

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

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

Plaintiffs,)

vs.)

No. 312236

STATE OF CALIFORNIA, DELAINE)
EASTIN, STATE SUPERINTENDENT)
OF PUBLIC INSTRUCTION, STATE)
DEPARTMENT OF EDUCATION,)
STATE BOARD OF EDUCATION)

Defendants.)

DEPOSITION OF
ROBERT CORLEY
VOLUME 2

SAN FRANCISCO, CALIFORNIA
FEBRUARY 11, 2003

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 11 Plaintiffs,)
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 13 vs.) No. 312236
 14)
 15)
 16 STATE OF CALIFORNIA, DELAINE)
 17 EASTIN, STATE SUPERINTENDENT)
 18 OF PUBLIC INSTRUCTION, STATE)
 19 DEPARTMENT OF EDUCATION,)
 20 STATE BOARD OF EDUCATION)
 21)
 22 Defendants.)
 23)
 24)
 25)

16 Deposition of ROBERT CORLEY, Volume 2, taken on
 17 behalf of Defendants, at 275 Battery Street, 27th
 18 Floor, San Francisco, California, continuing at 9:45
 19 a.m., Tuesday, February 11, 2003, before Jane H.
 20 Stuller, CSR #7223.
 21
 22
 23
 24
 25

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1 ROBERT CORLEY,
 2 having previously been duly sworn, was
 3 examined and testified as follows:
 4
 5 EXAMINATION
 6 BY MR. SEFERIAN:
 7 Q. Mr. Corley, do you realize you're still
 8 under oath?
 9 A. Yes.
 10 Q. Have you had any conversations with
 11 Mr. Eliasberg since five o'clock last evening about
 12 this deposition?
 13 A. Well, we just walked back to the office
 14 together and talked in extremely general terms just,
 15 am I still comfortable, and so on. I mean, It was
 16 nothing on that.
 17 Q. Have you had any discussions with anyone
 18 about this case since 5:00 p.m. last evening?
 19 A. No.
 20 Q. Have you reviewed any documents regarding
 21 this case since five o'clock last evening?
 22 A. I did reread a portion of the expert report
 23 -- of my report.
 24 Q. You're referring to Exhibit 1?
 25 A. Exhibit 1, yes.

1 Q. Which portion of Exhibit 1 did you read
2 since five o'clock last evening?

3 A. Just kind of skimmed through the back half
4 of it, starting at about page 60. It was just a
5 quick -- to refresh my memory. You know, it was --
6 it's just been a while since I actually read it all
7 the way through.

8 Q. How long did you spend last evening -- was
9 it last evening he read the --

10 A. Uh-huh, 15 -- 15 minutes.

11 Q. Okay.

12 A. That's all there is.

13 Before you begin your questioning, can I add
14 something to what I said yesterday?

15 Q. Yes.

16 A. Is now a good time or --

17 Q. Sure.

18 A. In thinking back on what was said yesterday,
19 at one point you were asking questions about
20 accountability of local schools and school boards.
21 And I wanted to supplement that, if I could. I may
22 have left a thought kind of dangling in midair
23 there.

24 What I said was that there is good
25 accountability for -- on the part of the community

1 a functioning dynamic of accountability. But where
2 it breaks down, it tends to break down and avalanche
3 into other problems. Which is, in many ways, the
4 essence of this entire case.

5 So with that, I'll return to your questions.

6 Q. What do you mean when you say, sometimes the
7 accountability system breaks down?

8 What do you mean by "breaks down"?

9 A. That a parent, a student, a community member
10 will have a complaint. They will phone it in or send
11 a letter or show up in person. And there is no
12 response; or there's a response of, I'll get to it,
13 and nothing ever happens. They've come back, nothing
14 ever happens.

15 So sometimes, there is actually a breakdown
16 in the follow through and in the whole scope of what
17 one would consider accountability. Sometimes you'll
18 have a complaint, and you call the school district
19 office. You get bounced from voice mail to voice
20 mail to voice mail.

21 And only the unusual and persistent parent
22 will follow through and actually get through to
23 anybody. It even occurs within the school system.
24 And I -- I have personal experience where a principal
25 who is in charge of a campus will say, I've sent in a

1 and parents and other officials for local school
2 officials and school boards. What needs to be added
3 to that, though, is that sometimes that system breaks
4 down.

5 And sometimes you have situations where, for
6 various reasons, for whatever reasons, there is not
7 good accountability. And this is an infrequent
8 occurrence. It is not the norm, but it does occur.
9 And sometimes the parents just so discouraged at the
10 lack of responsiveness, they just stop even attending
11 and caring. Sometimes there's a physical detachment
12 where they just don't even show up anymore.

13 So when I described that there is
14 accountability in normal, well-functioning districts,
15 there is a high degree of accountability. But in
16 some cases, that system breaks down, and there is not
17 local accountability. Then you've got a system of --
18 where things are out of balance.

19 And many of the conditions that are
20 described in this expert report occur under those
21 circumstances, where you lose the accountability, you
22 lose the connection, you lose the follow through. And
23 that's how these situations occur.

24 So again, I just wanted to say that, in
25 normal situations and normal circumstances, there is

1 work order. I've sent in four work orders. It's
2 still broken.

3 So at some point, the system has failed.
4 Again, I think that is really a core issue with this
5 entire case.

6 Q. When you were using the term accountability
7 with respect to local officials and school boards,
8 what's the definition of accountability in that
9 context?

10 A. Accountability in that context would be
11 responsiveness to concerns and complaints, to
12 requests for service, or materials, or information.
13 Accountability would be someone promising performance
14 and delivering the performance that was promised.

15 In a situation where someone has a comment
16 or complaint at the local level before a local
17 official or a school board, and there's not initial
18 responsiveness to that. In that situation, are there
19 any other things that can be done at the local level
20 to get a response to that concern or complaint?

21 MR. ELIASBERG: Objection; incomplete
22 hypothetical.

23 Go ahead.

24 THE WITNESS: Generally, a complaint is
25 directed at a staff person because they're the people

1 who are supposed to be doing the job. When there
2 isn't responsiveness, the next level of
3 accountability is the elected school board. There
4 may be ranks within staff. But after you've
5 exhausted your administrative remedy, then you go to
6 the elected remedy, which would be your Board of
7 Education.

8 If you go to the Board of Education and say,
9 My kid doesn't have an algebra book, my kid doesn't
10 have a bathroom, my kid -- you know, whatever, and
11 you don't get responsiveness there, you're kind of at
12 the end of the line.

13 And again, that gets back to a core issue of
14 this case. Is after one parent, two parents, ten
15 parents have identified a problem and gone through
16 staff, gone through the correct procedures, gone to
17 the elected board, and nothing has happened -- not
18 just once, but several times, what is the remedy?

19 We've seen some patents go to the newspaper,
20 so you'll have news media reports. I think Channel 2
21 in Los Angeles just had a big -- big special
22 investigative report. San Francisco Chronicle has
23 run reports. Sacramento Bee has run reports.

24 But again, these are leaving the system and
25 going to a third party attempting to get publicity,

1 A. Okay.

2 Q. And specifically, the second-full paragraph
3 there. Would you agree at State of California has,
4 at various times, established funds to address
5 specific needs of school districts, such as air
6 conditioning for schools that were changing to a
7 year-round calendar?

8 A. Yes. In the past, the state has had several
9 specific supplemental funds for those specific
10 programs. I believe most of those, if not all of
11 these, are now defunct. But in -- in the past, these
12 funds have existed, yes.

13 Q. Would you agree that the 1998 state school
14 bond included approximately \$2.1 billion for
15 modernization projects?

16 MR. ELIASBERG: Asked and answered.

17 THE WITNESS: I believe that's the correct
18 sum.

19 BY MR. SEFERIAN:

20 Q. Is it true that the modernization grant can
21 be used to fund different types of work, including
22 air conditioning, insulation and roof replacement?

23 A. Those are eligible costs, yes.

24 Q. The modernization funds are targeted towards
25 school districts that have older buildings that may

1 attempting to motivate some kind of follow through,
2 but there really is nobody else.

3 BY MR. SEFERIAN:

4 Q. If there are concerns or complaints at the
5 local level, and those are initially addressed, for
6 example, to a staff person, and then to an elected
7 school district board, and the board doesn't
8 respond. Is the board accountable to the extent that
9 the board members are subject to election and can be
10 voted out of office?

11 Is that part of the accountability?

12 A. That is part of the accountability. And
13 most school board members have four-year terms. And
14 again, I have to site like Ravenswood School
15 District, all one word, they've just had a major
16 turnover on their board. Three of the five seats are
17 new members that promised to clean up that district
18 that has been tragically underperforming for decades.

19 The long-time superintendent whose fingers
20 are all over the troubles is on administrative
21 leave. And -- but there, there literally is a
22 generation of failure. And finally, it took that --
23 that length of time for the community to respond.

24 Q. I'd like to ask you to direct your attention
25 to page 49 of your report, Exhibit 1.

1 be in greater need of repair, correct?

2 MR. ELIASBERG: Objection; vague.

3 THE WITNESS: I don't agree with your
4 statement. The modernization funds are not targeted
5 at the districts with older funds -- older
6 buildings. They're available to -- they're not
7 targeted to anybody. They're just available if you
8 meet the eligibility test, which 25 years of age for
9 permit buildings, 20 years for portables.

10 So, yes, they're available to all districts,
11 including those with older buildings, but they're not
12 targeted at all.

13 Q. Would you agree the modernization funds are
14 only eligible to school districts that have older
15 buildings that may be in greater need of repair?

16 A. Again, I would disagree with that
17 statement. It's a two-part statement you just made.
18 Modernization funds are not targeted. I mean, you're
19 not eligible until you're 25 years of age. But some
20 schools are 60 years old, some are 70 years old. And
21 there's no targeting, whatsoever, based on age. If
22 you're over the line, you're eligible.

23 And it -- I'm sorry. I forgot the second
24 half of your question. But I -- you can restate, if
25 you want, but I -- I do not accept your hypothesis

1 that these funds are targeted. They're made broadly
2 and equally available to everybody in the state.

3 Q. You would you agree that the modernization
4 funds are only made available to those school
5 districts that have older buildings?

6 A. If you define older as being 25 years of
7 age, yes, that is a correct statement. But again, 25
8 years of age is not really that old. I mean, that's
9 well over half of the schools in the state.

10 Q. Would you agree that the modernization funds
11 are only available to school districts that have
12 older buildings that may be in greater need of
13 repair?

14 A. The second half of your question, I believe
15 is not accurate. Again, modernization funds are not
16 targeted to anybody. If you have 25 years -- if you
17 have a building that is 25 years old, you're
18 eligible, period.

19 If you have greater need, you're still
20 eligible. You get in the same line with everybody
21 else out there in the pack. The beauty and strength
22 of the program is that it's widely, equally available
23 to everybody.

24 The disadvantage is that if you have an
25 extremely old or extremely needy building, you're out

1 1916 building. And we went up in the attic where the
2 electrical distribution system is. Nailed onto the
3 rafters were glass insulators with bare copper wires
4 that took electricity around the building and down
5 and fed the outputs where people were plugging in
6 computers and working in the 1990s.

7 That's how they wired buildings in 1916, and
8 it had never been upgraded. Nobody knew what was
9 really up there. So in some buildings, you go and
10 you have to replace a fuse with the circuit breaker.
11 Here, you literally had to abandon the entire
12 electrical guts of the building and bring in
13 electrical service that -- I mean, bare copper wires
14 running through attics just aren't allowed. You
15 can't do that. That was 1916, and when electricity
16 was kind of new.

17 That's totally different than modernizing a
18 1974 school which has modern electrical and flex
19 conduit, and it's just so apples and oranges. So
20 some of these very, very old schools, including right
21 here in San Francisco, it's enormously more expensive
22 to rewire and upgrade and modernize those schools.

23 They literally didn't even have a fuse box.
24 They didn't have fuses back then. They had little
25 thin pieces of wire what would burn up if there was a

1 there with everybody. So it's -- it's a very
2 democratic process in that everybody is equally
3 eligible all the time. However, if you have
4 extremely old or extremely needy buildings, you're in
5 the same line.

6 Prop 47 did change that a little bit, but
7 that's a different bond issue than you're referring
8 to.

9 Q. When you -- in your last answer when you
10 said Prop 47 changed that somewhat or a little bit,
11 what did you mean by that?

12 A. There's a section in recognition, after the
13 experience of Prop 1A, that very old buildings had
14 more costly and more needs. That there is a specific
15 provision in Prop 47 that allows additional funding
16 for buildings that are 50 years of age or older. And
17 I see that as a positive step by the state to address
18 the very real needs of the very, very old schools.

