

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF SAN FRANCISCO

3 UNLIMITED JURISDICTION

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6 ELIEZER WILLIAMS, a minor, by SWEETIE)

7 WILLIAMS, his guardian ad litem, et)

8 al., each individually and on behalf)

9 of all others similarly situated,)

10 Plaintiffs,)

11 vs.) No. 312236

12 STATE OF CALIFORNIA, DELAINE EASTIN,) VOLUME I

13 State Superintendent of Public)

14 Instruction, STATE DEPARTMENT OF)

15 EDUCATION, STATE BOARD OF EDUCATION,)

16 Defendants.)

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18
19 Deposition of NANCY RUTH MYERS,
20 Ed.D., taken at 275 Battery Street,
21 25th Floor, San Francisco, California,
22 commencing at 9:37 A.M., Wednesday,
23 January 22, 2003, before Jo Ann
24 Bruscella, CSR No. 4295.

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1 NANCY RUTH MYERS, Ed.D,
 2 having been first duly affirmed to tell the truth,
 3 the whole truth and nothing but the truth, testified
 4 as follows:
 5
 6 EXAMINATION
 7 BY MR. SIMMONS:
 8 Q. Good morning, Dr. Myers.
 9 A. Good morning.
 10 Q. My name is Shaun Simmons, and I am an
 11 attorney representing the State of California in 09:37 AM
 12 this litigation.
 13 Have you ever had your deposition taken
 14 before?
 15 A. Yes.
 16 Q. How many times? 09:37 AM
 17 A. One.
 18 Q. When did you have your deposition taken
 19 before this?
 20 A. It's been three years ago.
 21 Q. What kind of case did that involve? 09:38 AM
 22 A. A child custody case.
 23 Q. Were you testifying as an expert at all?
 24 A. Yes.
 25 Q. What opinions did you give in that case?

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1 A. The school systems that the child would be 09:38 AM
 2 going to. It was a comparison of two school
 3 systems, and which school system would probably be
 4 more appropriate for the child.
 5 Q. Did you testify at trial in that case?
 6 A. Yes. 09:39 AM
 7 Q. Do you recall the name of the case?
 8 A. No.
 9 Q. Do you recall who the parties were?
 10 A. No.
 11 Q. In what state was that litigation? 09:39 AM
 12 A. In Indiana.
 13 Q. Do you recall what county?
 14 A. Marion.
 15 Q. Do you recall the name of the court?
 16 A. No. 09:39 AM
 17 Q. Were you called in by the court or were you
 18 testifying on behalf of a party in that case?
 19 A. I was testifying on behalf of one of the
 20 parties.
 21 Q. But you can't remember the name of the 09:40 AM
 22 party that you testified --
 23 A. No.
 24 Q. -- testified on behalf of?
 25 MR. ELIASBERG: Nancy, just to make sure

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1 the court reporter can get everything, you need to 09:40 AM
 2 sort of make sure that Shaun is finished with his
 3 questions just because if two people are talking,
 4 there is no way the court reporter can get it down.
 5 MR. SIMMONS: Let's talk briefly about
 6 ground rules for the deposition. 09:40 AM
 7 MR. HAJELA: Shaun, can I go off the record
 8 for one quick second?
 9 (Discussion off the record.)
 10 MR. SIMMONS: Let's briefly go over the
 11 ground rules for the deposition so we are all 09:41 AM
 12 familiar with them.
 13 Q. You understand you have taken an oath here
 14 today that requires to you tell the truth?
 15 A. Yes.
 16 Q. You understand that by testifying here 09:41 AM
 17 today you are subject to all the penalties of
 18 perjury?
 19 A. Yes.
 20 Q. And the testimony that you give here today
 21 will have the same force and effect as if it were 09:41 AM
 22 given in a court of law.
 23 Do you understand that?
 24 A. Yes.
 25 Q. Throughout the day I will be asking you a

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1 number of questions related to this lawsuit. You're 09:41 AM
 2 required to answer those questions to the best of
 3 your ability. If you don't understand a question
 4 that I ask, just let me know, and I will do my best
 5 to rephrase it. Otherwise, if you go ahead and
 6 answer a question without telling me you didn't 09:41 AM
 7 understand it, I will just assume that you did
 8 understand it.
 9 Do you understand that?
 10 A. Yes.
 11 Q. Also, please throughout the day try and 09:41 AM
 12 answer questions verbally. We all kind of have a
 13 tendency at times to shake our heads or nod our
 14 heads, and that is tough for the court reporter to
 15 get a clear record of. So if we can both do our
 16 best to remember to speak instead of shake our 09:42 AM
 17 heads, that will be helpful.
 18 As Peter said, I will do my best to let you
 19 finish your answer before butting in with another
 20 question. And if you will give me the same courtesy
 21 and let me finish my question, that will help the 09:42 AM
 22 court reporter today.
 23 A. Okay.
 24 Q. Just so you know, the questions that I ask
 25 you today and the answers that you give will be

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1 transcribed in a booklet that you will have an 09:42 AM
 2 opportunity to review later. You are entitled to
 3 make changes to any of your answers. But you should
 4 know that if you do make changes to your answers,
 5 various attorneys that are involved in this case
 6 will be able to comment on those changes. 09:42 AM
 7 Do you understand that?
 8 A. Yes.
 9 Q. Also, if you need a break during the
 10 deposition at any time, just let me know. We are
 11 not in an endurance test. 09:43 AM
 12 A. Okay.
 13 Q. Also, I would like to get as complete a
 14 record of your opinions as I can here today. So if
 15 at any time, during the deposition, you would like
 16 to change or supplement an answer, something 09:43 AM
 17 triggers in your mind that you want to go back and
 18 add something to a question or change an answer,
 19 just let me know, and we will go back and take care
 20 of that.
 21 Is there any reason that you cannot provide 09:43 AM
 22 your best testimony here today?
 23 A. No.
 24 Q. Just returning to your prior experience as
 25 an expert testifying in a case before.

1 You were deposed in that case, and you also 09:43 AM
2 testified at trial; is that correct?

3 A. Yes.

4 MR. ELIASBERG: Compound.

5 BY MR. SIMMONS:

6 Q. Have you served as an expert in connection 09:43 AM
7 with any other litigation?

8 A. No.

9 Q. You mentioned that you compared two school
10 systems as part of your work as an expert in the
11 prior case. 09:44 AM

12 What school systems did you compare?

13 A. I don't even remember.

14 Q. Do you recall what type of comparison you
15 did between the systems?

16 A. One of the things that -- there were a 09:44 AM
17 number of things, but one that I remember was
18 looking at the free and reduced lunch programs
19 between the two schools.

20 Q. Why did you look at that issue?

21 A. Because one of the concerns was addressing 09:44 AM
22 the special needs of the child.

23 Q. Did you compare the facilities between the
24 two school systems?

25 A. Yes.

1 Q. Anything else about the size that you were 09:46 AM
2 looking into?

3 A. Right now I don't remember that there was
4 anything else.

5 Q. In terms of -- you also mentioned that you
6 looked at the condition of the facilities at the two 09:46 AM
7 schools -- in the two school systems.

8 What about conditions? What specific
9 conditions did you look into?

10 A. I was making sure that both facilities were
11 in good repair. 09:47 AM

12 Q. Anything else?

13 A. That's all I remember now.

14 Q. This may help for just later on in the day.
15 How would you define a facility in good repair?

16 A. There are a lot of ways, but one of the 09:47 AM
17 ways is are the rest rooms working in the facility.

18 Q. What other ways would you define or
19 consider?

20 A. Is the heating system appropriate to
21 provide heat in the winter. 09:47 AM

22 Q. Anything else?

23 A. Are they handicap accessible. Do they meet
24 the codes for handicap-accessible facilities.

25 Q. Anything else that comes to mind?

1 Q. What about the facilities did you compare? 09:45 AM

2 A. One of the things that I remember is the
3 size of the building and the condition of the
4 facilities.

5 Q. Why was it that you made a comparison
6 between the facilities of the two school systems? 09:45 AM

7 A. The child had special needs.

8 Q. Can you elaborate on "special needs" a
9 little bit?

10 A. The child needed to be in a special
11 education program. 09:45 AM

12 Q. Any particular kind of special education
13 program?

14 A. I don't remember now.

15 Q. If you recall, what about the size of the
16 facilities were you looking to compare? 09:46 AM

17 A. The main reason why I was looking at size
18 is whether or not both facilities had the kind of
19 program this child needed.

20 Q. When you say you compared the size of the
21 facilities, are you talking number of students or 09:46 AM
22 square footage?

23 A. Yes.

24 Q. So both of those?

25 A. Yes.

1 A. No. 09:48 AM

2 Q. What, if anything, did you do to prepare
3 for your deposition today?

4 A. I have spent several hours reviewing the
5 information from my expert report, as one example of
6 one of the things that I did. 09:48 AM

7 Q. What else can you recall having done to
8 prepare for your deposition today?

9 A. I have also spent time working with the
10 lawyers.

11 Q. Anything else that you recall having done 09:49 AM
12 to prepare for your deposition today?

13 A. No.

14 Q. What was your reason for reviewing your
15 expert report for the deposition today?

16 A. To remind myself about the report, since 09:49 AM
17 it's been several months since it had been
18 completed.

19 Q. Did you review any other documents or
20 documents other than your expert report in
21 preparation for your deposition today? 09:49 AM

22 A. Yes.

23 Q. What other documents?

24 A. Some of the information that I have since
25 worked on since the report was finished.

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1 Q. So do I understand you correctly that you 09:50 AM
2 gathered some additional information after you
3 finished your expert report, and that was the
4 information that you reviewed?
5 A. I gathered the additional information
6 because I am in the process of writing a book, and 09:50 AM
7 this is information that I have gathered in research
8 for the book, which pertained to the subject.
9 Q. In the course of reviewing your expert
10 report, did you find any inaccuracies?
11 A. No. 09:50 AM
12 Q. Did you come across anything in your report
13 that you would have liked to have changed?
14 A. No.
15 Q. You mentioned that you spent time working
16 with your lawyers. I assume you mean counsel for 09:51 AM
17 plaintiffs in this case?
18 A. Yes.
19 Q. Which lawyers did you work with?
20 A. Do you want me to name them?
21 Q. Please. 09:51 AM
22 A. Peter Eliasberg and Jack London.
23 Q. You say you worked with them.
24 Does that mean you had phone conversations
25 with them, or meetings?

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1 A. Yes. 09:51 AM
2 Q. How many phone conversations did you have?
3 Just in terms of the preparation for this
4 deposition.
5 A. Two.
6 Q. You had in-person meetings with your 09:51 AM
7 lawyers as well?
8 A. Yes.
9 Q. How many in-person meetings did you have?
10 A. One.
11 Q. When did the first of the two conversations 09:52 AM
12 you identified for us occur?
13 MR. ELIASBERG: Objection, vague as to
14 "conversations."
15 THE WITNESS: I don't know the date.
16 BY MR. SIMMONS: 09:52 AM
17 Q. Do you recall about how many days ago it
18 was?
19 A. No, I don't.
20 Q. Who was present -- actually, I'm just
21 trying to find a way to -- so we have a language to 09:52 AM
22 distinguish between the two conversations.
23 We will say, in the first conversation that
24 you had in preparation for your deposition, who was
25 present?

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1 A. Jack London and Peter Eliasberg. 09:52 AM
2 Q. About how long did that conversation last?
3 A. Forty-five minutes.
4 Q. I know you said you had difficulty
5 recalling exactly when the conversation occurred.
6 Did it occur within the last thirty days? 09:53 AM
7 A. Yes.
8 Q. Within the last two weeks?
9 A. I don't remember.
10 Q. Did you call counsel, or did they call you?
11 A. They called me. 09:53 AM
12 Q. What was discussed during the conversation?
13 A. There were a lot of things discussed, but
14 one of the things I remember is just basically the
15 rules, the ground rules of how this works, how a
16 deposition works. 09:53 AM
17 Q. What else can you recall, other than the
18 ground rules, being discussed in that conversation?
19 A. Talking with me about my part of the
20 deposition, what my role was in terms of providing
21 the expert report. 09:54 AM
22 Q. Can you recall any other topic areas that
23 were discussed in the course of that conversation?
24 A. No, I can't.
25 Q. Did you ask any questions of your lawyers

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1 during that conversation? 09:54 AM
2 A. I'm sure I did.
3 Q. Can you recall any?
4 A. No.
5 Q. You mentioned one of the things that was
6 discussed in that conversation was your role in 09:55 AM
7 providing an expert report; is that correct?
8 A. Right. Yes.
9 Q. What about your role in providing an expert
10 report was discussed?
11 A. The fact that my objective in serving -- in 09:55 AM
12 gathering this data was to look at what other states
13 were doing as good models of processes for
14 facilities, maintenance and operations.
15 Q. Can you recall anything else about the
16 conversation concerning your role in providing an 09:56 AM
17 expert report?
18 A. That part of my -- that my role focused on
19 looking at what other states were doing to provide
20 some examples of good models, and that my role was
21 not to serve as an expert of what's happening in 09:56 AM
22 California.
23 MR. SEFERIAN: Would you read that answer
24 back, please?
25 (The reporter read the answer as

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1 requested.) 09:57 AM
2 BY MR. SIMMONS:
3 Q. Do you recall when the second conversation
4 you had with plaintiff's counsel regarding your
5 preparation for this deposition occurred?
6 A. Yes. 09:57 AM
7 Q. When was that?
8 A. Last week.
9 Q. Did you contact plaintiff's counsel?
10 A. No.
11 Q. Did they call you on the telephone? 09:57 AM
12 A. Yes.
13 Q. Who participated in that conversation?
14 A. Peter Eliasberg.
15 Q. How long did that conversation last for?
16 A. About sixty minutes. 09:58 AM
17 Q. What do you recall being discussed in the
18 course of that conversations?
19 A. Peter asked me if I had questions from our
20 first conversation, having had a little time to
21 think about it, is one of the things that we talked 09:58 AM
22 about.
23 Q. Did you have any questions for Peter?
24 A. Yes.
25 Q. What questions did you have?

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1 A. How much I needed to go back and reread the 09:59 AM
2 entire box of stuff that I had gathered in my
3 research, and how much time I needed to spend on
4 refreshing my memory on that.
5 Q. What was Peter's answers to you?
6 A. I didn't need to spend a lot of time going 09:59 AM
7 through all of the documentation.
8 Q. Did you have any other questions for -- I'm
9 sorry. I should be more formal and say
10 Mr. Eliasberg. I apologize.
11 MR. ELIASBERG: We will stipulate that 09:59 AM
12 Peter is fine.
13 BY MR. SIMMONS:
14 Q. Did you have any other questions other than
15 the one about how much time you needed to go back
16 and review your backup materials? 09:59 AM
17 A. How much I needed to memorize.
18 Q. Any other questions?
19 A. Those are two that just I can think of off
20 the top. I'm sure there were others, but I can't --
21 I don't recall at this point. 10:00 AM
22 Q. Mr. Eliasberg gave you an opportunity to
23 ask some questions, if you had any.
24 Can you recall any other things being
25 discussed in the course of that conversation?

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1 A. Again, we talked about what my role was in 10:00 AM
2 this -- the scheme of the entire case.
3 Q. What about that role was discussed?
4 A. My role was to look at the -- what happens
5 in other states. To serve as an expert witness in
6 terms of what happens in other states, in terms of 10:00 AM
7 good models for processes for maintenance and
8 operations of facilities.
9 Q. Again, your focus was on what happens in
10 other states, not necessarily what is happening in
11 California? 10:01 AM
12 A. Yes, that was what I was asked to opine on.
13 Q. You also mentioned that there was an
14 in-person meeting that you had in preparation for
15 your deposition today?
16 A. Yes. 10:01 AM
17 Q. When did that occur?
18 A. Yesterday.
19 Q. Where did the meeting take place?
20 A. In the lawyer's office.
21 Q. Which lawyer's office? 10:01 AM
22 A. Morrison & Foerster.
23 Q. Who was present at the meeting?
24 A. Mr. Eliasberg and Mr. London.
25 Q. How long did the meeting last?

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1 A. About three hours. 10:02 AM
2 Q. What do you recall being discussed in that
3 meeting?
4 A. Again, reiterating what my role in the
5 expert witness part of this would be was one of the
6 things that we talked about again. 10:02 AM
7 Q. Anything else that you can recall?
8 A. We talked about the report that was done in
9 March of 2002. Since my expert report referred to
10 that report, we talked about that.
11 Q. You just identified two separate reports 10:03 AM
12 there in that last answer to my question; is that
13 correct?
14 A. No. One. One was my report, the expert
15 report, and the other one was a report done in the
16 State of California that I referred to in my report. 10:03 AM
17 Q. What report is that?
18 A. That is a report done on facilities and
19 finance committee, giving recommendations.
20 Q. What did you discuss about that report of
21 the facilities and finance committee? 10:03 AM
22 A. Clarifying my comments in my report that
23 the information -- I state -- not exactly. I don't
24 know exact words, but I speak to the fact that what
25 I have suggested was also suggested in that report.

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1 MR. SIMMONS: This may help just to have. 10:04 AM
 2 Can we mark, as Exhibit 1, the Expert Witness
 3 Declaration for Dr. Nancy L. Myers?
 4 (Deposition Exhibit 1 was marked for
 5 identification.)
 6 (Discussion off the record.) 10:04 AM
 7 BY MR. SIMMONS:
 8 Q. What about clarifying the reference that
 9 you make to the report of the finance and facilities
 10 committee?
 11 What about clarifying what was discussed? 10:05 AM
 12 I think there is a couple of references.
 13 A. Yes. I was looking for the references to
 14 that.
 15 Q. You know what? Can we go off the record?
 16 (Discussion off the record.) 10:06 AM
 17 (Deposition Exhibit 1 was remarked for
 18 identification.)
 19 BY MR. SIMMONS:
 20 Q. For the record, we now have a full expert
 21 report for Dr. Myers. I apologize for bringing an 10:15 AM
 22 inadequate report.
 23 When I left to go make copies, we were
 24 discussing that you had a discussion about
 25 clarifying a reference that you make in your report

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1 to the finance and facilities working group of the 10:15 AM
 2 joint committee to develop a master plan for
 3 education.
 4 Is that correct?
 5 A. Yes.
 6 Q. What about that -- what particular 10:15 AM
 7 clarification was being discussed?
 8 A. In paragraph 52, I say that the report, the
 9 five policy areas which should be considered to
 10 develop and maintain adequate and appropriate
 11 educational facilities is consistent with the 10:16 AM
 12 independent recommendations presented in this
 13 report, referring to that joint committee report.
 14 And my recommendations really addressed the
 15 facilities issues, not the finance issues.
 16 Q. Could you explain for me how you 10:16 AM
 17 distinguished between the finance issues and the
 18 facilities issues in your own mind?
 19 A. There were five major recommendations in
 20 that report, and one of the five speaks specifically
 21 regarding facilities. And within that one, which is 10:16 AM
 22 No. 5, there were several subcategories that spoke
 23 to facilities. The other four spoke mostly to
 24 facility -- I'm sorry, to finances.
 25 Q. Okay. So when you're referring to your

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1 report being consistent with the work of that 10:17 AM
 2 committee, you're referring to one of the five major
 3 recommendations and its subcategories?
 4 A. Yes.
 5 Q. What else can you remember discussing in
 6 the meeting that you had yesterday in preparation 10:17 AM
 7 for your deposition?
 8 A. We talked about some of the other state
 9 models, and clarifying, again, how those systems
 10 worked in various states.
 11 Q. Which state models did you discuss? 10:18 AM
 12 A. We talked about Maryland, Maryland's model,
 13 and the model of West Virginia specifically that I
 14 remember.
 15 Q. What did you discuss about Maryland's
 16 model? 10:18 AM
 17 A. One of the things I remember we talked
 18 about was how I would know that that was a
 19 successful model.
 20 Q. What was discussed in that connection?
 21 A. Looking at the facilities, being aware of 10:18 AM
 22 the facilities in Maryland, and the condition of
 23 those facilities.
 24 Q. What else was discussed about Maryland, if
 25 anything?

