MR. SEFERIAN:

12 Q. On page 48 of your report in the last
13 sentence of the first paragraph, what aspects of the
14 1998 bond program that favored new schools in new
15 neighborhoods continue in the 2002 bond program?

16 A. I'll give you two illustrations of several.
17 One, is the requirement that you have land as a
18 requirement to design and apply for new construction
19 funding. Land is more available in developing new
20 neighbors than it is in older built out neighbors.

21 Cities or aware that they need parks and
22 schools, and they simply tell developers that you
23 need to plan for a school, so they plot out it out.
24 The school district has to buy the land. It's not a
25 gift. But a smart developer will plan for schools

1 because it helps their sales.

2 In a built out area, you have to tear down
3 somebody's house to get the land for a school or tear
4 down a supermarket or tear down something else.
5 Very, very different scenario. It's parcel by
6 parcel, not even block by block. It's individual
7 parcel by individual parcel.

8 The other thing is the -- the tract map
9 issue on enrollment projects. You do a weighted
10 cohort projection of your enrollment, and then you
11 can supplement that by houses on approved but unbuilt
12 tract maps.

13 So in realty the existing kid on an
14 overcrowded campus on Concept 6 counts the same as a
15 kid who doesn't -- who potentially will live in a
16 house that hasn't been built yet. That clearly is
17 favoritism toward new housing areas as opposed to
18 existing overcrowding.

19 That was a policy decision. Support of the
20 California building industry was critical to SB50.
21 It's a deal that was made -- that's politics. But it
22 clearly favors -- and when you say that a
23 hypothetical kid in a future as yet unbuilt house
24 counts the same as an existing kid on a shortened
25 school year in an overcrowded school, something is

1 wacky with the system.

2 Q. Have you done any study or analysis of the
3 eligibility effect on districts in the -- with
4 existing schools of the aspects of the bond program
5 that favor new schools and new neighbors?

6 MR. ELIASBERG: Objection; vague and
7 ambiguous.

8 THE WITNESS: I'm not sure I totally
9 understand your question, but if you mean have I --

10 MR. SEFERIAN: I sorry. I can ask it
11 again.

12 THE WITNESS: Okay. That's a real big
13 question. A real big question. We can go for hours.

14 BY MR. SEFERIAN:

15 Q. I appreciate you letting me know that my
16 question wasn't clear. I'll ask it again.

17 Have you performed any analysis or
18 calculation of what effects the bond program that
19 favors new schools in new neighborhoods has on
20 districts in existing neighborhoods in terms of
21 reduced eligibility or lost construction funding or
22 any other aspect?

23 MR. ELIASBERG: Objection; compound, and
24 vague and ambiguous.

25 THE WITNESS: Again, it's a very complex

1 issue. Let me just try and hit a couple highlights
2 here. In -- after Prop 47, the priority point issue
3 has largely been set aside. Until then -- until --
4 and this is the essence of the Gadenus (phonetic)
5 lawsuit. Eligibility -- total eligibility really
6 didn't make a difference. So a district that could
7 include a lot of approved tract maps, had more
8 unhoused kids, had more eligibility, can move ahead
9 of another district in line. That part was taken out
10 of the new bond by AB16, so that issue has somewhat
11 left the table.

12 And in -- in another angle on your question,
13 eligibility is eligibility is eligibility. So
14 whether it's a tract-map kid that doesn't live there
15 or an overcrowded kid or just a regular projected
16 growth through your cohort model, it's all the same.

17 And it's -- the difference comes in, in that
18 a growing suburban area that has an upward trending
19 population, you get eligibility because of the upward
20 trend because of your increasing kindergarten and
21 primary grade rates.

22 And then you get bonus eligibility because
23 of the unbuilt houses. So you not only get your
24 projected eligibility, you get an additional bite of
25 the apple.

1 A stable area only has the -- or a stable
2 built-out area that does not have new housing
3 development only has initial cohort driven upward
4 trending, so it's difficult.

5 The other aspect is, frankly, in very
6 overcrowded schools, some parents pull their kids out
7 and put them somewhere else. So you may have people
8 voluntarily leaving your system. We do see this in
9 urban areas where schools are crowded. You simply
10 take your kids out of the local school and take them
11 to work with you because they'd be on Concept 6, and
12 have these incredible breaks in the middle of the
13 year. And the school would be so crowded, there
14 would be fights in the hallways.

15 People have been voting with their feet. So
16 there many different aspects to it. Because the kid
17 is not there, the district shows less growth, gets
18 less eligibility. Meanwhile, mom and dad are driving
19 back and forth to some other community where there
20 happens to be an empty seat.

21 BY MR. SEFERIAN:

22 Q. Have you performed any calculation or are
23 you aware of any calculation of which districts, if
24 any, have lost construction funding as a result of
25 the bond program rule that favors new schools in new

1 when money was handed out based on priority points,
2 it was absolutely critical. Certain people were
3 getting funding. Other people were getting nothing.
4 And even though they had significant needs, even
5 though you'd have hundreds and hundreds of priority
6 points, it wasn't enough and you got nothing. And
7 those people are suffering.

8 It's now leveled out a little bit where
9 there is no more priority point. But still if have a
10 lot of new houses and a lot of approved tract maps,
11 you got a lot of eligibility. You can run more
12 projects.

13 And with that too -- again, a key point is
14 that it's approved attended tract maps. Some
15 counties and some communities will approve a tract
16 map for 4,000 houses, every one of those counts.