19 Now, the people working on in those
20 buildings say the additional money still isn't
21 enough, but every little bit helps. So they're
22 grateful for the increment, even though it's still
23 not enough, but they're happy to get it.

24 Tony, let me give you just -- sorry -- just
25 a real-life example of that. We're modernizing a

1 problem. But they did not even have the things that
2 you would identify as a fuse. They had these
3 primitive little fuses.

4 So California is a big state. There are
5 8,000 schools, all kinds of special situations out
6 there, including some very, very old schools. So we
7 appreciate the state modernization, but there's a lot
8 of work to be done.

9 Q. The 1998 state bond also had a priority
10 points mechanism, correct?

11 A. You know, I'm going to have to think about
12 that because the priority point system was added by
13 separate legislation. And I believe there was some
14 priority points wording. The exact definition was
15 either amended or added by a different bill. But the
16 net result was, that that program did include
17 priority points. Whether it was in the original bill
18 or added, I frankly don't recall.

19 Q. The net result was that the school facility
20 program initially had priority points. Would that be
21 accurate?

22 A. Yeah. I'm not sure if it was in the initial
23 roll out. But clearly by '99 or 2000, it did have
24 priority points.

25 Q. Would you agree that the priority points

1 which were implemented with the school facility
2 program, or shortly thereafter, were targeted to
3 ensuring new construction funding would be made
4 available to school districts that are more crowded?

5 MR. ELIASBERG: Objection; compound.

6 THE WITNESS: I really don't agree with
7 that statement. It targeted funds to the people with
8 the greatest eligible, not the most crowded. And the
9 two are different.

10 BY MR. SEFERIAN:

11 Q. Is there a relationship between being
12 crowded and having eligibility under the school
13 facility program?

14 A. There generally is a relationship, but it's
15 not necessarily the same. Eligibility is a function
16 of existing capacity and chargability of that
17 capacity and your projected enrollment. Being
18 crowded is different.

19 You also have to factor in things like the
20 operational grant program, which has crowded schools,
21 but you lose eligibility in exchange for the annual
22 payments. There are just a number of factors that go
23 into it.

24 In general, though, if you're overcrowded,
25 you should have some eligibility, but not always.

1 education, which were able to jump to the head of the
2 line and get funded in a very prompt manner. They
3 were deemed to be exempt from the priority point
4 system.

5 BY MR. SEFERIAN:

6 Q. Would you agree that -- let me withdraw
7 that.

8 Would you agree with the statement that, on
9 the whole, Prop 1A was a success?

10 MR. ELIASBERG: Objection; vague and
11 ambiguous.

12 THE WITNESS: At a global level, yes, it
13 was. I mean, but -- you know, it put \$9 billion on
14 the streets for K-12, community college, CSU and UC.
15 It was a success. It did have a few parts that
16 clanked, didn't work that well.

17 But all in all, it put a tremendous -- it
18 achieved three goals: No. 1, it took away the mess
19 that had become the lease/purchase program and
20 replaced it with a more streamlined and efficient
21 program.

22 Second, put a lot of cash on the street. It
23 didn't come anywhere close to solving the problem,
24 but it did make a difference. And many, many
25 students are better off today because of it.

1 And it -- there are just other variables that
2 determine the actual outcome.

3 Q. Do you agree that the priority points
4 mechanism that was started with the school facility
5 program was targeted to ensure new construction
6 funding would be made available to those school
7 districts that had the greatest eligibility under the
8 school facility program?

9 MR. ELIASBERG: Objection; compound,
10 misstates his prior testimony about when priority
11 points started.

12 THE WITNESS: Again, I believe the priority
13 points mechanism we're describing was amended into
14 the program after the beginning. And it -- the
15 calculation for priority points was fairly complex,
16 and that it had more than one variable in it. And we
17 would have to pull out the regulation, actually go
18 over it in detail if you want to get into that level
19 of detail.

20 In general, it targeted money to the
21 districts with the greatest number of unhoused
22 students, which was the greatest number of eligible
23 students. In general, that's how it worked.

24 But there are some exceptions, and it did
25 include some exemptions. For example, count offices

1 And third, it brought peace to the developer
2 fee wars that were just getting -- fee war between
3 schools and residential builders that was just
4 getting more and more distracting from the main
5 purpose. So it did achieve its three main
6 legislative goals.

7 And I have to say, in that sense, it was a
8 success. It wasn't perfect, and I won't say it's
9 perfect, but it did achieve the main goals.

10 BY MR. SEFERIAN:

11 Q. Would you agree that, as a result of the
12 priority points mechanism that was implemented
13 shortly after Proposition 1A, new construction funds
14 were allocated to more crowded school districts as a
15 result of that priority point plan?

16 MR. REED: Objection; misstates his
17 testimony.

18 MR. ELIASBERG: Misstates his testimony,
19 and compound.

20 THE WITNESS: I do not agree with your
21 statement, no. I won't go that far. We just
22 discussed how most crowded and highest priority
23 points had similar factors, but are really
24 different. So, no, it did not direct crowding -- or
25 funding to the most crowded districts.

1 It -- I won't say it was a total disaster,
 2 but it -- there are many, many extremely crowded
 3 districts -- you know, desperately crowded districts
 4 that never got a penny under the priority point
 5 formula. They had to wait for the next bond.
 6 So the effect, unfortunately, was -- I think
 7 there were some unintended consequences based on the
 8 formula that was adopted. And there were some --
 9 unfortunately, it's a very complex calculation.
 10 There are a lot of variables. There are a lot of
 11 factors that go into it. And I don't even think the
 12 person that wrote it -- I forget who was it. I think
 13 Cardenas wrote it, a legislator, really predicted
 14 exactly how it work out in the real world.
 15 So, no, it did not target funding to the
 16 most crowded districts. It did do some targeting,
 17 but I can't accept that it actually targeted money to
 18 the most crowded.
 19 BY MR. SEFERIAN:
 20 Q. Would you agree that some crowded schools
 21 received money as a result of the priority points
 22 mechanism?
 23 A. I'm trying to -- yes. I'd have to say, at
 24 some point, some crowded schools did get the money,
 25 especially in the final rounds. But again, everybody

1 in the state program for new construction is crowded
 2 to some degree. I mean, you don't go stand in that
 3 line unless you have some degree of crowding. So
 4 everybody who got anything had some need.
 5 The reality is, it did not target to the
 6 most crowded, is just picked among the list based on
 7 this other set of criteria that was determined
 8 through regulation and the statutory language.
 9 Q. Would you agree that the 1998 school bond --
 10 state school bond also targeted \$1 billion for
 11 hardship school districts?
 12 A. I believe that's the correct amount, yes.
 13 Q. And the financial hardship assistance is
 14 made available to those school districts that cannot
 15 provide all or a part of their funding share for
 16 school district projects, correct?
 17 A. That's correct. It also provides funding to
 18 classes of eligible agencies that are eligible, by
 19 definition; for example, county superintendents of
 20 schools. By definition, they are a financial
 21 hardship.
 22 Q. Would you agree that the Proposition 1A
 23 hardship assistance was targeted towards those
 24 districts that, for whatever reason, could not fund
 25 the local match for a new construction or

1 modernization project?
 2 A. That's a correct definition of financial
 3 hardship.
 4 Q. The school facilities program also has a
 5 facility hardship grant; is that correct?
 6 A. That is correct.
 7 Q. Would you agree that the school facility
 8 program facility hardship is specifically targeted to
 9 facilities that pose an imminent health and safety
 10 threat or to replacing facilities lost due to a
 11 disaster?
 12 A. Those are the -- my recollection is that
 13 those are the restrictions adopted for the facility
 14 hardship.
 15 Q. Does the critically overcrowded schools
 16 program allow districts with critically overcrowded
 17 school sites to apply for a preliminary apportionment
 18 for new construction projects to relieve
 19 overcrowding?
 20 A. Yes. The critically overcrowded school
 21 program allows districts to make certain
 22 applications. It does allow the advanced application
 23 before you have plans or site. However, you need to
 24 be very clear that crowding is very narrowly defined
 25 in that program, and the -- there are many

1 constraints on it.
 2 So while it -- as we discussed at length
 3 yesterday, it is a good program, will meet many, many
 4 needs around the state. It is not a solution to
 5 everybody's problems. Many schools that are crowded
 6 or overcrowded lack minimal facilities, are
 7 ineligible for that program. So while it's a good
 8 program and has advantages, it also has many, many
 9 constraints and limitations. So you have to look at
 10 the whole package.
 11 Q. Do you have an understanding of why the
 12 critically overcrowded school program allows school
 13 districts with critically overcrowded school sites to
 14 apply for preliminary apportionment?
 15 MR. ELIASBERG: Objection; vague, and calls
 16 for speculation.
 17 THE WITNESS: The purpose of designing the
 18 program the way it was is, under the regular new
 19 construction program, a district cannot apply for
 20 funding until you have plans that were designed for a
 21 specific site, and you have control of the property,
 22 either you own it or you have it in escrow or you
 23 have a binding option or a 40-year lease or another
 24 surrogate for control of the property.
 25 In many areas, including many built-out

1 urban areas, where it is extremely difficult to
2 acquire land, often you have to condemn through
3 eminent domain parcel by parcel by parcel, which can
4 take years. You can never apply for funding until
5 you have the land.

6 And so what you're doing is, you're out
7 there condemning someone's house, you're kicking
8 grandma out of her house in the hopes that sometime
9 in the future you'll have enough land to design the
10 school to go down and ask for money. Meanwhile, you
11 kick grandma out of her house.

12 So there was a real disconnect between being
13 able to apply and the knowledge you would get the
14 money. And there's a real risk to school districts
15 who would have to dip in their own pocket, front the
16 money to evict somebody from their house to acquire
17 the property. And then in the future apply, and the
18 state may be out of money.

19 We talked at length yesterday about the
20 start-and-stop nature of state funding, about the
21 unpredictability, the inefficiencies. This was a key
22 inefficiency. So what it's saying to a community
23 like Glendale, that desperately needs a new high
24 school, if you apply for funding, we'll give you four
25 years -- we'll promise you the money and set it aside

1 MR. ELIASBERG: Objection; vague.

2 THE WITNESS: I can agree with you about
3 halfway through your statement, but then -- then we
4 break off here.

5 The critically overcrowded schools program
6 allows a certain small discrete subset of crowded
7 districts to access a certain pot of money. Other
8 schools that have significant crowding are ineligible
9 and have absolutely no access to that money and are
10 no better off.

11 So while it's a good program, again, there
12 are many limitations, there's a very, very narrow
13 window of time in which to apply. Funds that are not
14 given out as preliminary apportionments by the end of
15 that window are taken away from the critically
16 overcrowded schools program and given to the general
17 new construction pot of money.

18 So as far as, is it a helpful program? Yes,
19 it is. Is it going to solve overcrowding? No, it
20 not. It's not designed to, and it cannot. It will
21 not, but it is a helpful step for many, many
22 districts.

23 BY MR. SEFERIAN:

24 Q. Would you agree that the critically
25 overcrowded school provisions were designed to ensure

1 with your name on it. And give you four years to
2 find the land and the plans to come back and make
3 that real application to build your school.

4 And again, while there are some problems and
5 limitations on the program, it is a huge step forward
6 for districts that are having a touch time finding
7 land. So I value it, and it's a good program, and
8 I'm optimistic it's going to work, but there are
9 limitations on it. And you need to be realistic in
10 our review.

11 BY MR. SEFERIAN:

12 Q. In addition to the four years that the
13 critically overcrowded schools program allows a
14 school district to find land and draw up the plans
15 for an application, it also allows a school district
16 to apply for an additional one-year extension of time
17 to convert the preliminary apportionment for a
18 project to a new construction grant, correct?

19 A. That's correct.

20 Q. Would you agree that the critically
21 overcrowded schools provisions that set aside funds
22 for overcrowded schools and allow districts up to
23 five years to go through the approval process, were
24 designed to ensure that school districts with crowded
25 facilities would receive new construction funding?

1 that those districts who are eligible to receive
2 money under that program who have crowded facilities
3 would receive new construction funding?

4 A. I'm -- again, you're -- I can agree with
5 part of that, but not part of it. It -- all the
6 critically overcrowded schools program will do is
7 provide funding for the eligible schools who apply
8 within the very narrow application window and are
9 able to capture that part of the money and have the
10 eligibility to do so.

11 It will not address all the overcrowding of
12 those districts. It will not solve all the needs.
13 And it is, again, a very narrow program. It will
14 meet a discrete set of school needs and will address
15 crowding in those places.

16 However, again, as we discussed at length
17 yesterday, in some cases, you can have a very
18 overcrowded school, and you're busing many, many kids
19 out of their attendance area because of extreme
20 overcrowding, you use the critically overcrowded
21 school to build a new school, you may just get kids
22 off the bus, which is a good thing. Which is an
23 important step. But it may not end all the
24 overcrowding in that neighborhood. It may, it may
25 not. We don't know, and that's a case-by-case

1 determination.