Page 25

1 A. We talked about a report that was done in 10:19 AM
 2 Maryland, looking at the facility conditions over
 3 the last twenty years, which is how long their
 4 system has been in place.
 5 Q. Do you recall the title of that report?
 6 A. No, not exactly. I don't remember the 10:19 AM
 7 exact title.
 8 Q. Do you have a general sense of what the
 9 title was?
 10 A. Facilities and Maintenance Survey.
 11 Q. Is that document something that you relied 10:20 AM
 12 upon in forming the opinions you intend to give in
 13 this case?
 14 A. I wouldn't say I relied upon it, but it
 15 certainly was one piece of information, as I studied
 16 the Maryland model that I looked at. 10:20 AM
 17 Q. Do you know whether that report was
 18 produced in this litigation?
 19 A. I believe that it was. It was part of the
 20 information that I had looked at.
 21 Q. Are you able to summarize the substance of 10:21 AM
 22 that report for us?
 23 A. I can give you one piece of information
 24 from the report because it was pretty extensive.
 25 One of the things that it showed was looking at the

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1 conditions of facilities in Maryland twenty years 10:21 AM
 2 ago, and they had a rating scale from poor to very
 3 good, I believe was the highest. In twenty years
 4 that -- those facilities in the state of Maryland
 5 went from predominantly poor to mediocre -- but that
 6 wasn't the right name -- to predominantly good and 10:21 AM
 7 very good in that twenty-year period.
 8 Q. You mentioned earlier that Maryland's
 9 current system for managing facilities has been in
 10 place for twenty years; is that correct?
 11 A. I believe it's been twenty years, yes. 10:21 AM
 12 Q. Are you aware of any changes that were made
 13 in that system over that span of twenty years?
 14 A. Yes.
 15 Q. What changes can you recall?
 16 A. One of the things I remember is square 10:22 AM
 17 footage per student has changed because education
 18 requirements have changed.
 19 Q. Any other changes you can recall?
 20 A. The importance of air quality has become a
 21 larger issue in the last few years, and that has 10:22 AM
 22 been added to their checklist.
 23 Q. Could you explain to me what you're
 24 referring when you say that Maryland's checklist?
 25 A. Maryland has a series of forms that they

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1 use when they do inspections at the schools, and 10:23 AM
 2 both when the school does the inspection, as well as
 3 when they have someone from the partnership with the
 4 State come out and do inspections.
 5 Q. Other than square footage per student, and
 6 the importance of indoor air quality, are there any 10:23 AM
 7 other changes that you can recall having occurred to
 8 the system in Maryland?
 9 MR. ELIASBERG: Objection, misstates her
 10 prior testimony.
 11 BY MR. SIMMONS: 10:23 AM
 12 Q. Maybe this will clear it up.
 13 Dr. Myers, did you just refer to air
 14 quality generally as opposed to indoor air quality?
 15 Is that how I misstated your prior
 16 testimony on the changes to the Maryland system? 10:24 AM
 17 A. I think I said air quality, but I meant
 18 indoor air quality. I just assumed that was -- that
 19 I was talking about internal space.
 20 Q. So in addition to the square footage per
 21 student and air quality or indoor air quality 10:24 AM
 22 changes, can you recall any other changes having
 23 occurred to the system in Maryland in the
 24 twenty-year time frame that you have identified?
 25 A. I know there were several. Another one

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1 that I remember is refining how they determined 10:24 AM
 2 priorities within the state, which schools would
 3 receive dollars.
 4 Q. Were there any changes to that system that
 5 stand out in your mind as being a substantial change
 6 to the system that was in place at the start of the 10:25 AM
 7 twenty years as opposed to, you know, as time
 8 progressed through that twenty years?
 9 A. Probably. It's my understanding, and I'm
 10 not sure that this is exactly right, that the
 11 gentleman that is in charge of the school facilities 10:25 AM
 12 in Maryland has been there for those twenty years,
 13 but it's my understanding or recollection that they
 14 have established this adjusted age for facilities.
 15 And when the system started twenty years ago, I
 16 don't believe they had that in place at that point. 10:25 AM
 17 Q. Do you know about when the adjusted age
 18 aspect of the Maryland system was established?
 19 A. No, I don't.
 20 Q. Just returning briefly to the report that
 21 provided a survey of the facilities in Maryland, the 10:26 AM
 22 condition of the facilities in Maryland.
 23 Did you make any effort to verify the
 24 accuracy of the report?
 25 A. Yes.

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1 Q. What effort did you make? 10:26 AM
 2 A. I had the opportunity to do an on-site
 3 inspection with one of the -- to go to one of the
 4 school districts in Maryland with one of the
 5 inspectors, and we spent the day doing on-site
 6 inspections. 10:26 AM
 7 Q. So a part of your effort was performing an
 8 on-site inspection at one school district?
 9 A. At one school district, yes.
 10 Q. And that includes the schools within that
 11 district? 10:26 AM
 12 A. Yes.
 13 Q. Did you make any effort -- other efforts to
 14 verify the accuracy of the report that provides the
 15 survey of the condition of facilities in Maryland?
 16 A. Yes. 10:27 AM
 17 Q. What else did you do?
 18 A. I was provided surveys, historical data
 19 from school districts, and was able to compare the
 20 data and then the follow-up plans that the school
 21 submitted, and to look historically at how those 10:27 AM
 22 plans had changed and how the checklists had
 23 changed.
 24 Q. Do you know about how many school districts
 25 there are in Maryland?

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1 A. Gosh, no, I don't right now. I don't 10:27 AM
2 recall.
3 Q. How about the number of schools in
4 Maryland?
5 A. I don't recall.
6 Q. I am gathering your efforts entailed 10:27 AM
7 looking at some specific school sites to determine
8 either how they changed or progressed and the
9 condition of their facilities to verify your sense
10 of the accuracy of the report that surveyed the
11 condition of school facilities. 10:28 AM
12 Do you have a sense as to a percentage of
13 schools in Maryland that you were able to inspect on
14 your own to determine the condition of their
15 facilities?
16 MR. ELIASBERG: Objection, misstates her 10:28 AM
17 prior testimony.
18 THE WITNESS: I surveyed schools for one
19 day. So I don't know what the percentage of that
20 would be.
21 BY MR. SIMMONS: 10:28 AM
22 Q. How many schools were you able to survey?
23 A. We looked at three schools.
24 Q. So you looked at three schools as part of
25 your on-site inspections.

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1 A. Yes. 10:29 AM
2 Q. And then you had also mentioned that you
3 had looked at some historical data to determine how
4 plans changed for schools and whether that evidenced
5 some sort of progression in the condition of their
6 facilities? 10:29 AM
7 A. Yes.
8 Q. For how many schools did you look to for
9 this type of historical data?
10 A. I can't recall the exact number, but I know
11 that I spent a day in Dr. Stenzler's office looking 10:29 AM
12 through files of school -- specific schools. Not
13 necessarily the district, but specific schools. I
14 would say it was probably more than ten, but less
15 than thirty. But that's my best recollection.
16 Q. Who is Dr. Stenzler? 10:30 AM
17 A. Dr. Stenzler is the director of the
18 Facilities Planning Division for the state of
19 Maryland.
20 Q. Just returning to the meeting you had
21 yesterday. I believe you mentioned there were two 10:30 AM
22 aspects about Maryland that you can recall
23 discussing. One was a report done on Maryland that
24 surveyed the condition of the facilities, and the
25 other was just in general how you would know about

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1 the condition of those facilities. Those were the 10:31 AM
2 two things that I think you had previously mentioned
3 discussing.
4 Did you discuss anything else about
5 Maryland's system yesterday in your meeting?
6 MR. ELIASBERG: Objection, compound. 10:31 AM
7 THE WITNESS: I don't recall anything
8 specifically that we discussed.
9 BY MR. SIMMONS:
10 Q. You also mentioned having discussed West
11 Virginia in your meeting yesterday? 10:31 AM
12 A. Yes.
13 Q. What did you discuss about West Virginia?
14 A. Looking at the -- their system as well, and
15 why I had chosen that as one of the models that
16 might be considered, as California begins to look at 10:31 AM
17 a process.
18 Q. What did you say about why West Virginia
19 might be a state that California could look to in
20 addressing facilities issues?
21 A. One of the reasons is -- which is the same 10:32 AM
22 reason why I chose Maryland, is the gentlemen that
23 are in charge of the facilities for those two states
24 are highly esteemed colleagues that I have had the
25 opportunity to work with over the last twenty years

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1 in facility planning, and have -- know of their work 10:32 AM
2 within the state.
3 Q. Dr. Stenzler is the colleague who you are
4 referring to in terms of Maryland; correct?
5 A. Yes. Dr. Stenzler is in Maryland.
6 Q. And who would be the colleague in West 10:33 AM
7 Virginia?
8 A. Dr. Williams. Dr. Clacy Williams is in
9 West Virginia.
10 Q. Did you mention any other reasons as to why
11 California might look to West Virginia for a system 10:33 AM
12 of facilities management?
13 A. Yes.
14 Q. What else?
15 A. Again, they have a very specific process
16 that they use in determining priorities for 10:33 AM
17 facilities, as well as standards. They also have a
18 checklist.
19 Q. Any other reasons that you discussed as to
20 why California might look to the system in place in
21 West Virginia? 10:34 AM
22 A. Not that I recall right now.
23 Q. Can you recall having discussed anything
24 else in your meeting that occurred yesterday, other
25 than the models that are in place in Maryland and

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1 West Virginia? 10:34 AM
 2 A. We talked about the state of Ohio.
 3 Q. Are there any other general topic areas
 4 that you discussed in the course of your meeting
 5 yesterday?
 6 A. I talked about a survey that was done by 10:35 AM
 7 what's called The Schoolhouse Beat. It's a
 8 facilities magazine that has this e-mail service,
 9 and they did a survey just two or three weeks ago
 10 about facilities throughout the United States,
 11 asking what people thought of involvement. 10:35 AM
 12 Q. Any other topic areas that you can recall
 13 having covered in your meeting yesterday?
 14 A. Not that I can recall right now.
 15 Q. What did you discuss about the state of
 16 Ohio in your meeting yesterday? 10:35 AM
 17 A. The fact that they have got a system in
 18 place now to build new facilities and repair the
 19 facilities that are in disrepair throughout the
 20 state. A wonderful system. However, they don't
 21 have an ongoing system for maintenance of those 10:36 AM
 22 facilities.
 23 Q. Anything else that was discussed about
 24 Ohio?
 25 A. We talked about why they don't.

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1 Q. What was said in that connection? 10:36 AM
 2 A. Basically the -- in conversations with the
 3 executive director in Ohio, he was very much aware
 4 that that needed to be in place, and that was his
 5 next priority, once they got the whole system in
 6 place, just to do this building. Unfortunately, he 10:37 AM
 7 resigned, and I don't know where it stands now.
 8 Q. Did you make any effort to follow up to
 9 determine where the system in Ohio stands in terms
 10 of dealing with ongoing maintenance?
 11 A. I know. I mean, this all just happened in 10:37 AM
 12 the last month, two months. A person has been
 13 appointed to take his position. And so it's
 14 basically been on hold.
 15 Q. What was the previous director's name?
 16 A. Randy Fisher. 10:37 AM
 17 Q. You also mentioned having discussed a
 18 survey by Schoolhouse Beat.
 19 Can you tell me what that is?
 20 A. What the survey is or what Schoolhouse Beat
 21 is? 10:38 AM
 22 Q. Thank you. We will start with what
 23 Schoolhouse Beat is.
 24 A. My understanding of what it is, it's one
 25 of the resources I get every week. It comes from, I

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1 believe, the Planning magazine, and this is an 10:38 AM
 2 online weekly -- gives you, you know, kind of fun
 3 facts.
 4 Q. Can you give me examples of the types of
 5 fun facts that The Schoolhouse Beat will provide?
 6 A. It will talk about school construction, 10:38 AM
 7 that's happening in various states, schools that
 8 have passed bonds for school construction. And it
 9 always asks a question for people to respond to.
 10 What do you think about, or something like that, and
 11 then they report on that the next week. 10:39 AM
 12 Q. What was the survey from Schoolhouse Beat
 13 that was discussed?
 14 A. I don't recall the exact questions. But
 15 basically the intent of it was do you think, in
 16 order to get facilities in good repair in states, 10:39 AM
 17 that it require state involvement with local
 18 districts. I don't know exactly if that was the
 19 question, but that was the intent.
 20 Q. When was the -- and this survey was
 21 published by Schoolhouse Beat; is that correct? 10:39 AM
 22 A. Right.
 23 Q. When was it published?
 24 A. Probably -- I'm not exactly sure, but
 25 probably two or three weeks ago. Maybe four weeks

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1 ago. 10:40 AM
 2 MR. SIMMONS: Could we go off the record
 3 for just a second?
 4 (Discussion off the record.)
 5 BY MR. SIMMONS:
 6 Q. Did you discuss anything with Mr. Eliasberg 10:52 AM
 7 while you were on break?
 8 A. Yes.
 9 Q. What did you discuss?
 10 A. We talked about the issue of why I chose
 11 Maryland and West Virginia as two of my examples. 10:52 AM
 12 Q. And what did you discuss in that
 13 connection?
 14 A. The fact that it was more about having a
 15 system in place rather than just looking at some of
 16 the data regarding the schools in the state. 10:52 AM
 17 Q. Did you discuss anything else with
 18 Mr. Eliasberg?
 19 A. Yes.
 20 Q. What did you discuss?
 21 A. That I have a tendency to go on and on, and 10:53 AM
 22 was I talking to much.
 23 Q. What was the answer?
 24 A. No.
 25 Q. Did you discuss anything else with

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1 Mr. Eliasberg? 10:53 AM
 2 A. No.
 3 Q. When did you first learn about this case?
 4 A. I think it was fall of -- it was in 2001.
 5 Q. Do you recall what month, by any chance?
 6 A. It was in the fall of 2001. 10:54 AM
 7 Q. How did you learn about the case?
 8 A. I received a call from Mr. Eliasberg.
 9 Q. How long did the call last?
 10 A. I don't have any idea. I don't recall.
 11 Q. Do you recall what was discussed? 10:54 AM
 12 A. He was asking me about what I did; my
 13 qualifications; what I currently was working on;
 14 what I knew about facilities.
 15 Q. Do you recall what your answers were to any
 16 of those questions? 10:55 AM
 17 A. Yeah, that I knew a lot about facilities.
 18 Q. What else can you recall having discussed
 19 with Mr. Eliasberg in that conversation?
 20 A. I shared with him some of my experience
 21 over the last twenty years. I just served as 10:55 AM
 22 president of the International Organization for
 23 Facility Planners. I have served on the board for
 24 ten years of that organization.
 25 Q. Did Mr. Eliasberg tell you anything about

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1 the type of case that he was contacting you in 10:55 AM
 2 connection with?
 3 A. Yes.
 4 Q. What did he tell you?
 5 A. That it was regarding -- one of the issues
 6 in the case was regarding facilities in the state of 10:55 AM
 7 California.
 8 Q. Can you recall anything else?
 9 A. He had asked me if I had ever worked in
 10 California and was familiar with the facilities in
 11 California. 10:56 AM
 12 Q. What was your answer?
 13 A. Yes.
 14 Q. Did you take any notes during the
 15 conversation?
 16 A. I don't remember. If I did, you would have 10:56 AM
 17 them.
 18 Q. I know you said you couldn't recall exactly
 19 how long the conversation took. But do you have an
 20 estimate at all this terms of time that the call
 21 took? 10:56 AM
 22 A. I know I never had a short conversation
 23 with Mr. Eliasberg.
 24 Q. What other information did you share with
 25 Mr. Eliasberg in connection with your qualifications

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1 in terms of facilities work? 10:57 AM
 2 MR. ELIASBERG: Objection, assumes facts.
 3 THE WITNESS: We were -- I was in the
 4 process, at that point, of beginning to write a
 5 book. We were being commissioned to write a
 6 facilities book, and one of the chapters in the book 10:57 AM
 7 related to maintenance and operations of facilities.
 8 And so I was very interested in this case because
 9 it's an area of expertise that I would be
 10 investigating for purposes of the book, as well.
 11 BY MR. SIMMONS: 10:57 AM
 12 Q. Did Mr. Eliasberg mention anything about
 13 any of the positions the defendants in this case
 14 were taking in this case?
 15 A. Not that I recall.
 16 Q. What else, if anything, can you recall 10:58 AM
 17 being discussed in that conversation with
 18 Mr. Eliasberg?
 19 A. I think he asked me if I was interested in
 20 being involved, if I could commit to some time to do
 21 some research and use my expertise. 10:58 AM
 22 Q. Did Mr. Eliasberg give you any time frame
 23 or estimate as to how much time would be involved?
 24 A. Not that I recall.
 25 Q. What else can you recall being discussed in

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1 that conversation that you had with Mr. Eliasberg? 10:59 AM
 2 A. That's all I remember at this point.
 3 Q. Did you indicate whether this would be a
 4 type of assignment you were interested in?
 5 A. I don't know if in that first call we got
 6 to that point or not. I don't remember. 10:59 AM
 7 Q. At some point you were given an assignment
 8 to prepare an expert report in connection with this
 9 case, though; right?
 10 A. Yes.
 11 Q. How was that assignment communicated to 10:59 AM
 12 you?
 13 A. To the best of my recollection, I think
 14 Mr. Eliasberg called and asked if I was interested,
 15 and then asked if I would do it. I indicated, yes,
 16 I was interested, and then asked would I be willing 11:00 AM
 17 to do this.
 18 Q. About when did you receive that call from
 19 Mr. Eliasberg?
 20 A. Oh, golly. I don't remember. I don't
 21 remember. 11:00 AM
 22 Q. Can you recall whether it was still in
 23 2001?
 24 A. Yes, it was in 2001.
 25 Q. Can you recall about how long after your

1 first conversation with Mr. Eliasberg this 11:00 AM
 2 conversation that we are speaking of now took place?
 3 A. Probably -- my best recollection is that
 4 probably within a month.
 5 Q. In the time between this call that we are
 6 speaking of right now and the first call you 11:01 AM
 7 received from Mr. Eliasberg, did you have any more
 8 communications with him?
 9 A. No, not that I remember.
 10 Q. I think you said that Mr. Eliasberg asked
 11 if you were interested in this or it, and I assumed 11:01 AM
 12 that you were referring to the assignment that you
 13 were going to get in this case.
 14 Can you tell me a little bit more about
 15 whether you were given a specific assignment during
 16 the second phone call you received from 11:01 AM
 17 Mr. Eliasberg?
 18 MR. ELIASBERG: Objection, compound.
 19 THE WITNESS: Yes. I believe we talked
 20 about what I would be doing.
 21 BY MR. SIMMONS: 11:01 AM
 22 Q. What was discussed?
 23 A. That since I -- my expertise had been
 24 working in districts across the United States, that
 25 they wanted me to investigate states that had

1 successful facility models. 11:02 AM
 2 Q. Did they identify any states for you
 3 that -- first of all, who is "they" that you're
 4 referring to in that last answer?
 5 A. I guess "they" is Mr. Eliasberg.
 6 Q. Did Mr. Eliasberg point you to any specific 11:02 AM
 7 states as having a reputable facilities program?
 8 A. No, he did not.
 9 Q. In between the time that you were first
 10 contacted by Mr. Eliasberg and the second
 11 conversation you had with him, did you conduct any 11:03 AM
 12 preliminary research in connection with this case?
 13 A. No, I did not.
 14 Q. Would you turn to -- I believe it's
 15 paragraph 11 of your report. I'm sorry. It's
 16 paragraph 10. 11:03 AM
 17 There it says, "I was asked by the
 18 plaintiffs to opine on the range of solutions
 19 available and utilized by states other than
 20 California, to address the long-term planning,
 21 maintenance, supervision and operation of school 11:03 AM
 22 facilities."
 23 Was that how your assignment was first
 24 presented to you?
 25 A. Yes, it was.

1 Q. So the scope of your assignment, did it 11:04 AM
 2 change at all over time?
 3 A. No, it did not.
 4 Q. Did you provide any input to any of
 5 plaintiffs' lawyers as to what your specific
 6 assignment should be in this case? 11:04 AM
 7 A. If you're asking did I ask -- tell them
 8 what I thought I should do? Is that what you're
 9 asking?
 10 Q. Yes. Thank you.
 11 A. No, I did not. 11:04 AM
 12 Q. Up to this point we have identified some
 13 communications that you had with counsel for
 14 plaintiffs in connection with preparation for your
 15 deposition, in connection with your first learning
 16 of this case, and in connection with the first time 11:04 AM
 17 you were given the assignment in connection with
 18 this case.
 19 Other than those communications that we
 20 have already discussed, can you recall having any
 21 other communications with counsel for plaintiffs in 11:05 AM
 22 connection with this case?
 23 A. Yes.
 24 Q. About how many can you recall?
 25 A. Probably we talked maybe once a month on an

1 average, from what I remember, over the next several 11:05 AM
 2 months.
 3 Q. I guess I should clarify. You answered the
 4 question how I was thinking of it in my head. But I
 5 should clarify it. By "communications" in this
 6 instance, I was referring to spoken communications 11:05 AM
 7 as opposed to written.
 8 Is that the way you understood the
 9 question?
 10 A. Yes. Yes.
 11 Q. After the conversation in which you 11:06 AM
 12 received your assignment in connection with this
 13 case, what's the next communication or spoken
 14 communication you can recall having with any lawyer
 15 for the plaintiffs?
 16 MR. ELIASBERG: I'm sorry, Shaun. Did you 11:06 AM
 17 say just spoken communication or any communication?
 18 MR. SIMMONS: Yeah, just spoken.
 19 THE WITNESS: Are you asking me when or
 20 what?
 21 BY MR. SIMMONS: 11:06 AM
 22 Q. When's the next communication you can
 23 recall having?
 24 A. I don't know when exactly. I don't recall
 25 that.