17 Other communities will not approve large
18 maps like that. They have a residential allocation
19 formula or a growth control measure that approves
20 maps 100 at a time. That community automatically has
21 a disadvantage. Even though over time they may have
22 the same number of houses built, the city simply
23 approves 100 a year or 200 a year or 400 a year.

24 Another community approved the whole master
25 plan project in one fell swoop, there's an automatic

1 neighborhoods?

2 A. The question is whether anybody has actually
3 lost eligibility. And that's not an accurate
4 depiction of how it works. It's almost a lost
5 opportunity. Nobody loses eligibility because
6 somebody else got extra eligibility. It's just a
7 relative positioning of where districts stand.

8 After the 2002 bond, it's less important
9 because we're not in a priority point situation.
10 Prior to then, when this report was written, when we
11 were in priority point situation, it was extremely
12 important, and that's when you could look at just who
13 was getting the money. It -- in -- generally the
14 people getting the money were very rapidly growing
15 large suburban districts.

16 Once Los Angeles got its projects moving, it
17 simply swamped everybody else's eligibility. It got
18 all the money. And that's due to an artifact of how
19 the eligibility calculation was constructed.

20 Q. So is it your testimony that the provision
21 in the bond program as indicated on page 48 of your
22 report, that favors new schools, new neighborhoods is
23 much less significant now than it was before the 2002
24 bond was enacted?

25 A. It is less significant now. In the time

1 disadvantage.

2 But that's really getting into the minutiae
3 of the program. But that's what we talk about at
4 committee meetings, so -- sometimes asking techies is
5 difficult.

6 Q. On page 48 of your report, in the first
7 paragraph under heading B, you state that under the
8 states facility program, some portable classrooms are
9 excluded from consideration as existing capacity.

10 Which -- what is the location of those
11 portable classrooms that are excluded from
12 consideration as existing capacity?

13 MR. ELIASBERG: Objection; vague, and
14 assumes facts.

15 THE WITNESS: You have just asked an
16 incredibly complicated question.

17 MR. HAJELA: It's late in the afternoon for
18 that.

19 THE WITNESS: Let me give you a short
20 answer that may be -- will lead to something else
21 here. The treatment of portable classrooms has
22 always been a very complex and divisive issue in this
23 discussion. There is great deal of controversy over
24 what is and what is not a portable classroom. Nobody
25 really knows the complete definition.

1 On form 50-02, which is your existing
2 capacity analysis form, a school district has two
3 options for counting, for not counting portable
4 classrooms, and they're different. But in general,
5 the way most school districts do it is the first 25
6 percent of the -- of the number of portables equal
7 the 25 percent of your permanent classrooms are
8 considered chargeable. Above that, they're excluded.

9 The other option is to identify certain
10 types of portable classrooms that are excluded. And
11 you don't count those, and other kinds you do count.
12 So you do the A calculation, the B calculation, you
13 take whichever one you chose to take. Generally, the
14 one that maximizes your eligibility.

15 So what this says is some portable
16 classrooms in some districts are excluded. In cases
17 with multitrack, it's treated differently.

18 BY MR. SEFERIAN:

19 Q. How is it treated with multitrack or track?

20 A. You would ask that. Again, multitrack has
21 different treatments depending on the specifics. If
22 you recall earlier in the day, we talked about the 6
23 percent hit. Sometimes multitrack classrooms -- I
24 said that wrong. Let me start over.

25 The students in some multitrack classrooms

1 consideration as an existing capacity?

2 A. No. Again, that's data that is simply not
3 available. If it -- if there were to be a statewide
4 inventory form, that would be very, very important
5 information to know. We've asked for data, and I
6 don't think anybody really has a good handle on it.

7 MR. HAJELA: Is this a good time to take
8 five minutes.

9 (Recess.)

10 BY MR. SEFERIAN:

11 Q. What is your understanding of why, in the
12 state school facility program, some portable
13 classrooms are excluded from consideration as
14 existing capacity?

15 A. I believe the evolution of this issue has --
16 it used to be that very specific types of rooms were
17 excluded. It's become very, very difficult to track,
18 so the issue has evolved to where it is now. It's
19 more of an administrative expedient. It allows both
20 districts and the state monitoring officials to more
21 easily, and with a little more predictability, figure
22 out which room is which.

23 The problem was that it was -- a portable
24 classroom the same room could be used for a different
25 purpose and it would be chargeable/nonchargeable or

1 are not considered eligible for housing. They're
2 excluded and considered adequately housed in the
3 school district is participating in the operational
4 grant program.

5 So again, you can have kids sitting in a
6 brand new portable that's not counted. You can have
7 a kid sitting in a permanent classroom who -- in the
8 brand new portable classroom, is not considered as
9 existing capacity, and that kid is eligible for a new
10 school.

11 You can have another kid sitting in a
12 multitrack Concept 6 permanent classroom who is not
13 considered unhoused and has no construction
14 eligibility. So because of the intricacies of this
15 program, you can get to almost some absurd
16 conclusions.

17 In defense of the state and people who wrote
18 these rules, they're trying to respond to concerns of
19 school districts and other people, and they're trying
20 to be fair. There's no malicious intent. But this
21 is one of those unintended consequences that can
22 sometimes arise.

23 Q. In your work with this case, have you made
24 any assumptions or calculations regarding the portion
25 of portable classrooms that are excluded from

1 chargeable again. What this does is, it just allows
2 the system to continue functioning by simply counting
3 the total number and then assign them to either
4 chargeable or nonchargeable status.

5 So while it may not be a perfect system,
6 frankly, I don't really have a better proposal. It
7 -- it's just one of the ironies that it's possible
8 to have a brand new portable be excluded from
9 chargeability even though it's a perfectly adequate
10 room.