2 So I -- again, I don't mean to diminish the
3 program at all. It's a good program, but it's a very
4 limited program. And it will have a limited affect
5 on the total need for relieving overcrowding in the
6 State of California.

7 Q. Was Proposition 47 the first time that there
8 was more than one bond measure on a that single piece
9 of legislation?

10 A. I'm not equipped to answer that. I believe
11 it was unprecedented for school bonds. There may
12 have been others in history. I'm just not familiar.

13 Q. As you sit here today, do you recall any
14 other school bonds where there was more than --
15 strike that.

16 As you sit here today, can you recall any
17 other legislation where there was more than one
18 school bond in that legislation?

19 MR. ELIASBERG: Objection; lacks
20 foundation.

21 THE WITNESS: Personally, I cannot recall.
22 But again, there are other people who know bonding
23 much, much better than I do. And I pick up the phone
24 and call them when I have that kind of a question. I
25 don't track it that carefully.

1 mechanism in the event somebody will not get funded
2 to give it to the most crowded first. That doesn't
3 mean the most needy. It doesn't mean the most kids.
4 It just means the most crowded.

5 BY MR. SEFERIAN:

6 Q. Would you agree that the priority provision
7 to the critically overcrowded school program were
8 targeted to getting funds to the most crowded schools
9 first?

10 A. No, I do not agree with your statement. It
11 has nothing to do with getting them to them first.
12 It is a conditional trigger only if the program is
13 oversubscribed. It doesn't get them out there
14 first. It just means somebody else will not get
15 funded.

16 And secondly, one of the criticisms I've had
17 of this program, both before it was adopted and
18 since, is that there are some outlier exceptions in
19 terms of crowding. There are some -- some,
20 essentially, store front schools that have a large
21 number of independent study -- independent study-type
22 students in and out on an extremely tiny piece of
23 land. They're off the charts, people density. They
24 really have nothing to do with the majority of kids
25 in overcrowded schools.

1 BY MR. SEFERIAN:

2 Q. Will there also be another set aside for
3 critically overcrowded schools in - of over \$2.4
4 billion in the 2004 bond?

5 MR. ELIASBERG: Legislation speaks for
6 itself.

7 THE WITNESS: That -- that is approximately
8 correct based on my recollection. I would have to
9 check the actual numbers.

10 BY MR. SEFERIAN:

11 Q. Would you agree that within the critically
12 overcrowded schools program, there are provisions to
13 ensure that schools with the highest pupil density
14 levels will receive priority?

15 MR. ELIASBERG: Objection; vague. The
16 legislation speaks for itself.

17 THE WITNESS: I believe you're referring to
18 a particular provision of the legislation that says,
19 if the program is oversubscribed, which means there
20 are more requests for funding than funds allocated,
21 at that point in time, there will be an allocation
22 based on the highest density.

23 And I'm frankly not clear, as I sit here
24 today, whether that in regulation or in statute. I
25 believe it's actually in statute. So there is a

1 So it's really hard to compare 5,000 kids on
2 a 20-acre high school site versus 200 kids in a 10th
3 of an acre store front. A completely different
4 universe, but mathematically the store front has a
5 higher priority under that provision, which makes no
6 sense at all.

7 So whether you help out this huge
8 tremendously overcrowded high school or this tiny
9 little specialty program over here on the side where
10 somebody made a choice to go into that location, I'm
11 not sure that's a wise allocation. However, in the
12 infinite wisdom of our California legislature, that's
13 what they decided to do.

14 So I'm happy to have the program. I'm happy
15 it's going to help some kids. I'm not sure it's
16 really the best allocation of funds. But again, if
17 the legislation isn't perfect, it's a step forward.
18 We'll deal with it isn't per legislation.

19 Q. Under the 2002 bond -- state bond, school
20 districts are eligible to apply for financial
21 hardship assistance for new construction or
22 modernization projects, correct?

23 A. That is one of the provisions, yes. Again,
24 to repeat what I said yesterday, the financial
25 hardship provisions are extremely limited. They're

1 very difficult to apply for. They are burdensome.
 2 It is out there. It does exist.
 3 But it is not an easy or really even an
 4 effective program given the amount of time required
 5 to continually reapply and reestablish your financial
 6 hardship status. It's better than nothing. And it
 7 has allowed some projects to move forward, but it's,
 8 by no means, an cure-all or a tremendously successful
 9 program.

10 But it -- when you're desperate, it's
 11 there. But it needs to be taken in the correct
 12 context of a last resort, almost, rather than a
 13 generous offer by the state. It's -- it's intended
 14 as a last resort safety net, and that's -- that's all
 15 it is.

16 Q. I'd like to ask you to refer to page 25 of
 17 Exhibit 1.

18 A. Page 25?

19 Q. Yes.

20 MR. HAJELA: Are you going backwards in
 21 this deposition?

22 THE WITNESS: That takes care of the ten
 23 o'clock hour for Abe. No wise cracks until after
 24 11:00.

25 BY MR. SEFERIAN:

1 statewide study of facility program management?

2 MR. ELIASBERG: Objection; vague.

3 THE WITNESS: No. There is no
 4 representation anywhere in the report that there is a
 5 systematic or statewide study. This again, is based
 6 on my own personal experiences in the limitations of
 7 my own experiential history.

8 BY MR. SEFERIAN:

9 Q. On pages 20 -- if I can ask you, for a
 10 moment, just to briefly review pages 20 to 25 of your
 11 of report just to familiarize yourself with them.

12 A. Okay. Okay.

13 Q. On pages 20 to 25 of your report, Exhibit 1,
 14 you cite the report of facility problems in Oakland,
 15 Los Angeles Unified, San Francisco, Berkeley Unified
 16 and Del Paso Heights Elementary school district; is
 17 that correct?

18 A. Yes.

19 Q. Did you personally verify any of the reports
 20 of public school facility conditions in Oakland, Los
 21 Angeles, San Francisco, Berkeley or Del Paso Heights
 22 that are cited on pages 20 to 25 of your report?

23 A. I personally verified some of these, yes.

24 Q. Which of the reports cited on pages 20 to 25
 25 of your report did you personally verify?

1 Q. On page 25 of your report, under section 2
 2 you say, These and other reports are consistent with
 3 my own personal observations over many years that --
 4 and that you list three items below that, correct?

5 A. That's correct.

6 Q. Would you describe those three items on
 7 pages 25 as conclusions or opinions?

8 A. I'm not clear on the difference. These are
 9 my opinions, and they are both opinions and
 10 conclusions. They're conclusions based on my
 11 observations and opinions.

12 We can hang ourselves on semantics
 13 sometimes, but --

14 Q. The three opinions on pages 25, No. 1, 2 and
 15 3 of your report, are those based on your
 16 observations and the reports that are cited in your
 17 report?

18 A. Yes. Again, they're -- as stated in the
 19 report, this is my personal observations from being
 20 around the state for many years, and the resources
 21 cited in here and other anecdotal experiences I've
 22 had over the years. But in the totality, it is my
 23 own experience based on many, many, many sources.

24 Q. Are the three opinions that are listed on
 25 the bottom of page 25 of your report based on a

1 MR. ELIASBERG: Excuse me. Could you read
 2 the question back, please.

3 (Record read.)

4 MR. SEFERIAN: Let me restate it.

5 Q. Which of the reports of public school
 6 facility conditions in Oakland, Los Angeles,
 7 San Francisco, Berkeley or Del Paso Heights cited in
 8 pages 20 to 25 of your report did you personally
 9 verify?

10 MR. ELIASBERG: Objection; the
 11 San Francisco report doesn't talk about conditions.
 12 It talks about mismanagement. I mean, if you're
 13 talking about school facilities conditions, I think
 14 that's an incomprehensible question.

15 But if you can answer, Rob, go ahead.

16 THE WITNESS: Actually, I was going to say
 17 something very similar. Section D that begins on
 18 page 20 talks about the state has had long-standing
 19 evidence of management problems at the local level.
 20 The section D that you're referring to between pages
 21 20 and page 25 addresses published reports that would
 22 put the state on notice that there have been problems
 23 in these and other school districts.

24 By coincidence, I have verified some of the
 25 conditions in here. But this is not an assessment of

1 the conditions, but is more -- these are reports
2 which, some of which date back two decades, that put
3 the state on notice of the existence of these
4 problems out there.

5 So to be specifically responsive, in
6 Oakland, I did visit a number of the schools in
7 Oakland, some of which were named in these reports,
8 some of which are dating from the early '90s, that
9 indicated there were significant problems. And I
10 personally observed that some of these problems
11 reported at that time were still existing.

12 In the term of Los Angeles, the reports here
13 were -- for example, it specifically cites the Little
14 Hoover Commission report which talks more about the
15 global management. One of these reports is from
16 1978. And it really is not germane for me to go look
17 at Los Angeles Unified in 2002 and say, conditions
18 from 1978 are still there.

19 It said, the purpose of this is that the
20 state is put on notice by its own commission in 1978
21 that, at that time, there were problems in Los
22 Angeles, but that is many years ago. That is 25
23 years ago. And the same for the others.

24 Now, Del Paso Heights is actually a quite
25 contemporaneous news article. Berkeley is -- these

1 lack of performance, some of the land deals that were
2 made.

3 I was also contacted by the San Francisco
4 district attorney investigating the school district
5 and some of its former employees. There is no secret
6 about the problems here. I do say that there is a
7 new superintendent who has a new team and is really
8 working to clean things up. But until she got here,
9 it was a chaotic mess.

10 Q. Have you ever done any work with San
11 Francisco Unified?

12 A. No.

13 Q. Did you ever conduct any type of study of
14 the management of San Francisco Unified?

15 A. No.

16 Q. Did you ever conduct any type of management
17 study of Los Angeles, Del Paso, Oakland, Berkeley
18 school districts?

19 A. Can you define what you mean by "management
20 study"? That's a vague term.

21 Q. Did you ever undertake to look at the school
22 district management in those districts: Oakland, Los
23 Angeles, San Francisco, Berkeley, analyze the
24 management structure, its efficiency, determine the
25 extent of any problems and the results of those

1 the last few in here are 2001 information.

2 I am familiar with the San Francisco Unified
3 School District situation. Again, it's -- I believe
4 the State of California has access to the
5 San Francisco Chronicle, and it made the front page
6 repeatedly. That there were these incredible
7 problems in the San Francisco program. Berkeley's
8 programs were literally on the front page of that
9 regional newspaper. Del Paso Heights is the same
10 way. It made the front page of the Sacramento Bee.

11 So the purpose of the section is to say
12 that, assuming that the state has 50 cents to buy a
13 copy of the Bee, it essentially has been put on
14 notice that these problems existed.

15 BY MR. SEFERIAN:

16 Q. What did you mean when you said that you
17 know about the San Francisco situation?

18 What's your -- the basis of your knowledge
19 here in San Francisco?

20 A. I'm personally acquainted with people who
21 have worked for San Francisco Unified. At
22 conferences and meetings of people in the school
23 facilities community, sharing of war stories is a
24 common practice, and there were plenty of war stories
25 coming San Francisco about questionable practices,

1 problems?

2 Any type of analysis like that?

3 A. I, personally, have not undertaken that kind
4 of management study. However, for both Oakland, Los
5 Angeles and other districts -- going back to Oakland,
6 the same FCMAT team -- F-C-M-A-T -- fiscal crisis and
7 management assistance team, which is an official
8 State of California subagency under the
9 Superintendent of Public Instruction did an
10 exhaustive management study of Oakland and its
11 facility problems and business problems and other
12 problems. It's a three-inch thick report. It was
13 not necessary for me to personally redo what they had
14 just done.

15 Similarly -- and again, I want to put this
16 in the context of the section we're discussing, what
17 this says if the Little Hoover Commission did
18 investigate conditions in Los Angeles many years
19 ago. And they may or may not have a current study.
20 I'm not familiar. But they did investigate
21 conditions. They have trained investigators and
22 writers who did it, and published a report 20 years
23 ago citing problems.

24 The purpose of section is to say the State
25 of California knew about it because it's own

1 commission did the investigating. It's not to say
2 whether I have personal knowledge of whether those
3 problems continue now after two decades. But at the
4 time, the State of California was put on notice by
5 its own watch-dog agency that there were problems.

6 MR. ELIASBERG: We've been going over an
7 hour. Is this a good natural point to take a break?

8 MR. SEFERIAN: That's fine.

9 (Recess.)

