

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF SAN FRANCISCO

3 UNLIMITED JURISDICTION

4
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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 II

13 State Superintendent of Public)

14 Instruction, STATE DEPARTMENT OF)

15 EDUCATION, STATE BOARD OF EDUCATION,)

16 Defendants.)

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18
19 Continued deposition of NANCY RUTH
20 MYERS, Ed.D., at 275 Battery Street,
21 25th Floor, San Francisco, California,
22 commencing at 9:41 A.M., Thursday,
23 January 23, 2003, before Jo Ann
24 Bruscella, CSR No. 4295.

25 PAGES 170 - 370

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1 NANCY RUTH MYERS, Ed.D.,
 2 the witness, having been previously affirmed to tell
 3 the truth and nothing but the truth, testified
 4 further as follows:
 5
 6 EXAMINATION (CONTINUING)
 7 MR. SIMMONS:
 8 Q. Good morning, Dr. Myers.
 9 A. Good morning.
 10 Q. Just to take a quick moment to remind you
 11 that you are still under oath here today. 09:41 AM
 12 A. Okay.
 13 Shaun, could I clarify one of my answers
 14 from yesterday, having given it some thought?
 15 Q. Certainly.
 16 A. When we were talking about -- when I was 09:41 AM
 17 talking about the draft of the -- from the book, and
 18 I think the question was -- I was clarifying what
 19 draft I was talking about, the draft of the chapters
 20 versus the draft of the proposal. And I think you
 21 asked the question did I "rely" on that, I think was 09:41 AM
 22 what was asked, and I said I did rely on the draft
 23 of the proposal.
 24 Basically what I did was, I didn't really
 25 rely on it. I guess that wasn't appropriate. That

Page 175

1 wasn't what happened. It just so happened that 09:41 AM
 2 while I was working on that proposal, I was also
 3 starting this project. So the two were so closely
 4 related that, as I began to outline what I wanted to
 5 do for the book, that I thought was important for --
 6 to be included as part of the contents of the book, 09:42 AM
 7 it also were the kinds of things that I wanted
 8 for -- this information to gather for this project,
 9 for this report.
 10 So that basically is how those two things
 11 were related. In fact, the proposal for the book is 09:42 AM
 12 basically just bullet points. I have a copy so that
 13 you can have a copy of that. And basically the
 14 bullet points for that chapter are maintenance
 15 tracking systems, staff development, staff
 16 standards -- I'm sorry, state standards, and then in 09:42 AM
 17 the appendix -- it doesn't say it on here, but in
 18 the appendix one of the things would be facility
 19 checklists. So I really used this as an outline as
 20 I was working on the proposal, and it also became
 21 some of the pieces that I thought were critical. 09:43 AM
 22 Q. Can we have your copy of that marked as an
 23 exhibit?
 24 A. Sure.
 25 (Myers' Exhibit 3 was marked for

Page 176

1 identification.) 09:43 AM
 2 BY MR. SIMMONS:
 3 Q. Are there any other answers that you gave
 4 yesterday that you would like to clarify here now?
 5 A. No.
 6 Q. Did you discuss your deposition at all with 09:44 AM
 7 Mr. Eliasberg after we concluded the deposition
 8 yesterday?
 9 A. Yes.
 10 Q. What did you discuss?
 11 A. He asked me what I meant by "rely on" and 09:44 AM
 12 to clarify what I meant by that. And we talked
 13 about that, and I shared with him what I just shared
 14 with you.
 15 Q. Did you discuss anything else with
 16 Mr. Eliasberg? 09:44 AM
 17 A. No, we didn't.
 18 Q. I believe you have Exhibit 2, which is the
 19 smaller exhibit of the two. This is the e-mail
 20 survey that we were working with yesterday.
 21 A. Okay. 09:44 AM
 22 Q. I would like to just direct your attention
 23 to question five of the survey. And it says, "Are
 24 you aware of other states besides Maryland and West
 25 Virginia that have a very specific process for

Page 177

1 addressing maintenance and operations for all 09:45 AM
 2 schools in the state?" Why did you ask that
 3 question?
 4 A. What I was trying to find out in a quicker
 5 way was if people within the state knew of other
 6 states so that I could add them to my list of states 09:45 AM
 7 to investigate.
 8 Q. At the time that you sent out this
 9 question, were you aware of any other states besides
 10 Maryland and West Virginia that have a very specific
 11 process for addressing maintenance and operations 09:45 AM
 12 for all schools in the state?
 13 A. Those were the two that were most prominent
 14 in my memory.
 15 Q. What did you mean by the phrase "very
 16 specific process for addressing maintenance and 09:46 AM
 17 operations for all schools in the state"?
 18 A. Could they send me a list of this is what
 19 has to happen. This is the checklist. These are
 20 the deadlines. Basically the guidelines that the
 21 state followed working with the local districts. 09:46 AM
 22 Q. Did any of the respondents to your survey
 23 identify states, other than Maryland or West
 24 Virginia, as having a very specific process for
 25 addressing maintenance and operations for all

Page 178

1 schools in the state? 09:46 AM
 2 A. From my memory, most of them that responded
 3 that there were were relating to new facilities,
 4 with state funding for new facilities, and the
 5 requirement of putting a line item in the budget for
 6 continued maintenance and operations. For instance, 09:47 AM
 7 one person said Ohio does that, but then in further
 8 investigation, as I mentioned yesterday, Ohio really
 9 is addressing only new schools.
 10 Q. Can you recall any other specific states
 11 that you were made aware of by a respondent to your 09:47 AM
 12 survey as having a specific process for addressing
 13 maintenance and operations for all schools in the
 14 state?
 15 MR. ELIASBERG: Shaun, you mean only in
 16 response -- an e-mail response or any response she 09:47 AM
 17 received at all in the course of all of her work
 18 trying to gather information?
 19 MR. SIMMONS: It doesn't matter how they
 20 responded. Just someone who was responding to this
 21 survey. 09:47 AM
 22 MR. ELIASBERG: She already listed some of
 23 these states yesterday. Are you talking about
 24 states beyond what she listed yesterday?
 25 MR. SIMMONS: I don't think we dealt with

Page 179

1 this issue yesterday. 09:48 AM
 2 MR. ELIASBERG: Fair enough.
 3 THE WITNESS: Again, from conversations and
 4 personal contacts at some of the conferences, some
 5 states have parts of it. Kansas, for instance, does
 6 not have as specific a process. Basically what 09:48 AM
 7 colleagues would say to me, or write, whatever,
 8 would be, you know, you might want to check. They
 9 might. It was kind of that. It wasn't as much as
 10 we know, and that's how it is. For instance, the
 11 New Mexico one, I had both a personal contact with 09:48 AM
 12 them, as well as this e-mail. So I was able to
 13 clarify with them.
 14 BY MR. SIMMONS:
 15 Q. What states would you characterize as
 16 having a very specific process for addressing 09:49 AM
 17 maintenance and operations for all schools in the
 18 state?
 19 A. Probably Maryland and West Virginia are by
 20 far the leaders in having the most specific process.
 21 Other states require line items for maintenance and 09:49 AM
 22 operations, which certainly begins to speak to the
 23 issue. Others are now looking into that. For
 24 instance, Idaho is in the process of addressing
 25 that. New Jersey is looking into how do we better

Page 180

1 maintain our facilities. Massachusetts. 09:49 AM
 2 So I think the awareness level has been
 3 raised, but probably the two that have been doing it
 4 the longest and are being used more as the models
 5 would be West Virginia and Maryland.
 6 Q. So are West Virginia and Maryland the only 09:50 AM
 7 states that you would characterize as having a very
 8 specific process for addressing maintenance and
 9 operations for all schools in the state?
 10 A. I don't think I would only characterize
 11 them as the only ones. They are the two that I am 09:50 AM
 12 most familiar with. There may be others.
 13 Q. Are there any others that you can identify
 14 as you sit here today?
 15 A. No, not that are as specific as Maryland
 16 and West Virginia. 09:50 AM
 17 Q. By that I don't mean that are just
 18 necessarily as specific as Maryland and West
 19 Virginia, but states that you would nonetheless
 20 characterize as having a very specific process for
 21 addressing maintenance and operations for all 09:51 AM
 22 schools in the state.
 23 A. I think, as I stated earlier, there are
 24 some other states like New Jersey, for instance,
 25 Massachusetts, that are starting to develop those.

Page 181

1 Ohio knows they need to. So they are starting the 09:51 AM
 2 processes. But as I said, I don't think I would say
 3 they are very specific compared to the models in
 4 Maryland and West Virginia.
 5 Q. I understand that with respect to
 6 New Jersey and Massachusetts and Ohio you are 09:51 AM
 7 identifying those as states that are starting to
 8 look into developing a specific process for
 9 addressing maintenance and operations for all
 10 schools in the state.
 11 But what I just want to find out here, at 09:51 AM
 12 this point, is whether there is any other states
 13 than Maryland or West Virginia that you would
 14 characterize as having a very specific process for
 15 addressing maintenance and operations for all
 16 schools in the state. 09:52 AM
 17 A. At this point, those are the only two that
 18 I am most familiar with.
 19 Q. Are there states that you're not most
 20 familiar with that you would characterize as having
 21 a very specific process for addressing maintenance 09:52 AM
 22 and operations for all schools in the state?
 23 A. No. I'm not suggesting there aren't
 24 others, but I'm not as familiar with them.
 25 Q. So based on your present knowledge, the

Page 182

1 only two states that you would characterize as 09:52 AM
 2 having a very specific process for addressing
 3 maintenance and operation for all schools in the
 4 state are Maryland and West Virginia.
 5 A. Yes. Yes.
 6 Q. Do you know whether California has a very 09:53 AM
 7 specific process for addressing -- strike that.
 8 Have you made any effort to determine
 9 whether California has a very specific process for
 10 addressing maintenance and operations for all
 11 schools in the state? 09:53 AM
 12 A. The effort that I made again was through my
 13 conversations with Lettie Boggs and Rob Corley, and
 14 the information resources that I have read, as well
 15 as the depositions.
 16 Q. So other than the information that -- the 09:53 AM
 17 efforts that you identified for us yesterday, have
 18 you made any other efforts to determine whether
 19 California has a very specific process for
 20 addressing maintenance and operations for all
 21 schools in the state? 09:54 AM
 22 A. No, I have not.
 23 Q. If you will just turn to question six of
 24 your e-mail survey on Exhibit 2. You see the
 25 question there is: "It appears that some states

Page 183

1 have required local districts to put dollars in 09:54 AM
 2 budgets for maintenance, when new construction is
 3 occurring when the state is providing part of the
 4 money like Ohio."
 5 Are you aware of states that require
 6 dollars to be put in the budget for maintenance if 09:54 AM
 7 the state is not providing any money to the local
 8 district?"
 9 Did any respondents to your survey identify
 10 states that require dollars to be put into the
 11 budget for maintenance even if the state is not 09:55 AM
 12 providing any money to the local district?
 13 A. From my memory, typically the dollars, if
 14 they required it, it was because the state had given
 15 them money and so had kind of a hold on them, so to
 16 speak. Right now I can't think through my 09:55 AM
 17 conversations and/or through the e-mail survey of
 18 states that required local districts to do that if
 19 the state was not providing part of the money.
 20 Q. Outside of information you gathered from
 21 respondents to the survey, are you aware of any 09:56 AM
 22 states that require dollars to be put in the budget
 23 for maintenance even if the state is not providing
 24 any money to the local district?
 25 A. No, I'm not right now. I can't think of

Page 184

1 any. 09:56 AM
 2 Q. Just briefly I want to turn to Kansas that
 3 you had mentioned earlier.
 4 Correct me if I'm wrong, but Kansas I think
 5 you identified as a state that didn't have as
 6 specific a process for addressing maintenance and 09:56 AM
 7 operations, as do Maryland and West Virginia, but
 8 that the process was at least somewhat specific?
 9 Is that correct?
 10 A. No, it's not somewhat specific, but they
 11 are beginning to recognize the need to include 09:57 AM
 12 maintenance and operation as they address school
 13 facilities.
 14 Q. How are you aware that Kansas is beginning
 15 to recognize that need?
 16 A. Through a couple of avenues. Through 09:57 AM
 17 colleagues that I have worked with in Kansas, as
 18 well as through phone conversations.
 19 Q. Can you give me the names of the colleagues
 20 to which you're referring in that last answer?
 21 A. Gosh, I can tell you David is his first 09:58 AM
 22 name. No, I can't right now. I can't think of his
 23 last name.
 24 Q. I can give you some time, if you want. You
 25 mentioned that your understanding that Kansas was

Page 185

1 beginning to recognize a need for a specific process 09:58 AM
 2 for addressing maintenance and operations for all
 3 schools in their state was based in part on some
 4 phone conversations that you had.
 5 Can you identify the phone conversations
 6 for me? 09:59 AM
 7 A. Generally what would happen would be, if I
 8 talked with someone like David, who is in CEFPI, and
 9 he said, you know, you ought to talk to so-and-so
 10 and so-and-so, so then I would get on the phone and
 11 call various people. And I probably made fifty or 09:59 AM
 12 sixty calls like that. So to say specifically who
 13 it was would be very difficult for me to do that.
 14 Q. In question six of the survey you indicate
 15 that Ohio is a state that requires local districts
 16 to put dollars in budgets for maintenance and 09:59 AM
 17 operation when new construction is occurring and
 18 when the state is providing part of the money.
 19 Are you aware of states, other than Ohio,
 20 that require local districts to put dollars in
 21 budgets for maintenance, when new construction is 10:00 AM
 22 occurring and when the state is providing part of
 23 the money?
 24 A. Yes.
 25 Q. Which states?

Page 186

1 A. It's my recollection that most of the 10:00 AM
 2 states that have state assistance have a piece in
 3 that that requires some form of dollars be put in
 4 there for maintenance and operations. Again, for
 5 instance, West Virginia. They don't require it.
 6 But as I stated yesterday, they look at that before 10:00 AM
 7 they give them additional assistance.
 8 Q. What amount of money, if you know, does
 9 Ohio require a local district to put in its budget
 10 for maintenance, when new construction is occurring
 11 and when Ohio is providing part of the money? 10:01 AM
 12 A. I don't remember. I know I remember it was
 13 in the average, but I don't remember the exact
 14 number.
 15 Q. When you say, "in the average," do what
 16 average are you referring to? 10:01 AM
 17 A. There are some standards, if you will,
 18 nationally as to dollars that are appropriate for
 19 new facilities to put in there for maintenance and
 20 operations.
 21 Q. What is that average, if you know? 10:01 AM
 22 A. One and a half to four percent.
 23 Q. Now, you identified West Virginia as a
 24 state where putting dollars in a district's budget
 25 for maintenance, when new construction is occurring

1 in the state, is not a requirement; is that correct? 10:02 AM
 2 A. In West Virginia it is not a requirement.
 3 No, it is not a requirement.
 4 Q. Are there states, other than Ohio, where
 5 putting dollars in budgets for maintenance, when new
 6 construction is occurring and the state is providing 10:02 AM
 7 part of the money, is required?
 8 MR. ELIASBERG: Asked and answered.
 9 THE WITNESS: Most of the states that have
 10 state assistance may not have a formal requirement.
 11 But like West Virginia, they look at that before 10:03 AM
 12 they give them assistance.
 13 BY MR. SIMMONS:
 14 Q. Can you identify any states that make it a
 15 formal requirement?
 16 A. I know that California with the state 10:03 AM
 17 assistance has a line item.
 18 Q. Can you identify states where although it
 19 might not necessarily be a strict requirement that
 20 the dollars are put in budget for maintenance, when
 21 new construction is occurring and the state is 10:03 AM
 22 providing part of the money, but that nevertheless
 23 provide at least a guideline in that connection?
 24 A. No, I can't. In my research I wasn't
 25 looking that deeply into each of the states and

1 their specific requirements. 10:04 AM
 2 Q. What, if any, steps did you take to verify
 3 the information that you received in response to
 4 your e-mail survey?
 5 A. I'm not sure characterizing what I did as
 6 verifying, but again, because I work all over the 10:04 AM
 7 United States and do a lot of national
 8 presentations, at each of my presentations I would
 9 ask informally, towards the ends of the
 10 presentation, who is from what state, what do you do
 11 in your state, and that was another way for me 10:04 AM
 12 gathering information. Also, again, from my
 13 background knowledge of working in the industry for
 14 twenty-five years. And the people that responded
 15 are highly esteemed colleagues that I trusted and
 16 knew they knew. 10:05 AM
 17 Q. Just returning to question six real quickly
 18 on your e-mail survey. Can you just tell me why you
 19 asked that question there?
 20 A. Again, I wanted to see if there was any
 21 correlation to state assistance and maintenance and 10:05 AM
 22 operations budget locally.
 23 Q. Do you have an opinion as to whether local
 24 districts should be required to put dollars in
 25 budgets for maintenance, when new construction is

1 occurring in the state and the state is providing 10:06 AM
 2 part of the money?
 3 A. Yes.
 4 Q. What is that opinion?
 5 A. I believe there needed to be dollars
 6 allocated to keep up the facilities that are being 10:06 AM
 7 built.
 8 Q. Do you have an opinion as to how those
 9 dollars should had been allocated?
 10 MR. ELIASBERG: Objection, vague.
 11 MR. SIMMONS: I'm sorry. I will withdraw 10:06 AM
 12 that.
 13 Q. Now, as part of your multistate survey that
 14 you conducted in connection with your work on this
 15 case, I believe you testified that you had some
 16 telephone conversations; is that correct? 10:07 AM
 17 A. Yes, that's correct.
 18 Q. How many telephone conversations do you
 19 believe you had?
 20 A. I think I said yesterday a lot, and I would
 21 say a lot again today. 10:07 AM
 22 Q. Can you provide us with a roughly estimate?
 23 A. Again, as I said, I probably talked to
 24 fifty or sixty people back and forth from various
 25 states, and I know it was more than that.

1 Q. Can you recall any of the people who you 10:07 AM
 2 had telephone conversations with in connection with
 3 your multistate] Survey?
 4 A. Yes.
 5 Q. Who can you recall having a telephone
 6 conversation with in connection with your 10:08 AM
 7 multistate] Survey?
 8 A. One is John Willi.
 9 Q. Could you spell his name?
 10 A. W-I-L-L-I.
 11 Q. Anyone else that you can recall? 10:08 AM
 12 A. Peggy Kinsey, K-I-N-S-E-Y.
 13 Q. Anyone else that you can recall having a
 14 telephone conversation in connection with your
 15 multistate] Survey?
 16 A. David Anstrandt, A-N-S-T-R-A-N-D-T. 10:08 AM
 17 Q. Anyone else?
 18 A. Spencer Graves, G-R-A-V-E-S.
 19 Q. Anyone else?
 20 A. Robert Sands, S-A-N-D-S.
 21 Q. Anyone else? 10:09 AM
 22 A. Ron McKnight, M-C K-N-I-G-H-T.
 23 Q. Why don't you tell me all the people you
 24 can recall having a telephone conversation with in
 25 connection with your multistate] Survey.

Page 191

1 A. Steve Young, Y-O-U-N-G. Obviously Clacy 10:09 AM
 2 Williams. I won't say "obviously." Clacy Williams;
 3 Yale Stenzler; Sue Robertson, R-O-B-E-R-T-S-O-N.
 4 Those are ones I can think of right now. I'm kind
 5 of going around the country.
 6 Q. Who is John Willi? 10:10 AM
 7 A. He is an architect.
 8 Q. When did you speak with Mr. Willi?
 9 A. I don't have any idea. Sorry.
 10 Q. What do you recall speaking with Mr. Willi
 11 about? 10:10 AM
 12 A. He works in several states doing
 13 educational facilities, designing them. And so we
 14 talked about his knowledge of the states that he
 15 works in. He just gave me an overview.
 16 Q. What states did Mr. Willi provide you an 10:11 AM
 17 overview for?
 18 A. Ohio, Pennsylvania are two that we talked
 19 about specifically.
 20 Q. Can you recall any others?
 21 A. No. I can't right now. 10:11 AM
 22 Q. What overview did Mr. Willi provide you for
 23 Ohio?
 24 A. That money has to be put in there for new
 25 construction, but there isn't money available -- or

Page 192

1 there isn't a requirement for maintenance and 10:11 AM
 2 operations in existing budgets if it's not new
 3 construction.
 4 Q. Can you recall any other information that
 5 Mr. Willi provided to you as his overview -- as part
 6 of his overview of Ohio? 10:11 AM
 7 A. No.
 8 Q. What information can you recall Mr. Willi
 9 giving you concerning Pennsylvania, as part of the
 10 overview he provided you with?
 11 A. They provide state assistance in 10:12 AM
 12 Pennsylvania as well, but have no requirement for
 13 maintenance and operation as a line item for
 14 existing facilities.
 15 Q. What do you mean by Pennsylvania provides
 16 state assistance? 10:12 AM
 17 A. They give monies to local districts to
 18 build new buildings.
 19 Q. Does Mr. Willi work for a particular
 20 architectural firm?
 21 A. Yes. 10:12 AM
 22 Q. What is the name of the firm?
 23 A. Fanning Howey, F-A-N-N-Y, H-O-W-E-Y,
 24 Architects.
 25 Q. Who is --

Page 193

1 A. Excuse me. It's Fanning. I'm sorry. 10:13 AM
 2 F-A-N-N-I-N-G.
 3 Q. Thank you.
 4 A. I'm sorry.
 5 Q. Who is Peg Kinsey?
 6 A. She is an architect in Colorado. 10:13 AM
 7 Q. Do you recall when you spoke with
 8 Miss Kinsey?
 9 A. No, I don't.
 10 Q. What did you speak with Miss Kinsey about?
 11 A. Again, what is happening in Colorado. She 10:13 AM
 12 was one that had e-mailed me. So I wanted to follow
 13 up with her.
 14 Q. What did Miss Kinsey tell you about
 15 Colorado, if anything?
 16 A. She said that there were not requirements. 10:14 AM
 17 If the state didn't provide assistance, then there
 18 weren't requirements for maintenance and operations
 19 in that state.
 20 Q. Can you recall anything else that
 21 Miss Kinsey told you about Colorado's system? 10:14 AM
 22 A. We talked specifically about one district
 23 that was really in major disrepair, and they were
 24 going through a court battle, and she was sharing
 25 that with me.

Page 194

1 MR. ELIASBERG: Shaun, can we take a short 10:14 AM
 2 break?
 3 MR. SIMMONS: Yeah, sure.
 4 (There was a brief recess.)
 5 BY MR. SIMMONS:
 6 Q. Does Peggy Kinsey work for a particular 10:25 AM
 7 architectural firm?
 8 A. Yes, she does.
 9 Q. What's the name of the firm?
 10 A. I don't know.
 11 Q. Who is David Anstrandt? 10:25 AM
 12 A. He is a facilities person for a school
 13 district. The director of facilities, I believe is
 14 his title, but I'm not sure.
 15 Q. If you know, for what district he is the
 16 director of facilities? 10:26 AM
 17 A. Manheim Township School District.
 18 Q. What state is that in?
 19 A. In Pennsylvania.
 20 Q. Do you recall when you spoke with
 21 Mr. Anstrandt? 10:26 AM
 22 A. No, I don't.
 23 Q. Do you recall for about how long you spoke
 24 with Mr. Anstrandt?
 25 A. We spoke a number of times because I was

Page 195

1 doing a project for them, and our conversations were 10:26 AM
 2 always long. About lots of things.

3 Q. What information did Mr. Anstrandt give you
 4 that you found useful in connection with your
 5 multistate survey?

6 A. We talked about the Plan Con, which is what 10:26 AM
 7 it's called in Pennsylvania, their system for
 8 standards and how they would go about evaluating
 9 facilities.

10 Q. Anything else that you can recall from
 11 that -- strike that. 10:27 AM

12 Any other information that you can recall
 13 receiving from Mr. Anstrandt in connection with your
 14 multistate survey?

15 A. We talked about how they do their master
 16 planning for their maintenance and facilities. 10:27 AM

17 Q. You mentioned earlier -- was it Plan Con?

18 A. Plan Con. That's Pennsylvania's name for
 19 their state program.

20 Q. What does that program do, if anything?

21 A. I don't know all the details, but the 10:28 AM
 22 details I know are if you're going to do a school
 23 project in the state of Pennsylvania, you have to
 24 complete a form, I guess would be the best
 25 characterization of it, describing what you're

Page 196

1 doing, how much it's going to cost, what kind of 10:28 AM
 2 educational program you're going to offer. A number
 3 of things.

4 Q. You mentioned discussing some standards
 5 with Mr. Anstrandt. What standards did you discuss?

6 A. Pennsylvania standards that are part of the 10:28 AM
 7 Plan Con process.

8 Q. What is your understanding of those
 9 standards?

10 A. That they are minimum standards that have
 11 to be met in doing -- in designing new facilities in 10:28 AM
 12 the state of Pennsylvania.

13 Q. Who is Spencer Graves?

14 A. He is a facility planner for De Jong and
 15 Associates. D-E J-O-N-G.

16 Q. Do you recall when you spoke with 10:29 AM
 17 Mr. Graves in connection with your multistate
 18 survey?

19 A. We had a number of conversations over the
 20 nine, ten-month period.

21 Q. What information did you obtain from 10:29 AM
 22 Mr. Graves in connection with your multistate
 23 survey?

24 A. Spencer has the opportunity of working in
 25 several states, as well with school districts. And

Page 197

1 so we talked about the states that he was working 10:30 AM
 2 in, and how they dealt with maintenance, and how
 3 they looked at standards or did they have standards.