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1 Q. Do you recall generally about when that 11:06 AM
 2 occurred, though, although you may not recall a
 3 specific time?
 4 A. As I mentioned earlier, we talked about
 5 once a month on an average, that I remember.
 6 Q. So it was likely about a month after you -- 11:06 AM
 7 A. Probably.
 8 Q. Who were you contacted by in that next
 9 conversation?
 10 A. Mr. Eliasberg.
 11 Q. Did he contact you over the phone? 11:07 AM
 12 A. Yes.
 13 Q. Who participated in that phone call?
 14 A. Mr. Eliasberg.
 15 Q. And yourself, of course.
 16 A. Yes. 11:07 AM
 17 Q. Do you recall about how long it lasted?
 18 A. No, I do not recall.
 19 Q. What can you recall being said? What, if
 20 anything, can you recall being said in that
 21 conversation? 11:07 AM
 22 A. Typically he wanted an update of what I was
 23 doing and what I was working on; what I found.
 24 Q. When you say, "typically" he would want an
 25 update, can you recall that specifically with

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1 respect to this communication, or are you just 11:08 AM
 2 assuming that probably is what happened?
 3 A. What I am suggesting is that the calls over
 4 the next few months were to provide them some
 5 updates as to what I was doing, and to see where I
 6 was, and to make sure I was still working on it. 11:08 AM
 7 Q. Right. Do you recall what information you
 8 gave to Mr. Eliasberg as an update in that
 9 conversation?
 10 A. Not specifically in that one.
 11 Q. Do you recall generally at all? 11:08 AM
 12 A. I know that I had talked -- and I don't
 13 know which conversation, but in one of the
 14 conversations about some of the states that I
 15 thought really did have some good models for us to
 16 look at. 11:08 AM
 17 Q. Just with respect to this conversation that
 18 you had with Mr. Eliasberg after receiving your
 19 assignment, do you recall anything else that was
 20 said in that conversation outside of possibly just
 21 an update on your work? 11:09 AM
 22 A. No, I do not.
 23 Q. Maybe I will try this another way.
 24 Are there -- did you have conversations
 25 that you have had with counsel that stand out in

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1 your mind as specific conversations you can recall? 11:09 AM
 2 MR. ELIASBERG: Other than the ones she has
 3 already described?
 4 MR. SIMMONS: Yeah.
 5 THE WITNESS: At one of the conversations
 6 Mr. Eliasberg said that if I wanted to go and visit 11:09 AM
 7 some of the states that I felt were exemplary, that
 8 they thought that was a good idea.
 9 BY MR. SIMMONS:
 10 Q. Just for now, I just wanted to see if there
 11 is a certain number of communications, other than 11:09 AM
 12 those you have identified right now, that you can
 13 recall with some specificity as having occurred
 14 between you and a lawyer for plaintiffs.
 15 A. You mean a particular conversation or a
 16 particular time? 11:10 AM
 17 Q. Right.
 18 A. No, I don't remember.
 19 Q. I don't think -- as far as a particular
 20 time, if you don't know the date, that's fine.
 21 I'm just trying to -- rather than ask you 11:10 AM
 22 what happened, you know, what was the next
 23 conversation, and have you saying I don't know, it
 24 could have been a month, or something, I'm trying to
 25 see if there are conversations that stand out in

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1 your mind, and then we will go just through those 11:10 AM
 2 conversations.
 3 A. There isn't. What I have already shared,
 4 typically it was updates.
 5 Q. So you can recall, in the conversations
 6 that you had with plaintiffs, that you typically 11:11 AM
 7 gave them updates as to the progress of your work;
 8 is that right?
 9 A. Yes.
 10 Q. And you can also recall one conversation
 11 where you had suggested the possibility of going and 11:11 AM
 12 visiting some particular states that you thought had
 13 a good system, and the plaintiffs responded that
 14 that seemed like a reasonable idea; is that correct?
 15 A. Yes, that's true.
 16 MR. ELIASBERG: Asked and answered. 11:11 AM
 17 BY MR. SIMMONS:
 18 Q. What other, I guess, pieces of substance
 19 can you remember from your conversation with any of
 20 the plaintiffs' lawyers?
 21 A. They provided me information, resources, so 11:11 AM
 22 that I could get the context of what's going on in
 23 California.
 24 Q. Anything else that you can recall from your
 25 discussions with counsel for plaintiffs?

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1 A. They also gave me some names of people in 11:12 AM
 2 California that I could speak to again so I would
 3 have a better understanding. So as I wrote my
 4 report, I could put that in the context of what was
 5 happening in California.
 6 Q. I'm sorry, but I'm going to exhaust this. 11:12 AM
 7 Just any other areas that you can recall
 8 having discussions with counsel for plaintiffs about
 9 in connection with your work in this case?
 10 A. That's all I can recall right now.
 11 Q. You mentioned that you were provided with 11:12 AM
 12 some names of people to discuss the system for, I
 13 guess, managing facilities in California.
 14 Who were those people?
 15 A. One of the people was Rob Corley.
 16 Q. Any other people? 11:13 AM
 17 A. Another person was Lettie Boggs.
 18 Q. Do you know how to spell that name, by any
 19 chance?
 20 A. No. I'm sorry.
 21 MR. REED: L-E-T-T-I-E, B-O-G-G-S. 11:13 AM
 22 BY MR. SIMMONS:
 23 Q. Anybody else other than Rob Corley and
 24 Lettie Boggs?
 25 A. Not that I recall.

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1 Q. You also mentioned that plaintiffs provided 11:14 AM
 2 you with some information and resources so that you
 3 could understand the background of California in
 4 which you were writing your expert report.
 5 What types of information or resources were
 6 provided to you? 11:14 AM
 7 MR. ELIASBERG: Objection, compound.
 8 BY MR. SIMMONS:
 9 Q. We will take it first, what types of
 10 information were provided to you?
 11 A. One of the things I recall were 11:14 AM
 12 depositions.
 13 Q. What other types of information can you
 14 recall being provided to you by counsel for
 15 plaintiffs?
 16 A. The California codes for facilities. Some 11:14 AM
 17 of the legislative information.
 18 Q. Anything else?
 19 A. The March 2002 report from the working
 20 committee for facilities and finance.
 21 Q. What else can you recall -- strike that. 11:15 AM
 22 What other information, if any, can you
 23 recall having been provided to you by counsel for
 24 plaintiffs?
 25 A. Those are the things that I remember that

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1 stand out. 11:15 AM
 2 Q. When I first asked you, you mentioned you
 3 were provided with information and resources.
 4 Have you been distinguishing between those
 5 two terms and giving me these answers that --
 6 A. No. I have been using them synonymously. 11:15 AM
 7 Q. To ask you what resources were provided
 8 would lead me to the same answers that you gave when
 9 I asked what information was provided to you by
 10 plaintiffs' counsel?
 11 A. Yes, because the resources were 11:15 AM
 12 information.
 13 Q. Who is Lettie Boggs?
 14 A. She is a facilities person. I don't know
 15 her exact title, but she is a facilities person in a
 16 school district in California. 11:16 AM
 17 Q. Do you know what school district?
 18 A. I don't remember now.
 19 Q. Did you contact Ms. Boggs?
 20 A. Yes, I did.
 21 Q. When did you first contact Ms. Boggs? 11:16 AM
 22 A. Are you asking me what year or what month?
 23 Q. Just if you can give me a rough estimation
 24 of what you think it was, that's fine.
 25 A. Sometime in the early 2002.

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1 Q. Was that the first communication you had 11:16 AM
 2 ever had with Ms. Boggs?
 3 A. Yes.
 4 Q. I know you said you couldn't recall what
 5 school district she was from.
 6 Do you recall what area of the state she 11:17 AM
 7 lives in?
 8 A. No, I don't.
 9 Q. How many spoken communications did you have
 10 with Ms. Boggs?
 11 A. One. I had one telephone conversation. 11:17 AM
 12 Q. Did you have any written communications
 13 with Ms. Boggs?
 14 A. No, I did not.
 15 Q. How long did your telephone conversation
 16 with Ms. Boggs last? 11:17 AM
 17 A. What I recall was over an hour.
 18 Q. Did you contact her at work or at home?
 19 A. I contacted her at work.
 20 Q. In the course of your conversation with
 21 Ms. Boggs, did you take any notes? 11:18 AM
 22 A. I think I did.
 23 Q. Do you know whether those notes have been
 24 produced in this litigation?
 25 A. They were in the -- they were in my whole

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1 big box of stuff. So I would assume so. Although I 11:18 AM
2 remember the notes were taken on a little piece of
3 paper because I was in a phone booth at an airport.
4 Q. What can you recall having discussed with
5 Ms. Boggs in your telephone conversation that
6 occurred in early 2002? 11:19 AM
7 A. We were talking about what her assignment
8 was. She had changed jobs from one school district
9 to the school district she was at, and we were
10 talking specifically about what her assignment was
11 in the facilities areas at her new school district. 11:19 AM
12 Q. Do you recall what district she was working
13 at prior to the time you contacted her?
14 A. No, I don't remember.
15 Q. So you discussed how her assignment changed
16 when she switched jobs from one district to another. 11:19 AM
17 Did you discuss anything else with
18 Ms. Boggs?
19 MR. ELIASBERG: Objection, compound.
20 THE WITNESS: Yes.
21 BY MR. SIMMONS: 11:19 AM
22 Q. What else did you discuss with Ms. Boggs?
23 A. Her opinion on how facilities were
24 repaired, monies available; how she did that in the
25 system she had been in before and what she was going

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1 to be doing now. 11:20 AM
2 Q. What, if anything, can you recall Ms. Boggs
3 telling you about how her assignment changed when
4 she switched from her position with one district to
5 another?
6 A. What she told me was that basically she was 11:20 AM
7 hired to chase money for their district.
8 Q. Do you have a sense as to what she meant by
9 "chase money" for the district?
10 A. That in her last position she was able to
11 obtain quite a bit of money from the state in terms 11:21 AM
12 of repairing their facilities. And this district
13 needed money, and they had no one to go after that
14 money. And so her job, as a facilities person, was
15 to get in the hunt and get the papers filled out so
16 that they could get some money, as well, for their 11:21 AM
17 buildings.
18 Q. Not to be -- maybe I am missing, but I
19 think you had mentioned how her assignment changed.
20 And that seemed -- the last answer you gave to me
21 seemed to suggest that the assignment had been 11:22 AM
22 similar at the second district as it was at the
23 first.
24 Were there ways in which the assignment
25 changed?

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1 A. Yes. 11:22 AM
2 Q. In what ways?
3 A. She -- in the first assignment she was also
4 dealing specifically with facilities issues. In the
5 second assignment her job was strictly to chase
6 money. She was not going to be working on a 11:22 AM
7 day-to-day basis with facilities issues.
8 Q. If you know, what kinds of work was she
9 dealing with -- was she doing in dealing with
10 facilities issues in the first district that she
11 wouldn't be dealing with in the second district? 11:22 AM
12 A. I don't know exactly, but I would speculate
13 things like putting together master plans of which
14 building was going to get a new roof this year. You
15 know, following up and making sure that that was
16 being bid. Those kind of issues. Actual working 11:23 AM
17 within the facilities. That's what I'm assuming.
18 Q. You also mentioned, as one of the things
19 that you discussed with Ms. Boggs, was how the
20 school facilities were repaired at the districts in
21 which she was working. 11:23 AM
22 What did you discuss in that connection?
23 A. The condition of the facilities, and how
24 frustrating it was that there weren't dollars
25 available, and that every year those repairs would

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1 just get more costly and more costly. And in some 11:23 AM
2 cases, it was almost intentional because there were
3 funds available for deferred maintenance, but not
4 for ongoing maintenance in the state.
5 Q. In that last answer I heard you to say it
6 was intentional. 11:24 AM
7 What was the "it" in that sentence?
8 A. Allowing the facilities to continue to
9 deteriorate.
10 Q. Any other aspects of repairing facilities
11 that you discussed with Ms. Boggs? 11:24 AM
12 A. Not that I recall.
13 Q. You also mentioned one of the things as
14 having discussed with Ms. Boggs is money available
15 for maintenance.
16 What did you discuss in that connection? 11:24 AM
17 A. That typically there is not a set amount of
18 money put into the budget for ongoing maintenance.
19 And oftentimes what happens, when money gets tight,
20 the first place the money is taken away from is
21 maintenance and operations because it doesn't have a 11:25 AM
22 strong voice. So they were being required to do
23 more with less money.
24 Q. Can you recall anything else that you spoke
25 with Ms. Boggs about in terms of money being

1 available for maintenance? 11:25 AM
 2 A. That she knew that the only answer for them
 3 was for her to be able to get the money from the
 4 state. And so that's why their only avenue was to
 5 try to get in there and get the money that the state
 6 allocated each year. That was their only recourse, 11:25 AM
 7 they felt, or she felt.
 8 Q. Anything else that you can recall having
 9 discussed with Ms. Boggs concerning the availability
 10 of money for maintenance?
 11 A. No. Not that I recall, no. 11:26 AM
 12 Q. I think the last thing that you had
 13 mentioned discussing with Ms. Boggs was how the
 14 system differed for providing maintenance from I
 15 think her prior district to the district that she
 16 had been recently hired at. 11:26 AM
 17 Do you recall discussing something like
 18 that with Ms. Boggs?
 19 MR. ELIASBERG: Objection, misstates prior
 20 testimony.
 21 MR. SIMMONS: I very well may have. 11:26 AM
 22 Q. I thought that I heard you say that you had
 23 discussed the way that the system for dealing with
 24 maintenance in her prior district differed from the
 25 second maintenance.

1 Was that your testimony, or did I mishear 11:26 AM
 2 you?
 3 A. No. I think what I said was, what made the
 4 two systems different is that they had money that
 5 she was able then to use, and there was no money
 6 available in the system that she was in now. 11:26 AM
 7 Q. Did you ask why there was a discrepancy in
 8 the amount of money available at one system as
 9 opposed to the other?
 10 A. Yes.
 11 Q. What did she say? 11:27 AM
 12 A. It was again about getting money from the
 13 state; knowing how the fill out the paperwork, and
 14 how to get after the money and secure that.
 15 Q. Did you receive written communications from
 16 counsel for plaintiffs in connection with your work 11:27 AM
 17 on this lawsuit?
 18 A. Are you asking did I get a letter from
 19 them?
 20 Q. A little bit more broad. I'm trying to
 21 include letters. Also e-mails. You know, basically 11:28 AM
 22 communication written as opposed to the spoken word.
 23 A. Oh, yes.
 24 Q. Do you recall about how often you would
 25 receive written communications from counsel for

1 plaintiffs? 11:28 AM
 2 A. Probably over a nine-month period, maybe
 3 once every two or three weeks.
 4 Q. Do you know whether the written
 5 communications that you received from counsel for
 6 plaintiffs have been produced in this litigation? 11:28 AM
 7 A. I don't know.
 8 Q. Did you ever make an attempt to gather all
 9 of the communications that you received from counsel
 10 for plaintiffs in connection with this litigation?
 11 A. I attempted to keep the ones that were 11:29 AM
 12 resources for me as I gathered my data, but I don't
 13 know necessarily that I kept every e-mail.
 14 Q. Did you ever get -- at least with respect
 15 to the communications that you kept, did you ever,
 16 at any point, gather up those communications and 11:29 AM
 17 provide them to counsel for plaintiffs?
 18 A. If they were in my box of stuff, they got
 19 it.
 20 Q. Did you ever send written communications to
 21 counsel for plaintiffs? 11:29 AM
 22 A. Yes.
 23 Q. About how often did you do that, if you can
 24 recall?
 25 A. Not very often. One I specifically

1 remember was my itinerary, where I was going and who 11:30 AM
 2 I was visiting with.
 3 Q. Did you keep copies of the communications
 4 that you sent to counsel for plaintiffs in
 5 connection with your work on this case?
 6 A. Again, those kind of e-mails I didn't. 11:30 AM
 7 Q. I think you also mentioned that plaintiffs
 8 had mentioned Rob Corley as one that you might want
 9 to talk about California facilities issues with; is
 10 that correct?
 11 A. Yes. 11:30 AM
 12 Q. Did you ever contact Mr. Corley?
 13 A. Yes.
 14 Q. When did you first contact him?
 15 A. I don't recall. I know we played phone tag
 16 for several weeks. I'm not sure it ended up he 11:31 AM
 17 called me or I called him.
 18 Q. Outside of playing phone tag, do you recall
 19 how many times you were able to communicate with
 20 Mr. Corley?
 21 A. We talked once. Maybe twice. Maybe twice, 11:31 AM
 22 but I'm not sure.
 23 Q. Is your difficulty in distinguishing
 24 between those two conversations because, if they
 25 occurred, they likely occurred close together?

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1 MR. ELIASBERG: Objection, misstates her 11:31 AM
 2 prior testimony.
 3 THE WITNESS: I just don't remember for
 4 sure.
 5 Q. But you can recall at least --
 6 A. Yes, right. 11:31 AM
 7 Q. -- one conversation?
 8 Do you know about how long the conversation
 9 lasted?
 10 A. Gosh, it was a long time. More than an
 11 hour. 11:32 AM
 12 Q. Did anyone else participate in that
 13 conversation, other than you and Mr. Corley?
 14 A. No.
 15 Q. What can you recall discussing in that
 16 conversation? 11:32 AM
 17 A. What stands out is that he provided me an
 18 overview of the procedures in the State of
 19 California, in terms of facilities, for new
 20 facilities versus ongoing renovation.
 21 Q. Did you take notes during your 11:32 AM
 22 conversation?
 23 A. Probably.
 24 Q. Do you know whether you kept the notes?
 25 A. I believe they are in that -- my box of

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1 stuff. 11:33 AM
 2 Q. Other than Mr. Corley providing an overview
 3 of the procedures for construction and ongoing
 4 maintenance in California, can you recall any other
 5 areas that you discussed with him?
 6 A. We talked about FCMAT and what their role 11:33 AM
 7 was in the state, and he explained that to me
 8 generally. Not specifically, but generally.
 9 Q. Any other areas that you can recall
 10 discussing with Mr. Corley?
 11 A. No. Not that I recall. 11:34 AM
 12 Q. What, if anything, do you recall of the
 13 overview that he provided you with?
 14 A. He explained to me about the Facilities
 15 Division in California, and what its role was in
 16 relationship to new construction in terms of 11:34 AM
 17 oversight.
 18 Q. Anything else you can recall Mr. Corley
 19 telling you in connection with the overview he
 20 provided?
 21 A. I guess a little more information about the 11:34 AM
 22 Facilities Division, and that they don't have any
 23 power or authority to deal with renovation -- I'm
 24 sorry, with ongoing maintenance. That's strictly a
 25 local issue, according to what I remember.