11 Q. Do you agree that the state statutes and
12 regulations that provide that some portable
13 classrooms are excluded from consideration as
14 existing capacity, results in some school districts
15 with portables receiving eligibility in the state
16 facilities program for students that are currently
17 being housed in portable classrooms?

18 MR. ELIASBERG: Could you read that
19 question back please.

20 (Record read.)

21 MR. ELIASBERG: Vague and ambiguous.

22 THE WITNESS: I'm going to take a stab at
23 answering that. I believe your question is: Am I
24 aware that the statutes and regulations allow
25 eligibility for students that are housed in portable

1 classrooms? Yes, I'm aware of that.

2 And let me state too that that may not be a
3 bad thing. Portable classrooms are temporary
4 buildings. They're not meant to be permanent
5 classrooms. I -- I don't want to see a portable
6 that's 90 years old. But I have seen permanent
7 schools that are 90 years old, so what I believe the
8 statute is getting to is that a certain ratio of the
9 school districts rooms can be temporarily
10 portable-type classrooms.

11 But some districts have many, many more than
12 25 percent. Some have way over 50 percent of their
13 classrooms as portables. Those districts need some
14 permanent classrooms. And therefore those kids who
15 are -- some of those kids deserve to be eligible for
16 permanent real schools as opposed to portable
17 schools.

18 The -- earlier we had a long discussion
19 about the start-and-stop nature of state funding, how
20 the state was out of money for a long time. When the
21 state program did not have money or people were
22 unable to access state money, school districts still
23 had students. And many of them resorted to lease,
24 lease purchasing, buying, borrowing, whatever,
25 portable classrooms simply to provide adequate

1 existing capacity, increases the opportunity for
2 school districts with excluded portables to obtain
3 state facilities funding?

4 MR. ELIASBERG: Objection; vague and
5 ambiguous.

6 THE WITNESS: The effect of the exclusion
7 rule is to concrete eligibility for state funding,
8 yes, so that would be a true statement.

9 BY MR. SEFERIAN:

10 Q. Do you agree that the state statutes and
11 regulations that provide that some portable
12 classrooms are excluded from consideration as
13 existing capacity, are a method used by the State of
14 California to help those districts that have portable
15 classrooms build new facilities?

16 A. Yes, your statement is correct. By
17 excluding them from chargeability, they're creating
18 eligibility. And that way, the state is providing
19 the opportunity for the local district to use local
20 matching money to access state funding to build a
21 permanent replacement facility. It's not a gift.
22 You have to come up with local match.

23 Q. On page 48 of your report, in the middle of
24 the paragraph where it says, "some students on
25 multitrack are counted as accurately housed," are you

1 capacity.

2 The class-size-reduction program that was,
3 again, the \$40,000 grants from the state, led to a
4 jump in the number of portables. So some districts
5 are -- have too many portables, so therefore, that
6 eligibility is fine.

7 As far as some ratio of portables being
8 okay, that's been around for a long time, and --
9 yeah, I -- there's a differential effect based on the
10 number of acres and the setting. Very small urban
11 sites, like in San Francisco, are -- there's no room
12 for a portable. On some other campuses, if they're
13 well put in and of good quality and properly
14 installed, it can be an acceptable alternative.

15 So it's neither black nor white. It's
16 something that has to be looked at in the context of
17 the individual school.

18 BY MR. SEFERIAN:

19 Q. So in cases you would agree that placing a
20 portable classroom on the public school facility is
21 an acceptable method of housing students?

22 A. Yes.

23 Q. Do you agree that the state statutes and
24 regulations that provide that some portable
25 classrooms are excluded from consideration as

1 referring to those students in schools that are on
2 the operational grant program?

3 A. Holy cow. I would have to -- I apologize.
4 I'd have to check that ed code section right there.
5 I can give a general answer without checking the code
6 section. The code section I'm referring to is
7 17071.75, subparagraph A.

8 In students who are on multitrack, again,
9 they're the two aspects. One, is the 6 percent hit,
10 which is applied to everybody. The other is the
11 operational grant program where those are, by
12 definition, excluded and considered -- excluded from
13 eligibility and considered to be adequately housed.

14 Q. What's the statistics, are you aware of,
15 showing that the school -- that a number of students
16 attend who are on multitrack are counted as
17 adequately housed?

18 A. The only statistics I'm aware of -- again,
19 there's an inadequate statewide database on this.
20 The superintendent of public instruction is required
21 to provide an annual report to the state allocation
22 board that discusses the numbers of students
23 receiving operational grant funding. That report is
24 posted on the CDE website and is one that I've
25 referred to often in analyzing the number of students

1 affected by the operational grant funding requirement
2 limitations.

3 Q. In your work for this case, have you formed
4 any calculations or analysis showing the ratio or
5 ethnic composition of the multitrack students counted
6 as adequately housed?

7 A. I did not do it for this study. For a
8 separate project, I did it with Steve English, yes.

9 Q. Which project is that?

10 A. We were, again, lobbying -- preparing
11 lobbying documents that his firm actually carried
12 forward trying to get relief from the OP grant
13 program.

14 What we did is identified the schools
15 affected. That data came directly from the CDE
16 website. Then through -- also the -- a different
17 part of the CDE website, you can determine the ratio
18 ethnic and income composition and test scores of
19 those schools. It's very stark data, frankly. It
20 shows the overwhelming majority of students affected
21 are poor Latino, limited English speaking,
22 low-achieving students in low-achieving schools.
23 There is a very targeted impact of the OP grant
24 program.