10 BY MR. SEFERIAN:

11 Q. Have you reviewed the FCMAT study -- the
12 national of the Oakland Unified School District?

13 A. Yes.

14 Q. Did you review the FCMAT study of Oakland in
15 connection with your work for this case?

16 A. Yes. I have previously reviewed it for
17 another purpose. But, yes, went over it again for
18 this case.

19 Let me say, I did work as a consultant to --
20 I was a subconsultant to a different consultant in
21 Oakland and attended many meetings inside the
22 district with top administrators. And I'm quite
23 familiar with their management structure, and how
24 things were really working and not working in
25 Oakland.

1 So I don't want to leave you with the
2 impression that I've just driven by on the freeway.
3 I -- I do have personal experience sitting in those
4 meetings trying to deal with some of the issues that
5 are described in this report.

6 Q. And which meetings are you referring to?
7 What types of meetings?

8 A. In the context of rewriting their master
9 plan, we had meetings with the business services
10 people, the facilities team, the former
11 superintendent and the new superintendent, and
12 various district-level administrators in charge of
13 elementary curriculums, high school operations and
14 other topics. It was a comprehensive look.

15 In the course of that, had to have contact
16 with many different individuals throughout the
17 Oakland bureaucracy. You know, some of fine people
18 and some, frankly, were lacking. I think you'd find
19 that in any large organization. But I do have more
20 than just casual passing experience in Oakland.

21 Q. Is that based with the meetings you attended
22 in connection with the Oakland master plan?

23 A. Yes. That was the context.

24 Q. Over what period of time did you attend
25 meetings in Oakland in connection with its master

1 plan?

2 A. From 2000 through 2002.

3 Q. If -- can you give any estimate of between
4 2000 and 2002 how many meetings you attended in
5 Oakland in connection the development of its master
6 plan?

7 A. Twenty or more.

8 Q. Do you have any opinion about the analysis
9 by FCMAT of Oakland's management as indicated in its
10 FCMAT study?

11 A. Many of the conclusions drawn by FCMAT
12 matched what I observed. I also observed that the
13 new administration, the new superintendent, the new
14 business people, were attempting to implement many of
15 FCMAT's recommendations. So they were planning the
16 seeds for improvement. But, obviously, there was a
17 tremendous amount of work to be done.

18 Q. Speaking in general terms, did you agree
19 with the conclusions that FCMAT reached in its
20 management study of Oakland?

21 A. Yes.

22 MR. ELIASBERG: Objection.

23 THE WITNESS: Oh --

24 MR. ELIASBERG: Just leave a little bit of
25 room in case I need to make an objection.

1 THE WITNESS: Okay.
2 (Telephonic interruption.)

3 BY MR. SEFERIAN:

4 Q. What did you mean when you said that the
5 FCMAT study was planting seeds for improvement?

6 MR. ELIASBERG: Objection; misstates prior
7 testimony.

8 BY MR. SEFERIAN:

9 Q. I don't mean to misstate your testimony.
10 What did you mean when you said planting seeds for
11 improvement in the context you used it in the last
12 couple answers?

13 A. The FCMAT study identified things that were
14 clearly wrong with Oakland's management. It also
15 made clear, crisp recommendations for improvement and
16 change. And some of those were, in fact, being
17 implemented, that doesn't undo the fact that it was
18 done wrong in the past. But they were attempting to
19 complete FCMAT's recommendations and make it a more
20 efficient organization.

21 Q. Do you have any opinion about whether
22 FCMAT's recommendations and improvement -- withdraw
23 that question.

24 Did you have any opinion about whether
25 FCMAT's recommendations for improvement and change in

1 Oakland in connection with FCMAT's management study
2 of that district will result in improvement in that
3 district?

4 MR. ELIASBERG: Objection; vague, calls for
5 speculation.

6 THE WITNESS: I'm -- I'm hopeful that
7 implementation of FCMAT's recommendations will make
8 things better in Oakland. It's a --

9 (Telephonic interruption.)

10 MR. SEFERIAN: Sorry.

11 THE WITNESS: However, the recent fiscal
12 crisis, which occurred in the last few months in
13 Oakland, says that they still have a tremendous ways
14 to go. The district basically found it was 60 to \$80
15 million out of balance in this budget. That's a
16 tremendous shock.

17 So I -- as hopeful I am that things are
18 getting better, once again, there's a major crisis in
19 Oakland. And meanwhile, the 50,000 or so students
20 will be victimized by this latest crisis.

21 BY MR. SEFERIAN:

22 Q. On page 25 of your report on the bottom at
23 the first opinion, what did you mean: There are a
24 number of districts that have significant management
25 problems with their facilities programs?

1 overseeing the facilities program for a public
2 school?

3 A. Yes.

4 Q. What is your experience in that regard?

5 A. The range of my experience there involved
6 new construction, major maintenance, daily
7 maintenance, and then custodial operations, including
8 groundskeeping. I was facility director for a large
9 unified school district. And as a business manager
10 of a small unified district, there was no facility
11 director, so it all fell in my range of
12 responsibility.

13 Q. You were facility director for a school
14 district?

15 A. That's correct.

16 Q. Have you ever managed a facility program or
17 maintenance program at a particular school?

18 A. Again, can you be -- I'm not sure what you
19 mean. Did I -- was I a site-based person? No. I'm
20 not a site administrator. I'm a -- my experience has
21 been more at the district level.

22 Q. At which school or schools were you facility
23 director -- withdraw that.

24 At which school district or school districts
25 were you a facility director?

1 A. Again, in the context there, there are
2 approximately 1,000 school districts in the State of
3 California. When you throw in the county offices of
4 education it's over 1000.

5 There is a number -- and I do not know the
6 scope of it, I don't have an exact number to give you
7 -- but there are more than a few school districts
8 that have significant management problems: Lack of
9 ability to process applications, lack of ability to
10 manage and maintain their schools, lack of ability to
11 clean their facilities.

12 There are just too many reports accumulated
13 over too much time from too many parts of the state
14 to say it's not a problem. There clearly is a
15 problem. And I have personal experiences with some
16 of these districts, and I've had personal testimony
17 from others who are involved in -- in remedying these
18 problems. It is a persistent and ongoing situation.

19 Q. Have you ever managed a facility program at
20 a public school?

21 A. Yes, I have.

22 Q. What is your experience in that regard?

23 A. Can you be more specific in your question?
24 That's a big question.

25 Q. Have you ever been responsible for

1 MR. ELIASBERG: This is all on his resume.

2 THE WITNESS: It's all on the resume. If
3 you want to -- do you want the list?

4 I have been actually the facility director
5 at Conejo Valley Unified in Ventura County.

6 MR. ELIASBERG: C-O-N-E-J-O.

7 THE WITNESS: J-O. And business manager at
8 Oakpark Unified, and then interim facility director
9 for Washington Unified. And I've been an adviser to
10 school districts in facility matters for literally
11 dozens of school districts.

12 BY MR. SEFERIAN:

13 Q. Have you ever published any literature
14 regarding the relationship between public school
15 facility conditions and management problems with
16 facilities programs?

17 A. Your question is a little vague on that.
18 I -- I have written different articles over many
19 years on management procedures relating to facility
20 issues, more on the funding side than the daily
21 operational side.

22 But, no. I am not -- my report does not
23 represent that I'm a management expert or have done
24 extensive management studies of school districts.
25 That is not the point of this expert report. This

1 report is about conditions in schools, and some of
2 the causes. One of the causes of which is management
3 practices.

4 Q. Have you ever published any literature that
5 analyzed the relationship between conditions at a
6 public school facility or facilities and management
7 problems with facilities programs?

8 MR. ELIASBERG: Asked and answered.

9 THE WITNESS: I -- again, as I previously
10 stated, I -- I'm not an expert, and I don't publish
11 in -- in management studies. I mean, that's not my
12 thing. I have published literature in different
13 venues dealing with management practices that affect
14 school facilities, including the successful operation
15 and maintenance of good conditions in the schools.

16 But I'm not a management expert, and I don't
17 do management studies as stand-alone projects.
18 That's not the essence of this report.

19 BY MR. SEFERIAN:

20 Q. On page 25 in the first opinion when you
21 say, there are a number of districts, you go on after
22 that. In connection with your work for this case,
23 have you attempted to make a determination of the
24 number of districts that have significant management
25 problems as in facilities programs?

1 A. As I stated yesterday, there is no statewide
2 index or resource dealing with the number of schools
3 that have significant facility problems. Therefore,
4 I don't -- I did not undertake that. I don't believe
5 the data is available. I can only speak from my own
6 experience. When -- when I can name this number of
7 districts as reported in the expert report, that's
8 enough to say that there's a problem.

9 It's not -- it's not one district. It is
10 multiple districts. It's not one type of district.
11 It's not one geographic region. But I do not have an
12 exact number. That's beyond the scope of this
13 study. And critical information that would rely --
14 that would support that study is just not available
15 in any form from state resources or any other
16 resource.

17 Q. Are there certain districts that come to
18 mind that you could characterize as presently having
19 significant management problems with their facilities
20 programs?

21 MR. ELIASBERG: Just -- maybe we can speed
22 this up, are you talking about ones -- beyond ones he
23 cites in his report, or do you want him to list all
24 of them that he's aware of?

25 MR. SEFERIAN: Well, my understanding was

1 that some of those reports on 20 and 25 were not
2 necessarily meant to be an exhaustive list of the
3 current -- of the districts that have current
4 facility problems.

5 Q. So I'm asking, as you sit here today, if you
6 have in mind districts, as referred to page 25 of
7 your report, that presently have significant
8 management problems with their facilities programs?

9 A. Let me respond to that by saying that from
10 page 20 to page 25 of this report, the purpose of
11 that section D is to state that prominent published
12 reports put the state on notice that there are
13 districts with these problems over a period of more
14 than two decades. This section deals with the
15 state's awareness. And, in fact, it inescapably is
16 aware of this long-standing problem.

17 Your question was, do I have present
18 knowledge of present conditions. There are
19 well-publicized problems in West Contra Costa
20 Unified. There are well-publicized problems in
21 Oakland Unified. There are well-publicized problems
22 in San Francisco Unified. There are well-publicized
23 problems in Alum Rock Uni -- or elementary district.

24 The problems in Monterey Peninsula Unified
25 are well-known and published. Los Angeles has been

1 tagged with having a few problems, even though
2 they're working on it.

3 There are many other districts: Santa Ana
4 Unified. Compton deserves a place on this list,
5 long-standing deep-seated problems. Englewood
6 Unified, Del Paso is on the list. So again, we can
7 go on and on.

8 But clearly, there is a pattern statewide,
9 many geographic regions, many sizes, urban/rural
10 settings, suburban settings, where there are
11 districts struggling with problems that they cannot
12 resolve over a long period of time.

13 The State of California has been trustee of
14 Compton Unified for quite a few years, and their
15 facility problems continue to this day.

16 Q. Are those districts, which you just named in
17 your last answer, districts that you would
18 characterize, as referenced on page 25 of your
19 report, as districts that presently have significant
20 management problems with their facilities programs?

21 MR. ELIASBERG: Asked and answered.

22 THE WITNESS: I believe -- yes. I would
23 characterize all of those districts as having
24 management problems. Some are working to fix them.
25 Some are just seeming to languish, but, yes.

1 BY MR. SEFERIAN:

2 Q. In the heading 2 on page 25 of your report,
3 when you say that poor management and lack of
4 accountability at this local and site level is a root
5 case, what are the other causes of facility
6 problems?

7 MR. ELIASBERG: Objection; overbroad.

8 THE WITNESS: I guess, other causes of
9 facilities that are not listed in this section --
10 again, you got to take this in the context in which
11 it's presented, are age of building, crowding,
12 funding. And I mean, we can go on and on, but just
13 the same things that cause wear and tear on any
14 public building anywhere.

15 BY MR. SEFERIAN:

16 Q. Heading 2 of page 25 of your report, when
17 you write that poor management and lack of
18 accountability for local and site level is a root
19 cause, did you mean that it's important to have local
20 accountability for local public school facility
21 conditions?

22 A. If you read section 2 that begins on page 25
23 in its entirety, where there is good management and
24 where there is adequate accountability at the local
25 level, problems occur and problems are resolved and

1 BY MR. SEFERIAN:

2 Q. Would you agree that the school facility
3 program requires the school district to accept
4 responsibility for the outcome of projects?

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

7 THE WITNESS: The application form requires
8 a school district to sign on that box. Again,
9 getting back to the subject of this whole report,
10 what's the next step? Does the state ever monitor
11 that, or does it just file that piece of paper in a
12 cabinet and call it a day.

13 The point here that, for whatever reason, in
14 a few circumstances, the system has broken down, and
15 the state has not done anything to take care of the
16 kids that are affected. That's the essence of this
17 whole report.

