

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

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 THOMAS E. HENRY

San Francisco, California

Tuesday, August 21, 2001

Volume I

Reported by:
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Job No. 27574

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1 BE IT REMEMBERED, that on Tuesday, August 21,
2 2001, commencing at the hour of 8:41 a.m., thereof, at
3 the Law Offices of Morrison & Foerster LLP, 425 Market
4 Street, 32nd Floor, San Francisco, California, before
5 me, TRACY LEE MOORELAND, a Certified Shorthand Reporter
6 in the State of California, there personally appeared
7 THOMAS E. HENRY,
8 called as a witness herein, who, having been duly sworn
9 to tell the truth, the whole truth, and nothing but the
10 truth, was thereupon examined and interrogated as
11 hereinafter set forth.
12 ---o0o---
13 EXAMINATION BY MR. ROSENBAUM
14 Q. Can you state your full name for the record,
15 please.
16 A. Thomas E. Henry.
17 Q. How are you doing?
18 A. Doing great.
19 Q. Okay. Mr. Henry, have you had your deposition
20 ever taken before?
21 A. Yes.
22 Q. You're familiar with the procedures that are
23 followed generally with respect to depositions?
24 A. Yes.
25 Q. You've had a chance to discuss them with your

1 attorney?
 2 A. Yes.
 3 Q. And just for the record, your counsel is here
 4 with you?
 5 A. Yes.
 6 MR. ROSENBAUM: And why don't you state your
 7 name for the record.
 8 MR. FEKETE: Frank Fekete.
 9 Q. BY MR. ROSENBAUM: Okay. You know that you
 10 should just answer as fully and as fairly as you
 11 possibly can the questions.
 12 A. Yes.
 13 Q. And if any of my questions aren't clear to you,
 14 please ask me, and I'll be happy to clarify my question
 15 or restate it. Okay?
 16 You have to answer audibly for --
 17 A. I wasn't sure if you were asking a question or
 18 making a statement.
 19 Q. If you have any questions about anything I ask,
 20 please ask me and I'll be happy to clarify my questions
 21 for you.
 22 A. I will.
 23 Q. I want you to be as comfortable as possible.
 24 If you want a break at any point or just a stretch,
 25 please let me know, and I'll be glad to accommodate you.

1 A. Okay.
 2 Q. Can you state your present position?
 3 A. I am the chief executive officer for the Fiscal
 4 Crisis and Management Assistance Team.
 5 Q. Okay. And Fiscal Crisis Management Assistance
 6 Team is that known as FCMAT?
 7 A. Yes.
 8 Q. F-C-M-A-T, all caps?
 9 A. Yes.
 10 Q. And how long have you been in that position?
 11 A. I've been in that position for the last seven
 12 years.
 13 Q. How long has FCMAT been in existence?
 14 A. Since 1992, I believe.
 15 Q. Okay. And can you summarize for me, please,
 16 what your duties and responsibilities are?
 17 A. As the chief executive officer, I provide the
 18 administration of FCMAT services and products.
 19 Q. Okay. And can you tell me what FCMAT does?
 20 MR. HERRON: Objection. Calls for a narrative.
 21 THE WITNESS: FCMAT provides services and
 22 products to California public schools.
 23 Q. BY MR. ROSENBAUM: To whom do you report?
 24 MR. HERRON: Objection. Vague and ambiguous.
 25 THE WITNESS: I report directly to my immediate

1 supervisor and employer, Dr. Larry Rider.
 2 Q. BY MR. ROSENBAUM: Okay. Are you in any
 3 reporting line for the superintendent of schools,
 4 Delaine Eastin?
 5 A. No.
 6 Q. Or to the governor?
 7 A. No.
 8 Q. Or to the State Board of Education?
 9 A. No.
 10 MR. HERRON: Objection. Calls for a legal
 11 conclusion.
 12 Q. BY MR. ROSENBAUM: Or to the Department of
 13 Education?
 14 MR. HERRON: Objection. Calls for a legal
 15 conclusion.
 16 THE WITNESS: No.
 17 Q. BY MR. ROSENBAUM: Have you taken a look at the
 18 complaint in this case?
 19 A. Yes.
 20 Q. Have you read it?
 21 A. Yes.
 22 Q. And specifically have you read allegations in
 23 the complaint relating to conditions in California
 24 schools relative to facilities and school sites?
 25 MR. HERRON: Objection. Asked and answered.

1 THE WITNESS: You're asking whether I have read
 2 the complaint in regards to the Williams versus the
 3 State?
 4 MR. ROSENBAUM: Yes, sir.
 5 THE WITNESS: Yes.
 6 Q. BY MR. ROSENBAUM: Okay. And do you have an
 7 opinion, Mr. Henry, regarding the accuracy of the
 8 complaint relating to conditions in California schools
 9 relative to facilities and school sites?
 10 MR. HERRON: Objection. Improperly calls for
 11 an expert opinion. Vague and ambiguous. Calls for
 12 speculation. Overbroad. Unfair.
 13 MR. ROSENBAUM: You're the best expert in the
 14 state. Go ahead.
 15 THE WITNESS: Would you repeat the question.
 16 Q. BY MR. ROSENBAUM: Do you have an opinion
 17 regarding the accuracy of the complaint relating to
 18 conditions in California schools relative to facilities
 19 and school sites?
 20 MR. HERRON: All the same objections.
 21 THE WITNESS: No.
 22 Q. BY MR. ROSENBAUM: Have you characterized --
 23 you've been in California schools, is that right,
 24 pursuant to your job duties and responsibilities?
 25 MR. HERRON: Objection. Vague and ambiguous as

1 to been in schools.
 2 THE WITNESS: You're asking me in my capacity
 3 as chief executive officer whether I've performed some
 4 services or provided products for California public
 5 schools?
 6 MR. ROSENBAUM: Yes.
 7 THE WITNESS: The answer is yes.
 8 Q. BY MR. ROSENBAUM: And you and I have talked
 9 about those conditions; isn't that right?
 10 A. Yes.
 11 Q. And you've characterized the conditions in
 12 California schools relative to facilities and school
 13 sites as pretty poor?
 14 MR. HERRON: Objection. Vague and ambiguous.
 15 THE WITNESS: Yes.
 16 Q. BY MR. ROSENBAUM: Can you tell me the basis
 17 for that answer, please?
 18 MR. HERRON: Objection. Calls for a narrative.
 19 THE WITNESS: Would you repeat the question.
 20 MR. ROSENBAUM: Sure. Let's go off the record
 21 for a minute, please.
 22 (Recess taken.)
 23 MR. ROSENBAUM: It's been requested that we
 24 identify ourselves. I'm Mark Rosenbaum for Williams,
 25 plaintiffs.

1 MS. LHAMON: I'm Katherine Lhamon, also for the
 2 plaintiffs.
 3 MR. HAMILTON: I'm Richard Hamilton with the
 4 California School Boards Association representing an
 5 intervener.
 6 MR. SEFERIAN: Tony Seferian from the attorney
 7 general's office.
 8 MR. HERRON: David Herron from O'Melveny &
 9 Myers representing the State.
 10 MS. FAER: Laura Faer, law clerk with ACLU.
 11 MR. ELIASBERG: And I'm Peter Eliasberg with
 12 ACLU.
 13 MR. ROSENBAUM: Would you mind reading back the
 14 last question and answer.
 15 (Record read.)
 16 Q. BY MR. ROSENBAUM: What was the basis for that
 17 statement?
 18 MR. HERRON: Objection. Calls for a narrative.
 19 Calls for speculation. Calls for an expert opinion
 20 which he is not capable of giving.
 21 THE WITNESS: The basis of that statement would
 22 be in relationship to the work that our agency has done
 23 in the state of California in terms of our assessments
 24 and interventions.
 25 Q. BY MR. ROSENBAUM: When we use the word

1 "conditions," what did you understand that to mean,
 2 conditions in the schools?
 3 A. In terms of the question you're asking today or
 4 the questions that you asked previously?
 5 Q. The questions today, here.
 6 A. Well, the conditions in schools relative to the
 7 site and facility safety.
 8 Q. And when you say "facilities," what are you
 9 referring to?
 10 A. The school buildings located at the school
 11 sites.
 12 Q. When you say "sites," what do you mean?
 13 A. The sites where the school buildings are
 14 located.
 15 Q. Okay. And when you say "safety," what do you
 16 mean by that?
 17 A. The safety of staff and the students relative
 18 to the conditions of those sites and facilities.
 19 Q. Okay. FCMAT goes into different school
 20 districts and conducts inventories of conditions, do I
 21 understand that correctly?
 22 MR. HERRON: Objection. Argumentative.
 23 THE WITNESS: FCMAT has broad responsibilities
 24 that would include occasional assessment of school
 25 districts.

1 Q. BY MR. ROSENBAUM: Okay. And when you say
 2 "assessment of school districts," what do you mean by
 3 that?
 4 A. The legislature has on prior occasions assigned
 5 our agency to do assessments of -- comprehensive
 6 assessments of the five operational areas.
 7 Q. Okay. And when you say comprehensive
 8 assessment, what do you mean by that?
 9 A. Assessment that's based upon predeveloped
 10 standards in those five operational areas.
 11 Q. Okay. And why don't you, for the record, state
 12 what those five operational areas are.
 13 A. Personnel management, financial management,
 14 facilities management, instructional management, and
 15 governance/community.
 16 Q. Thank you. When you say "predeveloped
 17 standards," what do you mean by that?
 18 A. In the assignment at Compton Unified School
 19 District through Assemblyperson Washington, AB 52, we
 20 were required to do a comprehensive assessment in those
 21 five operational areas for purposes of developing a
 22 major -- a process by which we could measure growth to
 23 return the legal rights, powers and duties to the board,
 24 and in doing that, we developed both legal and
 25 professional standards for purposes of measuring growth.

1 Q. And that's in all five of the areas you
2 mentioned?

3 A. Correct.

4 Q. And FCMAT developed those standards; is that
5 right?

6 A. FCMAT --

7 MR. HERRON: Objection. Misconstrues prior
8 testimony. Vague and ambiguous. Calls for a legal
9 conclusion. Calls for speculation.

10 THE WITNESS: FCMAT developed those standards
11 through a process of communicating with the field and
12 other experts in those five areas.

13 Q. BY MR. ROSENBAUM: Okay. And were you involved
14 in the development of those standards?

15 A. Yes.

16 Q. Okay. And what was the nature of your
17 involvement?

18 MR. HERRON: Objection. Vague as to time.
19 Vague and ambiguous as phrased.

20 THE WITNESS: You're asking me at the time that
21 they were developed, what was my personnel involvement?

22 MR. ROSENBAUM: Exactly.

23 THE WITNESS: I was the -- I oversaw the
24 process in terms of making sure that we had a
25 comprehensive review of those five areas, and that we

1 encouraged other policymakers in the state to contribute
2 their expertise relative to those standards.

3 Q. BY MR. ROSENBAUM: Did FCMAT, to your
4 knowledge, consult experts to develop these standards?

5 A. Yes.

6 Q. And experts in what areas?

7 A. We made an effort through correspondence at
8 that time or telephone calls to individuals that we had
9 worked with or knew had a certain expertise in those
10 areas, and requested them to review the operational
11 areas and provide any input relative to standards that
12 may currently be in place at that time or standards they
13 feel that should be in place relative to a comprehensive
14 assessment.

15 Q. And as part of the FCMAT process, I think what
16 you told me, and I just want to see if I understand
17 correctly, from time to time FCMAT does go into
18 different school districts and conduct inventories of
19 conditions of school sites?

20 MR. HERRON: Objection. Vague and ambiguous.
21 Misconstrues prior testimony.

22 THE WITNESS: If you're asking has FCMAT been
23 assigned into a school agency whereby we have conducted
24 assessments of the facilities or sites, the answer is
25 yes.

1 Q. BY MR. ROSENBAUM: And the conditions of those
2 facilities?

3 A. Yes.

4 Q. Okay. And tell me, Mr. Henry, how is that
5 inventory conducted? How does FCMAT go about its
6 business?

7 MR. HERRON: Objection. Calls for a narrative.
8 Calls for speculation. Vague and ambiguous as to
9 phrased.

10 THE WITNESS: In those assignments that have
11 been made through the state legislature, that process
12 has been fairly consistent in that we have applied those
13 comprehensive standards in the five operational areas in
14 the development of the comprehensive report.

15 Q. BY MR. ROSENBAUM: And could that include
16 actually going and looking at the conditions at the
17 schools themselves?

18 MR. HERRON: Objection. Calls for speculation.

19 THE WITNESS: In those assignments that I
20 referenced earlier through the legislature, yes, it has
21 included on-site review and assessment of the sites and
22 facilities.

23 Q. BY MR. ROSENBAUM: And for what objective, for
24 what purpose?

25 A. For purposes of determine whether the standards

1 have been met.

2 Q. Okay. And with respect to that purpose, is it
3 important to do on-site investigations?

4 A. Yes.

5 Q. Why is that?

6 A. So that it's not a subjective assessment, that
7 it's objective based upon the standards that have been
8 developed.

9 Q. Okay. And to your knowledge, Mr. Henry, there
10 is no statewide inventory of conditions at public
11 schools throughout California?

12 MR. HERRON: Objection. Calls for a legal
13 conclusion. Calls for speculation. Calls for expert
14 witness testimony.

15 MR. ROSENBAUM: Make any objection you want,
16 just let me finish the question.

17 MR. HERRON: I thought you were done.

18 Q. BY MR. ROSENBAUM: Isn't that right?

19 MR. HERRON: Objection. Argumentative as well.

20 THE WITNESS: Would you repeat the question.

21 Q. BY MR. ROSENBAUM: To your knowledge,
22 Mr. Henry, there isn't any statewide inventory of
23 conditions at public schools in California?

24 MR. HERRON: All the same objections.

25 THE WITNESS: If you're asking me whether I'm

1 aware of a document that the state has developed
 2 relative to the conditions of facilities and sites in
 3 the state of California, I'm not aware of that document
 4 if it exists.
 5 Q. BY MR. ROSENBAUM: Have you ever heard one
 6 proposed?
 7 MR. HERRON: Objection. Vague and ambiguous.
 8 THE WITNESS: Are you asking whether I'm aware
 9 of any agency that has actually asked whether there
 10 should be an inventory?
 11 MR. ROSENBAUM: Yes.
 12 THE WITNESS: Yes.
 13 Q. BY MR. ROSENBAUM: Who is that?
 14 MR. HERRON: Objection. Vague and ambiguous.
 15 THE WITNESS: I believe the Little Hoover
 16 Commission Report suggested in one of their
 17 recommendations that there should be an inventory of
 18 facilities, and maybe the Ed-Source study that was done
 19 several years ago may have suggested that as well. I'm
 20 not sure about that.
 21 Q. BY MR. ROSENBAUM: And the Little Hoover
 22 Commission Report that you're referring to, that's the
 23 February 2000 report?
 24 MR. HERRON: Objection. Calls for speculation.
 25 Misconstrues prior testimony. He never said anything

1 about a report.
 2 THE WITNESS: The Little Hoover report was a
 3 report done around that time period. I'm not sure of
 4 the exact date of it. To Build a Better School, I
 5 believe, was the title.
 6 Q. BY MR. ROSENBAUM: Okay. And you've reviewed
 7 that report or a draft of it?
 8 MR. HERRON: Objection. Vague and ambiguous.
 9 THE WITNESS: I have read the report, yes.
 10 Q. BY MR. ROSENBAUM: And do you agree with the
 11 recommendation regarding the inventory that you
 12 referenced?
 13 MR. HERRON: Objection. Vague and ambiguous.
 14 THE WITNESS: I believe there should be a state
 15 inventory of facilities and sites, yes.
 16 Q. BY MR. ROSENBAUM: And why is that?
 17 MR. HERRON: Objection. Calls for testimony
 18 beyond the scope of his duties at FCMAT. Calls for
 19 expert -- improperly calls for expert testimony. Calls
 20 for a legal conclusion. Calls for a narrative. Object
 21 on all those grounds.
 22 THE WITNESS: Would you repeat the question.
 23 Q. BY MR. ROSENBAUM: Sure. Why do you agree with
 24 that recommendation regarding the inventory?
 25 MR. HERRON: All the same objections.

1 THE WITNESS: It seems clear that if there's an
 2 inventory relative to sites and facilities, that it
 3 would help the policymakers make informed decisions
 4 relative to funding of facilities and site issues.
 5 Q. BY MR. ROSENBAUM: And also prioritizing needs?
 6 MR. HERRON: Objection. Argumentative, and all
 7 the objections posed to the last question.
 8 MR. FEKETE: I want to add an objection also.
 9 If you're going to ask a question, would you ask a
 10 question and not a phrase.
 11 MR. ROSENBAUM: Sure. I'll restate the
 12 question.
 13 Q. You believe, don't you, Mr. Henry, that the
 14 state should have a good feel for the conditions at the
 15 public schools?
 16 MR. HERRON: Objection. Vague and ambiguous.
 17 Argumentative. Calls for speculation. Calls for a
 18 legal conclusion. Seeks expert testimony which this
 19 witness is not qualified to deliver.
 20 THE WITNESS: I'm not sure if "good feel" is
 21 the term that I would use, but I believe the state could
 22 benefit by an inventory of facilities and sites relative
 23 to proper decision-making, informed decision-making in a
 24 number of areas.
 25 Q. BY MR. ROSENBAUM: And what areas?

1 A. Funding relative to construction and deferred
 2 maintenance issues.
 3 Q. Any other areas?
 4 MR. HERRON: All the same objections interposed
 5 to the last question.
 6 THE WITNESS: I'm not sure what other areas I
 7 could come up with right now.
 8 Q. BY MR. ROSENBAUM: When you say "policymakers,"
 9 whom are you referring to?
 10 A. Those individuals in Sacramento that set
 11 policies for the California public schools.
 12 Q. Okay. And to your knowledge, who would that
 13 include?
 14 MR. HERRON: Objection. Calls for a narrative.
 15 Calls for speculation. Calls for a legal conclusion.
 16 Vague and ambiguous. Vastly overbroad and unfair to
 17 this witness.
 18 THE WITNESS: It's my opinion that the
 19 policymakers start with the state legislature, and
 20 include superintendent of public instruction, secretary
 21 of education.
 22 Q. BY MR. ROSENBAUM: Okay. And, Mr. Henry, is it
 23 correct that another reason that you believe an
 24 inventory should be conducted is that the information
 25 collected would be used to drive policy?

1 MR. HERRON: Objection. Argumentative. Asked
2 and answered in part. Vague and ambiguous as phrased.

3 THE WITNESS: I believe I have answered that
4 relative to informed decision-making relative to the
5 inventory.

6 Q. BY MR. ROSENBAUM: Okay. And if you've
7 answered this already, just bear with me. You believe
8 that one of the purposes is to ensure that the necessary
9 resources be attached to meet needs that have been
10 identified, is that a fair characterization of your
11 review?

12 MR. HERRON: Objection. Argumentative.

13 THE WITNESS: Yes.

14 MR. HERRON: Posthumously object.
15 Argumentative. Vague and ambiguous.

16 Q. BY MR. ROSENBAUM: Mr. Henry, you're familiar
17 with the State Allocation Board; is that right?

18 A. Yes.

19 Q. And what's your understanding of what the State
20 Allocation Board is?

21 A. I haven't had any direct involvement with the
22 State Allocation Board for several years, but when I was
23 a superintendent years ago, through the process of
24 constructing school districts, I had the opportunity to
25 work with that agency. And my understanding is that

1 since it's your term.

2 THE WITNESS: I understand it to mean the
3 conditions of California public schools relative to
4 facilities and sites.

5 Q. BY MR. ROSENBAUM: Thank you. Regarding the
6 inventory that you and I were talking about a few
7 moments ago, do you believe, based on your training and
8 experience, Mr. Henry, that the inventory for a
9 particular school district should be conducted by the
10 school district itself?

11 MR. HERRON: Objection. Calls for speculation.
12 Calls for testimony beyond his role at FCMAT.

13 MR. ROSENBAUM: Go ahead.

14 MR. HERRON: Calls for expert opinion
15 testimony.

16 THE WITNESS: Repeat the question.

17 Q. BY MR. ROSENBAUM: Sure. You and I talked
18 several moments ago about inventories of school
19 conditions. Do you recall that?

20 A. Yes.

21 Q. And isn't it correct, sir, that it's your
22 belief that the inventory for a particular school
23 district ought not to be conducted by the school
24 district itself?

25 MR. HERRON: Same objection.

1 they have the responsibility to set policies relative to
2 the funds from our state bond funds and to set
3 guidelines for school districts in terms of school
4 construction.

5 Q. Okay. And you and I, we've previously talked
6 about the State Allocation Board?

7 A. I don't recall that.

8 MR. FEKETE: Is that a question?

9 Q. BY MR. ROSENBAUM: To your knowledge,
10 Mr. Henry, isn't it correct that the State Allocation
11 Board doesn't currently look at school conditions?

12 MR. HERRON: Objection. Calls for speculation.
13 Calls for a legal conclusion. Vague and ambiguous.

14 THE WITNESS: I'm not aware if they do have
15 that responsibility.

16 Q. BY MR. ROSENBAUM: Okay. You're not aware of
17 any instance where the State Allocation Board looks at
18 school conditions; is that correct?

19 MR. HERRON: Same objection. Asked and
20 answered the question before.

21 THE WITNESS: I'm not aware of that.

22 Q. BY MR. ROSENBAUM: Okay. And when you hear the
23 phrase "school conditions" in this context, what do you
24 understand that to mean?

25 MR. HERRON: Objection. Calls for speculation

1 MR. FEKETE: I don't think that was your last
2 question.

3 Q. BY MR. ROSENBAUM: Let me restate. Who do you
4 think should conduct the inventory of school conditions?

5 MR. HERRON: All the same objections that I
6 just made.

7 THE WITNESS: I'm a proponent of local control,
8 and so I believe that the local school district has a
9 responsibility to conduct an assessment at the local
10 level.

11 Q. BY MR. ROSENBAUM: And why is that?

12 A. They are -- the governing board is elected to
13 provide policy relative to these issues and are
14 responsible for, I believe, the conditions of site
15 facilities. And if they're responsible, they should
16 have the opportunity to conduct that assessment and
17 address the problems or issues.

18 Q. Do you have a view as to what should be done
19 with that inventory?

20 A. You're asking do I have a view what the
21 governing board should do with a local inventory of the
22 sites facilities?

23 Q. Yes.

24 A. I believe it should be used as a mechanism or a
25 measure to correct any deficiencies at the local site.

1 Q. Okay. And should it be public?
 2 MR. HERRON: Objection. Calls for expert
 3 opinion testimony. Calls for testimony beyond the scope
 4 of his duties at FCMAT.
 5 THE WITNESS: I think it would be public, and I
 6 think it should be public.
 7 Q. BY MR. ROSENBAUM: Why is that?
 8 MR. HERRON: Same objections.
 9 THE WITNESS: Well, I believe it would be a
 10 public document relative to the Public Records Act, but
 11 I do believe that the community and staff, students
 12 would be interested in the results of any assessment.
 13 Q. BY MR. ROSENBAUM: And why is that?
 14 A. It would be meaningful to them in regards to
 15 the safety and health of staff and students, and I think
 16 that they'd be interested in knowing what the conditions
 17 are and how the board or staff would be addressing those
 18 conditions.
 19 Q. Okay. And do you think it would play a role in
 20 assuring that the conditions that needed to be redressed
 21 would, in fact, be redressed?
 22 MR. HERRON: Objection. Calls for expert
 23 opinion. Calls for testimony beyond his role at FCMAT.
 24 Calls for speculation. Calls for a legal conclusion.
 25 THE WITNESS: Would you repeat the question.

1 Q. BY MR. ROSENBAUM: Sure. I'm going to restate
 2 a slightly different question. You think accountability
 3 is a terribly important concept, don't you, sir?
 4 MR. HERRON: Same objection. Argumentative.
 5 Vague and ambiguous.
 6 THE WITNESS: That's a very general statement,
 7 but I do embrace accountability, yes.
 8 Q. BY MR. ROSENBAUM: And why is that?
 9 MR. HERRON: Same objections.
 10 THE WITNESS: I believe accountability frames
 11 how we go about our business in California public
 12 education, that is, holding ourselves accountable for
 13 the product that we are required to deliver to our
 14 students and communities.
 15 Q. BY MR. ROSENBAUM: And the inventory that we
 16 talked about, the locally conducted inventory, do you
 17 think that that is an important part of an
 18 accountability process?
 19 MR. HERRON: Objection. Calls for speculation.
 20 Calls for expert opinion. Calls for testimony beyond
 21 the scope of his duties at FCMAT.
 22 THE WITNESS: Well, it is part of the
 23 accountability process when you do an inventory and you
 24 go about your work in addressing those issues through
 25 the accountability mechanism.

1 Q. BY MR. ROSENBAUM: Okay. And do you also
 2 believe that an inventory of school conditions should be
 3 conducted by external organizations?
 4 MR. HERRON: Objection. Vague and ambiguous.
 5 Calls for speculation. Calls for expert opinion.
 6 THE WITNESS: I think the current structure
 7 allows for that, that is, currently California public
 8 schools, there are a number of areas where they are
 9 held -- school districts are held accountable locally,
 10 and there are oversight agencies that provide additional
 11 oversight relative to that accountability.
 12 Q. BY MR. ROSENBAUM: And you believe it's
 13 important to have an independent or external
 14 organization also conduct inventories of school district
 15 conditions?
 16 MR. HERRON: Objection. Asked and answered the
 17 question before. Argumentative.
 18 Q. BY MR. ROSENBAUM: Is that right?
 19 A. I believe that there needs to be proper
 20 oversight beyond the local agency, yes.
 21 Q. And why is that?
 22 MR. HERRON: Objection. Calls for speculation.
 23 Calls for expert opinion.
 24 THE WITNESS: I think it is consistent with
 25 strong accountability measures to not only hold the

1 local community, the governing board accountable, but
 2 there are intermediate agencies in the state, the county
 3 offices of education that have an oversight role which
 4 is important, and it's set in statutes. And then beyond
 5 that, the state has an accountability role.
 6 Q. BY MR. ROSENBAUM: Okay. Let's break that down
 7 a little bit. When you talk about the county offices of
 8 education, to what are you referring to?
 9 A. The county superintendent of schools offices.
 10 Q. And let me see if I understand your viewpoint
 11 correctly, Mr. Henry. You don't want -- you don't
 12 believe that an accountability system should exclusively
 13 rely on local districts, is that right, for purposes of
 14 conducting the inventory?
 15 MR. HERRON: Objection. Calls for a legal
 16 conclusion. Calls for an expert opinion and for
 17 testimony beyond his scope of duties at FCMAT.
 18 THE WITNESS: You're asking for my personal
 19 opinion?
 20 MR. ROSENBAUM: Based on your training and
 21 experience, yes.
 22 THE WITNESS: Yes, I do.
 23 Q. BY MR. ROSENBAUM: And why is that?
 24 MR. HERRON: Same objections.
 25 THE WITNESS: Would you repeat that question.

1 Q. BY MR. ROSENBAUM: Based on your training and
2 experience, why do you think it's important not to
3 exclusively rely on the school districts for purposes of
4 conducting the inventories of school conditions?

5 MR. HERRON: Objection. Vague and ambiguous.
6 Misconstrues prior testimony.

7 THE WITNESS: I support an oversight role,
8 which includes the county office of education, the
9 state, and that is consistent, I believe, with state
10 statutes, and I support the state statutes relative to
11 that. I think it's meaningful and provides clear
12 information at various levels.

13 Q. BY MR. ROSENBAUM: Okay. And when you say
14 "clear information," what do you mean by that?

15 A. Well, an accountability system has to be built
16 upon good communication relative to the assessments that
17 are conducted. Without that good communication, then I
18 think that the system is flawed.

19 Q. And why is that?

20 A. If an entity such as the county office of
21 education or FCMAT communicates their findings relative
22 to assessment, and those are communicated, we've found
23 that clear, communicated standards relative to recovery
24 recommendations are more likely to be followed and
25 implemented and met. So through past experience in

1 for a specific reason initially, and that was the
2 Oakland Unified School District through AB 52, and so
3 those are FCMAT standards relative to the legislative
4 charge to conduct comprehensive assessment, and those
5 standards have been used now not only at Compton Unified
6 School District, but at Oakland Unified School District,
7 and most recently West Contra Costa Unified School
8 District. So those were standards specifically designed
9 for the purpose required under the state statutes, the
10 legislation that assigned us into those school
11 districts.

12 Q. BY MR. ROSENBAUM: And FCMAT produces reports
13 regarding its work in different school districts; is
14 that right?

15 A. Yes.

16 Q. It prepares reports about West Contra Costa and
17 Oakland and Compton?

18 A. Yes.

19 Q. And the standards that we're talking about,
20 those are identified in those reports; isn't that
21 correct?

22 MR. HERRON: Objection. Vague and ambiguous.

23 THE WITNESS: The standards are identified, but
24 they're slightly different in each study, that the
25 standards are revisited each time there is an assignment

1 terms of our assessment through FCMAT, we find that
2 communication relative to -- clear communication
3 relative to standards and findings is paramount to
4 meeting those standards.

5 Q. Which means, in part, if I understand you
6 correctly, that the standards be known to the school
7 districts and known to the schools; is that right? Is
8 that one component?

9 MR. HERRON: Objection. Argumentative. Vague
10 and ambiguous as phrased.

11 THE WITNESS: Yes, that is important.

12 Q. BY MR. ROSENBAUM: And that they be easily
13 understandable to the school districts and the schools?

14 MR. HERRON: Objection. Calls for speculation.

15 THE WITNESS: Not only easily understandable,
16 but reachable as well.

17 Q. BY MR. ROSENBAUM: Okay. And the standards
18 that -- the predeveloped standards that we talked about
19 earlier, would that fit your definition of clear
20 standards?

21 MR. HERRON: Objection. Vague and ambiguous.

22 THE WITNESS: You are referring to FCMAT's
23 predetermined standards?

24 MR. ROSENBAUM: Yes, sir.

25 THE WITNESS: Those standards were developed

1 relative to the unique needs of that particular school
2 district.

3 (Mr. Jordan entered the room.)

4 Q. BY MR. ROSENBAUM: Do those standards for each
5 of those districts, do they meet your definition of
6 clear standards?