4 Q. What states did you discuss with
 5 Mr. Graves?

6 A. Ohio, Alabama, North Carolina, and I 10:30 AM
 7 believe we talked about Florida.

8 Q. What did you learn about Ohio from
 9 Mr. Graves?

10 A. That they do have -- they have a very
 11 specific set of standards. 10:30 AM

12 Q. What are those standards, if you know?

13 A. Well, it's about a 300-page manual.
 14 Everything from square foot per classroom to the
 15 kind of materials that have to go in every
 16 classroom. It's pretty descriptive. 10:31 AM

17 Q. Are those standards mandatory?

18 A. I'm not sure I would say mandatory. They
 19 are a requirement if you want the money from the
 20 state.

21 Q. So these standards that we have just been 10:31 AM
 22 discussing, are they directed toward new
 23 construction?

24 A. Yes, they are.

25 Q. Does Ohio have any standards directed

Page 198

1 toward maintenance of public school facilities? 10:31 AM
 2 A. No, they don't. I want to clarify that. I
 3 don't know that they do. We were speaking about
 4 new. So I don't know.

5 Q. By whom, if anyone, is Mr. Graves employed?

6 A. De Jong & Associates. 10:32 AM

7 Q. I'm sorry.

8 A. That's all right. D-E J-O-N-G.

9 Q. What information did you learn from
 10 Mr. Graves about Alabama in connection with your
 11 multistate survey? 10:32 AM

12 A. They have a system of guidelines within the
 13 state. That's all I remember right now.

14 Q. What is your understanding of the
 15 guidelines in Alabama?

16 A. I don't have a very good understanding 10:32 AM
 17 because we were talking generally.

18 Q. What is your general understanding of the
 19 guidelines in Alabama?

20 A. That the standards that we all typically
 21 use in the industry fit within the state with what 10:33 AM
 22 they are doing.

23 Q. When you say the standards that we all use
 24 in the industry, to what standards are you
 25 referring?

Page 199

1 A. The standards for square footage. Types of 10:33 AM
 2 spaces.
 3 Q. Do Alabama's guidelines address maintenance
 4 in public school facilities?
 5 A. I don't know. I don't know from that
 6 conversation. That's what you're asking? 10:34 AM
 7 Q. Do you know whether Alabama's guidelines
 8 address maintenance from any other source of
 9 information?
 10 A. I think it was one of the states that I
 11 talked with, but right now I can't think. No, I 10:34 AM
 12 don't know.
 13 Q. What did you learn from Mr. Graves about
 14 North Carolina?
 15 A. North Carolina has a set of standards that
 16 are, I believe, requirements for new construction 10:34 AM
 17 and a pretty specific process of what they have to
 18 go through to get approvals.
 19 Q. When you say, "approvals," are you
 20 referring to an approval for a specific construction
 21 project? 10:35 AM
 22 A. I am referring to state approvals for, yes,
 23 a specific construction project.
 24 Q. Do you know whether North Carolina has any
 25 standards for maintenance in public school

Page 200

1 facilities? 10:35 AM
 2 A. I think that's left up to the local
 3 district.
 4 Q. Are there any maintenance guidelines
 5 provided by the state of North Carolina?
 6 A. I don't know. 10:35 AM
 7 Q. What, if anything, can you recall learning
 8 from Mr. Graves about the state of Florida?
 9 A. Florida has a prototype school program that
 10 requires each district basically to build schools
 11 that are very much alike. 10:36 AM
 12 Q. Do you know whether the state of Florida
 13 has any standards relating to the maintenance of its
 14 public school facilities?
 15 A. Again, I think through their state
 16 assistance program they require dollars to be 10:36 AM
 17 included.
 18 Q. In that answer are you referring to dollars
 19 needing to be included for maintenance in a budget,
 20 when the state provides monies for new construction?
 21 A. Yes, that's what I'm speaking to, the 10:37 AM
 22 dollars for maintenance and operations to maintain
 23 those facilities that are being state funded.
 24 Q. Are you aware of any other guidelines in
 25 Florida that relate to the maintenance in public

Page 201

1 school facilities? 10:37 AM
 2 A. No, I am not.
 3 Q. Who is Robert Sands?
 4 A. He is the director of facilities for the
 5 Plano School District in Texas.
 6 Q. Can you recall when you spoke with 10:38 AM
 7 Mr. Sands in connection with your multistate survey?
 8 A. Again, a number of times over various
 9 occasions.
 10 Q. What information did you gather from
 11 Mr. Sands in connection with your multistate survey? 10:38 AM
 12 A. He shared with me the data system that they
 13 have created for Plano schools in tracking every one
 14 of their school facilities and the condition of each
 15 facility as one of the things we talked about, and
 16 he shared that with me. 10:38 AM
 17 Q. What else can you recall?
 18 A. He shared with me his master plan for
 19 facility, for the five-year plan; the facility
 20 checklist that they use.
 21 Q. What is your understanding of the data 10:39 AM
 22 system that is used for Plano schools?
 23 A. They are able to -- through an inventory
 24 system they are able to track basically every
 25 doorknob, every light, the kind of light that's in

Page 202

1 every school, when the light was changed, when the 10:39 AM
 2 filters were changed. Those kind of specific
 3 information about every one of the schools in Plano.
 4 Q. Are school districts in Texas required to
 5 have that kind of data system?
 6 A. No, they aren't. 10:39 AM
 7 Q. Are you aware of whether Texas has any
 8 standards relating to the maintenance of its public
 9 school facilities?
 10 A. I don't believe they have standards for
 11 maintenance for existing facilities. 10:40 AM
 12 Q. Do you know whether the state of Texas has
 13 standards for the maintenance of newly constructed
 14 facilities?
 15 A. Their funding mechanism is through a bond
 16 levy, and so I don't believe that the state is 10:40 AM
 17 involved in that.
 18 Q. When you say, "a bond levy," are you
 19 referring to local bond or a state bond?
 20 A. Local bonds.
 21 Q. Who is Ron McKnight? 10:41 AM
 22 A. He was the former facilities director for
 23 Ontario schools, the province of Ontario, Canada.
 24 Q. Do you recall when you spoke with
 25 Mr. McKnight in connection with your multistate

1 survey? 10:41 AM
 2 A. Again, a number of times over the course of
 3 the ten months.
 4 Q. What information do you recall obtaining
 5 from Mr. McKnight in connection with your multistate
 6 survey? 10:42 AM
 7 A. He shared with me what happens in Canada in
 8 terms of facility maintenance and how they put
 9 together master plans for the school district,
 10 school province.
 11 Q. Anything else you can recall -- 10:42 AM
 12 A. We talked about closing of schools,
 13 demographics.
 14 Q. What else, if anything, can you recall?
 15 A. How they went about doing facility
 16 assessments. 10:42 AM
 17 Q. Is that all you can recall from your
 18 conversations with Mr. McKnight?
 19 A. How they get dollars to fund their schools.
 20 Q. Can you remember any other information that
 21 you obtained from Mr. McKnight in connection with 10:43 AM
 22 your multistate survey?
 23 A. The organizational structure of Canada. We
 24 talked about that because it's quite different from
 25 the United States.

1 Q. Anything else? 10:43 AM
 2 A. No, that I can remember.
 3 Q. When you were talking about discussing
 4 facilities maintenance with Mr. McKnight in Canada,
 5 did you discuss other provinces than Ontario?
 6 A. We talked pretty specifically about Ontario 10:44 AM
 7 because it's a very, very large province, and the
 8 system is the same in Canada, with other provinces.
 9 Q. Does Ontario have standards for maintenance
 10 of public school facilities?
 11 A. They have minimum guidelines, and it's not 10:44 AM
 12 just public schools because parochial schools are
 13 under their jurisdiction as well.
 14 Q. Is compliance with the minimum guidelines
 15 mandatory?
 16 A. I would say, from his characterization, 10:45 AM
 17 highly recommended.
 18 Q. Can you tell me what you mean by "highly
 19 recommended"?
 20 A. They have to show they are good stewards of
 21 the money. And as they are looking at getting 10:45 AM
 22 additional funding for facilities, then the province
 23 looks at have you been spending money on
 24 maintenance.
 25 Q. What types or what areas are the minimum

1 guidelines addressed to? 10:46 AM
 2 A. I don't know. I can't think specifically
 3 of what they are right now.
 4 Q. Can you remember any general areas that
 5 those minimum guidelines are addressed to?
 6 A. One that I assume is in there, again, 10:46 AM
 7 because we are both in the industry -- you know,
 8 there is a lot of assumptions of understanding --
 9 that rest rooms have to work, have to be in good
 10 working condition, and health and safety codes are
 11 very typical, you know, meeting minimum standards 10:47 AM
 12 for that.
 13 Q. But those are assumptions that you are
 14 making?
 15 A. Yes.
 16 Q. What did you and Mr. McKnight discuss about 10:47 AM
 17 the funding of schools in Canada?
 18 A. My best recollection is that the funding
 19 comes from the government, the province, and there
 20 isn't a lot of involvement from the school district
 21 as to how much they are going to get. Basically 10:47 AM
 22 they are given X amount of dollars to operate the
 23 schools.
 24 Q. What did you discuss about the
 25 organizational structure of schools in Canada with

1 Mr. McKnight? 10:48 AM
 2 A. That there is quite a hierarchy.
 3 Q. Anything else about the organizational
 4 structure of schools in Canada that you discussed
 5 with Mr. McKnight?
 6 A. Not specifically that I remember. 10:48 AM
 7 Q. What is your understanding of the hierarchy
 8 that exists or that characterizes the organizational
 9 structure of schools in Canada?
 10 A. It's very strongly driven by government
 11 legislation, and the, quote, local control that -- 10:49 AM
 12 or even state control that we are familiar with is
 13 not there. It's not how they operate.
 14 Q. So it's actually the national government?
 15 A. It's more the national government.
 16 Q. Did you discuss whether there are any 10:49 AM
 17 deficiencies in that type of organizational
 18 structure with Mr. McKnight?
 19 A. I'm pretty sure we did.
 20 Q. Do you have your own opinion as to whether
 21 there are deficiencies in that type of 10:49 AM
 22 organizational structure that exists in Canada?
 23 A. Just from conversations with colleagues in
 24 Canada. I don't know firsthand, but just listening
 25 to my colleagues.

Page 207

1 Q. What kinds of information have you gathered 10:50 AM
 2 from listening to your colleagues?
 3 A. That they are very limited in any
 4 decision-making, planning, as we know it in the
 5 United States. Working with local districts in
 6 partnership with states doesn't occur at all. There 10:50 AM
 7 is very minimal planning that can happen in terms of
 8 new facilities.
 9 Q. Who is Steve Young?
 10 A. Steve Young is a facilities director in a
 11 school district in Washington. 10:51 AM
 12 Q. Do you know what school district?
 13 A. No, I don't.
 14 Q. Can you recall when you spoke with
 15 Mr. Young?
 16 A. Again, on a number of occasions. He is 10:51 AM
 17 currently the president of CEFPI this year. So we
 18 talk frequently.
 19 Q. Can you identify the number of times you
 20 spoke with Mr. Young in connection with your
 21 multistate survey? 10:51 AM
 22 A. No.
 23 Q. Can you recall what information you
 24 obtained from Mr. Young in connection with your
 25 multistate survey?

Page 208

1 A. We were talking mostly about an overview of 10:51 AM
 2 his knowledge because he has worked in several
 3 states, I believe, and what he knew of how they went
 4 about checking facility conditions and master
 5 planning.
 6 Q. Can you recall any specific states that you 10:52 AM
 7 discussed with Mr. Young?
 8 A. No, I can't. He just moved to Washington,
 9 so I can't remember where he was before.
 10 Q. Can you recall any specifics from the
 11 overview of his knowledge that he provided you with? 10:52 AM
 12 A. From my recollection, that his
 13 understanding of standards across the United States
 14 was pretty much similar to mine in that many states
 15 had standards or guidelines.
 16 Q. When you refer to standards or 10:53 AM
 17 guidelines -- well, what types of standards are you
 18 referring to there?
 19 A. Again, issues like size of classroom,
 20 number of square feet per student.
 21 Q. So would those be standards that typically 10:53 AM
 22 relate to the new construction of classrooms?
 23 A. Or renovation. Either one, usually.
 24 Q. What areas would the guidelines that you
 25 were speaking about address?

Page 209

1 A. The same as the standards. In some states 10:54 AM
 2 it's standards, and others it's guidelines.
 3 Q. Since we have been using this terminology,
 4 I better make sure we are both on the same page.
 5 My understanding of standard is that that's
 6 mandatory. Is that your understanding as well? 10:54 AM
 7 A. Yes, that's my understanding.
 8 Q. Whereas a guideline could be characterized
 9 as advisory; is that correct?
 10 A. Advisory, recommended.
 11 Q. Thank you. I think we are on the same 10:54 AM
 12 page. Who is Clacy Williams?
 13 A. He is the executive director of school
 14 facilities in the state of West Virginia.
 15 Q. How many telephone conversations can you
 16 recall having with Mr. Williams in connection with 10:55 AM
 17 your multistate survey?
 18 A. A number of conversations.
 19 Q. Is it possible to give a rough estimate?
 20 A. I would say up to ten over the nine,
 21 ten-month period as I was gathering data. 10:55 AM
 22 Q. What information were you able to gather
 23 from Mr. Williams in connection with your multistate
 24 survey?
 25 A. He provided me with --

Page 210

1 MR. ELIASBERG: Shaun, just to clarify, do 10:55 AM
 2 you mean solely through telephone conversations?
 3 MR. SIMMONS: You know, I suspect this is
 4 probably someone that you also had some face-to-face
 5 visits with. Why don't we limit it to telephone
 6 conversations for now. 10:56 AM
 7 Thank you, Peter.
 8 THE WITNESS: He provided an overview of
 9 what their state did.
 10 BY MR. SIMMONS:
 11 Q. When you say, "overview of what their state 10:56 AM
 12 did," did in terms of what?
 13 A. Addressing facility concerns in the state.
 14 Q. What can you recall from the overview that
 15 he provided you?
 16 A. That they do have state funding to local 10:56 AM
 17 districts.
 18 Q. What else can you recall from --
 19 A. They do inspections in local schools, and
 20 he talked about the facilities checklist they use.
 21 Q. Any other information that you can recall 10:57 AM
 22 gathering from Mr. Williams through telephone
 23 conversations?
 24 A. He provided a lot of information. I'm not
 25 sure if it was telephone, or when I visited, or

1 stuff he sent me. It's kind of hard to 10:57 AM
 2 differentiate the three.
 3 Q. Yeah, that's fair. Who is Yale Stenzler?
 4 A. He is the director of facilities, although
 5 I don't know his title exactly. I think Public
 6 Works is what it is in Maryland. He is the director 10:57 AM
 7 of that organization for facilities in the state of
 8 Maryland.
 9 Q. His work is done at the state level as
 10 opposed to the district level?
 11 A. Yes. 10:58 AM
 12 Q. How many times do you recall having spoken
 13 on the telephone with Mr. Stenzler?
 14 A. I'm not sure. I would be willing to guess
 15 six to eight times.
 16 Q. Did you also have face-to-face meetings 10:58 AM
 17 with Mr. Stenzler?
 18 A. Yes, I did.
 19 Q. What information can you recall receiving
 20 from Mr. Stenzler over the telephone?
 21 A. Our initial conversations were about, 10:58 AM
 22 again, what their process was in the state of
 23 Maryland, process in terms of new construction and
 24 existing construction, and knowing what the
 25 conditions were of the facilities. A pretty broad

1 overview. 10:59 AM
 2 Q. Who is Sue Robertson?
 3 A. Sue is a facility planner in North
 4 Carolina. She is also co-author of our book.
 5 Q. By whom, if anyone, is Miss Robertson
 6 employed? 10:59 AM
 7 A. It's called Planning Alliance.
 8 Q. What kind of business is Planning Alliance?
 9 A. Educational consulting with facilities.
 10 Q. What information can you recall receiving
 11 from Miss Robertson in connection with your 11:00 AM
 12 multistate survey?
 13 A. We talked about checklists, facility
 14 checklists. She, too, has worked in a number of
 15 states, and that was one of the areas that we
 16 discussed, what she had used in other states. 11:00 AM
 17 Q. Can you recall any specific states that you
 18 discussed with Miss Robertson in connection with
 19 your multistate survey?
 20 A. Washington, D.C., is one of them.
 21 Q. What other states can you recall? 11:00 AM
 22 A. Arizona, Ohio, North Carolina. Those are
 23 the ones I remember.
 24 Q. What information did you gather about
 25 Washington, D.C., from Miss Robertson?

1 A. The District's a mess. 11:01 AM
 2 Q. Is Washington, D.C., made up of just one
 3 school district?
 4 A. Yes, it is.
 5 Q. In what way is the District a mess?
 6 A. Going through no -- I'm sorry. No 11:01 AM
 7 stability in leadership within the District, both in
 8 terms of superintendent and board members.
 9 Q. Any other ways?
 10 A. Facilities were in pretty poor condition.
 11 I don't want to say pretty poor. Were in poor 11:02 AM
 12 condition for the most part. Not every facility,
 13 but certainly a lot of them. So much bureaucracy
 14 that it was hard to know who was in charge.
 15 Q. Did you discuss the existence, if any, of
 16 standards in Washington, D.C.? 11:02 AM
 17 A. That was one of the things Sue was
 18 establishing, was standards, trying to -- not
 19 necessarily just for the school district, but in
 20 order to have some equity across the District, they
 21 were applying some national standards within the 11:03 AM
 22 District.
 23 Q. Were those standards -- strike that.
 24 The standards that Miss Robertson was
 25 working with, were they directed to maintenance of

1 public school facilities? 11:03 AM
 2 A. Part of it was facility conditions.
 3 Q. What other areas did the standards address?
 4 A. Educational appropriateness of facilities;
 5 prioritizing which facilities needed dollars first.
 6 Q. Who did you have personal interviews in 11:04 AM
 7 connection with your multistate survey?
 8 MR. ELIASBERG: Shaun, just any
 9 face-to-face conversations as opposed to telephone
 10 conversations or e-mail?
 11 MR. SIMMONS: Yes. 11:04 AM
 12 THE WITNESS: We could go back through the
 13 list that I gave you earlier. A lot of those were
 14 both personal and phone conversations. I can't
 15 remember every name right now, but pretty much all
 16 of those people have been both personal and phone. 11:05 AM
 17 BY MR. SIMMONS:
 18 Q. Shall we run through those real quickly?
 19 A. Yes, that would be great.
 20 Q. John Willi?
 21 A. Yes. 11:05 AM
 22 Q. Peg Kinsey?
 23 A. Yes.
 24 Q. David Anstrand?
 25 A. Yes.

1 Q. Spencer Graves? 11:05 AM
 2 A. Yes.
 3 Q. Ron McKnight?
 4 A. No.
 5 Q. Steve Young?
 6 A. Yes. 11:05 AM
 7 Q. Clacy Williams?
 8 A. Yes.
 9 Q. Yale Stenzler?
 10 A. Yes.
 11 Q. Sue Robertson? 11:05 AM
 12 A. Yes. I would add for personal interviews,
 13 just ones I just remembered, Andrew Bunting,
 14 B-U-N-T-I-N-G.
 15 Q. Anyone else?
 16 A. Oh, golly. Our international organization 11:05 AM
 17 meeting was in October, and I probably talked to
 18 forty or fifty people there about this. So, you
 19 know.
 20 Q. Who is Andrew Bunting?
 21 A. He is an architect in Sidney, Australia. 11:06 AM
 22 Q. Is this the individual with whom you are
 23 providing assistance in his doctoral dissertation?
 24 A. Yes, and he provided me with assistance in
 25 what they do in Australia.

1 Q. By whom, if anyone, is Mr. Bunting 11:06 AM
 2 employed?
 3 A. I don't know the name of the architectural
 4 firm.
 5 Q. How do you know Mr. Bunting?
 6 A. He is a member of CEFPI and came to the 11:06 AM
 7 conference in October.
 8 Q. What information did you obtain from
 9 Mr. Bunting?
 10 A. Again, the system in -- he gave me an
 11 overview of the system in Australia and how schools 11:07 AM
 12 are funded.
 13 Q. What can you recall from the overview that
 14 Mr. Bunting provided you?
 15 A. It's primarily state. They don't call it
 16 state. I can't think what they call it. It's not 11:07 AM
 17 province. It's not regional. But they have a name
 18 for it, and it's organized differently by areas.
 19 And it's pretty much done by the government that
 20 gives them dollars, tells them what they can build,
 21 and where, and when. 11:08 AM
 22 Q. By "government," you mean something
 23 comparable in Australia to our state governments
 24 here in the United States?
 25 A. To national government.

1 MR. HAJELA: If it's important, I will fly 11:08 AM
 2 out there and depose him.
 3 BY MR. SIMMONS:
 4 Q. Did you discuss any standards that are in
 5 place in the Australian school system with
 6 Mr. Bunting? 11:08 AM
 7 A. Yes, we did.
 8 Q. What standards did you discuss?
 9 A. We talked about square footage per student,
 10 site requirements, as two examples of some of the
 11 things we discussed. 11:08 AM
 12 Q. Did you discuss any standards relating to
 13 maintenance of school facilities?
 14 A. I'm sure we did over several hours of
 15 conversation, because he gave -- he loves to talk,
 16 and he gave a great overview. 11:09 AM
 17 Q. Can you recall any specific standards
 18 relating to maintenance that he may have discussed?
 19 A. Since they have -- the one thing I remember
 20 is they have so many schools that are so small and
 21 in remote areas that it's hard to keep track of 11:09 AM
 22 where schools are. For instance, their high school
 23 kids may have to ride a bus an hour to an hour and a
 24 half to get to high school because they are so far
 25 away and in such remote areas.

1 Q. Outside of any discussions -- strike that. 11:09 AM
 2 Just in general are you aware of any
 3 standards relating to maintenance that are in place
 4 in the Australian school system?
 5 A. No, I'm not.
 6 Q. As part of your multistate survey, you 11:10 AM
 7 participated in some on-site inspections; is that
 8 correct?
 9 A. Yes, that is.
 10 Q. How many on-site inspections did you
 11 participate in in connection with your multistate 11:10 AM
 12 survey?
 13 A. Specifically I went to Maryland and to
 14 West Virginia for the specific purpose of looking at
 15 facilities, but I also did a number of others in
 16 conjunction with other reasons for going in other 11:10 AM
 17 areas.
 18 Q. Did you rely on any of the other on-site
 19 inspections in forming the basis of your opinions
 20 that are expressed in your expert report?
 21 A. I don't think I would characterize it as 11:11 AM
 22 rely on, but I certainly -- it became part of my
 23 background information, as I looked at facilities in
 24 other states and talked about issues.
 25 Q. How many on-site inspections did you

1 participate in the state of Maryland? 11:11 AM
 2 A. We went to three schools.
 3 Q. What schools?
 4 A. I don't know. I don't remember.
 5 Q. Who participated in those on-site
 6 inspections? 11:11 AM
 7 A. There were a number of people. I remember
 8 Dr. Stenzler went with me, and his state facilities
 9 inspection person, who was responsible for working
 10 with the local district, was along. And then there
 11 were people from the local district that 11:12 AM
 12 participated in the inspection in each case.
 13 Q. Do you recall the name of the state person
 14 that you identified?
 15 A. No, I don't.
 16 Q. Did that person attend all of the three 11:12 AM
 17 on-site inspections in Maryland that you attended?
 18 A. Yes.
 19 Q. Do you recall the names of the people from
 20 the local districts that were present at the on-site
 21 inspections that you attended? 11:13 AM
 22 A. No. It was different people at each
 23 school.
 24 Q. Can you recall the positions that those
 25 people from the local district had at the first

1 school you participated in an on-site inspection in 11:13 AM
 2 Maryland?
 3 A. I can't tell you specifically each school,
 4 but I can say for the most part it was the head
 5 custodian for the facility or the maintenance
 6 director. And I think I remember the maintenance 11:13 AM
 7 director for the district was with us for all three
 8 sites. I think he was.
 9 Q. So the schools at which you conducted or
 10 participated in the on-site inspection were all
 11 within the same district? 11:13 AM
 12 A. Yes, they were.
 13 Q. What district?
 14 A. In Baltimore.
 15 Q. Is it Baltimore Unified?
 16 A. I'm sorry, I don't know. 11:14 AM
 17 Q. The first inspection that you can recall
 18 doing or participating in in Maryland, what grade
 19 level was that school?
 20 A. It was an elementary school.
 21 Q. Was the on-site inspection of that 11:14 AM
 22 school -- strike that.
 23 I guess what I'm trying to find out is
 24 whether that on-site inspection that you
 25 participated in this school was planned as a normal

1 course of district business as opposed to something 11:15 AM
 2 that was done at a specific request of you.
 3 MR. ELIASBERG: Well, ambiguous, vague and
 4 calls for speculation. You can answer.
 5 THE WITNESS: No, it wasn't. This just
 6 happened to be the schools -- they have a rotating 11:15 AM
 7 schedule, and he just said, "You can go along with
 8 us." Normally Dr. Stenzler doesn't go, but he said,
 9 "You can go along with our inspection guy and see
 10 how we do this."
 11 BY MR. SIMMONS: 11:15 AM
 12 Q. Do you recall about how long the inspection
 13 at this first elementary school took?
 14 A. I believe we were there about two hours,
 15 but they do a lot of -- like they had a lot of
 16 information when they got there. "They," meaning 11:16 AM
 17 the state did, because they knew we were coming, or
 18 they were coming, and there was already their report
 19 given to them. So they were -- so we could do it
 20 rather quickly.
 21 Q. You identified a report as the type of 11:16 AM
 22 information that was provided to the folks from the
 23 state?
 24 A. Yes.
 25 Q. Can you describe that report for

1 ninety-three? 11:16 AM
 2 A. What I remember, because there were a
 3 number of reports, and I kind of get them mixed up,
 4 each year every school has to do an annual
 5 maintenance plan and report on how they are doing on
 6 all of the issues that are on the checklist. And so 11:16 AM
 7 then they follow up with this is how we corrected
 8 that issue. And so he had the paperwork from the
 9 last X number of years, and I don't know how many.
 10 And they were notified we are coming just to do the
 11 inspection, again, you know. And so they were 11:17 AM
 12 familiar with what they were going to be looking at,
 13 and the issues that they would be addressing.
 14 MR. ELIASBERG: Shaun, we have been going
 15 about an hour. Is this a decent time for a break?
 16 MR. SIMMONS: Yeah, this is fine. 11:17 AM
 17 (There was a brief recess.)
 18 MR. ELIASBERG: Shaun, do you have a sense
 19 of what your time line is? If you say, "I'm going
 20 to be done at" X, I'm not holding you to that. I
 21 just want to get a sense from you of where you think 11:38 AM
 22 you're going and what your time line is.
 23 MR. SIMMONS: Certainly, at the end of
 24 yesterday, I was hoping to be done by the end of
 25 today. I think there is still a chance I may go

1 into tomorrow a little bit, but I don't expect that 11:38 AM
 2 I would take up the entire three days. I mean, as
 3 far as anything more accurate than that, I'm sorry,
 4 I don't know that I can give anything more accurate
 5 than that.