25 Q. Is that work you were referring to the Steve

1 counted as adequately housed have actually resulted
2 in the school district failing to obtain state school
3 facility program funding?

4 A. Yes.

5 Q. What method did you use to perform that
6 analysis?

7 A. Well, you look at their 50-02 and see
8 whether they have eligibility and then see where it
9 got taken away when they got their OP grant funding
10 and then they don't have enough left over. I'm not
11 aware of any district that has lost every last drop
12 of eligibility, but some have taken substantial
13 hits.

14 I also want to make very clear on this, the
15 operational grant funding, the program has become
16 extremely skewed in the last four years. So that
17 where you're promised a dollar, you're now getting 20
18 cents.

19 So where there might have been a glimmer of
20 equity at one time in this program, the reality is
21 because of the capacity chargeability rules created
22 by SB50, the operational program funding basis has
23 become totally distorted.

24 In districts that are entitled to and
25 promised contractually a dollar from the state, are

1 English project, has that been published?

2 A. No. Again, it was an internal working
3 document that he used with his project and did
4 lobbying work in Sacramento.

5 Q. What was the -- what was the result of that
6 work?

7 MR. ELIASBERG: Objection; vague.

8 THE WITNESS: The outcome of -- out of that
9 came -- that was part of the impetuous behind the
10 critically overcrowded schools program, which was an
11 attempt, frankly, to deal with the issue of the
12 multitrack overcrowded schools. Other work, frankly,
13 got defeated in the legislative process.

14 The reality is very few people in the state
15 capital understand what multitrack is. Fewer under
16 operational grants, and they don't deal with stuff
17 they can't understand. So there -- again, this is
18 ongoing effort, school districts trapped in
19 multitrack and operational grant are trying to find a
20 fair and equitable to get off. But until you have
21 the classrooms, you can't. You're stuck.

22 BY MR. SEFERIAN:

23 Q. In your work for this case, did you perform
24 any objective analysis showing that school facility
25 program provisions that students on multitrack are

1 now getting 21 cents. So the whole calculus of OP
2 grants and multitrack and everything else is just
3 blown.

4 And the districts that are slowly sinking
5 right down to the edge of bankruptcy because they're
6 not getting the money that they're entitled to, even
7 though they're actively incurring the costs. That's
8 a little bit off the topic here.

9 But the reality is the whole operational
10 grant multitrack system is totally broken and needs
11 to be fixed. But unfortunately, it's a cost factor
12 to the state. I don't think it's going to be fixed
13 this year. But there is real hardship being created
14 for real kids today because of the broken program in
15 Sacramento.

16 Q. When you say the operational grant system is
17 broken and needs to be fixed, what are your
18 recommendations for how the system needs to be fixed?

19 A. Again, I'm not sure it's completely in line
20 with this expert report, but what has occurred is
21 that the base capacity of OP grant schools has been
22 modified by SB50 rules about what is chargeable and
23 what is not chargeable, to the extent that some
24 schools can claim an excessive number of students
25 being housed by a year round operations.

1 That's diluted the funding pool to the point
2 where the fixed amount of money eligible for OP
3 grants every year is spread among about five times as
4 many kids as it should; therefore, everybody gets 20
5 cents on the dollar. It's a very rough
6 approximation.

7 The reality is the smaller districts that
8 are getting it are getting shortchanged and yet their
9 outlay, their cost are not reduced at all. So you
10 have the same amount of outgo, you get one-fifth the
11 income and the schools are getting crunched, and
12 these tend to be very poor, high minority, high ESL
13 schools. Where they have less, they deserve every
14 penny they can get to maintain the program through
15 supplemental services.

16 So there really is a situation that's a
17 little bit outside Williams, but it affects many of
18 the same kids.

19 Q. Is it your testimony that it's primarily the
20 smaller school districts who are affected by the --
21 what you said are the deficiency and the operational
22 grant system?

23 A. No. I mean, I appreciate you bringing that
24 up. The effect in big districts, small district,
25 it's a per capita, so everybody is feeling it. I

1 program is not functioning as it was intended.

2 So the students on operational grants -- in
3 operational grant schools, today they're losing 100
4 percent of their eligibility. They're getting 20
5 percent of promised funding. Clearly something is
6 broken.

7 Different people have different proposed
8 solutions. What I would advocate for would be --
9 you've asked for my opinion -- is to restore the
10 eligibility to those students and phase out the
11 operational grant program. The governor has proposed
12 phasing it out over four years. So give back the
13 eligibility today, that gives us four years to build
14 the buildings and take away the money in four years.
15 I think it's so broke, it can't be fixed.

16 But what isn't fair is to take away all
17 eligibility today and give me 20 cents on the dollar.
18 BY MR. SEFERIAN:

19 Q. In the work that you prepared for this case,
20 did you actually make a list of the districts and the
21 extent of their school facility program funding loss
22 as a result of having students on multitrack who were
23 counted as adequately housed?

24 A. I don't believe I prepared a separate list.
25 I simply printed out the download from the website,

1 think the reality is the -- again, by the rules being
2 skewed a little bit, larger districts are able to
3 transfer their eligibility and noneligibility and get
4 approximately the same or more dollars. And the
5 smaller districts are the ones getting fewer actual
6 dollars.

7 So again, the effect depends on the
8 individual circumstances of the districts. It's not
9 the size of the district. But the reality is most
10 districts are getting about one-fifth of what they're
11 entitled to. They're used to getting about 90
12 percent or so. Now they're getting 20 percent, and
13 it's an absolute problem.

14 Q. Would you agree that the actual eligibility
15 effect from what you've described as a problem with
16 operational grant system, is having a greater effect
17 on smaller districts than large districts overall?