7 MR. HERRON: Objection. Asked and answered.
8 Vague and ambiguous.

9 THE WITNESS: Yes.

10 Q. BY MR. ROSENBAUM: And why is that?

11 A. I believe that they are clearly written and
12 they are clearly communicated to the school district in
13 advance so there's no misunderstanding in terms of the
14 standard that the school district would be held
15 accountable to regarding the assessment.

16 Q. Thank you.

17 MR. ROSENBAUM: Just want the record to reflect
18 Mr. Jordan entered the room.

19 Q. Mr. Henry, when you and I talked about the
20 inventories previously, am I correct, sir, did I
21 understand you correctly, sir, that you felt that one
22 should not exclusively rely on local districts, in part,
23 because they might be too close to the problems?

24 MR. HERRON: Objection. Misconstrues prior
25 testimony. Vague and ambiguous.

1 THE WITNESS: I don't believe I said that.
 2 Q. BY MR. ROSENBAUM: Okay. That they might not
 3 be sufficiently independent?
 4 MR. HERRON: Objection. Asked and answered the
 5 question before. Misconstrues prior testimony.
 6 Argumentative.
 7 THE WITNESS: One of FCMAT's strengths, I
 8 believe, as well as our charge, is that the entity is
 9 independent and external and does provide an independent
 10 external assessment of the standards when we're assigned
 11 into a school district.
 12 Q. BY MR. ROSENBAUM: And why is it important that
 13 the inventory and the assessment be conducted by an
 14 independent and external body?
 15 MR. HERRON: Objection. Calls for expert
 16 opinion. Calls for testimony beyond the scope of his
 17 duties at FCMAT. Vague and ambiguous.
 18 THE WITNESS: FCMAT believes that it is
 19 important that there not be any inherent biases relative
 20 to the assessment, that it is critical that when we
 21 conduct our assessments, that we're viewed as
 22 independent, external relative to the assessment so that
 23 there are no biases relative to the assessment.
 24 Q. BY MR. ROSENBAUM: And when you talked to me
 25 several moments ago about the county offices of

1 education being involved in the accountability process,
 2 is that, in part, because the county offices would be
 3 external to the local districts?
 4 A. County offices of education are external from
 5 the local school districts, and they are an entity, an
 6 agency between the school district and the State
 7 Department of Education, and they do have statutory
 8 oversight relative to their relationship between the
 9 school district and their office.
 10 (Break in the proceedings.)
 11 (Mr. Seferian entered the room.)
 12 Q. BY MR. ROSENBAUM: Regarding the county offices
 13 of education, Mr. Henry, do you think that they
 14 currently have the resources and staff to conduct
 15 inventories of conditions of local school districts?
 16 MR. HERRON: Objection. Calls for speculation.
 17 Calls for a legal conclusion.
 18 THE WITNESS: Are you asking my personal
 19 opinion?
 20 MR. ROSENBAUM: Based on your training and
 21 experience, yes.
 22 THE WITNESS: No.
 23 Q. BY MR. ROSENBAUM: Why is that?
 24 A. Well, you're asking whether the county offices
 25 of education have the necessary resources and staff

1 relative to assessments of facilities and sites of
 2 California public schools?
 3 Q. Exactly.
 4 MR. HERRON: Objection. Calls for speculation.
 5 Calls for a legal conclusion. Calls for an expert
 6 opinion.
 7 THE WITNESS: In my opinion, I'm not aware of a
 8 specific statute that currently assigns that
 9 responsibility to county offices of education directly,
 10 and so any involvement of that agency relative to that
 11 oversight rule would need to be followed with proper
 12 resources and staff to conduct that responsibility.
 13 Q. BY MR. ROSENBAUM: Okay. And, again, thinking
 14 about the county offices of education, do you believe
 15 that currently they have the expertise to conduct
 16 inventories of local school districts?
 17 MR. HERRON: Objection. Calls for speculation.
 18 MR. ROSENBAUM: Referring to the conditions at
 19 the schools.
 20 MR. HERRON: Calls for expert testimony. Calls
 21 for him to testify beyond his role at FCMAT.
 22 THE WITNESS: There are county offices in the
 23 state that, providing they have the resources, do have
 24 the expertise to take the standards that we've developed
 25 in the facilities management area and to conduct an

1 inventory or an assessment, but I'm not certain that all
 2 the county offices in the state have the expertise to do
 3 that just because of the size of the county office and
 4 prioritization in terms of resources and
 5 responsibilities.
 6 Q. BY MR. ROSENBAUM: Do you have any idea of what
 7 percent of the county offices would have the expertise
 8 to conduct the inventories of facilities?
 9 A. No.
 10 Q. Do you know if anyone's ever looked into that?
 11 A. I'm not aware of it.
 12 MR. HERRON: Objection. Calls for speculation.
 13 Q. BY MR. ROSENBAUM: And let me see if I
 14 understand this, the county offices of education at the
 15 present time, they are involved in accountability
 16 processes regarding the budgets of local school
 17 districts; is that right?
 18 A. Yes.
 19 Q. And that's part of their policy mandate as you
 20 understand it?
 21 A. Statutorily they have that authority under the
 22 statutes, correct.
 23 Q. And they can, in fact, rewrite budgets of local
 24 school districts; is that right?
 25 A. Under certain conditions, they can participate

1 in the redevelopment of budgets for school districts.
 2 Q. And, to your knowledge, Mr. Henry, do county
 3 offices of education currently have the policy mandate
 4 to conduct inventories of school conditions at local
 5 school districts?
 6 MR. HERRON: Objection. Vague and ambiguous in
 7 use of the term "policy mandate." Calls for
 8 speculation. Calls for a legal conclusion.
 9 THE WITNESS: I don't believe I can answer that
 10 question.
 11 Q. BY MR. ROSENBAUM: Do you know if they have a
 12 statutory mandate at this time to conduct inventories of
 13 school conditions at local school districts?
 14 MR. HERRON: Same objections.
 15 THE WITNESS: If they do, it's not clear in the
 16 statutes.
 17 Q. BY MR. ROSENBAUM: Okay. To your knowledge,
 18 are any county offices of education -- strike that.
 19 To your knowledge, Mr. Henry, have any county
 20 offices of education conducted inventories of school
 21 conditions at local school districts?
 22 MR. HERRON: Objection. Vague and ambiguous.
 23 Vague as to time.
 24 THE WITNESS: I don't have the knowledge to
 25 answer that question.

1 Q. BY MR. ROSENBAUM: Okay. Going back to the
 2 responsibility of county offices of education with
 3 respect to budgets, let me see if I understand
 4 correctly. A county office can disapprove a budget of a
 5 local school district; is that right?
 6 MR. HERRON: Objection. Asked and answered.
 7 THE WITNESS: Yes.
 8 Q. BY MR. ROSENBAUM: But its power is limited at
 9 the county office of education, with respect to budgets?
 10 MR. HERRON: Objection. Vague and ambiguous.
 11 THE WITNESS: Well, if you mean limited in
 12 terms of what their oversight is, it's limited in terms
 13 of what the statutes allows them to provide relative to
 14 that process.
 15 Q. BY MR. ROSENBAUM: Okay. And going back to the
 16 inventories of school conditions, let me see if I
 17 understand your viewpoint, sir. You believe that if the
 18 county staff -- strike that.
 19 You believe that if the county offices of
 20 education and the county superintendents were provided
 21 with the resources to conduct inventories of school
 22 conditions, you think they would be an ideal agency to
 23 conduct those inventories; isn't that right?
 24 MR. HERRON: Objection. Misconstrues prior
 25 testimony. Vague and ambiguous and extraordinarily

1 long.
 2 THE WITNESS: I believe that that is an
 3 interesting policy question that needs to be asked and
 4 reviewed with the participation of the county offices of
 5 education. I think that would be an important -- an
 6 interesting discussion.
 7 Q. BY MR. ROSENBAUM: What would your
 8 recommendation be?
 9 MR. HERRON: Objection. Calls for expert
 10 opinion.
 11 THE WITNESS: You're asking me my personal
 12 opinion?
 13 MR. ROSENBAUM: Based on your training and
 14 experience, yes.
 15 THE WITNESS: They are an intermediate agency
 16 between the school districts and the state and are well
 17 positioned, I believe, to provide oversight. Depending
 18 on the resources and the prioritization of those
 19 resources, I would think that would be an important
 20 policy discussion.
 21 Q. BY MR. ROSENBAUM: Okay. Based on your
 22 training and experience, you believe that the problems
 23 of conditions at school facilities should be remedied;
 24 isn't that right?
 25 A. Yes.

1 MR. HERRON: Objection. Vague and ambiguous.
 2 Q. BY MR. ROSENBAUM: Why is that?
 3 MR. HERRON: Objection. Calls for expert
 4 opinion, testimony. Vague and ambiguous.
 5 THE WITNESS: We have standards that have been
 6 developed, both legal and professional standards in
 7 those five operational areas, including facilities
 8 management, and an important element of the development
 9 of those standards and the assessment of those standards
 10 focused on safety and health issues first and foremost.
 11 And so if you're asking the question why do I
 12 feel that's important, FCMAT places an importance on the
 13 safety and health as the highest priority relative to
 14 those standards, safety and health of staff and
 15 students.
 16 Q. BY MR. ROSENBAUM: Why is that important?
 17 A. Well, that should be obvious in terms of the
 18 question, I guess, that for students to do well in
 19 school and staff to do well in instruction, safety and
 20 health is an important element to that.
 21 Q. And why is that?
 22 MR. HERRON: Objection. Asked and answered the
 23 question before.
 24 THE WITNESS: There is research, of course,
 25 that speaks to the issue in terms of effective learning,

1 in terms of condition of safety and health at
 2 facilities, and I think common sense speaks to that as
 3 well.
 4 Q. BY MR. ROSENBAUM: That's been your experience
 5 throughout your tenure at FCMAT; isn't that right?
 6 MR. HERRON: Objection. Vague and ambiguous in
 7 the use of the term that.
 8 THE WITNESS: I would have to ask you to
 9 rephrase your question in terms of what you're asking.
 10 Q. BY MR. ROSENBAUM: Okay. When you say
 11 "research," what research are you referring to?
 12 A. There has been research that's been documented
 13 in some of the reports that I've read that point to the
 14 importance of safety and health in the learning
 15 environment and the effect it has on instruction and the
 16 ability to learn. Referring to that research.
 17 Q. And based on your experience, do you agree with
 18 that research, those conclusions?
 19 MR. HERRON: Objection. Vague and ambiguous.
 20 THE WITNESS: Yes.
 21 MR. HERRON: Calls for expert opinion.
 22 Q. BY MR. ROSENBAUM: Why is that?
 23 MR. HERRON: Same objections.
 24 THE WITNESS: Well, first of all, I believe the
 25 research and, secondly, maybe more importantly, I

1 believe that it is common sense that a safe and healthy
 2 environment is conducive to learning and proper
 3 instruction. I personally believe that.
 4 Q. BY MR. ROSENBAUM: Okay. Now, going back,
 5 Mr. Henry, to the question about correcting conditions
 6 that need to be corrected at school facilities, let me
 7 see if I understand what you believe are the important
 8 issues.
 9 Am I correct, sir, that one of the issues that
 10 you think is important is standards, clear standards?
 11 A. Yes.
 12 Q. Okay. And another is leadership?
 13 MR. HERRON: Objection. Vague and ambiguous.
 14 Misconstrues prior testimony.
 15 THE WITNESS: Leadership is very important,
 16 yes.
 17 Q. BY MR. ROSENBAUM: When you say "leadership,"
 18 what do you mean by that?
 19 A. FCMAT has developed what we call 11 predictors,
 20 and that is in place. And certain numbers require
 21 intervention. And over the years we've developed 11 of
 22 these early warning signs or predictors, and at the top
 23 of the list is leadership, that we believe that
 24 leadership and communication -- communication happens to
 25 be the second item on the list -- leadership and

1 communication is critical to all of the other elements
 2 in school district operation, and specifically as it
 3 relates to financial management.
 4 Leadership, being the administration's ability
 5 to take the governing board's policies and be able to
 6 implement and follow through and make sure those
 7 policies are implemented in the way that they're written
 8 and intended.
 9 Q. When you say "communication," what do you mean
 10 by that?
 11 A. The ability to communicate clearly the intent
 12 of those policies at the local level so that they're
 13 well understood, and that the communication is two ways,
 14 that the administration is listening well in terms of
 15 what their staff and student community is saying
 16 relative to its policies, and that the administration
 17 indeed is communicating back the board's intent
 18 regarding those policies.
 19 Q. Okay. And is another important concern
 20 attention to details?
 21 MR. HERRON: Objection. Vague and ambiguous.
 22 THE WITNESS: Well, you're asking if attention
 23 to detail is an important element related to leadership
 24 or communication, I would agree with that, yes.
 25 Q. BY MR. ROSENBAUM: And why is that important?

1 A. If communication is vague, then one could argue
 2 that the message is not going to be well received, and
 3 if it's detailed and to the point, communication is
 4 normally better received.
 5 Q. Okay. And how about resources, is that
 6 important?
 7 MR. HERRON: Objection. Vague and ambiguous.
 8 THE WITNESS: You're asking if monetarily are
 9 resources important?
 10 MR. ROSENBAUM: Yes.
 11 THE WITNESS: And you're asking in relationship
 12 to facilities management?
 13 MR. ROSENBAUM: And the conditions of school
 14 sites, yes.
 15 THE WITNESS: Yes, resources are important.
 16 Q. BY MR. ROSENBAUM: And why is that?
 17 MR. HERRON: Objection. Vague and ambiguous.
 18 THE WITNESS: Resources drive outcomes, and
 19 without the proper resources, it's difficult to reach
 20 the outcomes.
 21 Q. BY MR. ROSENBAUM: Okay. Now, when FCMAT
 22 undertakes an assessment, does FCMAT look at these 11
 23 predictors?
 24 MR. HERRON: Objection. Vague and ambiguous in
 25 use of the term "assessment."

1 THE WITNESS: FCMAT can be assigned or invited
2 in by the local educational agencies, assigned by
3 oversight agencies, or invited in by local education
4 agencies for a variety of reasons.

5 The 11 predictors are used for purposes of
6 workshops or conferences that we share with the field in
7 terms of early warning signs. One of the predictors has
8 to do with budget development, another one has to do
9 with budget monitoring.

10 If you're asking, do -- we use those predictors
11 for purposes of staff development, but we also use those
12 as a guide when we're doing certain studies.

13 They don't always apply to every study, but
14 certain studies we clearly look at them and kind of
15 review and continually update those early warning signs.

16 Q. BY MR. ROSENBAUM: Do you know if there's any
17 agency or body in the state that does that, that looks
18 at those 11 predictors or some subset of them?

19 A. Are you asking if there are any other agencies
20 looking at those FCMAT predictors?

21 Q. Yes.

22 A. Those FCMAT predictors are on our website and
23 we have distributed them broadly across the state at
24 different workshops, and so I believe that there are
25 local education agencies that have reviewed them and

1 have found that.

2 (Ms. Lhamon left the room.)

3 Q. BY MR. ROSENBAUM: And have you found that at
4 every local school district?

5 MR. HERRON: Objection. Calls for speculation.
6 Vague and ambiguous.

7 THE WITNESS: Every local school district that
8 we've been involved in had a form of policies and
9 regulations in place.

10 Q. BY MR. ROSENBAUM: And has that worked any
11 hardship to those districts as far as you know?

12 MR. HERRON: Objection. Calls for speculation.
13 Calls for expert opinion.

14 MR. JORDAN: Are we following the protocol that
15 we don't have to formally join somebody else's
16 objection?

17 MR. ROSENBAUM: You don't have to do that.

18 THE WITNESS: I didn't hear the first part of
19 the question.

20 (Record read.)

21 THE WITNESS: If you're asking whether the
22 policies and regulations have created any hardship to
23 the school districts, the answer is no.

24 Q. BY MR. ROSENBAUM: Okay. And what's the basis
25 for that conclusion?

1 considered them in relationship to development of
2 budgets or monitoring the budgets or issues of
3 leadership or communication. I think there's been
4 reflection on those predictors.

5 Q. Do you know how many school districts have done
6 that?

7 A. No.

8 Q. Do you know if it's more or less than 10
9 percent of all school districts?

10 MR. HERRON: Objection. Calls for speculation.

11 THE WITNESS: I really don't know.

12 Q. BY MR. ROSENBAUM: Let's -- I want to go back
13 to the question of the clear standards that we were
14 talking about.

15 When FCMAT started going into schools,
16 Mr. Henry, did you find that there existed local level
17 standards as to what constituted a reasonable school
18 site?

19 MR. HERRON: Objection. Vague and ambiguous.

20 THE WITNESS: Well, standards, the term
21 standards itself has different definitions, I believe,
22 throughout the state.

23 But if you're asking whether we found
24 guidelines or policies or regulations at local sites,
25 local school districts, the answer to that is, yes, we

1 A. I'm just not aware whether their local
2 policies, regulations have created any hardship. I have
3 no knowledge of whether that has been the case.

4 Q. Okay. Now, you told me before that FCMAT
5 created its own standards for its work; is that right?

6 A. I indicated earlier that through AB 52,
7 Assemblymember Washington's bill that assigned FCMAT in
8 the Compton Unified School District, there was a
9 requirement within that piece of legislation that FCMAT
10 conduct comprehensive assessments in those five
11 operational areas, and to develop a process by which we
12 could measure progress over time. And in order to do
13 that, FCMAT felt that that approach needed to be
14 standards based so that there would be an objective
15 process in place relative to that review. And with the
16 bases of that and the requirements of that piece of
17 legislation, we went about our work in developing the
18 standards in those five operational areas.

19 (Ms. Lhamon entered the room.)

20 Q. BY MR. ROSENBAUM: Okay. And did you encounter
21 any resistance from any of the local school districts to
22 the establishment of these standards?

23 A. I wouldn't use the term "resistance," but
24 clearly at Compton Unified School District at the early
25 stages of the process there were a number of

1 individuals, including board members, advisory board
2 members that had concern about whether FCMAT would be
3 holding Compton to a higher standard than other school
4 districts in the state relative to the return of legal
5 rights, powers and duties, and so that is always a
6 question that we reflect on and are sensitive to
7 relative to using those standards.

8 Q. And what was your conclusion?

9 MR. HERRON: Objection. Vague and ambiguous.

10 THE WITNESS: We believe that we have convinced
11 the members of the Compton advisory board, as well as
12 the community, that those were standards that were, one,
13 clearly defined, two, we believe were reachable, and
14 three, were not holding Compton Unified School District
15 to a higher standard. And we think the results of the
16 six-month progress reports that we're required to
17 provide reflect that.

18 Q. BY MR. ROSENBAUM: Okay. And, again, those
19 standards are -- with reference to Compton, for example,
20 they are referenced in the periodic reports that FCMAT
21 produces; is that right?

22 A. All of the standards are referenced in the
23 initial comprehensive report. And the six-month
24 progress reports focus on certain standards each
25 six-month period, so that each six-month period we do

1 (Recess taken.)

2 Q. BY MR. ROSENBAUM: You doing okay, Mr. Henry?

3 A. Doing fine.

4 Q. I apologize for the cramped conditions here.

5 Mr. Henry, to your knowledge, before FCMAT went into
6 Compton, had Compton conducted an inventory of local
7 school conditions?

8 MR. HERRON: Objection. Vague and ambiguous.

9 MR. ROSENBAUM: Referring to facilities.

10 THE WITNESS: I'm not aware of that.

11 Q. BY MR. ROSENBAUM: Okay. Do you know if the
12 State had ever directed Compton to conduct an inventory
13 of school facilities?

14 MR. HERRON: Objection. Vague and ambiguous.

15 MR. ROSENBAUM: Prior to FCMAT coming in.

16 THE WITNESS: I don't know if they did or not.

17 Q. BY MR. ROSENBAUM: Okay. How about West Contra
18 Costa, before FCMAT came into West Contra Costa, to your
19 knowledge, had West Contra Costa ever conducted an
20 inventory of school conditions at its facilities?

21 A. I don't know.

22 Q. Or Oakland?

23 A. I don't know there either.

24 Q. Do you know how many local school districts
25 have conducted inventories of conditions at their school

1 not examine each standard because certain standards have
2 been met and do not need to be looked at every six-month
3 period. So there's a focus by the school district to
4 self-select certain standards, and FCMAT selects certain
5 standards, and those are the standards that are reviewed
6 during the six-month interval periods.

7 Q. Now, prior to the FCMAT standards that you were
8 just talking to me about, to your knowledge, the state
9 did not have a baseline set of standards; isn't that
10 right?

11 MR. HERRON: Objection. Calls for speculation.
12 Calls for expert opinion testimony. Calls for him to
13 testify beyond his role at FCMAT.

14 THE WITNESS: I'm not aware of -- again, back
15 to the definition of a standard. Our standards that we
16 developed for the process at Compton and Oakland and
17 West Contra Costa was intended to develop a threshold or
18 a guideline by which to measure school districts and for
19 purposes of measuring growth.

20 I'm not aware of that type of process at the
21 state level, but I do believe they have standards in
22 various operational areas, and somebody from the State
23 would be better to respond to that question than myself.

24 MR. HERRON: We've been going about an hour. I
25 suggest we take a break, a brief break.

1 facilities?

2 MR. HERRON: Objection. Calls for speculation.

3 THE WITNESS: I don't know.

4 Q. BY MR. ROSENBAUM: Can you name any that have?

5 MR. HERRON: Objection. Calls for him to
6 testify beyond his role at FCMAT. Calls for
7 speculation.

8 THE WITNESS: Yes.

9 Q. BY MR. ROSENBAUM: Which ones?

10 A. There were a couple districts in Marin County
11 that had requested our standards and facilities
12 checklist that we used at Oakland to do their own
13 facilities and site review. I'm not certain whether
14 they completed it or not, but they did request that
15 information. And it's been a few years, but I believe
16 that at least one, maybe two districts ran a facilities
17 and site review using the checklist.

18 Q. Okay. And do you know which districts those
19 were?

20 A. I don't recall which ones they were.

21 Q. Can you tell me, as best you recollect, sir,
22 when this occurred, when the request for the FCMAT --
23 when the FCMAT standards were requested?

24 A. About -- let's see. It would have been during
25 the Oakland assessment, I believe, in -- so that would

1 be around April '99, something around there.
 2 Q. Okay. And do you know if the inventories were
 3 actually conducted?
 4 A. I believe they were.
 5 Q. Okay. Any of the districts that conducted
 6 those inventories, did you ever hear any complaints that
 7 the conducting of those inventories worked a hardship on
 8 those districts?
 9 MR. HERRON: Objection. Vague and ambiguous.
 10 THE WITNESS: Let me go back and make sure that
 11 we're saying the same thing here, that I don't think the
 12 districts ran the comprehensive standards in facilities
 13 management, I believe what they did in terms of their
 14 request is that they requested the site facilities
 15 checklist -- it was created for a different purpose at
 16 Oakland Unified School District -- and I believe they
 17 ran that assessment, the facilities site assessment, and
 18 I'm not aware of whether they had any complaints.
 19 Q. BY MR. ROSENBAUM: You didn't hear of any
 20 complaints; is that correct?
 21 A. No.
 22 Q. And what was the purpose with respect to
 23 Oakland for which those standards were created?
 24 MR. HERRON: Objection. Asked and answered
 25 several times now.

1 THE WITNESS: Are you asking what was the
 2 purpose of the standards in regards to the comprehensive
 3 assessment, or the facility site checklist?
 4 MR. ROSENBAUM: The facility site checklist.
 5 THE WITNESS: The facility site checklist,
 6 which is separate from the standards, was a document we
 7 created to accommodate what was coined as get on the bus
 8 tour for the local community members to inspect the
 9 facilities and sites at Oakland Unified District. So
 10 FCMAT wanted a process that was clear and easily
 11 understood and the community members could participate
 12 in, and we developed it for that purpose.
 13 Q. BY MR. ROSENBAUM: Okay. To your knowledge,
 14 sir, the request from the Marin County school districts,
 15 was that related to any grand jury investigation?
 16 A. No, it was not.
 17 Q. To your knowledge, sir, is there any
 18 requirement in state law that local school districts
 19 conduct inventories of school facilities?
 20 MR. HERRON: Objection. Asked and answered.
 21 Calls for a legal conclusion.
 22 THE WITNESS: Would you repeat the question.
 23 Q. BY MR. ROSENBAUM: Do you know of any
 24 requirement in state law that local school districts
 25 conduct inventories of their school facilities?

1 A. No.
 2 MR. HERRON: Same objection. Vague and
 3 ambiguous.
 4 Q. BY MR. ROSENBAUM: Regarding standards, sir,
 5 are you aware of any state standards that are relative
 6 to temperatures in classrooms?
 7 MR. HERRON: Objection. Vague and ambiguous.
 8 Calls for a legal conclusion. Calls for speculation.
 9 THE WITNESS: No.
 10 I'm sorry, would you repeat the question.
 11 Q. BY MR. ROSENBAUM: Sure. What I'm interested
 12 in is whether, to your knowledge, there are any state
 13 standards relative to temperatures in classrooms?
 14 MR. HERRON: Same objections.
 15 THE WITNESS: I know there are state standards
 16 relative to site issues that I think maybe came about
 17 through SB-50, but I'm not aware of standards relative
 18 to the facilities.
 19 Q. BY MR. ROSENBAUM: When you say "site issues,"
 20 what do you mean by that?
 21 A. I'm recalling that the Department of Education
 22 has a facilities management branch and there are, as I
 23 recall, sites -- some site standards that they have
 24 to -- they're required to look at. And by site
 25 standards, location of a school site relative to an

1 airport, environmental issues that they're required to
 2 address prior to construction of the school.
 3 Q. Okay. So those standards -- let me see if I
 4 understand you correctly -- they relate to new buildings
 5 rather than existing buildings; is that right?
 6 MR. HERRON: Objection. Vague in the use of
 7 the word "those standards." Calls for speculation.
 8 Calls for a legal conclusion.
 9 THE WITNESS: The standards that I've referred
 10 to, I believe, addresses new construction. And there
 11 are also some standards relative to modernization funds
 12 in terms of the process of applying for funds and what
 13 requirements have to be met to receive those funds.
 14 Q. BY MR. ROSENBAUM: And those are the site
 15 standards you were referring to a few moments ago?
 16 A. Yes.
 17 Q. Thank you. And to your knowledge, sir, are
 18 there any state standards relating to vermin in
 19 classrooms?
 20 MR. HERRON: Objection. Calls for speculation.
 21 Calls for a legal conclusion, and calls for expert
 22 opinion testimony.
 23 THE WITNESS: There are no specific standards
 24 that I'm aware of relative to vermin, but there are
 25 specific legal standards relative to safety and health

1 issues.

2 Q. BY MR. ROSENBAUM: Okay. And what about with
3 respect to windows in classroom, are you aware of any
4 specific state standards that relate to that?

5 MR. HERRON: Same objections.

6 THE WITNESS: Not specific to broken windows,
7 but, again, Title 5 regulation, as well as Ed Code
8 citations that address safety and health issues at
9 California public schools.

10 Q. BY MR. ROSENBAUM: Okay. When FCMAT went into
11 West Contra Costa -- strike that.

12 When FCMAT went into Oakland, to your
13 knowledge, had there been any inventory of school
14 conditions conducted by the local school district prior
15 to FCMAT?

16 MR. HERRON: Objection. Vague and ambiguous.
17 Asked and answered.

18 THE WITNESS: I'm not aware.

19 Q. BY MR. ROSENBAUM: Same for West Contra Costa?

20 MR. HERRON: Objection. Asked and answered.

21 THE WITNESS: Yes.

22 Q. BY MR. ROSENBAUM: Okay. And to your
23 knowledge, had the State ever demanded West Contra Costa
24 to conduct an inventory of local school conditions prior
25 to FCMAT's entry into that district?

1 A. I don't know.

2 Q. You're not aware of any?

3 A. Correct.

4 Q. And same answer for Oakland?

5 MR. HERRON: You've already asked him that
6 question. Object on that ground.

7 THE WITNESS: Correct.

8 Q. BY MR. ROSENBAUM: Okay. Now, we talked about
9 this a little bit earlier, sir, but after the standards
10 are set and after they are communicated to school
11 districts, you believe that proper resources should
12 follow those standards; is that correct?

13 MR. HERRON: Objection. Vague and ambiguous.
14 Asked and answered. Calls for an expert, legal opinion.

15 THE WITNESS: I'm not sure what you're asking
16 in that question.

17 Q. BY MR. ROSENBAUM: In terms of reaching those
18 standards, is it your view, sir, that there should be
19 proper resources so the standards could be met?

20 MR. HERRON: Objection. Vague and ambiguous in
21 use of the phrase "in terms of reaching those
22 standards." Calls for an expert opinion. Calls for a
23 legal conclusion. Vague and ambiguous as phrased.

24 THE WITNESS: Our standards, the FCMAT
25 standards, when those are applied, there are --

1 typically there are resources that provide for that
2 assessment, and so the resources are there for FCMAT to
3 conduct the assessment relative to the FCMAT standards.

4 Q. BY MR. ROSENBAUM: And with respect to the
5 school districts meeting the standards, is it your
6 belief that there should be proper resources available
7 so that the school districts can achieve those
8 standards?

9 MR. HERRON: Same objection as interposed to
10 the second question before.

11 THE WITNESS: I don't believe I can answer that
12 question.

13 Q. BY MR. ROSENBAUM: Okay. You're familiar with
14 AB 1200; is that right?

15 A. Yes.

16 Q. Okay. And does AB 1200 give county offices of
17 education some oversight responsibilities?

18 A. Yes.

19 Q. Okay. And what's been your experience with
20 AB 1200?

21 MR. HERRON: Objection. Vague and ambiguous.
22 Calls for a narrative. Very strange.

23 THE WITNESS: You're asking me what my
24 experience has been in terms of the chief executive
25 officer of the Fiscal Crisis and Management Assistance

1 Team relative to AB 1200?

2 MR. ROSENBAUM: Yes.

3 THE WITNESS: Well, I'm very knowledgeable
4 about AB 1200 and the requirements that apply on school
5 districts as well as county offices.