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1 Q. Just for the sake of terminology, I think I 11:35 AM
 2 have heard you use the term "ongoing maintenance"
 3 and the term "deferred maintenance."
 4 Do you distinguish between those two terms?
 5 A. Yes, I do.
 6 Q. Could you define the way you -- could you 11:35 AM
 7 tell me how you define ongoing maintenance, please?
 8 A. I will give you one example of what I mean
 9 by that. An easy one. If you have a rest room that
 10 has a valve that's not working in the rest room, an
 11 ongoing maintenance item would be to get that valve 11:35 AM
 12 fixed. Deferred maintenance would be just to leave
 13 it alone, and let it get to the point where it's
 14 totally rusted out or totally deteriorated, and now
 15 you've got to replace the entire unit.
 16 Q. So the distinction -- correct me if I'm 11:36 AM
 17 wrong, but the distinction that you draw between
 18 ongoing maintenance and deferred maintenance depends
 19 largely on the timing in which the maintenance
 20 occurs?
 21 Is that correct or not? 11:36 AM
 22 A. It's not really timing as much as the
 23 extent of the problem. I will use another example.
 24 A roof. If you do your yearly maintenance of roofs,
 25 inspections, and making certain, if there are any

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1 problems on the roof, that you can do minor 11:36 AM
 2 patching, for instance, that would be an ongoing
 3 maintenance issue.
 4 If you don't continue to do that on a
 5 regular basis, all of a sudden those small little
 6 patches become giant holes on the roof, and now 11:37 AM
 7 you've got a major problem with the roof.
 8 Q. Outside of providing the examples that you
 9 gave me, which are helpful, is there just a way you
 10 would define the term "ongoing maintenance" in and
 11 of itself? 11:37 AM
 12 A. I would say it's -- I don't know a
 13 definition, but just from experience it's things
 14 that should be taken care of on a regular basis with
 15 minimal cost associated with them versus those
 16 things that are probably going to be high-dollar and 11:37 AM
 17 are taken care of periodically.
 18 That's my definition, I guess.
 19 Q. The same question with respect to deferred
 20 maintenance. Just aside from providing an example,
 21 is there a definition of deferred maintenance that 11:38 AM
 22 you feel comfortable giving?
 23 A. I just gave you both in my last example.
 24 Q. I think you mentioned discussing with
 25 Mr. Corley that the Facilities Division of the State

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1 doesn't have the power or authority to deal with 11:38 AM
 2 ongoing maintenance.
 3 Is that correct that this was an area that
 4 you discussed with Mr. Corley?
 5 A. We talked about what their role was in
 6 terms of ongoing maintenance, yes. 11:39 AM
 7 Q. What do you recall having learned through
 8 that discussion with Mr. Corley?
 9 A. What I remember is that basically they have
 10 no role. There is no system in place for them to
 11 evaluate school districts unless they are involved 11:39 AM
 12 in some kind of a building program.
 13 Q. You also mentioned discussing the
 14 Facilities Division's responsibility in relationship
 15 to oversight and new construction; is that correct?
 16 A. Yes. 11:39 AM
 17 Q. What do you recall discussing in that
 18 connection with Mr. Corley?
 19 A. That primarily is the role of the
 20 Facilities Division; that they are there to provide
 21 oversight, minimal standards for new construction. 11:40 AM
 22 Q. Why did you describe the standards there as
 23 minimal standards?
 24 A. Because from what I remember from the State
 25 of California, square footage per student is the

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1 lowest of anybody in the United States, the amount 11:40 AM
 2 of square feet per student. So I would categories
 3 them as minimal.
 4 Q. Any other reasons that you would categories
 5 them as minimal?
 6 A. That would be the primary one. 11:40 AM
 7 MR. ELIASBERG: I just want to grab a
 8 water, if we can take a thirty-second break.
 9 MR. SIMMONS: We can go off the record.
 10 (Discussion off the record.)
 11 BY MR. SIMMONS: 11:41 AM
 12 Q. Dr. Myers, have you ever spoken to any
 13 plaintiffs' testifying experts other than Rob
 14 Corley?
 15 A. I don't know what you mean.
 16 Q. I was just wondering if you have ever 11:53 AM
 17 spoken with any of the experts for the plaintiffs
 18 involved in this case. If you have spoken with any
 19 of them.
 20 A. I don't know who they are.
 21 Q. I am just making sure that you haven't had 11:54 AM
 22 a conversation with them and not known that they are
 23 an expert.
 24 Have you ever had a conversation with
 25 Jeannie Oakes?

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1 A. No. 11:54 AM
 2 Q. Linda Darling Hammond?
 3 A. No.
 4 Q. Heinrich Mintrop? I have probably battered
 5 that name.
 6 MR. ELIASBERG: M-I-N-T-R-O-P. 11:54 AM
 7 THE WITNESS: No.
 8 BY MR. SIMMONS:
 9 Q. Thomas Sobol?
 10 A. No.
 11 Q. William Koski? 11:54 AM
 12 A. No.
 13 Q. Kenji Hakuta?
 14 A. No.
 15 Q. Ross Mitchell?
 16 A. No. 11:54 AM
 17 Q. Glen Earthman?
 18 A. I know him. We are both colleagues of
 19 CEFPI, but we have never had a conversation about
 20 this. We saw each other at the CEFPI in October.
 21 Q. Michelle Fine? 11:55 AM
 22 A. No.
 23 Q. Megan Sandel?
 24 A. No.
 25 Q. Norton Grubb?

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1 A. No. 11:55 AM
 2 Q. Laura Goe?
 3 A. No.
 4 Q. You know Mr. Earthman, but you have never
 5 had a conversation with him about this case?
 6 A. No. I was not aware he was involved in it. 11:55 AM
 7 Q. Have you reviewed any of the other expert
 8 reports in this case?
 9 A. No, I have not.
 10 Q. So you never reviewed any draft reports
 11 provided by experts in connection with this case? 11:55 AM
 12 A. No, not that I recall.
 13 Q. And that's the same with respect to even
 14 Mr. Corley? You never reviewed his report either?
 15 A. No, I did not.
 16 Q. What opinions do you intend to offer at the 11:56 AM
 17 trial of this case?
 18 MR. ELIASBERG: That's incredibly broad.
 19 Objection.
 20 THE WITNESS: I have several opinions that
 21 are presented in the report. 11:56 AM
 22 BY MR. SIMMONS:
 23 Q. Does the report contain all of the opinions
 24 about which -- that you intend to offer at trial?
 25 A. Yes, it does.

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1 Q. Do you know whether all of the documents 11:57 AM
 2 that you relied on in forming the opinions you
 3 intend to give at trial have been produced in this
 4 litigation?
 5 MR. ELIASBERG: Objection, calls for
 6 speculation. 11:57 AM
 7 THE WITNESS: You know, I put together all
 8 the information and gave it to the lawyers. I can't
 9 answer.
 10 BY MR. SIMMONS:
 11 Q. You have mentioned a couple of times you 11:57 AM
 12 put together a box, and I think in a couple of
 13 answers you said, "I had a box, and if it was in the
 14 box, it was most likely produced."
 15 Can you tell me the process you used to
 16 create that box? 11:57 AM
 17 A. I have quite a creative filing system, and
 18 I have a file box for each of the chapters for the
 19 book, and one of the chapters was maintenance and
 20 operations. So as I would gather research on
 21 maintenance and operations, it went into that file 11:57 AM
 22 box, and it was related both to the -- this case --
 23 this case, as well as to information related to the
 24 book. So that was my maintenance and operations
 25 box.

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1 MR. SIMMONS: I'm just thinking, 11:58 AM
 2 Mr. Eliasberg, I don't know whether we can do this
 3 or not, but it might speed us through this.
 4 Can you represent that all of the documents
 5 that were required by the pretrial order have been
 6 produced to the State in connection with this case? 11:58 AM
 7 MR. ELIASBERG: Yes. I mean, there has
 8 been an issue about drafts, which came up last month
 9 from O'Melveny counsel or somebody else. But, yes,
 10 it's our position that everything we were required
 11 to produce pursuant to the pretrial order has been 11:58 AM
 12 produced.
 13 MR. SIMMONS: Can we go off the record for
 14 a second?
 15 (Discussion off the record.)
 16 BY MR. SIMMONS: 11:58 AM
 17 Q. You mentioned the filing system that you
 18 had, and what you did was just basically have a
 19 place where the research that you would gather, you
 20 would include in this area, in this box that you
 21 had; is that correct? 12:01 PM
 22 A. That's pretty much how I gathered
 23 information and kind of kept it together.
 24 Q. Did you have a system for keeping track of
 25 communications between you and counsel for

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1 plaintiffs in connection with this lawsuit? 12:01 PM
 2 A. No, I did not.
 3 Q. It looks like you received your doctorate
 4 in education in 1979; is that correct?
 5 A. Yes.
 6 Q. And that was from Indiana University; is 12:02 PM
 7 that correct?
 8 A. Yes.
 9 Q. What particular area of education, if any,
 10 did you focus on in the course of obtaining your
 11 doctorate in education? 12:02 PM
 12 A. School facilities, school facility
 13 planning. I spent two years as a graduate assistant
 14 doing school facility planning across the country
 15 with the IUT.
 16 Q. What school facilities-related course work 12:02 PM
 17 did you take in obtaining your doctorate in
 18 education from Indiana University?
 19 A. One of them was a course in school facility
 20 planning. Another one was on looking at budgets,
 21 and my doctoral dissertation was on facility 12:02 PM
 22 planning.
 23 Q. Your resume or your curriculum vitae also
 24 indicates you have a specialist in education degree
 25 from Indiana.

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1 A. Right. 12:03 PM
 2 Q. Can you tell me what that degree is?
 3 A. That's an administrative degree. You get
 4 that first. A lot of people just -- that's to
 5 become a superintendent or a principal. I have
 6 every degree you can get in education. I have a 12:03 PM
 7 director of special ed, as well as all of the
 8 administrative licenses. So that was through the
 9 specialist degree.
 10 Q. What type of course work did you take to
 11 get that degree or in the course of obtaining that 12:03 PM
 12 degree?
 13 A. It was pretty much rolled into my doctoral
 14 degree. It was credit work in administrative
 15 leadership, curriculum, facilities. All of the
 16 areas related to administration: budget, finance, 12:04 PM
 17 supervision.
 18 Q. Now, you have a master's, as well as a
 19 bachelor's of science, in speech and hearing
 20 pathology; is that correct?
 21 A. Yes, that's true. 12:04 PM
 22 Q. When did you make the decision to focus on
 23 facilities work?
 24 A. When I went back to school to get my
 25 specialist degree and become a principal, to become

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1 an administrator. My assistantship was in the 12:04 PM
 2 facility planning area. And I spent two years, as I
 3 said, working in that area and liked the area very
 4 much.
 5 Q. Is the assistantship that you just
 6 mentioned different from the work that you mentioned 12:04 PM
 7 doing as a graduate student?
 8 A. This -- it's graduate assistantship. You
 9 get paid a little bit of money and do a lot of work.
 10 Q. Can you tell me a little bit more about the
 11 substance of your doctoral dissertation? 12:05 PM
 12 A. I compared a large elementary school, in
 13 terms of numbers of students in the facility, to a
 14 small elementary school, which had two hundred -- I
 15 believe two hundred fifty students. I can't
 16 remember for sure right now. And the differences in 12:05 PM
 17 the two environments. It was ecological psychology,
 18 is what it was.
 19 Q. Can you define that for me?
 20 A. That's looking at things -- behaviors that
 21 happen within an environment in a small school 12:06 PM
 22 versus a large school. Looking at the settings that
 23 occur.
 24 Q. What kind of differences did you focus in
 25 on?

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1 A. Numbers of field trips students were able 12:06 PM
 2 to take; kinds of activities where parents were
 3 involved; the amount of one-on-one time that
 4 students were available to have with their teacher,
 5 as examples of some of the things that I looked at.
 6 Q. Now, just those examples lead me to believe 12:06 PM
 7 that you probably concluded in your dissertation
 8 that the small school environment was preferable to
 9 the large school environment; is that correct?
 10 A. That's true. That's what I found. In
 11 terms of -- I didn't -- I'm sorry. What did you 12:06 PM
 12 just ask me?
 13 Q. I did it the wrong way, anyway.
 14 What did you -- what conclusions, if any,
 15 did you draw in the course of comparing the large
 16 elementary school in terms of number of students 12:07 PM
 17 with the smaller elementary school?
 18 A. What I found was that in the smaller
 19 elementary school the students had more
 20 opportunities for more activities. That's one of
 21 the things I found. 12:07 PM
 22 Q. What other conclusions, if any, did you
 23 draw?
 24 A. I don't remember. That's been a few years
 25 ago.

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1 Q. Let's look at paragraph 4 of your report 12:07 PM
 2 that refers to the work that you did as a graduate
 3 assistant.
 4 Can you tell me about just generally what
 5 type of work you did as a graduate student in
 6 connection with the facility team that you mentioned 12:08 PM
 7 in paragraph 4?
 8 A. The Indiana University team was hired to go
 9 into a school district -- school system or school
 10 district, and to do a master plan for that district,
 11 which would include finances, demographics, and 12:08 PM
 12 facility conditions, typically. And I was involved
 13 in evaluating the facilities with my professor. I
 14 was in the facility piece of it.
 15 Q. Do you recall who were members of the
 16 Indiana facility team that you mention in paragraph 12:08 PM
 17 4?
 18 A. Yes.
 19 Q. Who were they?
 20 A. Dr. Dean Berkeley, Dr. William Wilkerson,
 21 and Dr. C. William Day were the three primary 12:09 PM
 22 persons that were involved.
 23 Q. Were there any other graduate assistants,
 24 in addition to you, that worked with this facility
 25 team, that you can recall?

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1 A. On some of the projects, when they were 12:09 PM
 2 very large projects, several graduate students were
 3 involved. But it just depended on the size of the
 4 project and where it was located.
 5 Q. You mentioned that you worked in reviewing
 6 facilities with your professor. 12:09 PM
 7 Which professor were you referring to
 8 there?
 9 A. Dr. Day was the facilities professor at IU.
 10 Q. Would you summarize what it was that --
 11 what things about facilities that you were looking 12:10 PM
 12 at in connection with your work with Dr. Day?
 13 MR. ELIASBERG: Objection, overbroad.
 14 THE WITNESS: There were a lot of things
 15 that we looked at, but one example would be
 16 educational appropriateness of spaces within 12:10 PM
 17 facilities.
 18 BY MR. SIMMONS:
 19 Q. Any other examples that you can think of?
 20 A. Square footage of classrooms; condition of
 21 facilities, such as rest rooms. 12:10 PM
 22 Q. Did you personally evaluate any educational
 23 facilities?
 24 A. Yes.
 25 Q. Do you recall about how many different

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1 facilities you had the opportunity to evaluate in 12:10 PM
2 your work as a graduate student?
3 A. I have no idea. It was for two years, and
4 a -- a lot. I'm sorry. I don't know.
5 Q. Is there a number that -- a lot. Would you
6 be comfortable saying more than twenty-five, more 12:11 PM
7 than fifty?
8 Is there a number you could find some
9 comfort with like that? If not, that's fine.
10 A. You know, to say one a month or two a
11 month, I'm not sure, to be honest, because it was in 12:11 PM
12 the middle of doing my doctoral dissertation and all
13 that. So I don't really know.
14 Q. In what states did the Indiana facility
15 team perform facility evaluations while you were a
16 graduate assistant for that team? 12:11 PM
17 A. The two primary states were Indiana and
18 Kentucky, but I believe -- I can't remember. We
19 worked in four or five states, but Indiana and
20 Kentucky were the primary states.
21 Q. In what states were you personally involved 12:12 PM
22 with an evaluation of educational facilities while
23 you were working as a graduate assistant?
24 A. Primarily Indiana and Kentucky.
25 Q. You mentioned that the facility team would

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1 produce a master plan for a school or a district as 12:12 PM
2 part of its work.
3 Did the facility team also publish any
4 academic articles?
5 MR. ELIASBERG: Objection, compound.
6 THE WITNESS: If you're asking about the 12:13 PM
7 articles that the team, as a group, published?
8 MR. SIMMONS: Right.
9 THE WITNESS: We did not publish articles
10 as a group. Each of the professors published
11 articles in their own respective discipline, but not 12:13 PM
12 necessarily as a group.
13 BY MR. SIMMONS:
14 Q. Do you recall -- did you participate in the
15 creation of the master plans?
16 A. Not all of them, but a lot of them. 12:13 PM
17 Q. Do you recall about how many master plans
18 you participated in creating as a graduate
19 assistant?
20 A. No, I don't. A large majority of them
21 because that was the job of a graduate student. 12:13 PM
22 Q. When you completed your doctorate, you went
23 to work with an architectural firm in Indiana; is
24 that correct?
25 A. That's right.

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1 Q. What was the name of the firm? 12:14 PM
2 A. McGuire & Shook.
3 Q. Did you have a title while you were
4 employed by McGuire & Shook?
5 A. Yes. Director of educational services.
6 Q. Did your title change over the course of 12:14 PM
7 time that you worked for McGuire & Shook?
8 A. Yes.
9 Q. What other titles did you hold?
10 A. I became director of marketing for the firm
11 as well, besides doing the educational programming. 12:14 PM
12 Q. So throughout the approximately ten years
13 that you spent at McGuire & Shook you were director
14 of educational services, and then for some other
15 time you were a director of marketing services as
16 well? 12:15 PM
17 A. Yes, that's true.
18 Q. What was the nature of your work as
19 director of educational services for McGuire &
20 Shook?
21 A. I would work with the schools in doing the 12:15 PM
22 master plans. Again, looking at condition of
23 facilities, as one example, making recommendations
24 to facilities, are two of the things that I did
25 regularly.

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1 Q. Could you explain what a master plan is for 12:15 PM
2 me?
3 A. That's pretty broad, too. But a piece of
4 that is to look at the condition of all the
5 facilities in the school district, and to look at
6 the size of the facility; how much it would cost to 12:15 PM
7 renovate the facility; the demographics; the
8 financial picture of the district; the educational
9 programs in the district; and then to determine what
10 they needed to do for long range. Should they keep
11 a building open. Should they consolidate. Should 12:16 PM
12 they change re organization. That's a quick
13 overview.
14 Q. In addition to helping districts create
15 master plans, what other types of work did you do as
16 a director of educational services for McGuire & 12:16 PM
17 Shook?
18 A. I wrote the educational programs for the
19 facilities in terms of what went into every
20 classroom, based on the educational program the
21 school had defined. 12:16 PM
22 Q. Anything else that you can recall?
23 A. No. Those are the main things I did.
24 Q. Could you explain for me a little bit more
25 about that last task that you identified, which was

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1 educational programs for facilities? 12:17 PM
 2 What did that entail?
 3 A. Meeting with the teachers. An example,
 4 talking with kindergarten teachers if they were
 5 building a new elementary building; working with the
 6 kindergarten teachers to find out specifically what 12:17 PM
 7 they need in a kindergarten room: how many sinks;
 8 what kind of flooring was appropriate.
 9 Q. Presently you are the president of The
 10 Myers Group; is that correct?
 11 A. That's correct. 12:17 PM
 12 Q. What is The Myers Group?
 13 A. It's an educational consulting firm.
 14 Q. How long have you been president of The
 15 Myers Group?
 16 A. Since '89, 1989, the fall -- the winter of. 12:18 PM
 17 Q. How many people are employed by The Myers
 18 Group at this time?
 19 A. Right now two.
 20 Q. Is one of those persons you?
 21 A. Yes. 12:18 PM
 22 Q. Who is the other employee of The Myers
 23 Group?
 24 A. My administrative assistant.
 25 Q. And her name is? His name is?

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1 A. Fran Van Oyen, V-A-N O-Y-E-N. 12:18 PM
 2 Q. In what areas of education does The Myers
 3 Group provide consultation?
 4 MR. ELIASBERG: Objection, overbroad.
 5 THE WITNESS: There are a number of areas
 6 that we work in. One of them is community planning, 12:19 PM
 7 working with communities. I bring in consultants,
 8 if they want demographic studies. I bring in a
 9 nationally known demographer. We do the facility
 10 conditions, and I work with various architects. So
 11 they are hired as consultants. It depends on the 12:19 PM
 12 project, what they need. Pretty much all areas of
 13 facility planning and educational programming.
 14 BY MR. SIMMONS:
 15 Q. Let's focus in on the facilities-related
 16 work that The Myers Group does. 12:19 PM
 17 Can you tell me about that?
 18 A. One of the areas is looking at educational
 19 adequacy of the facilities; do they appropriately
 20 meet the educational program. Another one is
 21 working with faculty and staff and making certain 12:20 PM
 22 that the facilities meet their educational needs
 23 with all the changes that are occurring now in
 24 education.
 25 Q. Any other areas in dealing with facilities

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1 that The Myers Group provides? 12:20 PM
 2 A. There are a lot of areas. For instance,
 3 Great Organization is an area that's affected my
 4 facilities curriculum offering. Pretty much
 5 anything that you're doing within a building affects
 6 the facility or the facility is affected. 12:21 PM
 7 MR. ELIASBERG: Shawn, we have been about a
 8 half an hour. If there is a natural breaking point
 9 at some point. Is that okay?
 10 MR. SIMMONS: Maybe five, ten minutes tops,
 11 and we can do a break. 12:21 PM
 12 MR. ELIASBERG: A real five to ten minutes
 13 as opposed to a lawyer's five to ten, yeah, we ask
 14 go five to ten.
 15 BY MR. SIMMONS:
 16 Q. Does The Myers Group assist districts with 12:21 PM
 17 master planning?
 18 A. Yes.
 19 Q. One of the things you mention in your
 20 report is your work with The Myers Group includes
 21 working with several large school districts in 12:21 PM
 22 implementing successful bond referendums.
 23 A. Yes.
 24 Q. Can you tell me what that work entails?
 25 A. Primarily it's establishing a program of

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1 working with the community and making them the 12:22 PM
 2 ownership to the importance of their involvement in
 3 facilities.
 4 Q. What else does working with the large
 5 school districts in implementing the successful bond
 6 referendums involve? 12:22 PM
 7 A. There is an entire process that usually
 8 takes anywhere from six months to two years of
 9 working with the community, working with the
 10 teachers, working with the businesses.
 11 Q. Can you provide me with an overview of that 12:22 PM
 12 process?
 13 A. Not quickly.
 14 Q. How long are we talking?
 15 A. Well, there is like six or eight different
 16 pieces to that. 12:22 PM
 17 Q. What are the six or eight different pieces?
 18 A. Establishing -- looking at the facility
 19 conditions within the district, working with the
 20 teachers in establishing educational programs;
 21 working with the business community and getting 12:23 PM
 22 their input of what they need and how we can best
 23 work together in partnership; working with the
 24 community through a series of meetings called key
 25 communicator meetings; working with the architects

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1 and establishing cost estimates for various options 12:23 PM
 2 for facilities. Those are some of the areas.
 3 Q. How many successful bond referendums have
 4 you worked on as part of your work with The Myers
 5 Group?
 6 A. I have never had one fail. In some cases 12:24 PM
 7 it's not bond referendums. Like in some states it's
 8 not a bond referendum, but it's a petition drive.
 9 Between petition drives as well as bond referendums,
 10 probably twenty.
 11 Q. Can you explain the difference, if any, 12:24 PM
 12 between a bond referendum and a petition drive?
 13 A. Yes.
 14 Q. Would you do that?
 15 A. In the state of Indiana, a school board
 16 decides that they are going to do a building 12:24 PM
 17 program, let's say. And they have a public hearing
 18 called a 1028 hearing. And the board votes to go
 19 ahead with the program. And following that there is
 20 an opportunity for people to sign petitions in
 21 disagreement with the bond -- I'm sorry, in 12:25 PM
 22 disagreement with the program, whatever the school
 23 board has decided to do. And they have thirty days
 24 to get petitions. Both sides gather petitions, and
 25 whoever has the most petitions wins or loses.