18 BY MR. SEFERIAN:

19 Q. And in opinion No. 2 on page 25, you say
20 that school districts with the worst facility
21 problems often fit a pattern of poorly managed
22 maintenance and construction programs within an
23 overall poor management system.

24 Have you published any literature that
25 supports that statement?

1 fixed. It's where you have a breakdown, either poor
2 management or a lack of accountability that problems
3 occur and are not addressed.

4 The problem that is the context and subject
5 of this report, is that there are a small number, but
6 a significant number, to the people affected of
7 school districts and school sites that have
8 persistent long-standing facility and cleanliness
9 problems that are not addressed through normal
10 practices and procedures. That's the reason this
11 report argues for oversight and some kind of
12 monitoring by the state.

13 Everybody's bathroom gets dirty at some
14 point. Most of them get cleaned daily and are just
15 fine. There's that small number where they don't get
16 cleaned. They aren't maintained. They deteriorate
17 further and further and further. That's what this
18 report is all about.

19 Q. Would you agree that one part of
20 accountability is holding persons responsible for
21 outcomes?

22 MR. ELIASBERG: Objection; vague,
23 ambiguous, overbroad.

24 THE WITNESS: What you just described is a
25 part of accountability, yes.

1 A. No.

2 Q. Have you conducted any research that
3 supports that statement?

4 A. Define "research."

5 Q. Have you conducted any type of comprehensive
6 or scientifically based research studies that would
7 support that statement?

8 MR. ELIASBERG: Objection; vague and
9 ambiguous.

10 THE WITNESS: As I previously stated, my
11 area of practice is not management studies. In my
12 personal experience, contacting school districts
13 where we observed the worse facility problems, you
14 typically quickly encounter a poorly managed facility
15 program.

16 And you typically and frequently encounter
17 an overall poor management structure. That is the
18 basis for No. 2. It was not a scientific or academic
19 study. This was based on my own experience as it --
20 as is stated on page 25.

21 BY MR. SEFERIAN:

22 Q. Are there any specific districts, that
23 you're aware of, that fit the description in No. 2 on
24 page 25, that have the -- that have a pattern of
25 poorly managed maintenance and construction programs

1 within an overall poor management system?

2 MR. ELIASBERG: Objection; asked and
3 answered.

4 THE WITNESS: Yes. In fact, the list that
5 was previously provided to you would have to fit
6 this. You can start with Compton and Ravenswood and
7 West Contra Costa and Oakland. I will credit Los
8 Angeles Unified. They have had a tremendous number
9 of problems, and I think they have a new team in
10 there that's turned a corner and is getting better.
11 It's -- they're not out of the woods yet, but they've
12 definitely turned a corner.

13 Clearly, Santa Ana is having trouble,
14 Inglewood. Again, we can keep on going, but I --
15 BY MR. SEFERIAN:

16 Q. What did you mean on opinion 3 on page 25,
17 that school districts able to maintain and build
18 adequate schools have strong managers and sensible
19 policies and practices for management of their
20 facilities?

21 A. Again, this is based entirely on my personal
22 observations. But when you go out to a district and
23 see things going right, invariably, you find
24 competent, able managers. Places that are succeeding
25 and where things are happening right have got a good

1 any cases that you have observed or viewed
2 specifically for this case?

3 A. I'm not clear on your question. The
4 discussion in here is the summation of many, many
5 years of experience. I did not run out and do
6 separate, unique observations only for this case.
7 This is a summation based on many, many site visits
8 over many years in many communities throughout the
9 State of California.

10 So in that sense, I'm -- this the not a
11 result of anything uniquely done in preparation for
12 this case. Again, it's a summation of many, many
13 observations over a long period of time.

14 Q. Have you developed any set of objective
15 criteria to evaluate the quality of a campus level or
16 district level management system?

17 MR. ELIASBERG: Objection; vague.

18 THE WITNESS: As I previously stated,
19 management studies are not my area of expertise or
20 practice. I -- in this report on other pages, we've
21 -- I've listed out criteria for defining what is
22 factors that would contribute to a school being in
23 unusually poor condition. But in terms of management
24 practices, no, that's not my area of practice.

25 BY MR. SEFERIAN:

1 principal. They have a good support staff. When
2 something breaks, it's promptly repaired. Again,
3 this is all described at length in the report on
4 other pages.

5 But the pattern -- successful schools are
6 succeeding. And the kids enjoy a safe, clean, decent
7 environment. Textbooks are in the classrooms. The
8 chairs don't rattle and shake. The heat comes on.
9 The cooling comes on. The water is clean and fresh.

10 Again, you see a pattern of success because
11 of the ongoing continuing involvement of good
12 managers. And again, those managers tend to work
13 with a support staff, a district staff. A
14 superintendent who is on the ball is out there when
15 problems are not resolved between a principal and the
16 custodial department or a maintenance department. A
17 phone call is made, and somebody makes things happen.

18 So you go to a well-run district, and you
19 know it.

20 MR. REED: Off the record.

21 (Discussion off the record.)

22 BY MR. SEFERIAN:

23 Q. I'll ask you to look at the top of page 26
24 of your report. When you mention cases in the first
25 sentence that you have observed or viewed, were there

1 Q. On page 26 of your report in the first
2 paragraph, when you say that in virtually every case
3 where I have observed unusually poor conditions, poor
4 management without accountability led to neglect,
5 what type of accountability was not present in that
6 context?

7 A. In the first paragraph on page 26, the use
8 of the word "accountability" refers to -- it would
9 start with -- I think the primary issue would be just
10 basic cleaning and cleanliness, where bathrooms were
11 not regularly cleaned adequately over many, many
12 weeks, months or even years, there's an accumulation
13 of damage, seeping urine, stains, just crud
14 everywhere that they simply were not cleaned.

15 Carpeting in kindergarten and primary rooms
16 were not adequately cleaned. And after years, you
17 just had packed dirt, filth, debris, all kinds of
18 nasty stuff, and kids sitting on the rugs.

19 There are windows that are not adequately
20 cleaned. They would get dirty and be scoured, so
21 they were scratched and would block the view from the
22 windows. It again, it's -- I think the most common
23 route is cleanliness.

24 Secondary one is just basic maintenance
25 largely involving weatherproofing. This is where you

1 have rain water penetration, sprinklers spraying on
2 walls over years where they have penetrated, created
3 molds and dry rot conditions in the gaps in windows
4 that allowed outside forces to come in.

5 Also, in grounds and landscaping. Sometimes
6 you had accumulated debris around buildings that
7 encouraged pests, encouraged deterioration of the
8 building. You would have grass clippings piled up
9 against it. You would have grass growing through
10 cracks in the sidewalk.

11 Again, there -- there is a range of
12 conditions described here. But at a root level, it's
13 the day-to-day cleaning that's neglected and not
14 performed. The periodic maintenance and cleaning
15 that is skipped over or minimized. And then finally,
16 the -- the necessary maintenance and repairs that are
17 not done or deferred or done poorly.

18 When you look at a drip that has been
19 dripping for literally years to the point where you
20 can see permanent stain marks on the building, it's
21 obvious that somebody failed to be accountable and do
22 their job and fix the drip, that became the leak,
23 that became the breakdown in the system.

24 Q. In the second paragraph on page 26, what did
25 you mean, that Sacramento City Unified has turned a

1 getting better, nobody did anything. The state
2 didn't do anything. The county didn't do anything.
3 The city didn't do anything. Nobody did anything.

4 And the students and the parents and the
5 community suffered.

6 Q. Have you ever worked as a consultant for
7 Sacramento City Unified?

8 A. Yes, I have.

9 Q. Are you currently working for Sacramento
10 City Unified?

11 A. No. Work's done.

12 Q. What do you mean in the second paragraph of
13 page 26 of your report, that West Contra Costa has
14 greatly improved?

15 A. Again, West Contra Costa kind of hit
16 bottom. And when Dr. Herb Cole went there as
17 superintendent, he did really a top-to-bottom shake
18 up, and he was able to implement management practices
19 that have started to address, again, decades of
20 neglect and tragic neglect of the schools. They had
21 horrible conditions there as documented in the FCMAT
22 report and other places.

23 They have struggled as a district. And he
24 was only there a few years. They haven't quite got
25 their act together yet, but they are getting better.

1 corner?

2 A. Second paragraph on page 26 says, there is
3 some good news out there. Sac City had a tremendous
4 number of problems. The new administration led by
5 Jim Sweeney as the superintendent, Tom Guyagos as the
6 associate superintendent, have reformed and
7 implemented accountability and good management
8 practices throughout their facilities and operations
9 unit.

10 Where buildings were not maintained for
11 decades in some cases, now they are being
12 maintained. They sought and received state
13 modernization money. They passed -- not one, but two
14 school bonds. That district has turned a corner.
15 And they are unfortunately burdened today with
16 undoing decades of neglect that they inherited from
17 their predecessors.

18 But things are better there. When a work
19 order is filed for repair, it's promptly dealt with.
20 So they're not adding to the accumulation of
21 problems. But unfortunately, they're still undoing
22 years of neglect.

23 And I'm pleased to say there are other
24 districts where things are getting better. But for
25 all those years and decades where things were not

1 Conditions were just abominable there. And now
2 they're probably poor to fair.

3 Q. In the second paragraph on page 26 of your
4 report, in connection with Oakland, what higher
5 stands were you referring to?

6 A. I was working in Oakland when Dennis Giconis
7 took over as superintendent. And he is a man of just
8 incredible energy, and he -- I was at a high school
9 when he came to visit. And some kids pointed out a
10 broken bathroom, he took care of it right there on
11 the spot. He does not accept excuses. He's trying,
12 but he's -- again, I see him just being overwhelmed
13 by the system in place.

14 One person can't do it. So he has done a
15 tremendous service to that community. He's working
16 just as hard as any human being could possibly work.
17 But again, he can't carry the burden by himself, and
18 they've slid tremendously backward. I think he was
19 really undermined by some of his staff on this
20 financial crisis they find themselves in.

21 I think an essential point is that when
22 conditions are unusually poor, it doesn't require a
23 great deal of intervention. Sometimes it takes
24 somebody just putting a spotlight on a problem.
25 That's what happened in Sacramento City. That's what

1 Dr. Cole did in West Contra Costa. That's what
2 Dennis Giconis has done in Oakland.
3 It isn't a life-time commitment. It isn't a
4 huge burden. Sometimes it's standing there saying,
5 this will be cleaned up. It will be cleaned up now.
6 That's all the kids want. They don't -- they're not
7 asking for luxury facilities. They just want the
8 bathrooms clean and functional.

9 And if we have to keep it in the context of
10 one person can make a difference, some modest
11 intervention, it not a continual effort, but it needs
12 to happen. And where it's not happening, it just
13 can't be ignored.

14 Q. On page 21 of your report in the footnote,
15 you write that the Oakland District has since applied
16 for state funding and is beginning to make gains on
17 its huge facilities need.

18 In your opinion, if a school district
19 applies for state funding, is that a sign that the
20 district's management is making progress towards
21 improving its school facilities?

22 MR. ELIASBERG: Objection; incomplete
23 hypothetical.

24 THE WITNESS: Your question asked whether
25 the fact that've applied for state funding means

1 school district or management is moving towards
2 adequately managing its facilities program?

3 A. In extension of the previous answer, the
4 fact you applied for some money here does not mean
5 that your management program has suddenly come
6 together and its healthy. No. Those are totally
7 different things. One would hope that the former is
8 an indicator of the latter. But they really are so
9 different, I cannot agree with your statement.

10 MR. ELIASBERG: Can we go off the record
11 for just a minute?

12 MR. SEFERIAN: Sure.

13 (Recess.)

14 BY MR. SEFERIAN:

15 Q. If I could ask you to refer to page 23 of
16 your report.

17 A. Okay.

18 Q. In the last paragraph, what do you mean when
19 you say that with respect to Los Angeles Unified,
20 significant staffing changes and other reforms since
21 then appear to be making a difference?

22 A. The last paragraph on page 23 refers to some
23 reports that were prepared by the auditor general or
24 -- I forget the exact title of the person. But the
25 district's own auditor in the year 2000/2001.

1 they're making a gain. And typically, it signals
2 that people are involved. I hesitate to make the
3 leap that filing the application means they've
4 actually got a handle on their problem.

5 In the case of Oakland, they paid an
6 out-of-town consultant a whole bunch of money to fill
7 in the forms. They signed them. They put them in
8 the mail. Subsequent to that, the facilities
9 department basically melted down. So the fact they
10 did get their applications filed after paying a
11 considerable chunk of money for it, again, internal
12 crisis in the facilities unit involving the loss of
13 director, most of the staff, many of the project
14 managers have brought them back down again.