6 AB 1200, in addition to providing additional
7 oversight and authority to county offices of education,
8 created the Fiscal Crisis Management Assistance Team.
9 And so I'm familiar with the legislation relative to the
10 requirements of the oversight agencies, as well as the
11 responsibilities that were assigned to school districts,
12 and then also the creation of FCMAT through the
13 legislature.

14 Q. BY MR. ROSENBAUM: And since AB 1200, to your
15 knowledge, there haven't been any emergency loans since
16 county agencies stepped in and began fiscal oversight at
17 the school districts; isn't that correct?

18 A. Well, that was correct up to this last
19 legislative session, and there has now been a piece of
20 legislation, AB 96 Aroner, whose bill was recently
21 assigned by the governor that provided an emergency loan
22 to the Emery Unified School District.

23 Q. And when was AB 1200 passed?

24 A. It was introduced in 1991 and became effective
25 in 1992.

1 Q. Okay. With the exception of Emery, that's the
 2 only school district that -- for which there's been a
 3 necessity for an emergency loan for which you're aware
 4 of?
 5 A. Correct.
 6 Q. And it's your belief, based on your training
 7 and experience, Mr. Henry, that AB 1200 contributed to a
 8 model for an oversight system; is that correct?
 9 MR. HERRON: Objection. Calls for a legal
 10 conclusion. Calls for expert opinion, testimony.
 11 You're asking him to speculate and to testify beyond his
 12 role at FCMAT. It's vague and ambiguous as phrased.
 13 THE WITNESS: AB 1200 did provide additional
 14 oversight at the intermediate agency level, the county
 15 office of education level in terms of financial
 16 management issues.
 17 Q. BY MR. ROSENBAUM: And you think that could
 18 contribute to a model for an oversight system; isn't
 19 that right?
 20 MR. HERRON: Same objections.
 21 THE WITNESS: No, I don't -- I don't think I
 22 said that.
 23 Q. BY MR. ROSENBAUM: You think that AB 1200
 24 represents a good example of how a county agency might
 25 be able to help turn things around when it's necessary;

1 is that a fair statement?
 2 MR. HERRON: Same objections.
 3 THE WITNESS: AB 1200 has been remarkably
 4 successful relative to the intent of the legislation.
 5 Q. BY MR. ROSENBAUM: And what about with respect
 6 to -- specifically I want you to focus on the role of an
 7 intermediate agency at the county offices.
 8 Do you think that's been a successful model?
 9 MR. HERRON: Objection. Vague and ambiguous,
 10 and all the other objections interposed to the question
 11 too, before.
 12 THE WITNESS: Well, the intent of AB 1200 was
 13 to avert emergency loans, and it's been successful in
 14 that regard, and it provided additional responsibility
 15 and authority to the county office of education relative
 16 to that intent. And in terms of the record there, I
 17 believe it's been a very successful piece of
 18 legislation.
 19 Q. BY MR. ROSENBAUM: Okay. You told me, sir,
 20 that FCMAT has been involved in an inspection of
 21 conditions at the Oakland school district; is that
 22 right?
 23 A. Yes.
 24 Q. Okay. And when did that begin?
 25 MR. HERRON: Objection. Vague and ambiguous to

1 the use of the term "that."
 2 THE WITNESS: You're asking when the
 3 legislation was enacted to assign us to Oakland Unified
 4 School District?
 5 MR. ROSENBAUM: That's the first question, yes.
 6 THE WITNESS: That was in 1999, April of 1999.
 7 Q. BY MR. ROSENBAUM: And what did you understand
 8 FCMAT's responsibility to be pursuant to that
 9 legislation?
 10 A. The responsibility of that assignment was
 11 spelled out in a piece of legislation, and it was
 12 similar to the responsibilities at Compton; that is,
 13 FCMAT was required to conduct comprehensive assessments
 14 in the five operational areas and to provide
 15 recommendations and a recovery plan relative to those
 16 recommendations.
 17 Q. And that comprehensive assessment in five
 18 areas, FCMAT has been assigned that responsibility in
 19 Compton, in Oakland, and in West Contra Costa; am I
 20 correct?
 21 A. Yes.
 22 Q. In any other school districts?
 23 A. No.
 24 Q. And when did FCMAT actually begin the process
 25 of conducting those comprehensive assessments?

1 MR. HERRON: Objection. Compound. Vague and
 2 ambiguous.
 3 THE WITNESS: Are you asking when we began at
 4 Oakland?
 5 MR. ROSENBAUM: Yes, sir.
 6 THE WITNESS: I believe the legislation was
 7 around April of 1999, so we would have started
 8 relatively soon after that. And we finished that
 9 particular study around January of 2000.
 10 Q. BY MR. ROSENBAUM: And is FCMAT still involved
 11 in conducting comprehensive assessments in Oakland?
 12 A. No.
 13 Q. And when did that stop?
 14 A. The formal report was released in January of
 15 2000, and other than a few follow-up meetings related to
 16 clarification of some of the findings and
 17 recommendations, our work has concluded there.
 18 Q. Okay. Is it concluded in West Contra Costa?
 19 A. Just recently concluded the comprehensive
 20 assessment, and that report was released to the school
 21 district and community.
 22 And in West Contra Costa we have a similar
 23 responsibility to provide a six-month progress report to
 24 the school district and the state legislature, and we
 25 are within the six-month -- first six-month period.

1 Q. Okay. Just so I understand you, is FCMAT
2 required to continue to make six-month reports with
3 respect to Oakland?
4 A. No.
5 Q. Your work is done there?
6 A. Correct.
7 Q. And so far as you know, is any state agency
8 undertaking inspections of conditions at the schools in
9 the Oakland school district at this time?
10 MR. HERRON: Objection. Calls for speculation.
11 Vague and ambiguous.
12 THE WITNESS: I'm not aware.
13 Q. BY MR. ROSENBAUM: Okay. Or is any state
14 agency, to your knowledge, involved in inspecting
15 conditions at school facilities in any districts besides
16 West Contra Costa and Compton at this time?
17 MR. HERRON: Could we have that read back.
18 (Record read.)
19 MR. HERRON: Objection. Vague and ambiguous.
20 Calls for a legal conclusion. Calls for him to testify
21 as an expert, and asks him to testify beyond his role at
22 FCMAT. Calls for a narrative.
23 THE WITNESS: I'm not aware.
24 Q. BY MR. ROSENBAUM: Okay. Now, going back to
25 Oakland, part of the comprehensive assessment you've

1 told me was an inspection of the conditions at school
2 facilities; is that right?
3 A. Did you say Compton?
4 Q. I'm sorry, Oakland.
5 A. Yes.
6 Q. Okay. As part of that, sir, did FCMAT conduct
7 inspections at every school in Oakland?
8 A. No.
9 Q. Do you know what percent of the schools?
10 A. I don't know the percent. We conducted
11 assessments in every school, other than those that were
12 under construction at the time.
13 Q. Okay. And do you know if inspections have been
14 conducted at any point at the schools that, in fact,
15 were constructed?
16 MR. HERRON: Objection. Vague and ambiguous.
17 THE WITNESS: We had -- FCMAT had follow-up
18 inspections and picked up one or two of the schools that
19 were under construction, and I believe that we conducted
20 assessments in essentially every school except maybe
21 half a dozen, if that.
22 Q. BY MR. ROSENBAUM: And those assessments, those
23 involved actually on-site surveys of the conditions of
24 the facilities; is that right?
25 A. Yes.

1 Q. Okay. And if you've answered this before, just
2 tell me. But do you know how many schools in the state
3 of California have had on-site surveys of their
4 facilities conducted?
5 MR. HERRON: Objection. Calls for speculation.
6 Asking him to testify beyond his role at FCMAT. Calls
7 for an expert opinion.
8 THE WITNESS: Are you asking how many schools
9 has FCMAT been assigned to conduct that assessment?
10 MR. ROSENBAUM: Let's start there, yeah.
11 THE WITNESS: I apologize. Let me make sure I
12 understand your question. Is that -- is your question
13 relative to the comprehensive standards or the facility
14 site inspection checklist?
15 MR. ROSENBAUM: Let's break it down. First
16 with respect to the comprehensive survey.
17 THE WITNESS: Three school districts, Compton,
18 Oakland, West Contra Costa.
19 Q. BY MR. ROSENBAUM: And with respect to just the
20 on-site surveys, do you know how many schools?
21 A. Two.
22 Q. Okay. And which are they?
23 A. Compton and Oakland Unified.
24 Q. Okay. Not West Contra Costa?
25 A. I don't know the answer to that. I've had to

1 recuse myself from that particular study because of
2 conflict on another -- on the education audit appeals
3 panel that I serve on, so I'm not familiar with the West
4 Contra Costa study and what went on there.
5 Q. Okay. Now, not including FCMAT surveys, do you
6 know how many schools in the state of California have
7 been subjected to on-site surveys for the conditions of
8 their facilities?
9 A. No.
10 Q. Do you know if that information is maintained
11 in any way?
12 MR. HERRON: Objection. Calls for speculation.
13 Calls for him to testify beyond his role at FCMAT.
14 THE WITNESS: I don't know.
15 Q. BY MR. ROSENBAUM: You've never seen any such
16 information?
17 MR. HERRON: Same objections.
18 THE WITNESS: No.
19 Q. BY MR. ROSENBAUM: Okay. Now, the Oakland
20 survey, Mr. Henry, were parents involved in those
21 on-site surveys?
22 MR. HERRON: Objection. Asked and answered.
23 THE WITNESS: Yes.
24 Q. BY MR. ROSENBAUM: And were staff members
25 involved in those on-site surveys?

1 A. Yes.

2 Q. And, to your knowledge, sir, why were parents
3 involved?

4 A. Well, they wanted to be involved, first of all;
5 secondly, Senator Perata, who was intimately involved at
6 the time, still is, encouraged the parents to
7 participate in the site inspection.

8 Q. Do you think it's important for the community
9 to be involved in the on-site surveys, based on your
10 training and experience?

11 MR. HERRON: Objection. Vague and ambiguous.

12 THE WITNESS: If you're asking whether parents
13 need to be involved in the education of their children
14 in a school district, the answer is yes.

15 Q. BY MR. ROSENBAUM: And you would include as
16 part of that the on-site surveys?

17 MR. HERRON: Objection. Vague and ambiguous.

18 THE WITNESS: If you're asking should parents
19 be involved in the FCMAT process by which we inspect the
20 school facilities and sites, the answer is yes.

21 Q. BY MR. ROSENBAUM: Why do you think that's
22 important?

23 A. Two reasons, ownership in the process. And
24 specifically at Oakland Unified School District we felt
25 it was important to engage the community for

1 sustainability purposes. We felt it was important to
2 have a core group of parents trained that could
3 participate after FCMAT left the school district to
4 continue an ongoing review.

5 Q. And why did you think that was important?

6 A. For the sustainability reasons I stated
7 previously.

8 Q. Just so I understand, when you say
9 "sustainability," what do you mean by that?

10 A. In Compton Unified School District the
11 legislation required us to determine whether the
12 standard had been substantially met, but also whether
13 the standard was sustainable. Sustainable meaning that
14 once the oversight agency or the outside agency, the
15 independent external agency left, it was critically
16 important to the author of that piece of legislation, as
17 well as FCMAT, that there was a mechanism in place,
18 infrastructure in place that would sustain that
19 standard, and one of our basic tenets is the engagement
20 of the community relative to that.

21 Q. The tenet is you need to engage the community
22 and if you don't engage the community, it's hard to
23 sustain the standards; is that right?

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

1 THE WITNESS: I'm not suggesting that, because
2 I think there are a number of school districts that have
3 varying degrees of parental involvement and can sustain
4 the standards, so there are a number of variables that
5 speak to that. We think it's an important element and
6 obviously embrace it in our process.

7 Q. BY MR. ROSENBAUM: When you told me about
8 "ownership in the process," what did you mean by that?

9 MR. HERRON: Objection. Misconstrues prior
10 testimony. Maybe you could phrase the question to -- I
11 don't recall him having testified to that.

12 MR. ROSENBAUM: You testified to that four
13 questions ago.

14 MR. HERRON: Why don't you reread him the
15 question.

16 MR. ROSENBAUM: Could you repeat Mr. Henry's
17 answer where he used the phrase "ownership" and
18 "process."

19 (Record read.)

20 THE WITNESS: One of our basic tenets of
21 success relative to our work is the engagement of the
22 local community, and part of that speaks to the
23 community owning the conditions of the school district.

24 Supporters, obviously, of local control, and
25 parents first and foremost know, I think, the conditions

1 of their school districts in their communities and have
2 a vested interest in those conditions, and so it's
3 important that they do take ownership and participate in
4 that process. We embrace that in our work.

5 Q. BY MR. ROSENBAUM: Do you know of any state
6 standards or laws that require parents to become
7 involved in surveying conditions at schools?

8 MR. HERRON: Objection. Calls for a legal
9 conclusion.

10 THE WITNESS: I'm not aware of any.

11 Q. BY MR. ROSENBAUM: And what exactly did parents
12 do in the Oakland survey?

13 MR. HERRON: Objection. Calls for speculation.
14 Vague and ambiguous.

15 THE WITNESS: They participated in the
16 assessment process at the site level.

17 Q. BY MR. ROSENBAUM: How did they do that?

18 MR. HERRON: Same objections.

19 THE WITNESS: Prior to the review, the parents
20 were trained in the matrix, and we explained the rubric
21 that we were using relative to the assessment. And then
22 we divided up the parents into groups of 30 or so and
23 literally went out to the sites during that day, and
24 multiple days follow-up, went through the safety site
25 facility checklist and had them participate in their

1 opinion as a parent what they felt, based on the rubric,
 2 what the condition of the schools were, and there was a
 3 numerical rating that they were asked to determine
 4 through the rubric, and then we assigned -- actually
 5 assigned a letter grade to the inspection. And then
 6 after the review, we had a debriefing with the parents
 7 to discuss what we found. We discussed the
 8 recommendations, and they participated in that process.
 9 Q. BY MR. ROSENBAUM: Okay. Was the involvement
 10 of the parents useful to FCMAT in performing its
 11 assessment?
 12 A. Yes.
 13 Q. Why is that?
 14 A. Each of the groups of 30, 20 to 30, depending
 15 on the size of the particular groups, had a trained
 16 FCMAT consultant, facilities site consultant that
 17 participated, so there was one FCMAT individual and a
 18 group of 20, 30 parents. And it was important for us to
 19 hear the community perspective relative to the
 20 conditions of the school district, that we had a
 21 narrative perspective, an outside external perspective,
 22 but it was important to us to get the community
 23 perspective in terms of the conditions in the school
 24 district.
 25 Q. And why is that?

1 A. They're the closest to the school site, and
 2 obviously the impact of the condition of the schools is
 3 most meaningful to them rather than an external
 4 independent entity is, and so it was important to get
 5 that personal perspective.
 6 Q. When you said "matrix" a few moments ago, what
 7 did you mean by that?
 8 A. We have developed for that purpose, for looking
 9 at the site facilities issues, a number of factors that
 10 we look at, and then a narrative that follows each
 11 factor that helps guide parents or ourselves in terms of
 12 whether the criteria has been met or not. And by matrix
 13 I mean the criteria that supports the basic standard.
 14 Q. Do you know if that matrix is included in any
 15 of the Oakland reports?
 16 A. It was -- no, I don't believe it was included
 17 in the Oakland, the comprehensive reports. No, it was a
 18 separate document.
 19 Q. Would it be possible to get a copy of that
 20 matrix?
 21 A. Yes, it would be.
 22 Q. Do you keep a copy or does your office keep a
 23 copy?
 24 A. I believe we provided that to you.
 25 Q. Okay. Mr. Henry, to your knowledge, the use of

1 parents that you talked about in terms of inspecting the
 2 conditions of school facilities, has that taken place at
 3 any other school district in California?
 4 MR. HERRON: Objection. Calls for speculation.
 5 Asks for him to testify beyond his role at FCMAT. Vague
 6 and ambiguous as phrased.
 7 THE WITNESS: Would you repeat the question.
 8 Q. BY MR. ROSENBAUM: Has that happened anywhere
 9 else? Have parents been utilized in the inspection of
 10 school conditions in any other school district that
 11 you're aware of?
 12 MR. HERRON: Same objections.
 13 THE WITNESS: Yes.
 14 Q. BY MR. ROSENBAUM: Which other school
 15 districts?
 16 A. Those districts that I referenced earlier in my
 17 testimony at Marin County.
 18 Q. Anywhere else that you're aware of?
 19 MR. HERRON: Same objections.
 20 THE WITNESS: I'm not aware.
 21 Q. BY MR. ROSENBAUM: Okay. Now, you also said
 22 that staff members were involved in the assessment of
 23 school conditions, is that right, at Oakland?
 24 A. Yes.
 25 Q. And when you said "staff members," what did you

1 mean by that?
 2 A. The get on the bus tour, as it was coined,
 3 invited community members, as well as elected officials,
 4 as well as staff members at any particular site. Those
 5 that actually inspected the site included those staff
 6 members that volunteered at that particular date, and
 7 then there were principals at the site that participated
 8 more in terms of guiding, helping guide us through the
 9 facility itself, but there were staff members that
 10 volunteered to participate during those days.
 11 Q. Did they include teachers?
 12 A. Yes.
 13 Q. Did they include counselors, do you know?
 14 A. I'm not aware of that.
 15 Q. Did they include principals?
 16 A. Yes.
 17 Q. Was the involvement of teachers important to
 18 obtaining the objective of those inspections?
 19 MR. HERRON: Objection. Vague and ambiguous as
 20 phrased.
 21 THE WITNESS: I'm not sure I know what you mean
 22 by "important."
 23 Q. BY MR. ROSENBAUM: Do you think it was a good
 24 thing that the teachers were involved in the site
 25 assessments?

1 MR. HERRON: Same objection.
 2 THE WITNESS: Yes.
 3 Q. BY MR. ROSENBAUM: Why is that?
 4 A. Because they wanted to participate, and the
 5 fact that they wanted to participate, that's a good
 6 thing. And, secondly, teachers and parents know first
 7 and foremost the conditions of the school, so it's
 8 important to have that personal perspective during the
 9 tours.
 10 Q. Okay. And why is that important?
 11 MR. HERRON: Objection. Asked and answered.
 12 THE WITNESS: I believe I have answered that
 13 relative to the community's involvement, the parents and
 14 other community members, and I believe my statement --
 15 answers would be the same for staff.
 16 Q. BY MR. ROSENBAUM: Do you know outside of the
 17 Oakland school district whether or not teachers have
 18 been involved in on-site assessments of the conditions
 19 of facilities?
 20 MR. HERRON: Objection. Calls for speculation.
 21 Vague and ambiguous. Asks him to testify beyond his
 22 role at FCMAT.
 23 THE WITNESS: I'm not aware.
 24 MR. FEKETE: Are we at a logical breaking
 25 point?

1 MR. ROSENBAUM: Yeah.
 2 (Recess taken.)
 3 Q. BY MR. ROSENBAUM: Before we broke to change
 4 rooms, Mr. Henry, we were talking about the involvement
 5 of staff members in the on-site inspections of
 6 conditions at schools. Do you remember that?
 7 A. Yes.
 8 Q. Okay. Besides Oakland, do you know of any
 9 other school districts where staff members have been
 10 involved in on-site inspections of conditions at
 11 schools?
 12 MR. HERRON: Objection. Asked and answered.
 13 Calls for speculation. Vague and ambiguous as phrased,
 14 and asks him to testify beyond his role at FCMAT.
 15 THE WITNESS: I believe the school districts
 16 that I referred to earlier had staff members
 17 participating.
 18 Q. BY MR. ROSENBAUM: The two in Marin?
 19 A. Correct.
 20 Q. Anywhere else?
 21 A. Not that I'm aware of.
 22 Q. Okay. Now, to your understanding, what was the
 23 community response to their involvement in the on-site
 24 inspections in Oakland?
 25 MR. HERRON: Objection. Vague and ambiguous.

1 THE WITNESS: You're asking what was the
 2 community response at Oakland Unified School District?
 3 MR. ROSENBAUM: Yes, sir.
 4 THE WITNESS: First of all, it was well -- the
 5 community was well represented. They participated very
 6 well, and they expressed positive comments in terms of
 7 their involvement.
 8 Q. BY MR. ROSENBAUM: They got on buses and went
 9 around to the schools; is that right?
 10 A. Yes.
 11 Q. Do you know how many parents and children
 12 participated?
 13 MR. HERRON: Objection. Vague and ambiguous.
 14 Vague as to time. Calls for speculation.
 15 THE WITNESS: I hadn't indicated earlier that
 16 students participated. And I'd have to ask you to
 17 repeat the question.
 18 Q. BY MR. ROSENBAUM: Do you know how many parents
 19 participated, just your best estimate?
 20 A. Approximately 300 parents.
 21 Q. And were they all volunteers?
 22 A. I believe they were.
 23 Q. And is it fair to say, sir, that the parents
 24 who knew -- let me strike that.
 25 Am I correct, sir, that you told me that the

1 parents who knew how bad the schools were, were pleased
 2 that they were being taken seriously?
 3 MR. HERRON: Objection. Misconstrues prior
 4 testimony. Vague and ambiguous. Argumentative.
 5 MR. ROSENBAUM: I don't mean today. I want to
 6 clarify. When you and I talked previously.
 7 MR. HERRON: Same objections.
 8 THE WITNESS: I'm not sure I understand the
 9 question.
 10 Q. BY MR. ROSENBAUM: You and I talked previously
 11 about the Oakland school district prior to today.
 12 A. Yes.
 13 Q. And at that time did you tell me that the
 14 parents loved participating in the on-site inspections?
 15 A. I don't remember using the word "loved."
 16 Q. Okay. Do you remember telling me that the
 17 parents who knew how bad the schools were were pleased
 18 that their views were finally memorialized?
 19 A. There were comments made during the inspection
 20 process as well as the debriefing that were clear
 21 indications that they benefited and appreciated the
 22 involvement during the inspection.
 23 Q. Okay. And after that inspection, did the
 24 schools improve, the conditions of the schools improve?
 25 MR. HERRON: Objection. Vague and ambiguous in

1 terms of "that inspection" and also "in the schools
2 improve." Overbroad. Calls for speculation. Vague as
3 to time.

4 THE WITNESS: FCMAT was not required to conduct
5 a follow-up relative to those assessments, and so I'm
6 uncertain relative to the degree of improvement.

7 Q. BY MR. ROSENBAUM: Wasn't it your
8 understanding, sir, that the schools became cleaner and
9 safer after the inspection?

10 MR. HERRON: Objection. Vague and ambiguous.
11 Argumentative.

12 THE WITNESS: There were reports in the paper
13 following the inspection and there were meetings held
14 with FCMAT and the administration and members of the
15 Board that led us to believe that the school district,
16 specifically the governing board and the administration,
17 was taking very seriously the findings and the
18 recommendations. And we concluded from that, that there
19 was a process in place to address those recommendations.

20 Q. BY MR. ROSENBAUM: Okay. And was it also your
21 understanding that resources were found to address some
22 of the conditions that were identified?

23 MR. HERRON: Objection. Vague and ambiguous.

24 THE WITNESS: I don't have specific knowledge
25 of that, but there would have had to have been an effort

1 that?

2 MR. HERRON: Same objections. Argumentative.

3 THE WITNESS: Monitoring of the recommendations
4 is an important element to meeting the recommendations.

5 Q. BY MR. ROSENBAUM: And why is that?

6 A. Monitoring would suggest that there is a
7 formalized process in place that's communicated and
8 understood in terms of the implementation of the
9 recommendations.

10 Q. When you say a "formalized process in place,"
11 what do you mean by that?

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

14 THE WITNESS: Formalized would, in my opinion,
15 represent that the governing board of the school
16 district, as well as the administration, is aware of the
17 findings and recommendations regarding the assessment,
18 and that they're prepared to provide the necessary
19 resources, staff and funding to address those
20 recommendations.

21 Q. BY MR. ROSENBAUM: Okay. And how many school
22 districts in California, if you know, sir, is such a
23 formalized process in place?

24 MR. HERRON: Objection. Vague and ambiguous in
25 the use of the term "formalized process." You're asking

1 to dedicate resources to some of the recommendations.

2 Q. BY MR. ROSENBAUM: Okay. And what's the basis
3 for that answer?

4 A. Some of the recommendations had cost elements
5 tied to them, and I'm fairly certain that the school
6 district addressed those that were considered to be
7 major safety and health-related recommendations.

8 Q. Okay. And am I correct, Mr. Henry, that you
9 believe that an important step that might have been
10 missing in Oakland was that after the external entity
11 came in for crisis intervention, there's a necessity for
12 another local agency who will continue the monitoring;
13 is that correct?

14 MR. HERRON: Objection. You're asking him to
15 testify beyond his role at FCMAT. You're asking him to
16 speculate. Object on those grounds.

17 MR. JORDAN: Leading.

18 THE WITNESS: If you're asking whether FCMAT
19 believes that it is important for the local agency to
20 implement those recommendations that were provided to
21 them, the answer is yes.

22 Q. BY MR. ROSENBAUM: And also for there to be
23 continuing monitoring of the conditions?

24 MR. HERRON: Same objections.

25 Q. BY MR. ROSENBAUM: Does FCMAT also believe

1 him to testify beyond his role at FCMAT.

2 THE WITNESS: I don't know.

3 Q. BY MR. ROSENBAUM: Are you aware of any?

4 MR. HERRON: Same objections.

5 THE WITNESS: No.

6 Q. BY MR. ROSENBAUM: Okay. Do you know, sir,
7 whether any monitoring of conditions has continued at
8 the Oakland school district after FCMAT left?

9 MR. HERRON: Objection. Asked and answered.

10 Q. BY MR. ROSENBAUM: Did you already answer that
11 for me?

12 A. Yes.

13 Q. Okay. You're a big supporter of the public
14 schools; is that right?

15 A. Yes.

16 Q. You've devoted most of your professional
17 life -- all of your professional life to the public
18 schools?

19 A. Yes.

20 Q. And why are you a supporter of the public
21 schools?

22 A. That gets into a philosophical discussion.

23 MR. HERRON: Objection. Calls for philosophy.

24 THE WITNESS: I'm a product of the public
25 school system and I believe in free public education. I

1 think that's what our country is founded on and the
 2 strengths of our country is based on public education,
 3 so on the basis of that, I'm obviously a supporter.
 4 Q. BY MR. ROSENBAUM: And, Mr. Henry, with respect
 5 to your duties and responsibilities at FCMAT, are you
 6 familiar with the term infrastructure?
 7 A. Yes, I am.
 8 Q. Okay. And what's your understanding of what
 9 infrastructure means as you use it in your professional
 10 capacity?
 11 A. We use it in our capacity related to the
 12 facilities and sites, the basic infrastructure that is
 13 required to conduct educational business.
 14 Q. Okay. And you've stated to me, Mr. Henry, that
 15 in California, based on your training and experience,
 16 you're concerned about the infrastructure of the state
 17 school system; is that right?
 18 MR. HERRON: Objection. Misconstrues prior
 19 testimony.
 20 MR. ROSENBAUM: I'm not talking about your
 21 testimony. You and I talked previously.
 22 THE WITNESS: If you're asking whether I'm
 23 personally concerned about the infrastructure of the
 24 California public schools, I would say that there are
 25 California public schools that I have concerns regarding

1 the basic infrastructure.
 2 Q. BY MR. ROSENBAUM: And what do you mean by
 3 that?
 4 A. There are many school districts in this state
 5 that are well managed and well maintained, however,
 6 there are many school districts in this state that, for
 7 a variety of reasons, there needs to be attention
 8 focused on the basic infrastructure.
 9 Q. Can you break down in numbers how many are well
 10 managed and how many you have concerns about?
 11 MR. HERRON: Objection. Calls for speculation.
 12 Obviously it's also again asking him to testify beyond
 13 the scope of his duties at FCMAT, it's therefore
 14 improper. Also calls for an expert opinion.
 15 THE WITNESS: No.
 16 Q. BY MR. ROSENBAUM: Do you know if anyone in the
 17 state has made that sort of investigation, how many of
 18 the districts are well managed and how many have the
 19 infrastructure problems?
 20 MR. HERRON: Same objections. It's compound.
 21 Argumentative.
 22 THE WITNESS: I'm not aware of a state
 23 inventory of facilities such as that.
 24 Q. BY MR. ROSENBAUM: And you've told me outside
 25 of this deposition that you're worried with respect to

1 the school districts that you referenced, not the
 2 well-managed ones but the other ones, that were going to
 3 lose the infrastructure, didn't you tell me that?
 4 A. I did.
 5 MR. HERRON: Same objections.
 6 Q. BY MR. ROSENBAUM: And what did you mean by
 7 that?
 8 MR. HERRON: Same objections as posed to the
 9 prior question.
 10 THE WITNESS: One of our predictors addresses
 11 the infrastructure of California public schools, and I
 12 personally believe that the safety and health of staff
 13 and students is the most important element that we
 14 address relative to student learning, and because of
 15 that it is important that staff members and students are
 16 able to teach and learn in safe and healthy
 17 environments. And if we're not focusing in on that, I
 18 personally believe that there is potential that we're
 19 going to lose that client base, that student base.
 20 Q. BY MR. ROSENBAUM: The students and parents who
 21 can afford to leave, will leave the schools, is that
 22 what you mean?
 23 MR. HERRON: Objection. Argumentative. Calls
 24 for speculation.
 25 THE WITNESS: I believe there's potential for

1 that, yes.
 2 Q. BY MR. ROSENBAUM: Okay. And have you seen
 3 that occur in certain school districts?
 4 MR. HERRON: Objection to the extent it asks
 5 him to testify beyond his role at FCMAT.
 6 THE WITNESS: There are a number of parents
 7 that are opting to enroll their youngsters, their
 8 students in private, parochial, home schooling. I'm not
 9 certain of the reasons why they're enrolling their
 10 students in those.
 11 Q. BY MR. ROSENBAUM: Do you know if anyone has
 12 surveyed those parents to find out why they're leaving?
 13 MR. HERRON: Objection. Vague and ambiguous to
 14 the use of the terms "anyone" and "those parents" and
 15 "surveyed."
 16 THE WITNESS: It would have been from the
 17 surveys that been conducted both from the state and
 18 national perspective over the years, and I have -- or I
 19 recall reading those in the past several years. I don't
 20 know the specifics, but I know there have been parental
 21 surveys that have been conducted.
 22 Q. BY MR. ROSENBAUM: Do you know if one of the
 23 factors was, in fact, the infrastructure of the schools
 24 as influencing a parent's choice to leave?
 25 A. I don't know that personally. I think there is

1 literature to the surveys that addresses that issue.
 2 Q. Okay. Sitting here today, do you know what any
 3 of that literature is today?
 4 A. Pardon me?
 5 Q. Do you know what any of that literature is?
 6 Can you help identify any of that literature sitting
 7 here today?
 8 MR. JORDAN: I'm having trouble with this air
 9 pushing out here. If you could speak up a little.
 10 THE WITNESS: If you're asking if I'm aware of
 11 the specific title of the article or the agency that's
 12 done the research, I can't recall that information.
 13 But I know that Ed Source a few years back
 14 shared that information at one of their workshops
 15 regarding the national and state surveys that were being
 16 conducted, and I -- my recollection is that the safety
 17 and health of this staff and students at that time was
 18 an important element in the survey.
 19 Q. BY MR. ROSENBAUM: And for the record, what's
 20 Ed Source?
 21 A. Ed Source is a nonprofit entity that was
 22 created out of the League of Women Voters at the
 23 University of Women that analyzes complex educational
 24 issues and provides a meaningful analysis to the
 25 educational community and others, policymakers, relative

1 to those issues.
 2 Q. Is it a government body?
 3 A. I don't believe it's a government body in terms
 4 of government body through the state or federal
 5 government.
 6 Q. Do you know, sir, whether the state of
 7 California has ever undertaken any investigation to
 8 determine why parents leave the public school system?
 9 A. I'm not aware of that.
 10 Q. Now, the schools that FCMAT deals with, sir,
 11 you told me, again, outside this deposition, that you
 12 believe that they lack attention; isn't that correct?
 13 MR. HERRON: Objection. Vague and ambiguous.
 14 THE WITNESS: If you're asking me in my
 15 capacity in FCMAT whether there are some school
 16 districts or some schools that need attention relative
 17 to the facilities and sites, the answer is yes.
 18 Q. BY MR. ROSENBAUM: And can you tell me the
 19 basis of that answer, please?
 20 A. That's based on my experience as the chief
 21 executive officer of FCMAT in terms of the work and
 22 assignments that we have in the state of California.
 23 Q. Do you know how many districts -- strike that.
 24 When you say "need attention," what do you mean
 25 by that?