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1 MR. SIMMONS: I can break here, if that's 12:25 PM
 2 good with you folks.
 3 MR. ELIASBERG: Yeah, that's fine.
 4 (A lunch recess was taken from 12:25 P.M. to
 5 1:43 P.M.)
 6
 7 EXAMINATION (CONTINUING) 01:43 PM
 8 BY MR. SIMMONS:
 9 Q. You are also a practicing speech
 10 pathologist; is that correct?
 11 A. Yes, that's correct.
 12 Q. What does a practicing speech pathologist 01:44 PM
 13 do?
 14 A. That means that I stayed involved in
 15 providing speech therapy services.
 16 Q. For how long have you been a practicing
 17 speech pathologist? 01:44 PM
 18 A. Do you mean how long have I continuously
 19 or --
 20 Q. Yes.
 21 A. I started back -- gosh, I think it was five
 22 years ago because I wanted to get back into the 01:44 PM
 23 schools, since I was a consultant, working across
 24 the nation, and I wanted to have firsthand
 25 experience. Yes, I do know what's going on in

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1 schools today because I have been there. So I
 2 started back deliberately to get that experience 01:45 PM
 3 again.
 4 Q. By whom, if anyone, are you currently
 5 employed as a practicing speech pathologist?
 6 A. It's all private consulting at this point.
 7 Q. Who, if anyone, do you have a consulting 01:45 PM
 8 arrangement with?
 9 A. It's called First Steps.
 10 Q. Can you tell me what First Steps is?
 11 A. It's the Indiana version of the federal
 12 program that provides services to birth through 01:45 PM
 13 three-year-olds. Every state has an organization
 14 that provides those services, and in Indiana it's
 15 called First Steps.
 16 Q. So in your work as a practicing speech
 17 pathologist, do you tend to work with students in 01:45 PM
 18 that age range?
 19 A. Yes. At this point it's birth through
 20 three. When I started back I was in public schools.
 21 I chose an inner-city school.
 22 Q. Do you recall what school? 01:46 PM
 23 A. School 98 in Indianapolis.
 24 Q. School 98 is something of a unique name for
 25 a school. How did they come up with that, if you

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1 know?
 2 A. It was one, two, three -- 01:46 PM
 3 MR. ELIASBERG: Objection, speculation.
 4 MR. REED: The first ninety-seven were
 5 taken.
 6 THE WITNESS: They were all numbered.
 7 Indianapolis public schools are numbered. 01:46 PM
 8 BY MR. SIMMONS:
 9 Q. Can you estimate how much time you devote
 10 working as a practicing speech pathologist as
 11 opposed to work that you do in connection with
 12 school facilities? 01:46 PM
 13 A. Are you asking like right now, or are you
 14 asking --
 15 Q. Let's start with right now, if you can.
 16 A. About two hours a month.
 17 Q. For about how many months do you think you 01:47 PM
 18 have been dedicating approximately two hours a month
 19 to speech pathology?
 20 A. Over a year.
 21 Q. How about prior to that time to this
 22 portion -- this latest portion of time where it's 01:47 PM
 23 been two hours a month?
 24 Prior to that, how much time did you
 25 dedicate to speech pathology?

1 A. Prior to the last year, you're asking?
 2 Q. Yes. 01:47 PM
 3 A. It averaged probably fifteen hours a month.
 4 Q. Can you provide an estimate as to the
 5 amount of time your work with The Myers Group
 6 consumes on average in a month?
 7 A. I work probably sixty hours a week with 01:48 PM
 8 traveling because I do a lot of traveling. So it
 9 probably averages around sixty hours a week.
 10 MR. HAJELA: Objection. That's too much.
 11 THE WITNESS: Tell my boss.
 12 MR. HAJELA: It makes the rest of us look 01:48 PM
 13 bad.
 14 BY MR. SIMMONS:
 15 Q. You are also an instructor at Indiana
 16 University at this time; is that correct?
 17 A. I am not right now, but I have been. 01:48 PM
 18 Q. For how long were you an instructor at
 19 Indiana University?
 20 A. Probably for seven years.
 21 Q. What, if any, courses did you teach during
 22 that time? 01:49 PM
 23 A. The graduate course in school facilities.
 24 Q. Is there a particular kind of student that
 25 would take that course from you?

1 A. It would typically be persons working on
 2 their administrative license or doctoral students. 01:49 PM
 3 It is a requirement for both of those areas.
 4 Q. Was there an amount of hours that you spent
 5 on that class each week?
 6 MR. ELIASBERG: Actually in class or
 7 preparing -- objection, vague. 01:49 PM
 8 MR. SIMMONS: Yeah. That's fair.
 9 Q. How many hours was the course, actually?
 10 A. It was a one night a week -- actually, I
 11 can't remember. Three to three and a half hours
 12 because it varied depending on the weeks, the 01:50 PM
 13 semester. And I taught in the summer, too. It was
 14 varied.
 15 Q. How many students would you generally have
 16 in a course?
 17 A. The last course I taught was a distance 01:50 PM
 18 learning course, where I had students on five
 19 different campuses, and I was teaching on one of the
 20 campuses, and I had students at four other campuses.
 21 And I can't remember because it's been like -- I
 22 recall I think I had thirty students total. 01:50 PM
 23 Q. What was your specific title for your work
 24 at Indiana University?
 25 A. Adjunct professor.

1 Q. Is part of your employment as an adjunct
 2 professor where you're required to engage in 01:51 PM
 3 research?
 4 A. No.
 5 Q. I think in paragraph 2 of your report you
 6 indicate that you have had the opportunity to work
 7 in more than thirty states, as well as Canada and 01:51 PM
 8 Australia, in the area of educational facilities
 9 planning.
 10 A. Yes.
 11 Q. What states have you worked in the area of
 12 educational facilities planning? 01:51 PM
 13 A. I don't think I can give you all of them,
 14 but I can give you some that I have done a lot of
 15 work in. Texas, Indiana, Oklahoma, Ohio, Michigan,
 16 Pennsylvania are some that come to mind right away.
 17 Q. When was the last time that you did 01:52 PM
 18 facilities-related work in Texas?
 19 A. I am currently working in Texas.
 20 Q. The same question with respect to Indiana.
 21 A. I am currently working in Indiana.
 22 Q. How about Oklahoma? 01:52 PM
 23 A. I am working in Oklahoma.
 24 Q. With respect to Ohio?
 25 A. I have a project in Ohio right now.

1 Q. How about Michigan?
 2 A. No, I do not. 01:52 PM
 3 Q. When was the last time that you did some
 4 work with Michigan in the area of school facilities?
 5 A. I think that's probably been -- my
 6 recollection would be four or five years ago.
 7 Q. Are you currently working in the area of 01:53 PM
 8 school facilities in Pennsylvania?
 9 A. I just finished a project.
 10 Q. What work were you doing in Texas?
 11 A. I'm doing several contracts for a school
 12 district currently. 01:53 PM
 13 Q. What does that work entail?
 14 A. I'm doing the educational adequacy
 15 evaluations of all of their facilities. I am
 16 writing the educational programs for their
 17 elementary, intermediate middle schools and high 01:53 PM
 18 school. We are reorganizing the high school, and I
 19 am doing staff development with all of the K through
 20 twelve faculty, and I am doing the community work.
 21 Q. Is this a contract that you had with a
 22 particular district in Texas? 01:53 PM
 23 A. It's with the program manager, who is
 24 working for this district.
 25 Q. What district is it?

1 A. Cedar Hill, independent school district.
 2 Q. What work are you currently doing in 01:54 PM
 3 Indiana?
 4 A. I am beginning a master plan community
 5 engagement process with a district in Indiana.
 6 Q. Could you define for me what community
 7 engagement constitutes? 01:54 PM
 8 A. Again, that's a pretty broad, long subject.
 9 But basically the purpose of meeting with people
 10 within the community, and getting them involved in
 11 what's happening in the schools; serving as a
 12 facilitator to provide information so they are more 01:55 PM
 13 knowledgeable of why we are asking for what we are
 14 asking for in terms of facilities.
 15 Q. Is the work that you're doing right now, is
 16 that pursuant to a particular contract?
 17 A. It will be. It's just starting. 01:55 PM
 18 Q. Who would the contract be with?
 19 A. Laporte Community Schools.
 20 Q. Is that a school district?
 21 A. Yes, it is.
 22 Q. How many schools are in that district, if 01:55 PM
 23 you know?
 24 A. I don't know yet.
 25 Q. What work are you currently doing in

1 A. It was a staff development program, working
 2 with the architect in the community, addressing the 01:57 PM
 3 needs of a new high school, and writing the
 4 educational program for that new high school.
 5 Q. Who were you working with on that?
 6 A. The Manheim Township School District. I
 7 had a contract with them, as well as with the 01:58 PM
 8 architect.
 9 Q. And about how many schools were in that
 10 school district?
 11 A. I don't know because I was really working
 12 with just the high school. 01:58 PM
 13 Q. What work did you do in Canada in the area
 14 of educational facilities planning?
 15 A. I helped the Ontario, the province, to look
 16 at their standards and compare them to those in the
 17 United States, and to talk about the planning 01:58 PM
 18 process, and give them some suggestions of what they
 19 might do.
 20 Q. What type of standards were you comparing
 21 amongst Ontario and states in the United States?
 22 A. A number of areas, but one of the areas 01:59 PM
 23 specifically, again, square footage per student.
 24 Types of spaces in facilities.
 25 Q. Any other standards that you can recall

1 Oklahoma?
 2 A. I have spent the last two years working 01:56 PM
 3 with Oklahoma City in developing a master plan for
 4 the Oklahoma public schools, and working with the
 5 community in order to pass a bond referendum. And
 6 they require a sixty percent in order to make it
 7 pass. 01:56 PM
 8 Q. When you say you're working with Oklahoma
 9 City, is that a school district as well?
 10 A. Oklahoma City Public Schools, yes.
 11 Q. About how many schools are in the Oklahoma
 12 City Public School District? 01:56 PM
 13 A. Ninety-three.
 14 Q. What work are you currently doing in Ohio?
 15 A. Currently I am doing a master plan and
 16 community work for a district in northern Ohio, who
 17 is attempting to pass \$170 million bond issue. 01:57 PM
 18 Q. What is the name of the district?
 19 A. Warren City Schools.
 20 Q. About how many schools are in that
 21 district, if you know?
 22 A. I believe there is sixteen or seventeen, 01:57 PM
 23 but I'm not sure.
 24 Q. What work did you just finish up in
 25 Pennsylvania?

1 comparing between Ontario and states in the United
 2 States? 01:59 PM
 3 A. Not specifically, no.
 4 Q. Do you have a general sense of the kind of
 5 standards you were comparing in that work?
 6 A. We were doing more this is what we do, this
 7 is what you do kind of thing; looking at the whole 01:59 PM
 8 planning process, and how do you engage community;
 9 how do you engage faculty and staff. So it's more
 10 process -- not more of, but it certainly included
 11 the issue of process.
 12 Q. Could you define for me how you're using 02:00 PM
 13 process in that answer?
 14 A. Process in terms of how you go about
 15 involving the community; how do you go about -- what
 16 steps do you take to involve the faculty; what kinds
 17 of meetings would you have; what could those 02:00 PM
 18 meetings include.
 19 Q. About how long did you work with Ontario on
 20 this project?
 21 A. It's been an ongoing process because,
 22 again, it's through CEFPI, the facility 02:00 PM
 23 organization. And I have served as a resource to
 24 them off and on for a number of years.
 25 Q. Do you have a sense as to the number of

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1 years you have spent working with Ontario and your
 2 work with CEFPI? 02:01 PM
 3 MR. ELIASBERG: Objection, compound.
 4 THE WITNESS: The number of years I have
 5 worked with CEFPI has been -- twenty years I have
 6 worked with CEFPI.
 7 BY MR. SIMMONS: 02:01 PM
 8 Q. Did you work with Ontario during all those
 9 years?
 10 A. No, I don't believe so.
 11 Q. Do you know about how many of those years
 12 you were working with Ontario? 02:01 PM
 13 A. I really don't because it's been off and on
 14 for a lot of years.
 15 Q. What kind of work did you do in Australia
 16 in the area of educational facilities planning?
 17 A. Currently I am working with an architect in 02:01 PM
 18 Australia, serving as a resource. He is working on
 19 his doctorate, and I am serving as one of his expert
 20 sources for his doctoral dissertation and have
 21 helped again in the area of planning and facility
 22 programming. 02:02 PM
 23 Q. Do you have an understanding as to the
 24 scope of the dissertation he is writing?
 25 A. No, I don't.

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1 Q. I am trying to find the paragraph.
 2 Paragraph 2 of your report. Can you explain what 02:02 PM
 3 establishing educational vision is?
 4 A. Again, that's pretty broad, but one of the
 5 areas that might be easiest to explain would be
 6 working with a particular school district in
 7 defining how they are going to meet the individual 02:03 PM
 8 needs of students; what kind of programs they are
 9 going to provide in order to do that; what grade
 10 organization is most appropriate for them, is a
 11 couple of examples of that.
 12 Q. Also in that same paragraph you refer to 02:03 PM
 13 staff development projects.
 14 Can you give me an idea about what that is?
 15 A. That's working with various educational
 16 staff, like elementary, middle school or high
 17 school, and discussing with them best practices, 02:04 PM
 18 research available. Things that are -- projects
 19 that are doing well, based on research, and what are
 20 they doing; how do we see that changing. Basically
 21 bringing them a lot of information about how they
 22 might do their job better or differently if they 02:04 PM
 23 choose to do that.
 24 Q. In that same paragraph you refer to writing
 25 educational specifications.

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1 A. I mentioned about that earlier. That's
 2 specifically working, again, with faculty members. 02:04 PM
 3 Once a decision has been made to design a new
 4 building, to sit down again with the kindergarten
 5 teacher and talk specifically about what goes into a
 6 kindergarten room. It's very specific details of
 7 design. 02:04 PM
 8 Q. When you say what things go into a
 9 kindergarten classroom, can you give me some
 10 categories of things that you're talking about?
 11 A. Marker boards, tack boards, sinks, floor
 12 covering, student storage. 02:05 PM
 13 Q. Also in paragraph 2, what does working with
 14 design professionals to ensure that the integrity of
 15 the educational program is being articulated in the
 16 design?
 17 What does that mean? 02:05 PM
 18 A. That means if -- once an educational
 19 program is written, and we have defined specifically
 20 what we want, how many rooms we want, what those
 21 rooms need to have in them, then I would work with
 22 the architects and the engineers to make sure what 02:05 PM
 23 we have written is actually being shown on the
 24 drawings.
 25 Q. You also refer to working with the ongoing

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1 maintenance in operations of school personnel.
 2 Give me a brief definition of what you mean 02:06 PM
 3 by that phrase.
 4 A. As we talk about building needs, facility
 5 conditions, that we work with the custodians and the
 6 maintenance personnel and establish their needs,
 7 their priorities. 02:06 PM
 8 Q. What is the council for educational
 9 facilities planners international?
 10 A. It's an international organization that is
 11 the No. 1 resource organization for school facility
 12 planning. It's an advocacy organization that 02:06 PM
 13 advocates for the importance of school facility
 14 planning.
 15 Q. And that's the CEFPI that you were
 16 referring to earlier?
 17 A. Yes, that's correct. 02:07 PM
 18 Q. I would be mistaken if I refer to it as
 19 CEFPI, I take it?
 20 A. No, you would not be. CEFPI is what it's
 21 referred to often.
 22 Q. You mentioned it's considered the No. 1 02:07 PM
 23 organization.
 24 A. Yes.
 25 Q. How did it achieve that reputation?

1 MR. ELIASBERG: Objection, calls for
2 speculation. 02:07 PM

3 MR. SIMMONS: If you know.

4 THE WITNESS: Probably because it's the
5 largest and the only one of its kind. Other
6 organizations have small -- like the Association of
7 School Business Officials has a facility part of 02:07 PM
8 that organization, but it's very small.

9 BY MR. SIMMONS:

10 Q. If you know, who refers to it as the No. 1
11 organization?

12 Who bestows that title on it, if anyone? 02:08 PM

13 MR. ELIASBERG: Objection, calls for
14 speculation.

15 THE WITNESS: I can only give you some
16 references of examples. Many states refer to the
17 council for looking at the standards. When there is 02:08 PM
18 an issue in the legislative that is a facility-
19 related issue, most of the time -- I would say a
20 majority of the time the council gets called to
21 provide resources. So those would be examples of
22 how I would know that. But other than that, I 02:08 PM
23 don't.

24 BY MR. SIMMONS:

25 Q. I assume that -- are there individual

1 members to this organization?

2 A. There are individual members and corporate 02:09 PM
3 members.

4 Q. What kind of folks make up the individual
5 membership?

6 A. Educators, administrators, facility
7 planners, architects, engineers, project managers, 02:09 PM
8 construction managers, parents. It's quite a broad
9 range. There is others, too, but those are the main
10 ones. Professors.

11 Q. What kind of groups are considered members
12 of the corporate membership of that organization? 02:09 PM

13 A. For the most part it's defined as, if you
14 want to have a corporate membership, then three of
15 your members can be voting members. So it could be
16 an architectural firm. It could be a construction
17 management firm. It could be a school district. So 02:10 PM
18 it's basically more of a membership issue rather
19 than a separate title, necessarily.

20 Q. What are the requirements, if any, for
21 individuals to obtain membership in CEFPI?

22 A. You need to be somehow interested in school 02:10 PM
23 facilities and pay the membership dues.

24 Q. You served on the board of CEFPI for ten
25 years; is that correct?

1 A. That's correct.

2 Q. Are you still currently on the board of 02:10 PM
3 CEFPI?

4 A. No, I'm not.

5 Q. By what process, if any, are individuals
6 selected to serve on the board of CEFPI?

7 A. The organization is made up of regions, and 02:11 PM
8 in the United States there are six regions, and then
9 Canada is included within some of those regions in
10 the United States. Australia, and Saudi Arabia, and
11 Brazil -- there are four or five other countries --
12 Japan, are international regions. And each region 02:11 PM
13 selects -- votes on a member to represent their
14 region, and I was selected to represent the Midwest
15 Great Lakes region, the first three terms -- two
16 terms. I'm sorry. And then I ran for international
17 president and served on the board by virtue of that. 02:11 PM

18 Q. Did you have particular duties as a board
19 member of CEFPI?

20 A. Yes.

21 Q. What were those duties?

22 A. Well, fiduciary responsibilities, 02:12 PM
23 obviously. Establishing the strategic plan for the
24 organization. There were a number of
25 responsibilities; being certain that we were

1 providing conferences that were helpful and
2 meaningful. We received grants. 02:12 PM

3 Q. You mentioned running for president of
4 CEFPI. You served as president of CEFPI in 2000; is
5 that correct?

6 A. 2000 was the year I was president, but it
7 was a three-year term. 02:13 PM

8 Q. How is the president of CEFPI elected?

9 A. By the entire organization.

10 Q. Were your duties as president different
11 from your duties as a board member of CEFPI?

12 A. Most definitely. 02:13 PM

13 Q. What were your duties as president?

14 A. Setting the vision and the agenda for the
15 year.

16 Q. What does setting the vision and the agenda
17 for the year entail? 02:13 PM

18 A. In my particular term, we were going
19 through a major restructuring and doing a new
20 strategic plan, and through my leadership we
21 established a new direction for the organization, a
22 new direction in the sense of updating where we had 02:14 PM
23 been and where we were going.