15 Now, they're working to build them up, but
16 they're not out of the woods yet. Meanwhile, kids go
17 to school every day. Some of the bathrooms are still
18 dirty. Some of the windows are still broken. Some
19 of the heaters don't work. They're trying, but
20 they're not there yet. But poor conditions exist
21 every day if you have to attend that school.

22 BY MR. SEFERIAN:

23 Q. If Oakland Unified School District applied
24 for funding under the critically overcrowded school
25 program, in your opinion, would that be a sign the

1 Since then, there is a new director for the
2 division. There are a number of new staff people.
3 There -- the district appears to be making a very
4 diligent, aggressive effort to improve its facilities
5 unit to get construction and modernization and
6 renovation projects moving forward in a timely
7 manner, and getting -- getting the work done.

8 So, yes, there were problems in 2000, 2001
9 under the new superintendent's leadership and some
10 new school board members, a lot of attention, both
11 inside and outside the district, there appear to be
12 changes. I think that's an excellent sign.

13 In fact, they had to get knocked in the head
14 a few times to get everybody focused on the task at
15 hand. Just says that change isn't automatic, and
16 things don't always get better. It does take some
17 outside attention when things really do get out of
18 hand.

19 Q. What do you mean when you say "outside
20 attention"?

21 A. Outside attention by the media, by the
22 school board. And in the case of Los Angeles, it was
23 the whole Belmont fiasco that really opened the box,
24 and disclosed a number of deep-seated problems in the
25 facilities unit.

1 And I think at that point, the
2 superintendent, Roy Romer, has spent a lot of time
3 and energy making sure that the department and that
4 division is functioning at a higher level. And they
5 appear to be functioning at a higher level. I have
6 to give them credit.

7 Q. Los Angeles Unified's local \$3.3 billion
8 bond will be matched with state funds from
9 Proposition 47, correct?

10 A. Some portions of it will be matched. And
11 again, as we discussed yesterday, the state grant
12 amounts are inadequate to do the work that needs to
13 be done. So Los Angeles, like many other districts,
14 is supplementing the 50 percent match with a 20 or 40
15 percent match to get an adequate product on the
16 ground. So not all of that 3.3 billion will be
17 matched one for one, but some of it will be matched.

18 Q. Can you give any estimate?

19 A. No. Not without knowing the internal
20 calculations of the district.

21 Q. Did you have any opinion about the extent to
22 which these facilities funds being received by Los
23 Angeles Unified in 2002 as a result of the 2002 bonds
24 will address the district's facility needs?

25 MR. REED: Vague and ambiguous as to which

1 bond on the ballot shows they were paying a great
2 deal of attention to this problem. And what it
3 really shows is that the voters of the Los Angeles
4 Unified School District believe the district is
5 dealing with these problems and trust them to spend
6 the money wisely.

7 But that does not say that all the problems
8 are resolved or that adequate practices and
9 procedures are in place for all the needs of all the
10 schools. It's a huge, huge school district.

11 BY MR. SEFERIAN:

12 Q. Would you agree that the \$3.3 billion Los
13 Angeles Unified school bond will be used in part for
14 health and safety repairs, including roof
15 replacement, bathroom replacement and classroom
16 renovation?

17 MR. ELIASBERG: Objection; calls for
18 speculation classroom renovation.

19 THE WITNESS: The items you've listed,
20 classroom renovations, roof replacements and so forth
21 were part of the advertised projects under the bond.
22 Whether they will actually be used that way, I don't
23 have any personal knowledge. But that is what the
24 district represented to the public would be done,
25 among other projects.

1 2002 bond.

2 MR. ELIASBERG: Also assumes certain facts,
3 incomplete.

4 THE WITNESS: I don't have complete
5 knowledge of what they're doing. There was a large
6 article on the front page of the San Francisco
7 Chronicle yesterday talking about Los Angeles and the
8 fact they have a number of projects going.

9 Last calculation I heard is, they had about
10 100,000 students worth of eligibility in the state
11 program. And if they have 70 or so projects moving
12 forward, clearly they have an enormous number of
13 projects that are not yet in the pipeline.

14 So while things are getting better, there is
15 a tremendous amount of work to be done. And there is
16 significant issues of crowding and multitrack and
17 concept 6 and overflow bussing and many other issues
18 for them to resolve.

19 BY MR. SEFERIAN:

20 Q. Would you agree that the passage of the \$3.3
21 billion bond by Los Angeles Unified is evidence that
22 the district's management is addressing its
23 facilities needs?

24 MR. ELIASBERG: Objection; vague.

25 THE WITNESS: I believe them putting the

1 BY MR. SEFERIAN:

2 Q. Would you agree that the \$3.3 billion Los
3 Angeles Unified bond is subject to strict
4 accountability requirements, including an independent
5 citizen oversight committee?

6 A. I -- I have no personal knowledge of that.
7 I believe it was a Prop 39 bond which does require
8 that. There is an existing oversight committee, so I
9 believe there are some procedures. But again, that's
10 -- you would have to ask the district for details.

11 Q. Would you agree that under the \$3.3 billion
12 Los Angeles Unified bond that's referred to on page
13 23 of your report, all of those bond funds can be
14 used to built, equip and repair schools, and on
15 instructional materials and not on administrative
16 salaries?

17 A. I -- I -- I don't have any basis to answer
18 that question. It -- I mean, obviously you can't use
19 bond funds to pay teaching staff salaries or
20 principal salaries. Some of the bond funds can be
21 used for project administrator salaries who are
22 building these projects and doing the renovation.
23 But specifically uses of the funds internally to the
24 district, I don't have any unique or special
25 knowledge.

1 Q. Would you agree that under the Los Angeles
2 Unified bond that passed in 2002, referred to on page
3 23 of your report, annual independent performance and
4 fiscal audits must be issued to the public?

5 A. I have no basis to respond to that
6 question. I believe that's a requirement, but I
7 don't have any special knowledge of the circumstances
8 of their bond. You would have to ask the district
9 for that information.

10 Q. If I could ask you to look at page 22 of
11 your report, in the first full paragraph, in the
12 first sentence where you say, the commission
13 criticized the state for failing to help districts
14 develop necessary managerial skills and knowledge of
15 how to run a facilities program effectively.

16 Do you agree with that criticism?

17 A. That -- the statement you're referring to on
18 page 22 was made by the Little Hoover Commission in
19 1978. I think it still is generally true today that
20 -- I don't believe the state has ever established or
21 maintained any kind of training program for school
22 administrators on how to run their program.

23 There have been occasional informational
24 workshops. There is some collection of guide books
25 that have been presented. But in terms of ongoing

1 my understanding that there was no statewide
2 program. There was no ongoing educational program.

3 Q. Do you have any opinion, in that regard, as
4 to the Department of Education currently?

5 A. In regard to the Department of Education
6 currently, I am not aware of any ongoing training
7 program for school administrators on facility
8 utilization. Again, they do offer occasional
9 seminars. They have published resource guides.
10 There is staff available for phone and personal
11 consultations.

12 But in terms of a systematic training
13 program which I believe was the essence of the Little
14 Hoover Commission's report, no, that has not been
15 embraced by the State Department of Ed or any other
16 state department, that I'm aware of.

17 Q. Is that the essence of what you're trying to
18 convey in that portion on page 22, that there is no
19 systematic training program?

20 A. Let me go back to -- the section on page 22
21 is part of a larger section that says the state has
22 had long-standing evidence and management problems at
23 the local level. The specific quote you've -- you're
24 discussing is from the 1978 report by the Little
25 Hoover Commission. The Little Hoover Commission is a

1 education, I can't recall any systematic program.

2 Q. Is it your opinion that under current law,
3 the state is required to maintain such a systematic
4 program?

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

7 THE WITNESS: I'm not equipped to answer
8 that. I'm not familiar with every part of the
9 education code.

10 BY MR. SEFERIAN:

11 Q. The next sentence on page 22 of your report
12 where there's a quote in part that states: The State
13 Department of Education has generally failed to
14 provide leadership in promoting the economic
15 administration of education.

16 Was that also a quote from the Little Hoover
17 Commission report?

18 A. That's from the Little Hoover Commission
19 report in 1978.

20 Q. Do you agree with that statement, that the
21 State Department of Education has generally failed to
22 provide leadership in promoting the economic
23 administration of education?

24 A. You're using a partial quote there. But at
25 the time that quote was made in 1978, that does match

1 state agency that does investigations and prepares
2 reports to the legislature and the administration.

3 What the quote on page 22 says is that, in
4 1978, the state was formally given a document that
5 said there's a problem and that there is no training
6 program. And there was a firm recommendation from
7 the Little Hoover Commission to the state
8 administration and to the legislature that they do
9 something about it.

10 So what page 22 says is that the state, 24
11 years ago, 25 years ago this year, learned that there
12 was a problem. And to date -- at that time, they had
13 done nothing, that they should do something. And as
14 far as I can tell to date in 25 years, they have not
15 implemented a problem -- or a program to remedy this
16 shortage of trained and lack of administrative
17 expertise.

18 So the statement here is not my quote. It's
19 something the Little Hoover Commission created many,
20 many years ago. And as far as I can tell, it's still
21 valid today which, you know, is separate issue.

22 Q. Are you presently critical of the Department
23 of Education for there not being a training program
24 for school facility administrators?

25 A. I believe the evidence presented in this

1 report and many other sources, including those cited
2 in this expert report, demonstrate that there is a
3 fairly widespread problem of adequate administration
4 of school facility programs. The -- whether the
5 Department of Ed should or should not, or whether
6 some other department should create that, some kind
7 of training program, is open for discussion.

8 But the fact is that there is a shortage of
9 trained and -- trained administrators and people with
10 the experience and skills to administer these
11 programs.

12 As your question pointed out yesterday, the
13 state has poured billions of dollars into this, and
14 yet has not spent any funds, as far as I can tell, on
15 training people how to operate and maintain those
16 schools that the state has spent so many billions
17 building. That appears to be a very shortsighted
18 practice on the part of the state.

19 Now, why the Department of Ed hasn't done
20 it, I frankly don't know. They involves state
21 government issues that are above my experience.

22 Q. The next part of that same quote on page
23 22: In particular, the department has failed to
24 provide leadership in the collection, dissemination
25 and promotion of information regarding the methods

1 good job. They're trying hard. However, they have
2 the Department of Education and its leadership and
3 the administration have defined the Department of
4 Education's role to be very narrow. They take the
5 legislative mandates only. And that is their
6 universe.

7 Even though they can see other problems out
8 there, or I presume that they can see the problems in
9 the greater school community, they have found them --
10 their -- their charter and their mission very
11 restricted to dealing with mandated tasks and only
12 the most general kinds of support for the school
13 administrators out there.

14 Since they are the Department of Education,
15 no one else is really stepping forward to do it. So
16 we have in the State of California this -- somewhat
17 of a gap in the system between the local districts
18 and the state. You have a great deal of state money
19 flowing out of Sacramento to the local districts.

20 And yet, in terms of a balanced program that
21 is training a new generation of managers,
22 administrators and folks to run the program, there is
23 really silence coming out of Sacramento. So while I
24 respect the work that individuals are doing, and they
25 do some great work, there's a gap here. And the hole

1 and benefits of attaining efficient facility use in
2 the face of the coming enrollment.

3 Is that a present criticism that you share
4 at this time?

5 A. Again, that statement was made in 1978. The
6 -- in the same way that the State Department of
7 Education and any other department has not provided
8 training or a skill development program for school
9 administrators on growth and maintenance, they have
10 not provided anything on how to deal with declining
11 enrollment, which is a factor in some districts today
12 -- not a large number, but there are districts that
13 have actual declining enrollment.

14 So what do you do with the surplus
15 facilities, and how do you scale down some of your
16 programs. Fortunately or unfortunately, it's a
17 limited number of districts that have to deal with
18 that right now.

19 Q. Do you have any criticisms specific to the
20 California Department of Education as they pertain to
21 your opinions in this case?

22 MR. ELIASBERG: Objection; vague.

23 THE WITNESS: It's a broad question. I
24 think I best respond to that. It would be -- many
25 individuals at the State Department of Education do a

1 that's been created is starting to have significant
2 consequences in certain school districts around the
3 state.

4 BY MR. SEFERIAN:

5 Q. Specifically with respect to the Department
6 of Education, what other activities or functions that
7 the department is not currently performing, in your
8 opinion, should they be performing with respect to
9 facilities?

10 A. It is beyond my level of expertise and role
11 in this particular expert report to say who should be
12 doing it, but clearly there's a need for greater
13 training and just management support systems for
14 operation of schools after they're renovated or newly
15 constructed. Within that broad heading, I think
16 there are many subtasks, but I'll leave it at that.

17 There is support for getting the papers
18 filled in and filed for processing the papers. But
19 at that point, the state just backs off. And there
20 is no systematic state function to monitor conditions
21 in existing schools out there.