1 A. There are some schools and school districts
 2 that need to address safety and health issues related to
 3 facilities and sites.
 4 Q. When you say "safety and health issues," what
 5 do you mean by that?
 6 MR. HERRON: Objection. Asked and answered.
 7 THE WITNESS: FCMAT has developed a set of
 8 standards, as well as a matrix, in terms of safety and
 9 health issues related to facilities and sites. And when
 10 I reference that there are schools that need to direct
 11 attention to certain safety and health issues, I'm
 12 really referring to some of the legal standards as well
 13 as industry standards related in the FCMAT standards.
 14 Q. BY MR. ROSENBAUM: And do you know how many
 15 schools in the state of California need that attention
 16 as you're defining it?
 17 A. No.
 18 Q. Has anyone -- has FCMAT ever conducted a survey
 19 to find out how many schools in the state of California
 20 need that attention?
 21 MR. HERRON: Objection. Vague and ambiguous in
 22 terms of the phrase "that attention."
 23 THE WITNESS: No.
 24 Q. BY MR. ROSENBAUM: Have you ever been directed
 25 to do that?

1 A. Are you asking if FCMAT has ever been directed
 2 to conduct a survey of the statewide California public
 3 schools?
 4 Q. Yes.
 5 A. No.
 6 Q. If you had the resources necessary to do that,
 7 could FCMAT undertake such a survey?
 8 MR. JORDAN: Calls for speculation.
 9 MR. HERRON: Objection. Improper hypothetical.
 10 asking him to -- stop there.
 11 THE WITNESS: FCMAT performs very well under
 12 the current statutes that we're obligated to follow, and
 13 those statutes are very clear in terms of our role and
 14 responsibilities, and we're adequately funded to perform
 15 those responsibilities.
 16 So if you're asking could FCMAT do more than
 17 what we're currently doing in the statutes, that's a
 18 policy question that's probably unfair for me to answer,
 19 not appropriate for me to answer. That's a policy
 20 decision for the policymakers or the state legislature,
 21 and currently that's not a responsibility that FCMAT
 22 has.
 23 Q. BY MR. ROSENBAUM: Policymakers have never
 24 given you that directive, is that what you're telling
 25 me?

1 MR. HERRON: Objection to the use of that term
2 "that directive."

3 THE WITNESS: By that directive you mean
4 responsibility to go out and survey the conditions of
5 California public schools?

6 MR. ROSENBAUM: Yeah.

7 THE WITNESS: No, that is not a directive that
8 we have.

9 Q. BY MR. ROSENBAUM: Do you know if there's any
10 state agency that has that directive, to find out the
11 conditions and what schools need attention with respect
12 to the facilities?

13 MR. HERRON: Objection. Calls for speculation,
14 and also asks him to testify beyond his role at FCMAT.
15 Vague and ambiguous as phrased.

16 THE WITNESS: Could you repeat the question.

17 Q. BY MR. ROSENBAUM: Sure. If I understand you
18 correctly, Mr. Henry, you've said to me, the
19 policymakers have never said to FCMAT, go out and survey
20 conditions at the state schools to find out which ones
21 have facility needs; is that right?

22 A. Right.

23 Q. Okay. Now, my question is, do you know if
24 there's been any state agency that's been directed to
25 find out which schools in California have facility needs

1 in the state where we have applied our own standards,
2 FCMAT standards, where there are certain standards that
3 are unmet or partially met.

4 Q. BY MR. ROSENBAUM: And do you know what the
5 socioeconomic status of the students are at those
6 schools?

7 MR. HERRON: Objection. Vague and ambiguous.
8 Calls for speculation. Asking him to testify beyond the
9 scope of his duties in his role at FCMAT.

10 THE WITNESS: Are you asking whether I know the
11 socioeconomic makeup of the school districts whereby
12 we've been assigned to do the comprehensive assessment?

13 MR. ROSENBAUM: Yes.

14 THE WITNESS: I couldn't provide you a
15 percentage relative to that question, but generally I
16 know the socioeconomic makeup, and that would have been
17 an element we would have examined at the time that we
18 did our assessment.

19 Q. BY MR. ROSENBAUM: And what have your findings
20 been?

21 MR. HERRON: Objection. Calls for a narrative.
22 Vague and ambiguous. Overbroad since it covers many
23 schools, several school districts, and therefore
24 compound.

25 THE WITNESS: I would prefer to refer to our

1 that require attention?

2 MR. HERRON: Objection. Vague and ambiguous.
3 Calls for speculation. You're asking him to testify
4 beyond his role at FCMAT.

5 THE WITNESS: No.

6 Q. BY MR. ROSENBAUM: You're not aware of any?

7 A. I'm not aware of any.

8 Q. How about county offices, have they been
9 directed to find out what the conditions are at local
10 schools and which schools need attention with respect to
11 facilities, to your knowledge?

12 MR. HERRON: Same objections. Asked and
13 answered.

14 MR. JORDAN: Ambiguous.

15 THE WITNESS: If they have, I'm not aware of
16 any.

17 Q. BY MR. ROSENBAUM: Okay. Now, you told me
18 several questions ago that FCMAT has found schools that
19 it believes lack attention; is that right?

20 Did I understand you correctly as to
21 facilities?

22 MR. HERRON: Objection. Misconstrues prior
23 testimony.

24 THE WITNESS: By lack of attention, what I mean
25 by that is that there are school districts and schools

1 reports relative to the specifics of that. It's been a
2 while since I've looked at that.

3 Q. BY MR. ROSENBAUM: We're talking about the
4 reports of West Contra Costa, Oakland and Compton?

5 A. West Contra Costa, I recused myself from that
6 study.

7 Q. But Oakland and Compton, is that what you're
8 referring to?

9 A. Yes.

10 Q. We talked about racial and ethnic
11 characteristics of the students. Do you know what the
12 racial and ethnic characteristics are at Compton?

13 MR. HERRON: Objection. Calls for speculation.

14 THE WITNESS: Yes.

15 Q. BY MR. ROSENBAUM: What is that?

16 A. It's predominantly a minority school district.
17 It is in a demographic change, becoming predominantly
18 Hispanic, and I believe the second ethnic population
19 would be African-American.

20 Q. Do you know what the percentage of Caucasian
21 students is at Compton?

22 A. I do not know the percentage, no.

23 Q. Is it very big?

24 A. No.

25 Q. Okay. And how about the same question with

1 respect to Oakland, do you know what the ratio and
 2 composition of the Oakland school district is?
 3 MR. HERRON: Objection. Calls for speculation.
 4 THE WITNESS: I don't recall the percentage,
 5 but I believe the Oakland Unified School District is
 6 going through a similar demographic shift, as is
 7 California, and there is an increasing Hispanic
 8 population, Oakland Unified, and also a large
 9 African-American population at Oakland Unified.
 10 Q. BY MR. ROSENBAUM: Do you know what the white
 11 population is?
 12 A. No.
 13 Q. It's not very large?
 14 MR. HERRON: Objection. Vague and ambiguous.
 15 Calls for speculation.
 16 THE WITNESS: I'm not aware of the percentage.
 17 Q. BY MR. ROSENBAUM: Okay. Now, one of the
 18 things you told me, Mr. Henry, before this deposition,
 19 is that one of the things that FCMAT has found regarding
 20 the infrastructure at the schools where FCMAT works is
 21 that that infrastructure is really neglected.
 22 MR. HERRON: Objection. Argumentative.
 23 MR. FEKETE: That's not a question.
 24 Q. BY MR. ROSENBAUM: Isn't that what you told me,
 25 sir?

1 MR. JORDAN: Leading.
 2 THE WITNESS: Could you repeat the statement.
 3 Q. BY MR. ROSENBAUM: You and I talked previously
 4 about FCMAT's work?
 5 A. Yes.
 6 Q. Okay. And in the course of that discussion,
 7 isn't it true that you told me that what you have found
 8 is that the infrastructure at schools FCMAT works with
 9 is really neglected?
 10 MR. JORDAN: Leading.
 11 MR. HERRON: Same objection.
 12 THE WITNESS: I don't recall the specifics of
 13 that conversation, but I am certain that that, as
 14 stated, is very broad; that is, FCMAT works in multiple
 15 school districts in the state of California, school
 16 sites, and we do a variety of services in development of
 17 products for those school agencies.
 18 There are some school districts that we have
 19 been assigned in or invited in that have not met the
 20 standards, but there are other school districts
 21 certainly that have. So we work up and down the state
 22 of California in many school districts in the state.
 23 Q. BY MR. ROSENBAUM: Right. And some of the
 24 school districts have top-of-the-line schools; isn't
 25 that right?

1 A. Yes.
 2 Q. And some of the school districts have
 3 facilities that, in FCMAT's judgment, are really
 4 neglected; isn't that right?
 5 MR. HERRON: Objection. Argumentative. Vague
 6 and ambiguous.
 7 THE WITNESS: "Neglected" has a lot of
 8 connotations in it. I'd prefer to say that there are
 9 standards in some school districts that need attention.
 10 Q. BY MR. ROSENBAUM: Need attention badly, would
 11 you say?
 12 MR. HERRON: Objection. Vague and ambiguous.
 13 MR. ROSENBAUM: I'll withdraw that.
 14 Q. You believe that part of what is needed for
 15 those school districts where attention is required is
 16 resources and prioritization. Is that a fair
 17 understanding of your findings, sir?
 18 MR. HERRON: Objection. Vague and ambiguous.
 19 Calls for speculation. Asking him to testify beyond his
 20 role at FCMAT. Calls for an expert opinion.
 21 THE WITNESS: Well, I believe that at the top
 22 of that communication is most important. More so
 23 perhaps than the resource issue, the conditions need to
 24 be communicated. And if they're communicated, then
 25 there's more likelihood that they can be measured and

1 met.
 2 Q. BY MR. ROSENBAUM: When you say -- do you mean
 3 conditions or do you mean standards, or do you mean
 4 both?
 5 A. I mean the conditions relative to the
 6 assessment of the standards.
 7 Q. And when you say they need to be communicated,
 8 what do you mean by that?
 9 A. I thought that we had answered that earlier.
 10 Q. Okay. And in some instances do you believe
 11 that prioritization is required?
 12 MR. HERRON: Objection. Vague and ambiguous.
 13 Calls for speculation. Asking him to testify beyond his
 14 role at FCMAT. Calls for an expert opinion.
 15 THE WITNESS: In terms of my role in FCMAT, in
 16 FCMAT itself we place importance on safety and health,
 17 and so relative to prioritization, the safety and health
 18 issues, we have highlighted this and are more critical
 19 if that needs attention at the site level.
 20 Q. BY MR. ROSENBAUM: Okay. And how about
 21 resources, are there some districts where resources are
 22 required with respect to the conditions of the
 23 facilities?
 24 MR. HERRON: Same objections.
 25 THE WITNESS: Yes.

1 Q. BY MR. ROSENBAUM: What district would they be
2 that you're aware of?

3 MR. HERRON: Same objections.

4 THE WITNESS: That was a general statement. I
5 would think that there are a number of school districts
6 that would suggest that in order for them to address the
7 conditions of their facilities and sites, that they
8 would need adequate resources to do that.

9 Q. BY MR. ROSENBAUM: Which districts are you
10 aware of that fit that category?

11 MR. HERRON: Same objections. Vague and
12 ambiguous as phrased.

13 THE WITNESS: I have a little difficulty with
14 that question in terms of stating a list of school
15 districts.

16 Q. BY MR. ROSENBAUM: Can you give me a few
17 examples?

18 A. It's possible that, you know, I would list a
19 school district and the school district would suggest
20 that, well, resources aren't an issue, so I think it's a
21 little difficult for me to answer that question.

22 Q. You've heard superintendents say that we're not
23 going to fix a particular building because we're waiting
24 for state money to build a new facility, haven't you?

25 MR. HERRON: Objection. Argumentative. Vague

1 Calls for speculation. Calls for a legal conclusion.

2 Argumentative.

3 THE WITNESS: I found that report to be
4 comprehensive in that it provided, I thought, a fair
5 historical perspective of facility funding in the state
6 and provided an assessment, a general assessment, and
7 then, I felt, some meaningful recommendations.

8 Q. BY MR. ROSENBAUM: Those recommendations were
9 consistent with FCMAT's findings?

10 MR. HERRON: Objection. Vague and ambiguous,
11 "FCMAT's findings." Calls for speculation. Asking for
12 him to testify as an expert and asking him to testify
13 beyond his role at FCMAT.

14 THE WITNESS: I didn't really look at the
15 report or haven't looked at the report relative to
16 whether it was consistent with FCMAT's findings or
17 recommendations.

18 Q. BY MR. ROSENBAUM: Okay. When we talked prior
19 to this deposition, Mr. Henry, you characterized the
20 current system of oversight of school facilities and
21 school sites as dysfunctional in some areas; isn't that
22 correct?

23 MR. HERRON: Objection. Argumentative.

24 MR. JORDAN: Leading.

25 THE WITNESS: Would you repeat the question,

1 and ambiguous. Vague as to time.

2 THE WITNESS: There have been occasions where
3 I've heard individuals state that they're waiting for
4 state resources to address that, either modernization
5 issues or construction issues.

6 Q. BY MR. ROSENBAUM: Okay. And those
7 individuals, those include superintendents of school
8 districts?

9 MR. HERRON: Objection. Argumentative.
10 Misconstrues prior testimony.

11 THE WITNESS: I don't recall whether it was a
12 superintendent that made those comments or a principal
13 or other administrators that have made those comments.

14 Q. BY MR. ROSENBAUM: It was some administrator;
15 is that right?

16 A. Correct.

17 Q. Okay. And we talked earlier, sir, about the
18 Little Hoover Commission Report on the school facilities
19 titled To Build a Better School.

20 A. Yes.

21 Q. And you had told me you had read that report?

22 A. Yes.

23 Q. And you found that report thorough and
24 comprehensive; is that correct?

25 MR. HERRON: Objection. Vague and ambiguous.

1 please.

2 Q. BY MR. ROSENBAUM: Sure. You and I talked
3 about the system of oversight of school facilities and
4 school sites in the state of California, do you remember
5 that, prior to this deposition?

6 A. Yes.

7 Q. And in the course of that discussion you said
8 to me, look, in some areas the current system of school
9 facilities and school sites is dysfunctional.

10 MR. JORDAN: Leading and calls for hearsay.

11 MR. HERRON: Argumentative. Vague and
12 ambiguous.

13 THE WITNESS: Well, it was some time ago when
14 we talked, and it appears you're reading from a quote of
15 some sort, but I would prefer you just restate the
16 question.

17 Q. BY MR. ROSENBAUM: Okay. Isn't it true, sir,
18 that with respect to the current system of oversight at
19 school facilities and school sites, you think in some
20 areas that system is dysfunctional; isn't that right?

21 MR. HERRON: Calls for speculation. Calls for
22 a legal conclusion. Asks him to testify beyond his role
23 at FCMAT. Also calls for expert testimony.

24 MR. ROSENBAUM: I just want -- just based on
25 your experience, sir.

1 MR. JORDAN: Leading as phrased.
 2 THE WITNESS: Well, I've already indicated that
 3 there were -- there are school districts or schools in
 4 my opinion that need attention relative to facilities
 5 and sites. And the term dysfunctional has several
 6 meanings, I guess, legal and professional meanings, so
 7 my preference is to stick with the earlier testimony
 8 today that there are some school districts in the state,
 9 in my opinion, that need to pay attention to those
 10 standards related to facilities and sites.
 11 Q. BY MR. ROSENBAUM: Okay. And you think that in
 12 some of those school districts, not enough money from
 13 the school budget is directed at facilities; isn't that
 14 right?
 15 MR. HERRON: Objection. Vague and ambiguous as
 16 phrased, and to the use of the term "some of those
 17 school districts." Calls for speculation, a legal
 18 conclusion, and asks him to testify as an expert and
 19 beyond his role at FCMAT.
 20 MR. JORDAN: Leading.
 21 THE WITNESS: I appreciate the -- your
 22 question, but that's really a question that needs to be
 23 answered at the policy level, needs to be researched and
 24 answered, and I don't believe that that's occurred. I
 25 don't believe really there's been adequate research

1 relative to that. I'm not sure that -- I'm not aware of
 2 any policy discussion that has taken place in regards to
 3 that question.
 4 Q. BY MR. ROSENBAUM: Okay. If you were asked for
 5 your recommendation, sir, you believe that state funding
 6 needs to be structured so that enough is allocated to
 7 maintenance and operations; is that right?
 8 MR. HERRON: All the same objections.
 9 Argumentative. Asked and answered.
 10 THE WITNESS: There are questions certainly in
 11 the state relative to the adequacy of facilities
 12 funding, and there's discussions that take place often
 13 at various levels relative to that. Little Hoover
 14 Commission Report is one report that addresses funding.
 15 There are others. I believe Ed Source's report relative
 16 to facilities that they completed in 1998 addresses that
 17 as well. So there are a number of policy level agencies
 18 and individuals that are grappling with that question.
 19 Q. BY MR. ROSENBAUM: Regarding conditions, sir,
 20 do you know where California ranks in terms of square
 21 feet per student?
 22 MR. HERRON: Objection. Vague and ambiguous.
 23 THE WITNESS: No.
 24 Q. BY MR. ROSENBAUM: Do you know if it's near the
 25 bottom of the states?

1 A. No.
 2 Q. Have you stated to me, sir, that both new and
 3 old schools that are being built are small and cramped?
 4 MR. HERRON: Objection. Misconstrues prior
 5 testimony. Vague and ambiguous. Argumentative.
 6 MR. JORDAN: Calls for hearsay.
 7 THE WITNESS: I don't recall making that
 8 statement.
 9 Q. BY MR. ROSENBAUM: Okay. In your work,
 10 Mr. Henry, have you seen rats and vermin in the schools?
 11 MR. HERRON: You mean work for FCMAT?
 12 MR. ROSENBAUM: Yes.
 13 THE WITNESS: Yes.
 14 Q. BY MR. ROSENBAUM: Where?
 15 A. At Compton Unified School District and Oakland
 16 Unified School District.
 17 Q. Do you know -- when was that?
 18 MR. HERRON: Objection. Vague and ambiguous.
 19 THE WITNESS: I don't recall the exact date.
 20 It would have been during the time of our assessment or
 21 follow-up.
 22 Q. BY MR. ROSENBAUM: And do you know how long
 23 those conditions had existed prior to FCMAT's inquiry?
 24 MR. HERRON: Objection. Calls for speculation.
 25 Assumes facts not in evidence. Vague and ambiguous.

1 THE WITNESS: No.
 2 Q. BY MR. ROSENBAUM: Okay. Did you -- do you
 3 know -- strike that.
 4 Do you know for a fact, sir, whether or not
 5 those conditions exist today in Compton, rats and
 6 vermin?
 7 MR. HERRON: Objection. Vague and ambiguous in
 8 the use of the term "those conditions." Vague as to
 9 time. Calls --
 10 THE WITNESS: You're asking me point specific
 11 today whether I know, and the answer is no.
 12 Q. BY MR. ROSENBAUM: How about for Oakland?
 13 A. No.
 14 Q. You don't know?
 15 A. No.
 16 Q. Do you know how many schools in the state of
 17 California have rats?
 18 MR. HERRON: Objection. Vague and ambiguous,
 19 "have rats," the use of that term. Calls for
 20 speculation. Asks him to testify beyond his role at
 21 FCMAT. It's an unfair question. It's poorly phrased.
 22 MR. ROSENBAUM: Go ahead.
 23 THE WITNESS: No.
 24 Q. BY MR. ROSENBAUM: Or vermin in classrooms?
 25 MR. HERRON: Same objections.

1 THE WITNESS: No.
 2 Q. BY MR. ROSENBAUM: Do you know if anyone has
 3 undertaken such an investigation to find that answer
 4 out?
 5 MR. HERRON: Same objections.
 6 THE WITNESS: No.
 7 (Mr. Eliasberg left the room.)
 8 Q. BY MR. ROSENBAUM: In FCMAT's work, Mr. Henry,
 9 have you seen air and ventilation systems that don't
 10 work so that students are too hot or too cold?
 11 MR. HERRON: Objection. Calls for speculation.
 12 Vague and ambiguous as phrased.
 13 THE WITNESS: Yes.
 14 Q. BY MR. ROSENBAUM: What do you mean by that?
 15 MR. HERRON: What does he mean by what?
 16 Q. BY MR. ROSENBAUM: What's your understanding in
 17 talking about it being too hot or too cold, the
 18 students?
 19 A. If you're asking whether we have been in school
 20 districts that the standards relative to ventilation,
 21 heating and air have not been met or partially met, the
 22 answer is yes, we have been in school districts where
 23 the standards have not been met or partially met.
 24 Q. And what school district are those?
 25 A. Compton Unified School District, Oakland

1 Unified School District.
 2 Q. Do you know how many school districts there are
 3 in the state of California where air and ventilation
 4 systems don't work properly so students are too hot or
 5 too cold?
 6 MR. HERRON: Objection. Calls for speculation.
 7 Calls for expert testimony. Asking him to testify
 8 beyond his role at FCMAT. Vague and ambiguous.
 9 (Mr. Eliasberg entered the room.)
 10 THE WITNESS: No.
 11 Q. BY MR. ROSENBAUM: Do you know if anyone in the
 12 state has looked into that question?
 13 MR. HERRON: Same objections.
 14 THE WITNESS: No.
 15 Q. BY MR. ROSENBAUM: Any county offices looked
 16 into that question?
 17 MR. HERRON: Same objections. Vague and
 18 ambiguous.
 19 THE WITNESS: No.
 20 Q. BY MR. ROSENBAUM: Okay. Do you know in
 21 Compton how long those conditions of the air and
 22 ventilation system not working so students were too hot
 23 or too cold, do you know how long that had existed
 24 before FCMAT came?
 25 MR. HERRON: Objection. Misconstrues prior

1 testimony. And all the prior objections interposed.
 2 THE WITNESS: No.
 3 Q. BY MR. ROSENBAUM: Or same question for
 4 Oakland?
 5 A. No.
 6 Q. Do you know, sitting here today, whether or not
 7 there are classrooms in Oakland where the air and
 8 ventilation systems don't work so students are too hot
 9 or too cold?
 10 MR. HERRON: Objection. Asked and answered.
 11 THE WITNESS: No.
 12 Q. BY MR. ROSENBAUM: Same question for Oakland?
 13 A. No.
 14 Q. Do you know if anyone in the state is looking
 15 into whether or not there are classrooms in Oakland that
 16 are too hot or too cold for the students because the air
 17 and ventilation systems don't work properly?
 18 MR. HERRON: Objection. Calls for speculation
 19 You're asking him to testify beyond his role at FCMAT.
 20 Calls for an expert opinion.
 21 THE WITNESS: I'm not aware of that.
 22 Q. BY MR. ROSENBAUM: Same question for Compton?
 23 MR. HERRON: Same objections.
 24 THE WITNESS: Yes.
 25 Q. BY MR. ROSENBAUM: Do you know?

1 A. I'm not aware of that.
 2 Q. Okay. Thank you.
 3 Going back to the air and ventilation system
 4 that we were talking about, I take it, sir, there were
 5 teachers in those classrooms, right, where those systems
 6 weren't working properly?
 7 MR. HERRON: Objection. Calls for speculation.
 8 Vague and ambiguous.
 9 THE WITNESS: Yes.
 10 Q. BY MR. ROSENBAUM: Do you know if any of those
 11 teachers had ever reported the failure of those systems
 12 to higher officials?
 13 MR. HERRON: Objection. Vague and ambiguous to
 14 the use of the term "higher officials."
 15 MR. ROSENBAUM: I'm referring to either Compton
 16 or Oakland.
 17 MR. JORDAN: Calls for speculation.
 18 MR. HERRON: You mean Compton or Oakland
 19 officials?
 20 MR. ROSENBAUM: Whether the teachers had
 21 reported the conditions to someone above them, whether
 22 they were principals or administrators or someone at the
 23 school district.
 24 THE WITNESS: Yes.
 25 Q. BY MR. ROSENBAUM: Do you know if they have

1 reported that?
 2 A. Yes.
 3 Q. And what's the answer?
 4 A. What is the answer to --
 5 Q. Had they reported it?
 6 A. Yes, they have reported it.
 7 Q. I'm sorry.
 8 A. If you're asking me if I'm aware of whether
 9 staff members in either Compton Unified School District
 10 or Oakland Unified School District have reported the
 11 conditions in their classroom or their sites, the answer
 12 to that is, yes. They've reported to either their
 13 superiors or administrators at the school district, the
 14 answer is yes.
 15 Q. Do you know if any reports by those teachers
 16 were made prior to FCMAT's entry into those school
 17 systems?
 18 MR. HERRON: Reports to the district?
 19 MR. JORDAN: Calls for speculation.
 20 MR. ROSENBAUM: Reports to principals,
 21 administrators, persons in the district.
 22 THE WITNESS: You're asking whether I'm aware
 23 if the staff members had formally made reports to the
 24 administration at the school district prior to FCMAT's
 25 engagement? The answer is yes.

1 Q. BY MR. ROSENBAUM: And do you know what
 2 response they received? Strike that.
 3 Is that true for both Compton and Oakland?
 4 MR. HERRON: Objection. Calls for speculation.
 5 THE WITNESS: I am certain that it's true in
 6 regards to Oakland Unified School District.
 7 Q. BY MR. ROSENBAUM: And you don't know one way
 8 or the other with regard to Compton?
 9 A. No.
 10 Q. For Oakland, how do you know that?
 11 A. FCMAT had received copies of the
 12 correspondence.
 13 Q. Okay. And do you have copies of that
 14 correspondence?
 15 A. If I do have copies of that correspondence, we
 16 have provided it.
 17 Q. Do you know what response, if any, they
 18 received?
 19 MR. HERRON: Objection. Vague and ambiguous.
 20 THE WITNESS: No.
 21 Q. BY MR. ROSENBAUM: Do you know if they received
 22 any response at all?
 23 MR. HERRON: They who? Objection. Vague and
 24 ambiguous as to the use of that term.
 25 Q. BY MR. ROSENBAUM: I just want to be very clear

1 here. You're talking about correspondence from teachers
 2 to officials; is that right?
 3 MR. HERRON: Objection. Vague and ambiguous to
 4 the use of the term "officials."
 5 THE WITNESS: If you're asking whether I'm
 6 aware if the administration responded to the
 7 correspondence from teachers --
 8 MR. ROSENBAUM: Yes.
 9 THE WITNESS: -- sent to the administrators.
 10 MR. ROSENBAUM: Yes.
 11 THE WITNESS: I'm not aware.
 12 Q. BY MR. ROSENBAUM: Have you seen any
 13 correspondence back from administrators to teachers
 14 about conditions in the classrooms?
 15 MR. HERRON: In reference to complaints?
 16 THE WITNESS: And this is in reference to
 17 Oakland High School district?
 18 MR. ROSENBAUM: Yes, sir.
 19 MR. HERRON: Objection. Vague and ambiguous.
 20 THE WITNESS: I believe that there were
 21 responses from the administration back to staff members
 22 relative to some of the letters, yeah.
 23 Q. BY MR. ROSENBAUM: Do you know if all the
 24 letters received responses?
 25 A. I'm not aware of that.

1 Q. Did you request all the correspondence back and
 2 forth with respect to complaints regarding conditions in
 3 the classroom?
 4 MR. HERRON: Objection. Vague and ambiguous in
 5 the use of the term "you."
 6 THE WITNESS: No.
 7 Q. BY MR. ROSENBAUM: Okay. Did you -- how did
 8 you come into custody of those -- that correspondence?
 9 A. We held -- FCMAT held not only the training
 10 sessions that were open to the public, but we held some
 11 community forums, and during at least one of the
 12 community forums some of the memorandums that were
 13 written by staff to the administration were provided to
 14 us at that time.
 15 Q. By staff members?
 16 A. Yes.
 17 Q. And when was that, approximately?
 18 A. That had to be after April of '99, around that
 19 period.
 20 Q. Okay. And were there conditions other than the
 21 temperature in the classrooms that were referenced in
 22 some of these correspondence?
 23 A. Yes.
 24 Q. Okay. And what other conditions were
 25 referenced?