24 Q. On page 3 of your curriculum vitae you
25 refer to some -- you have a heading of Selected

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1 Project Experience, and then National underneath
2 that. And you refer to San Diego United School 02:14 PM
3 District.
4 Is that supposed to be unified, or is that
5 actually the name of the district?
6 A. Is it's probably San Diego Unified.
7 Q. What did your work with San Diego Unified 02:15 PM
8 School District entail?
9 A. I worked as a consultant with Bill De Jong,
10 D-E J-O-N-G, doing educational specifications for
11 the entire district.
12 Q. How long did you do that work for? 02:15 PM
13 A. Approximately six months, I think.
14 Q. About when did you do that work?
15 A. It's been several years ago. I'm not sure.
16 Q. More than five?
17 A. Probably more than five. 02:16 PM
18 Q. And you mentioned that you worked with Bill
19 De Jong?
20 A. Yes.
21 Q. On that contract. What was his position?
22 A. He is a facility planner, the same as I am. 02:16 PM
23 And it was a very large project, and he asked me to
24 work with him on it.
25 Q. Was he an employee of the San Diego Unified

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1 School District, or --
2 A. No. He was a consultant. He is a facility 02:16 PM
3 planning consultant.
4 Q. Who did you work with at San Diego Unified
5 School District, if anyone?
6 A. The Facilities Division people. I have no
7 idea any of their names. 02:16 PM
8 Q. You mentioned that that work entailed
9 drafting the educational specifications for the
10 entire district.
11 Was there any other types of work involved?
12 A. That's all I did. 02:17 PM
13 Q. Have you worked with any other school
14 districts in California?
15 A. No, I have not.
16 Q. Have you worked with any individual schools
17 in California? 02:17 PM
18 A. No, I have not.
19 MR. ELIASBERG: Can we take just a very
20 brief break? Five minutes.
21 (There was a brief recess.)
22 BY MR. SIMMONS: 02:19 PM
23 Q. Other than the work that we talked about
24 with the San Diego Unified School District, have you
25 done any other facilities-related work in

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1 California?
2 A. No. 02:26 PM
3 Q. Prior to your work as an expert in this
4 case, did you have any understanding as to how
5 public school facilities in California are managed?
6 A. What do you mean by "managed"? I don't --
7 I mean, I work in San Diego. So I had a general 02:26 PM
8 idea of how the system worked or how the Facilities
9 Planning Division worked.
10 Q. What was that understanding?
11 A. That they were involved in new
12 construction. 02:27 PM
13 Q. Did you have any other understanding as to
14 the role the State of California plays in the
15 management of school facilities?
16 A. No, I did not.
17 Q. How about County Offices of Education? 02:27 PM
18 Did you have any understanding of the role
19 County Offices of Education play in the management
20 of public school facilities in California?
21 A. No, I did not.
22 Q. Prior to the time you began working as an 02:28 PM
23 expert in this case, did you have any understanding
24 as to the role school districts played in the
25 management of public schools in California?

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1 A. I had minimal understanding.
2 MR. ELIASBERG: Ambiguous and overbroad. 02:28 PM
3 BY MR. SIMMONS:
4 Q. What was your understanding of the role
5 that school districts played in the management of
6 school -- public school facilities in California?
7 MR. ELIASBERG: Objection, vague and 02:28 PM
8 overbroad.
9 THE WITNESS: What I knew was from my
10 involvement with members from California that
11 belonged to CEFPI, and the discussions over the
12 years as we compared state practices. 02:29 PM
13 BY MR. SIMMONS:
14 Q. What was it that you knew from those
15 comparisons with other members of CEFPI?
16 A. One of the things that I knew was that the
17 local districts basically had control over what they 02:29 PM
18 were doing, in terms of their facilities, with
19 minimal state oversight.
20 Q. In the course of your work in connection
21 with this lawsuit, have you made any effort to
22 determine what role the State of California plays in 02:29 PM
23 the maintenance of public school facilities?
24 MR. ELIASBERG: Asked and answered.
25 THE WITNESS: Are you asking do I know

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1 about this? I'm not sure what your question is.
2 BY MR. SIMMONS: 02:30 PM
3 Q. I guess first just to determine whether you
4 made an effort to determine what role the State of
5 California plays with respect to the maintenance of
6 public school facilities.
7 A. Yes. 02:30 PM
8 Q. What effort did you make?
9 A. Talking with persons in the state. As I
10 mentioned earlier, talking with Rob Corley and
11 Lettie Boggs. That's one example of the information
12 I obtained in order to have some context. 02:30 PM
13 Q. Did you make any other effort than your
14 conversations with Rob Corley and Lettie Boggs to
15 determine what role the state plays in the
16 maintenance of public school facilities?
17 A. Yes. 02:31 PM
18 Q. What else did you do?
19 A. Reading information from depositions and
20 articles about the State of California, and
21 depositions regarding the issue.
22 Q. What depositions did you read regarding 02:31 PM
23 that issue?
24 A. I think three of them are listed in my
25 expert report, I believe. At least two of them are.

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1 Brooks and Lang and Henry are three of that I have
2 read. 02:31 PM
3 Q. What did you learn from reading the Brooks
4 deposition?
5 MR. ELIASBERG: Objection, overbroad.
6 THE WITNESS: I'm not sure I could say
7 specifically what one said versus what the other, 02:32 PM
8 but there was a general theme, it seemed to me.
9 BY MR. SIMMONS:
10 Q. And by "general theme," do you mean a
11 general theme in the books, Lang and Henry
12 depositions? 02:32 PM
13 Is that what you're referring to?
14 A. What I recall.
15 Q. Now, I notice that you identify some page
16 numbers from the depositions of Brooks and Henry I
17 see on pages 4 and 5. 02:32 PM
18 Did you include all of the pages for all of
19 the depositions that you relied on in producing your
20 opinions in this case?
21 MR. ELIASBERG: Objection, vague.
22 MR. SIMMONS: Strike that. 02:33 PM
23 MR. ELIASBERG: The report speaks for
24 itself.
25 BY MR. SIMMONS:

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1 Q. I guess what I'm trying to determine is
2 whether there were any depositions or pages of 02:33 PM
3 depositions that you read that are not indicated in
4 the expert report you prepared.
5 A. Do you mean did I read more pages than the
6 pages that are listed here?
7 Q. Yes. 02:33 PM
8 A. Yes.
9 Q. Did you rely on those pages in forming the
10 basis of the opinions you report in your expert
11 report?
12 A. To say did -- I guess I'm not sure what 02:33 PM
13 you're asking. I did read the depositions, and the
14 part about the facilities and the deterioration of
15 the comprehensive plans were the things that I noted
16 as most critical for what I was talking about. But
17 there were other things in there, but right offhand 02:33 PM
18 I couldn't tell you what those things are because
19 they were quite lengthy depositions.
20 Q. You mentioned that you also read some
21 articles in order to determine what role the State
22 of California plays in the maintenance of public 02:34 PM
23 school facilities.
24 What articles did you read?
25 A. I can't tell you one right now, but they

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1 would be in my stuff, the information I gave to the
2 lawyers. 02:34 PM
3 Q. Do you have a general sense as to the
4 information you gleaned from reading those articles?
5 MR. ELIASBERG: Objection, vague.
6 THE WITNESS: For the most part, you know,
7 it was talking about facilities in the state. I can 02:35 PM
8 give you one example. It was a report card from a
9 school district, and it talked specifically about
10 that particular school. And in that report card it
11 talked about the deterioration of the facility and
12 that the rest rooms weren't working. And it talked 02:35 PM
13 about a lot of things, but in one area of this
14 newsletter or report card, that was in there.
15 BY MR. SIMMONS:
16 Q. I should clarify my question. I'm sorry.
17 I was just trying to figure out, we talked about 02:35 PM
18 what effort that you made to determine what role the
19 State of California plays in the maintenance of
20 public school facilities.
21 And I think you mentioned you had read some
22 articles as part of that effort; is that correct? 02:36 PM
23 A. Yes.
24 Q. So I was just trying to get at what
25 information you gathered or gleaned from those

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1 articles about the role that the state plays in the
2 maintenance of public school facilities. 02:36 PM
3 A. Again, since that wasn't the focus of my
4 research or my report, the information that I read
5 was mostly to give me some context about the State
6 of California. So those areas have been identified
7 in the expert report. My focus mostly was on what 02:36 PM
8 other states were doing.
9 Q. Just to make sure, but sitting here today,
10 can you recall any bits of information that you
11 gathered from these articles concerning the role the
12 state plays in the maintenance of public school 02:36 PM
13 facilities?
14 A. Not bits of information from articles, no.
15 Q. Can you recall any information that you
16 were able to gather from those articles?
17 A. One example that I vaguely remember was 02:37 PM
18 talking about the condition of facilities in a
19 district in the state, and a hot line being
20 established for facilities.
21 Q. What is hot line?
22 A. A hot line where parents could call. 02:37 PM
23 Q. In the course of your work in connection
24 with this lawsuit, have you made any effort to
25 determine what role state agencies play in the

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1 maintenance of public school facilities?
2 MR. ELIASBERG: Objection, asked and 02:38 PM
3 answered.
4 THE WITNESS: I'm sorry. I don't
5 understand. In California, you're asking?
6 MR. SIMMONS: I'm sorry. I will try that
7 again. 02:38 PM
8 Q. Are you aware that the State of California
9 has been sued in this litigation, for which you have
10 been designated as an expert?
11 A. Yes.
12 Q. Do you also understand there is some state 02:38 PM
13 agency defendants or state agencies that have been
14 sued in connection with this litigation?
15 A. Yes.
16 Q. So what I was trying to determine was
17 whether you made an effort to determine what role 02:38 PM
18 the state agencies that are named as defendants in
19 this lawsuit play in the maintenance of public
20 facilities in California.
21 MR. ELIASBERG: Are you talking beyond her
22 discussion with, for example, the SF School 02:39 PM
23 Facilities Planning Division? Just because she has
24 already talked about some of that.
25 MR. SIMMONS: You have mentioned something

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1 about the School Facilities Planning Division.
2 THE WITNESS: From my conversations with 02:39 PM
3 Rob.
4 BY MR. SIMMONS:
5 Q. With Rob Corley. I guess -- your answer
6 would be -- let me try that again.
7 Outside of the conversation that you had 02:39 PM
8 with Rob Corley, and the conversation that you had
9 with Lettie Boggs, did you make any other effort to
10 determine the role that the state agencies, who have
11 been named as defendants in this case, play in the
12 maintenance of school facilities in California? 02:39 PM
13 A. No, I did not.
14 Q. In the course of your work in connection
15 with this lawsuit, have you made an effort to
16 determine what role County Offices of Education play
17 in the maintenance of public school facilities? 02:40 PM
18 MR. ELIASBERG: Objection, assumes facts.
19 THE WITNESS: No, other than the
20 conversations, again, that I had to get general
21 information from Rob Corley.
22 BY MR. SIMMONS: 02:40 PM
23 Q. Do you recall any aspect of those
24 conversations that dealt with County Offices of
25 Education in California?

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1 A. Not specifically.
2 Q. Any general recollection? 02:40 PM
3 A. No.
4 Q. In the course of your work in connection
5 with this lawsuit, have you made an effort to
6 determine what role school districts play in the
7 maintenance of public school facilities in 02:41 PM
8 California?
9 A. Again, through my conversation with Lettie
10 Boggs and Rob Corley.
11 Q. Any other effort made by you in this
12 connection? 02:41 PM
13 A. No.
14 Q. You mentioned -- we have discussed your
15 conversations that you had with Rob Corley and
16 Lettie Boggs.
17 Did you do anything to verify the 02:41 PM
18 information that you received from Rob Corley in
19 that conversation?
20 A. No, I did not.
21 Q. Did you do anything to verify the
22 information that you received in your conversation 02:41 PM
23 with Lettie Boggs?
24 A. No.
25 Q. In the course of your work in connection in

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1 this lawsuit, have you made an effort to determine
 2 what role the State of California plays in the 02:42 PM
 3 modernization of public school facilities?
 4 MR. ELIASBERG: Objection, ambiguous.
 5 BY MR. SIMMONS:
 6 Q. I think, yeah, I should fix it.
 7 Do you understand how the term 02:42 PM
 8 "modernization" is used in California with respect
 9 to the management of public school facilities?
 10 MR. ELIASBERG: Objection, vague.
 11 THE WITNESS: The only understanding I have
 12 is, as I mentioned earlier, is what the School 02:42 PM
 13 Facilities Division does in terms of working with
 14 projects that are receiving dollars, that are either
 15 getting new facilities or renovated facilities.
 16 Whether or not renovated and modernization are
 17 defined the same way, I don't know. 02:42 PM
 18 BY MR. SIMMONS:
 19 Q. In the course of your work in connection
 20 with this lawsuit, have you made an effort to
 21 determine what role the State of California plays in
 22 the renovation of public school facilities? 02:43 PM
 23 A. Again, through the conversations with Rob
 24 and Lettie.
 25 Q. Aside from your conversations with

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1 Mr. Corley and Ms. Boggs, have you, in the course of
 2 your work in connection with the lawsuit, made an 02:43 PM
 3 effort to determine what role the state agencies
 4 that are named as defendants in this case play in
 5 the renovation of public school facilities in
 6 California?
 7 A. That's the same question you just asked me. 02:44 PM
 8 Q. The prior question dealt with the state as
 9 opposed to now. This question deals with the state
 10 agency defendants in this case.
 11 A. Again, only in the context of the
 12 conversation to give me a general overview with Rob. 02:44 PM
 13 Q. In the course of your work in connection
 14 with this lawsuit, have you made any effort to
 15 determine what role the California County Offices of
 16 Education play in the renovation of public school
 17 facilities, if any? 02:44 PM
 18 A. No, other than the conversations, and the
 19 depositions, again, you know, as I mentioned
 20 earlier.
 21 Q. Is it fair to say that -- strike that.
 22 In terms of your work to familiarize 02:45 PM
 23 yourself with the management of school facilities in
 24 California public schools, is it fair to say that
 25 your effort to determine how that system works is

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1 limited to your conversations with Mr. Corley,
 2 Ms. Boggs, and some articles that you read? 02:45 PM
 3 A. No.
 4 Q. What else would you include in your effort?
 5 A. The depositions, my twenty years of
 6 experience in working in school districts and
 7 working with persons in the State of California, and 02:46 PM
 8 being aware of what's -- what has been the case in
 9 California, having worked for San Diego.
 10 Q. As you sit here today, what is your
 11 understanding of the role that the State of
 12 California plays in the new construction of public 02:46 PM
 13 school facilities?
 14 A. It's very limited.
 15 MR. ELIASBERG: Can you read that question
 16 back, please?
 17 (The reporter read the pending question.) 02:47 PM
 18 THE WITNESS: Can I clarify that? My
 19 understanding is very limited, not their role is
 20 very limited.
 21 BY MR. SIMMONS:
 22 Q. As you sit here today, what is your 02:47 PM
 23 understanding of the role the State of California
 24 plays in the maintenance of public school facilities
 25 in California?

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1 A. Again, based on the information that I
 2 have, their role is very limited. Are you talking 02:47 PM
 3 about ongoing maintenance?
 4 Q. We can start with ongoing maintenance.
 5 A. My understanding is their role is very
 6 limited with ongoing maintenance.
 7 Q. What is that understanding based on? 02:48 PM
 8 A. Some of the research, as well as the
 9 conversations, as well as the depositions, as well
 10 as my knowledge from experience.
 11 Q. To what research can you point in support
 12 of your last answer? 02:48 PM
 13 A. Research, meaning gathering information,
 14 not research as in research in the sense of data
 15 collecting.
 16 Q. What information can you point to in
 17 support of the answer that you gave concerning the 02:48 PM
 18 limited role of California in ongoing maintenance?
 19 A. Again, going back to the conversations.
 20 Q. Just to make sure we are on same page, I
 21 think, when I first asked the question on what you
 22 based your opinion as to the -- your understanding 02:49 PM
 23 as to the role of the State of California in the
 24 ongoing maintenance of public school facilities, you
 25 indicated that they were your conversations with Rob

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1 Corley and Lettie Boggs, the depositions that you
 2 have read, and also some of the research, I think 02:49 PM
 3 were your words.
 4 I understand that you had the conversation
 5 with Mr. Corley and Ms. Boggs, but what I'm trying
 6 to get at is just what the research you were
 7 referring to is. 02:49 PM
 8 MR. ELIASBERG: Objection, compound,
 9 misstates prior testimony.
 10 THE WITNESS: If you're asking me to define
 11 research -- is that what you're asking me to do?
 12 BY MR. SIMMONS: 02:50 PM
 13 Q. No. I'm just trying to get at -- I'm just
 14 trying to get at -- I think you testified that the
 15 State of California plays a limited role in the
 16 maintenance of ongoing maintenance of public school
 17 facilities. I just want to find out each thing that 02:50 PM
 18 you rely on in support of that statement.
 19 I understand you have mentioned Mr. Corley
 20 and Ms. Boggs.
 21 A. Um-hum.
 22 Q. And you have also mentioned some 02:50 PM
 23 depositions. And then you mentioned research or I
 24 guess additional information that you gathered.
 25 What I'm trying to find out is, what

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1 additional information do you rely --
 2 A. Again, some of that, I think I gave some 02:50 PM
 3 examples about reading some of the articles and
 4 paper. Again, some of this comes from like
 5 Schoolhouse Beat, the different organizations. And
 6 they do snippets from different states of things
 7 that are happening within the state. And so it's 02:51 PM
 8 pieces here and there.
 9 I mean, I read every day. That's my job.
 10 And so when there is something of interest of
 11 California, I would read it. So to specifically say
 12 it was this or that, you know, over a period of two 02:51 PM
 13 years, I have read a lot of things because it's
 14 peaked my interest.
 15 Q. Is all of the information that you rely on
 16 in saying that the role of the State of California,
 17 in the ongoing maintenance of public school 02:51 PM
 18 facilities, is limited -- is all the information
 19 that you rely on making that statement -- has all
 20 that information been produced to the state in this
 21 case?
 22 MR. ELIASBERG: Objection, calls for 02:52 PM
 23 speculation.
 24 THE WITNESS: As far as I know, it has
 25 been. I mean, there are times I will read something

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1 on the Internet, and I don't necessarily copy it
 2 off. But for the most part, things that I relied on 02:52 PM
 3 I would keep in a separate folder, and then as I
 4 went back and started pulling things together. So
 5 you should have that, I believe, or they should have
 6 it, whatever they did with it.
 7 BY MR. SIMMONS: 02:52 PM
 8 Q. As you sit here today, what is your
 9 understanding of the way in which the State of
 10 California funds the ongoing maintenance of public
 11 school facilities?
 12 MR. ELIASBERG: Objection, assumes facts, 02:53 PM
 13 asked and answered.
 14 THE WITNESS: My understanding is very
 15 limited about their involvement. What I believe to
 16 be the case is that they are aren't involved in
 17 ongoing maintenance. They are not involved in the 02:53 PM
 18 sense of providing dollars and/or even inspecting,
 19 having basically anything to do with it. That's my
 20 understanding.
 21 BY MR. SIMMONS:
 22 Q. As you sit here today, what is your 02:53 PM
 23 understanding of the way in which the State of
 24 California funds the modernization of its public
 25 school facilities?