6 MR. ELIASBERG: Okay. I just want to say, 11:38 AM
 7 it's your deposition. You can do it how you want.
 8 But we did agree to bring Nancy out here for three
 9 days. We have provided her. I think it's going
 10 unreasonably slowly. We have barely touched on
 11 what's in her expert report. I just want to state 11:39 AM
 12 for the record that I don't think time has been
 13 productively used, or certainly can be used much
 14 more efficiently than it is being used.

15 MR. SEFERIAN: I strongly disagree with
 16 that characterization of the deposition. I think 11:39 AM
 17 it's going as efficiently as it can be going, and
 18 the parties never agreed to limit the deposition to
 19 three days. That was the initial amount of days
 20 that was given to us by plaintiffs' counsel, and we
 21 are trying to conduct the depositions as 11:39 AM
 22 expeditiously as we can and still have them be as
 23 efficient as they need to be, especially in a
 24 deposition as important as this deposition. So
 25 those are the guidelines we are operating under.

1 MR. SIMMONS: I will concur with 11:39 AM
 2 Mr. Seferian. Unless anybody has anything else they
 3 want to say, shall we move on?

4 MR. ELIASBERG: Sure.

5 BY MR. SIMMONS:

6 Q. Did you discuss anything with Mr. Eliasberg 11:40 AM
 7 at the last break?

8 A. I don't remember.

9 Q. When we went on break we were discussing
 10 the on-site inspection of the first elementary
 11 school that you went to in Maryland. 11:40 AM

12 Can you give me an overview of what that
 13 on-site inspection process entailed?

14 A. We used the checklists that Maryland has
 15 established, and toured the facility looking at the
 16 various components from the checklist. 11:40 AM

17 Q. Did you do anything else that you can
 18 recall?

19 A. At the end of the tour, we all sat down and
 20 had a summary or briefing of this is what we think
 21 we saw. You know, this is what we are concerned 11:41 AM
 22 about. Just kind of an overview. When I say, "we,"
 23 I mean them, the state. I was just observing.

24 Q. What is your recollection of that meeting
 25 that occurred at the end of the on-site inspection

1 process? 11:41 AM

2 A. The state was very pleased with the
 3 condition of the facilities.

4 Q. What was the next school that you
 5 participated in on-site inspection with in Maryland?

6 A. It was a high school. 11:42 AM

7 Q. Who was present during that on-site
 8 inspection, or who participated in that on-site
 9 inspection?

10 A. Two of the people I remember are
 11 Dr. Stenzler and his inspection person from the 11:42 AM
 12 state.

13 Q. Do you recall the individuals from the high
 14 school participating in that inspection?

15 A. The principal I believe was part of that
 16 group. 11:42 AM

17 Q. Can you recall anyone else?

18 A. Someone from central office.

19 Q. What is central office?

20 A. Central office from Baltimore schools.

21 Q. How long did that on-site inspection last? 11:42 AM

22 A. My recollection is two or three hours,
 23 because we stayed there through lunch. We had lunch
 24 there as well.

25 Q. Can you provide me with an overview of what

1 that inspection process entailed? 11:43 AM

2 A. Again, they used their checklist and looked
 3 at areas within the school, identifying condition of
 4 facilities.

5 Q. Was the checklist that was used during the
 6 on-site inspection of the high school the same 11:43 AM
 7 checklist that was used in the on-site inspection of
 8 the elementary school? If you know.

9 A. It wasn't the same checklist, but was the
 10 same contents.

11 Q. So does Maryland have the same standard 11:44 AM
 12 form that it uses in connection with all of its
 13 on-site inspections?

14 A. Yes. But elementary facilities are
 15 different than high school facilities. So the
 16 checklist would be different. 11:44 AM

17 Q. So there is one checklist for elementary
 18 schools in Maryland; is that correct?

19 A. I'm not sure I would say -- characterize
 20 there is only one. From my memory -- and again,
 21 it's been a long time. I don't remember. I know 11:44 AM

22 elementary has one, and then there is additional
 23 things added for high school. Whether it's a
 24 totally separate checklist or all incorporated as
 25 one document, I don't remember.

1 Q. Is the same checklist used for all 11:44 AM
2 elementary schools in Maryland?

3 A. I only -- it's my assumption that, yes, it
4 is.

5 Q. What was the next school that you
6 participated in an on-site inspection? 11:45 AM

7 A. It was an elementary school.

8 Q. Who was present?

9 A. Dr. Stenzler and Mike or -- I think that
10 was his name, the guy from the state, or Mike may
11 have been the principal. I'm sorry. I don't 11:45 AM
12 remember.

13 Q. Were there representatives from the
14 elementary school that participated?

15 A. Yes. The principal participated and the
16 head custodian. 11:45 AM

17 Q. For how long did the on-site inspection
18 last?

19 A. Approximately two hours.

20 Q. Can you provide an overview of the on-site
21 inspection process that you participated in? 11:46 AM

22 A. Again, what they did was used their
23 checklist and investigate all the various areas
24 within the facility and rate them.

25 Q. I believe you also testified that you

1 attended some on-site inspections in the state of 11:46 AM
2 West Virginia; is that correct?

3 A. Yes, I did.

4 Q. For what schools were these on-site
5 inspections?

6 A. It was really one school. We talked 11:47 AM
7 about -- I looked at a number of others, but I
8 actually visited one school in the area.

9 Q. Do you recall the name of that school?

10 A. No, I don't.

11 Q. Do you recall the district in which that 11:47 AM
12 school was located?

13 A. No, I don't.

14 Q. When you say you visited -- you say you
15 visited one school, but that you looked at a number
16 of others? Is that correct? 11:47 AM

17 A. Yes, that's correct. I looked at the
18 paperwork from others.

19 Q. For how many other schools did you look at
20 paperwork?

21 A. I don't remember. Dr. Williams gave me 11:47 AM
22 files and said, "Here's some examples." So I looked
23 through those files.

24 Q. Can you estimate the number of schools?

25 A. No, I can't.

1 Q. Do you have a sense as to whether it was 11:47 AM
2 more than five schools?

3 A. I'm sure it was more than five. He gave me
4 a handful, so . . .

5 Q. Do you know whether it was more than ten?

6 A. No, I don't. 11:48 AM

7 Q. What did the paperwork that you looked at
8 in connection with these schools entail?

9 A. It was a lot of things. One of the things
10 that was in their file was the inspection that had
11 been done previously, the ratings. That was one the 11:48 AM
12 things in every file, data about each of the schools
13 in that particular district.

14 Q. What kinds of data?

15 A. Square footage, when the building was
16 built, as examples of -- name of the school. 11:48 AM

17 Q. What grade level was the school that you
18 participated in an on-site inspection with?

19 A. It was a high school.

20 Q. Who participated in that inspection?

21 A. Dr. Williams and the principal. There were 11:49 AM
22 some other people, but I don't remember.

23 Q. Were they representatives of the high
24 school?

25 A. There was one representative from the

1 state, and the others were from the high school. 11:49 AM

2 Q. Now, in Maryland it sounded like there was
3 an inspector from the state that attended the
4 on-site inspections that you participated in; is
5 that correct?

6 A. That's correct. 11:49 AM

7 Q. Is that on-site inspection process usually
8 handled by an inspector from the state in Maryland?

9 A. Yes, it is.

10 Q. Is that the same case with West Virginia?

11 A. Yes, it is. 11:50 AM

12 Q. So was Dr. Williams the inspector?

13 A. He was basically showing me how they did it
14 with their form. And so in that case I guess I
15 would characterize him as the inspector for that
16 facility. Normally he wouldn't be. 11:50 AM

17 Q. Did you make a special request to
18 Dr. Williams to take you on an on-site inspection?

19 A. Yes, I did.

20 Q. Can you give me a brief overview of what
21 the on-site inspection of this high school in 11:50 AM
22 West Virginia entailed?

23 A. Again, we looked at the systems within the
24 facility; the building floor plan; types of spaces.

25 Q. Did Dr. Williams use a checklist at all in

Page 231

1 connection with the inspection? 11:51 AM
 2 A. He referred to the checklist as we toured
 3 the facility.
 4 Q. Would you turn to the appendix to your
 5 expert report, which is marked as Exhibit 1?
 6 Have you had a chance to review it yet? 11:52 AM
 7 Can you tell me what the documents that are
 8 contained in the appendix to your expert report
 9 constitute?
 10 A. This is part of the information that is
 11 used in the state of West Virginia for a number of 11:53 AM
 12 areas as it relates to school facilities.
 13 Q. Do these represent all of the checklists
 14 that are used in West Virginia, if you know?
 15 A. I don't know. This certainly is a
 16 majority, I believe, but I can't -- wouldn't say 11:53 AM
 17 that there might not be another one.
 18 MR. REED: There seem to be a number of
 19 forms in the appendix. When you say "these" in your
 20 question, Shaun, are you referring to the entire
 21 document? 11:53 AM
 22 MR. SIMMONS: That is a good point.
 23 Q. Can you tell me what the first page in your
 24 appendix consists of?
 25 A. It's a Maintenance and Custodian Care Site

Page 232

1 Visit report. 11:54 AM
 2 Q. Was that document used in the course of the
 3 on-site inspection you participated in?
 4 A. It was used in the extent that we talked
 5 about how this would be used.
 6 Q. How would this document be used in an 11:54 AM
 7 on-site inspection?
 8 A. This would be what they would summarize the
 9 issues that need to be dealt with in that facility.
 10 Q. Now, there is one page there.
 11 Is that page related to any other pages in 11:54 AM
 12 your appendix, or is it at least the same -- what
 13 I'm trying to find out if is if there is more than
 14 one page to that first document, or is that document
 15 a whole document in and of itself.
 16 A. I'm not sure. 11:54 AM
 17 Q. If you turn the page, and on the back side
 18 of the first page, what is your understanding of
 19 that document?
 20 MR. ELIASBERG: I don't have a back side of
 21 the first page. 11:55 AM
 22 MR. REED: I don't either.
 23 MR. ELIASBERG: It wasn't double-sided
 24 copied.
 25 MR. SIMMONS: Off the record.

Page 233

1 (Discussion off the record.) 11:55 AM
 2 BY MR. SIMMONS:
 3 Q. You also indicated that you conducted
 4 extensive additional research in connection with
 5 your multistate survey.
 6 Can you identify for me the types of 11:55 AM
 7 research you conducted in connection with your
 8 multistate survey, other than the types that we
 9 already discussed?
 10 MR. ELIASBERG: Are you referring to her
 11 prior testimony or to a report? 11:56 AM
 12 BY MR. SIMMONS:
 13 Q. I'm sorry. You will notice that in
 14 paragraph 11 of your report, you mention that you
 15 used e-mails, short e-mail survey, phone
 16 conversation, personal interviews, visits to school 11:56 AM
 17 sites. I think those are the categories that we
 18 have discussed, as well as participating in on-site
 19 inspections. Then you mention extensive additional
 20 research.
 21 What do you mean by "extensive additional 11:56 AM
 22 research" there?
 23 A. I think probably I have given examples.
 24 But, for instance, things like the conversations at
 25 national presentations, I deliberately made sure

Page 234

1 that I talked with people from all over the country 11:56 AM
 2 about their standards and facility issues, just a
 3 broad overview. Again, through my daily work. I
 4 did this every day. I made sure that I was looking
 5 for specific things related to what was going on in
 6 other states more directly than what I probably 11:57 AM
 7 would do on a daily basis without doing both this
 8 project as well as the book.
 9 Q. Any other types of research?
 10 A. Going on line; looking through National
 11 Clearinghouse, which is a very good source for 11:57 AM
 12 facilities information; talking with editors of
 13 magazines, the facilities magazines. Those would be
 14 some of the things I remember in addition to what I
 15 have already talked about.
 16 Q. Did anyone assist you in drafting the 11:57 AM
 17 report that has been designated as your expert
 18 report in this litigation?
 19 A. No.
 20 Q. Did anyone ever provide comments to you on
 21 your report? 11:58 AM
 22 A. Yes.
 23 Q. Who did so?
 24 A. Mr. Eliasberg.
 25 Q. Anyone else?

Page 235

1 A. I can't remember anybody else. 11:58 AM
 2 Q. What comments can you recall Mr. Eliasberg
 3 providing in connection with your expert report?
 4 A. That I had a lot of information, and some
 5 of it was interesting, but possibly not relevant.
 6 Q. With respect to what information did 11:58 AM
 7 Mr. Eliasberg make that comment, if you can recall?
 8 A. I think in my report I had talked about how
 9 important I thought facilities were in terms of
 10 meeting the needs of students, and that really
 11 wasn't part of what I was charged to opine on. 11:59 AM
 12 Q. Any other types of information that you can
 13 recall Mr. Eliasberg commenting that they might not
 14 have been relevant to your task in this litigation?
 15 A. That's the main one I remember.
 16 Q. What other types of comments did you 11:59 AM
 17 receive from Mr. Eliasberg in connection with your
 18 expert report?
 19 A. Asking me to clarify what some of the
 20 educational jargonese ment.
 21 Q. Do you recall any specific jargon you were 12:00 PM
 22 asked to clarify?
 23 A. Ongoing maintenance, deferred maintenance,
 24 standards, were some examples I remember just that
 25 we talked about.

Page 236

1 Q. Can you recall any other comments that 12:00 PM
 2 Mr. Eliasberg provided with you in connection with
 3 your expert -- provided to you in connection with
 4 your expert report?
 5 A. Making sure that I was citing things
 6 appropriately, a conversation with someone versus 12:01 PM
 7 reading it. To make certain I was doing that
 8 appropriately.
 9 Q. Did anyone ever edit your report for you?
 10 MR. ELIASBERG: Objection, vague.
 11 THE WITNESS: Do you mean did Mr. Eliasberg 12:01 PM
 12 help with looking at what I had written and giving
 13 me suggestions on adding words or making it clearer?
 14 BY MR. SIMMONS:
 15 Q. Mr. Eliasberg or anyone else.
 16 A. We worked on, I would guess, what I would 12:01 PM
 17 call wordsmithing. So if that's editing, we did do
 18 that.
 19 Q. Did anyone else provide assistance in
 20 editing your report?
 21 A. Not that I recall. 12:01 PM
 22 Q. What edits do you recall that reflect
 23 wordsmithing?
 24 A. I can't think right now of a specific
 25 example.

Page 237

1 Q. Why don't we turn to paragraph 15 of your 12:02 PM
 2 report, please, Dr. Myers. In the first sentence of
 3 that paragraph you say that, "Those states that
 4 appear to be most successful in providing an
 5 equitable long-term solution for maintenance have
 6 one major thing in common. There is a partnership 12:02 PM
 7 between the state and the local district with
 8 clearly defined standards and operating procedures."
 9 What do you mean by "partnership," as you
 10 used it there?
 11 A. What I am suggesting is that there are 12:02 PM
 12 standards that have been established in cooperation
 13 with the local districts and the state, and together
 14 they have identified how they are going to go about
 15 doing the inspection process, for instance. And
 16 it's not -- the partnership is, it's not the state 12:03 PM
 17 doing it, necessarily. It could be the local entity
 18 doing it, but the state is working with them. So
 19 there is a relationship that's been developed
 20 between the state and the local entities.
 21 Q. When you refer to a "relationship," do you 12:03 PM
 22 mean a particular organizational structure that
 23 facilitates a partnership?
 24 A. In most cases, yes, it's an organizational
 25 structure that is defined.

Page 238

1 Q. And the organizational structure has to be 12:03 PM
 2 defined through clearly defined standards and
 3 operating procedures; is that correct?
 4 A. That could be part of it, yes. That's one
 5 part of it.
 6 Q. In your opinion, are the clearly defined 12:04 PM
 7 standards a necessary part of it?
 8 A. I believe there need to be some standards
 9 that are defined.
 10 Q. Do you have an opinion as to what would
 11 constitute an optimal organizational structure for 12:04 PM
 12 use in California in managing public school
 13 facilities?
 14 A. No, I do not.
 15 Q. Do you have an opinion as to what a
 16 minimally necessary organizational structure for the 12:04 PM
 17 maintenance of public school facilities in
 18 California should look like?
 19 A. I think there are a number of things that
 20 need to be included. How it looks would be a
 21 decision that would have to be made through the 12:05 PM
 22 state of California.
 23 Q. Do you have any opinion as to how the
 24 organizational structure in California ought to look
 25 in terms of managing its public school facilities?

Page 239

1 A. No, I do not. 12:05 PM
 2 Q. Do you have any opinion as to what clearly
 3 defined standards California should include in any
 4 organizational structure for the purposes of
 5 maintaining public school facilities?
 6 A. If you're asking me do I think through the 12:05 PM
 7 partnership that there can be some standards
 8 defined, I do believe there can be standards defined
 9 through the partnership.
 10 Q. I guess on top of that I'm asking whether
 11 there is specific standards that you have in mind 12:06 PM
 12 that you believe are necessary in the state of
 13 California.
 14 MR. ELIASBERG: Standards as to what? We
 15 have talked about standards in a number of different
 16 ways here. That term is pretty vague in this 12:06 PM
 17 context.
 18 BY MR. SIMMONS:
 19 Q. I guess I'm trying to use it broadly. You
 20 mention in your report that there needs to be -- if
 21 you will turn to paragraph 15. You mention clearly 12:06 PM
 22 defined standards in that first sentence.
 23 What types of standards are you referring
 24 to there?
 25 A. One example of a standard that I am

Page 240

1 referring to would be that rest rooms are in working 12:06 PM
 2 condition.
 3 Q. Is that a standard that you believe should
 4 be required in the state of California?
 5 A. Yes, it is.
 6 Q. What I would like to do is outline all of 12:07 PM
 7 the clearly defined standards that you feel ought to
 8 be in place in California.
 9 A. I don't think I can do that without
 10 information, looking at some of the checklists in
 11 the information I have provided. I mean, there are 12:07 PM
 12 some obvious things, but to go through an entire
 13 checklist would be impossible for me.
 14 Q. What standards can you think of, as you sit
 15 here today, that you think ought to be a part of
 16 California systems for maintaining public school 12:07 PM
 17 facilities?
 18 A. An obvious one, again, is meeting all the
 19 requirements for ADA accessibility requirements.
 20 Q. Just before we move on, what documents
 21 would you need to look at to determine all of the 12:08 PM
 22 clearly defined standards that you think ought to be
 23 in place in California?
 24 A. What I would refer to would be go back and
 25 look at checklists from other states and compare the

Page 241

1 similarities. Since that was not part of my expert 12:08 PM
 2 report, it wasn't my position to put together a
 3 checklist. And I am providing information just
 4 based on my knowledge of working in the industry for
 5 twenty-plus years, and I'm sure I would miss some if
 6 I just pulled some out of the air. 12:08 PM
 7 Q. Do I understand you correctly that you
 8 don't intend to offer an opinion that any particular
 9 standards are necessary in -- strike that.
 10 Do I understand you correctly that you
 11 don't intend to offer an opinion as to what clearly 12:09 PM
 12 defined standards are necessary in California for
 13 the maintenance of public school facilities?
 14 A. For the purpose of this report, no, I will
 15 not be giving specific standards.
 16 Q. Your opinion is just that in general there 12:09 PM
 17 should be standards.
 18 A. I think there should be specific standards.
 19 Not general standards, but I think there is enough
 20 data from which the state of California can hold the
 21 standards that they feel. And there is enough 12:09 PM
 22 consistency across the country.
 23 Q. But you are not prepared here today to
 24 offer a specific set of standards that you feel are
 25 necessary --

Page 242

1 A. No, I'm not. 12:09 PM
 2 Q. -- in California?
 3 And you don't intend to offer such an
 4 opinion at trial; is that correct?
 5 A. That's correct.
 6 Q. Do you intend to offer at trial a 12:10 PM
 7 particular organizational structure -- strike that.
 8 Do you intend to offer at trial an opinion
 9 as to a particular organizational structure that
 10 California ought to have in place in terms of
 11 maintaining its public school facilities? 12:10 PM
 12 A. No, I don't. However, one of my
 13 recommendations is that there needs to be a
 14 partnership. But how that is established, I don't
 15 intend to suggest a particular method.
 16 Q. What is it about a partnership that -- 12:10 PM
 17 strike that.
 18 MR. ELIASBERG: Can I have one second,
 19 Shaun? Literally ten seconds.
 20 (There was a brief recess.)
 21 BY MR. SIMMONS: 12:11 PM
 22 Q. Dr. Myers, do you have an opinion as to any
 23 specific type of partnership that the state of
 24 California ought to put in place to maintain its
 25 public school facilities?

Page 243

1 MR. ELIASBERG: Objection, vague. 12:12 PM
 2 THE WITNESS: No, I do not.
 3 BY MR. SIMMONS:
 4 Q. So is the extent of your opinion that you
 5 intend to offer in this case solely that there --
 6 only that there ought to be a partnership in 12:12 PM
 7 California?
 8 A. No.
 9 Q. What else does your opinion, in terms of a
 10 partnership, entail with respect to California?
 11 A. As I said in my report, that my 12:12 PM
 12 investigation suggests that those that are most
 13 successful in providing equitable long-term
 14 solutions for facility maintenance have one major
 15 thing in common, and that is a state and local
 16 partnership. 12:12 PM
 17 Q. So you think California needs to have in
 18 place a state and local partnership.
 19 A. If they want to be -- that seems to be one
 20 of the things that makes states successful. And I'm
 21 not suggesting that's the only thing, but that 12:13 PM
 22 certainly would be one thing.
 23 Q. Do you intend to offer an opinion at trial
 24 that the state of California must have a partnership
 25 between the state and local districts?

Page 244

1 A. I will only be suggesting that in my 12:13 PM
 2 investigation, in looking at other states, that was
 3 a critical component. It wasn't a critical
 4 component. I'm sorry. It was a common thing that
 5 happened. I'm not sure I would characterize it as
 6 "a critical component." 12:13 PM
 7 Q. Is it possible for a state to have a
 8 sufficient program for maintaining its public school
 9 facilities without including a partnership as part
 10 of that program?
 11 MR. ELIASBERG: Objection, incomplete, 12:14 PM
 12 inappropriate hypothetical.
 13 THE WITNESS: Again, from my experience and
 14 my investigation, those schools that appeared to be
 15 most successful had that partnership.
 16 BY MR. SIMMONS: 12:14 PM
 17 Q. Do you intend to offer an opinion that a
 18 partnership, as you define it, is necessary to an
 19 adequate system for maintaining public school
 20 facilities?
 21 MR. ELIASBERG: Objection, vague and 12:14 PM
 22 ambiguous.
 23 THE WITNESS: I don't understand your
 24 question.
 25 BY MR. SIMMONS:

Page 245

1 Q. I guess what I'm -- you seem to have an 12:14 PM
 2 opinion that -- you seem to have an opinion that
 3 there are some states out there that appear to be
 4 more successful in managing -- in maintaining their
 5 public school facilities; is that correct?
 6 A. I'm sorry. I don't understand. Would you 12:15 PM
 7 ask it again?
 8 Q. Maybe it will help if you look at paragraph
 9 15 of your report. It seems to me that you have an
 10 opinion that there appears to be some states -- or
 11 there are some states that appear to be most 12:15 PM
 12 successful in providing an equitable long-term
 13 solution for facility maintenance; is that correct?
 14 A. Yes.
 15 Q. And then you also offer an opinion that
 16 those states have one thing in common; that there is 12:15 PM
 17 a partnership between the state and local district
 18 with very clearly defined standards and operating
 19 procedures.
 20 MR. ELIASBERG: Objection, misstates the
 21 contents of her report. 12:15 PM
 22 MR. SIMMONS: Could you read that back?
 23 I'm sorry. I didn't intend to do that, but maybe I
 24 did.
 25 (The reporter read the pending question.)