22 So until an applicant fills in a form and
23 mails it to Sacramento, and says I'd like to renovate
24 or modernize my school, or I have a critical hardship
25 need, or something like that, the state really has

1 this extreme hands-off approach. Whether that's wise
2 or not is a matter of state policy. I think the
3 consequence we see is that there is unequal and
4 uneven treatment of the school facilities that the
5 state has invested so much money in over many, many
6 years.

7 Q. Was it within the scope of your work in this
8 case to analyze the extent to which the Department of
9 Education, under its existing budget and staffing
10 level, would be able to perform the additional
11 training and management support systems that the
12 state, you say, should be providing?

13 A. Analysis of the Department of Education's
14 budget was not part of my report. I am aware that
15 choices can be made. And I -- again, I'd -- nowhere
16 am I proposing an extensive and terribly expensive
17 program.

18 But clearly, there is a gap in knowledge,
19 and a modest program, it could be Department of Ed
20 working with UC or CSU or private college to provided
21 it, doesn't mean -- it doesn't require the Department
22 of Education personally to provide it.

23 They could contract with a university and
24 offer continuing education. There are many avenues
25 to get it done. The fact is that there's a gap in

1 the training and support for local school districts
2 and people managing and maintaining the schools that
3 are out there.

4 It need not be necessarily a budgetary issue
5 for the Department of Education. What is it is a
6 leadership issue where they identify a problem and
7 create a solution. The solution could be through a
8 private vendor. It could be through a college. It
9 could be a professional association.

10 But the fact is that, ultimately, these are
11 state-funded facilities. Ultimately, almost every
12 district's budget comes from the State of
13 California. Ultimately, the graduation standards are
14 defined by the State of California. And yet on the
15 maintenance side, it's not their job. And that's the
16 gap that I'm talking about.

17 Q. In connection with your work in this case,
18 do you have any criticisms of the California State
19 Board of Education relating to facilities?

20 MR. ELIASBERG: Vague, overbroad.

21 THE WITNESS: Specifically in connection
22 with this case, no. Generally in connection with
23 this case, I would say the State Board of Education
24 has taken an extreme hands-off position toward this
25 whole issue. And it's nothing new. It's been going

1 on for years.

2 They really have backed away from the entire
3 facilities and adequacy and conditions of schools
4 arena, and just left it to the administrative
5 department and the local agencies. So it's a matter
6 of omission, rather than commission.

7 BY MR. SEFERIAN:

8 Q. Do you have any opinions regarding specific
9 actions that the Board of Education -- California
10 Board of Education should be taking with respect to
11 facilities, but that they're not taking?

12 MR. ELIASBERG: Objection to the extent it
13 calls for a legal conclusion.

14 THE WITNESS: I will refer you to the
15 proposed master plan for education, which identifies
16 that State Board of Education has a fairly narrow
17 role. And what they can do is provide policies,
18 vision and leadership.

19 My criticism of them is that they have not
20 provided vision, policies and leadership in this
21 area. They have just been silent.

22 The master plan proposes some changes to the
23 whole administrative structure that may bring the
24 vision, policies closer together. But the Board of
25 Education -- the State Board of Education basically

1 is not a player. They have chosen not to participate
2 in this arena, even though it has a pronounced effect
3 on their ability to fulfill their greater mission.

4 So in that sense, I think they have been
5 very guilty of -- of disavowing a role when, in fact,
6 they do have a role.

7 BY MR. SEFERIAN:

8 Q. Do you have any opinions in this case about
9 specifically what role the California Board of
10 Education should be playing with respect to
11 facilities?

12 MR. ELIASBERG: Objection; asked and
13 answered -- well, withdraw that objection.

14 THE WITNESS: With regard to the expert
15 report presented before you, what it -- what it's
16 saying is that somebody needs to do it. That there
17 needs to be a role. And whether it's the
18 administrative function or the state board function
19 or the governor's function or somebody, somebody who
20 has a handle on this needs to take a greater role.

21 The state board is the policy setting body.
22 And therefore, they do have a role. It may just be
23 to set a policy for somebody else to do.

24 BY MR. SEFERIAN:

25 Q. Can you elaborate on the last answer you

1 gave at all?

2 A. Again, we have to look at what the role of
3 the State Board of Education is. They're a policy
4 setting body. They're not an administrative agency.
5 They are charged with setting policies -- while not a
6 legal scholar or having spent a great deal of time
7 studying that, my understanding of the role of the
8 State Board of Education is to set the broad policy
9 framework for the educational system in the State of
10 California. That's the role of a policy-setting
11 board.

12 They have taken a minimal interest and role
13 in how schools are operated, and the facilities and
14 availability and conditions of classrooms to perform
15 that educational role. The State Board of Education
16 approves which textbook you can buy and prohibits you
17 from buying other textbooks.

18 But they don't tell you you can't use a
19 smelly classroom, or you have to clean the bathrooms
20 once a day or once a week or once a month or ever.
21 They simply are silent.

22 So while minutely prescriptive on one side
23 of the ledger in terms of teacher training,
24 credentialing, days of the year, textbooks, the
25 pencil you use on testing, everything. On

1 policy they have other than some global generalities
2 about adequate facilities which have absolutely no
3 ability to implement because they're so general and
4 global.

5 The word barely appears in their entire
6 policy structure.

7 Q. Can you describe the review of the Board of
8 Education's published policy that you conducted?

9 A. I obtained a copy of their policy and goal
10 statement off the website and read it searching for
11 this kind of information and failing to find it.

12 Q. Do you have any criticisms of the
13 superintendent of public instruction with respect to
14 your opinions in this case?

15 A. I say that I believe several quotes in this
16 document from the former state superintendent,
17 Delaine Eastin -- there was recently a change in the
18 occupant of the office -- show that Mrs. Eastin was
19 equally frustrated by the state's inability to affect
20 change where clearly deficient conditions existed.

21 Again, the state superintendent is an
22 elected official. She has a very narrow portfolio.
23 And she could see the problem. She could smell the
24 problem. She couldn't fix the problem. And that is
25 precisely the essence of this case, is that an

1 facilities, there's this rolling silence. They have
2 nothing. And what we need is balance in this
3 program.

4 So while they seem to be able to reach
5 through the local school boards and the local
6 administration and actually tell the teacher what
7 they can and can't do on a daily basis, on
8 facilities, they just say nothing. And that's the
9 problem with the State Board of Education on this
10 matter.

11 They haven't done anything wrong. They just
12 haven't done anything at all. And by not doing
13 anything, they have let the policy void -- by leaving
14 a policy void, they have allowed the situation to
15 arise where some students are actually impeded in
16 their ability to get a decent adequate education
17 because of the facilities in which they have to
18 attend school.

19 Q. What is the basis for your statement that
20 the State Board of Education has taken a minimal
21 interest in the role?

22 A. As part of this project, and for other
23 purposes, I did a review of the State Board of
24 Education's published policies. And on facilities,
25 they're not there. I can't recall any meaningful

1 outsider can be brought in, but there is no
2 intervention possible. There's a breakdown in the
3 system here.

4 I believe Mr. O'Connell, the current
5 superintendent, is also committed to this area, the
6 area of school facilities. But I'm sure he will find
7 himself in the same situation.

8 Q. What do you mean "narrow portfolio"?

9 A. Again, while I do not profess to be an
10 expert on the operations of the State Department of
11 Education, I refer to the quote from Mrs. Eastin in
12 this expert report where she describes conditions
13 that she clearly finds deficient. And yet, what tool
14 does she have to monitor -- to require change, to
15 promote change. She has a bully pulpit, and that's
16 all.

17 BY MR. SEFERIAN:

18 Q. With respect to your opinion in this case,
19 do you have any criticisms of any specific state
20 level entity, besides the Department of Education,
21 Board of Education, state superintendent, with
22 respect to facilities?

23 MR. ELIASBERG: Overbroad.

24 THE WITNESS: It's a big state government.
25 Personally, I feel we have a governor of the State of

1 California who was confronted by this actual
2 litigation and chose to tenaciously and expensively
3 fight the litigation instead of just fixing the dang
4 problem.

5 It's my personal opinion, for the amount of
6 money spent on legal fees, could have fixed most of
7 the problem. It's a personal opinion and may be
8 inaccurate, but clearly there are deficient and
9 substandard conditions in some schools in this
10 state.

11 And a proactive approach would be to send a
12 deputy attorney general out to inspect them. And if
13 so, monitor until the problem is fixed, or send
14 somebody out, send the highway patrol, send the
15 National Guard. I don't care who you send. Use the
16 governor, let him decide. There is the secretary of
17 education and her staff.

18 So the fact is, we have a statewide system
19 of education in California for public schools.
20 Curriculum is defined at the state and imposed on the
21 local district. Finance comes from Sacramento to the
22 local district. Every bit of accountability is state
23 based. There are local boards, but they have less
24 and less power every year.

25 And yet here where there's a problem

1 says the -- a proposed hypothetical monitoring system
2 would be about a million dollars a year. A million
3 dollars a year, and you could largely address this
4 problem. That's inexperience in the context of the
5 entire state budget.

6 MR. ELIASBERG: It's about 12:35. Is this
7 a good time to take lunch?

8 MR. SEFERIAN: Okay.
9 (Lunch recess.)
10

1 identified, it's all of a sudden not the state's
2 problem. It's somebody else's problem. And that's
3 the big disconnect we have.

4 So without getting into who and which
5 department and everybody else who potentially could
6 be involved in this, the leadership at issue is that
7 there is a problem. It needs to be addressed. And
8 whether it's legislative, executive or
9 administrative, somebody needs to fix this problem.

10 And I don't pretend to be able to tell the
11 state how to do its job. I don't understand all the
12 state operations, but somebody in Sacramento needs to
13 set up a system to deal with this problem.

14 And as I've said in the expert report, it is
15 my belief that it will not be tremendously
16 expensive. It will not be incredibly intrusive on
17 local districts. It's a small problem. And once
18 people are set on the right path monitoring and
19 maintaining that system, it will be fairly easy and
20 inexpensive.

21 BY MR. SEFERIAN:

22 Q. What do you mean when you say "fairly
23 inexpensive"?

24 A. The state budget is 100 billion a year, give
25 or take a few dollars. Another part of this report

1 AFTERNOON SESSION
2 FEBRUARY 11, 2003 12:25 P.M.
3 EXAMINATION (Continued)

4 BY MR. SEFERIAN:

5 Q. Okay. Mr. Corley, did you have any
6 discussions or review any documents about this case
7 during the lunch break?

8 A. I'm trying to think.

9 MR. ELIASBERG: Well, we did could go over
10 the documents that I gave to Tony.

11 THE WITNESS: Right. He showed me those
12 and asked if I have a better copy -- more legible
13 copy of that. Unfortunately, that's all I have.
14 There might be something in my office, but it was
15 just a question of legibility.

16 MR. ELIASBERG: I believe they were written
17 in pencil, so they're pretty faint.

18 MR. SEFERIAN: Just for the record, why
19 don't we --

20 THE WITNESS: But I can read them, so if
21 you have questions about them, I'll be happy to fill
22 in any words that are vague.

23 BY MR. SEFERIAN:

24 Q. At this point, I just want to ask you if the
25 documents I'm handing you now are the documents that

1 you looked at over the lunch period?

2 A. Yes. Actually, just these first top two
3 pages. These two right here. I didn't look at any
4 of the others. It was just the handwritten ones.

5 MR. SEFERIAN: Why don't we mark these as
6 the next exhibit in order, please.

7 (Defendants' Exhibit No. 4 was
8 marked for identification.)

9 BY MR. SEFERIAN:

10 Q. Is Exhibit 4 copies of notes that you
11 prepared?

12 (Witness examining document.)

13 A. I guess it goes on the back.

14 Yes. These are -- the first four pages --
15 my mistake -- are handwritten notes that I wrote.
16 And then the last page is an e-mail that was sent to
17 me with some scribbled notes up in the corner.

18 Q. Do you know where the original notes are
19 that are in Exhibit 4?

20 A. My belief is that if they are still here,
21 they would be in my office in a file cabinet. I will
22 check at the hotel where I have a few documents, but
23 I don't believe I have any notes there. I just have
24 copies of some reports. And I'd be very happy to
25 provide them.

1 I don't know really where the originals are,
2 to be honest with you. But I'll be happy to search
3 for them if it would be of assistance.

4 And I think if Peter has a more legible
5 copy, we will be happy to provide it. I think it's a
6 copy of a copy, and it just faded a bit.

7 MR. ELIASBERG: I'm going to just -- for
8 the record, we don't have -- we made the copy of what
9 Rob sent to us, so -- I could look, but I don't know
10 that we have any others, but I will look if you would
11 like.