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1 MR. ELIASBERG: Objection, ambiguous.
 2 There is back and forth about that particular word. 02:53 PM
 3 It may not be the best choice of words.
 4 BY MR. SIMMONS:
 5 Q. Does renovation work better for you than
 6 modernization?
 7 A. Typically renovation and new construction 02:54 PM
 8 are usually one category, and modernization may be
 9 more like ongoing maintenance. I don't know for
 10 sure what you're defining.
 11 Q. As you sit here today, what is your
 12 understanding of the manner in which the State of 02:54 PM
 13 California funds new construction of its public
 14 school facilities?
 15 A. I don't know what that involvement is, a
 16 clear understanding.
 17 Q. Prior to your work in connection with this 02:55 PM
 18 lawsuit, did you ever perform any research
 19 concerning the appropriate role of the state in the
 20 management of public school facilities?
 21 MR. ELIASBERG: Objection, ambiguous.
 22 THE WITNESS: If you're asking me have I 02:55 PM
 23 ever worked for another state or looking at other
 24 state facility issues?
 25 BY MR. SIMMONS:

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1 Q. What I'm trying to get at is whether you
 2 have done any research on the topic of whether -- 02:55 PM
 3 strike that.
 4 The question is: Prior to your work in
 5 connection with this lawsuit, have you ever
 6 performed any research concerning the appropriate
 7 role of a state in the management of public school 02:56 PM
 8 facilities?
 9 A. Yes.
 10 Q. What research have you done?
 11 A. Again, through CEFPI, one of our goals is
 12 to be able to look at what all states are doing. 02:56 PM
 13 And so, again, that's one of the things that I am
 14 constantly comparing, is what other states are
 15 doing, and the state role versus the local role.
 16 Research, to say is it research as in gathering
 17 data, yes. If it's research as in coming up with a 02:56 PM
 18 question and coming up with statistical analysis,
 19 no.
 20 Q. What data have you gathered concerning the
 21 appropriate role of the state in the management of
 22 public school facilities prior to the time you began 02:56 PM
 23 your work in connection with this lawsuit?
 24 A. Most of the data has been what is; what
 25 states do have state involvement and what states

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1 don't. It's more of a comparison of states.
 2 Q. Have you ever published a paper concerning 02:57 PM
 3 the appropriate role of a state in the management of
 4 its public school facilities?
 5 A. No, I have not.
 6 Q. Have you ever given a presentation
 7 concerning what the appropriate role of a state 02:57 PM
 8 should be in the management of its public school
 9 facilities?
 10 A. No, I have not.
 11 Q. Have you ever attended any conferences that
 12 discussed what the appropriate role of a state in 02:57 PM
 13 the management of public school facilities should
 14 be?
 15 A. I have been involved in conferences that
 16 speak to that, that talk about that.
 17 Q. What conferences can you recall where that 02:58 PM
 18 was an area of discussion?
 19 A. Typically every year at the Council for
 20 Educational Facility Planners International
 21 Conference, that is one of your discussion topics.
 22 Sometimes it's a bit broader, where it's talking 02:58 PM
 23 about the whole partnership issue.
 24 Q. Have you ever worked with any state
 25 governments in establishing a system for the

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1 management of public school facilities?
 2 A. No. 02:58 PM
 3 Q. Page 2 of your report, in paragraph 7, you
 4 mention having testified before the state
 5 legislature in Indiana.
 6 When did you testify before the state
 7 legislature in Indiana? 02:59 PM
 8 A. Probably -- I don't recall exactly, but
 9 it's been probably five or six years ago.
 10 Q. What was the subject matter of the
 11 testimony you gave there?
 12 A. The position of partnerships with the state 02:59 PM
 13 and local communities in establishing what they
 14 needed for their educational programs.
 15 Q. Did you have any prepared remarks for that
 16 testimony?
 17 A. No. You mean, did I read something? Is 03:00 PM
 18 that what you're asking me?
 19 Q. We can start with that, yes.
 20 A. No, I did not read.
 21 Q. Did you have an outline that you followed?
 22 A. Not on paper. 03:00 PM
 23 Q. Do you recall for about how long you gave
 24 testimony to the legislature in Indiana?
 25 A. It was about an hour.

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1 Q. Do you know why you were called to testify
 2 before the legislature in Indiana? 03:00 PM
 3 A. Because of my -- I don't know exactly, but
 4 I assume that it was because I was seen as one of
 5 the experts in the field of facilities in the state,
 6 and they wanted to get my opinion and understanding
 7 of what they were debating. 03:01 PM
 8 Q. What was it that the legislator was
 9 debating at the time you gave testimony?
 10 A. They were talking about establishing very
 11 stringent requirements for all school districts in
 12 Indiana with regards to size of facilities, square 03:01 PM
 13 foot per building, in order to -- they saw that as a
 14 way, perhaps, to save dollars.
 15 MR. ELIASBERG: Shaun, at some point when
 16 there is a logical break, if you could.
 17 MR. SIMMONS: Yeah. Let's go off record. 03:02 PM
 18 (There was a brief recess.)
 19 BY MR. SIMMONS:
 20 Q. And your last answer -- before that, just a
 21 couple of quick questions.
 22 What did you discuss with Mr. Eliasberg 03:16 PM
 23 during lunchtime?
 24 A. During lunch? Who was Morrison & Foerster,
 25 and what is the ACLU, and how are they connected.

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1 Q. What else did you discuss, if anything?
2 A. My children. 03:17 PM
3 Q. Did you discuss anything else related to
4 this case or this deposition?
5 A. Not really. I mean, he just said, "You're
6 doing fine."
7 Q. How about at the last break that we just 03:17 PM
8 took? What did you discuss with Mr. Eliasberg?
9 A. That I am very tired.
10 Q. Anything else?
11 A. That I need to not ask you questions.
12 MR. HAJELA: Can we go off the record for 03:17 PM
13 one second?
14 (Discussion off the record.)
15 MR. SIMMONS: For the record, I think we
16 have -- we recognize Dr. Myers is three hours off of
17 her normal time and is enjoying this deposition as 03:19 PM
18 much as any deponent ever enjoys a deposition. And
19 so we will try and go today through a quarter to
20 five. But in the event that Dr. Myers is just tired
21 and can't focus in on the deposition and give her
22 best testimony here today, we are all agreeable to 03:19 PM
23 ending at some point earlier. Just for the record.
24 THE WITNESS: Thank you.
25 BY MR. SIMMONS:

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1 Q. So at the last break, at least the one
2 before we discussed an ending time, you mentioned 03:19 PM
3 you discussed the fact that you were tired and that
4 you maybe needed to not ask questions of me.
5 Did you discuss anything else?
6 A. No.
7 Q. The last area we were talking about was 03:20 PM
8 your testimony before the legislature in Indiana.
9 You had mentioned that the legislature was
10 addressing the question of whether to establish some
11 stringent requirements in terms of the size of
12 facilities; is that correct? 03:20 PM
13 A. What they were looking at is size in terms
14 of amount of square feet for X number of students.
15 Q. In paragraph 7 you also mention that you
16 spoke to the legislature concerning the need for
17 facility guidelines and standards for the state. 03:21 PM
18 Can you explain for me a little bit more in
19 detail what it was you spoke to the legislature
20 about?
21 A. Yes.
22 Several years ago, and I can't tell you the 03:21 PM
23 exact year, but when I was in the -- first in the
24 profession, we had a very strong facilities
25 department in the State of Indiana who -- and we

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1 also had state requirements for school facilities.
2 Over the years that department was dissolved, and 03:21 PM
3 there was no longer any direct involvement from the
4 state with the school districts, and that became
5 problematic.
6 Q. Can you give me some examples of the types
7 of requirements that the state had in place for 03:21 PM
8 school facilities?
9 A. Yes.
10 When a school was going to do a building
11 program, they would have to get -- they would have
12 to follow the standards, the minimum standards 03:22 PM
13 established by the state. For instance, elementary
14 classrooms had to be nine hundred square feet.
15 Music rooms had to be eleven hundred square feet, as
16 a example. And once the design was -- the design
17 development phase was completed, they had to take 03:22 PM
18 those drawings to the State department, and the
19 State department had to approve them before they
20 could continue with the project.
21 Q. Were there any standards that addressed
22 ongoing maintenance in public schools in Indiana at 03:22 PM
23 that time?
24 A. There were guidelines for percentages of
25 dollars to be put in the general fund for ongoing

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1 maintenance, and those were looked at by the State
2 department. I'm sorry. Not looked at, but reviewed 03:22 PM
3 by the State department.
4 Q. I guess this is probably answered by the
5 term "guidelines." I assume if they were
6 guidelines, they are not mandatory, or is that not a
7 correct understanding? 03:23 PM
8 A. That is a correct understanding, but the
9 hidden understanding was if you weren't being a good
10 steward of the taxpayer dollars, then the State
11 department wasn't real pleased with passing on new
12 facilities if you weren't taking care of your 03:23 PM
13 existing facilities. It was more of an unwritten
14 rule.
15 Q. Correct me if I'm wrong, but I think maybe
16 you used the term "habitability"?
17 Maybe I'm wrong. Not in paragraph 7, but 03:23 PM
18 just in terms of the types of standards a state
19 might enact.
20 A. I don't remember using that word.
21 Q. Maybe I may have just been incorrect as
22 well. Am I the only one that remembers that? 03:24 PM
23 Well, in any event, do you have an
24 understanding of what the term "habitability" means?
25 A. I have an understanding of what I think it

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1 means. It means whether or not a place is able to
2 be lived in or able to be used. 03:24 PM
3 Q. Do factors like cleanliness and --
4 A. Cleanliness, air quality, absence of light,
5 temperature.
6 Q. Did Indiana have standards in place for the
7 habitability of school classrooms at the time you 03:25 PM
8 testified?
9 A. At the time I testified, no.
10 Q. Do they now?
11 A. No, they do not.
12 Q. Were those some of the types of -- strike 03:25 PM
13 that.
14 Did you speak to the need of habitability
15 standards for the State of Indiana when you
16 testified before the legislature?
17 A. No. 03:26 PM
18 Q. What types of facility guidelines did you
19 speak for the need of in Indiana?
20 A. I was suggesting that there could not be
21 one approach to design for all facilities and that
22 indeed there could be guidelines. For instance, 03:26 PM
23 nine hundred square feet for an elementary classroom
24 is an excellent guideline. But every school
25 district, as they worked within those guidelines,

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1 could determine what was most appropriate to meet
2 their needs. And so the state would be a partner 03:26 PM
3 with a local district. Instead of having only
4 mandatory guidelines that were so dogmatic that
5 there couldn't be flexibility, was to have local
6 involvement.
7 Q. Could you take a look at paragraph 10 of 03:27 PM
8 your expert report?
9 It says there you will opine on the range
10 of solutions available and utilized by states other
11 than California to address long-term planning,
12 maintenance, supervision, and operation of school 03:27 PM
13 facilities.
14 What I'm wondering is, are the opinions
15 that you intend to offer in this case premised on an
16 assumption that there is a change necessary in the
17 system for managing public school facilities in 03:27 PM
18 California?
19 A. My opinions are based on looking at models
20 in other states where they have a system in place to
21 address school conditions, school facility
22 conditions. I guess, you know, in the State of 03:28 PM
23 California, if they can answer -- and there are
24 issues that I see as being important, having looked
25 at a number of other states and what they are doing.

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1 And it would be my understanding in the
2 State of California, if they can look at those and 03:28 PM
3 say, yes, we do have state and local partnerships,
4 yes, we do have standards and guidelines or
5 standards of inspection procedures put in place,
6 yes, we do have data-gathering mechanisms, yes, we
7 do have equitable funding, then perhaps the State is 03:28 PM
8 doing what they need to be doing. It is my
9 understanding that they don't have all of those
10 things in place.
11 Q. Try this one other way. Do you intend to
12 offer an opinion that the current system for 03:29 PM
13 managing public school facilities in California is
14 deficient in some respect?
15 A. That's not what my task was.
16 Q. Just to be clear, I take it the answer to
17 that question is no? 03:29 PM
18 MR. ELIASBERG: I think it was asked and
19 answered. She was very clear.
20 MR. SIMMONS: You can answer the last
21 question.
22 THE WITNESS: I don't understand. I'm 03:29 PM
23 sorry.
24 BY MR. SIMMONS:
25 Q. I asked if you intended to offer an opinion

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1 about whether the current system in place in
2 California for managing public school facilities is 03:29 PM
3 deficient, and I believe your answer was that "that
4 was not my task"; is that correct?
5 A. Yes.
6 Q. So essentially the answer, also, is no to
7 that question; is that correct? 03:30 PM
8 A. No, I won't be offering an opinion on the
9 California system.
10 Q. Thank you. Another question just with
11 respect to the scope of your opinions.
12 Are you opining about something more than 03:30 PM
13 the maintenance of public school facilities?
14 That's a bad question. I'm sorry.
15 What I am trying to figure out is whether
16 your opinion will extend to new construction of
17 public school facilities or whether your opinions 03:30 PM
18 that you intend to offer at this case are limited to
19 how the state should address maintenance of public
20 school facilities.
21 A. I believe through my opinion I have
22 suggested that it's more than just maintenance, 03:31 PM
23 period.
24 Q. In paragraph 3 of your report you mention
25 that one of your forthcoming publications will

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1 include a facilities planning manual.
 2 When do you expect to complete that work? 03:31 PM
 3 A. The book will be finished this summer. The
 4 manuscript will be finished this summer, the summer
 5 of 2003.
 6 Q. To what, if any, audiences is the manual
 7 directed to? 03:31 PM
 8 MR. ELIASBERG: Objection, may call --
 9 well, no. Strike that.
 10 THE WITNESS: It's a very broad audience.
 11 The book is more than a facility manual. It's a
 12 book about connecting -- the importance of 03:32 PM
 13 connections with facilities, communities, parents,
 14 business people, board members, administrators.
 15 So it's to talk about school facilities as
 16 it relates to ownership of everyone involved in
 17 those facilities. 03:32 PM
 18 BY MR. SIMMONS:
 19 Q. I'm not sure if you will be able to answer
 20 this.
 21 What portion of your manual is directed to
 22 maintenance and operations of facilities? 03:32 PM
 23 A. I don't know that yet. We are still
 24 writing.
 25 Q. Do you have any estimate as to what portion

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1 of the manual will ultimately be directed to
 2 maintenance and operations of facilities? 03:32 PM
 3 A. We have a number of chapters that
 4 specifically talk to different aspects of
 5 facilities. But throughout the whole book there is
 6 a tie-in of connection of how all of those pieces
 7 work together. So one chapter specifically is only 03:33 PM
 8 speaking to maintenance and operations, but then
 9 throughout the book it will show how that ties in.
 10 Q. Can you tell me some of the aspects of
 11 maintenance and operations that are addressed in the
 12 facilities planning manual? 03:33 PM
 13 A. No, because we don't have that one written.
 14 Q. Can you tell me some of the aspects of
 15 maintenance and operations that you expect to be a
 16 part of the facilities planning manual?
 17 A. What we have outlined is to include 03:33 PM
 18 checklists, looking at inventories, how to do an
 19 inventory of a school facility and its conditions
 20 either by a local person or some other entity. For
 21 the most part it's going to be a lot of how to kinds
 22 of things that persons can use. It will speak to 03:34 PM
 23 the importance of having dollars allocated for
 24 ongoing maintenance. Those will be some of the
 25 issues that will be in the chapter that we have

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1 outlined so far.
 2 Q. Did you rely on drafts of this facilities 03:34 PM
 3 planning manual -- first of all, are there any
 4 drafts of the facilities planning manual?
 5 A. Are there drafts? There are -- some of the
 6 chapters have had first drafts that are being
 7 reviewed. 03:34 PM
 8 Q. Did you rely on any of those drafts in
 9 forming the opinions that you have set forth in your
 10 expert report?
 11 A. Yes.
 12 Q. Were those made available? 03:35 PM
 13 A. No, because it's -- the drafts that I am
 14 speaking to are -- there are two different
 15 definitions of drafts. There are drafts of some
 16 chapters which are not in the maintenance and
 17 operations chapters, and that intellectual property 03:35 PM
 18 remains with myself and my co-author. And we only
 19 have four people reviewing that information now
 20 confidentially.
 21 What I was speaking to -- the other
 22 definition, as I was describing draft, was, as we 03:35 PM
 23 put together our proposal and presented it to the
 24 organization who hired us to write this book, we had
 25 to tell them what we were going to put in each

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1 chapter. So I was referring to that as the draft.
 2 Q. So it's that proposal that you relied on in 03:35 PM
 3 forming the basis of the opinions set forth in your
 4 report?
 5 A. Right. That was part of our outline, was
 6 figuring out what we were going to put in the
 7 chapter and some of that information. 03:36 PM
 8 Q. In terms of any of the chapters for which
 9 you have created drafts up to this point, you didn't
 10 rely on any of those in forming the opinions that
 11 are set forth in your expert report?
 12 A. No. The drafts that are completed in the 03:36 PM
 13 book to date.
 14 Q. It could just be me, and it could be late.
 15 I was confused by the last answer.
 16 I understood you to say that the proposal
 17 was what you relied on in terms of forming the 03:36 PM
 18 opinion -- forming the opinions set forth in your
 19 expert report. But that you didn't rely on the
 20 drafts of some of the chapters for your facilities
 21 planning manual.
 22 Is my understanding correct? 03:37 PM
 23 A. There are two different definitions of
 24 drafts, and the drafts that I didn't rely on are
 25 chapters that are specifically speaking to other

1 areas like site selection, like community
2 participation, like design parameters. Those drafts 03:37 PM
3 I didn't rely on, and those are the drafts I was
4 speaking to with regards to being reviewed.

5 Q. I apologize for this. So which drafts did
6 you rely on?

7 A. The draft that I relied on, in terms of 03:37 PM
8 including in the information, was the draft that we
9 put together when we did the proposal for the book.
10 There were eight proposals. We were one, and we
11 were selected to write the book.

12 Q. Did you include that proposal any materials 03:37 PM
13 that you provided plaintiffs counsel with?

14 A. I don't believe so.

15 Q. If you will turn to paragraph 11, please.
16 You indicate that you conducted a multistate survey
17 in connection with your work on this case. 03:38 PM

18 Why did you do that?

19 A. Because one of the things I was charged
20 with doing was to find out what other dates were
21 doing in terms of dealing with maintenance and
22 operations in their state, and so it made sense to 03:38 PM
23 ask them what they were doing.

24 Q. When did you conduct the survey that you
25 refer to there in paragraph 11?

1 A. I believe it was the winter or spring of
2 2002. 03:39 PM

3 Q. Is that multistate survey complete at this
4 point? Actually, strike that. That's a bad
5 question.

6 Has your work on the multistate survey that
7 you identify in paragraph 11 finished as of this 03:39 PM
8 time?

9 A. It's finished for the purposes of this
10 expert report.

11 Q. Thank you. Do you know about how much time
12 it took to complete the survey? 03:39 PM

13 A. If you mean how much time did it take for
14 me to write it, it took probably about maybe an hour
15 and a half to frame the questions, and then I
16 e-mailed it.

17 Q. What other work did you do in connection 03:40 PM
18 with this survey, aside from framing the questions
19 that you e-mailed out?

20 A. I followed up in some cases with some of
21 the comments I got back to get further information,
22 or followed up with a second e-mail with some of 03:40 PM
23 them that I knew I could count on to give me
24 information that hadn't returned their information
25 yet.

1 Q. Now, in paragraph 11 you indicate there
2 that you gathered information from more than thirty 03:41 PM
3 states, as well as Canada and Australia.

4 Can you tell me which states you gathered
5 information from in connection with the multistate
6 survey?

7 A. I can't tell you every one. A few of them 03:41 PM
8 I can recall. Colorado, Pennsylvania, Michigan,
9 Ohio, Nebraska.

10 Q. Is there a document that you can think of
11 that would allow you to determine which states that
12 you gathered information about in connection with 03:42 PM
13 the multistate survey?

14 A. Is there a document? No.

15 Q. Is there a set of documents that would
16 allow you to do that?

17 A. Yes. 03:42 PM

18 Q. What would that set of documents be?

19 A. They are in that box. Basically what I did
20 is, I made a file for every date, and then the
21 information I gathered from each state I put in the
22 state's file. 03:42 PM

23 Q. So for each state that you gathered
24 information about in connection with the multistate
25 survey, there should be documents relating to that

1 state.

2 A. Yes. 03:42 PM

3 Q. Do you recall what number of states beyond
4 thirty you were able to gather information about in
5 connection with the multistate survey?

6 MR. ELIASBERG: Objection, ambiguous.

7 THE WITNESS: No, I don't. I can't recall. 03:43 PM
8 BY MR. SIMMONS:

9 Q. What types of information were you looking
10 to gather about states in connection with the
11 multistate survey?

12 A. One of the questions that I asked was, was 03:43 PM
13 there a partnership -- I don't remember exactly how
14 I asked, but was there state involvement in
15 maintenance and operation of school facilities in
16 their state; was the state involved in that, and if
17 so, how. 03:44 PM

18 Another question I asked was if there
19 wasn't state involvement, then how did school
20 districts get the money to maintain and operate
21 their buildings. And another question I asked was
22 were they familiar with a school district or more 03:44 PM
23 than one school district that was really doing a
24 good job of maintaining and operating their
25 facilities.