Page 246

1 MR. ELIASBERG: Same objection. 12:16 PM
 2 MR. SIMMONS: I forget where I'm going with
 3 that question.
 4 Q. What I want to determine is whether you
 5 think that -- do you intend to offer an opinion that
 6 it is necessary to have a partnership before a state 12:16 PM
 7 -- strike that.
 8 Do you intend to offer an opinion that it
 9 is necessary that there be a partnership between the
 10 state and local district with very clearly defined
 11 standards and operating procedures in order for a 12:16 PM
 12 state to provide an equitable long-term solution for
 13 facility maintenance?
 14 A. The opinion that I will provide will be
 15 that is one of the pieces -- that is one of the
 16 things that you need. That alone won't necessarily 12:16 PM
 17 provide that, but that is certainly one piece of
 18 what needs to happen from my investigation.
 19 Q. Why don't you tell me a little bit more
 20 about what this partnership entails.
 21 MR. ELIASBERG: Vague as to "this 12:17 PM
 22 partnership."
 23 BY MR. SIMMONS:
 24 Q. How does California go about establishing a
 25 partnership?

Page 247

1 MR. ELIASBERG: Objection, calls for 12:17 PM
 2 speculation.
 3 THE WITNESS: It would be difficult for me
 4 to answer that because there are other pieces that
 5 need to be included in that, and I would assume that
 6 that would be all of the organizational structure 12:17 PM
 7 that would be established. So what comes first?
 8 Those would be some of the questions that would have
 9 to be answered, as you look at a number of things
 10 that need to be included
 11 BY MR. SIMMONS: 12:18 PM
 12 Q. Am I correct, though, that you also don't
 13 have an opinion as to what the organizational
 14 structure ought to look like in California, in terms
 15 of the system, to maintain public school facilities?
 16 A. I don't believe that there is one structure 12:18 PM
 17 that has to be the structure to make it work. I
 18 think there are a number of ways that it can work,
 19 and that's up to California to decide what would
 20 work for them.
 21 Q. What types of organizational structures are 12:18 PM
 22 available to California to choose from?
 23 A. There are a number of models. For
 24 instance, whether you do local, regional, state
 25 organizations, whether you just do state and local

Page 248

1 organizational structures. Those are two that I can 12:18 PM
 2 think of right away that could be addressed.
 3 Q. If California chose to use a local,
 4 regional, and state organizational structure, what
 5 would that look like, in your opinion?
 6 A. I don't know because I'm not familiar 12:19 PM
 7 enough with -- I know there are a lot of schools in
 8 California. And how they are organized and where
 9 you would locate regional offices, that's not in my
 10 expertise.
 11 Q. Do you have an opinion as to what 12:19 PM
 12 responsibilities those different entities would have
 13 in connection with maintaining public school
 14 facilities?
 15 MR. ELIASBERG: Objection, vague and
 16 compound. 12:19 PM
 17 MR. SIMMONS: I will rephrase.
 18 Q. What I'm trying to find out is, let's
 19 assume that California adopts a local, regional, and
 20 state organizational structure for dealing with
 21 maintaining public school facilities. 12:19 PM
 22 What would the -- what, if anything, would
 23 the local bodies be responsible for?
 24 MR. ELIASBERG: Objection, improper
 25 hypothetical, and assumes facts.

Page 249

1 THE WITNESS: Again, it would depend on how 12:20 PM
 2 they organized their structure. One example would
 3 be if they chose to put together a facilities
 4 checklist, you know, they would have to decide who's
 5 going to deal with that. It's specifically related
 6 to how California chooses to do it. 12:20 PM
 7 BY MR. SIMMONS:
 8 Q. Do you have any opinion as to what clearly
 9 defined operating procedures ought to be put in
 10 place in California in terms of its system to
 11 maintain public school facilities? 12:20 PM
 12 MR. ELIASBERG: I'm sorry. Could you read
 13 the question back?
 14 (The reporter read the pending question.)
 15 MR. ELIASBERG: Objection to the extent it
 16 calls for a legal conclusion. 12:21 PM
 17 THE WITNESS: I guess I don't understand
 18 what you're asking me to tell you.
 19 BY MR. SIMMONS:
 20 Q. One thing that I gather from your report is
 21 that you think that a state and local district need 12:21 PM
 22 to have clearly defined operating procedures.
 23 Is that correct?
 24 A. That's correct.
 25 Q. What clearly defined operating procedures

Page 250

1 must the state and local district have? 12:21 PM
 2 MR. ELIASBERG: Objection to the extent it
 3 calls for a legal conclusion.
 4 THE WITNESS: An example of what I am
 5 speaking of in terms of clearly defined operating
 6 procedures, one example would be in their 12:21 PM
 7 determination of how often they needed to do
 8 inspections, and when would they then follow up, how
 9 would they follow up. It's those kinds of
 10 procedures that need to be defined so everybody
 11 knows what it is they are doing. 12:22 PM
 12 BY MR. SIMMONS:
 13 Q. Do you intend to offer an opinion as to
 14 what clearly defined operating procedures California
 15 ought to implement in the event plaintiffs succeed
 16 in this case? 12:22 PM
 17 A. No, I do not.
 18 Q. Why is it that you feel a state and local
 19 district need to have very clearly defined operating
 20 procedures?
 21 A. Again, from my investigation, those states 12:22 PM
 22 that knew what the rules were, and everybody was
 23 clear about those rules, made it more successful in
 24 terms of following the rules as they worked through
 25 their plans.

Page 251

1 Q. Are there any other reasons? 12:23 PM
 2 A. I'm sure there are other reasons, but that
 3 certainly would be a primary one.
 4 Q. Can you think of any other reasons, as you
 5 sit here today?
 6 A. Again, using some of the models from the 12:23 PM
 7 successful -- of the states that have been
 8 successful. There are operating procedures that
 9 seem to be a part of that success.
 10 Q. Are there any other reasons that you can
 11 think of, as you sit here today? 12:23 PM
 12 A. Not right now.
 13 Q. You feel it's necessary that there be a
 14 partnership between a state and its local districts
 15 in terms of having a system for dealing with
 16 maintenance of public school facilities; is that 12:24 PM
 17 correct?
 18 MR. ELIASBERG: Objection, vague and
 19 ambiguous.
 20 THE WITNESS: I was talking about a
 21 solution for a facility maintenance, not a system. 12:24 PM
 22 I don't believe I said "system."
 23 BY MR. SIMMONS:
 24 Q. Okay. Is a partnership necessary for a
 25 solution?

Page 252

1 A. Again, I believe that's one of the factors 12:24 PM
 2 that needs to be considered.
 3 Q. But are you -- you say it's one of the
 4 factors that needs to be considered. But my
 5 question is a little different. I'm asking you is
 6 that partnership necessary. 12:25 PM
 7 Is that a necessary component, or are there
 8 other avenues?
 9 MR. ELIASBERG: Objection to the extent
 10 it's asking for a legal conclusion.
 11 THE WITNESS: Again, from my investigation, 12:25 PM
 12 those states that were successful had the
 13 partnership. I don't know if there are other
 14 avenues.
 15 BY MR. SIMMONS:
 16 Q. In that first sentence you say that, "Those 12:25 PM
 17 states that appear to be most successful in
 18 providing an equitable long-term solution for
 19 facility maintenance have one major thing in
 20 common."
 21 What states are you referring to in that 12:26 PM
 22 sentence?
 23 A. Most specifically the two states would be
 24 West Virginia and Maryland.
 25 Q. Are you referring to any other states in a

Page 253

1 more general manner in that sentence? 12:26 PM
 2 A. Again, from my background information, in
 3 talking with people from other states, that seemed
 4 to be a common thing, a common theme.
 5 Q. Are there any other states in the nation
 6 that you would characterize as appearing to be most 12:26 PM
 7 successful in providing an equitable long-term
 8 solution for facility maintenance?
 9 A. The two that provide the model the best
 10 from my research would be the ones that I have
 11 mentioned. 12:27 PM
 12 Q. Which are West Virginia and Maryland; is
 13 that correct?
 14 A. Yes, that's correct.
 15 Q. I just want to be clear about, are there
 16 any other states that you would characterize as 12:27 PM
 17 being most successful in providing an equitable
 18 long-term solution for facility maintenance?
 19 A. I think other states are components, but
 20 Maryland and West Virginia probably have the most
 21 components. For instance, Ohio has components of 12:27 PM
 22 state partnerships, local partnerships, as do other
 23 states.
 24 Q. Tell me if I'm wrong. The way I read that
 25 sentence is that you're not necessarily talking

Page 254

1 about components of the facility program. You're 12:27 PM
 2 talking about just in general whether those states
 3 have a -- what appears to be a success in providing
 4 an equitable long-term solution for facility
 5 maintenance.
 6 MR. ELIASBERG: Objection, compound. 12:28 PM
 7 THE WITNESS: I guess I don't understand
 8 the question. I'm sorry.
 9 BY MR. SIMMONS:
 10 Q. I understand that you have identified some
 11 states like Ohio as having some components of a 12:28 PM
 12 successful program.
 13 What I'm trying to find out is, just what
 14 states do you consider successful in providing an
 15 equitable long-term solution for facility
 16 maintenance? 12:28 PM
 17 MR. ELIASBERG: Objection, compound and
 18 misstates her prior testimony.
 19 BY MR. SIMMONS:
 20 Q. I will strike that.
 21 What states do you contend appear to be 12:28 PM
 22 most successful in providing an equitable long-term
 23 solution for facility maintenance?
 24 MR. ELIASBERG: Asked and answered.
 25 THE WITNESS: Maryland and West Virginia.

1 BY MR. SIMMONS: 12:28 PM
 2 Q. Are there any others?
 3 MR. ELIASBERG: Objection, ambiguous.
 4 BY MR. SIMMONS:
 5 Q. Are there any other states that appear to
 6 be -- that appear to you to be most successful in 12:29 PM
 7 providing an equitable long-term solution for
 8 facility maintenance?
 9 A. I think there are other states that are
 10 working on that and are successful.
 11 Q. What states are those? 12:29 PM
 12 A. One of them I would suggest would be
 13 Pennsylvania. Another one would be Ohio. Another
 14 one would be Indiana. Again, looking at all the
 15 components that make facilities maintained, there
 16 are a lot of states that have pieces of those 12:29 PM
 17 components.
 18 MR. ELIASBERG: Shaun, it's about 12.30.
 19 Do you have a few more minutes, or do you want to
 20 wrap up now?
 21 MR. SIMMONS: No. That's fine. Actually, 12:29 PM
 22 this is a fine point to break.
 23 (A lunch recess was taken from 12:30 P.M. to
 24 1:54 P.M.)
 25

1 EXAMINATION (CONTINUING)
 2 BY MR. SIMMONS: 01:54 PM
 3 Q. Welcome back, Dr. Myers.
 4 A. Thank you.
 5 Q. Did you discuss your deposition with anyone
 6 at all over the break?
 7 A. No. 01:54 PM
 8 Q. Did you discuss anything related to this
 9 case over the break?
 10 A. The only thing we talked about is what if
 11 we don't get done in three days.
 12 Q. What did you discuss in that connection? 01:54 PM
 13 A. That we just wait and see.
 14 Q. All right. Before we took our break, you
 15 had identified some states for us to which you felt
 16 were most successful in providing an equitable
 17 long-term solution for facility maintenance, and 01:55 PM
 18 then some others that I think you identified as
 19 successful, although perhaps not on the same level
 20 as Maryland and West Virginia. Yesterday we talked
 21 a little bit about Maryland.
 22 What I would like to know is, what forms 01:55 PM
 23 the basis of your opinion that West Virginia appears
 24 to be a state most successful in providing an
 25 equitable long-term solution for facility

1 maintenance?
 2 MR. ELIASBERG: Objection, ambiguous. 01:55 PM
 3 BY MR. SIMMONS:
 4 Q. Do you understand the question?
 5 A. No, I don't understand.
 6 Q. What leads you to characterize West
 7 Virginia as a state that is most successful in 01:55 PM
 8 providing an equitable long-term solution for
 9 facility maintenance?
 10 A. I think one of the things that allows me to
 11 say that is, they have a system in place throughout
 12 the state so that those districts that have a more 01:56 PM
 13 difficult time accomplishing that task, the task of
 14 facility upkeep, there is a system there to help
 15 them. And as you look across the state, that the
 16 system helps all districts equally with the same
 17 process. 01:56 PM
 18 Q. Is there anything else that leads you to
 19 characterize West Virginia as a state that appears
 20 to be most successful in providing an equitable
 21 long-term solution for facility maintenance?
 22 A. Another reason is, I believe -- or I have 01:57 PM
 23 opined in the expert report that I think there are
 24 some components that provide the opportunity for
 25 states to do more than a good job of keeping

1 facilities in good repair, and West Virginia has the
 2 components that I am suggesting are important to 01:57 PM
 3 allow that to happen.
 4 Q. Have you made any effort to determine the
 5 condition of school facilities -- public school
 6 facilities in West Virginia?
 7 MR. ELIASBERG: Are you talking about 01:57 PM
 8 beyond what she has already talked about? I want to
 9 know if you're talking about new things or going
 10 over new ground.
 11 MR. SIMMONS: Certainly, I'm not entirely
 12 sure what we have covered in this area. 01:58 PM
 13 THE WITNESS: Yes, I have, to answer the
 14 question. Yes, I have made an effort
 15 BY MR. SIMMONS:
 16 Q. What effort did you make?
 17 A. The number of phone calls that I had with 01:58 PM
 18 Dr. Williams, discussing school facilities in the
 19 state, as one of the examples.
 20 Q. Anything else?
 21 A. The on-site visit, both, again, with
 22 Dr. Williams, as well as visiting one of the 01:58 PM
 23 schools.
 24 Q. Did you visit a different school than the
 25 school for which you participated in an on-site

1 visit?
 2 A. We did what I call windshield tours of 01:58 PM
 3 several schools in the area due to our limitation in
 4 time.
 5 Q. About how many schools do you think you
 6 were able to do a windshield tour of?
 7 A. Probably we did it a couple of different 01:59 PM
 8 times. So probably five or six.
 9 Q. What's involved in a windshield tour?
 10 A. We drove by the school, went around the
 11 school. Dr. Williams talked about the school. You
 12 know, the condition of the school; some of the 01:59 PM
 13 square footage issues; program issues.
 14 Q. What did Dr. Williams tell you about the
 15 condition of public school facilities in West
 16 Virginia?
 17 A. That they are getting better, much better. 01:59 PM
 18 Q. Did he tell you anything else about the
 19 condition of public school facilities in West
 20 Virginia?
 21 A. He stated that historically West Virginia
 22 has been considered one of the states that hasn't -- 02:00 PM
 23 doesn't have very good facilities. But since they
 24 have been able to have a process in place and allow
 25 that process to work over a period of time, that the

1 schools are definitely improving. But it takes time
 2 and money for them to do this. 02:00 PM
 3 Q. Other than what you have already identified
 4 for us, have you undertaken any other efforts to
 5 determine the condition of school facilities in West
 6 Virginia?
 7 A. I spoke with another facility planner who 02:00 PM
 8 has done quite a bit of work in the state of West
 9 Virginia.
 10 Q. Who is that?
 11 A. Dr. Roy Blizzard, B-L-I-Z-Z-A-R-D.
 12 Q. By whom, if anyone, is Dr. Blizzard 02:00 PM
 13 employed?
 14 A. He is currently an educational consultant.
 15 He is a retired facility planner from a school
 16 district in West Virginia, but I don't know.
 17 Q. What did Dr. Blizzard tell you about the 02:01 PM
 18 condition of school facilities in West Virginia?
 19 A. That the facilities are improving, are
 20 continuing to improve, now that they are getting
 21 help.
 22 Q. Did you make any effort to verify the 02:01 PM
 23 accuracy of what Dr. Blizzard told you in connection
 24 with the condition of school facilities in West
 25 Virginia?

1 A. I would guess my verification, again, comes
 2 from my background knowledge of having worked with 02:01 PM
 3 Dr. Blizzard and been involved in CEFPI for the last
 4 twenty-plus years.
 5 Q. Anything else?
 6 A. Not that I can think of right now.
 7 Q. Did you make any effort to verify the 02:01 PM
 8 accuracy of the information that Dr. Williams
 9 provided you in connection with the condition of
 10 public school facilities in West Virginia?
 11 A. Other than what I previously stated, I
 12 again looked at some of the files, in his office, of 02:02 PM
 13 some of the schools.
 14 Q. I believe Pennsylvania was a state that you
 15 identified as being successful, albeit not one of
 16 the state's most successful, in providing an
 17 equitable long-term solution for facility 02:02 PM
 18 maintenance; is that correct?
 19 A. It's one of the states that has some of the
 20 components of a successful school, yes.
 21 Q. Did you make any effort to ascertain the
 22 condition of public school facilities in 02:03 PM
 23 Pennsylvania?
 24 A. Yes, I did.
 25 Q. What did you do?

1 A. I talked with Brad Furey, F-U-R-E-Y, who
 2 had been the director of school facilities for a 02:03 PM
 3 number of years in the state of Pennsylvania, had
 4 just retired.
 5 Q. Did you do anything else?
 6 A. I also had personal contacts and phone
 7 conversations with Ed Kirkbride, K-I-R-K-B-R-I-D-E, 02:03 PM
 8 who is an educational facilities consultant and
 9 architect who does a lot of work in the state of
 10 Pennsylvania.
 11 Q. Anything else?
 12 A. I also had conversations with David 02:03 PM
 13 Anstrand, the facilities director at Manheim
 14 Township School District.
 15 Q. Did you visit any schools in Pennsylvania?
 16 A. Yes, I did.
 17 Q. What schools? 02:04 PM
 18 A. All of the schools in Manheim Township.
 19 Q. How many schools are in Manheim Township?
 20 A. Eleven or twelve. I'm not certain right
 21 now.
 22 Q. Do you know how many public schools there 02:04 PM
 23 are in total in Pennsylvania?
 24 A. No, I do not.
 25 Q. What did Brad Furey tell you about the

1 condition of the school facilities in Pennsylvania?
 2 A. That once -- he was the brain child of Plan 02:04 PM
 3 Con in Pennsylvania. And once that program had been
 4 implemented, they finally have a way to help schools
 5 to improve in the state.
 6 Q. Did he tell you anything else about the
 7 condition of facilities in Pennsylvania -- public 02:05 PM
 8 school facilities in Pennsylvania?
 9 A. Well, it was his opinion that they
 10 certainly have improved. But again, it's a long
 11 process to bring all the facilities up to
 12 present-day codes. 02:05 PM
 13 Q. Did you do anything to verify the accuracy
 14 of the information you received from Mr. Furey in
 15 terms of the condition of public school facilities
 16 in Pennsylvania?
 17 A. To verify the accuracy of what he told me? 02:05 PM
 18 Again, having worked with other colleagues in
 19 Pennsylvania, and seeing schools in Pennsylvania, I
 20 would believe what he said was true.
 21 Q. What did Mr. Kirkbride tell you about the
 22 condition of public school facilities in 02:06 PM
 23 Pennsylvania?
 24 A. That Plan Con has helped give them some
 25 teeth, so to speak, in assuring that facilities are

1 getting some attention by the local districts.
 2 Q. Did he tell you anything about the actual 02:06 PM
 3 condition of facilities -- of public school
 4 facilities in Pennsylvania?
 5 A. We talked a lot about process and about
 6 their standards, and about budgets, and those kind
 7 of issues. 02:06 PM
 8 Q. Do you recall any information that
 9 Mr. Kirkbride gave you about the condition, the
 10 physical condition, of public school facilities in
 11 Pennsylvania?
 12 A. The only thing I can remember is that he 02:07 PM
 13 showed me some of the Plan Con studies from other
 14 districts.
 15 Q. Which districts?
 16 A. I don't remember.
 17 Q. Did you do anything to verify the accuracy 02:07 PM
 18 of the information you received from Mr. Kirkbride?
 19 A. No, other than these were state reports
 20 that were filed. So I would assume they would have
 21 to be accurate, if they were filed with the state.
 22 Q. What, if anything, is your understanding of 02:07 PM
 23 the condition of the school facilities, public
 24 school facilities, in Ohio?
 25 A. They are getting better.

1 Q. Did you make any effort to ascertain the
 2 condition of public school facilities in Ohio? 02:08 PM
 3 A. Yes.
 4 Q. What did you do?
 5 A. I have had the opportunity to work in Ohio
 6 and be familiar with the process that they use and
 7 the historical data that was gathered for the 02:08 PM
 8 lawsuit.
 9 Q. Have you ever visited any schools in Ohio?
 10 A. Yes, I have.
 11 Q. Did you visit any schools in Ohio in
 12 connection with your work on this case? 02:08 PM
 13 A. Not solely in connection with this work,
 14 but as a facilities person I am always interested in
 15 this issue.
 16 Q. So did you visit schools in Ohio during the
 17 same time frame that you were doing your work in 02:09 PM
 18 connection with the case?
 19 A. Yes.
 20 Q. What schools did you visit?
 21 A. Portsmouth city schools,
 22 P-O-R-T-S-M-O-U-T-H. 02:09 PM
 23 Q. Any other schools?
 24 MR. ELIASBERG: You're talking solely
 25 contemporaneous with her preparing this report

1 rather than the whole time.
 2 MR. SIMMONS: Yes. Thank you. 02:09 PM
 3 THE WITNESS: That's the only school
 4 district during the period of this report, although
 5 I visited a lot of other schools in Ohio.
 6 BY MR. SIMMONS:
 7 Q. So do you feel comfortable giving an 02:09 PM
 8 opinion about the physical condition of public
 9 school facilities in Ohio?
 10 MR. ELIASBERG: Objection, vague.
 11 THE WITNESS: I guess my opinion would be
 12 based on the data from the court case in terms of 02:10 PM
 13 the amount of dollars that needed to -- the billions
 14 of dollars that needed to be spent in Ohio over a
 15 ten-year period, and then seeing those facilities
 16 firsthand, and seeing the changes that are occurring
 17 in the state, watching that evolution of growth and 02:10 PM
 18 change.
 19 BY MR. SIMMONS:
 20 Q. Have you ever conducted a survey of the
 21 physical condition of public school facilities in
 22 Ohio? 02:10 PM
 23 A. I haven't personally.
 24 Q. Have you ever reviewed any surveys?
 25 A. I reviewed the Ohio survey that was

1 completed.

2 Q. Does that survey have a title? 02:11 PM

3 A. I don't know what it is.

4 Q. Do you know when the survey was conducted?

5 A. Several years ago. It was the beginning of

6 the court case. It was commissioned by the state.

7 Q. Did you take any steps to verify the 02:11 PM

8 accuracy of that survey?

9 A. No, I didn't.

10 Q. Have you ever conducted a survey of the

11 condition of public school facilities in

12 Pennsylvania? 02:11 PM

13 A. No, I personally haven't.

14 Q. Have you ever read such a survey?

15 A. I read some of the master plans at --

16 again, through the Plan Con process. That's part of

17 the requirement of Plan Con, is to do the facility 02:11 PM

18 conditions of schools.

19 Q. Have you ever read any other survey that --

20 strike that.

21 Have you ever conducted a survey of the

22 physical condition of school facilities in West 02:12 PM

23 Virginia?

24 A. No, I have not.

25 Q. Have you ever read such a survey?

1 A. Again, some of it's through Dr. Blizzard

2 and Dr. Williams. Some of the information that they 02:12 PM

3 have gathered over the years, especially

4 Dr. Williams, had to have it for the legislature.

5 Q. Do you consider that information you're

6 referring to to be a survey of the physical

7 condition of public school facilities in West 02:12 PM

8 Virginia?

9 A. That's what it was. I mean, that's what I

10 assumed it to be. It talked about facilities and

11 the condition of the facilities. So I define a

12 survey of the facilities a condition report of those 02:12 PM

13 facilities.

14 Q. Did you make any effort to verify the

15 accuracy of the information that you just identified

16 as a survey?

17 A. Again, it was my assumption, since it was 02:13 PM

18 presented to the legislature, that it would be

19 accurate.

20 Q. I think the last state that you identified

21 as being successful in providing an equitable

22 long-term solution for facility maintenance was 02:13 PM

23 Indiana; is that correct?

24 A. Yes. It has some of the components.

25 Q. Have you ever conducted a survey to

1 ascertain the physical condition of school

2 facilities in Indiana? 02:13 PM

3 A. Yes.

4 Q. When did you do that?

5 A. I have been doing it with specific school

6 districts in Indiana over the last twenty years.

7 Q. What process did you use to conduct the 02:14 PM

8 survey, if any?

9 A. Various processes. There wasn't one

10 specific one. One example would be in doing master

11 planning, doing the physical facility condition

12 checklist, discussing the educational opportunities 02:14 PM

13 or lack of, as well as the physical conditions that

14 needed to be corrected in facilities.