18 MR. ELIASBERG: Objection; vague as to
19 eligibilities.

20 THE WITNESS: I think it would be very hard
21 to answer that question without reviewing the effects
22 case by case by case, which, again, is a little bit
23 beyond the scope of this.

24 I think it's sufficient to say, at this
25 point that the two programs are linked. The one

1 and there's a total at the bottom of the page.

2 Q. Which website are you referring to?

3 A. Department of Education.

4 Q. Under current laws, are there some districts
5 who have students on the multitrack calendars who are
6 counted as adequately housed who have not or will not
7 receive any fewer state funding dollars because of
8 having those students?

9 MR. ELIASBERG: Objection; vague and
10 ambiguous.

11 THE WITNESS: Boy. Oh, boy. Let me see if
12 I understand your question.

13 You asked if a district is operating a multitrack
14 school and will not lose any eligibility -- yes.

15 MR. SEFERIAN: Let me ask it again.

16 THE WITNESS: Okay. Shorter sentences.
17 Four o'clock rule, you got to use shorter sentences.

18 BY MR. SEFERIAN:

19 Q. Are there some school districts that have
20 students on multitrack who are counted as adequately
21 housed but who do not receive any fewer state funding
22 dollars as a result of having those multitrack
23 students being considered as adequately housed?

24 A. I think you're -- let me answer your
25 question by saying that there are districts on

1 multitrack who did not apply or have not applied for
2 the operational grant money. They have no loss in
3 eligibility, that you simply count the number of
4 chairs they have. Those are considered adequately
5 housed. All the other kids are eligible for
6 funding.

7 This -- the school districts that took the
8 operational grant, you count the chairs they have,
9 and then you add a factor for the additional students
10 housed on multitrack. Those are also deducted. In
11 exchange, you were to get an annual payment. So
12 there are some districts that operate multitrack
13 where the students in excess of the number of seats
14 that are determined through the eligibility formula
15 are completely eligible for funding.

16 One of the changes brought about SB50 was
17 prior to then, once you took an operational grant
18 dollars, you lost your eligibility forever. You
19 could never ever get it back. But the legislation
20 changed -- I'm sorry. It wasn't the SB50. It was
21 the clean up bill AB695 said if you stop taking the
22 dollars, you get your eligibility back the next year.

23 So it allowed districts that chose to get
24 off of the operational grant to get their eligibility
25 back. So you give up the money, get your eligibility

1 back.

2 Q. Would you also disagree that there are some
3 districts who are receiving year-round education
4 operational grants and who have students on
5 multitrack who are counted as adequately housed and
6 who have still not lost construction eligibility or
7 construction funding because they have students
8 who -- on multitrack who are counted as adequately
9 housed?

10 MR. ELIASBERG: Objection. Counsel, it
11 also misstates his very testimony. He didn't agree
12 to anything in the last question, so he's not also
13 agreeing to go anything.

14 THE WITNESS: If you're asking whether
15 there's anybody on -- receiving OP grant dollars that
16 hasn't lost eligibility, there is a section of the
17 law that says certain school sites that have very
18 high people density do not take the OP grant yet.

19 So there is a limited number of school sites
20 out there that are benefiting from that one section.
21 That could be seen as predecessor to the critically
22 overcrowded schools legislation.

23 There was an attempt to balance the scales,
24 if you will, to notify those very, very small
25 overcrowded schools and allow those kid to try and

1 get a new facility.

2 So the -- I don't want to create the image
3 that the state has never responded to this program,
4 but the response is very narrow, very limited and
5 only applied to really a handful of school sites in
6 the entire State of California.

7 But you're correct in noting that there was
8 one narrow exception out there. And I could give you
9 a code section if I had a book here. But off the top
10 of my head, I've forgotten it.

11 BY MR. SEFERIAN:

12 Q. Do you agree, is that the state statutes and
13 regulations that provide that projected enrollment
14 from unbuilt homes on approved tract maps count the
15 same as students currently enrolled increases the
16 opportunity for school districts to begin planning
17 early for anticipated school age population growth?

18 A. I would agree that the intent of the tract
19 map section is to allow districts to -- actually, let
20 me restate that if I may. Let met start over again.

21 You're positing that the eligibility from
22 tract maps allows for early planning. The early
23 planning can occur with or without the eligibility.
24 When a track map is included, I know it's coming. I
25 can talk to the developer. I can plan for a school

1 site.

2 That part can happen irrespective of the
3 eligibility. Those districts also get construction
4 eligibility for those future homes. I think that's a
5 key difference.

6 So if your question about planning --
7 planning is not related to the eligibility kick.
8 That is you can plan now, you can plan with
9 eligibility, plan without eligibility. What it does
10 is allows me to apply to the state for money to
11 design that school, to prepare for it and get it
12 built before the kids even move into the first
13 house. That's the differential effect.

14 The planning could occur without the
15 construction eligibility. And the SB50 program, the
16 school facilities program, planning and construction
17 are all one package.

18 In the old predecessor, the lease purchase
19 program there were two separate applications. First
20 I'd apply for planing money. Then later for
21 construction money.

22 SB50 compressed those into one phase
23 construction only. So I said earlier that the
24 district has to front load the process, that would be
25 -- the planning effort would be a district task.

1 Whether it that's good or bad is -- depend on the --
2 your circumstances, but that's the reality of the law
3 today.

4 Q. Do you agree that states statutes and
5 regulations that provide that projected enrollment
6 from unbuilt homes on approved tract maps count the
7 same as students currently enrolled, are effective in
8 helping those school districts design and build new
9 facilities?