1 A. I would --
 2 MR. HERRON: Objection to the extent you're
 3 asking him to speculate about the content of documents
 4 already in your possession.
 5 BY MR. JORDAN: Calls for hearsay.
 6 THE WITNESS: I would prefer to rely on the
 7 documents themselves. I'm fairly certain if we
 8 maintained the documents, we've provided those documents
 9 to you.
 10 MR. HERRON: Mark, when you get to a convenient
 11 breaking point, I think we've been going about an hour.
 12 MR. ROSENBAUM: Give me just a couple more
 13 minutes. I want to close this off.
 14 Q. You were personally present at some of these
 15 community meetings, is that right, Mr. Henry?
 16 A. Yes.
 17 Q. And staff members were in the audience; is that
 18 right?
 19 MR. HERRON: Are we talking about Compton?
 20 MR. ROSENBAUM: We're talking about Oakland.
 21 THE WITNESS: Yes.
 22 Q. BY MR. ROSENBAUM: And some staff members said,
 23 we've made complaints to school officials about the
 24 conditions? Did they say that in sum or substance?
 25 MR. HERRON: Objection. Vague and ambiguous.

1 THE WITNESS: I don't recall the specific
 2 statements that they made, but clearly they provided
 3 correspondence that they'd shared with the
 4 administration.
 5 Q. BY MR. ROSENBAUM: Did some of these staff
 6 members express concerns to FCMAT that their complaints
 7 weren't properly paid attention to?
 8 A. Repeat the question.
 9 Q. Sure. The staff members said to you or other
 10 FCMAT officials, we've complained about the conditions
 11 to school officials; isn't that right?
 12 A. Yes.
 13 Q. And they said, in fact, we've sent
 14 correspondence in which we've described some of the
 15 conditions; isn't that right?
 16 MR. HERRON: Objection. Asked and answered.
 17 Argumentative.
 18 THE WITNESS: Yes.
 19 Q. BY MR. ROSENBAUM: And they also said, and our
 20 complaints haven't been dealt with? Didn't they also
 21 say that?
 22 MR. HERRON: Same objections.
 23 THE WITNESS: I don't know if they said exactly
 24 like that, but I'm sure that they were concerned with
 25 the follow-up.

1 Q. BY MR. ROSENBAUM: They weren't happy?
 2 A. No.
 3 Q. No meaning they weren't happy; is that right?
 4 A. They didn't appear to be happy.
 5 MR. ROSENBAUM: We can take a break right now.
 6 (Lunch recess taken.)
 7 Q. BY MR. ROSENBAUM: You doing okay, Mr. Henry?
 8 A. Yes.
 9 Q. Okay. You've told us a few times, Mr. Henry,
 10 that FCMAT becomes involved with school districts either
 11 by invitation or assignment, am I getting that right?
 12 A. Yes.
 13 Q. When you say invitation, what do you mean by
 14 that?
 15 A. FCMAT can be invited in by local educational
 16 agencies, that is, school districts and/or county
 17 offices of education.
 18 Q. Okay. Or it can be assigned; is that right?
 19 A. Yes.
 20 Q. And what does that mean?
 21 A. FCMAT can be assigned by the oversight agency,
 22 that is, the county, superintendent of school's office,
 23 or assigned through the state legislature.
 24 Q. Okay. Can the state superintendent of
 25 education assign FCMAT?

1 MR. SEFERIAN: Objection. Calls for
 2 speculation. Calls for a legal opinion, no foundation.
 3 MR. HERRON: I thought he meant superintendent
 4 of public instruction as opposed to education.
 5 MR. ROSENBAUM: That's what I mean. I
 6 appreciate that.
 7 THE WITNESS: If you're asking whether the
 8 superintendent of public instruction has the statutory
 9 authority to assign FCMAT under certain conditions, if
 10 certain conditions are met, the answer is yes.
 11 Q. BY MR. ROSENBAUM: To your knowledge, has that
 12 ever happened?
 13 A. Yes.
 14 Q. When?
 15 A. The superintendent of public instruction has
 16 assigned FCMAT years ago, early on, to the Mendocino
 17 County Office of Education, and the superintendent of
 18 public instruction has assigned FCMAT into the
 19 San Francisco Unified School District to do a financial
 20 assessment, and the superintendent of public instruction
 21 has assigned FCMAT with the joint assignment of Alameda
 22 County superintendent of schools at Emery Unified School
 23 District.
 24 Q. Okay. Thanks. Mendocino, to the best of your
 25 recollection, when did that happen?

1 A. Well, it was very early on. I really don't
2 recall the year. I would guess around 1993, maybe,
3 right around there.

4 Q. And what was the task that FCMAT had?

5 MR. SEFERIAN: Objection. No foundation.
6 Assumes facts not in evidence.

7 THE WITNESS: The superintendent of public
8 instruction through an engagement letter requested FCMAT
9 to conduct an assessment of various allegations that
10 were being made at the time by the county board toward
11 the county superintendent, and also allegations by the
12 county superintendent towards the county board, and we
13 were assigned in to do a review and conduct an
14 assessment relative to those charges.

15 Q. BY MR. ROSENBAUM: Did it deal with issues of
16 financial mismanagement?

17 A. Yes.

18 Q. Any examination -- one of the things you do in
19 Compton, FCMAT does in Compton, is it has a category
20 pupil achievement, am I right?

21 MR. HERRON: Objection. Vague and ambiguous.

22 Q. BY MR. ROSENBAUM: That's one of the areas that
23 it looks into?

24 A. If you're asking whether one of the five
25 operational areas is instruction, the answer is yes.

1 Q. Okay. Was instruction part of the assignment
2 for Mendocino?

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

5 THE WITNESS: I don't recall whether
6 instruction was a specific operational area that we were
7 asked to review in relationship to finance. It would
8 only have been in, I think, in relationship to finance.

9 Q. BY MR. ROSENBAUM: Okay. And you told us
10 earlier that when FCMAT went into Compton, FCMAT
11 developed a set of standards to assess in the area of
12 instruction, am I understanding that correctly?

13 A. Yes.

14 Q. Were those standards developed at the time of
15 Mendocino?

16 MR. HERRON: Objection. Asked and answered in
17 part.

18 THE WITNESS: No.

19 Q. BY MR. ROSENBAUM: Okay. When you say that if
20 it dealt with instruction, it would be the financial
21 aspect of it -- am I understanding it right? Again I'm
22 thinking about Mendocino.

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

25 THE WITNESS: If you're asking whether we

1 applied the instructional standards at Mendocino County
2 Office of Education, the answer is no. They were not
3 developed at that time, nor do I believe the charge
4 involved pupil achievement or instruction. However, in
5 the financial assessment, occasionally we would look at
6 other operational areas, and I'm not certain whether we
7 did that at Mendocino or not.

8 Q. BY MR. ROSENBAUM: Okay. And one of the
9 operational areas is facilities management; is that
10 right?

11 A. Yes.

12 Q. And when you looked into Mendocino, did you
13 look into facilities management? Strike that.

14 When you went into Compton, you also told us
15 that you developed a set of standards dealing with
16 facilities management; is that right?

17 A. Yes.

18 Q. And I take it those standards didn't exist at
19 the time you were assigned to look into Mendocino; is
20 that right?

21 A. That is correct.

22 Q. Okay. And so when you went into Mendocino,
23 were you specifically directed to look at the question
24 of the state of the conditions of the school facilities
25 in Mendocino?

1 MR. SEFERIAN: Objection. No foundation.
2 Assumes facts not in evidence.

3 THE WITNESS: It's been a number of years since
4 we were engaged in Mendocino Unified School District,
5 and I would prefer to rely on the record. I believe we
6 provided that information to you.

7 Q. BY MR. ROSENBAUM: So I would know by looking
8 at the report whether or not you looked into that area;
9 is that right?

10 A. Yes.

11 Q. With respect to San Francisco Unified School
12 District, when were you directed to look into the
13 financial matters?

14 MR. SEFERIAN: Objection. Misstates the
15 witness' testimony. Assumes facts not in evidence.

16 MR. ROSENBAUM: Go ahead.

17 THE WITNESS: The San Francisco assessment
18 followed, I believe, Oakland Unified School District's
19 assessment. I think we began in early 2000, and that
20 was a financial management assessment only.

21 Q. BY MR. ROSENBAUM: What does that mean?

22 A. The charge that we were provided was to
23 determine the solvency of the school district for the
24 current and two subsequent years, and look at the
25 district's internal controls and to provide

1 recommendations relative to our findings.
 2 Q. And that was the full extent of FCMAT's charge
 3 as you understood it, right?
 4 A. I would rely more on the engagement letter than
 5 my memory today. The engagement letter, plus, I
 6 believe, budget language specific to the appropriation
 7 that we were provided spelled out the specifics to that
 8 assessment.
 9 Q. Same for Emeryville?
 10 A. Correct.
 11 Q. Okay. Now, you told us that FCMAT has
 12 conducted comprehensive assessments in three school
 13 districts, right?
 14 A. If you're suggesting comprehensive assessment
 15 being the five operational areas, the answer is yes,
 16 three school districts.
 17 Q. Compton, West Contra Costa and Oakland?
 18 A. Yes.
 19 Q. Now, were you invited by the West Contra Costa
 20 School District to conduct the assessment?
 21 MR. HERRON: Objection. Vague and ambiguous in
 22 the use of the term "you." I take it you mean FCMAT.
 23 MR. ROSENBAUM: Yeah.
 24 THE WITNESS: If you're asking did the
 25 governing board of West Contra Costa invite FCMAT to do

1 the comprehensive assessment, the answer is no.
 2 Q. BY MR. ROSENBAUM: How about Oakland, did the
 3 school governing board of Oakland invite FCMAT to do the
 4 comprehensive assessment of the Oakland school district?
 5 A. Yes.
 6 Q. And how about Compton?
 7 A. No.
 8 Q. In fact, at the time that Compton -- that FCMAT
 9 began with Compton, who was in charge of the Compton
 10 schools?
 11 A. The Compton Unified School District was under
 12 receivership, and the state administrator was
 13 responsible for the day-to-day operation of the school
 14 through the assignment of the superintendent of public
 15 instruction.
 16 Q. Okay. Thank you. And I take it FCMAT doesn't
 17 go into every school district every year; isn't that
 18 right?
 19 A. That is correct.
 20 Q. And it certainly doesn't go into every school
 21 every year?
 22 A. That is correct.
 23 Q. And you may have already told me this. Bear
 24 with me. When FCMAT goes into a school district, it
 25 doesn't necessarily go into every school; isn't that

1 right?
 2 A. Yes.
 3 Q. It does not?
 4 A. It does not go into every school.
 5 Q. In fact, for some FCMAT assessments, it doesn't
 6 go into any schools; isn't that right?
 7 MR. HERRON: Objection. Vague and ambiguous.
 8 THE WITNESS: If you're asking whether there
 9 are occasions when FCMAT is either invited in or
 10 assigned into a school district, there are occasions
 11 when we could conduct that assessment without appearing
 12 at the school site level.
 13 Q. BY MR. ROSENBAUM: Okay. And the five
 14 operational areas, would you mind stating them again for
 15 me?
 16 A. They are personnel management, facilities
 17 management, financial management, pupil achievement,
 18 and, the fifth area, governance/community.
 19 Q. Community relations, or is it just community?
 20 A. Community relations, yes.
 21 Q. And how many school districts -- and I'm going
 22 all the way back to when FCMAT started. How many school
 23 districts have invited FCMAT in to make an assessment in
 24 the area of pupil achievement?
 25 MR. HERRON: Objection. Calls for speculation.

1 Documents produced answer that question better than this
 2 witness can.
 3 THE WITNESS: I'm not certain of the exact
 4 number of school districts that have invited us in to
 5 conduct pupil achievement.
 6 Q. BY MR. ROSENBAUM: Can you give me an estimate?
 7 MR. HERRON: Objection. Calls for speculation.
 8 THE WITNESS: No, I can't.
 9 Q. BY MR. ROSENBAUM: Can you tell me if it's more
 10 or less than 10?
 11 MR. HERRON: Same objection.
 12 MR. ROSENBAUM: I don't want you to guess.
 13 THE WITNESS: You're asking on those occasions
 14 where we're invited in --
 15 MR. ROSENBAUM: Yes.
 16 THE WITNESS: -- whether I know the number of
 17 school districts that have actually asked for FCMAT
 18 assessments in pupil achievement?
 19 MR. ROSENBAUM: Yes, sir.
 20 MR. HERRON: Same objection.
 21 THE WITNESS: I would be guessing if I provided
 22 a number today.
 23 Q. BY MR. ROSENBAUM: Okay. Let me mark -- let's
 24 mark as Exhibit No. 57, and I'll supply your counsel and
 25 other counsel with copies of it, a six-page document.

1 At the top of the first page it says FCMAT. I don't
 2 pretend that this is a full description of it.
 3 I'd ask you to take a look at it and see if you
 4 recognize this document.
 5 (Exhibit 57 was marked.)
 6 Q. BY MR. ROSENBAUM: I'm going to put 57 in front
 7 of you and supply copies to counsel.
 8 MR. HERRON: Mark, could I have agreement that
 9 the State joins in any objections interposed by counsel
 10 for the state agency, defendants, unless indicated
 11 otherwise?
 12 MR. ROSENBAUM: Say that again.
 13 MR. HERRON: Can I have an understanding that
 14 the state joins in objections interposed by counsel for
 15 the state agency, defendants?
 16 MR. ROSENBAUM: Sure.
 17 MR. HERRON: Thanks. And has joined to this
 18 point.
 19 MR. ROSENBAUM: Okay.
 20 Q. Mr. Henry, feel free to take as much time on
 21 this, but I just want to know generally if you're
 22 familiar with this document.
 23 MR. FEKETE: Counsel, can I ask a question? I
 24 notice that the first three pages of this document say
 25 pages 1, 2 and 3 of 4, but there's no page 4 of 4. And

1 language at the time that provided some detail, the
 2 scope of study agreement between the board and FCMAT
 3 determined the work product as well. I left that piece
 4 out.
 5 Q. Okay. Help me understand that. That means the
 6 school board -- maybe you just said this and I'm being
 7 dense here -- the school board determined the scope of
 8 what FCMAT did; is that right?
 9 A. In part they did by the signing of the study
 10 agreement, yes.
 11 Q. Okay. And that agreement was one of the
 12 documents that was turned over to us?
 13 A. Yes.
 14 Q. Okay. Looking now at what's been marked as
 15 Exhibit 57, page 1 of this, do you know what this is?
 16 A. If you're asking if I'm aware of the origin of
 17 it, I understand where the origin is and I understand
 18 what the document was used for, yes.
 19 Q. Okay. What was the origin, please?
 20 A. I'm certain that this came off of the FCMAT
 21 website.
 22 Q. Okay. And what was this used for?
 23 MR. HERRON: Objection. Calls for speculation.
 24 Assumes facts not in evidence.
 25 THE WITNESS: If you're asking why was this on

1 the last page says 1 of 2, there is no page 2 of 2.
 2 MR. ROSENBAUM: You've got what I've got, and I
 3 agree with your characterization. That's what I got.
 4 Q. Referring you to the top of what's been marked
 5 as Exhibit 57, Mr. Henry, is that the FCMAT logo at the
 6 top?
 7 A. Yes.
 8 Q. Okay. Were you involved in the Oakland
 9 assessment yourself?
 10 A. Yes.
 11 Q. What was the nature of your involvement?
 12 MR. HERRON: Objection. Calls for a narrative.
 13 Vague as to time.
 14 THE WITNESS: I was a chief administrative
 15 officer at the time, responsible for the delivery of the
 16 product that we're required to provide under the
 17 legislation.
 18 Q. BY MR. ROSENBAUM: Okay. And looking at the
 19 first page of Exhibit 57 and in the upper right-hand
 20 corner it says page 1 of 4. Do you see that?
 21 A. May I go back and address that last question?
 22 Q. Sure.
 23 A. I want to make sure that it's understood that
 24 the board there at Oakland invited FCMAT in by unanimous
 25 vote, and so in addition to the, I believe, budget

1 the website -- are you asking why this was on the
 2 website?
 3 MR. ROSENBAUM: Yeah.
 4 THE WITNESS: There were requests at the time
 5 that we concluded the site assessment to provide this
 6 information on the website for school districts and
 7 community members to have access to the ratings and
 8 conditions of the school at the time of the site
 9 inspection.
 10 Q. BY MR. ROSENBAUM: And do you know what these
 11 letter grades mean? You'll notice under high school it
 12 says Castlemont High, F; Fremont, D; McClymonds, F;
 13 Oakland High, F; Oakland Technical, F; Skyline, F.
 14 Do you know what those letters mean?
 15 A. Yes.
 16 Q. What do they mean?
 17 A. They relate to the matrix that I referred to
 18 earlier, in that there is a numerical rating that
 19 relates to a letter grade in terms of the conditions of
 20 the school on that matrix.
 21 Q. Okay. And those are health and safety
 22 conditions?
 23 A. The narrative that follows the broad categories
 24 include major safety and health issues, but they also
 25 include issues unrelated to safety and health.

1 Q. When you say major health and safety issues,
2 what do you mean by that?

3 A. FCMAT noted certain conditions or certain
4 standards in terms of the assessment process that was
5 important for us to assess relative to the safety and
6 health of students and staff.

7 Q. Okay. Those were the legal and industry
8 standards, in part, that you were talking about earlier?

9 MR. HERRON: Objection. Vague and ambiguous.

10 THE WITNESS: No. Again, there's two
11 separate -- there's the FCMAT standards and each of the
12 five operational areas that are legal and professional
13 standards, and those standards we did assess the unified
14 school district on, but separate from that and prior to
15 that assessment we used the matrix, which these findings
16 and grades stemmed from, and that was from the get on
17 the bus tour.

18 Q. BY MR. ROSENBAUM: And who prepared that
19 matrix?

20 A. There were a combination of individuals that
21 participated in the development of that.

22 Q. Was FCMAT involved in that?

23 A. Yes.

24 Q. Were you involved in that personally?

25 A. Yes.

1 Q. Okay. Keep 57 in front of you, but let's mark
2 as Exhibit 58 a document, a four-page document that at
3 the top of the first page says OUSD, grading criteria.
4 I'll have this marked and supply it to counsel.
5 (Exhibit 58 was marked.)

6 Q. BY MR. ROSENBAUM: I'm going to ask you,
7 Mr. Henry, if you'd please take a look at what's now
8 been marked as Exhibit 58.
9 Have you had a chance to look at that now?

10 A. Yes.

11 Q. Is that the matrix, Exhibit 58?

12 A. It's part of -- I'm sorry, repeat the question.

13 Q. I'm trying to figure out what the matrix is
14 that you're referring to. Is Exhibit 58 the matrix?

15 A. No.

16 Q. Is it related to the grading on Exhibit 57?
17 What relationship, if any, exists between Exhibit 58 and
18 Exhibit 57?

19 A. Exhibit 58 was a document that was tied to the
20 matrix that provided, we felt, better clarity in what we
21 had hoped the community would look for, community and
22 staff, as well as FCMAT would look for in determining
23 the numerical rating on the matrix. And so there were
24 two documents, this document and a matrix that has a
25 definition, I believe -- not only definition, but an

1 indication which items we felt were major safety and
2 health issues, and how one would go about determining
3 the numerical rating and the application of the letter
4 grade.

5 Q. When you say "this document," you're referring
6 to what's been marked now as Exhibit 58?

7 A. Yes, I am.

8 Q. Okay. Now, what does it mean -- what's your
9 understanding, Mr. Henry, of what it means if a school
10 receives an F?

11 MR. HERRON: Are you referring to Exhibit 57?

12 MR. ROSENBAUM: Yes, I am.

13 THE WITNESS: The letter grade assigned to the
14 school districts related back to the number of -- the
15 number of elements that were looked at to determine
16 whether the particular standard had been met or not.
17 And there is a -- the matrix provides for the number of
18 standards that would need to be met to receive a letter
19 grade of A, B, C, down the list.

20 Q. BY MR. ROSENBAUM: And who actually gave these
21 grades? Again, referring to Exhibit 57.

22 A. The grades were determined by utilizing the
23 criteria and in discussion with the individuals that
24 participated on the site review at the time that the
25 inspection took place.

1 Q. Okay. And FCMAT was involved in the site
2 review; is that right?

3 A. Yes.

4 Q. And did -- and do you happen to remember what
5 an F means as to how many items are out of compliance?

6 MR. HERRON: Objection. Calls for speculation.
7 Compound.

8 THE WITNESS: I don't have the matrix in front
9 of me, but I believe we provided that information. I
10 don't recall.

11 Q. BY MR. ROSENBAUM: F is the lowest, right?

12 A. Yes.

13 Q. Okay. And did you visit -- yourself, did you
14 visit Castlemont High School?

15 MR. HERRON: Ever?

16 MR. ROSENBAUM: As part of this task.

17 THE WITNESS: I don't recall whether I visited
18 Castlemont High School or not.

19 Q. BY MR. ROSENBAUM: How about the schools that
20 are listed under high schools, do you remember visiting
21 any of them, Castlemont, Fremont, McClymonds, Oakland
22 High, Oakland Technical or Skyline?

23 A. I know that I visited a couple, at least a
24 couple high schools. I don't recall today which high
25 schools those were.

1 Q. A couple of the high schools that are listed on
2 Exhibit 57?
3 A. Yes.
4 Q. Okay. And how would you characterize the
5 conditions at those schools that you visited?
6 MR. HERRON: Objection. Calls for a narrative.
7 Vague and ambiguous as phrased.
8 THE WITNESS: I believe that the data speaks
9 for itself at a point in time, and so the letter grade
10 and the definition of the letter grade relative to that
11 has been provided to you, and so I think that speaks to
12 the conditions at the time that we did this.
13 Q. BY MR. ROSENBAUM: Same for the middle schools
14 and same for the elementary schools?
15 A. Yes.
16 Q. Did you visit middle schools?
17 A. Yes.
18 Q. Okay. And you visited elementary schools too?
19 A. Yes.
20 Q. Do you remember how many middle schools you
21 personally visited?
22 A. No.
23 Q. How many elementary schools, can you give me
24 any estimate?
25 MR. HERRON: Objection. Calls for speculation.

1 THE WITNESS: I probably visited around 18
2 schools.
3 Q. BY MR. ROSENBAUM: Throughout the Oakland
4 school district?
5 A. Yes.
6 Q. Okay. Did you see any A's?
7 A. I believe I did, yes.
8 Q. Do you remember approximately how many?
9 A. No.
10 Q. Did you see -- were the majority of the schools
11 you visited A's?
12 A. No.
13 Q. Okay. Were the majority of the schools you
14 visited A's or B's?
15 MR. HERRON: Objection. Calls for speculation.
16 THE WITNESS: I would want to go back and look
17 at the record and refresh my memory.
18 Q. BY MR. ROSENBAUM: Okay. Mr. Henry, how does a
19 school get to be an F?
20 MR. HERRON: Objection. Asked and answered.
21 Q. BY MR. ROSENBAUM: How does that happen?
22 MR. JORDAN: Calls for speculation.
23 MR. HERRON: Same objection.
24 THE WITNESS: Are you asking how the school
25 district received an F relative to this site?

1 Q. BY MR. ROSENBAUM: No, you've done a really
2 nice job of explaining that. I want to understand how
3 it happens. Does it happen overnight?
4 MR. HERRON: Objection. Calls for speculation.
5 MR. ROSENBAUM: That a school gets an F, gets
6 an F state of conditions.
7 MR. HERRON: Objection. Vague and ambiguous.
8 Calls for a legal conclusion. Calls for expert opinion.
9 Asks him to --
10 MR. ROSENBAUM: Oh, gosh, if there's one person
11 in this state who understands this, it's Mr. Henry.
12 MR. HERRON: You're not testifying. Can I
13 finish my objection?
14 MR. ROSENBAUM: Sure.
15 MR. HERRON: Or are you going to ask a new
16 question?
17 MR. ROSENBAUM: I just think the way you try to
18 impeach this gentleman is absolutely --
19 MR. HERRON: I'm not trying to impeach him.
20 I'm putting objections on the record.
21 MR. ROSENBAUM: Sure you are. You're trying to
22 tear him down at every juncture.
23 MR. HERRON: Ask a decent question.
24 MR. ROSENBAUM: And it's really unseemly.
25 MR. HERRON: Ask a decent question and I won't

1 have to object.
2 Q. BY MR. ROSENBAUM: Mr. Henry, how does a school
3 get to be an F in terms of conditions?
4 MR. HERRON: Objection. Calls for speculation.
5 Calls for expert opinion testimony. Asking him to speak
6 beyond his role at FCMAT. It's vague and ambiguous as
7 phrased.
8 THE WITNESS: I think the reports speak to --
9 the reports that we provided relative to these
10 assessments speak to the conditions and the
11 recommendations, and my preference is -- and I believe
12 it is important to rely on those reports relative that.
13 Q. BY MR. ROSENBAUM: I don't mean to be rude to
14 you, and if you say to me stop, of course I'll stop.
15 Do you have an understanding of what the causes
16 were?
17 A. You're speaking of the --
18 Q. You know, I'm familiar with these reports and I
19 see the descriptions of the schools in these reports,
20 but my question is a little bit different. And, again,
21 I don't mean to be rude to you. You don't know how much
22 respect I have for you.
23 But my question to you is, do you have a sense
24 of what the causes are? How does it happen?
25 MR. HERRON: Same objections. Asked and

1 answered. Vague and ambiguous.

2 THE WITNESS: You're asking me whether I have a
3 personal opinion of what's --

4 MR. ROSENBAUM: Yeah, based on your experience.
5 And I'm not saying there has to be one cause, I just
6 want to rely on your knowledge and your experience just
7 to get a sense of how do these things happen, what
8 causes it.

9 MR. HERRON: Same objections.

10 THE WITNESS: I'm not sure that that question
11 can be answered in a one- or two-sentence response.

12 MR. ROSENBAUM: Take as much time as you want.

13 MR. HERRON: Also calls for a narrative.

14 MR. ROSENBAUM: It's really important. We
15 really want to know.

16 THE WITNESS: Well, you've had an opportunity
17 to review the reports.

18 MR. ROSENBAUM: Yes, I have.

19 THE WITNESS: And the reports reflect, in our
20 opinion, that is, FCMAT's opinion, on what has caused
21 certain conditions relative to facilities.

22 Q. BY MR. ROSENBAUM: Why don't you tell me what
23 you think are the principal causes.

24 MR. HERRON: All the same objections. It's
25 noted in the series of questions just asked.

1 Those are the ones you feel most comfortable
2 talking about, right?

3 A. Correct.

4 Q. So I don't care about any district you haven't
5 been in. But in the districts that you've been in,
6 what's your best judgment as to what caused the sorts of
7 conditions that are reflected on Exhibit 57?

8 MR. HERRON: All the same objections interposed
9 to the previous series of these similar questions.

10 And I think you ought to just ask him OUSD, if
11 that's what you're directing him to, Exhibit 57.

12 THE WITNESS: I think the FCMAT predictors is
13 not, in my personal opinion, in terms of the condition
14 of California public schools. And as I indicated
15 earlier, there are many school districts that are well
16 managed, and we could point to those predictors and
17 clearly state that many of the conditions that we think
18 need to be in place are in place in those school
19 districts that are well managed and have safe and
20 healthy facilities and sites.

21 The same can be true for those school districts
22 that are struggling to address the conditions of
23 facilities and sites, and I think at the top of that we
24 look at leadership and communication, as I referred to
25 earlier, that good, strong leadership and good,

1 THE WITNESS: You're asking me my personal
2 opinion, not the FCMAT --

3 MR. ROSENBAUM: Based on your training and
4 experience. You've been in these schools, you've
5 studied these schools, you've devoted your career to
6 understanding these questions.

7 Q. This is really what we want to find out in this
8 case, how does this happen, what are the causes of it?
9 Just like your best judgment. And take as long as you'd
10 like to answer.

11 MR. HERRON: All the same objections.

12 THE WITNESS: Well, the difficulty in that
13 question is that I'm not certain that my responses would
14 be accurate relative to the state, the condition of the
15 state's public schools. I might have a sense relative
16 to a few of the districts we've worked in, but I'd be
17 worried about that being applied broadly to the rest of
18 the schools.

19 Q. BY MR. ROSENBAUM: Mr. Henry, if I have
20 confused you today, it's my fault. I don't expect you
21 to be able to talk about every school in this district,
22 and I don't expect you to be able to talk about every
23 school district in this. I appreciate the precision and
24 the care with which you give answers. I just want to
25 know in the districts that you've been in.

1 effective communication is paramount to addressing
2 whether there are the local board policies and
3 regulations or whether there are state standards that
4 relate to those conditions. And so at the top of that
5 are predictors, and my personal opinion is a void in
6 leadership and ineffective communication affect all of
7 the other conditions.

8 Q. BY MR. ROSENBAUM: And when FCMAT comes into
9 Oakland, your experience, and don't be modest here, your
10 experience is that FCMAT makes a difference, right?
11 Conditions improve; isn't that right?

12 MR. HERRON: Objection. Asked and answered.
13 Argumentative.

14 THE WITNESS: Well, if you're asking whether I
15 believe the process that we used at Compton Unified
16 School District and at Oakland Unified School District
17 has made a difference, I believe it has made a positive
18 difference, yes.

19 Q. BY MR. ROSENBAUM: That's why you're sent in
20 there, right, to make a difference in terms of the
21 conditions; isn't that right? That's your
22 understanding?