15 Q. Have you ever established a particular

16 protocol to be used in surveying the physical

17 condition of school facilities in Indiana? 02:14 PM

18 A. I have several protocols, depending on what

19 specifically we are looking for.

20 Q. About how many schools do you believe that

21 you have surveyed the physical condition of in

22 Indiana? 02:15 PM

23 A. Well, we have a ninety-three school

24 districts, or ninety two. Ninety two or

25 ninety-three school districts, and I probably worked

1 in forty or forty-five of them directly, and know of

2 others. 02:15 PM

3 Q. How long did it take you to accomplish the

4 survey we have been speaking about?

5 MR. ELIASBERG: Asked and answered.

6 THE WITNESS: The survey itself, going into

7 a particular school building, could take anywhere 02:15 PM

8 from one day to five days.

9 BY MR. SIMMONS:

10 Q. I thought you had conducted a survey of the

11 physical condition of public school facilities in

12 Indiana. 02:15 PM

13 Am I incorrect about that?

14 A. I am talking about -- yes, I did conduct a

15 survey of some of the school districts in the state

16 of Indiana. To clarify, what I was speaking about

17 was, yes, I have done surveys of school buildings in 02:16 PM

18 school districts in the state of Indiana. Probably

19 more than forty. I have not done personally a

20 statewide facility survey of all of the school

21 districts in the state of Indiana.

22 Q. How, if at all, is a partnership, as you 02:16 PM

23 define it, evidenced in New Mexico?

24 A. My understanding is there is a partnership

25 between the state and the local entities, which is a

Page 271

1 combination of they have established standards.
 2 They have published an inspection process. 02:17 PM
 3 Q. Any other ways in which a partnership is
 4 evidenced in the state of New Mexico?
 5 A. That's what I know specifically. I'm not
 6 sure -- I know their funding is part of that
 7 equation, but I am not exactly certain how that 02:17 PM
 8 works.
 9 Q. What inspection process is in place in the
 10 state of New Mexico, if you know?
 11 A. The state has just established an ongoing
 12 process of inspecting all of the facilities in the 02:18 PM
 13 state, working with the local districts.
 14 Q. Who conducts the inspections?
 15 A. The local oversight committee does. The
 16 local con -- district does, and then it has
 17 oversight by the state. 02:18 PM
 18 Q. For how long has this inspection process
 19 been in place?
 20 A. Not very long. I would speculate a couple
 21 of years, maybe.
 22 Q. Who is on the local oversight committee 02:18 PM
 23 that you have identified?
 24 A. I don't know.
 25 Q. Do you have an opinion as to whether

Page 272

1 California should adopt the inspection process used
 2 in New Mexico, as you have just defined it? 02:19 PM
 3 A. The opinion that I have is that part of the
 4 components of successful maintenance, is to have an
 5 inspection process. There are a lot of models for
 6 inspection. So as to which model they choose to use
 7 would be totally up to the state. 02:19 PM
 8 Q. Are there any minimum requirements that you
 9 would have for an inspection process to be used by a
 10 state government in inspecting its public school
 11 facilities?
 12 MR. ELIASBERG: Objection, vague and 02:19 PM
 13 ambiguous.
 14 THE WITNESS: Again, I think there are some
 15 obvious ones based on my experience for the last
 16 twenty-plus years. One of the things, as an
 17 example, one would be that rest rooms are in working 02:20 PM
 18 condition. Handicapped accessibility codes are
 19 being met would be another example.
 20 BY MR. SIMMONS:
 21 Q. Are you aware of any states that use an
 22 inspection process similar to that of New Mexico? 02:20 PM
 23 A. Most of the states use a similar process
 24 because there are a lot of similarities with the
 25 kinds of things you're going to be inspecting in a

Page 273

1 facility. Now, how they rank them may be different.
 2 Q. What other states would you characterize as 02:20 PM
 3 having an inspection process in order to that of New
 4 Mexico?
 5 A. It would be hard for me to say that all of
 6 the states that have inspection processes probably
 7 are similar. As to exactly what those are, I 02:21 PM
 8 couldn't tell you, but they are similar because
 9 there are similar things that you look for in every
 10 building.
 11 Q. What states have an inspection process, to
 12 your knowledge? 02:21 PM
 13 A. West Virginia, Maryland, Arizona.
 14 Obviously New Mexico. Those are ones I can think of
 15 right now.
 16 Q. What does Arizona's inspection process
 17 entail, if you know? 02:22 PM
 18 A. I don't know. I just know that that's part
 19 of the process.
 20 Q. Do you have any understanding as to how
 21 Arizona's inspection process is conducted?
 22 A. I know it starts with the state. It's an 02:22 PM
 23 establishment of guidelines working with the local
 24 districts. It's, again, a state and local
 25 partnership.

Page 274

1 Q. So the state establishes guidelines for the
 2 inspection process in Arizona? 02:22 PM
 3 A. I don't know if it's guidelines. Possibly
 4 standards. This is relatively new for the state of
 5 Arizona.
 6 Q. Who is responsible for conducting the
 7 inspections that occur in Arizona, if you know? 02:22 PM
 8 A. I don't know.
 9 Q. How often do the inspections occur in
 10 Arizona, if you know?
 11 A. I don't know.
 12 Q. You also mentioned that New Mexico has some 02:23 PM
 13 standards in place that evidence a partnership
 14 between the state and local districts.
 15 To what standards were you referring?
 16 MR. ELIASBERG: Objection. I believe it
 17 misstates the prior testimony. 02:23 PM
 18 THE WITNESS: If we define standards as
 19 things like square foot per student, air quality,
 20 there are those kinds of standards. Accessibility
 21 codes could be a standard.
 22 BY MR. SIMMONS: 02:24 PM
 23 Q. As you sit here today, do you know whether
 24 those standards that you have just identified are in
 25 place in New Mexico?

1 A. I don't know specifically, no.
 2 Q. If you will turn to paragraph 15 of your 02:24 PM
 3 report. I think you will see in -- I believe it's
 4 the second sentence. You say that, "For instance,
 5 in New Mexico, when a school district is receiving
 6 state or local funding to assist with a facility
 7 project that is either" new or -- "either a new or a 02:24 PM
 8 renovated facility, guidelines have been established
 9 to include ongoing maintenance and operations of
 10 those facilities, and those dollars must be included
 11 within the facility project."

12 How does that process that you just -- that 02:24 PM
 13 is just identified there in paragraph 15 evidence a
 14 partnership between the state and local districts in
 15 New Mexico?

16 A. Because the guidelines that have been
 17 established were established with the two entities 02:25 PM
 18 working together. It wasn't done just by the state,
 19 as they began to look at what needs to go into
 20 establishing those guidelines.

21 Q. Do you know what the guidelines that you
 22 identify there in paragraph 15 say with respect to 02:25 PM
 23 the amount of dollars that must be included within a
 24 facility project to cover ongoing maintenance and
 25 operations of the facilities?

1 A. Well, again, according to Richard's e-mail,
 2 2.4 percent of the budgeted funds of new 02:25 PM
 3 construction has to go to M&O, to maintenance and
 4 operations.

5 Q. When you say, "Richard's e-mail," are you
 6 referring to --

7 A. I'm sorry. The e-mail. 02:25 PM

8 Q. Exhibit 2.

9 A. Exhibit 2, right. That was one of the
 10 e-mail surveys and that happens to be the New Mexico
 11 e-mail survey from Mr. Herrera, who is the
 12 facilities director. 02:26 PM

13 Q. If you know, what does Mr. Herrera mean by
 14 budgeted funds in that answer under question No. 3?

15 A. In the amount of money available through
 16 the general fund. Then 2.4 percent of that money
 17 goes into maintenance and operation. 02:26 PM

18 Q. So New Mexico uses a percentage of the
 19 general fund as opposed to a percentage of
 20 replacement value methodology.

21 A. According to Mr. Herrera.

22 Q. Did you make any effort to verify the 02:26 PM
 23 accuracy of the answer that Mr. Herrera provided to
 24 you under question three of Exhibit 2?

25 A. Yes.

1 Q. What did you do?
 2 A. I talked with an architect that works in 02:27 PM
 3 the state of New Mexico.

4 Q. What's that person's name?

5 A. Bill Waters.

6 Q. By whom, if anyone, is Mr. Waters employed?

7 A. I don't know the name of the architectural 02:27 PM
 8 firm.

9 Q. In what manner, if any, is the partnership
 10 between the state and local organizations reflected
 11 in Illinois?

12 A. Again, they have established a partnership 02:27 PM
 13 with the state and with regional offices and the
 14 local districts so that there is closer ties to
 15 locations within the state of Illinois rather than
 16 just one state organization.

17 Q. Are there any other ways in which a 02:28 PM
 18 partnership is evidenced in the state of Illinois?

19 A. It's my understanding, when their processes
 20 were put in place, again, it was developed with
 21 local involvement, working with state, a committee.

22 Q. In paragraph 16 you say, "In addition to 02:28 PM
 23 establishing a partnership, there needs to be an
 24 organizational structure established to allow local
 25 school districts the opportunity to become

1 responsible for their facilities."

2 Do you know whether local school districts 02:28 PM
 3 are responsible for their facilities under
 4 California law, as it stands now?

5 MR. ELIASBERG: Objection to the extent it
 6 calls for a legal conclusion.

7 THE WITNESS: I don't know -- I don't know. 02:28 PM
 8 BY MR. SIMMONS:

9 Q. You also say in paragraph 16, "This process
 10 can, for example, ensure that a formula for equity
 11 throughout the state is workable."

12 What do you mean by "process" in that 02:29 PM
 13 sentence?

14 A. If a structure has been published defining,
 15 for instance, how schools will be funded, and part
 16 of that formula speaks to establishing priorities
 17 based on need, then that would help look at equity. 02:29 PM

18 Another example would be the issue of
 19 standards, and across the state they would be the
 20 same for all school districts.

21 Q. What do you mean by "a formula for equity"
 22 in paragraph 16? 02:30 PM

23 A. I think the two examples I just gave you
 24 would be what I would call formulas. If you look at
 25 setting up a prioritization, looking at establishing

Page 279

1 standards, looking at adjusted age of facilities,
 2 for instance, those all could be part of that equity 02:30 PM
 3 formula.
 4 Q. What is the well defined organizational
 5 structure that you refer to in paragraph 16 of your
 6 expert report?
 7 A. Something that speaks to how the state and 02:30 PM
 8 the local are going to work together to not only
 9 establish the process, but also to do the ongoing
 10 inspections; who's responsible; what are the chain
 11 of -- how will the communication be performed going
 12 back and forth. 02:31 PM
 13 Q. Is it your position that the state of
 14 Maryland has a very well-defined organizational
 15 structure?
 16 A. Their organizational structure is well
 17 defined, yes. 02:31 PM
 18 Q. In what ways is it well defined?
 19 A. Basically the department of -- it's not
 20 called school construction. I think it's called
 21 Department of Public Works works with the local
 22 school districts. And so they know, you know, who 02:31 PM
 23 they are to call, and the communication goes
 24 directly between the two.
 25 Q. You identify a process by which a local

Page 280

1 school district in Maryland provides a maintenance
 2 plan to the state, and the local district updates 02:32 PM
 3 their plan each year.
 4 Can you give me an overview of that
 5 process?
 6 A. Basically they have a form that the
 7 district fills out each year, talking about each of 02:32 PM
 8 their facilities, the condition of facilities. For
 9 instance, roof repairs. And they will inform the
 10 state what their plan is to fix that roof on a
 11 particular building. Then the state the next year,
 12 they will inform the state again; have they fixed it 02:32 PM
 13 yet. And if so -- if not, why not, using that
 14 example.
 15 Q. Is that process mandatory for school
 16 districts in Maryland?
 17 A. Yes, it is. 02:33 PM
 18 Q. What is the adjusted age to which you refer
 19 to in paragraph 16?
 20 A. What they look at is, for instance, if a
 21 building is a 1950's building, but it's had
 22 additions and/or renovations done to it, then they 02:33 PM
 23 factor in a number. The building is no longer a
 24 1950's building. It's more like a nineteen
 25 whatever. So as they are addressing priorities

Page 281

1 within the state. They are addressing them based on
 2 age of facilities. Not initial age necessarily, but 02:33 PM
 3 renovated age.
 4 Q. That adjusted age is used to determine the
 5 needs of a school in Maryland; is that correct?
 6 A. It's used for a number of things. One of
 7 the most important is prioritizing projects for the 02:33 PM
 8 state.
 9 Q. Are you aware of any other states that use
 10 an adjusted age to prioritize projects?
 11 A. No, I'm not.
 12 Q. You refer to a point system in paragraph 02:34 PM
 13 16.
 14 Can you describe that point system for me?
 15 A. Not exactly, but I can give you some pieces
 16 of it because it's pretty complicated.
 17 Each school building gets so many points 02:34 PM
 18 for age, adjusted age, educational appropriateness,
 19 and that's a long drawn-out program where you look
 20 at size of spaces and so forth. And the district
 21 that has the least amount of points then comes to --
 22 goes to the top in terms of need, or it may be the 02:35 PM
 23 most amount of points.
 24 He showed me all of the school districts
 25 and how many points each one of them had, based on

Page 282

1 all these determinants.
 2 Q. Are you aware of any other states that use 02:35 PM
 3 a point system like the one you have just described
 4 as being used in Maryland?
 5 A. Ohio used something similar to that. Not
 6 exactly the same, but similar to that.
 7 Q. Any other states? 02:35 PM
 8 A. I think Arizona is starting that process.
 9 Q. Is it your opinion that California should
 10 adopt a point system similar to that used in
 11 Maryland?
 12 A. I think California needs to adopt whatever 02:35 PM
 13 they think would be the most fair and equitable way
 14 to distribute their funds. I don't think there is
 15 one way to do it. This just happens to be a model
 16 that obviously works for Maryland.
 17 Q. In paragraph 17 you mention that the state 02:36 PM
 18 of California is unique in that the number of
 19 schools that would be -- that would impact is larger
 20 than any other state.
 21 What is the "this" that you're referring to
 22 in that sentence? 02:36 PM
 23 A. The issue of the state and local
 24 partnership, and how you would go about doing the
 25 whole process, establishing the process.

Page 283

1 Q. Do you know how many schools there are in
2 California? 02:36 PM
3 A. No, I don't.
4 Q. Do you know how many districts there are in
5 California?
6 A. No, I don't.
7 Q. Are there other ways, outside of the number 02:37 PM
8 of schools, in which California is unique in terms
9 of its public school system?
10 A. I'm sure there are a lot of ways. One way
11 I know is that they have the lowest square foot per
12 student of any state. 02:37 PM
13 Q. Any other ways?
14 A. They have a requirement for a certain
15 percentage of portables or relocateables on sites.
16 That's unusual -- or I have never worked with that
17 in any other state. Those are two things I can 02:37 PM
18 think of off the top.
19 Q. Any other ways in which you think
20 California is unique in terms of its public school
21 system?
22 A. I'm not sure I would characterize it as 02:37 PM
23 unique, but just different.
24 Q. In what ways is it different?
25 A. Well, the square footage issue. I guess I

Page 284

1 define unique differently.
2 Q. In the last sentence of paragraph 18, you 02:38 PM
3 say that, "there is no current system in place to
4 ensure that all educational facilities in the state
5 of California are safe, provide a healthy
6 environment, and are educationally appropriate."
7 What do you mean by the term "educationally 02:38 PM
8 appropriate"?
9 A. That in this context I'm talking about it
10 has the right amount of square footage to meet the
11 individual needs of students, program spaces. So
12 speaking basically, at that point, to the 02:39 PM
13 educational issues for the children.
14 Q. Anything else that you would include in
15 your terminology of educationally appropriate?
16 A. Gosh, there are lots of things. Textbooks,
17 delivery systems, curricular areas. All of those 02:39 PM
18 things are part of an educationally appropriate
19 system.
20 Q. On what do you base your opinion that there
21 is a current system in place to ensure that all
22 educational facilities in the state of California 02:39 PM
23 are safe, provide a healthy environment, and are
24 educationally appropriate?
25 A. From the depositions, as well as from the

Page 285

1 conversations with Rob Corley and -- Rob Corley and
2 from the depositions. 02:39 PM
3 Q. By "depositions," do mean the depositions
4 of the individuals who are identified in the first
5 sentence of paragraph 18?
6 A. Yes.
7 Q. Are there any other depositions that you 02:40 PM
8 rely on?
9 A. Not that I remember.
10 Q. Do you know what FCMAT stands for?
11 A. No, I don't. I don't remember.
12 Q. Did you make an effort to determine what 02:40 PM
13 role FCMAT plays in the California public school
14 system?
15 A. Yes.
16 Q. What effort did you make?
17 A. That was one of the things that Rob Corley 02:40 PM
18 spent a lot of time talking with me about. Also
19 through the deposition.
20 Q. Did you make any other efforts to determine
21 the role FCMAT plays in the California public school
22 system? 02:41 PM
23 A. I also looked at the Compton Unified
24 district plan. I don't know if it's called plan,
25 but just to get an overview.

Page 286

1 Q. Anything else that you can recall?
2 A. No. 02:41 PM
3 Q. Why in paragraph 20 do you say that FCMAT
4 had the potential of being an organization that
5 could assist with the maintenance and operations
6 programs for the state?
7 A. I am just speculating that they are 02:41 PM
8 organized and that they have some familiarity with
9 the districts.
10 Q. On --
11 A. In the absence of no organization, at least
12 there is something that is started. 02:41 PM
13 Q. On what do you base that speculation?
14 A. Because they have already -- according to
15 the information that I received, they have already
16 done some -- you know, they have been in a position
17 to do some comprehensive facility reviews. 02:42 PM
18 Q. You suggest in paragraph 20 that FCMAT may
19 need more power and authority, as well as financial
20 resources.
21 What power do you think FCMAT needs?
22 What additional power do you think FCMAT 02:42 PM
23 needs?
24 MR. ELIASBERG: Objection to the extent it
25 calls for a legal conclusion.

Page 287

1 THE WITNESS: I think what I would be
2 speaking to there would be a system established, an 02:42 PM
3 of processes so that everybody was clear about that,
4 and everyone would know who was going to be
5 responsible for en ensuring that those things
6 happened.
7 BY MR. SIMMONS: 02:43 PM
8 Q. What power would FCMAT have under that
9 system of processes?
10 MR. ELIASBERG: Objection, vague, calls for
11 a legal conclusion.
12 THE WITNESS: I'm not sure how that would 02:43 PM
13 be established. Again -- I don't know. I can't
14 think right now what that would be.
15 BY MR. SIMMONS:
16 Q. You refer to FCMAT as needing additional
17 authority, as well, in paragraph 20. 02:43 PM
18 What additional authority should FCMAT
19 have?
20 A. I think that goes back specifically to the
21 processes that are established and knowing that
22 districts are required to do whatever has been set 02:43 PM
23 up, and that somebody will be working with the local
24 to see that that happens, and there is consequences
25 if it doesn't. So I would guess that's more the

Page 288

1 authority that I would be speaking to there.
2 Q. You also indicate that FCMAT needs more 02:44 PM
3 financial resources in paragraph 20.
4 What additional financial resources are you
5 considering in that first sentence in paragraph 20?
6 A. I don't think it says more financial
7 resources. It says, "financial resources." 02:44 PM
8 It's my understanding that they really
9 don't have any financial resources; that they can
10 investigate a school and tell them what they need to
11 do, but then basically can't do anything else. Once
12 they have told them what they need to do, they don't 02:44 PM
13 necessarily go back and check on them, and they have
14 no money to help them, either.
15 Q. On what do you base that opinion?
16 A. The Henry deposition, and again talking
17 with Rob Corley. 02:44 PM
18 Q. Anything else?
19 A. Reading the report from Compton.
20 Q. You indicate in paragraph 20 that there are
21 two ways for FCMAT to get involved with local
22 districts. 02:45 PM
23 What are the two ways that you are aware of
24 FCMAT being able to get involved with local
25 districts?

Page 289

1 A. One of them is through the state
2 legislature, asking or requesting their assistance 02:45 PM
3 in crises in districts, and the other one is if the
4 district themselves ask for assistance.
5 Q. Are you aware of any other ways that FCMAT
6 can get involved with local districts?
7 A. No, I'm not. 02:45 PM
8 Q. You say, "To date FCMAT has worked with
9 only a small number of districts on facilities
10 issues."
11 What number of districts is a small number,
12 as you use that term in paragraph 20? 02:46 PM
13 A. According to my report, three school
14 districts; that they have conducted comprehensive
15 facilities reviews in only three school districts.
16 Q. On what do you base that opinion?
17 A. Again, the information from Henry's 02:46 PM
18 deposition and Rob Corley's information.
19 Q. Have you ever read FCMAT's charter?
20 A. No.
21 Q. If you will look at the second to the last
22 paragraph or the second to the last sentence of 02:46 PM
23 paragraph 20. You say, "Since FCMAT's charter is
24 defined by the legislature, unless a district
25 specifically invites their assistance, FCMAT's work

Page 290

1 in Oakland did not include follow-up work with the
2 district after the initial evaluation of the 02:47 PM
3 facilities and recommendations."
4 Does that refresh your recollection whether
5 you have read FCMAT's charter?
6 A. Again, that comes from reading the
7 deposition and also talking with Rob. That's 02:47 PM
8 information that I obtained from him.
9 MR. ELIASBERG: Shaun, it's been almost an
10 hour. Do you have a lot more questions on FCMAT, or
11 is that going to be a natural breaking point when
12 you start talking about FCMAT? 02:47 PM
13 MR. SIMMONS: No. Actually, that's a fine
14 breaking point. I was actually getting ready to
15 move on to paragraph 21.
16 MR. ELIASBERG: Okay. We have been going
17 an hour. 02:48 PM
18 (There was a brief recess.)
19 BY MR. SIMMONS:
20 Q. Dr. Myers, just to direct your attention to
21 paragraph 21 quickly.
22 Does paragraph 21 fairly summarize the 03:06 PM
23 extent of your knowledge about the School Facilities
24 Planning Division of the Department of Education?
25 MR. ELIASBERG: That's an ambiguous

1 question. You may answer. I should say a vague
 2 question. 03:06 PM
 3 THE WITNESS: I don't know that it
 4 summarizes my knowledge about the Division. I know
 5 that these are components of what the Division is
 6 responsible for.
 7 BY MR. SIMMONS: 03:07 PM
 8 Q. Other than the things that you have
 9 identified in paragraph 21, what other activities
 10 are you aware of the School Facilities Planning
 11 Division of the Department of Education being
 12 responsible for? 03:07 PM
 13 A. I know they look at the guidelines or
 14 requirements for square footage for buildings. They
 15 review those.
 16 Q. Anything else?
 17 A. I believe they review the drawings, but I'm 03:07 PM
 18 not certain of that.
 19 Q. Are you speculating in that last answer?
 20 A. It's based on my work in San Diego several
 21 years ago. It seems to me that they did review the
 22 drawings then. 03:08 PM
 23 Q. Any other activities that you're aware of
 24 the School Facilities Planning Division of the
 25 Department of Education being responsible for?