10 A. Yes. I would -- you'd have to say yes to
11 that question. By giving the eligibility earlier in
12 time before the homes are even built, it is assisting
13 those districts that can take advantage of that --
14 the opportunity to start their planning, design and
15 construction earlier in time. So, yes, that would be
16 the intended outcome.

17 I'm not sure that exactly answers your
18 question.

19 But the effect of that section is to allow
20 those districts that can avail themselves of that
21 eligibility to build earlier.

22 Q. What changes would you make to this statute
23 and regulations that provide the projected enrollment
24 from unbuilt homes on approved tract maps count the
25 same as students currently enrolled?

1 given only to a subset of the school districts. An
2 older built-out community where you have new
3 families, emigrant families, whatever, moving into
4 old apartments, they don't get anything. So it is an
5 unfair advantage.

6 It may be a legitimate advantage, and it may
7 be necessary or important in those cases. But you
8 can cross into another community that has the same
9 rate of growth, and they get nothing. So it's a
10 decision that was made, and that's the way it is.

11 BY MR. SEFERIAN:

12 Q. Would it be fair to say that you agree in
13 principle with the state's statutes and regulations
14 that provide that projected enrollments from unbuilt
15 homes on approved tract maps count the same as
16 students currently enrolled?

17 MR. ELIASBERG: Objection; vague and
18 ambiguous.

19 THE WITNESS: If you're -- let me see. I
20 believe your question said: Do I agree with the
21 statute and regulation in effect today? I understand
22 it. I don't agree with it. I would like to see it
23 modified, as I've previously answered.

24 BY MR. SEFERIAN:

25 Q. If you were going to assume that the

1 MR. ELIASBERG: Objection; assumes facts.
2 Incomplete hypothetical.

3 THE WITNESS: If I could write the
4 regulations, I would trim the sails of that program a
5 little bit and maybe allow three years of -- it would
6 be a projected homes built in the next three years to
7 be counted.

8 There is a valid point here. When a huge
9 tract is approved, and you know the kids are coming,
10 you want to get a jump start on it.

11 The original law was absolutely unlimiting
12 in time. It could be houses being built 30 years
13 from now would be counted. The regulation were
14 modified a couple years ago to be the next five
15 years. Which is still kind of getting out there on
16 the horizon.

17 So if it were two or three years, I'd be
18 much more comfortable with it. Yes, it's a leg up to
19 the rapidly growing area. But, yes, they also have
20 real need.

21 It is impossible in a state as big and
22 diverse as California to have something that's
23 utterly completely fair to everybody. So we have to
24 look at the different effects.

25 Again, the reality is, it's an advantage

1 statutes and regulations were modified to provide
2 that the projected enrollment from unbuilt homes and
3 approved tract maps projected three years would count
4 the same as students currently enrolled, would you
5 agree with that system?

6 A. I would prefer that to the current system.
7 If I had to do the whole statewide system over again,
8 I would probably leave out that section. A kid is a
9 kid.

10 I don't see why we give kids in unbuilt
11 houses preferences over kids today in old
12 apartments. Three years would be better, but I would
13 -- other than the political expedience, I don't
14 really see why it needs to be there in the first
15 place.

16 Q. If we assume that the state statutes and
17 regulations were changed so that enrollment from
18 unbuilt homes on approved tract maps could only be
19 projected three years, would that actually result in
20 different allocations of school facility program
21 funding that would otherwise occur under current law?

22 A. You're asking a hypothetical question. I
23 believe the logical answer would be yes. By changing
24 from a five-year projected window to a three-year
25 projected window or a one-year projected window,

1 would change the eligibility of some districts who
2 would then, in turn, change their availability and
3 practice of applying for funding.

4 So, yes, there would be a real world
5 effect. That would leave more money in the
6 unfundable pot or unallocated pot to go to whoever
7 was the next district to come in the front door.

8 Because we are dealing with a finite amount
9 of resources that would go to somebody, it's really a
10 choice of who will get a piece of that pie of
11 resources, rather than will it all get spent. We
12 know it all will get spent.

13 The question is who gets it. And that's the
14 business. You know, who is going to get the money
15 and how quickly they can get in the line and get
16 their plans in and grab a piece of it.

17 Q. Do you have any estimate or way of
18 quantifying how the allocations from the school
19 facility program fund would be different if the
20 approved tract map provisions could only be project
21 three years instead of five years?

22 A. I do not have any independent basis. Again,
23 if we had a more robust database of the eligibility
24 at OPSC, we could give a very clear answer on that.
25 Right now there's no way of knowing that without

1 A. Rapidly growing communities there, as used
2 in that context, again, is referring to the previous
3 sentence. That talks about tract maps. Is rapidly
4 growing, as in rapidly developing with new housing
5 units.

6 Q. Would you agree that in a rapidly growing
7 community, typically if new schools are not built,
8 then existing schools will become more crowded?

9 A. Again, as an answer to your hypothetical
10 question, if a community is rapidly growing with
11 family -- the enrollment is also growing and new
12 facilities are not built, yes, there will be
13 increasing crowding.

14 The question that I think your hypothetical
15 avoided is, do they deserve new facilities more than
16 the existing overcrowded school right across the
17 river or the county line or the city boundary or
18 whatever it is.

19 You know, again, I have to compare like
20 Korea Town in Los Angeles which was an older built
21 out -- total built-out community that had very few
22 kids. The community changed.

23 Now it has lots and lots and lots of kids.
24 No -- virtually no new housing versus Elk Grove that
25 had lots of hay fields and now has lots of houses.