1 MR. SIMMONS: Can we go off record?
 2 (Discussion off the record.) 03:44 PM
 3 BY MR. SIMMONS:
 4 Q. I wanted to ask you about just the
 5 terminology in paragraph 11.
 6 When you say "survey," are you referring to
 7 just the e-mail survey that you sent out, or 04:04 PM
 8 something broader?
 9 A. Something much broader.
 10 Q. Perhaps, rather than me ask if I understand
 11 it, you can just tell me what you mean by "survey."
 12 (Interruption in proceedings.) 04:04 PM
 13 BY MR. SIMMONS:
 14 Q. Can you tell me how you're using the word
 15 "survey" in that paragraph 11 of your report?
 16 A. I was using it in the broad sense of
 17 talking to people, visiting with people. Just 04:05 PM
 18 basically -- I don't know the right words to use.
 19 I'm sorry.
 20 Q. Maybe I can help. I think often academics
 21 will refer to during the survey, the literature,
 22 which doesn't necessarily mean asking questions. It 04:05 PM
 23 means investigating an area.
 24 A. That's a good word, "investigating."
 25 Q. Would the multistate survey that you did --

1 does paragraph 11 -- does that provide a pretty fair
 2 summary of the contours of the survey you undertook? 04:06 PM
 3 A. The e-mails -- the short e-mail survey,
 4 that would be one. The phone conversations,
 5 personal interviews, the visits, yes, that would
 6 pretty much define what I mean by "survey," what I
 7 do. 04:06 PM
 8 MR. SIMMONS: Thank you.
 9 (Deposition Exhibit 2 was marked for
 10 identification.)
 11 BY MR. SIMMONS:
 12 Q. Let's turn to Exhibit 2. Is this the 04:06 PM
 13 e-mail survey to which you're referring in paragraph
 14 11?
 15 A. Yes, it is.
 16 Q. And the survey has six questions; is that
 17 correct? 04:07 PM
 18 A. That's correct.
 19 Q. Did any of the questions ever change over
 20 time?
 21 A. No, they didn't.
 22 Q. To whom did you send the survey out to? 04:07 PM
 23 A. I tried to select somebody from every
 24 state. I went through the CEFPI directory state by
 25 state. If they had a facility planner in that

1 state, I sent to it them. If they didn't, then I
 2 sent it to somebody that I knew in the state. If I 04:07 PM
 3 didn't know anybody in the state, then I just chose
 4 somebody that I thought had been a member for a
 5 while and might actually return the survey.
 6 Q. All of the people to whom you sent the
 7 survey were members of CEFPI; is that correct? 04:08 PM
 8 A. Yes. I believe so. I believe so.
 9 Q. Are you familiar about the term "response
 10 rate"? Have you ever heard that term used before?
 11 A. Yes.
 12 Q. Do you have an understanding as to what the 04:08 PM
 13 response rate to the e-mail survey was?
 14 A. It was defined in a couple of ways. Some
 15 sent me information back like this. Some called me.
 16 Some I saw at a conference that came up four weeks
 17 later, the Midwest Great Lakes Conference. We had 04:08 PM
 18 fifteen states at that conference. So some talked
 19 to me there. So my response rate would be defined
 20 differently based on all of those contacts versus
 21 how many just actually sent me an e-mail.
 22 Q. If we include all of the types of contacts 04:09 PM
 23 or responses that you just identified, would you be
 24 able to produce a response rate to your e-mail
 25 survey for us here?

1 A. Would I be able to guess how many?
 2 MR. ELIASBERG: I'm not trying to -- you 04:09 PM
 3 say, "e-mail survey," but then you also -- survey is
 4 many more. Are you trying to get how many just
 5 responded only to e-mails as opposed to other
 6 contacts she made verbally?
 7 MR. SIMMONS: Yeah. I just want to find 04:09 PM
 8 out how many people responded to the e-mail survey
 9 that you sent out, regardless of the manner in which
 10 they responded.
 11 THE WITNESS: Okay. Whether or not -- the
 12 persons that responded to this e-mail survey in 04:09 PM
 13 phone conversations, and personal visits, and by
 14 e-mail probably were thirty to thirty-five people
 15 representing thirty-five states. Thirty or
 16 thirty-five states. Somewhere in that area.
 17 BY MR. SIMMONS: 04:10 PM
 18 Q. Do you know the total number of people you
 19 sent the e-mail survey out to?
 20 A. Approximately seventy, because in some
 21 cases I sent to more than one person in the state.
 22 Q. How many times did you send the survey out? 04:10 PM
 23 MR. ELIASBERG: Objection, vague and
 24 ambiguous.
 25 BY MR. SIMMONS:

1 Q. I guess that's difficult. I'm sorry.
 2 What I'm trying to find out is, did you 04:10 PM
 3 send this series of questions out to a block of
 4 e-mails on one occasion, or was there more than one
 5 point at which you sent the e-mail out?
 6 A. There was more than one point that I sent
 7 the e-mail. 04:10 PM
 8 Q. Do you know how many different times you
 9 sent the e-mail survey out?
 10 A. I believe I sent three. I would give them
 11 a friendly reminder.
 12 Q. If you look at Exhibit 2 there, your first 04:11 PM
 13 question asks whether the respondent state has an
 14 ongoing inspection process to ensure that facilities
 15 are maintained.
 16 What facilities are you referring to there?
 17 A. Their school facilities in the state. 04:11 PM
 18 Q. Why did you ask that question?
 19 A. Because that was one of the areas that I
 20 was researching, is what did other states do.
 21 Q. Do you know -- how many respondents, if
 22 any, indicated that their state had on ongoing 04:12 PM
 23 process to ensure that facilities are maintained?
 24 A. Some, but I don't know the number.
 25 Q. Can you estimate as to whether it was less

1 respondents identified states that had on ongoing
 2 inspection process to ensure that facilities are 04:14 PM
 3 maintained.
 4 Are you personally aware of other states
 5 than the ones you have identified that have such an
 6 ongoing inspection process?
 7 MR. ELIASBERG: Objection, ambiguous. 04:14 PM
 8 THE WITNESS: The ones I have identified
 9 that I remember. The ones I am aware of right now.
 10 MR. SIMMONS: I just wanted to make sure
 11 there weren't states out there that a respondent
 12 hadn't necessarily identified, but you nonetheless 04:14 PM
 13 were aware of having an ongoing facility --
 14 THE WITNESS: I can't think right now.
 15 BY MR. SIMMONS:
 16 Q. -- inspection process. You mentioned that
 17 Arizona is trying to have an ongoing inspection 04:15 PM
 18 process.
 19 What led you to characterize that state as
 20 trying to have an ongoing inspection process?
 21 A. The State of Arizona is going through some
 22 legal issues right now in terms of facilities, and 04:15 PM
 23 they are trying to establish some standards and some
 24 processes for the state to use. But it's my
 25 understanding that due to lack of funds -- well,

1 than five or more than five?
 2 Can you give us an estimate, please? 04:12 PM
 3 A. It was definitely more than five, but I'm
 4 not sure. Again, part of it was how do you define
 5 ongoing inspection. Some of them are caveats: yes,
 6 we do, but, or this is what we call it.
 7 Q. Did you have a particular ongoing 04:12 PM
 8 inspection process in mind when you sent the
 9 question out?
 10 A. I didn't have a particular model I was
 11 focusing on. I was just asking the question pretty
 12 broad. 04:13 PM
 13 Q. What states can you recall respondents
 14 identifying as having an ongoing process to ensure
 15 the facilities are maintained?
 16 A. Well, one of the states is New Mexico. It
 17 just started. Another one is Maryland, and another 04:13 PM
 18 one is West Virginia.
 19 Q. Can you recall any others, as you sit here
 20 today?
 21 A. Arizona is trying to.
 22 Q. I know we are testing you late, but if you 04:13 PM
 23 can recall others.
 24 A. I can't think of any others right now.
 25 Q. I guess my first question was whether

1 some political issues right now, that that's been
 2 stalemated. That's my understanding. 04:15 PM
 3 Q. Your second question, although it's listed
 4 under the first section in Exhibit 2 of the e-mail
 5 survey, is whether the inspection process is
 6 enforced by the state or totally local control.
 7 For those states that you have identified 04:16 PM
 8 as having an ongoing inspection process, can you
 9 tell me whether that process is enforced by the
 10 state or through local control?
 11 A. In Maryland it's a combination of state and
 12 local. In West Virginia it's a combination of state 04:16 PM
 13 and local.
 14 Q. New Mexico was the other state.
 15 A. Thank you. It's a combination.
 16 Q. Now, if we go down to what's identified as
 17 question 2 of the e-mail survey. You ask whether 04:16 PM
 18 there are dollars specifically identified in school
 19 budgets for maintenance and operations as opposed to
 20 pay for custodians.
 21 Can you explain for me a little bit more
 22 about what that question is asking? 04:17 PM
 23 A. Yeah. Basically what I am saying is -- or
 24 what I was asking was, in the general fund every
 25 year there is a line item for maintenance and

1 operations. And does your state have guidelines so
2 that there is money included in local budgets for 04:17 PM
3 maintenance and operations. And I was clarifying
4 that I didn't want the custodial money because that
5 is in their -- personnel are in there. So it's not
6 about personnel. It's about real maintenance and
7 operations of facilities. 04:17 PM

8 Q. The dollars that you were looking for to be
9 specifically identified, is that something that was
10 identified -- that you were looking to see whether
11 it was identified in a state budget?

12 A. No, in the local budgets. When I asked the 04:18 PM
13 question in school budgets, I meant school district
14 budgets.

15 Q. Okay. Thank you.

16 How many respondents do you recall having
17 indicated that there were dollars specifically 04:18 PM
18 identified in school district budgets for
19 maintenance and operations?

20 A. Probably there were more that said they
21 thought there were, because in some states they do a
22 better job of maintaining their facilities. And so 04:19 PM
23 I think I recall there were certainly more yeses
24 that there were dollars indicated in the budgets by
25 a number of the states.

1 Q. When you're saying, "more yeses," you're
2 referring to the yeses that you received to question 04:19 PM
3 No. 1?

4 A. Yes. Right.

5 Q. Can you recall any states which respondents
6 to the e-mail survey identified as having a dollar
7 specifically identified in school district budgets 04:19 PM
8 for maintenance and operations?

9 A. Besides Maryland and West Virginia, and I
10 believe Florida does. I believe Nevada does. Ohio
11 does in terms of new facilities. There have to be
12 dollars specified. 04:20 PM

13 Q. Can you think of any other states that
14 require dollars to be specifically identified in
15 school budgets for maintenance and operations?
16 A. The question doesn't say required. It says
17 are there dollars specifically defined. And I would 04:20 PM
18 say to you that for the most part it's not a matter
19 of requirement. It's do states do that. Many
20 states suggest there is a one-and-a-half- to four-
21 percent range that makes sense to be put aside for
22 maintenance and operations. But to say "required," 04:20 PM
23 for the most part it's not a requirement, but it's a
24 practice, I would suggest. For instance, even in
25 West Virginia they don't require it.

1 MR. HAJELA: I am confused now. Peter, can
2 I ask a follow-up so I don't have to come back here? 04:21 PM

3 MR. ELIASBERG: If you have a specific
4 question or two, I don't mind, if Shaun doesn't
5 mind. I don't want you to go down another path.

6 MR. HAJELA: I won't go down another path.
7 I'm just confused by what's meant here, then. 04:21 PM

8 Is your question asking, in the school
9 district's annual budget, did they identify dollars
10 for maintenance and operations?

11 THE WITNESS: Yes.

12 MR. HAJELA: Wouldn't every school 04:21 PM
13 district's budget identify dollars for maintenance?

14 THE WITNESS: No. What we would identify
15 is dollars for custodian fees, for payment of
16 custodians.

17 BY MR. SIMMONS: 04:21 PM

18 Q. Do you know whether any school districts in
19 California identified dollars specifically for
20 maintenance and operations in their budgets?

21 A. I don't know.

22 Q. Why did you ask this question No. 2 here in 04:22 PM
23 your e-mail survey?

24 A. Because I was trying to find out what
25 states are doing, if that is a practice that occurs

1 commonly in most districts; and if so, how do they
2 determine that. That was the follow-up question. I 04:22 PM
3 wanted to see if this one and a half to four percent
4 was in the range I was going to get from the people
5 that responded affirmatively to that.

6 Q. In question 3 is your follow-up, I think,
7 that you were just referring to, as to whether the 04:23 PM
8 dollars that are identified for maintenance and
9 operation are -- how that figure is determined.

10 A. Yes.

11 Q. How many respondents, if you recall,
12 indicated that maintenance and operation dollars 04:23 PM
13 were determined based on a percentage of replacement
14 value?

15 A. I don't remember.

16 Q. As you sit here today, you aware of any
17 school districts that determine their maintenance 04:24 PM
18 and operations budget based on a percentage of
19 replacement value?

20 A. Yes.

21 Q. In what states are those school districts
22 located? 04:24 PM

23 A. One I can think of offhand is Ohio.

24 Q. Any other states with districts that
25 identify their maintenance and operations monies in

1 terms of a percentage of replacement value that
2 you're aware of, as you sit here today? 04:24 PM

3 A. I don't remember how Maryland and West
4 Virginia do it, since they are two states that I
5 know do that. But I don't know which way they
6 choose to do it.

7 Q. Going back to again trying to keep a 04:25 PM
8 distinction between the state -- what the state is
9 doing and what the local school district is doing.

10 It seems to me we have been discussing that
11 the local school districts are the ones identifying
12 the M&O dollars in their budgets; is that correct? 04:25 PM

13 A. That's correct.

14 Q. In Ohio does the state do anything to
15 assist districts in that regard?

16 MR. ELIASBERG: Objection, vague.

17 MR. SIMMONS: I will withdraw that. 04:25 PM

18 Q. I guess what I'm trying to find out is if
19 this is something school districts do or whether the
20 state has any role in determining how maintenance
21 and operations budgeted their dollars.

22 A. In the state of Ohio what happens, the 04:25 PM
23 state says to the local district, if they are going
24 to get money from the state to do new construction,
25 that they have to show in their general fund budget

1 A. I don't remember whether it's replacement
2 value or a percentage of the general fund. 04:27 PM

3 Q. Is that true with respect to West Virginia
4 as well?

5 A. I don't remember which it is.

6 Q. Do you have any sense as to whether more
7 states use a percentage of replacement value method 04:28 PM
8 or a percentage of the general fund method?

9 A. It's a debate right now. So I really don't
10 have a good sense of which side is winning. The
11 School Business Officials organization, which deals
12 with the business officials, and they are the ones 04:28 PM

13 that usually set the budget. And there is a debate
14 going on which side; how do you determine that. So
15 there are a lot of schools that are doing it both
16 ways, it's my understanding.

17 Q. Are you aware of any other methods for 04:29 PM
18 determining maintenance and operations budgets other
19 than the percentage of replacement value and the
20 percentage of the general fund methods that you have
21 indicated or set forth here in your question three
22 to the e-mail survey? 04:29 PM

23 A. Yes.

24 Q. What other kinds are there?

25 A. Superintendents will look at all the money

1 that they have allotted a percentage of dollars for
2 replacement value in order to maintain those 04:26 PM
3 facilities that the state is helping pay for.

4 Q. Would they also be required to show that
5 they are maintaining an amount sufficient to the
6 percentage of replacement value for facilities that
7 the state is not funding? 04:26 PM

8 A. In the state of Ohio, that is the area in
9 which they have not gotten to yet. As I mentioned
10 earlier, they realized that's a hole in their
11 process, and they have not legislated that or
12 included that yet in their state guidelines. 04:26 PM

13 Q. Are there any states that have done that?

14 A. In Maryland school districts have to have a
15 line item for maintenance and operations. And in
16 West Virginia, in order to get state funding, they
17 have to show -- they go back and look at the last 04:27 PM
18 five-year budgets of that school district and see if
19 they have indeed allocated and spent the money that
20 they have allocated for maintenance and operations.
21 And if they have not, then they don't get the state
22 funding. 04:27 PM

23 Q. Does Maryland require the districts to use
24 a percentage of replacement value in determining
25 their maintenance and operations budgets?

1 they have, and then realize they have to put
2 something in that line item, and just stick some 04:29 PM
3 dollars arbitrarily in there. Arbitrarily in the
4 sense they may ask somebody do you think we are
5 going to need a new roof; how much do you think
6 that's going to be. Okay, let's stick that money in
7 there. 04:30 PM

8 Q. We will refer to that as the arbitrary
9 method. Are there any other methods that you're
10 aware of than those three?

11 A. No.

12 Q. Switch down to the fourth question of your 04:30 PM
13 e-mail survey, where you inquire, if there is not a
14 state program for facility inspection, are there
15 some schools that have established their own ongoing
16 maintenance program.

17 Why did you ask that question? 04:30 PM

18 A. Because I was interested in seeing if many
19 local districts took it upon themselves to put
20 together a checklist; and if so, then I could
21 contact perhaps those schools and find out what they
22 did. 04:31 PM

23 Q. How many respondents to your survey
24 indicated that there were some schools that had
25 established their own ongoing maintenance program,

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1 if you can recall?

2 A. Typically the answer I received was I know 04:31 PM

3 there are some in our state. I can't tell you who.

4 That was kind of a general response, or another

5 response was some do it better than others.

6 Q. Are you aware of any states where --

7 actually, strike that. 04:31 PM

8 When you refer to "schools," are you again

9 referring to school districts, or are you referring

10 to just a particular school in that question?

11 A. In that question I was referring to school

12 districts, are there some school districts 04:32 PM

13 that. . . .

14 Q. Regardless of what respondents to the

15 survey indicated, are you aware of any school

16 districts that have established their own ongoing

17 maintenance program? 04:32 PM

18 A. Yes.

19 Q. What school districts are you aware of?

20 A. One of them that has done an excellent job

21 is Jefferson County schools in Denver, Colorado.

22 Q. What other school districts are you aware 04:32 PM

23 of that have established their own ongoing

24 maintenance program?

25 A. Manheim Township School District in

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1 Pennsylvania.

2 Q. Any others? 04:33 PM

3 A. Plymouth schools in Plymouth, Indiana.

4 Q. I apologize. I know it's late in the day,

5 but I'm going to test your memory.

6 A. There are a number of schools. There are a

7 number of schools that I have had the opportunity to 04:33 PM

8 work with that have done a really good job of doing

9 ongoing maintenance through a master plan, is how I

10 am familiar with it. Those are just ones I think of

11 off the top.

12 Q. Just for some point of clarification here. 04:33 PM

13 How are you using the term "ongoing

14 maintenance program" in that question four of your

15 e-mail survey?

16 A. What I mean by that is, if you went into

17 that district, and you said where's your plan for 04:33 PM

18 making certain that every building is painted on a

19 regular basis, that the roofs are repaired, that

20 toilets are working, show me your five-year plan, a

21 district can pull out their five-year plan and say

22 this is what we are going to do with each of these 04:34 PM

23 building every year, and this is what we are going

24 to do next year, so that there is an ongoing

25 procedure for maintaining those facilities.

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1 Q. Are you aware of any school districts in

2 California that have established their own ongoing 04:34 PM

3 maintenance program?

4 A. No, I'm not.

5 Q. Did you undertake any effort to find out

6 whether there were any school districts in

7 California who had such an ongoing maintenance 04:34 PM

8 program?

9 A. No, I did not.

10 MR. SIMMONS: Can we break for a second?

11 MR. ELIASBERG: Sure.

12 (Discussion off the record.) 04:34 PM

13 (TIME NOTED: 4:34 P.M.)

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1 I declare under penalty of perjury

2 under the laws of the State of California

3 that the foregoing is true and correct.

4 Executed on _____, 2003,

5 at _____, _____.

6

7

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10 _____

11 SIGNATURE OF THE WITNESS

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1 STATE OF CALIFORNIA) ss:
 2 COUNTY OF SAN FRANCISCO)
 3
 4 I, JO ANN BRUSCELLA, CSR No. 4295, do hereby
 5 certify:
 6
 7 That the foregoing deposition testimony of
 8 NANCY RUTH MYERS, Ed.D, was taken before me at the
 9 time and place therein set forth, at which time the
 10 witness was placed under oath and was affirmed by me
 11 to tell the truth, the whole truth, and nothing but
 12 the truth; that the testimony of the witness and all
 13 objections made by counsel at the time of the
 14 examination were recorded stenographically by me,
 15 and were thereafter transcribed under my direction
 16 and supervision, and that the foregoing pages
 17 contain a full, true and accurate record of all
 18 proceedings and testimony to the best of my skill
 19 and ability.
 20 I further certify that I am neither counsel for
 21 any party to said action, nor am I related to any
 22 party to said action, nor am I in any way interested
 23 in the outcome thereof.
 24
 25

1 IN WITNESS WHEREOF, I have subscribed my name
 2 this 4th day of February, 2003.
 3
 4
 5
 6
 7 _____
 8 JO ANN BRUSCELLA, CSR No. 4295
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1 DEPOSITION EXHIBITS
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 8 2 E-mail dated 2/6/02 from Keeler 147
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