1 A. I can't think of any right now.
 2 Q. In paragraph 22 you refer to the Facilities 03:08 PM
 3 and Facilities Working Group of the Joint Committee
 4 to develop a master plan for education.
 5 Is that the correct title of that
 6 organization?
 7 A. That's the title that was on the report, I 03:08 PM
 8 believe. I'm not sure it's an organization, but
 9 that was the title that was on the report.
 10 Q. Why don't we turn to paragraph 23. In
 11 paragraph 23 you say that, "once the partnership has
 12 been established and an organizational structure has 03:09 PM
 13 been defined, then the state needs to begin the
 14 identification process."
 15 Why does the state need to begin the
 16 identification process?
 17 A. Because that would be the -- one of the 03:09 PM
 18 first steps in looking at the -- actually knowing
 19 what is -- I'm sorry, what are the conditions of
 20 facilities. They are identifying the school
 21 facilities.
 22 Q. Why, in your opinion, is it necessary for 03:09 PM
 23 the state to be aware of the conditions of the
 24 facilities?
 25 A. For a number of reasons, one of which, in

1 order to have an idea as to prioritizing the
 2 facilities in the worst condition. Also, to have 03:10 PM
 3 historical data as to what are -- specifically what
 4 are the conditions of all of the facilities in the
 5 state.
 6 Q. What identification process, if any, do you
 7 believe that the state of California should 03:10 PM
 8 undertake?
 9 A. Basically identifying the facility
 10 conditions of every school. I am not suggesting
 11 they do this right off, but the identification
 12 process would be to identify the facility conditions 03:10 PM
 13 of each of the schools in the state of California.
 14 Q. Do you have an opinion as to how the state
 15 of California ought to go about identifying the
 16 condition of its public school facilities?
 17 A. I don't think, again, there is one specific 03:11 PM
 18 way. There are a number of ways they could do that.
 19 There are a number of models available.
 20 Q. You mention in the second sentence of
 21 paragraph 23 that a plan can be published as to the
 22 most equitable approach to address all of the needs. 03:11 PM
 23 How do you define equitable approach?
 24 A. I would guess one of the primary concerns I
 25 would have is those schools that have the poorest

1 facilities or need the most help, in terms of
 2 dollars, to assist in bringing their facilities up 03:11 PM
 3 to the level of standard that has been established,
 4 should have the opportunity to get those dollars
 5 before other districts that perhaps are not nearly
 6 in that type of -- in that bad a condition.
 7 Q. Is there a specific set of standards 03:12 PM
 8 against which you think we should measure equity?
 9 MR. ELIASBERG: Objection, vague.
 10 MR. SIMMONS: I apologize.
 11 Q. Is there a specific set of standards that
 12 you would propose to be utilized in determining the 03:12 PM
 13 most equitable approach of funding maintenance in
 14 California's public schools?
 15 A. I think those standards can be established,
 16 again, utilizing some of the standards that have 03:12 PM
 17 been published in other states. For instance, one
 18 example might be giving a point system to the
 19 working condition of rest rooms, and each school
 20 would receive some kind of a rating. So you could
 21 do a tabulation.
 22 Q. There is no particular set of standards out 03:13 PM
 23 there that you would suggest California use in
 24 determining the most equitable approach to
 25 addressing the maintenance -- addressing funding the

1 maintenance of California's public schools?
 2 A. I don't think there is one set that's the 03:13 PM
 3 model that ought to be used. I think there is a
 4 number of sets that could be used and combined.
 5 Q. You also say that the ultimate goal would
 6 be to identify every facility in the state of
 7 California by its square footage age, its 03:13 PM
 8 renovations and/or additions, and it's educational
 9 appropriateness.
 10 Why should every facility in the state of
 11 California be identified by its square footage age?
 12 A. For a number of reasons, but one of those 03:14 PM
 13 reasons would be to have a record of the number of
 14 facilities in the state, and how old those
 15 facilities are, so you could begin collecting
 16 historical data.
 17 So as you look at improving, establishing 03:14 PM
 18 through your process, you can look at improving
 19 those schools to be able to say, for instance,
 20 seventy-five percent of our buildings are 1950s or
 21 older. Within the last five years we were able to
 22 correct dah, dah, dah, dah, dah. So statistical 03:14 PM
 23 data, as well as -- so that there is an inventory.
 24 Q. Are you aware of any states that have
 25 identified every public school facility in the state

1 Q. When you say, "they," who is responsible in
 2 Arizona for publishing the process, if you know? 03:16 PM
 3 A. I don't know for sure. I could go back and
 4 look through some of the information, if you needed
 5 me to get that, but I don't remember.
 6 Q. Massachusetts was also a state that you
 7 identified as being in the process of identifying 03:16 PM
 8 every facility, every public school facility by its
 9 square footage age.
 10 Whereabouts in the process is
 11 Massachusetts?
 12 A. What's happening with those other states 03:17 PM
 13 that I mentioned is, they realized the importance of
 14 doing an inventory within their state so they can
 15 get a handle on the facilities issues. So they have
 16 looked to models that have worked.
 17 And so in most cases Massachusetts and New 03:17 PM
 18 Jersey, for instance, and Arizona, have looked to
 19 the Ohio model and to Maryland and to West Virginia
 20 as models. So they weren't reinventing as they
 21 began looking at what they wanted to do in their
 22 state. So my understanding is they are at the 03:17 PM
 23 beginning of that process.
 24 Q. Is there legislation in Arizona that
 25 relates to this process by which each school

1 by its square footage?
 2 A. Maryland does. 03:14 PM
 3 Q. Any other states?
 4 A. I believe West Virginia does as well.
 5 Q. Any other states?
 6 A. Arizona is going to.
 7 Q. Any other states that you're aware of that 03:15 PM
 8 identify all of its public school facilities by
 9 their square footage?
 10 A. A couple of others that are in the process,
 11 again, are Massachusetts and New Jersey, Ohio. I
 12 know that GAO report gives every state, but that's 03:15 PM
 13 an older report. It was 1996, I believe. So
 14 obviously every state has done it to some degree.
 15 Q. Do you recall the title of the GAO report
 16 to which you're referring?
 17 A. No, yes. 03:16 PM
 18 Q. At what stage in the process is Arizona in
 19 terms of identifying all of its public schools
 20 facilities in terms of their square footage age?
 21 A. I'm not exactly sure, but it's my
 22 understanding that they are at the beginning of 03:16 PM
 23 that. They put together what they want to get
 24 accomplished, and it's kind of right there now.
 25 They have established their process.

1 facility will be identified by its square footage
 2 age? 03:17 PM
 3 A. I believe there is. I'm not positive, but
 4 I believe there is.
 5 Q. How about in Massachusetts?
 6 A. I'm not sure.
 7 Q. And New Jersey? 03:18 PM
 8 A. I believe there is in New Jersey.
 9 Q. Are you aware of any states that are able
 10 to identify every public school facility within the
 11 state by its educational appropriateness?
 12 A. Yes. 03:18 PM
 13 Q. Which states are you aware of?
 14 A. Again, Maryland. Every state defines
 15 educational appropriateness differently. Some call
 16 it educational adequacy. Others call it educational
 17 appropriate. Others call it educational 03:18 PM
 18 requirements. So just to use this term,
 19 "educational appropriateness," I don't know that
 20 that's the states that used -- that look at the
 21 educational issues, what they exactly call it.
 22 Q. If we include the other terms that you have 03:19 PM
 23 identified for us here in your last answer, what
 24 states would you add, other than Maryland?
 25 A. All of the states I mentioned earlier that

Page 299

1 have the process to identify square footage. That
 2 would be West Virginia, Arizona, Maryland, 03:19 PM
 3 Massachusetts, New Jersey, Ohio.
 4 Q. Has Arizona completed that process?
 5 MR. ELIASBERG: Asked and answered.
 6 THE WITNESS: No. It's my understanding
 7 they haven't started it. 03:19 PM
 8 BY MR. SIMMONS:
 9 Q. And that would be the same with
 10 Massachusetts and New Jersey?
 11 A. That's right. They are in the initial
 12 stages. 03:19 PM
 13 Q. You indicate in paragraph 23 that the --
 14 A. 23?
 15 Q. Paragraph 23, the last sentence, you say,
 16 "This will be a very daunting task given the large
 17 number of schools in the state." 03:20 PM
 18 What does "this" refer to in that sentence?
 19 A. Doing the inventory of all the schools.
 20 The identification process I spoke to earlier.
 21 Q. Do you have an opinion as to how long that
 22 task would take? 03:20 PM
 23 A. No, I don't.
 24 Q. Do you have an opinion as to how much it
 25 would cost to undertake that task?

Page 300

1 A. No, I don't.
 2 Q. You do indicate in that next sentence that, 03:20 PM
 3 "There are alternatives to a full-scale facility
 4 survey. That could achieve the outcome of
 5 identification of the facilities that need the most
 6 attention initially."
 7 What alternatives are you referring to in 03:21 PM
 8 paragraph 23?
 9 A. One example might be you would do -- ask
 10 each school district to send in information that you
 11 all have decided would be helpful to do an initial
 12 gathering of data, and then from that start your 03:21 PM
 13 prioritization. That might be one alternative
 14 instead of having somebody else come in and actually
 15 do the physical assessments.
 16 Q. Can you think of any other alternatives?
 17 A. Another one might be asking each district 03:21 PM
 18 to not just do the survey, but to prioritize for
 19 their sake which facilities they think are most
 20 critical, and why, and then from the state, you
 21 know, do a comparison of all of those to try to
 22 prioritize. 03:22 PM
 23 Q. Are there any other alternatives that you
 24 can think of?
 25 A. Not right now.

Page 301

1 Q. In paragraph 4 you suggest that it might be
 2 possible to adopt the model that is used in 03:22 PM
 3 Maryland.
 4 Can you provide us with an overview of the
 5 model you're referring to in paragraph 24?
 6 A. In Maryland each of the schools is required
 7 to do a school facilities survey. Everyone in the 03:22 PM
 8 state has the same survey, and they fill out that
 9 survey based on the same criteria. And that is
 10 submitted then to the state department, and then the
 11 state department takes the information from there
 12 and begins the prioritization with the point system 03:23 PM
 13 and the adjusted age.
 14 Q. Do you know of any other states that use a
 15 model similar to the one you just described as in
 16 existence in Maryland?
 17 A. I believe that's how West Virginia began 03:23 PM
 18 their process.
 19 Q. Are you aware of any other states?
 20 A. My recollection is that when Ohio began
 21 collecting data before they did the statewide
 22 survey, it started with the school district sending 03:24 PM
 23 in information. But that's been a number of years
 24 ago. But my recollection is that's how they started
 25 gathering the data.

Page 302

1 Q. Are you speculating at all in this last
 2 answer? 03:24 PM
 3 A. Yes, I am. It's just -- it's speculating
 4 in the sense that I think that's what I remember,
 5 but . . .
 6 Q. Do you have an understanding as to how the
 7 point system you identified as being in existence in 03:24 PM
 8 Maryland works?
 9 MR. ELIASBERG: I think that's been asked
 10 and answered. Go ahead.
 11 MR. REED: I think so, too.
 12 MR. SIMMONS: I apologize. I will withdraw 03:24 PM
 13 it.
 14 Q. You indicate that age is not the sole
 15 determining factor of need, in paragraph 24, but
 16 that it can be a key indicator, especially in making
 17 an initial assessment of statewide needs. 03:25 PM
 18 On what do you rely on giving that opinion?
 19 A. My experience as well as the conversation
 20 with Dr. Stenzler.
 21 Q. Anything else?
 22 A. No. 03:25 PM
 23 Q. Why is it that age is not the sole
 24 determining factor of need?
 25 A. I can give you one example that might help.

Page 303

1 Years ago we used to put terrazzo floors in
 2 school buildings throughout the country, and 03:26 PM
 3 terrazzo floors are almost indestructible. And
 4 today, for the most part, we can't afford terrazzo
 5 in schools other than perhaps in entry ways. So in
 6 the older schools, a 1940s, 1950s building that had
 7 all terrazzo hallways, to the assume the conditions 03:26 PM
 8 of those hallways would be worse than a newer school
 9 is not correct because of the materials that were
 10 used.
 11 Q. Can you think of any other examples that
 12 show that age is not the sole determining factor of 03:26 PM
 13 need?
 14 A. Yes. Another facility example would be
 15 case work cabinets. We used to build all of the
 16 case work out of real wood, and had coat closets,
 17 and so forth, that were almost indestructible as 03:26 PM
 18 well. Now most of it is plastic laminate. Again,
 19 you can't just say because a building is newer, it's
 20 in better condition.
 21 Q. On what do you base the opinion that age
 22 can be a key indicator in determining need, even 03:27 PM
 23 though it's not a sole determining factor?
 24 A. Because for the most part some of the
 25 issues related to square footage. Some of the

Page 304

1 issues related to systems. You know, older
 2 buildings would have -- unless they have been 03:27 PM
 3 renovated would have old electrical systems,
 4 plumbing systems, boiler systems, perhaps. The size
 5 of the classrooms would be smaller than what we
 6 would program today. So there are a number of areas
 7 that just due to age would suggest the condition to 03:27 PM
 8 be worse.
 9 Q. On what do you -- what are you basing that
 10 opinion?
 11 A. On my experience, again, as well as talking
 12 with Dr. Stenzler and Dr. Williams. 03:28 PM
 13 Q. You indicate that the initial survey that's
 14 been discussed above in your report is not suggested
 15 to replace the need for an ongoing maintenance plan
 16 for each facility.
 17 What do you mean by "ongoing maintenance 03:28 PM
 18 plan for each facility" in that paragraph?
 19 A. I think of the initial survey as something
 20 that is pretty static. It tell us what is in a
 21 certain period of time. An ongoing maintenance plan
 22 is something that is dynamic, that continues to 03:28 PM
 23 change. And that speaks specifically about the
 24 needs of the facility, and hopefully those needs are
 25 going to change over time.

Page 305

1 Q. In that same sentence, the first sentence
 2 in paragraph 25, what are you contemplating by "a 03:29 PM
 3 more independent analysis of the needs of all of the
 4 facilities throughout the state"?
 5 A. If the decision is made by the state of
 6 California that they are going to do something less
 7 than a comprehensive plan to start the process, that 03:29 PM
 8 doesn't suggest that there doesn't need to be an
 9 inventory done at some point.
 10 MR. SIMMONS: Could you read that answer
 11 back for me?
 12 (The reporter read the answer.) 03:29 PM
 13 MR. SIMMONS: I apologize. There was a lot
 14 of negatives in that.
 15 Q. You say in paragraph 25, as well, "As the
 16 standards for facilities are being developed, a
 17 process could be established utilizing the standards 03:30 PM
 18 to provide an instrument to formally evaluate each
 19 facility either at the local level or in partnership
 20 with the state."
 21 Can you tell me what process you
 22 contemplate by that sentence there? 03:30 PM
 23 A. What I am suggesting is that as each
 24 district evaluates their facilities either locally
 25 or through some other structure, that everybody is

Page 306

1 evaluating with the same instrument so the data that
 2 we are collecting is -- we know we are collecting 03:31 PM
 3 the same data across the state.
 4 Q. Do you have an opinion as to what
 5 instrument the state ought to use in making that
 6 evaluation?
 7 A. No, I don't. 03:31 PM
 8 Q. In paragraph 26 you identify some -- you
 9 indicate that there must also be an inspection
 10 process published, as well as minimum facility
 11 standards defined in order to provide an
 12 accountability system both for the local district, 03:32 PM
 13 as well as for the state.
 14 Am I correct in understanding that you
 15 don't have a set of standards that you would propose
 16 the state of California adopt?
 17 A. No, I do not. 03:32 PM
 18 Q. Am I correct that you don't have an
 19 inspection process in mind that you think
 20 California -- that the state of California ought to
 21 adopt?
 22 A. No, but I think there are several models 03:32 PM
 23 that I referred to certainly as a starting point for
 24 them to address or at least look at.
 25 Q. You identify some types of standards that

Page 307

1 you think ought to be excluded, I believe, in a set
2 of standards used for inspection processes in 03:33 PM
3 paragraph 27; is that correct?
4 MR. ELIASBERG: The document speaks for
5 itself.
6 THE WITNESS: Yeah, that's what I identify
7 as some of the things that might be included. 03:33 PM
8 Q. Is that list exhaustive?
9 A. No.
10 Q. What do you mean by "health and safety
11 standards" as it's used in paragraph 27?
12 A. Rest rooms that work with appropriate 03:33 PM
13 ventilation, cleanliness, windows that aren't
14 broken, mold. I mean, air quality issues. Those
15 are some health and safety.
16 Q. What do you mean by "recommendations for
17 ongoing maintenance and operations function" as used 03:33 PM
18 in that first sentence of paragraph 27?
19 A. An example would be filters need to be
20 changed X number of times a year. Roofs need to be
21 inspected X number of times a year. Windows need to
22 be inspected, gutters. Specifically facility issues 03:34 PM
23 that need to be checked and fixed.
24 Q. How about "appropriate guidelines to
25 address the educational appropriateness of the

Page 308

1 facility"?
2 A. Providing guidelines for minimal programs 03:34 PM
3 that every school should have. If we believe all
4 classrooms should be of a certain size, then that
5 should be a guideline at least across the state.
6 Everybody should have an art room, for instance, or
7 not. Something like that. 03:34 PM
8 Q. When you say, "a guideline," as it's used
9 here in paragraph 27, does that same distinction
10 that we made earlier between mandatory and
11 nonmandatory apply?
12 A. Not necessarily, because as I thought about 03:35 PM
13 it, there are some states that's called them
14 guidelines, but the truth is they are standards.
15 They require it, but they call them guidelines. So
16 that's -- I don't know that that's as clear a
17 distinction as what I was suggesting earlier. 03:35 PM
18 Q. What states are you aware of that use the
19 term "guidelines" to describe mandatory standards?
20 A. Indiana.
21 Q. Any others?
22 A. I believe Arizona talks about guidelines, 03:35 PM
23 but the truth is they are really standards.
24 Q. Any other states?
25 A. Well, West Virginia provides guidelines for

Page 309

1 maintenance and operation budgets. But if you don't
2 do it, you don't get money. So. . . . 03:35 PM
3 Q. The last category of standards that you
4 identify in the first paragraph of 27 is "guidelines
5 for allocation of financial resources to ensure
6 ongoing maintenance and operations."
7 What do you mean by that phrase? 03:36 PM
8 A. What I'm suggesting is there be a
9 percentage of dollars put in the budgets to ensure
10 that ongoing maintenance occurs.
11 Q. Do you have an opinion as to what that
12 percentage ought to be? 03:36 PM
13 A. I think I said earlier one and a half to
14 four percent. I know the national guidelines are
15 two to four percent. But I believe I said earlier
16 one and a half to four percent because some of that
17 has to do with extenuating circumstances of 03:36 PM
18 facilities.
19 Q. Do you think the state of California ought
20 to adopt that one-and-a-half- to four-percent
21 guideline you have just explained for us?
22 A. I think they need to adopt a guideline. 03:37 PM
23 But again, I don't know what's appropriate for
24 California.
25 MR. REED: Can we clarify one and a half to

Page 310

1 four percent of what in your answer?
2 BY MR. SIMMONS: 03:37 PM
3 Q. I think that was replacement value; is that
4 correct?
5 A. No. That was general fund. I am confused.
6 Wait a minute. I think it's replacement value. I
7 think you're right. I'm sorry. I was thinking of 03:37 PM
8 New Mexico. That's general fund. It's replacement
9 value.
10 Q. In paragraph 28 you talk about the
11 inspection process that exists in the state of West
12 Virginia. 03:38 PM
13 Do you know how often schools in West
14 Virginia are inspected under the state of West
15 Virginia's program?
16 A. I don't remember, but I have that
17 information. I could get it, but I don't remember 03:38 PM
18 right now.
19 Q. If you could turn to the appendix, again,
20 of your report. It was the first page of the
21 appendix that was two-sided and the rest were
22 one-sided. I have a back side for that page, if 03:39 PM
23 you're comfortable replacing it in the exhibit.
24 Is that okay with you?
25 MR. ELIASBERG: I won't replace it. Oh,

Page 311

1 you made a double-sided version?

2 MR. SIMMONS: Yeah, I made a double-sided 03:39 PM

3 version. We have just exchanged the first page of

4 the appendices from Dr. Myers' report with a new

5 page that is two-sided.

6 Q. Do you recognize that two-sided document,

7 Dr. Myers? 03:40 PM

8 A. Yes.

9 Q. Can you tell me what that document is?

10 A. It's the form for the site visit. The

11 Maintenance and Custodial Care Site Visit Report is

12 what it's called. 03:40 PM

13 Q. I think earlier you might have suggested

14 that this was a summary report; is that correct?

15 A. This is -- yes.

16 Q. Who fills out this report, if you know?

17 A. It's a combination from the inspection from 03:40 PM

18 the state, as well as the District sitting down

19 together and summarizing their results.

20 Q. To whom, if anyone, is this report

21 submitted?

22 A. To the state, to the school building 03:41 PM

23 authority of West Virginia.

24 Q. If you look at the next page of your

25 appendix to your expert report. Do you recognize

Page 312

1 that document there?

2 A. The School Facilities Review? 03:41 PM

3 Q. Yes.

4 A. Yes.

5 Q. What is that document?

6 A. This basically provides a baseline of data

7 for each of the schools. 03:41 PM

8 Q. In what state, if any, is this School

9 Facilities Review used?

10 A. This is West Virginia.

11 Q. How is this School Facilities Review used

12 by the state of West Virginia? 03:41 PM

13 A. When --

14 MR. ELIASBERG: Objection, just to the

15 extent it calls for speculation.

16 MR. SIMMONS: If you know.

17 THE WITNESS: My understanding is, when 03:41 PM

18 they go to do a site visit, either the information

19 is filled out as much as possible prior to, and then

20 completed when they get there, or if not, the

21 inspector completes it. He may not know who the

22 principal is, for instance. Some of that 03:42 PM

23 information, but they gather that data.

24 BY MR. SIMMONS:

25 Q. Are either of the first two documents that

Page 313

1 we have just talked about -- are either of those

2 used in prioritizing funds by the state of West 03:42 PM

3 Virginia?

4 A. I don't believe so. These are very

5 specific to a school, but there is -- there is no

6 prioritization on here.

7 Q. Are there any documents in the appendix to 03:42 PM

8 your report that are used by the state of West

9 Virginia in prioritizing funds?

10 A. I don't believe so, because there weren't

11 any of the -- no.

12 Q. I believe the third page of the appendix 03:43 PM

13 begins with the document entitled "Evaluation

14 Criteria." This document spans nine pages.

15 Can you tell me if you recognize the

16 document?

17 A. Yes. Yes. 03:43 PM

18 Q. What is the document?

19 A. This is part of what West Virginia uses.

20 It's the appraisal guide for school facilities, and

21 it's what they use when they do their inspection.

22 Q. Now, behind that document there is a page 03:43 PM

23 that is entitled "K Through 4 School Facilities

24 Evaluation Checklist."

25 That document appears to span four pages.

Page 314

1 Do you recognize that document?

2 A. Yes. 03:44 PM

3 Q. What is it?

4 A. This is the additional information that,

5 when they are doing an elementary evaluation, they

6 do this part and this as well. I mentioned earlier

7 about there are specific things related to different 03:44 PM

8 facilities. So you would do the general inspection

9 issues, and then you would also look specifically

10 for specific things related to that grade level or

11 those grade levels.

12 Q. So I think if you will look behind the 03:44 PM

13 document that spans the next four pages, and that

14 says, "5 Through 8 School Facilities Evaluation

15 Checklist."

16 Do you recognize that document?

17 A. Yes, I do. 03:44 PM

18 Q. Can you tell me what that document is?

19 A. It's the same thing. If they are doing a

20 facility that is more of a middle school, then they

21 would use this document rather than either one of

22 the other two. 03:45 PM

23 Q. Thank you.

24 MR. REED: Can we be clear the "they" we

25 are talking about is West Virginia?

Page 315

1 THE WITNESS: Yes, West Virginia, in their
2 inspection. 03:45 PM
3 BY MR. SIMMONS:
4 Q. It looks like the next seven pages and,
5 actually, the last seven pages of the appendix are a
6 document entitled "9 Through 12 School Facilities
7 Evaluation Checklist." 03:45 PM
8 Do you recognize that document?
9 A. Yes, I do.
10 Q. Can you tell me what that document is, as
11 well?
12 A. This is also used as the specialty document 03:45 PM
13 that goes with the general document. However, there
14 are some things in here that are more than just nine
15 through twelve because there are science labs that
16 are six through twelve. Depending on what they are
17 exactly inspecting, they would use this one or the 03:45 PM
18 one before.
19 Q. Thank you.
20 MR. ELIASBERG: Shaun, just give me one
21 minute to grab a cup of coffee.
22 MR. SIMMONS: Yeah, sure. We can go off 03:46 PM
23 the record.
24 (There was a brief recess.)
25 BY MR. SIMMONS:

Page 316

1 Q. Are you aware of any states that use a
2 checklist similar to the ones that are provided in 03:48 PM
3 the appendix to your expert report?
4 A. Yes, I am.
5 Q. What states would those be?
6 A. The document that is used by the state of
7 West Virginia was produced by the Council of 03:49 PM
8 Educational Facility Planners and is considered the
9 standard, if you will, for districts to use in their
10 facilities checklists.
11 So many states and districts use this form.
12 Q. Are you aware of any states that require 03:49 PM
13 districts to -- inspections of districts to occur
14 using checklists like the ones that are contained in
15 the appendix to your expert report?
16 MR. ELIASBERG: Objection, vague.
17 THE WITNESS: The states that require an 03:49 PM
18 inspection process have some form of a checklist.
19 Now, I'm not aware that it's exactly this one.
20 BY MR. SIMMONS:
21 Q. Are there alternatives to the checklists
22 that are contained at the appendix to your report? 03:50 PM
23 A. Yes.
24 Q. What would be some alternatives?
25 A. Maryland's doesn't look quite like this.