1 going through each and every application in there.
2 And you know, you're talking 850 some odd
3 applications.

4 So ideally, that would be available data.
5 It would be very beneficial for policy makers and
6 independent analysis. Right now, that data does
7 exist. It is not in accessible form, and I don't
8 believe anybody else has analyzed it. It would be
9 interesting.

10 Q. Would you agree that in a rapidly growing
11 community, there will often be a need for additional
12 public school facilities to be built?

13 MR. ELIASBERG: Objection; incomplete
14 hypothetical.

15 THE WITNESS: You're asking whether rapid
16 growth is usually an indicator of need for new
17 schools. Typically, that is correct. Not always,
18 but typically, yes, it would fit together.

19 You need to quantify rapidly as a percentage
20 or an absolutely number. It needs to be clarified a
21 little bit, but in general.

22 Q. On page 48 of your report in the last
23 sentence of the first paragraph under heading B, what
24 did you have in mind when you used the term "rapid
25 growing communities"?

1 They both have needs; both needs are legitimate.

2 Why does Elk Grove have a priority that
3 Korea Town doesn't? I could Korea Town or parts of
4 the San Francisco or Oakland or other communities as
5 well.

6 What we have is a favoritism given to the
7 people who go from open land to housing. Where you
8 go from few kids to many kids in existing housing,
9 you get absolutely nothing. Just stand in line with
10 everybody else. One gets -- your competitor gets the
11 advantage, and they have developer fees to front load
12 the project that existing housing doesn't earn, don't
13 get any developer fees for new families in old
14 housing.

15 Q. In that same sentence on page 48 of your
16 report, which program were you referring to that was
17 designed to meet growth needs for new schools in
18 rapidly growing communities?

19 A. You're correct. The reference program is a
20 little vague. As used in this paragraph in this
21 sentence, program refers to counting students from
22 tract maps as -- as enrollment to determine
23 eligibility.

24 Q. In your opinion, have the rules that provide
25 for enrollment from unbuilt homes on approved tract

1 maps been effective in meeting growth needs for new
2 schools in rapidly growing communities?

3 A. That -- I can't answer that because it
4 requires a lot of speculation. I do recall -- I'll
5 give you an anecdote that, hopefully, will illustrate
6 the point here. Is -- holy cow. Let me think here.

7 About a year ago, Elk Grove Unified in
8 Sacramento County had five new schools funded under
9 -- by the allocation board under the last of the
10 Prop 1A money. That was, I think, the June quarter
11 ending.

12 They were the only district -- growing
13 district to get any money at all. They did it
14 because of two quirks in the rules. One is excluded
15 classrooms and two is tract maps.

16 Everybody else is still standing in line.
17 The next time around, Los Angeles had its
18 applications in, and they had so many more priority
19 points. They got all the money.

20 But to -- my friends in San Maria, in
21 Salinas, in Stockton and everywhere else, they got
22 nothing. Elk Grove got five brand new schools
23 because of that section.

24 So it did have an effect. How broad that
25 effect is, I don't know. Again, you know, you're

1 financial hardship?

2 A. The application process, the criteria for
3 financial hardship status are intentionally very
4 limiting. It is meant to be difficult. And it is
5 meant to be an option of last resort. The goal is
6 for the local district to come up with the money.
7 And you have to really prove that you don't have any
8 money.

9 Q. Would you agree that in addition to becoming
10 eligible for financial assistance for new
11 construction and modernization, a district meeting
12 the financial hardship criteria may also be eligible
13 for an early apportionment for design costs?

14 A. That is one of the provisions of the
15 financial hardship program. So if you meet the very
16 tough eligibility criteria, you can ask for advance
17 funding because, again, you don't have any money.

18 Q. Would you agree that the financial hardship
19 provisions in the school facility program are
20 designed by the State of California to help any
21 school district pay for needed modernization projects
22 and new construction that it otherwise might be
23 unable to afford?

24 MR. ELIASBERG: Objection; vague. Calls
25 for speculation.

1 dealing with some data that just is not well
2 distributed or published. And Elk Grove, I'll say,
3 has tremendous needs. They really do deserve the new
4 schools, but so do other people. So they got five,
5 everybody else got zero.

6 Q. In the last sentence of page 48 when you
7 say, "a 20 percent local match may be reduced or
8 waived if certain criteria are met," which criteria
9 were you referring to in that sentence?

10 A. That would be the financial hardship status.

11 Q. Would you agree that in some cases, school
12 districts that are unable to contribute some or all
13 of the local modernization match, may be eligible for
14 financial hardship assistance in which the state will
15 pay part or all of the district's share of the
16 construction project?

17 A. Your question is: Are some districts
18 eligible for financing hardship to pay the 20 percent
19 match, now 40 percent match on modernization. The
20 answer is, yes, there are districts that are eligible
21 Monterey Peninsula Unified just got a bunch of
22 funding under that rule. It's difficult to qualify
23 for financial hardship. But some districts are, in
24 fact, eligible.

25 Q. Why do you say it's difficult to qualify for

1 THE WITNESS: I believe your statement is
2 inaccurate. Because you said allows any school
3 district to obtain funding, and that's just not the
4 way the rules work. The financial hardship, it's a
5 very difficult set of circumstances to meet that
6 test. And if you happen to meet the test, yes, the
7 program is there.

8 But saying that there's a program over here
9 for very limited number of districts, and saying all
10 districts can have access to the money are two very
11 different things. So I don't disagree with your
12 statement. But I do concede that those districts
13 that meet eligibility are able to apply.