23 A. Yes.

24 Q. Now, why does that happen? Why does FCMAT make
25 a difference? The grades go up after FCMAT is there;

1 isn't that right?
 2 MR. HERRON: Objection. Compound.
 3 Which question would you like him to answer
 4 first?
 5 MR. ROSENBAUM: The second one.
 6 Q. The grades go up after FCMAT spends time in the
 7 district, right?
 8 MR. HERRON: Objection. Calls for speculation.
 9 Q. BY MR. ROSENBAUM: Isn't that your experience?
 10 MR. HERRON: Argumentative.
 11 THE WITNESS: I believe that there are a number
 12 of school districts that are making improvement in these
 13 areas that have never requested or have had assigned
 14 FCMAT into their school district or schools, and so
 15 clearly there are school districts that are making
 16 improvements without FCMAT's involvement.
 17 Q. BY MR. ROSENBAUM: Right. And I understand
 18 that, but my question is, when FCMAT went into Compton,
 19 things improved; isn't that right?
 20 A. Yes.
 21 Q. Facilities improved; isn't that right?
 22 A. If you're asking whether we were able to
 23 measure progress relative to the assessment on the
 24 standards-based approach, the answer is, yes, we've been
 25 able to measure gain and progress.

1 Q. In all five operational areas in Compton?
 2 A. Yes.
 3 Q. And same thing in Oakland, for the limited time
 4 you were in there, the facility conditions improved;
 5 isn't that right?
 6 A. Yes.
 7 Q. Now, you don't think that FCMAT was just some
 8 neutral measurement device, do you? Don't you think
 9 that FCMAT was part of what caused the conditions to
 10 improve?
 11 MR. HERRON: Objection. Compound. Counsel is
 12 testifying. Calls for speculation. Vague and
 13 ambiguous.
 14 THE WITNESS: I believe that FCMAT aided in
 15 that process, yes.
 16 Q. BY MR. ROSENBAUM: How?
 17 MR. HERRON: Objection. Calls for a narrative.
 18 Asked and answered.
 19 THE WITNESS: We aided relative to the charge
 20 that we had, and that was to conduct an independent
 21 external assessment that was standards based, to provide
 22 the school district a mechanism by which they could
 23 measure progress over time.
 24 Q. BY MR. ROSENBAUM: Okay. And what I'm trying
 25 to understand even better here is what was the

1 phenomenon, what was it about FCMAT becoming involved in
 2 these districts that down the line there were
 3 improvements in the conditions?
 4 What did FCMAT add to the situation that helped
 5 create the improvement?
 6 MR. HERRON: Objection. Asked and answered
 7 repeatedly. Calls for speculation. It's not specific
 8 enough.
 9 THE WITNESS: If you're asking what did FCMAT
 10 incorporate into the assessment that assisted with the
 11 district's ability to measure gain, the answer to that
 12 is the assessment provided -- the comprehensive
 13 assessment provided recommendations and recovery steps
 14 in those five operational areas that provided the school
 15 district a basis by which they could determine whether
 16 they were making progress in relationship to those
 17 standards.
 18 Q. BY MR. ROSENBAUM: Okay. See if I understand
 19 this. FCMAT brings in standards, the standards are
 20 communicated clearly, there are findings and
 21 recommendations as to how to improve with respect to the
 22 standards, and then there is ongoing monitoring to see
 23 whether or not the improvement's made?
 24 Am I understanding what FCMAT is contributing
 25 to this process?

1 MR. HERRON: Objection. Calls for speculation.
 2 I doubt he knows what's your understanding.
 3 THE WITNESS: If you're asking whether that was
 4 the process at Compton Unified School District, that is,
 5 we were called in to provide a comprehensive assessment
 6 and additionally called in to provide oversight in terms
 7 of the progress relative to that assessment, then the
 8 answer is, yes, that is true of Compton Unified School
 9 District.
 10 Q. BY MR. ROSENBAUM: And do you think that
 11 oversight helped make the difference in Compton?
 12 A. Well, I'm certain that the oversight has
 13 provided a mechanism by which we can measure gain, and
 14 in that vein, then we were able to determine whether the
 15 school district has made gain or not.
 16 Q. But FCMAT also made recommendations as to how
 17 to make gains; isn't that right?
 18 MR. HERRON: Objection. Asked and answered
 19 repeatedly.
 20 THE WITNESS: Yes.
 21 Q. BY MR. ROSENBAUM: And do you think those
 22 recommendations played a part in the achievement that
 23 was recorded?
 24 A. Yes.
 25 Q. And why do you think that?

1 A. Because the follow-up that we're required to
 2 provide specifically addresses the progress that's made
 3 on those recommendations, and that progress indicates
 4 that it is positive in the school district, and in
 5 Compton Unified School District's case, has made
 6 measured growth over time relative to those
 7 recommendations.
 8 Q. And you personally were involved in the Compton
 9 process; isn't that right?
 10 A. Yes.
 11 Q. Intimately involved; isn't that right?
 12 MR. HERRON: Objection. Vague and ambiguous.
 13 Asked and answered.
 14 THE WITNESS: Yes.
 15 Q. BY MR. ROSENBAUM: Were you head of that team?
 16 A. I am the chief executive officer for the Fiscal
 17 Crisis and Management Assistance Team and point on many
 18 of the studies and was point on Oakland Unified School
 19 District's.
 20 Q. Personally Mr. Henry, when did you first come
 21 to Compton, I mean, with respect to your FCMAT
 22 assignments?
 23 A. AB 52 was enacted in 1997, I believe, so around
 24 that period.
 25 Q. And that was an assignment by the legislature;

1 is that right?
 2 A. Yes, it was.
 3 Q. Okay. And when -- you took a tour of the
 4 schools in Compton when you first went down there; isn't
 5 that right?
 6 A. Yes.
 7 Q. And you've been on tours with me of the schools
 8 in Compton; isn't that right?
 9 A. Yes.
 10 Q. And when you first went down and looked at
 11 those schools, how would you characterize the state they
 12 were in?
 13 MR. HERRON: Objection. Calls for a narrative.
 14 THE WITNESS: If you're asking initially when
 15 we conducted site reviews prior to the comprehensive
 16 assessment, if that's your question, there were a number
 17 of schools at Compton Unified School District that
 18 required immediate attention relative to safety and
 19 health issues.
 20 Q. BY MR. ROSENBAUM: Do you remember the
 21 gymnasium in the high school that was closed down, the
 22 swimming pool?
 23 A. Are you referring to Compton High School?
 24 Q. Yeah.
 25 A. Yes.

1 Q. What was that like?
 2 MR. HERRON: Objection. Vague as to time.
 3 THE WITNESS: Are you asking at the time that
 4 we did our initial -- we did a number of walk-throughs
 5 at Compton Unified School District?
 6 MR. ROSENBAUM: Initially.
 7 THE WITNESS: There were a number of facilities
 8 in disrepair at Compton Unified School District
 9 initially.
 10 Q. BY MR. ROSENBAUM: They couldn't even use the
 11 swimming pool; isn't that right?
 12 A. Yes.
 13 Q. There were rats that were in the gymnasium;
 14 isn't that right?
 15 A. Well, I'm not certain whether there were rats
 16 in the gymnasium at the time that I walked through the
 17 gymnasium.
 18 Q. And you went into individual classrooms, isn't
 19 that right, in Compton?
 20 MR. HERRON: Objection. Vague as to time.
 21 THE WITNESS: Yes.
 22 Q. BY MR. ROSENBAUM: And there were classrooms
 23 where kids didn't have textbooks; isn't that right?
 24 MR. HERRON: Same objection.
 25 THE WITNESS: Yes.

1 Q. BY MR. ROSENBAUM: And there were classrooms
 2 where kids didn't have other basic instructional
 3 materials; isn't that right?
 4 MR. HERRON: Objection. Vague and ambiguous.
 5 Vague as to time.
 6 THE WITNESS: If you're asking whether the
 7 results of the assessment verified that there were some
 8 classrooms at Compton Unified School District that did
 9 not have either an adequate number of textbooks or
 10 current textbooks or instructional materials, the answer
 11 is yes. The comprehensive assessment determines that.
 12 Q. BY MR. ROSENBAUM: And there was no system in
 13 place to make sure that all kids had books, isn't that
 14 right, the required books that they needed; isn't that
 15 right?
 16 MR. HERRON: Objection. Calls for speculation.
 17 MR. ROSENBAUM: When you first got there.
 18 MR. HERRON: Argumentative.
 19 THE WITNESS: Well, the assessment that we
 20 conducted verified at that time that there was not a
 21 consistent policy or procedure that was either in place
 22 or followed related to that.
 23 Q. BY MR. ROSENBAUM: In fact, one of the items in
 24 the grid for assessing Compton is availability of
 25 instructional materials; isn't that right?

1 MR. HERRON: Objection. Argumentative. Vague
2 and ambiguous in the use of the term "grid."

3 THE WITNESS: Are you asking whether there is a
4 standard, whether FCMAT has a standard that we assess a
5 school district on relative to textbooks and
6 instructional materials?

7 MR. ROSENBAUM: Exactly.

8 THE WITNESS: Yes.

9 Q. BY MR. ROSENBAUM: And that standard, do you
10 know of any state law that embraces that standard?

11 MR. HERRON: Objection. Vague and ambiguous in
12 your use of the term "that standard."

13 THE WITNESS: FCMAT has both legal and
14 professional standards, and there are legal standards, I
15 believe, that speak to instructional materials, if not
16 specific instructional materials, addresses educational
17 materials, and so -- so in that sense there are legal --
18 there are legal standards, I believe, or state
19 standards.

20 Q. BY MR. ROSENBAUM: Let me refine this a little
21 bit, and I'm glad to refer you to this if you'd like. I
22 don't want to mislead you on this. Actually, I'll hold
23 back on that.

24 When you first went into Compton, on those
25 standards you rate from 0 to 5; is that right?

1 marked?

2 Was that your understanding of your charge?

3 MR. HERRON: Objection. Vague and ambiguous.
4 Compound.

5 THE WITNESS: I'm not certain that AB 52
6 required FCMAT to determine the cause of why a standard
7 had not been met.

8 But in the process of assessing the standards,
9 FCMAT did look at documentation and conducted interviews
10 and observations to determine why a standard received
11 the numerical rating that it received.

12 Q. BY MR. ROSENBAUM: Okay. Do you happen to
13 recall, Mr. Henry, how many years it had been that
14 Compton didn't have an effective system for getting kids
15 the basic instructional materials?

16 MR. HERRON: Objection. Calls for speculation.
17 Lacks foundation. Vague and ambiguous.

18 THE WITNESS: No, I don't know.

19 Q. BY MR. ROSENBAUM: Okay. Do you think it just
20 happened the year before you came?

21 MR. HERRON: Same objections.

22 THE WITNESS: Do I think what happened the year
23 I came?

24 MR. ROSENBAUM: That everything was 10, and
25 then there was a year where it dipped to 0 and FCMAT

1 MR. HERRON: Objection. Vague and ambiguous.

2 THE WITNESS: If you're asking our rating
3 relative to the standards in those five operational
4 standards, the rating is -- starts with a 0 scale score,
5 meaning that the standard is not met or not in
6 existence, to a high school score of 10, which means the
7 standard is substantially met and sustainable.

8 Q. BY MR. ROSENBAUM: I understand. And when you
9 went into Compton, there were a number of items under
10 the pupil achievement category that -- where FCMAT gave
11 Compton 0's; isn't that right?

12 MR. HERRON: Objection. Vague and ambiguous as
13 to which school you're referring to in Compton.

14 MR. JORDAN: It calls for hearsay if it's in a
15 report too.

16 THE WITNESS: If you're asking whether the
17 standards that we assessed the school district on and
18 schools, whether there are a number that received a 0, I
19 don't recall the exact number, but there were standards
20 that received a 0.

21 Q. BY MR. ROSENBAUM: Okay. Now I know how much
22 FCMAT had to do in Compton and the other districts, but
23 did FCMAT regard as one of its responsibilities to
24 identify the cause of every 0, why -- how it happened
25 that a district got to a 0 in the items where it was so

1 comes in. I'm trying to understand these sorts of
2 conditions.

3 Q. When they get to the 0's and the 1's and the
4 2's, did it just happen, or was it something, in your
5 judgment, that had evolved over time?

6 MR. HERRON: Objection. Calls for speculation.
7 Asked and answered in part.

8 THE WITNESS: You're asking my personal opinion
9 whether I believe that a standard that received a rating
10 of 0 could have just occurred overnight?

11 MR. ROSENBAUM: Yes, sir.

12 THE WITNESS: And I believe it is accurate to
13 say that there could be certain standards that could
14 move a number of scale scores in a relatively short
15 period of time depending on the attention and resources
16 applied to it. But generally, in terms of the
17 comprehensive assessment, the condition of the school
18 district determined through the FCMAT assessment
19 represents a condition over time. I'm not certain the
20 number of years.

21 Q. BY MR. ROSENBAUM: Can you tell me the basis of
22 your answer?

23 MR. HERRON: Objection. Calls for speculation.

24 THE WITNESS: You're asking my personal
25 experience, I guess, an opinion. If we look just at

1 facilities, the condition of facilities, deterioration
2 of facilities doesn't happen over a short period of
3 time.

4 Q. BY MR. ROSENBAUM: Of course not. One of the
5 other things, when you went into those classrooms in
6 Compton, you found classrooms where there wasn't a
7 permanent teacher assigned; isn't that true?

8 MR. HERRON: Objection. Vague as to time.

9 THE WITNESS: You're asking whether when we did
10 our comprehensive assessment, we determined that there
11 were either emergency permit or emergency-credentialed
12 teachers, and the answer is yes.

13 Q. BY MR. ROSENBAUM: Do you know what the
14 percentage was, or can you give me an estimate?

15 A. No.

16 Q. Do you know if there were classrooms,
17 Mr. Henry, where there was just a revolving door of
18 substitutes?

19 MR. HERRON: Objection. Vague and ambiguous.

20 THE WITNESS: I don't know if there's a
21 revolving door subject to Compton Unified School
22 District, like other districts have difficulty
23 recruiting and obtaining fully-credentialed teachers.

24 Q. BY MR. ROSENBAUM: And what other districts are
25 you thinking of?

1 Q. BY MR. ROSENBAUM: No apologies necessary. Why
2 do you think that is?

3 MR. HERRON: Same objections. Also object to
4 the extent it asks him to speak beyond his FCMAT role.

5 THE WITNESS: There is a shortage of qualified
6 teachers in the state of California, and class size
7 reduction legislation has, in part, contributed to
8 the -- that shortage in terms of there are more teaching
9 assignments than there are fully-credentialed teachers,
10 it appears, in the state of California. And the urban
11 school districts appear to be having a greater
12 difficulty in our assessments than some of the other
13 school districts in recruitment and retention of
14 fully-credentialed teachers.

15 Q. BY MR. ROSENBAUM: And let me see if I
16 understand this. One of the things that you found, for
17 example, in Compton, Compton had a real problem
18 retaining qualified teachers; isn't that right?

19 MR. HERRON: Objection. Vague as to time.

20 THE WITNESS: They did, yes.

21 Q. BY MR. ROSENBAUM: And one of the things that
22 you found out is that one of the factors that
23 contributed to the problems of retention was the state
24 of those facilities; isn't that right?

25 MR. HERRON: Objection. Asked and answered

1 A. When I say other districts -- other urban
2 school districts?

3 Q. Yeah.

4 A. Clearly that was a finding at Oakland Unified
5 School District, and that is a finding in our personnel
6 management studies that were conducted in the state of
7 California.

8 Q. What other districts?

9 MR. HERRON: Objection. Asked and answered.

10 THE WITNESS: I don't --

11 MR. HERRON: Calls for speculation.

12 THE WITNESS: -- Have that to memory, but I
13 believe those reports have been provided to you.

14 Q. BY MR. ROSENBAUM: And in your experience over
15 all the years you've been at FCMAT, one of the things
16 you've found is that the conditions of the facilities
17 affects teacher retention; isn't that right?

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

20 THE WITNESS: We have found in the
21 comprehensive assessments that it is difficult for those
22 school districts, those urban school districts that
23 we've been engaged in, to recruit and retain
24 fully-credentialed teachers. I don't know if that was
25 your question or not. I apologize.

1 about five questions ago.

2 THE WITNESS: Yes.

3 Q. BY MR. ROSENBAUM: And why do you think that
4 is?

5 MR. HERRON: Objection. Calls for speculation.
6 I also object to the extent it calls for testimony
7 outside of his role in FCMAT. Calls for expert opinion
8 testimony.

9 THE WITNESS: I'm not aware of FCMAT conducting
10 any surveys, formal or informal in terms of why teachers
11 have decided to relocate to other school districts in
12 the urban school districts that we have conducted a
13 comprehensive assessment in.

14 I am certain that the work that we're doing
15 over in the personnel management area, those reports are
16 going to address some of these issues, and we're
17 required to provide a report to the state legislature.

18 Q. BY MR. ROSENBAUM: It's really an important
19 question, isn't it?

20 MR. HERRON: Objection. Vague and ambiguous.
21 Argumentative.

22 THE WITNESS: Are you asking whether the
23 condition of facilities and sites contributes to whether
24 teachers would continue to work at the school district?

25 MR. ROSENBAUM: Yes.

1 THE WITNESS: That that's an important
 2 question?
 3 MR. ROSENBAUM: Yes.
 4 THE WITNESS: I believe that it's an important
 5 question for all school districts because of the
 6 shortage of qualified teachers, in determining how we
 7 can best go about recruiting and retaining our teachers
 8 in all the public schools.
 9 Q. BY MR. ROSENBAUM: When you went into Compton,
 10 one of the things -- you saw a lot of young,
 11 inexperienced teachers; isn't that right?
 12 MR. HERRON: Objection. Vague and ambiguous.
 13 Vague as to time. Calls for speculation.
 14 THE WITNESS: If you're asking whether we found
 15 teachers that were first-year teachers and teachers that
 16 did not have full credentials that were on either
 17 waivers or emergency permits or credentials, the answer
 18 is yes.
 19 Q. BY MR. ROSENBAUM: One of the things that you
 20 found was -- that you determined was that those teachers
 21 need mentoring, isn't that right, from experienced
 22 teachers?
 23 A. Yes.
 24 Q. And the availability of mentoring, that's going
 25 to affect whether or not those teachers stay at those

1 schools; isn't that right?
 2 MR. HERRON: Objection. Calls for speculation.
 3 Calls for an expert opinion.
 4 THE WITNESS: I'm not sure that's the only
 5 criteria that would keep a teacher at the school.
 6 Q. BY MR. ROSENBAUM: But that's one of the
 7 criteria; isn't that right?
 8 MR. SEFERIAN: Objection. No foundation.
 9 Calls for speculation. Calls for an opinion.
 10 MR. HERRON: Same objections.
 11 THE WITNESS: You're asking my personal opinion
 12 on whether staff development is conducive to retention?
 13 MR. ROSENBAUM: Yes, based on your experience.
 14 THE WITNESS: I believe it is.
 15 Q. BY MR. ROSENBAUM: Why do you say that?
 16 A. From my personal experience talking to staff
 17 members.
 18 Q. Common sense, isn't it? And another factor is
 19 whether or not those teachers have the resources they
 20 need to teach their classes; isn't that right?
 21 MR. HERRON: Factor of what? Object as vague
 22 and ambiguous.
 23 MR. ROSENBAUM: I appreciate that. That
 24 contributes to retention.
 25 MR. SEFERIAN: Objection. No foundation.

1 Calls for speculation. Calls for an opinion.
 2 THE WITNESS: There are a number of factors
 3 that speak to retention and recruitment.
 4 Q. BY MR. ROSENBAUM: Tell me, based on your
 5 experience, what you think those factors are.
 6 MR. HERRON: Objection. Calls for an expert
 7 opinion. Calls for speculation.
 8 THE WITNESS: My personal opinion --
 9 MR. ROSENBAUM: Based on your experience. Go
 10 ahead.
 11 THE WITNESS: -- is the condition of sites and
 12 facilities, is the commitment to the necessary resources
 13 that need to be deployed relative to performing that
 14 responsibility and, thirdly, the mentoring of staff
 15 development that is critical to our new teachers.
 16 Q. BY MR. ROSENBAUM: Why do you think those
 17 factors are important?
 18 MR. HERRON: Objection. Asked and answered.
 19 THE WITNESS: I believe that's common sense,
 20 but I believe there's research that points to the
 21 importance of that as well.
 22 Q. BY MR. ROSENBAUM: And part of the contribution
 23 that FCMAT made to -- now things are better in Compton
 24 in terms of retention of teachers, isn't that true,
 25 experienced teachers?

1 MR. SEFERIAN: Objection. No foundation.
 2 Calls for speculation.
 3 THE WITNESS: I'm not certain on -- and I don't
 4 believe that we've looked recently at the ability of
 5 Compton Unified School District to recruit and retain
 6 teachers in any quantitative manner from our initial
 7 assessment to where they are currently. I don't believe
 8 we've looked at that in any -- with any specificity.
 9 Q. BY MR. ROSENBAUM: The state administrator is
 10 Randolph Ward; is that right?
 11 A. Yes.
 12 Q. You've worked with Dr. Ward?
 13 A. Yes.
 14 Q. You have a lot of respect for Dr. Ward?
 15 A. Yes.
 16 Q. Okay. And you have a good working relationship
 17 with him; isn't that right?
 18 A. Yes.
 19 Q. He hasn't thrown hot water at you or anything
 20 like that, has he?
 21 A. No.
 22 Q. But that's been known to happen at Compton or
 23 the like.
 24 Now, part of your working relationship is that
 25 FCMAT has made suggestions to the state administrator

1 and his staff as to how to do things to improve teacher
 2 recruitment and retention; isn't that right?
 3 A. Yes.
 4 Q. And in your experience, that's been helpful to
 5 that system, isn't that right?
 6 I'm not asking you for an exact quantification
 7 of it, but your experience in that district is that
 8 that's made a difference, that's helped? It's not the
 9 only factor, but it's contributed; isn't that right?
 10 MR. SEFERIAN: Objection. Asked and answered.
 11 No foundation. Calls for speculation.
 12 MR. HERRON: Compound. About five questions
 13 there.
 14 THE WITNESS: I believe it's important that we
 15 not overemphasize the importance of the comprehensive
 16 study and the fine work that's going on through Dr. Ward
 17 and his staff, that I believe that there are a number of
 18 interventions and administrative decisions that have
 19 been made at Compton unrelated to the FCMAT report that
 20 have been very helpful.
 21 Q. BY MR. ROSENBAUM: Right. And Dr. Ward is a
 22 good man and he works on this job 27 hours a day, right?
 23 MR. HERRON: Objection. Counsel is testifying.
 24 Argumentative.
 25 THE WITNESS: Dr. Ward is very diligent.

1 Q. BY MR. ROSENBAUM: So all I'm saying is that
 2 one factor in the improvement is the recommendations and
 3 the guidance and the professional expertise that FCMAT's
 4 brought to this district; isn't that right? That's not
 5 to denigrate him one bit. But isn't that true, that
 6 part of the success here has been the counsel and the
 7 advice and the recommendations that FCMAT has brought?
 8 MR. SEFERIAN: Objection. Compound question.
 9 Calls for inadmissible opinion. Calls for speculation.
 10 Asked and answered.
 11 THE WITNESS: I believe FCMAT has provided a
 12 meaningful role relative to the charge in AB 52.
 13 Clearly the six-month progress reports reflect that role
 14 and the importance of it.
 15 Q. BY MR. ROSENBAUM: Now, is there also a consent
 16 decree in place for Compton?
 17 A. Yes.
 18 MR. FEKETE: Counsel, before you go any
 19 further, we've been at this for a little more than an
 20 hour.
 21 MR. ROSENBAUM: We can take a break.
 22 (Recess taken.)
 23 Q. BY MR. ROSENBAUM: You doing okay?
 24 A. Yes.
 25 Q. We were talking about -- one of the things we

1 were talking about before we took a break, Mr. Henry,
 2 was a matter of textbooks in Compton.
 3 Do you remember that generally?
 4 A. Yes.
 5 Q. It was kind of a stupid question. Okay. Now,
 6 there is now a system in place to assure that all kids,
 7 all students have textbooks; isn't that right?
 8 A. Yes.
 9 Q. And am I right, would you call that a matrix
 10 system? In Compton I'm referring to.
 11 A. I don't know if it's been defined as a matrix
 12 system. You're asking whether the system that the state
 13 administrator has developed is labeled a matrix system?
 14 Q. Yeah. It's not terribly important.
 15 A. I don't know whether it's been labeled that or
 16 not.
 17 Q. Let's talk about the elements of that system.
 18 Is it your understanding that -- there is a system that
 19 has now been developed that specifically addresses the
 20 question of making sure that all students have
 21 textbooks; is that right?
 22 A. Yes.
 23 Q. And not only textbooks, but current textbooks;
 24 is that right?
 25 A. Yes.

1 Q. Okay. And, in fact, when you -- when we walked
 2 around to those classrooms, there were students who had
 3 out-of-date textbooks; isn't that right?
 4 MR. HERRON: Objection. Assumes facts not in
 5 evidence. Calls for speculation. Vague as to time.
 6 THE WITNESS: If you're asking on the date that
 7 you participated on the site review whether there were
 8 students in classrooms that did not have current
 9 textbooks, the answer is yes.
 10 Q. BY MR. ROSENBAUM: Okay. And when you use the
 11 word "current," what do you mean by that?
 12 A. Like current textbooks. I mean those textbooks
 13 that have been recently ordered and purchased by the
 14 school district for purposes of instruction.
 15 Q. Okay. And when you -- before you and I went on
 16 that tour, there were other tours that you went on of
 17 classrooms; isn't that right?
 18 A. Yes.
 19 Q. And you had also found on those prior tours
 20 that there were students that didn't have current
 21 textbooks as you just defined it?
 22 MR. FEKETE: Is that a question?
 23 MR. ROSENBAUM: Yeah.
 24 Q. Isn't that right? That wasn't the first time
 25 that it came to your attention that students at Compton

1 didn't have textbooks?
 2 A. That is correct.
 3 Q. And do you know in how many schools in the
 4 state of California there are students who don't have
 5 textbooks?
 6 MR. HERRON: Objection. Calls for speculation.
 7 Calls for a legal conclusion. Calls for a legal
 8 opinion. Asks him to testify beyond his role at FCMAT.
 9 Vague and ambiguous as phrased.
 10 THE WITNESS: No.
 11 Q. BY MR. ROSENBAUM: Or in how many classrooms
 12 there are kids who don't have textbooks?
 13 MR. HERRON: Same objections.
 14 THE WITNESS: No.
 15 Q. BY MR. ROSENBAUM: And if I asked the same
 16 question about current textbooks, do you know how many
 17 schools there are where students don't have current
 18 textbooks?
 19 MR. HERRON: Same objections.
 20 THE WITNESS: No.
 21 Q. BY MR. ROSENBAUM: Or do you know how many
 22 classrooms there are in the state of California where
 23 students don't have current textbooks?
 24 MR. HERRON: Same objections.
 25 THE WITNESS: No.

1 Q. BY MR. ROSENBAUM: Okay. And to your
 2 knowledge, Mr. Henry, do you know if anybody in the
 3 state knows that answer, how many student -- how many
 4 schools there are where students don't have textbooks?
 5 MR. HERRON: Same objections.
 6 THE WITNESS: No.
 7 Q. BY MR. ROSENBAUM: Or how many students don't
 8 have current textbooks, do you know of anybody that
 9 knows that?
 10 MR. HERRON: Same objections.
 11 THE WITNESS: No.
 12 Q. BY MR. ROSENBAUM: Are you aware of any survey
 13 or inquiry to determine how many students in the state
 14 of California don't have textbooks?
 15 MR. HERRON: Same objections.
 16 THE WITNESS: No.
 17 Q. BY MR. ROSENBAUM: Or don't have current
 18 textbooks?
 19 MR. HERRON: Same objections.
 20 THE WITNESS: No.
 21 Q. BY MR. ROSENBAUM: And have you ever heard any
 22 discussion about, gee, it would be a good thing if we
 23 found out how many students didn't have textbooks?
 24 MR. HERRON: Vague and ambiguous in addition to
 25 same objections.

1 THE WITNESS: Are you asking whether I'm aware
 2 whether there's been any discussion at a policy level in
 3 regards to conducting a survey?
 4 MR. ROSENBAUM: Exactly right.
 5 THE WITNESS: No, I'm not aware.
 6 Q. BY MR. ROSENBAUM: Okay. Now, you told me
 7 earlier that -- if I use the wrong word, just correct
 8 me -- one of the criteria in looking at pupil
 9 achievement is whether or not students have
 10 instructional materials; is that right?
 11 MR. HERRON: Objection. Misconstrues prior
 12 testimony.
 13 Q. BY MR. ROSENBAUM: Is that one of the
 14 standards?
 15 THE WITNESS: Yes, that is one of the
 16 standards.
 17 Q. BY MR. ROSENBAUM: Prior to your coming into
 18 Compton, and by you I mean FCMAT, had that analysis been
 19 made in Compton?
 20 MR. HERRON: Objection. Vague and ambiguous.
 21 Calls for speculation.
 22 THE WITNESS: You're asking whether there was
 23 an analysis conducted prior to FCMAT's engagement in
 24 terms of whether there were proper textbooks or
 25 instructional materials in the classrooms?

1 MR. ROSENBAUM: Exactly.
 2 THE WITNESS: Not that I'm aware of.
 3 Q. BY MR. ROSENBAUM: How about in Oakland?
 4 A. Not that I'm aware of.
 5 Q. How about in West Contra Costa?
 6 A. Not that I'm aware of.
 7 Q. Do you know of any district that has conducted
 8 that survey, that inquiry?
 9 MR. HERRON: Objection. Calls for speculation.
 10 Calls for a legal conclusion. Calls for expert
 11 testimony and is beyond his role at FCMAT. Vague and
 12 ambiguous as phrased.
 13 THE WITNESS: No.
 14 Q. BY MR. ROSENBAUM: Now, FCMAT decided to make
 15 that one of the standards; isn't that right?
 16 MR. HERRON: Objection. Vague and ambiguous.
 17 Asked and answered.
 18 THE WITNESS: It is a -- it is a standard in
 19 our list of standards.
 20 Q. BY MR. ROSENBAUM: And were you involved in the
 21 decision-making to include that as one of the standards?
 22 A. Yes.
 23 Q. Okay. And did you think it ought to be
 24 included as a standard?
 25 A. Yes.