Page 317

1 Q. Any other alternatives that you're aware
2 of? 03:50 PM
3 A. Program managers that do a lot of master
4 planning develop their own checklists using a
5 computer software program. And most of the large
6 program managers have their own.
7 Q. The software program that you mentioned, is 03:50 PM
8 there a particular name for that software?
9 A. Some of them are developed by the
10 particular organization.
11 Q. In paragraph 29 you discuss Maryland as an
12 example of a state with an on-site inspection 03:51 PM
13 process.
14 What kinds of health and safety issues does
15 Maryland's on-site inspection address?
16 A. Some of the things would include
17 cleanliness of the facility, conditions of the rest 03:51 PM
18 rooms, air quality. Those would be a few of the
19 things.
20 Q. What types of educational
21 appropriateness -- strike that.
22 What aspects of educational appropriateness 03:51 PM
23 are considered in the Maryland on-site inspection
24 process?
25 A. The numbers of spaces; sizes of classrooms;

Page 318

1 kinds of classrooms; labs that are available within
2 the facility. Those kind of examples. 03:52 PM
3 Q. You indicate that a rating is given in
4 paragraph 2 of 29 for various categories.
5 What's that rating scale?
6 MR. ELIASBERG: You mean sentence two?
7 MR. SIMMONS: Sorry. Sentence two, 03:52 PM
8 paragraph 29.
9 THE WITNESS: The next sentence, it's
10 superior, very good, good, fair, poor, or not
11 applicable rating scale.
12 BY MR. SIMMONS: 03:52 PM
13 Q. And then you indicate that there is a
14 multiplier attached to each of these areas.
15 What is that multiplier?
16 A. I don't remember. Again, I have that
17 paperwork. I could find it if you needed me to. 03:52 PM
18 Q. In paragraph 30 you indicate that an
19 inspection report is sent to the school district,
20 and the district has a thirty-day period in which to
21 respond in writing as to how they plan to address
22 the areas identified as needing attention. 03:53 PM
23 Who sends that inspection report, if
24 anyone?
25 A. It comes out of the state's office. The

1 Department of Public Works I believe is
 2 Dr. Stenzler's office. 03:53 PM
 3 Q. It indicates that if they do not respond --
 4 in the second sentence, paragraph 30, "If they do
 5 not respond in the time allocated or if they do not
 6 provide a plan, there is the potential for the
 7 district to lose state aid out of their general 03:53 PM
 8 budget."
 9 Who is the "they" in the start of that
 10 second sentence of paragraph 30?
 11 A. If the school district that's received the
 12 plan doesn't respond. 03:54 PM
 13 Q. Is an inspection report sent out to each
 14 school district in Maryland?
 15 A. When the inspection has been completed,
 16 yes.
 17 Q. So does the inspection report go out 03:54 PM
 18 regardless of whether any areas are identified as
 19 needing attention?
 20 A. Yes. They would get an inspection report
 21 as a summary of the visit.
 22 Q. Do you have an opinion as to -- would you 03:54 PM
 23 consider the process that's identified in the second
 24 sentence of paragraph 30 -- would you consider that
 25 an accountability mechanism?

1 MR. ELIASBERG: Objection, vague.
 2 THE WITNESS: I'm not sure, you know. 03:55 PM
 3 Again, it's part of their whole process. I don't
 4 know, in developing what they were going to do --
 5 you know, it seems as though, just from my looking
 6 at it, that makes sense. It could be, but I don't
 7 know because I wasn't involved in their putting the 03:55 PM
 8 plan together.
 9 BY MR. SIMMONS:
 10 Q. Do you have an opinion as to the wisdom of
 11 allowing a district to lose state aid out of their
 12 general budget if they do not respond to their 03:55 PM
 13 inspection report?
 14 A. The opinion I have had is there needs to be
 15 some form of accountability. But as to what that
 16 is, again, that is up to the state and the group to
 17 decide, the partnership. That is certainly one way 03:55 PM
 18 to do it, but I'm sure there are others.
 19 Q. How often do inspections occur in Maryland?
 20 Strike that. How often do inspections of school
 21 facilities occur in Maryland?
 22 A. Inspections occur every year, but not with 03:55 PM
 23 every school.
 24 Q. How often is a school inspected in
 25 Maryland?

1 MR. ELIASBERG: It's in the report, Shaun.
 2 You are welcome to ask her, but it's set forth very 03:56 PM
 3 clearly in paragraph 31.
 4 THE WITNESS: Every five years.
 5 BY MR. SIMMONS:
 6 Q. Is five years the amount of time that you
 7 would opine is necessary for a school to be 03:56 PM
 8 inspected?
 9 A. No. I don't think there is a right number
 10 because, again, you have to look at the numbers of
 11 schools within the state and the condition of the
 12 facilities. So you have -- that has to be 03:56 PM
 13 determined by your own site-specific factors.
 14 Q. I take it, then, you wouldn't have an
 15 opinion as to how often individual public schools in
 16 California ought to be inspected.
 17 A. No, I don't. 03:57 PM
 18 Q. Can you tell me what is meant by
 19 "comprehensive plan," as it's used in paragraph 32?
 20 A. I am speaking there specifically about a
 21 plan, how to address facility needs. For instance,
 22 if they've got a roof problem, and it's a very 03:57 PM
 23 costly problem, what are the steps they are going to
 24 take to either, A, patch the roof until they can
 25 afford to put a new one on, or, you know, what steps

1 are they going to take to make sure the roof is not
 2 leaking. So they develop a plan, specifically 03:58 PM
 3 what's going to happen with each of the system
 4 areas.
 5 Q. In this same sentence where the term
 6 "comprehensive plan" is used, you also say, "There
 7 also must be funds allocated in the general budget 03:58 PM
 8 for maintenance and operations of existing
 9 facilities."
 10 To whose budget is that referring?
 11 A. The school district's budget.
 12 Q. Is there a specific amount of funds that 03:58 PM
 13 are required to be allocated in the school
 14 district's general budget?
 15 A. I don't believe -- I don't remember if
 16 there is.
 17 Q. In that next sentence you say, "When a 03:58 PM
 18 district is requesting financial assistance for
 19 facilities, the general budget is reviewed to ensure
 20 that dollars have been allocated for maintenance and
 21 operations as a line item budget consistently over
 22 the past few years." 03:59 PM
 23 Who is responsible for reviewing that
 24 general budget?
 25 A. Dr. Stenzler's office.

1 Q. Is there any particular position within
2 Dr. Stenzler's office that is responsible for 03:59 PM
3 reviewing the general budget to ensure that dollars
4 have been allocated for maintenance and operations
5 as a line item budget?
6 A. It's my understanding that when they are
7 looking at the prioritization of schools that 03:59 PM
8 perhaps might receive funding that year, one of the
9 things they look at is the budgets of those school
10 districts that are being considered. And if those
11 school districts had been good stewards in terms of
12 a reasonable amount of money in the budgets 03:59 PM
13 historically to address maintenance and operations,
14 then they would remain in the prioritization.
15 Q. Would you refer to that as a type of
16 accountability mechanism?
17 A. That certainly would be another way of 04:00 PM
18 addressing schools being accountable.
19 Q. Are you aware of other states that use a
20 similar accountability mechanism to that?
21 A. I believe West Virginia does as well.
22 Q. Can you think of any other states? 04:00 PM
23 A. Again, I think Arizona. That is going to
24 be one of their plans. Massachusetts, New Jersey.
25 Q. When you say you think it's going to be

1 part of their plans, are you speculating at all?
2 A. I just know the processes are similar 04:00 PM
3 because they are using the models, the same models.
4 Now, whether they are exactly the same, but I know
5 the models are similar.
6 Q. You refer to some regulations that New York
7 amended in 1999 in paragraph 33. 04:00 PM
8 How do those regulations address the need
9 for a comprehensive long-range plan pertaining to
10 educational facilities?
11 MR. ELIASBERG: Could you read back the
12 question? 04:01 PM
13 (The reporter read the pending question.)
14 THE WITNESS: I think what I am suggesting
15 there is that the regulations were changed to
16 suggest that they do need to have -- the school
17 districts need to have a plan; that prior to this 04:02 PM
18 time, there was no requirement for school districts
19 to have a plan. And so with amending the
20 regulations now, they do need to have a plan, a
21 comprehensive long-range plan.
22 BY MR. SIMMONS: 04:02 PM
23 Q. So a comprehensive long-range plan is now
24 required under the regulations of the state of
25 New York?

1 A. Yes, I believe that's part of the
2 regulations now. 04:03 PM
3 Q. Does New York have regulations which also
4 require a building survey to be conducted once every
5 five years?
6 A. I'm not sure if that is in the regulations
7 or if that's part of the process they put in place 04:03 PM
8 to ensure gathering the data for a comprehensive
9 plan.
10 Q. What does that building survey entail, if
11 you know?
12 A. I don't know. 04:03 PM
13 Q. Who conducts the building survey, if you
14 know?
15 A. The state. It's conducted by the state.
16 Q. Is there a particular agency within the
17 state that conducts the building survey that is 04:04 PM
18 referenced in paragraph 33?
19 A. I don't know the name of it. I don't
20 remember the name of it. Again, I could get that
21 information for you.
22 MR. ELIASBERG: Shaun, it's about an hour 04:04 PM
23 and ten minutes since we came back from lunch. Can
24 we take ten minutes?
25 MR. SIMMONS: Yeah, that's great.

1 (There was a brief recess.)
2 BY MR. SIMMONS: 04:04 PM
3 Q. Dr. Myers, paragraph 32, I just want to
4 turn quickly back to that last sentence of that
5 paragraph. You indicate, "When a district is
6 requesting financial assistance for facilities, the
7 general budget is reviewed to ensure that dollars 04:20 PM
8 have been allocated for maintenance and operation as
9 a line item budget consistently over the past few
10 years."
11 What happens to the district if its general
12 budget does not have an allocation for maintenance 04:20 PM
13 and operations as a line item budget consistently in
14 the last few years?
15 A. According to Dr. Stenzler, that district
16 might not receive funding for that year. There
17 isn't a hard-and-fast rule, but their concern is if 04:21 PM
18 they are not using their own dollars wisely, then
19 they possibly won't use the state dollars wisely as
20 well.
21 Q. Are you aware of any legislation in the
22 state of Maryland that addresses that specific 04:21 PM
23 circumstance?
24 A. No, I'm not aware of any legislation.
25 Q. Any regulations?

Page 327

1 A. I don't remember from our conversations.
2 Q. Can you recall if there is any guidelines 04:21 PM
3 that govern that circumstance?
4 A. Again, that's in my information I would be
5 glad to look up. I don't remember right now.
6 Q. In paragraph 33 you talk about an annual
7 visual survey that must be conducted in years when 04:22 PM
8 the building survey is being conducted.
9 What is the annual visual survey to which
10 you're referring in that paragraph?
11 A. My understanding is that what has to happen
12 is, they have to walk around the facility and make 04:22 PM
13 sure things are in good repair, based on the
14 building survey that had been completed.
15 Q. Is the annual visual survey required by any
16 regulations in New York?
17 A. Again, I think that's part of the process 04:22 PM
18 that they have established.
19 Q. By "process," do you mean a process that
20 was established by the amendments to New York's
21 regulations in 1999?
22 A. For the comprehensive long-range plan, part 04:23 PM
23 of that would consist of these items.
24 Q. So the regulations basically spell out a
25 comprehensive long-range plan, and as part of that

Page 328

1 there must be an annual visual survey conducted in
2 years when no building survey is being conducted? 04:23 PM
3 MR. ELIASBERG: Objection, compound.
4 THE WITNESS: It's my understanding that
5 the regulations says there has to be a comprehensive
6 long-range plan, and these are some of the areas
7 that they have decided would be included in that 04:23 PM
8 plan. I mean, in order to make that plan happen.
9 BY MR. SIMMONS:
10 Q. Who is the "they" to which you're referring
11 in that last answer?
12 A. The state of New York. The division that 04:23 PM
13 is working in this area.
14 Q. In paragraph 34 you discuss a number of
15 means for including monies for maintenance and
16 operation and an ongoing budget -- I'm sorry. You
17 discuss a number of means to include monies for 04:24 PM
18 ongoing maintenance and operations; is that correct?
19 A. I don't understand. I'm sorry. Ask me.
20 Q. I was going to say, in paragraph 34 you're
21 identifying a number of ways that financial
22 resources can be allocated in a general budget for 04:25 PM
23 ongoing maintenance and operations; is that correct?
24 A. I think I provide one way that you might
25 consider including dollars. I don't believe there

Page 329

1 is a number of ways.
2 Q. I think there is at least three different 04:25 PM
3 alternatives that are suggested; is that correct?
4 MR. ELIASBERG: The document speaks for
5 itself.
6 THE WITNESS: I believe they all relate to
7 putting a percentage of money into the budget. So I 04:25 PM
8 don't know if that's three ways or one way, but it's
9 all about a certain amount of dollars put into the
10 budget.
11 BY MS. SIMMONS:
12 Q. Is there -- is any one of those 04:26 PM
13 approaches -- you think any one of the approaches
14 that is identified in paragraph 34 is better than
15 any of the others?
16 A. I think part of the consideration has to
17 be, are we looking at dollars putting in the budget 04:26 PM
18 for new facilities or renovated facilities.
19 Q. Why would that affect the analysis?
20 A. Because in a new facility, two percent of
21 that replacement value would probably be a pretty
22 good number to do ongoing maintenance for a new 04:26 PM
23 facility. But in an old facility, which has a lower
24 replacement value, probably requires -- would be my
25 speculation it requires much more than two percent

Page 330

1 of that replacement value in order to bring it up to
2 code. Up to standards, whatever those standards 04:27 PM
3 are.
4 So I think it's difficult to say there is
5 one way to do it for all facilities because you're
6 looking at new facilities versus old facilities.
7 Q. Do you know of any states that have adopted 04:27 PM
8 the two- to four-percent replacement value guideline
9 that the National -- that you cite the National
10 Research Council for in paragraph 34?
11 A. I'm not sure that there are states that
12 have adopted it, but it's certainly in practice in 04:27 PM
13 many states throughout the country. It's also
14 recognized by the School Business Officials as a
15 good average to be included in budgeting.
16 Q. You refer to the bill in the legislature in
17 Idaho that would require districts to set aside one 04:28 PM
18 and a half percent of the replacement value of all
19 of their facilities into a special fund to be used
20 only for maintenance.
21 Do you know what the status of that bill
22 is? 04:28 PM
23 A. No, I don't. That was going on when I was
24 writing this report.
25 Q. What is the percentage of general funds

1 that needs to be set aside in Ohio for maintenance
2 and operations? 04:28 PM

3 A. I don't know that specific number. I could
4 get that information.

5 Q. Do you know what rate is used in Ontario
6 for budgetary minimum for maintenance and operations
7 for each school board in the province? 04:29 PM

8 A. That changes yearly, and I don't know what
9 the rate is.

10 Q. Is there any type of formula that is used
11 in Ontario?

12 A. I don't know how they compute that rate. 04:29 PM
13 That, again, comes from the government.

14 Q. You indicate that the rate that's used in
15 Ontario, or at least -- strike that.

16 You indicate that the funding in Ontario is
17 established on a yearly basis. Therefore, each 04:29 PM
18 board -- school board can plan and finance the
19 improvements across the board with the knowledge
20 that every year, as long as the pupil load does not
21 decrease, they will receive the same amount of
22 money. 04:29 PM

23 On what do you rely in giving that opinion?

24 A. That comes from my conversations with Ron
25 McKnight and Pres Harrison, who have worked in the

1 what I remember. But there is a school board as we
2 would know it, but it's not just over one small 04:31 PM
3 area. It's over a large province, the whole
4 province of Ontario.

5 Q. You indicate in paragraph 34 that
6 "Maintenance and operations cannot" -- the next word
7 is "me," but I assume that's "be transferred to 04:32 PM
8 capital expenditures, nor can capital funding be
9 transferred to maintenance and operations."

10 On what do you base that opinion?

11 A. From my conversations with Ron McKnight and
12 Pres Harrison. 04:32 PM

13 Q. Is there any other basis for that opinion?

14 A. No.

15 Q. In paragraph 35 you identify a
16 comprehensive maintenance plan that must be
17 established by each district and updated annually. 04:33 PM

18 You say "must" as though that comprehensive
19 maintenance plan is a requirement in the state of
20 West Virginia. Is that the case?

21 A. Yes, that is the case. I think I referred
22 to it earlier, perhaps. 04:33 PM

23 Q. Is it required by a statute?

24 Are districts required to establish that
25 comprehensive plan by a statute of the state of West

1 province of Ontario.

2 Q. Who was the other individual that you 04:30 PM
3 identified?

4 A. Pres, P-R-E-S, and then Harrison,
5 H-A-R-R-I-S-O-N.

6 Q. Is that Mr. or Ms. Harrison?

7 A. Mr. 04:30 PM

8 Q. Thank you.

9 By whom, if anyone, is Mr. Harrison
10 employed?

11 A. He was employed by the Province of Ontario.

12 Q. What was his position there? 04:30 PM

13 A. Facilities director, or whatever their
14 title is called. Basically he was in charge of
15 facilities.

16 Q. Now, the school board that you refer to, is
17 that -- is the school board part of a province or a 04:31 PM
18 district? The school board you refer to in
19 paragraph 34.

20 A. Ontario has a school board governance
21 policy -- I mean, has a school board that governs
22 the province similar to -- it's not quite the same 04:31 PM
23 as school boards in the United States because
24 it's -- there are more political ramifications in --
25 well, some other -- it's pretty complicated, from

1 Virginia?

2 A. I don't know what you mean. 04:33 PM

3 Q. Is there specific legislation that requires
4 a district to establish a comprehensive maintenance
5 plan in the state of West Virginia?

6 A. I'm not sure if it's, again in the
7 legislation or part of the process. I could look it 04:33 PM
8 up.

9 Q. When you say, "part of the process," what
10 do you mean by "part of the process"?

11 A. It's been my experience that what happens
12 is legislation may say, like in New York, you need 04:34 PM
13 to have a comprehensive maintenance plan, but they
14 don't define specifically how you go about doing
15 that. It's up to the state, then, or the local
16 districts, however that plays out, to define what
17 comprehensive plan is and what that includes. And 04:34 PM
18 so I'm not certain if it would be -- I'm not certain
19 if that is part of the statute or if that's their
20 way of handling it.

21 Q. The next sentence, you mention "On-site
22 inspections occur as it relates to new and/or 04:34 PM
23 renovated construction."

24 Can you explain what you mean to me by that
25 sentence?

Page 335

1 A. The state goes to the site and actually
 2 looks and inspects the sites, the school sites. 04:35 PM
 3 Q. What organization of the state, if you
 4 know, is responsible for conducting those
 5 inspections?
 6 A. The Facilities Division from the state.
 7 Q. What do those inspections entail, if you 04:35 PM
 8 know?
 9 A. They are much more than the facilities
 10 checklist that is included in the back of the
 11 appendix because we are looking at new site
 12 construction, and so it includes issues like 04:35 PM
 13 concrete, borings. I think that's what it's called,
 14 but construction-type issues, as well. Not just
 15 facility conditions like rest rooms. Not just about
 16 that. It's also about the construction itself.
 17 Q. You identify an accountability component in 04:36 PM
 18 the system that the state of West Virginia has.
 19 Can you explain what that accountability
 20 component is for us here today?
 21 A. If the district has not included dollars
 22 to -- in their budget to maintain and operate 04:36 PM
 23 facilities, then they could possibly lose some of
 24 their state funding. The information is turned over
 25 to the state superintendent, and they could lose

Page 336

1 state funding.
 2 Q. Again, I will ask the question if there is 04:36 PM
 3 legislation that deals with that accountability
 4 mechanism.
 5 A. I don't know whether it's legislation or
 6 process.
 7 Q. Are you aware of any other accountability 04:36 PM
 8 components within the state of West Virginia's
 9 system for dealing with maintenance and operations
 10 of school facilities?
 11 MR. ELIASBERG: Other than what she has
 12 already talked about? 04:37 PM
 13 MR. SIMMONS: Yes.
 14 THE WITNESS: I don't know of any other at
 15 this point.
 16 BY MR. SIMMONS:
 17 Q. You indicate in paragraph 35 that there are 04:37 PM
 18 no requirements as to how many dollars must be
 19 included in the line item for -- well, to what are
 20 you referring there in terms of where it must be
 21 included?
 22 A. I am referring to the line item for 04:38 PM
 23 maintenance and operations budgets by each of the
 24 districts.
 25 Q. So it's your understanding that there is no

Page 337

1 specific amount required by the state of West
 2 Virginia; is that correct? 04:38 PM
 3 A. That's correct.
 4 Q. Then you say, "but there must be a
 5 recognition of the need for dollars spent on
 6 facilities."
 7 What do you mean by that phrase? 04:38 PM
 8 A. You can't just arbitrarily put dollars in
 9 the line item budget without some understanding of
 10 how those dollars are going to be spent. You put
 11 this much in for this roof, and this much in for
 12 this, and this much in for that. So there is some 04:38 PM
 13 understanding so if I question -- if they were
 14 questioned about what are you going to do with those
 15 dollars, that there is a plan that recognizes those
 16 amount of dollars that go within that line item
 17 budget. 04:39 PM
 18 Q. Are you saying the amount of dollars
 19 specified must be based on some reasonable judgement
 20 by the district?
 21 A. It goes back to the comprehensive
 22 maintenance plan they have to submit. So their plan 04:39 PM
 23 ought to be in concert with the dollars they are
 24 asking -- or they are including.
 25 Q. Let's start with the last couple of

Page 338

1 sentences in paragraph 35, where you talk about this
 2 was an accountability mechanism that we discussed 04:39 PM
 3 that when a district is requesting funding from the
 4 state to assist with the facility project, the
 5 Department of Facilities will review budgets from
 6 the school district to ensure they have been
 7 complying with the requirement to include dollars 04:39 PM
 8 for maintenance and operations in their budgets. If
 9 they have not, and then funding may be denied.
 10 On what do you base that opinion?
 11 A. Conversations with Dr. Williams.
 12 Q. Anything else? 04:40 PM
 13 A. No.
 14 Q. Did you discuss any instances with
 15 Dr. Williams where funding was denied in the manner
 16 set forth in the last two sentences of paragraph 35
 17 of your expert report? 04:40 PM
 18 A. I believe I asked him the question has he
 19 ever had to do that, and his reply was yes.
 20 Q. Did he indicate for what districts he had
 21 to do that?
 22 A. No. No, not that I remember. 04:40 PM
 23 Q. Did he indicate for what number of
 24 districts that course of action was required?
 25 A. No, but I interpreted that to mean not very

Page 339

1 many. But he didn't say that, but I didn't -- he
2 didn't say a specific number. But just by the way 04:41 PM
3 he said it, I assumed it wasn't very many.
4 Q. You say in paragraph 36 that "If you don't
5 have a system of checks and balances in place with
6 specific standards and guidelines to follow, then
7 the likelihood of facilities becoming a low priority 04:41 PM
8 in terms of funding is great."
9 What do you mean by "a system of checks and
10 balances," as you use that phrase in paragraph 36?
11 A. Developing -- it could include things
12 like -- I'm sorry. There are a lot of things checks 04:41 PM
13 and balances could mean, but it could include things
14 like the comprehensive maintenance plan that's
15 updated yearly. That's checked by somebody other
16 than just the district saying, "Yep, we have it, but
17 nobody looks at it." That would be one example. 04:42 PM
18 Q. Is there any particular system of checks
19 and balances that you believe the state of
20 California ought to use in its system of maintaining
21 public school facilities?
22 A. Again, I think there are some good models 04:42 PM
23 out there that they could turn to to begin to
24 develop theirs.
25 Q. What are the good models?

Page 340

1 A. West Virginia and Maryland would be two.
2 Q. Any others? 04:42 PM
3 A. Arizona's model.
4 Q. Any others?
5 A. I would think they would want to look at
6 all of the states now that are beginning the
7 process, like New York, and Massachusetts, and New 04:43 PM
8 Jersey, for instance, just to do a comparison of
9 what each state is doing.
10 Q. Any other models that you think the state
11 of California ought to look to for a system of
12 checks and balances? 04:43 PM
13 A. I'm not suggesting that they need to look
14 to any one for a system. I am suggesting that they
15 need to look at a number and then develop their own
16 to be clear.
17 Q. Right. That's good. Thank you. I guess I 04:43 PM
18 was just trying to find out did we exhaust the
19 possibilities of models that you would recommend the
20 state of California looking to.
21 A. I would think, when they are ready to start
22 that process, or if and when that happens, that the 04:44 PM
23 states that I have mentioned certainly would be
24 great examples to start with, but I would not
25 suggest those are the only states. Probably it

Page 341

1 would be in their best interest to do a search as
2 well. 04:44 PM
3 Q. As you sit here today, are there any other
4 states that you would identify?
5 A. Right now, I can't.
6 Q. In paragraph 36 you say, "If you don't have
7 a system of checks and balances in place with 04:44 PM
8 specific standards and guidelines to follow, then
9 the likelihood of facilities becoming a low priority
10 in terms of funding is great."
11 On what do you base your opinion that the
12 likelihood of facilities becoming a low priority in 04:44 PM
13 terms of funding is great?
14 A. Probably -- not probably. One of the
15 biggest reasons I base that is because I have been
16 working in the school systems for twenty-two years,
17 and have seen what happens with schools and budgets. 04:45 PM
18 And the other way I know that again is by spending
19 all the years that I have, working across the
20 country with CEFPI and colleagues in every state,
21 and that always is an issue that we discuss. It
22 certainly came up as I talked with various people in 04:45 PM
23 states.
24 Q. Anything else that you base that opinion
25 on?

Page 342

1 A. No.
2 Q. Is there any academic literature addressing 04:46 PM
3 whether the likelihood of facilities becoming a low
4 priority, in terms of funding, is greater when there
5 is no system of checks and balances in place?
6 MR. ELIASBERG: Ambiguous and vague.
7 THE WITNESS: There is literature talking 04:46 PM
8 about ongoing maintenance versus deferred
9 maintenance, and additional costs to a district if
10 they don't keep their buildings up; that it's not
11 just more money the next year. Oftentimes it's lots
12 more money the next year for maintenance. There is 04:46 PM
13 quite a bit of literature speaking to that issue,
14 which is I think referring to what you're asking.
15 BY MR. SIMMONS:
16 Q. What I was asking is just if there was --
17 if there is any -- like you said in paragraph 36, 04:47 PM
18 you deal -- you mention there is just a likelihood
19 of facilities becoming a low priority in terms of
20 funding in the absence of a system of checks and
21 balances. And I was asking if there is any academic
22 literature out there on that subject that you're 04:47 PM
23 aware of.
24 A. I would say some of the lawsuits that have
25 happened, part of the premises have been trying to

1 develop a system so that facilities don't become a
2 low priority. But right now I couldn't tell you, 04:47 PM
3 you know, where to turn to look up this piece of
4 information.