14 There is a consequence to them applying
15 because when you sign up for financial hardship, the
16 state basically takes all your capital outlay money.
17 So if you need to replace playground equipment, you
18 don't have any capital outlay money anymore. They
19 took it away from you.

20 And in the real world, districts are forced
21 to make really tough choices. Do you let kids play
22 on dangerous playground equipment, or do you get in
23 there and fix the bathrooms and the lights so that
24 you can conduct classes? That's a heck of a choice
25 for somebody to make.

1 They take away your bus replacement fund.
2 They take away your vehicle replacement fund. They
3 really do go through the books pretty -- pretty
4 intensively.

5 BY MR. SEFERIAN:

6 Q. Would you agree that the financial hardship
7 provisions in the school facilities program were
8 designed by the state to help those school districts
9 that qualify for the hardship provisions to pay for
10 needed projects that they otherwise might be unable
11 to afford?

12 MR. ELIASBERG: Objection; it calls for
13 speculation.

14 THE WITNESS: I don't really know the
15 intent. I would be speculating on that. But I do
16 know the effect is for districts that do meet the
17 eligibility criteria, for these districts that are
18 able to meet the eligibility criteria, it is a
19 benefit, and they are able to participate in the
20 program.

21 There's a down side to them being in the
22 program in that they give up other monies and other
23 flexibilities, but, yes, you're right. If you meet
24 the criteria, it does allow you to participate in
25 that program with the limitations that the financial

1 desperate, you know, it's the only game in town. So
2 I would like to see some changes in the program. I
3 don't believe it's entirely a fair program. I
4 believe it's a little excessive in its requirements.

5 But for the districts who would otherwise
6 utterly be left out in the cold, it is better than
7 being left out in the cold.

8 BY MR. SEFERIAN:

9 Q. What do you mean when you say,
10 "Status auditing reeligibility
11 process in the financial hardship
12 provisions of the school facilities
13 program is burdensome?"

14 A. It's a very complex financial reporting form
15 to prove that you really don't have any other money.
16 It's kind of like declaring bankruptcy, and then
17 coming back in six months and declaring bankruptcy
18 again. You have to go back. You have to meet with
19 them. Be audited by them. You have to show your
20 verified statements. It's a lot of paperwork. And
21 because no project gets done in six months, it means
22 you have to apply and then reapply and then reapply
23 and reapply.

24 Testimony from every district I know that
25 has gone through it, has been exactly the same: Is

1 hardship program imposes.

2 BY MR. SEFERIAN:

3 Q. Does the financial hardship provisions in
4 the school facility program result in new
5 construction and modernization projects occurring
6 that would otherwise not occur without the hardship
7 provisions?

8 A. For those districts that need the
9 eligibility criteria, yes, those provisions have been
10 beneficial. And they have allowed some projects to
11 go forward, but again, there's a real cost to the
12 district. But in the limited circumstances, it has
13 done what it was intended to.

14 Q. Do you have any criticisms of the financial
15 hardship provisions of the school facility program?

16 MR. ELIASBERG: Other than the ones he's
17 been lying out for the past couple of minutes?

18 THE WITNESS: We'd gone over this earlier
19 in the day, but, yes, I do. I believe the program is
20 overly strict. It takes away too much of the capital
21 funding of the district, leaving it utterly unable to
22 respond to other very legitimate needs of the
23 schools. I believe the auditing and constant
24 reeligibility verification process is burdensome.

25 But when people are really, really

1 that it's burdensome. It's difficult. It's very
2 time consuming. It takes time and staff energy away
3 from the modernization and new construction
4 projects.

5 MR. SEFERIAN: Off the record. Let's take
6 a break for the day.

7 MR. ELIASBERG: Fine. Thank you.
8 (Time: 5:10 p.m.)
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1 STATE OF _____)
2 COUNTY OF _____)

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6
7 I, ROBERT CORLEY, the undersigned, declare
8 under penalty of perjury that I have read the
9 foregoing transcript, and I have made any
10 corrections, additions or deletions that I was
11 desirous of making; that the foregoing is a true and
12 correct transcript of my testimony contained therein.

13 EXECUTED this _____ day of _____,
14 20____, at _____, _____.
(city) (state)

15
16
17 _____
18 ROBERT CORLEY
19
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1 REPORTER'S CERTIFICATION OF CERTIFIED COPY

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6
7 I, JANE H. STULLER, CSR No. 7223, a
8 Certified Shorthand Reporter in the State of
9 California, certify that the foregoing pages 1
10 through 198, constitute a true and correct copy of
11 the original deposition of ROBERT CORLEY, taken on
12 February 10, 2003.

13 I declare under penalty of perjury under
14 the laws of the State of California that the
15 foregoing is true and correct.

16
17 Dated the 27th day of February, 2003.
18
19
20

21 JANE H. STULLER, C.S.R. NO. 7223
22
23
24
25

1 REPORTER'S CERTIFICATE

2
3
4 I, JANE H. STULLER, CSR No. 7223, Certified
5 Shorthand Reporter, certify;

6 That the foregoing proceedings were taken
7 before me at the time and place therein set forth, at
8 which time the witness was put under oath by me;

9 That the testimony of the witness and all
10 objections made at the time of the examination were
11 recorded stenographically by me and were thereafter
12 transcribed; that the foregoing is a true and correct
13 transcript of my shorthand notes so taken.

14 I further certify that I am not a relative or
15 employee of any attorney or of any the parties, nor
16 financially interested in the action.

17 I declare under penalty of perjury under the
18 laws of California that the foregoing is true and
19 correct.

20 Dated this 27th day of February, 2003.
21
22
23

24 JANE H. STULLER, C.S.R. No. 7223
25