1 Q. Was there any dissenting view?
 2 A. No.
 3 Q. Did anyone at the Compton school district say,
 4 don't ask that question, don't give us that standard?
 5 MR. HERRON: Objection. Calls for speculation.
 6 THE WITNESS: No.
 7 Q. BY MR. ROSENBAUM: Why did you think it was
 8 important to include that as a standard?
 9 A. I would want to refer to the list of standards,
 10 but I believe that there is a legal standard relative to
 11 that, as well as perhaps a professional standard. The
 12 fact that there's a legal standard, there's no debate
 13 relative to legal standards.
 14 Q. Do you think educationally it's an important
 15 standard?
 16 A. Yes.
 17 Q. Why do you think that?
 18 MR. HERRON: Object to the extent that you're
 19 calling for expert opinion or asking him to testify
 20 beyond his role at FCMAT.
 21 THE WITNESS: It's common sense that students
 22 and staff members need current and sufficient
 23 instructional materials to perform their
 24 responsibilities.
 25 Q. BY MR. ROSENBAUM: Why do staff members need

1 it?
 2 MR. HERRON: Same objections.
 3 THE WITNESS: Are you asking why staff members
 4 need current textbooks?
 5 MR. ROSENBAUM: Yes.
 6 THE WITNESS: One, I believe it's a legal
 7 standard, and, two, it's difficult to address the --
 8 it's difficult to address the state standards in
 9 instruction if we're not utilizing textbooks that, at
 10 least in part, focus in on the accountability standards.
 11 Q. BY MR. ROSENBAUM: Why is that?
 12 MR. HERRON: Same objections.
 13 THE WITNESS: School districts are being held
 14 accountable and can receive rewards or sanctions
 15 depending on the results of the assessment. And it
 16 would be difficult to show gain relative to standards if
 17 they're not using the curricular that focuses in on what
 18 those current standards are.
 19 Q. BY MR. ROSENBAUM: Do you know whether that
 20 standard is applied in other school districts that FCMAT
 21 doesn't go into?
 22 A. Are you asking whether that standard -- being
 23 the standard that the school districts have adequate
 24 instructional materials and current textbooks?
 25 Q. Yeah. I just framed it a little different.

1 The students have, that's what you mean, isn't it, that
 2 students have the materials?
 3 MR. HERRON: Objection. Vague and ambiguous.
 4 THE WITNESS: Would you repeat the question.
 5 Q. BY MR. ROSENBAUM: Sure. Let me ask you a
 6 related question. In the districts that FCMAT goes into
 7 each year, let's start with the year 2000, in how many
 8 districts, to the best of your knowledge, to the best of
 9 your recollection, Mr. Henry, does FCMAT apply the
 10 standard about students having instructional materials,
 11 is it all of the districts?
 12 A. No.
 13 Q. Okay. Is it 50 percent of the districts?
 14 MR. HERRON: Objection. Calls for speculation.
 15 THE WITNESS: No.
 16 Q. BY MR. ROSENBAUM: Is it less than 10 percent
 17 of the districts?
 18 MR. HERRON: Same objection.
 19 THE WITNESS: You are asking me to speculate.
 20 I've not looked at the percentages of school districts
 21 relative to that question, and I'm uncertain of the
 22 number.
 23 Q. BY MR. ROSENBAUM: Okay. FCMAT does -- I want
 24 to see if I understand this. It does fiscal matters and
 25 it does management matters, is that a fair breakdown?

1 A. FCMAT provides fiscal crisis intervention and
 2 management assistance.
 3 Q. Okay. And is there a rough breakdown in terms
 4 of percentage, what percentage of the districts are
 5 fiscal crisis and what percentage are management
 6 assistance? Is it around 85/15?
 7 MR. HERRON: Any particular time frame?
 8 Objection. Vague as to time.
 9 THE WITNESS: Yes, it is.
 10 Q. BY MR. ROSENBAUM: 85/15 is right?
 11 A. Yes.
 12 Q. And is that the state right now?
 13 A. If you're asking whether the percentage of
 14 FCMAT's work can be broken down in terms of 85 percent
 15 in one area and 15 percent in another area, it's been
 16 very consistent since 1992 that 85 percent of our work
 17 typically falls into the category of management
 18 assistance, and 15 percent of our work falls into the
 19 category of fiscal crisis intervention.
 20 Q. And so if we're talking about surveying the
 21 state of the conditions of facilities, does that fall
 22 under fiscal crisis or management assistance?
 23 MR. HERRON: Objection. Vague and ambiguous.
 24 THE WITNESS: Fiscal crisis intervention is
 25 defined -- that is defined, what that is, and that is

1 that the district -- school district has a disapproved
2 budget or a negative or qualified certification on their
3 interim report, and so, by definition, if there's a
4 disapproved budget, a negative or a qualified, that is
5 classified as a fiscal crisis intervention by
6 definition.

7 And the management assistance studies can range
8 from everything from internal controls review, to food
9 service, to personnel management. There's a litany in
10 the code that we're authorized to review.

11 And I'm not certain that I would classify the
12 facilities management reviews in the fiscal crisis
13 intervention definition as we've defined it. The three
14 comprehensive studies in Compton through the
15 legislature, and Oakland through the board's invitation,
16 West Contra Costa through the legislature, we were
17 assigned by the state legislature to do those
18 comprehensive studies, and so they weren't necessarily
19 in a condition of disapproved budget or a negative or
20 qualified certification.

21 Q. BY MR. ROSENBAUM: Okay. I appreciate that.
22 But FCMAT doesn't survey the state of facilities
23 conditions in every district; isn't that right?

24 MR. HERRON: Objection. Asked and answered
25 several times.

1 not directed to look at the state of the conditions of
2 facilities; isn't that right?

3 A. That is correct.

4 Q. And, for example, FCMAT wasn't directed to look
5 at whether or not there were classrooms that were too
6 hot or too cold, isn't that right, for students?

7 A. That is correct.

8 Q. And FCMAT wasn't directed to look at the
9 question of availability of textbooks?

10 A. That is correct.

11 Q. Now, Cloverdale is experiencing -- the
12 Cloverdale school district is experiencing financial
13 problems; isn't that right?

14 MR. HERRON: Objection. Argumentative. Vague
15 as to time. Vague and ambiguous as phrased.

16 MR. JORDAN: Calls for speculation.

17 THE WITNESS: If you're asking whether the
18 Cloverdale Unified School District was experiencing
19 financial difficulties at the time that we were
20 assigned, the answer is yes.

21 Q. BY MR. ROSENBAUM: Okay. And it wasn't able to
22 meet its budget; isn't that right?

23 MR. HERRON: Same objections.

24 THE WITNESS: It's been a while. I believe the
25 county office of education, the Sonoma County Office of

1 THE WITNESS: That is correct.

2 Q. BY MR. ROSENBAUM: Okay. Now, coming back
3 to -- and has FCMAT ever surveyed the state of the
4 conditions in the Los Angeles Unified School District?

5 A. No.

6 Q. Or in San Francisco?

7 MR. HERRON: Objection. Asked and answered.

8 Q. BY MR. ROSENBAUM: I'm not interested in the
9 financial management, but I mean in terms of assessing
10 the state of facilities as you did in Oakland or
11 Compton, West Contra Costa?

12 A. No.

13 Q. Now one of the districts that FCMAT has looked
14 at is Cloverdale; isn't that right?

15 A. That is correct.

16 Q. Were you involved in that?

17 A. Not involved in terms of an on-site
18 involvement.

19 Q. Were you involved in reviewing the report?

20 MR. HERRON: Objection. Vague and ambiguous.

21 THE WITNESS: I try to review most reports.
22 I'm not certain whether I've reviewed the Cloverdale
23 report.

24 Q. BY MR. ROSENBAUM: Let me ask you, and if you
25 don't know it, just tell me. In Cloverdale, FCMAT was

1 Education had questions about the fiscal viability of
2 the school district at the time of the engagement.

3 Q. BY MR. ROSENBAUM: Do you know, sitting here
4 today, what the fiscal viability of the school district
5 is?

6 MR. HERRON: As of today?

7 MR. ROSENBAUM: Yes.

8 MR. JORDAN: Calls for speculation.

9 MR. HERRON: And it's vague and ambiguous.

10 THE WITNESS: I do not know.

11 Q. BY MR. ROSENBAUM: Okay. Now, when a school
12 district has problems of fiscal viability, can that
13 affect its ability to build new schools?

14 MR. HERRON: Objection. Vague and ambiguous.
15 Calls for speculation.

16 I take it you're asking this in terms of his
17 FCMAT role?

18 MR. ROSENBAUM: Yes.

19 THE WITNESS: If you're asking whether the
20 status of the school district's budget impacts the
21 school district's ability to participate in state
22 funding or the ability to generate local funding in
23 regards to facilities, I believe that is a fact.

24 Q. BY MR. ROSENBAUM: Okay. Especially under Prop
25 1A; isn't that right?

1 A. Yes.

2 Q. Why is that?

3 MR. HERRON: Objection. Calls for a legal
4 conclusion.

5 THE WITNESS: There is a match that is required
6 of the school district which helps establish a priority
7 basis for funding, state funding. And a school district
8 that is having fiscal difficulties may have difficulties
9 with that match.

10 Q. BY MR. ROSENBAUM: That was one of the concerns
11 that was expressed in the Little Hoover Commission
12 Report that we talked about earlier; isn't that right?

13 MR. HERRON: Objection. That report will speak
14 for itself. Calls for speculation.

15 THE WITNESS: I believe that the Little Hoover
16 Commission Report addressed that issue.

17 Q. BY MR. ROSENBAUM: And based on your training
18 and experience -- again, I just want it from your FCMAT
19 experience -- you share that concern that was expressed
20 in the Little Hoover Commission Report; isn't that true?

21 MR. HERRON: Objection. Calls for an expert
22 opinion and asks him to testify beyond his FCMAT role
23 despite what you said.

24 THE WITNESS: I would ask you what concern that
25 is.

1 MR. ROSENBAUM: The concern that there may be
2 school districts that need new schools, but under 1A
3 can't make the 50-percent match.

4 MR. HERRON: Same objections.

5 THE WITNESS: Yes.

6 Q. BY MR. ROSENBAUM: And why is that?

7 MR. HERRON: Same objections.

8 THE WITNESS: Well, there are school districts
9 in California that have difficulty making that match.
10 They're either unable to generate local funding through
11 general obligation bonds or other means to make that
12 50-percent match.

13 Q. BY MR. ROSENBAUM: Now, I just want you to
14 focus on the districts that FCMAT has been involved
15 with. Any of those districts fall into that category?

16 MR. HERRON: Objection. Calls for speculation.
17 Asks him to testify beyond his FCMAT role. Asks for an
18 expert opinion.

19 THE WITNESS: Yes.

20 Q. BY MR. ROSENBAUM: And what are they?

21 A. Compton Unified School District.

22 Q. Any others?

23 MR. HERRON: Same objections. Extraordinarily
24 overbroad.

25 THE WITNESS: I'm not certain who the others

1 were.

2 Q. BY MR. ROSENBAUM: It's possible, you just
3 don't know one way or the other?

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

6 MR. HERRON: Same objections.

7 THE WITNESS: Well, I'm certain on Compton High
8 school district relative to their, to this date,
9 inability to pass a local bond measure.

10 Q. BY MR. ROSENBAUM: Do you know how many times
11 they've tried?

12 A. At least twice.

13 Q. Do you know when those attempts were made?

14 A. I don't recall.

15 Q. Okay. And you had meetings with Dr. Ward in
16 which you discussed the importance of that bond measure
17 passing in order for the district to meet some of its
18 priorities; isn't that right?

19 A. Yes.

20 Q. And Dr. Ward was very concerned as to what the
21 district would do if those bond measures didn't pass; is
22 that right?

23 MR. HERRON: Objection. Calls for speculation.
24 Argumentative.

25 THE WITNESS: Well, I'd prefer to let Dr. Ward

1 speak to that.

2 Q. BY MR. ROSENBAUM: Going back to the textbook
3 situation, Mr. Henry. Let's talk about the plans that
4 have been put into effect in Compton. Let me see if I
5 understand some of the elements of that plan.

6 One of the elements is that there be a book
7 coordinator at each school in Compton; is that right?

8 A. I'm not that familiar with the specific plan
9 that the school district has put in place relative to
10 that. I'm not familiar with the term "book
11 coordinator."

12 Q. Okay. I just want you obviously to testify to
13 what you're familiar with.

14 Has there been instituted a bar code system?

15 A. You're asking whether the district has
16 instituted a bar code process to track and inventory
17 textbooks relative to their return. The answer is yes.

18 Q. And the schools do book check-ins and they do
19 inventories?

20 A. Yes.

21 Q. And principals at staff meetings ask teachers
22 whether or not they need books?

23 MR. HERRON: Objection. Calls for speculation.
24 Vague as to time.

25 THE WITNESS: I haven't participated in any

1 recent staff meetings.

2 Q. BY MR. ROSENBAUM: But that's your
3 understanding from Dr. Ward as to what happens?

4 A. Would you repeat the question.

5 Q. Sure. As part of the textbook -- making sure
6 the kids have textbooks, is it your understanding that
7 principals at staff meetings will ask teachers, do you
8 need books, do you have all the books that you need?

9 MR. HERRON: Objection. Asked and answered.
10 He's already responded to that.

11 THE WITNESS: Yes, that's my understanding.

12 MR. HERRON: Calls for speculation.

13 Q. BY MR. ROSENBAUM: By the way, when we talk
14 about the book situation in Compton, we're talking about
15 kids actually having two books, right, two copies of the
16 same book? Isn't that the way the system works in
17 Compton, they have one for the classroom and then one
18 that they can take home?

19 MR. HERRON: Objection. Compound. Calls for
20 speculation. Vague and ambiguous.

21 THE WITNESS: If you're asking whether there is
22 a process to provide two textbooks in the core
23 curricular areas, the answer is yes.

24 Q. BY MR. ROSENBAUM: Okay. And the return of
25 those textbooks at the end of the year, isn't it true,

1 Q. BY MR. ROSENBAUM: We've been talking about the
2 check-ins, the inventories, the bar code system,
3 consequences of kids not returning books, kids getting
4 two sets of books, principals asking teachers if they
5 have books.

6 Do you know whether or not any of those
7 elements were recommendations that FCMAT made in
8 consultation with Dr. Ward?

9 A. I would defer to the conference report that's
10 been provided, and it is very clear in terms of
11 recommendations.

12 Q. Okay. In your experience, Mr. Henry, is the
13 system working, do kids have books in numbers that they
14 didn't have previously?

15 MR. HERRON: Are you talking about in Compton?

16 MR. ROSENBAUM: Yeah, just Compton. Thanks.

17 THE WITNESS: If you're asking whether the
18 students at Compton Unified School District are provided
19 textbooks in core subject areas and whether those
20 textbooks are routinely returned, the answer to that
21 question is yes.

22 Q. BY MR. ROSENBAUM: And that wasn't happening
23 before FCMAT got involved; isn't that true?

24 MR. HERRON: Objection. Calls for speculation.

25 THE WITNESS: Well, I don't know if -- I don't

1 Mr. Henry, that if students don't return textbooks,
2 there are consequences?

3 A. Yes.

4 Q. And those consequences may be tied to report
5 cards, graduation, promotion to the next grade?

6 MR. SEFERIAN: Objection. Calls for
7 speculation.

8 THE WITNESS: The consequences that I'm aware
9 of have to do with a fee schedule that is provided
10 towards the end of the school year with a listing of
11 student names and fees that are owed the school
12 district, and part of that listing includes whether the
13 students have returned the textbooks from home.

14 Q. BY MR. ROSENBAUM: And when you personally got
15 involved in Compton, this was one of your concerns,
16 whether or not kids had books; isn't that right?

17 A. When FCMAT concluded their assessment, that was
18 a standard that was addressed and recommendations that
19 were provided to the school district.

20 Q. Okay. And if you recall, do you know if any of
21 the elements that we've been talking about were part of
22 the recommendations that FCMAT made?

23 MR. HERRON: Objection. Vague and ambiguous.

24 THE WITNESS: I'm not sure I understand what
25 you mean by "any of the elements."

1 know if I would support that statement. I think that
2 there are a number of variables and factors that have
3 contributed to that, not just FCMAT's involvement.

4 Q. BY MR. ROSENBAUM: Chronologically that didn't
5 happen before FCMAT got involved? I'm just trying to
6 set a time spot here.

7 MR. SEFERIAN: Objection. No foundation.
8 Calls for speculation.

9 MR. ROSENBAUM: That's okay. The rankings,
10 actually, speak for themselves.

11 Q. Let me ask you this, do you know how many other
12 school districts in the state of California utilize a
13 system that is in sum or substance like what we've been
14 talking about in Compton?

15 MR. HERRON: Objection. Calls for speculation.
16 Calls for a legal conclusion, expert opinion. Asking
17 him to testify beyond his role at FCMAT. It's vague and
18 ambiguous as phrased.

19 THE WITNESS: Are you asking whether any other
20 school districts in the state that have implemented a
21 bar code system relative to textbooks in --

22 MR. ROSENBAUM: Bar code and the consequences
23 and a system in place to deal with textbooks like you
24 talked about in Compton.

25 MR. HERRON: Same objections.

1 THE WITNESS: I'm not aware of any, no.
 2 Q. BY MR. ROSENBAUM: Is availability of textbooks
 3 a problem in Oakland?
 4 MR. HERRON: Objection. Vague as to time.
 5 THE WITNESS: Are you asking whether that was
 6 an issue when we did our comprehensive assessment?
 7 MR. ROSENBAUM: Yes.
 8 THE WITNESS: Yes.
 9 Q. BY MR. ROSENBAUM: And you toured a lot of
 10 classrooms at Oakland; isn't that right?
 11 A. Yes.
 12 Q. And you found classrooms in Oakland where kids
 13 didn't have textbooks; isn't that right?
 14 MR. HERRON: Objection. Argumentative. Vague
 15 as to time. Vague and ambiguous as phrased.
 16 THE WITNESS: The on-site reviews that I
 17 conducted is separate from the comprehensive assessment
 18 that was conducted by others and other FCMAT staff
 19 members, consultants. And the report addresses the
 20 condition of the instructional materials and textbooks.
 21 MR. ROSENBAUM: Okay.
 22 THE WITNESS: And provides recommendations
 23 relative to that.
 24 Q. BY MR. ROSENBAUM: And to your knowledge, is
 25 there now a system in place in Oakland to deal with

1 no.
 2 Q. Okay. I want to go back to Oakland for one
 3 minute. Has the Oakland school district invited FCMAT
 4 back?
 5 A. If you're asking whether we have had contact
 6 with administration or a board since we conducted the
 7 comprehensive assessment, the answer is yes.
 8 Q. My question is a little bit different. Have
 9 they specifically invited you back to conduct
 10 assessments?
 11 A. Yes.
 12 Q. Okay. And is FCMAT presently conducting
 13 assessments at Oakland?
 14 A. No.
 15 Q. Will FCMAT be conducting assessments at
 16 Oakland?
 17 MR. HERRON: Objection. Calls for speculation.
 18 THE WITNESS: No.
 19 Q. BY MR. ROSENBAUM: And why is that?
 20 A. There was a follow-up to our comprehensive
 21 report to do an assessment of special education program
 22 services and funding, and that was a follow-up from our
 23 comprehensive report that we provided the school
 24 district.
 25 Q. With the exception of special education, has

1 textbook availability for students?
 2 MR. HERRON: Objection. Vague and ambiguous.
 3 THE WITNESS: At the time that the school
 4 district received the report and a short period after
 5 that in terms of communication back to the board as well
 6 as FCMAT, I was certain that the school district was
 7 applying meaningful attention and resources to the
 8 various recommendations very systematically. I've not
 9 been involved recently at Oakland High School district.
 10 Q. BY MR. ROSENBAUM: So far as you know, there's
 11 no state agency that's been involved in monitoring;
 12 isn't that right?
 13 MR. HERRON: Objection. Calls for speculation.
 14 Asking him to testify beyond his role at FCMAT. Calls
 15 for an expert opinion.
 16 THE WITNESS: You're asking whether there's any
 17 state agency that's involved in monitoring relative to
 18 the comprehensive assessment?
 19 MR. ROSENBAUM: Yes.
 20 MR. HERRON: Same objections.
 21 THE WITNESS: None that I'm aware of.
 22 Q. BY MR. ROSENBAUM: Okay. Now, was FCMAT ever
 23 involved in the Ravenswood school district?
 24 A. If you're asking whether FCMAT has conducted an
 25 assessment at Ravenswood School District, the answer is

1 Oakland invited FCMAT back to conduct assessments in any
 2 of the other areas that you all initially conducted an
 3 assessment about?
 4 MR. HERRON: "You all" being FCMAT?
 5 MR. ROSENBAUM: Yes.
 6 THE WITNESS: No.
 7 Q. BY MR. ROSENBAUM: Okay. When I asked you
 8 about Ravenswood, you said that FCMAT hasn't conducted
 9 an assessment; is that right?
 10 A. That's right.
 11 Q. My question is a little bit different. Were
 12 you ever at any point invited in to conduct an
 13 assessment?
 14 A. Yes.
 15 Q. Okay. When was that?
 16 A. In terms of what month or --
 17 Q. Well, let's start with what year.
 18 A. It was last month we were invited.
 19 Q. Okay. And did -- where did that invitation
 20 come from?
 21 A. The invitation came from the county
 22 superintendent of schools, Dr. Floyd Gonella.
 23 Q. And did Superintendent Eastin -- strike that.
 24 You talked to me a little bit earlier about
 25 that the superintendent of public instruction under the

1 law, as you understand it, can make assignments for
 2 FCMAT to particular school districts; is that right?
 3 MR. SEFERIAN: Calls for an inadmissible
 4 opinion. Calls for speculation. No foundation.
 5 Argumentative.
 6 MR. HERRON: Slightly misconstrues his
 7 testimony.
 8 THE WITNESS: The AB 1200 -- AB 1200
 9 legislation provides for a mechanism by which the
 10 superintendent of public instruction can assign or
 11 request the services of FCMAT under certain conditions.
 12 Q. BY MR. ROSENBAUM: Did you ever have
 13 discussions with Superintendent Eastin regarding
 14 conducting an assessment of Ravenswood?
 15 A. I don't recall if I have.
 16 Q. You don't recall whether or not you've ever
 17 talked to -- have you ever talked to the superintendent
 18 about Ravenswood?
 19 A. Yes, I have.
 20 Q. And that was prior to your being invited in?
 21 A. Yes.
 22 Q. And you talked to her on more than one
 23 occasion?
 24 A. No.
 25 Q. Did you talk to her on one occasion?

1 A. Yes.
 2 Q. And was that in person or was it by telephone?
 3 A. That was in person.
 4 Q. Okay. And was that in her office?
 5 A. No.
 6 Q. Can you tell me where that was?
 7 A. It was in Los Angeles.
 8 Q. And who else was present?
 9 A. I believe Dr. Ward was present. And her
 10 comment was more of a passing comment in terms of recent
 11 media relative to Ravenswood.
 12 MR. SEFERIAN: Move to strike the answer as
 13 nonresponsive.
 14 Q. BY MR. ROSENBAUM: And what's your best
 15 recollection of what was said by Superintendent Eastin?
 16 A. I don't recall. I'm just trying to be honest
 17 in terms of your question. I do recall that
 18 Superintendent Eastin referenced Ravenswood to me
 19 unrelated to the purpose of the meeting in Los Angeles
 20 several months ago.
 21 Q. Okay. Ravenswood is a school district with
 22 problems; isn't that right?
 23 MR. HERRON: Objection. Vague and ambiguous.
 24 Calls for speculation. Calls for an expert opinion.
 25 Lacks foundation.

1 THE WITNESS: I think that it would -- it's
 2 inappropriate for me to respond to that question in that
 3 we have been assigned to do an independent external
 4 assessment to determine the status of the school
 5 district in a number of areas.
 6 Q. BY MR. ROSENBAUM: Okay. Did anyone in the
 7 superintendent's office or on the superintendent's staff
 8 request that FCMAT undertake an assessment of
 9 Ravenswood?
 10 MR. SEFERIAN: Objection. Calls for
 11 speculation. Lacks foundation.
 12 THE WITNESS: Yes.
 13 Q. BY MR. ROSENBAUM: Who was that?
 14 A. Superintendent Eastin and members of her staff.
 15 Q. Okay. And what members of her staff?
 16 A. Deputy Superintendent Susie Lange.
 17 Q. Okay. Anyone else that you recall?
 18 A. No.
 19 Q. And in what areas were you requested to focus
 20 on?
 21 MR. SEFERIAN: Objection. No foundation.
 22 THE WITNESS: Superintendent Eastin through, I
 23 believe, a response -- through a response of questioning
 24 either by the state board or members of the audience at
 25 the state board in regards to Ravenswood suggested that

1 FCMAT would be conducting an assessment of the
 2 Ravenswood school district.
 3 Q. BY MR. ROSENBAUM: I just want to understand
 4 the scope of the assessments. Is it one of these
 5 comprehensive assessments in all five areas, or is it
 6 limited just to financial matters or something else?
 7 A. It is not a comprehensive assessment in the
 8 five operational areas. There has been a study
 9 agreement that has been developed, and I'm uncertain to
 10 date whether it has been assigned by the county
 11 superintendent, but it has been forwarded to the county
 12 superintendent for his review, and upon his signing,
 13 would deploy a team to do the assessment relative to the
 14 study agreement.
 15 Q. Okay. Will it involve the five areas that we
 16 talked about? Will it involve the area of facilities
 17 management?
 18 MR. SEFERIAN: Objection. Calls for
 19 speculation.
 20 THE WITNESS: I don't have the study agreement
 21 in front of me, but I know, at least in the draft, there
 22 was a reference to facilities in the draft study
 23 agreement that I reviewed weeks ago.
 24 Q. BY MR. ROSENBAUM: Okay. And I just want your
 25 best recollection, Mr. Henry. You didn't turn that

1 document over to us, right?
 2 A. I don't recall.
 3 MR. HERRON: Objection. Calls for speculation.
 4 MR. ROSENBAUM: I'd like that document also.
 5 Q. What about with respect to pupil achievement,
 6 do you recall if it included that?
 7 A. I would want to refer to the study agreement.
 8 I believe that it's unfair to address it in that I'm not
 9 sure that it's been formally assigned by either the
 10 county superintendent or FCMAT.
 11 Q. Fair enough. Fair enough. I don't want you to
 12 do anything that you think is inappropriate, so if the
 13 next question is inappropriate, tell me and I'll
 14 withhold it at this time.
 15 You told me several questions ago, if I
 16 understood you correctly, that at one point the county
 17 board of education invited FCMAT in; is that right?
 18 MR. HERRON: Regarding Ravenswood?
 19 MR. ROSENBAUM: Yeah.
 20 THE WITNESS: The county -- the San Mateo
 21 county superintendent has requested the services of
 22 FCMAT in a study that the county superintendent is
 23 conducting, and so FCMAT will be working under the
 24 auspices of the San Mateo county superintendent in
 25 relationship to Ravenswood.

1 Q. BY MR. ROSENBAUM: Now, was there ever a time
 2 that an invitation to FCMAT from the county office or
 3 the county superintendent was tendered and then
 4 rescinded?
 5 MR. HERRON: Objection. Asked and answered.
 6 THE WITNESS: No.
 7 Q. BY MR. ROSENBAUM: Was there ever any question
 8 about whether or not FCMAT would become involved in
 9 Ravenswood in terms of the county's willingness to have
 10 FCMAT involved?
 11 A. No.
 12 MR. HERRON: Objection. Asked and answered.
 13 Q. BY MR. ROSENBAUM: Now you're aware of the
 14 consent decree in the Compton case. I'm shifting here
 15 for a minute.
 16 We talked before the break about a consent
 17 decree in Compton.
 18 A. Yes.
 19 Q. And you're familiar with the terms and the
 20 conditions of that consent decree?
 21 A. Yes.
 22 Q. You've read it?
 23 A. Yes.
 24 Q. And it's referenced and discussed in your
 25 Compton reports?

1 A. Yes.
 2 Q. Now, part of FCMAT's ongoing responsibilities
 3 in Compton, are they pursuant to that consent decree?
 4 A. No, not entirely.
 5 Q. Okay. I didn't mean to suggest the whole
 6 thing. But are there some responsibilities that FCMAT
 7 has with respect to the Compton school district that
 8 exist by virtue of the consent decree as you understand
 9 it?
 10 A. Yes.
 11 Q. And what are those responsibilities?
 12 A. FCMAT is designated as the monitor of the
 13 consent decree relative to certain standards and the
 14 progress of those standards in terms of the consent
 15 decree being met.
 16 Q. And in your reports you identify what standards
 17 those are, referring to the consent decree; isn't that
 18 right?
 19 A. Yes.
 20 Q. And the way that happened was that the state
 21 administrator and me and some other lawyers talked to
 22 FCMAT about whether or not it would be willing to assume
 23 that role; isn't that right?
 24 A. Yes.
 25 Q. And you or FCMAT agreed to assume that role

1 under the court decree; isn't that right?
 2 A. Yes.
 3 Q. Okay. And those standards include standards
 4 for pupil achievement?
 5 MR. HERRON: Objection. Vague and ambiguous.
 6 MR. ROSENBAUM: Under the consent decree. I
 7 appreciate that.
 8 THE WITNESS: Yes.
 9 Q. BY MR. ROSENBAUM: And with respect to
 10 facilities?
 11 A. Yes.
 12 Q. And health and safety?
 13 A. Health and safety related to facilities?
 14 Q. Yes.
 15 A. Yes.
 16 Q. And teacher qualifications?
 17 A. Yes.
 18 Q. Okay. Prior to the consent decree -- let me
 19 strike that for a moment.
 20 With respect to teacher qualifications, what
 21 does FCMAT monitor pursuant to the consent decree?
 22 A. The consent decree addresses the number or
 23 percentage of noncredentialed teachers at Compton
 24 Unified School District, and FCMAT works with the school
 25 district in terms of their recruitment and retention

1 efforts in that regard.

2 Q. Okay. You give advice, you give counsel, and
3 then you monitor the performance; is that right?

4 MR. HERRON: Objection. Argumentative. Vague
5 and ambiguous.

6 THE WITNESS: Yes.

7 Q. BY MR. ROSENBAUM: Okay. And prior to the
8 consent decree, did those standards with respect to
9 teachers that you just described, did they exist?