5 Q. On what do you base your opinion in
6 paragraph 36 that "typically there are only a few
7 'voices' that view the maintenance and operations of 04:48 PM
8 facilities as a priority"?

9 MR. ELIASBERG: Was that a question? I
10 know you read the sentence, but what was --

11 MR. SIMMONS: Prior to that I asked what is
12 the basis for that. 04:48 PM

13 THE WITNESS: Again, working in districts
14 for the last twenty-two years; dealing with master
15 plans, and hearing conversations from teachers,
16 administrators, parents; going to a school board;
17 questioning why money is being spent the way it is. 04:48 PM
18 Again, as well as talking with colleagues that deal
19 with this on a daily basis as well.

20 BY MR. SIMMONS:

21 Q. Anything else that that opinion is based
22 on? 04:48 PM

23 A. No.

24 Q. You refer to, in paragraph 37, "This
25 ongoing maintenance and operations program can be

1 A. I think I am using process in the broader
2 sense of there are things that need to happen in 04:50 PM
3 order to address the needs of facilities,
4 maintenance and operations. Those things include
5 the state and local partnership. Those things
6 include establishing standards. Those things
7 include doing the data gathering. And those things 04:50 PM
8 include equitable funding.

9 So all of that is part of a process, and
10 one piece of that within that process is the ongoing
11 maintenance plan. Now, how that is defined for the
12 state of California will have to be up to the state 04:51 PM
13 of California, but certainly addressing a plan for
14 ongoing maintenance makes sense in the broader
15 context of the process.

16 Q. You mention the report from the Finance and
17 Facilities Working Group of the Joint Committee to 04:51 PM
18 develop a master plan for education. You mentioned
19 that a few times in your expert report.

20 You indicate that -- your report is
21 consistent with the recommendations in that report;
22 is that correct? 04:51 PM

23 A. I clarified that yesterday, but I will
24 clarify it again today. Do you want me to?

25 Q. No. I will fix it. There is one sub --

1 very successful, but it will take time."

2 What ongoing maintenance and operation 04:49 PM
3 program are you referring to there?

4 A. The part of the plan that I have suggested
5 of developing a comprehensive master plan, or at
6 least that might be one part of what the process
7 could include. 04:49 PM

8 Q. Can you tell me what other parts the
9 process would include?

10 A. I don't understand.

11 Q. I guess I'm just trying to find out, are
12 you referring to a specific ongoing maintenance and 04:49 PM
13 operations program there in paragraph 37?

14 A. Yes. I guess I refer back up to paragraph
15 36, where I said maintenance and operations of a
16 school facility is ongoing process. The ongoing
17 maintenance and operations program is part of that 04:49 PM
18 whole process of developing a plan and then working
19 the plan.

20 Q. You indicate in paragraph 37 that "There is
21 a need for a well thought-out process." I guess I'm
22 having trouble with this term "process." I would 04:50 PM
23 like to know what it is you mean when you're using
24 that term in the context of this paragraph and
25 paragraph 36.

1 there is one -- there is five areas, and one of the
2 areas which deals with facilities as opposed to the 04:52 PM
3 finance issues that are dealt with by the other four
4 areas.

5 A. Yes, that's true. That's what I spoke to
6 yesterday.

7 Q. You indicate that your report is consistent 04:52 PM
8 with that one area.

9 Are there any ways in which your report is
10 inconsistent with that aspect of the report?

11 MR. ELIASBERG: Objection, compound and
12 misstates the witness' prior testimony. You can go 04:52 PM
13 ahead and answer.

14 THE WITNESS: I guess I don't understand.

15 BY MS. SIMMONS:

16 Q. Are there any -- can you identify any
17 inadequacies in the Finance and Facilities Working 04:52 PM
18 Group of the Joint -- strike that.

19 Can you identify any inadequacies in the
20 report prepared by the Finance and Facilities
21 Working Group of the Joint Committee to develop the
22 master plan for education? 04:53 PM

23 Can you identify any inadequacies in the
24 process suggested by that report?

25 MR. ELIASBERG: You're talking about both

Page 347

1 the whole thing, including the finance piece?
 2 MR. SIMMONS: Just the facilities aspects 04:53 PM
 3 of the report.
 4 THE WITNESS: Okay, just the facilities? I
 5 think the pieces they recommend are certainly
 6 appropriate to be included. I wouldn't suggest that
 7 it's exhaustive. There may be other areas that need 04:53 PM
 8 to be included as well. But certainly the seven I
 9 believe they recommend under point five, most of
 10 those I have also spoken to in this expert report.
 11 BY MR. SIMMONS:
 12 Q. What other areas do you think may need to 04:53 PM
 13 be included in that report?
 14 A. I don't know. But I don't want to say it's
 15 the only areas. I'm not sure if -- they speak of --
 16 talk about equitable funding, and I'm not sure if
 17 that's talked about in No. 5, but it's certainly 04:54 PM
 18 talked about within that report. So whether -- that
 19 certainly is one of the issues that I have opined is
 20 important, and I'm not sure that that's necessarily
 21 in No. 5. It might be.
 22 Q. Throughout the day you have identified 04:54 PM
 23 there may be a number of solutions for any given
 24 maintenance and operations problem.
 25 In terms of establishing equitable funding,

Page 348

1 do you also believe that there are a variety of
 2 solutions to establishing equitable funding? 04:55 PM
 3 MR. ELIASBERG: Objection, compound.
 4 THE WITNESS: I do believe that there are a
 5 number of ways that you can determine how to
 6 identify priorities for the state.
 7 BY MR. SIMMONS: 04:55 PM
 8 Q. What are the ways that you can identify --
 9 what are the ways that you can think of for
 10 identifying priorities for the state?
 11 A. One of the ways would require doing the
 12 initial survey or doing the survey information, the 04:55 PM
 13 data gathering, and then establishing some sort of a
 14 system to rank those schools. That certainly would
 15 be a pretty logical example.
 16 Q. What states, if any, do you believe have
 17 established a system that provides equitable 04:56 PM
 18 funding?
 19 THE WITNESS: Ohio.
 20 MR. ELIASBERG: Just to clarify, we are
 21 talking about particular facilities funding; right?
 22 MR. SIMMONS: Yes. 04:56 PM
 23 THE WITNESS: I have to be careful, too,
 24 because what I am defining as equitable funding is
 25 that what the state has done is looked at all of the

Page 349

1 facility conditions within the state and said, "We
 2 want to start with the ones that are in the worst 04:56 PM
 3 condition." So there may be other ways to define
 4 equitable. So when I speak of Ohio, that's their
 5 system. In West Virginia, that's the system. In
 6 Maryland, that's the system. And then the other
 7 states that I mentioned earlier that are starting, 04:57 PM
 8 Arizona, Massachusetts, New Jersey, that's what they
 9 are looking to as well.
 10 I'm not suggesting that's the only way to
 11 define equitable, but that's certainly what many
 12 states have chosen in order to have some sense of 04:57 PM
 13 where do we begin.
 14 MR. HAJELA: Shaun, do you mind if I ask a
 15 clarifying question?
 16 MR. SIMMONS: Yeah.
 17 MR. HAJELA: Does this equitable funding 04:57 PM
 18 relate only to new construction and renovation?
 19 THE WITNESS: No, it does not.
 20 MR. HAJELA: So in those states you
 21 mentioned, they are distributing funds related to
 22 maintenance and operations as well? 04:58 PM
 23 THE WITNESS: I'm sorry. How they did it,
 24 like in the state of Ohio, is first they did the
 25 initial survey, and then they did a statewide

Page 350

1 survey, and then they ranked every school district
 2 on condition of facilities, socioeconomic status. 04:58 PM
 3 There were six or eight variables. They ranked
 4 every school district. And then based on that
 5 compilation, then, they decided this district gets
 6 this amount of money for their schools. And for the
 7 most part, it is for additions, renovations, or new 04:58 PM
 8 schools. It's not for we are going to give you
 9 money for ongoing maintenance and operations. So
 10 that's what I was speaking to.
 11 BY MR. SIMMONS:
 12 Q. If you will look at paragraph 41, you say, 04:59 PM
 13 "It is my understanding that in the state of
 14 California there is not a system established whereby
 15 the oldest square footage in the state or the
 16 schools in the worst condition is addressed first
 17 regardless of location within the state." 04:59 PM
 18 On what do you base that opinion?
 19 A. Conversations with Rob Corley and Lettie
 20 Boggs.
 21 Q. Anything else?
 22 A. No, not that I can think of right now. 04:59 PM
 23 Q. Are you aware that there was a recent bond
 24 measure passed in California for school facilities
 25 construction and maintenance?

Page 351

1 A. No.
2 MR. SIMMONS: Counsel, can we go off the 05:00 PM
3 record for just a second?
4 MR. ELIASBERG: Sure.
5 (Discussion off the record.)
6 MR. SIMMONS: We are back on. Dr. Myers
7 has been a trooper and agreed to stay for another 05:10 PM
8 half-hour.
9 THE WITNESS: Shaun, can I clarify a
10 question that you asked me earlier that I thought of
11 something when I had a chance to walk around for a
12 minute? 05:11 PM
13 You asked the question about was there any
14 literature to suggest that maintenance takes a back
15 seat to other budget items in a school district's
16 budget. And every year American Schools and
17 University publishes a report, looking at all of the 05:11 PM
18 regions in the United States, and specifically
19 identifies how many dollars are being spent on
20 construction, renovation, how many dollars are being
21 spent on maintenance, and then how that compares to
22 the year before. So there is historical data. 05:11 PM
23 It's my recollection that over the last
24 three years, at least the last three years that I
25 can remember, those maintenance dollars have

Page 352

1 continued to decrease. But it's interesting -- it's
2 certainly an interesting look at the bigger picture, 05:11 PM
3 which might serve as a resource.
4 BY MR. SIMMONS:
5 Q. Thank you. I will follow up on that
6 quickly. First I will finish with indicating you
7 have been nice enough to indulge us with another 05:12 PM
8 thirty minutes here. I will do my best to get as
9 much done in that thirty minutes.
10 If you will turn to paragraph 41 of your
11 report. You say that it is your understanding that
12 in the state of California there is not a system 05:12 PM
13 established whereby the oldest square footage in the
14 state or the schools in the worst condition is
15 addressed first regardless of location within the
16 state.
17 What is your basis for that opinion? 05:12 PM
18 A. My conversation with Rob Corley, as well
19 as -- well, it was really with Rob Corley.
20 Q. Do you have any other basis for that
21 opinion?
22 A. It's been included in some of the 05:13 PM
23 depositions, but I would have to go back and look at
24 my notes.
25 Q. The next sentence, paragraph 41, says, "It

Page 353

1 appears that allocation is generally made on a first
2 come first serve basis, and those districts with a 05:13 PM
3 savvy staff are more likely to obtain the dollars
4 needed for new construction and modernization."
5 On what do you base that opinion?
6 A. My discussion with Lettie Boggs.
7 Q. Do you base that opinion on any other 05:13 PM
8 information?
9 A. Primarily it was our discussion.
10 Q. Can you recall anything else, as you sit
11 here today, that you relied upon in forming that
12 opinion? 05:14 PM
13 A. No, I can't, not right now.
14 Q. The next sentence of paragraph 41 is:
15 "Those districts that are operating with a very
16 small multipurpose staff do not have the time and/or
17 resources to commit to chasing the dollars and are 05:14 PM
18 often left out completely in any state for federal
19 aid." Can you tell me what the basis for that
20 opinion is?
21 A. My conversation with Lettie Boggs.
22 Q. Anything else? 05:14 PM
23 A. Rob Corley. The conversation with Rob
24 Corley.
25 Q. Anything else you rely upon in support of

Page 354

1 that opinion?
2 A. There may have been other things, but right 05:15 PM
3 now those are the two that I remember.
4 Q. What do you consider a district -- what
5 districts in California would you identify as having
6 a very -- is operating with a very small
7 multipurpose staff, if any? 05:15 PM
8 A. I don't know the district in California.
9 Q. You say another related -- strike that.
10 In paragraph 42 you say that "Another
11 related problem is that unless a school district has
12 a person hired on the staff to chase state funding, 05:15 PM
13 there is little hope that local districts will be
14 given dollars to assist with maintenance issues
15 within their district."
16 What do you base that opinion?
17 A. My conversations with Rob Corley and Lettie 05:16 PM
18 Boggs, and perhaps through the depositions. But
19 again, I would have to go back and refer to them.
20 Q. Anything else that you can recall as
21 supporting that opinion that you give in the first
22 sentence of paragraph 42? 05:16 PM
23 A. No.
24 Q. When you say in that second sentence
25 "persons who work within the state of California who

1 in some cases have been hired specifically to chase
 2 state dollars as their primary job responsibility 05:16 PM
 3 have shared this insight," what persons are you
 4 referring to in that sentence?
 5 A. Primarily Lettie Boggs.
 6 Q. Anyone else?
 7 A. She, in that conversation, mentioned some 05:17 PM
 8 other -- that she knows this also occurs because she
 9 mentioned some other persons, colleagues, as well,
 10 but I don't remember who she mentioned.
 11 MR. HAJELA: I'm sorry to do this again.
 12 In the sentence right before that you used the term 05:17 PM
 13 "maintenance issues." I am again confused about
 14 whether we are talking about new construction or
 15 modernization or maintenance.
 16 THE WITNESS: I think this is in the
 17 broadest sense, all of it, because some of that 05:17 PM
 18 might be deferred maintenance, which could also been
 19 seen as renovation or modernization. So it's hard
 20 to say it's just one.
 21 BY MR. SIMMONS:
 22 Q. The next sentence, paragraph 42, you say, 05:18 PM
 23 "Once the data-gathering system is in place, the
 24 state will be able to identify the districts which
 25 have the greatest needs."

1 On what do you base that opinion?
 2 A. Talking with Dr. Williams, and 05:18 PM
 3 Dr. Stenzler, and some of my other colleagues, as we
 4 address the issue of how do you decide
 5 prioritizations.
 6 Q. Anything else that that opinion is based
 7 on? 05:18 PM
 8 A. Probably my experience. Not probably.
 9 Definitely my experience in working with districts.
 10 Q. Anything else that you can recall right
 11 now?
 12 A. No. 05:19 PM
 13 Q. In paragraph 43 you say, "In the context of
 14 new construction an equitable funding system could
 15 be established similar to that authorized by the
 16 state of Ohio."
 17 Correct me if I'm wrong, but it's not your 05:19 PM
 18 opinion in this case that the state of California
 19 ought to adopt the funding system used by the state
 20 of Ohio; is that correct?
 21 A. Yes, it is not my opinion they should adopt
 22 any state's model. 05:20 PM
 23 Q. In the second sentence you state that
 24 "Every school facility in every school district in
 25 the state was evaluated by a team of architects and

1 engineers employed by the state to establish, among
 2 other things, a ranking as to the districts with the 05:20 PM
 3 most facility needs."
 4 How are you aware of that process?
 5 A. Through my experience in working with the
 6 state of Ohio.
 7 Q. Any other ways? 05:20 PM
 8 A. I also served on the CEFPI board, and we
 9 were commissioned to review that process.
 10 Q. Do you know what that process cost the
 11 state of Ohio?
 12 A. I have no idea. 05:21 PM
 13 Q. The next sentence in paragraph 43 says,
 14 "Other factors were addressed in determining the
 15 priority ranking for the state, including the
 16 district's financial circumstances and ability to
 17 fund new or renovated facilities based on the 05:21 PM
 18 demographics of community and the wealth index."
 19 How are you aware of that information in
 20 that sentence?
 21 A. Because I have been involved in some
 22 projects in the state of Ohio that are receiving 05:22 PM
 23 funding based on this priority ranking, as well as
 24 from my involvement with CEFPI in reviewing the
 25 process.

1 Q. Do you know whether the state of California
 2 considers the district's ability to fund new and/or 05:22 PM
 3 renovated facilities in making funding decisions?
 4 A. Would you please say that again?
 5 MR. SIMMONS: Could you read that back?
 6 (The reporter read the pending question.)
 7 THE WITNESS: No, I don't know. 05:22 PM
 8 BY MR. SIMMONS:
 9 Q. You say Ohio took in the ability to fund
 10 based on a wealth index. What is your understanding
 11 of that wealth index?
 12 A. There were a number of components that went 05:23 PM
 13 in to make up the wealth index. I can tell you a
 14 few of them. They looked at the average income
 15 within the community, age of -- the census data
 16 within each community, poverty level, unemployment
 17 rates. Those were just some of the things I know 05:23 PM
 18 that went into that as part of the ranking.
 19 Q. How do you know that those areas were part
 20 of the wealth index?
 21 A. Because I am working with some districts
 22 that are receiving funding from the state, as well 05:23 PM
 23 as, again, my work with the CEFPI in reviewing all
 24 of this.
 25 Q. That next sentence where you say,

Page 359

1 "utilizing a series of objective data-gathering
 2 instruments, including facility evaluations, 05:24 PM
 3 demographic studies, and financial ability of the
 4 district, a prioritization of all school districts
 5 in the state of Ohio has been determined." How long
 6 did that process take the state of Ohio, if you
 7 know? 05:24 PM
 8 A. I wouldn't want to guess. It seems like
 9 it's taken several years, but I couldn't tell you if
 10 that's two years or five years. I'm not really
 11 sure.
 12 Q. What objective data-gathering instruments, 05:25 PM
 13 other than facility evaluations, were used as part
 14 of the process in Ohio?
 15 A. They employed demographers to do a
 16 statistical analysis of the enrollment projections
 17 in each of the school districts, as one example. 05:25 PM
 18 They looked at the tax base of the school district.
 19 Q. Any other objective data-gathering
 20 instruments that you can think of?
 21 A. Well, some of the things related to the
 22 wealth index would be certainly objective data; 05:25 PM
 23 unemployment rates, welfare cases. Those would
 24 certainly all be objective.
 25 Q. In paragraph 44 you indicate that "the

Page 360

1 funding system should not be based totally on
 2 providing dollars to only those districts that apply 05:26 PM
 3 either on a first come first serve basis or on the
 4 application process alone."
 5 On what do you rely in reporting that
 6 opinion?
 7 A. It's my understanding from my conversations 05:26 PM
 8 with Rob Corley and Letitia Boggs, that currently is
 9 the system in California.
 10 Q. In that last answer you just said Letitia
 11 Boggs instead of Lettie.
 12 A. I'm sorry. Lettie Boggs. 05:26 PM
 13 Q. In paragraph 45 you indicate that "state
 14 funds for deferred maintenance in California are not
 15 allocated on a first come first serve basis."
 16 On what do you base that opinion?
 17 A. My conversations with Lettie Boggs and Rob 05:27 PM
 18 Corley and from some of the depositions, I believe.
 19 Q. Now, in your next sentence you say that
 20 your understanding is that all those districts that
 21 apply receive some dollars, but the amount is based
 22 on the amount of dollars available, and that is 05:27 PM
 23 divided among all applicants.
 24 On what do you base that opinion?
 25 A. My conversations with Rob Corley and Lettie

Page 361

1 Boggs.
 2 Q. When you say the amount is based on the 05:28 PM
 3 amount of dollars available, could you explain a
 4 little bit more what you mean by that?
 5 A. It's my understanding that each year the
 6 state allocates X amount of dollars for deferred
 7 maintenance projects, and then it's up to the state 05:28 PM
 8 entity to decide who gets what. And basically if
 9 fifty districts apply, then they divide it up; a
 10 hundred and fifty, they divide it up. That's my
 11 understanding.
 12 Q. In paragraph 45 you say, "The current 05:28 PM
 13 system does not assure deferred maintenance funds go
 14 to districts that have serious needs if they fail to
 15 apply for funds."
 16 Upon what do you base that opinion?
 17 A. My discussions with Rob Corley and Lettie 05:28 PM
 18 Boggs.
 19 Q. Anything else?
 20 A. Not right now I can think of, no.
 21 (Discussion off the record.)
 22 MR. ELIASBERG: Could you read back the 05:30 PM
 23 last question and answer?
 24 (The reporter read the preceding question
 25 and answer.)

Page 362

1 BY MR. SIMMONS:
 2 Q. In paragraph 46 you say, "While California 05:31 PM
 3 has included dollars in the budget for deferred
 4 maintenance, those monies have fluctuated over the
 5 years, and thus maintenance continues to take a back
 6 seat in local budgets."
 7 On what do you base that opinion? 05:31 PM
 8 A. Reading the California code, as well as
 9 conversations with Rob Corley.
 10 Q. Anything else?
 11 A. No.
 12 Q. What is your understanding of how deferred 05:31 PM
 13 maintenance monies have fluctuated over the years,
 14 as you put it in paragraph 46?
 15 A. It's my understanding, from the
 16 conversations, that the numbers haven't been static;
 17 that every year it's a different number and not 05:32 PM
 18 necessarily going up, increasing the budgets for
 19 more dollars for maintenance, but in many cases
 20 decreasing the budgets.
 21 Q. You identify, in paragraph 47, three
 22 findings of the state. Do you see where that is? 05:32 PM
 23 There is A, B and C.
 24 A. Yes.
 25 Q. Where do those findings come from? If you

1 know.
 2 A. I don't know right now. I think they came 05:33 PM
 3 from conversations. I think it came from -- do you
 4 want me to clarify?
 5 Q. Yes.
 6 A. I think it came from the conversation with
 7 Rob Corley specifically. 05:33 PM
 8 Q. Are you speculating at all in that answer?
 9 A. No. Speculating in the sense that I am
 10 pretty sure that's right. So is that speculating?
 11 Q. We will leave it at that for now. In
 12 paragraph 48 you indicate that there is not only a 05:34 PM
 13 problem with deferred maintenance dollars, but also
 14 with defining the ongoing maintenance issues versus
 15 deferred maintenance projects.
 16 Can you explain a little bit more for me
 17 what you mean by that sentence? 05:34 PM
 18 A. What I understand is that there are monies
 19 allocated in the state budget for deferred
 20 maintenance, as I spoke to earlier. There is a pot
 21 of money if you apply for it. Local districts have
 22 to pay for ongoing maintenance. There aren't 05:35 PM
 23 assistance dollars from the state for ongoing
 24 maintenance. What happens sometimes is, because
 25 districts don't have money to fund ongoing

1 maintenance, they wait or they have to wait until it
 2 gets to the point that it becomes a deferred 05:35 PM
 3 maintenance problem so that they have the
 4 possibility of getting some dollars to take care of
 5 the issues. For instance, roofs.
 6 Q. On what do you base the opinion that you
 7 just provided us with in your last answer? 05:35 PM
 8 A. From conversations with Lettie Boggs and
 9 Rob Corley.
 10 Q. Anything else?
 11 A. No.
 12 MR. ELIASBERG: She also cites something in 05:35 PM
 13 the report. Are you talking anything else beyond
 14 that citation?
 15 MR. SIMMONS: I'm talking anything else
 16 beyond the conversations with the --
 17 THE WITNESS: The report. 05:35 PM
 18 BY MR. SIMMONS:
 19 Q. Turn to paragraph 50 really quickly. You
 20 say that "Several models have been presented in this
 21 information to provide guidelines that have been
 22 successful in other states." 05:36 PM
 23 Correct me if I'm wrong, but as I
 24 understand the opinions that you have provided in
 25 your report and discussed with me over the last

1 couple of days, it's not your opinion that the state
 2 is required to adopt any of the models that you 05:37 PM
 3 identify in your expert report; is that correct?
 4 A. If you're asking if I am suggesting the
 5 state of California adopt a specific state model, I
 6 am not suggesting that. I am suggesting that they
 7 look at all of the models that are available, and 05:37 PM
 8 develop one that is appropriate for them.
 9 MR. ELIASBERG: Shaun, it's about thirty
 10 minutes. Have you sort of got a few more, or does
 11 it make sense to stop now?
 12 MR. SIMMONS: It probably makes sense to 05:37 PM
 13 stop now because the remainder that I have I will
 14 probably finish a hell of a lot quicker tomorrow
 15 than I will. . . .
 16 MR. ELIASBERG: We are all pretty tired,
 17 and I know the witness is. It's probably best to 05:38 PM
 18 end now.
 19 MR. SIMMONS: Okay.
 20 (TIME NOTED: 5:38 P.M.)
 21
 22
 23
 24
 25

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
 8
 9
 10 _____
 11 SIGNATURE OF THE WITNESS
 12
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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 5th day of February, 2003.
 3
 4
 5
 6
 7 _____
 8 JO ANN BRUSCELLA, CSR No. 4295
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1 INDEX
 2 VOLUME II
 3
 4 THURSDAY, JANUARY 23, 2003
 5
 6 WITNESS EXAMINATION
 7
 8 NANCY RUTH MYERS, Ed.D.
 9
 10 (By Mr. Simmons) 174, 256
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 DEPOSITION EXHIBIT
 2 NANCY RUTH MYERS, Ed.D.
 3
 4 NUMBER DESCRIPTION IDENTIFIED
 5 3 Document entitled "The Building 175
 6 and Beyond Creating Connections in
 7 Educational Planning"
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