10 MR. HERRON: Objection. Calls for speculation.
11 Vague and ambiguous. Vague and ambiguous as to time.

12 MR. ROSENBAUM: In Compton.

13 THE WITNESS: I'm fairly certain that the
14 standards -- or I believe that the standards and the
15 consent decree paralleled the standards in the FCMAT's
16 comprehensive assessment document.

17 Q. BY MR. ROSENBAUM: Okay. And there are also
18 standards with respect to how many times teachers can
19 take the CBEDS; isn't that right?

20 MR. HERRON: At Compton in the consent decree?

21 MR. ROSENBAUM: Yes.

22 THE WITNESS: Yes.

23 Q. BY MR. ROSENBAUM: And whether or not they have
24 to take the exam after a certain period of time; isn't
25 that right?

1 A. Yes.

2 Q. And to your knowledge, Mr. Henry, did those
3 standards exist prior to the consent decree?

4 MR. HERRON: Calls for speculation. Object on
5 that ground.

6 THE WITNESS: I don't believe that the FCMAT
7 standards specifically addressed the number of times
8 that a staff member would be permitted to take CBEDS.

9 Q. BY MR. ROSENBAUM: And the purpose of those
10 standards, as you understand them, is to get more
11 experienced, qualified teachers into Compton; isn't that
12 right?

13 MR. HERRON: Objection. Argumentative.
14 Assumes facts not in evidence. Vague and ambiguous.

15 THE WITNESS: Are you asking the purposes of
16 the standards that are delineated in the consent decree,
17 are those standards designed to enhance teacher
18 recruitment and retention?

19 MR. ROSENBAUM: Yes, sir.

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

22 MR. HERRON: Calls for a legal conclusion as
23 well.

24 THE WITNESS: FCMAT's role is to determine and
25 to measure the progress relative to where the district

1 initially was assessed in terms of current, real time,
2 in terms of progress made on those standards. And so my
3 answer would be yes, that those standards provide the
4 district an opportunity to measure progress relative to
5 that.

6 Q. BY MR. ROSENBAUM: And do you know if those
7 standards are applied anywhere else in the state of
8 California, at any other school district?

9 A. You're asking whether the standards in the
10 consent decree are applied. The ones that are
11 different -- I believe there are a few standards that
12 might be different than the FCMAT standards, and you're
13 asking whether those ACLU consent decree standards are
14 different -- or are applied anywhere else in the state?

15 MR. ROSENBAUM: Yes.

16 MR. SEFERIAN: Objection. Calls for
17 speculation. No foundation.

18 THE WITNESS: I'm not aware of that.

19 Q. BY MR. ROSENBAUM: Mr. Henry, do you know what
20 CCR is?

21 A. Class-size reduction. I'm sorry. It is late.

22 Coordinated compliance review.

23 Q. You got two of the letters correct on that one.

24 A. I apologize. Coordinated compliance review.

25 Q. How about do you -- are you familiar with that?

1 A. Yes.

2 Q. Okay. Have you ever read any CCR reports?

3 MR. HERRON: Ever?

4 MR. ROSENBAUM: That you're aware of.

5 THE WITNESS: I have read some CCR reports,
6 yes.

7 Q. BY MR. ROSENBAUM: Do you regularly read the
8 reports that they -- strike that.

9 Do you regularly read the reports that they
10 prepare?

11 A. No.

12 Q. Do you, as a matter of course, send FCMAT
13 reports over to CCR?

14 MR. HERRON: Objection. Vague and ambiguous.

15 MR. SEFERIAN: Objection. Vague and ambiguous.
16 Unintelligible.

17 THE WITNESS: No, not to CCR.

18 Q. BY MR. ROSENBAUM: Okay. Do you know who is
19 head of CCR?

20 A. No.

21 MR. SEFERIAN: Objection. Vague and ambiguous.

22 Q. BY MR. ROSENBAUM: Do you know who Bill Padilla
23 is?

24 A. I know a Bill Padilla, yes.

25 Q. Have you ever met Bill Padilla?

1 A. Yes.
 2 Q. Have you ever been in meetings with Bill
 3 Padilla?
 4 A. I believe I have, yes.
 5 Q. Do you know who Lynn Burnham is -- Lauri
 6 Burnham? That's like class-size reduction.
 7 MR. HERRON: Got the last name right.
 8 Q. BY MR. ROSENBAUM: Let's start with Lynn
 9 Burnham and then we'll go to Linda Burnham and then
 10 we'll go to Lauri Burnham. Strike all that.
 11 Do you know who Lauri Burnham is?
 12 A. No.
 13 Q. Do you know who Phil Spears is?
 14 A. No.
 15 Q. Do you know who Brittany Spears is?
 16 A. Yes.
 17 MR. HERRON: And do you like her? No, don't
 18 answer that.
 19 Q. BY MR. ROSENBAUM: Do you know who Paul Warren
 20 is?
 21 A. Yes.
 22 Q. Have you had meetings with Paul Warren?
 23 A. Yes.
 24 Q. Do you know who Scott Hill is?
 25 A. Yes.

1 Q. Have you had meetings with Scott Hill?
 2 A. Yes.
 3 Q. Do you know who Stu Greenfeld is?
 4 A. Yes.
 5 Q. Have you had meetings with him?
 6 A. Yes.
 7 Q. Have you ever directed anyone on the FCMAT
 8 staff to read CCR reports?
 9 A. No.
 10 Q. Do you know what the API is?
 11 A. Yes.
 12 Q. And you know what IIUSP is?
 13 A. Yes.
 14 Q. And do you have an understanding as to how the
 15 rewards and the sanctions of the API work?
 16 A. I have a general understanding how the academic
 17 performance index works.
 18 Q. Do you consider yourself an expert in the area
 19 of how the API works?
 20 A. No.
 21 Q. Or IIUSP?
 22 A. No.
 23 Q. Do you know what IIUSP is?
 24 MR. JORDAN: Asked and answered.
 25 THE WITNESS: I do.

1 Q. BY MR. ROSENBAUM: Are you aware of the fact,
 2 sir, that there are teachers in some classrooms who have
 3 received the API rewards and have given them to charity?
 4 MR. HERRON: Objection. Calls for speculation.
 5 THE WITNESS: I'm aware of the news media
 6 articles that have reported that.
 7 Q. BY MR. ROSENBAUM: Okay. I know you've given
 8 thought to questions of accountability.
 9 Do you think it's fair if one teacher gets
 10 rewards and another doesn't, even though one teacher
 11 might have a totally more difficult set of students to
 12 teach?
 13 MR. SEFERIAN: Objection. Argumentative.
 14 Calls for speculation. Calls for an inadmissible
 15 opinion.
 16 MR. HERRON: You're asking him to testify
 17 beyond his role at FCMAT.
 18 MR. ROSENBAUM: I appreciate that. Let's limit
 19 it.
 20 Q. I just want you to think about your experience
 21 in the FCMAT schools. I'm not asking you to make a
 22 global statement of every school in the state.
 23 Thinking about your experience in different
 24 classrooms in schools that FCMAT has dealt with, just
 25 limit it to that universe, do you think it's fair -- has

1 every classroom got a set of students that are equally
 2 easy to teach?
 3 MR. HERRON: Objection. Calls for speculation.
 4 THE WITNESS: Well, you've asked a different
 5 question there. Does every classroom have --
 6 Q. BY MR. ROSENBAUM: Let me say it a third way.
 7 I want to limit it to the FCMAT universe of schools. If
 8 you'd like we can just talk about Compton or Oakland or
 9 just talk about Oakland and Compton.
 10 Are there some groups of students that are
 11 higher achievers than other groups of students, better
 12 achievers?
 13 MR. SEFERIAN: Objection. Vague and ambiguous.
 14 Overly broad.
 15 MR. HERRON: Calls for speculation too.
 16 THE WITNESS: I don't feel comfortable in
 17 responding to that question.
 18 MR. ROSENBAUM: Let me frame it a little bit
 19 differently.
 20 Q. Do you think that there are different
 21 conditions in different classrooms in terms of -- under
 22 which to teach students?
 23 Do you think every classroom presents the same
 24 set of conditions in terms of ability to teach students?
 25 MR. HERRON: Objection. Compound.

1 MR. ROSENBAUM: Again, I'm just talking about
 2 the universe of classrooms you're familiar with in,
 3 let's say, Oakland and Compton.
 4 THE WITNESS: No.
 5 Q. BY MR. ROSENBAUM: Okay. And why do you say
 6 that?
 7 MR. HERRON: Objection. Calls for speculation.
 8 THE WITNESS: There are different conditions
 9 throughout California public schools related to
 10 facilities and sites.
 11 Q. BY MR. ROSENBAUM: Okay. And, again, just
 12 focusing on the ones you're familiar with from your
 13 FCMAT work, do you think it's fair that teachers
 14 confronting different conditions in their classrooms,
 15 that some are rewarded and some aren't rewarded when
 16 their conditions may be vastly different?
 17 MR. SEFERIAN: Objection. Argumentative.
 18 Vague and ambiguous.
 19 MR. HERRON: You're asking him to provide also
 20 an expert opinion and to speak outside his role at
 21 FCMAT.
 22 THE WITNESS: I don't believe I can fairly
 23 respond to that. That's a policy question, and I'm not
 24 prepared to answer that question.
 25 Q. BY MR. ROSENBAUM: Okay. Let me ask you,

1 again, sir, to take a look at --
 2 MR. SEFERIAN: I just observed -- because of
 3 the time, if you were at a logical turning point, could
 4 we break.
 5 MR. ROSENBAUM: Okay.
 6 (Recess taken.)
 7 Q. BY MR. ROSENBAUM: Mr. Henry, you know I think
 8 I screwed it up. When we were talking about Ravenswood,
 9 I think I was just stupid.
 10 Did the superintendent, meaning the
 11 superintendent of public instruction, did she ever
 12 withdraw an assignment of FCMAT to Ravenswood?
 13 And by withdraw I don't mean necessarily 100
 14 percent to zero. It could be that, or it could be that
 15 the terms -- scope of the assignment changed.
 16 MR. SEFERIAN: Objection. Compound question.
 17 Asked and answered. Vague and ambiguous.
 18 MR. ROSENBAUM: It wasn't asked and answered.
 19 I was asking previously about the county superintendent
 20 and the county offices.
 21 THE WITNESS: If you're asking whether the
 22 superintendent of public instruction entertained the
 23 notion to assign FCMAT into Ravenswood, the answer is
 24 yes. And if you're asking whether that happened, the
 25 answer is no.

1 MR. ROSENBAUM: Okay.
 2 MR. SEFERIAN: Move to strike the answer as
 3 nonresponsive to the question.
 4 Q. BY MR. ROSENBAUM: And what's your
 5 understanding -- first of all, when did it happen
 6 initially that -- I don't want to -- when did she first
 7 entertain the notion of assigning FCMAT into Ravenswood
 8 so far as you know?
 9 MR. SEFERIAN: Objection. Calls for
 10 speculation. No foundation.
 11 MR. FEKETE: I'm going to object also. I think
 12 for him to speculate as to what was in the mind of an
 13 elected state official is entirely inappropriate. I'm
 14 just going to direct him not to answer the question.
 15 Q. BY MR. ROSENBAUM: Were you ever present -- I
 16 don't want you to speculate as to what anybody's mind
 17 was. But were you ever in a discussion with the
 18 superintendent of public instruction or any of her staff
 19 members at which the subject matter of FCMAT being
 20 assigned to Ravenswood came up?
 21 MR. SEFERIAN: Objection. Asked and answered.
 22 THE WITNESS: Yes.
 23 Q. BY MR. ROSENBAUM: Okay. And were you told in
 24 sum or substance -- strike that.
 25 That was a meeting with -- was it a meeting

1 with Superintendent Eastin?
 2 MR. HERRON: Objection. Asked and answered.
 3 MR. SEFERIAN: Objection. Asked and answered.
 4 MR. FEKETE: Didn't you already answer that?
 5 THE WITNESS: I have already answered.
 6 Q. BY MR. ROSENBAUM: That was the meeting you
 7 were talking to me about earlier with Susie Lange and
 8 Superintendent Eastin; is that right?
 9 A. The reference to Superintendent Eastin
 10 assigning FCMAT to Ravenswood occurred formally at a
 11 State Board of Education meeting, and subsequent to that
 12 meeting I received a call from Susie Lange, the deputy
 13 superintendent, in regards to that.
 14 MR. SEFERIAN: Move to strike as nonresponsive
 15 to the question.
 16 Q. BY MR. ROSENBAUM: Okay. Was it a meeting of
 17 the state board that you were present at?
 18 A. No.
 19 Q. Okay. What was your initial understanding of
 20 what the scope of FCMAT's assessment would be?
 21 MR. SEFERIAN: Objection. No foundation.
 22 Calls for speculation. Vague and ambiguous.
 23 THE WITNESS: Are you asking what
 24 Superintendent Eastin's desire was relative to the
 25 assessment?

1 MR. ROSENBAUM: Exactly.
 2 MR. SEFERIAN: Objection. Calls for
 3 speculation. No foundation.
 4 THE WITNESS: I'm not aware of that.
 5 Q. BY MR. ROSENBAUM: Now, you subsequently
 6 received a phone call from Ms. Lange; is that right?
 7 A. Yes.
 8 Q. And what did -- was that by telephone?
 9 A. Yes.
 10 Q. And how long after the earlier discussion with
 11 the superintendent?
 12 A. Are you asking how soon I received a call from
 13 Deputy Lange relative to when Delaine Eastin made a
 14 comment at the state board?
 15 Q. Yes.
 16 A. I believe it was the same day.
 17 Q. Okay. And what did Deputy Lange say to you?
 18 A. She said that the superintendent of public
 19 instruction had made a statement at the state board
 20 meeting in response to a question that she was
 21 considering the assignment of FCMAT into the Ravenswood
 22 school district.
 23 Q. Okay. And what else did Deputy Lange say?
 24 MR. SEFERIAN: Objection. Assumes facts not in
 25 evidence. Calls for speculation.

1 THE WITNESS: She asked me whether I had
 2 received any calls from the media in regards to that
 3 statement.
 4 Q. BY MR. ROSENBAUM: And what did you say?
 5 A. I said yes.
 6 Q. In fact, you were subsequently quoted about
 7 this matter; isn't that right?
 8 A. I'm not sure I understand what you're referring
 9 to.
 10 Q. Okay. And what did Ms. Lange say to you after
 11 you said that you had received some press or media
 12 calls?
 13 MR. SEFERIAN: Objection. Assumes facts not in
 14 evidence.
 15 THE WITNESS: Would you repeat the question.
 16 Q. BY MR. ROSENBAUM: Sure. Let me see if I
 17 understand the sequence here. Deputy Lange calls you
 18 and says, have you received any phone calls about the
 19 superintendent's statement regarding Ravenswood, did she
 20 say in sum or substance?
 21 MR. SEFERIAN: Objection. Misstates the
 22 witness' testimony.
 23 THE WITNESS: She had asked whether we had
 24 received any calls from the media in regards to
 25 Superintendent Eastin's statement.

1 Q. BY MR. ROSENBAUM: Okay. Thanks. And then you
 2 said yes?
 3 A. Correct.
 4 Q. And then what did she say?
 5 MR. SEFERIAN: Objection. Assumes facts not in
 6 evidence.
 7 THE WITNESS: She asked whether we had
 8 responded yet to the media.
 9 Q. BY MR. ROSENBAUM: And what did you say?
 10 A. No.
 11 Q. And then what did she say?
 12 MR. SEFERIAN: Objection. Assumes facts not in
 13 evidence.
 14 THE WITNESS: I don't believe that she said
 15 much after that. I had asked whether they had contacted
 16 Dr. Floyd Gonella of the county superintendent.
 17 MR. SEFERIAN: Move to strike the answer as
 18 nonresponsive to the question.
 19 Q. BY MR. ROSENBAUM: And county superintendent in
 20 San Mateo County?
 21 A. Yes.
 22 Q. And what did Deputy Lange say to you?
 23 A. She said that they were preparing to do that.
 24 Q. Okay. And did she say -- did Deputy Lange say
 25 in sum or substance, the superintendent can't commit

1 FCMAT to Ravenswood unless we get approval from the
 2 county superintendent?
 3 MR. SEFERIAN: Objection. Misstates the
 4 witness' testimony. Argumentative.
 5 THE WITNESS: I don't believe that Deputy Lange
 6 made that statement.
 7 Q. BY MR. ROSENBAUM: Did she say FCMAT can't do
 8 anything until or unless we get approval from the county
 9 superintendent?
 10 MR. SEFERIAN: Objection. Misstates the
 11 witness' testimony. Argumentative.
 12 THE WITNESS: If you're asking whether in that
 13 conversation Deputy Superintendent Lange stated that
 14 FCMAT could not be engaged without the county
 15 superintendent's permission, the answer is, no, that was
 16 not stated.
 17 Q. BY MR. ROSENBAUM: Okay. Did she say anything
 18 to you about whether or not you should talk to the
 19 media?
 20 A. No.
 21 Q. Okay. Was it your understanding as a result of
 22 that phone call that FCMAT could not go into Ravenswood
 23 unless the county acquiesced?
 24 MR. SEFERIAN: Objection. Calls for
 25 speculation.

1 THE WITNESS: No, that was not my understanding
 2 relative to that phone call.
 3 Q. BY MR. ROSENBAUM: Okay. How about
 4 subsequently?
 5 MR. HERRON: How about subsequently what?
 6 Q. BY MR. ROSENBAUM: Did that become your
 7 understanding?
 8 MR. SEFERIAN: Objection. Vague and ambiguous.
 9 Overly broad.
 10 THE WITNESS: There were questions that were
 11 asked to the Department of Education and to FCMAT in
 12 whether the superintendent of public instruction had the
 13 authority to assign FCMAT independently into Ravenswood.
 14 MR. SEFERIAN: Move to strike the answer as
 15 nonresponsive to the question.
 16 Q. BY MR. ROSENBAUM: And how do you know that?
 17 A. How do I know that there were questions asked?
 18 Q. Exactly.
 19 A. They were asked of me.
 20 Q. And who asked you those questions?
 21 A. The county superintendent, Dr. Floyd Gonella,
 22 asked me what authority the state superintendent had to
 23 assign FCMAT independently.
 24 Q. Did the county superintendent call you or did
 25 you call the superintendent?

1 A. I called the county superintendent, but the
 2 county superintendent was not in his office at the time
 3 that I called.
 4 Q. And he subsequently returned your call?
 5 A. Yes.
 6 Q. Is it a he?
 7 A. He.
 8 Q. And when did this happen in the sequence of
 9 events here?
 10 A. It happened -- those calls happened the same
 11 day.
 12 Q. Okay. Subsequent to your call from Deputy
 13 Lange?
 14 A. Subsequent to the call from Deputy Lange, yes.
 15 Q. Did Deputy Lange ask you to call the county
 16 superintendent?
 17 A. No.
 18 Q. Did anybody ask you to do that?
 19 A. No.
 20 Q. That was of your own initiative?
 21 A. Yes.
 22 Q. Why did you do that?
 23 A. I felt a professional obligation to Dr. Gonella
 24 in that we were receiving numerous calls from the media,
 25 and I was worried that he would be receiving similar

1 calls without having knowledge on the basis of the
 2 calls.
 3 Q. Okay. And was Dr. Gonella upset when you spoke
 4 with him?
 5 MR. SEFERIAN: Objection. Calls for
 6 speculation.
 7 THE WITNESS: I would prefer you to ask
 8 Dr. Gonella that question.
 9 Q. BY MR. ROSENBAUM: Okay. And one of the
 10 subjects that came up in your -- how long did your
 11 conversation -- is it Dr. Gonella?
 12 A. Yes, it is.
 13 Q. And just for the record, do you know how to
 14 spell his name?
 15 A. I believe it's G-o-n-e-l-l-a.
 16 Q. Okay. And how long did your conversation with
 17 Dr. Gonella take?
 18 A. I really don't recall the time.
 19 Q. Okay. And one of the subject matters that came
 20 up was the question of FCMAT's authority; is that right?
 21 MR. HERRON: Objection. Asked and answered.
 22 MR. ROSENBAUM: It's just a predicate question.
 23 Go ahead.
 24 THE WITNESS: You're asking whether the county
 25 superintendent inquired on the statutory authority for

1 the superintendent of public instruction to assign FCMAT
 2 in independently. The answer is yes.
 3 Q. BY MR. ROSENBAUM: And what did you say to him?
 4 A. At the time I was uncertain relative to whether
 5 the state superintendent had the authority under the
 6 statutes to assign FCMAT into a school district, and I
 7 shared that understanding with him and indicated I
 8 researched the code, talked to legal counsel in regards
 9 to that.
 10 Q. Okay. And what did Dr. Gonella say in
 11 response?
 12 A. I don't recall the specific response of
 13 Dr. Gonella.
 14 Q. Do you remember anything he said?
 15 A. Yes.
 16 Q. What was that?
 17 A. He was questioning whether the superintendent
 18 of public instruction had the authority to assign FCMAT
 19 independently.
 20 Q. Did he say in sum or substance, FCMAT is not
 21 coming in here?
 22 A. No.
 23 Q. Did he -- have you had subsequent discussions
 24 with Superintendent Gonella?
 25 A. Yes.

1 Q. And have they been over the scope of -- what's
2 been the subject matter?
3 A. The development of the study agreement.
4 Q. Okay. And if I understand you from your
5 earlier testimony, that study agreement is not yet
6 finalized; is that right?
7 A. It is -- it is possible that it could be
8 finalized, I'm just not aware of it. I know that the
9 final draft was mailed or faxed to Dr. Gonella, I'm just
10 not certain whether that's been returned as of today.
11 Q. Were you involved in the preparation of that
12 draft?
13 A. Yes.
14 Q. Okay. And, again, Mr. Henry, I don't want to
15 misunderstand what was said here, but if I understand
16 you correctly, you said to him -- I think I asked you
17 this, so bear with me. You said to him you don't think
18 the superintendent has the authority or you're uncertain
19 about it? I just want to get straight what you said to
20 me. It's my mistake not getting it the first time.
21 A. If you're asking whether in subsequent
22 conversations we discussed the statutory authority in
23 regards to Superintendent Eastin assigning FCMAT, the
24 answer is, yes, we had that discussion.
25 Q. And what's your present understanding of what

1 A. Yes.
2 Q. Okay. And it says Fremont High School; is that
3 right?
4 A. Yes.
5 Q. Okay. And still looking at the last page of
6 Exhibit 57, do you see where it says serious safety and
7 health issues? Do you see that?
8 A. Yes.
9 Q. And the first one says, large rats are entering
10 the classrooms. Do you see that?
11 A. Yes.
12 Q. Do you know how many classrooms?
13 A. No.
14 Q. Okay. Do you know -- did anyone at the Oakland
15 school district ever dispute this finding?
16 MR. HERRON: Objection. Assumes facts not in
17 evidence. Mischaracterizes the document, which speaks
18 for itself. Calls for speculation. Vague and ambiguous
19 as phrased.
20 THE WITNESS: No.
21 Q. BY MR. ROSENBAUM: Okay. Did you ever hear
22 anyone at the Oakland school district disputing any of
23 the statements 1 through 9 on the final page of
24 Exhibit 57?
25 MR. HERRON: Same objections.

1 the superintendent can do?
2 MR. SEFERIAN: Objection. Calls for an
3 inadmissible opinion. Calls for speculation. No
4 foundation.
5 MR. HERRON: May call for attorney/client
6 privileged information as well.
7 THE WITNESS: My present understanding is that
8 there are certain conditions by which the superintendent
9 of public instruction can assign FCMAT into local
10 educational agencies, predominantly county offices of
11 education, but we were unable to find a clear citation
12 that would allow her, the superintendent of public
13 instruction, to assign FCMAT into a school district.
14 Q. BY MR. ROSENBAUM: Okay. School district, you
15 mean an LEA?
16 A. Yes.
17 Q. Okay. Thanks. Let me ask you -- Mr. Henry, if
18 you could direct your attention back to Exhibit 57. Do
19 you have that in front of you?
20 A. Yes.
21 Q. And I'm asking you, sir, if you would look at
22 the last page, which, as your counsel pointed out, it
23 says 1 of 2 and there is no 2 of 2.
24 Do you have that page? In the upper right-hand
25 corner it says 1 of 2.

1 THE WITNESS: I don't recall that, no.
2 Q. BY MR. ROSENBAUM: Okay. And regarding --
3 incidentally, the grades that we talked about on the
4 first three pages of Exhibit 57, did anyone at the
5 Oakland school district ever dispute any of the grades
6 that were given to your knowledge?
7 MR. HERRON: Same objections. Vague and
8 ambiguous in the use of the term "dispute."
9 THE WITNESS: If you're asking whether there
10 were any staff members that questioned the findings or
11 the letter grade, I do recall that there were
12 administrators that during the process questioned parts
13 of the review.
14 Q. BY MR. ROSENBAUM: Okay. The review referring
15 to the review that's on Exhibit 57?
16 A. Yes.
17 Q. Okay. And do you know what parts?
18 A. I recall that there was at least one high
19 school principal that was challenging the assessment.
20 Q. Do you know which principal, which school?
21 MR. HERRON: Objection. Compound.
22 THE WITNESS: I believe it was McClymonds High
23 School.
24 Q. BY MR. ROSENBAUM: Okay. And was it the
25 principal there?

1 A. I believe it was, yes.
 2 Q. Do you know what the principal said? Did he
 3 say, well, we shouldn't get an F, we should get a C or a
 4 D or a B or an A?
 5 A. I don't recall the discussion that took place,
 6 I just recall that there was concern on the part of the
 7 principal relative to the assessment and the final
 8 letter grade.
 9 Q. Was the grade ever changed to your knowledge?
 10 A. No.
 11 Q. Okay. Were you ever consulted about whether
 12 the grade should be changed?
 13 A. Was I ever consulted by whom?
 14 Q. Anybody.
 15 MR. HERRON: Can I just ask, are you saying the
 16 grade that's set forth on Exhibit 57?
 17 MR. ROSENBAUM: Yes.
 18 THE WITNESS: And are you specifically
 19 referring to a high school?
 20 MR. ROSENBAUM: Yes, McClymonds High School,
 21 grade F, first page of Exhibit 57.
 22 Q. That's what we're talking about, right?
 23 MR. HERRON: It's unclear. You're saying did
 24 it ever change from an F to something else, or did it
 25 change from F because someone complained?

1 MR. ROSENBAUM: No, did it change from F to
 2 something else?
 3 THE WITNESS: I don't recall ever being asked
 4 to change the letter grade from an F to a higher grade.
 5 Q. BY MR. ROSENBAUM: Did you visit McClymonds to
 6 your knowledge?
 7 A. I believe I did, yes.
 8 Q. And because Frank Robinson and Veda Pinson went
 9 there?
 10 A. That's not the reason I visited the high
 11 school, no.
 12 Q. But that was cool. Do you think McClymonds
 13 High School warranted an F?
 14 MR. HERRON: Him personally?
 15 THE WITNESS: It's not a subjective grade.
 16 It's a grade based upon objective criteria.
 17 MR. HERRON: Can I just ask, how are you
 18 feeling, Mr. Henry? You seem to me to be getting tired,
 19 and he's a relentless questioner.
 20 MR. ROSENBAUM: Let's go off the record.
 21 (Discussion held off the record.)
 22 MR. ROSENBAUM: We've agreed to adjourn the
 23 deposition at this time in appreciation of the long day
 24 that this has been, and I'd like to resume it at the
 25 earliest possible convenience for you. I know your

1 schedules are busy, but we would like to complete it
 2 early. So we don't have to do that at this moment, but
 3 can we speak in the next day or so, or do you know dates
 4 right now?
 5 MR. FEKETE: Well, I know dates, but I assume
 6 not everyone around the table does. If we all do, we
 7 can all look at calendars.
 8 Now, I realize how much difficulty there was in
 9 scheduling this date, and I would prefer not to go
 10 through that process again of being in the middle of
 11 calls from both sides.
 12 MR. HERRON: It may be helpful, also, I think,
 13 to set aside whatever estimate of days so we can get it
 14 done. How many do you estimate from here?
 15 MR. ROSENBAUM: I want to go off the record.
 16 (The deposition concluded at 4:08 p.m.)
 17 ---o0o---
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 25

1 Please be advised that I have read the
 2 foregoing deposition. I hereby state there are:
 3
 4 (check one) _____ NO CORRECTIONS
 5 _____ CORRECTIONS ATTACHED
 6
 7 _____
 8 Date Signed
 9
 10 _____
 11 THOMAS E. HENRY
 12
 13 Case Title: Williams vs State, Volume I
 14 Date of Deposition: Tuesday, August 21, 2001
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1 DEPONENT'S CHANGES OR CORRECTIONS

2 Note: If you are adding to your testimony, print the
3 exact words you want to add. If you are deleting from
4 your testimony, print the exact words you want to
5 delete. Specify with "Add" or "Delete" and sign this
6 form.

7 DEPOSITION OF: THOMAS E. HENRY, VOLUME I
8 CASE: WILLIAMS VS STATE OF CALIFORNIA

9 DATE OF DEPOSITION: TUESDAY, AUGUST 21, 2001

10 I, _____, have the following
11 corrections to make to my deposition:

12	13	14	15
16	PAGE	LINE	CHANGE/ADD/DELETE
17	_____	_____	_____
18	_____	_____	_____
19	_____	_____	_____
20	_____	_____	_____
21	_____	_____	_____
22	_____	_____	_____
23	_____	_____	_____
24	_____	_____	_____

25 _____
THOMAS E. HENRY DATE

1 REPORTER'S CERTIFICATE

2
3 I certify that the witness in the foregoing
4 deposition,
5 THOMAS E. HENRY,
6 was by me duly sworn to testify the truth, the whole
7 truth, in the within-entitled cause; that said
8 deposition was taken at the time and place therein
9 named; that the testimony of said witness was reported
10 by me, a duly certified shorthand reporter and a
11 disinterested person, and was thereafter transcribed
12 into typewriting.

13 I further certify that I am not of counsel or
14 attorney for either or any of the parties to said cause,
15 nor in any way interested in the outcome of the cause
16 named in said deposition.

17 IN WITNESS WHEREOF, I have hereunto set my hand
18 this 31st day of August, 2001.

19
20
21
22
23 _____
TRACY LEE MOORELAND, CSR 10397
24 State of California
25