12 THE WITNESS: And I will offer that these
13 -- these were extremely -- or these were casual
14 notes made very, very early in the process back when
15 I was still figuring out who was doing what. And I
16 don't think there's any material information in any
17 part of this at all. So I -- frankly, I had
18 forgotten these even existed.

19 These are not critical notes. I did not
20 rely on these notes for any of part of this reports.
21 They were just casual working papers that accumulated
22 during the course of this project.

23 BY MR. SEFERIAN:

24 Q. Would you agree that the Department of
25 Education school facilities planning division

1 consultants and analysts helped California's counties
2 with long-range master planning for new school
3 facilities?

4 A. The question is whether they helped counties
5 -- or school districts or counties?

6 Q. Let me restate that. Would you agree that
7 the Department of Education school facilities
8 planning division, field services consultants and
9 analysts help California's school districts with
10 long-range master planning for new school facilities?

11 A. On occasion and upon request of the school
12 district, yes, they do.

13 Q. Would you agree that the school facilities
14 planning division of the Department of Education
15 helps school districts with school site selection?

16 A. Yes. It's a requirement of the education
17 code that a site be approved by the Department of
18 Education. So once a school district has
19 independently identified one or more potential sites,
20 the Department of Ed field rep will come out and
21 review the sites. There's a form that's filled out
22 at that time.

23 But again, it's in response the -- an
24 initiative from the school district.

25 Q. And is it accurate to say that a Department

1 of Education official inspects every site for a new
2 public school that is going to be constructed?

3 A. A Department of Ed report has to be filed.
4 If it's a preowned property by the school district,
5 sometimes the report is not filed. I believe it's
6 their current practice to come out and inspect every
7 single site just to guarantee the fact that it's
8 done.

9 Q. Is it accurate that the school facilities
10 planning division of the Department of Education
11 reviews construction plans for growth projects and
12 modernization of existing school facilities?

13 MR. ELIASBERG: Compound.

14 THE WITNESS: That -- that's actually a
15 very complicated question. The Department of Ed does
16 review preliminary plans on growth projects. Some
17 growth projects involve additional portable
18 classrooms, which, in some cases, are not reviewed by
19 Department of Ed.

20 And when you say growth projects, there's
21 district funded growth and state funded growth. And
22 the different requirements at the state funded versus
23 local -- locally funded.

24 As far as modernization projections, I'm not
25 aware that they inspect all modernization plans.

1 They may, in fact, do so, but I'm not aware that they
2 do that.

3 BY MR. SEFERIAN:

4 Q. On page 25 of your report, in the middle of
5 the page, when you say you're personally familiar
6 with the school district referring to Del Paso
7 Heights, in what capacity is that?

8 A. An associate of mine was facilities director
9 in the high school district serving that area. And
10 he was aware that the elementary district was having
11 trouble and asked me to join him and look at some
12 sites and propose some solutions. So in a
13 voluntarily -- voluntary, noncompensated, arrangement
14 just to provide some assistance to a small and needy
15 school district, which is fairly common throughout
16 the state. There's a lot of sharing that goes on.

17 Q. To your knowledge, does Del Paso Heights
18 currently have a superintendent?

19 A. It's my understanding that at this moment in
20 time, they have an acting superintendent, but still
21 have not found a permanent superintendent. That's in
22 February 2003. They have been challenged.

23 Q. Do you have any understanding as to whether
24 Del Paso Heights currently has a business manager or
25 personnel director?

1 next step. The expectation was that things would
2 cure themselves, but that apparently has not yet
3 happened.

4 Q. What would your proposal be in a situation
5 that you described in Del Paso Heights where they had
6 begun to experience management breakdown?

7 A. Well, again, the focus of this report is not
8 on the management operation of all school districts.
9 It's clearly they had vacant positions that needed to
10 be filled. Assuming they would do an adequate job of
11 hiring, they would get somebody with skill and
12 background and expertise who could fill the job and
13 get things back on track.

14 What had happened was things had started to
15 become a little unraveled when some lower management
16 staff had left the district. With the
17 superintendent/business manager leaving, the whole
18 system just collapsed. So in --

19 As it's relevant to this case, if a parent
20 or student were to be concerned or have a complaint
21 with the adequacy of the school, about the
22 cleanliness -- their principals didn't know if they
23 would have a job next year.

24 There was no superintendent to complain to.
25 There was no business manager. The board was

1 A. I believe they've hired a personnel director
2 and that the county is still doing business services
3 for them.

4 Q. Do you have any understanding as to when the
5 management breakdown in Del Paso Heights began?

6 A. My understanding is that when the former
7 superintendent, who was a long-time superintendent,
8 left, things started to unravel pretty soon after
9 that. He was able to keep many of the issues in
10 hand, but I have not spent a great deal of time on
11 current affairs in that district.

12 Q. How did the management breakdown in Del Paso
13 Heights affect its facilities program?

14 A. At the time I was out there, they had lost
15 their facilities director and they had been unable to
16 advance their state applications.

17 Their deferred maintenance plan was
18 seriously out of date. There were active repair
19 projects that were stalled because there really was
20 no one to figure out if they should be done by
21 in-house label or bid out or do plans or prepare
22 bids. There were just a number of issues that were
23 kind of stuck in limbo.

24 So the purpose of the high school district
25 coming out to help was just to help them take the

1 deadlocked in an open turmoil. It's a case where the
2 students would be adversely affected, and there was
3 no adequate management structure to respond to the
4 needs and concerns.

5 So this is an example of a situation where a
6 need would not -- a need could arise that could not
7 be addressed through normal local accountability
8 measures.

9 Q. In a situation such as -- that you've
10 described with Del Paso Heights, where need could not
11 be addressed through normal accountability measures,
12 in your opinion, what type of response should the
13 state take in such a situation?

14 A. I believe in a situation like this, the
15 state has an obligation to ensure that the students
16 enrolled in this school system have an equal and fair
17 chance to receive the education that they're promised
18 as students of the California School System.

19 The reason that -- the state protocols are
20 that when the district cannot manage its financial
21 affairs, the county superintendent steps in. When
22 the county superintendent cannot solve the problems,
23 then the state steps in. That's on the financial
24 side.

25 On the personnel side, there's state

1 credentialing laws. On the textbook side, there's
 2 state textbook laws. On the facilities and
 3 cleanliness side, there's nothing.
 4 And again, the whole purpose of this report
 5 is that there needs to be an equal mechanism that
 6 says no matter what, there are state standards.
 7 There are state minimums. There's an educational
 8 service that will be provided to these students.
 9 That's state money being spent. It's a
 10 state accountability system. It's a state graduation
 11 standard. But there's this blind spot when it comes
 12 to facilities and facility conditions.
 13 Q. Do you have an opinion about how
 14 specifically the mechanism would work in a case like
 15 Del Paso Heights?
 16 MR. ELIASBERG: Objection; vague and
 17 ambiguous. Incomplete hypothetical.
 18 THE WITNESS: Again, I think it would be
 19 talk about conditions as they -- at the time this
 20 report was written, and the citation here describes
 21 the particular moment in time.
 22 It could be that it would be as simple as a
 23 state inspector saying, hey, there's a cleanliness
 24 issue. And the county superintendent or someone else
 25 who is at that moment administering the financial

1 affairs would arrange to have the bathrooms cleaned
 2 or the play grounds swept or whatever the issue was.
 3 It doesn't have to be an extensive and
 4 onerous program. It may be just a little push from
 5 either of the county level or state level to remind
 6 the school board that they really need to hire an
 7 administrator. Appoint an acting administrator. Get
 8 somebody in here to keep the systems going so that
 9 the schools run in a smooth and efficient manner.
 10 This district does not appear ready for a
 11 full state takeover. It just needs a little push to
 12 get back on track. And that should be the first
 13 level of intervention.
 14 When a district is in absolute crisis like
 15 the Richmond bankruptcy, that's a different story.
 16 But this is a district that was on track, drifted a
 17 little bit, just needs a push to get back. So very
 18 minor nudge from the state is that all that's being
 19 discussed here.
 20 BY MR. SEFERIAN:
 21 Q. In a case such as Del Paso Heights, as
 22 you've described on page 25 of your report, was the
 23 school board unaware that it should have hired an
 24 administrator?
 25 MR. ELIASBERG: Objection; calls for

1 speculation.
 2 THE WITNESS: That requires speculation on
 3 my part. I don't know what they were thinking. I
 4 mean, it's pretty obvious that there was a problem.
 5 It was very obvious that the reason they had all
 6 these management problems was the fighting on the
 7 board.
 8 What they were thinking, I can't -- it would
 9 be purely speculative on my part. I just don't know.
 10 BY MR. SEFERIAN:
 11 Q. In a situation such as that with Del Paso
 12 Heights where it was obvious they needed an
 13 administrator, why would it be required to have the
 14 state remind them of that fact?
 15 A. The -- the reason -- in California, we have
 16 a very awkward government system. You've got the
 17 State Education Code. You've got State Department of
 18 Education. And then you go down to the local school
 19 district. There's nobody in the middle. There's
 20 just the state, the local. Where -- and then below
 21 that, you've got the kids.
 22 Where the local is failing, somebody has to
 23 go from state down the kids. And if we had a system
 24 like exists in other states where the county
 25 superintendent has administrative responsibilities

1 for the schools in that county, it would be
 2 different. California is not set up that way.
 3 The point is that California has minimum
 4 expectations for the educational program in every
 5 public school. Where they're not being delivered --
 6 or in danger of not being delivered, somebody should
 7 step them in to make sure that the children affected
 8 who are compelled to go to the school, by the way,
 9 actually get the education they're promised.
 10 Again, the section that we're referring to
 11 on page 10 through 25, purpose of the section is to
 12 say that some of these situations where there have
 13 been problems in school districts, are highly
 14 visible.
 15 This is literally on the way to the airport,
 16 half the legislators drive past this district ever
 17 single day when they fly into Sacramento to go to the
 18 work. This isn't a secret. That this is visible.
 19 It's on the front page of the Sacramento Bee. It's
 20 within view of the State Capital, and yet here's a
 21 district in absolute turmoil. It isn't a hidden
 22 situation. It's the visibility that's the important
 23 issue here.
 24 Q. I'd like to ask you to refer to page 26 of
 25 your report, in the third full paragraph, first

1 sentence where you write, "every school has or will
2 experience some breakdown or problem with its
3 facilities."

4 Would you agree that a school that
5 experiences breakdown or a problem with facilities,
6 it does not necessarily have a management problem.

7 MR. ELIASBERG: Objection; incomplete
8 hypothetical. Assumes facts.

9 THE WITNESS: I believe the paragraph that
10 you're referring to clearly says that -- that the
11 fact something breaks, does not mean there's a
12 management problem. No, it's something very
13 different.

14 So again, I'm not sure if that's your
15 question. The fact that a toilet got stopped up one
16 day does not mean that there's a management problem,
17 no. It means there's a problem to be fixed, not that
18 there's a management problem.

19 The very next sentence says,
20 "Well-managed schools and
21 districts with support may fix
22 the problem."

23 So if the toilet get stopped up today, you
24 fix it, tomorrow you don't have the problem. When
25 you have it stopped up Monday and Tuesday and

1 problems -- you know, I get 39 complaints in one
2 year, that's a big red flag that there's a problem
3 out there.

4 If a parent calls and says The bathrooms are
5 flooded at my kid's school, the state takes the call,
6 calls the school and says, Did it get fixed? And the
7 school says, yes, it got fixed.

8 If they get another call the next day that
9 says, The bathrooms are flooded again, and the state
10 calls back and says, Did it get fixed, and you start
11 getting three or four of these, somebody needs to get
12 into the car and go out and check out what's going
13 on.

14 Maybe the next call is to the district
15 superintendent saying, What the heck is going on over
16 at this school. Send somebody over there and find
17 out. The point is, somebody is following through.

18 But, yes, you will get isolated calls that
19 there's a problem. And the first response is not to
20 call a fire drill and send out a crew. It's just
21 simply call the school and say, I had a report.
22 What's the status?

23 A good school, the secretary, the principal,
24 someone will say, Yes, there was a problem and, yes,
25 it's been fixed and things are back to normal.

1 Wednesday and Thursday and Friday, and you come back
2 and it's still stopped up on Monday, there's a
3 problem. That's the distinguishing factor here.

4 It's that things break. Lights burn out.
5 Pipes break. Toilets get stopped up. Sinks back
6 up. Things happen. Good districts fix the problem
7 so the students don't suffer. There's a temporary
8 inconvenience, but it gets fixed. It gets cleaned
9 up. Life goes on.

10 Poorly managed schools, just like it says in
11 this paragraph, don't make the repairs. Then you
12 have the accumulated problems. The bacterial
13 growth. The contamination. The smells. That's the
14 real problem that this report is addressing.

15 BY MR. SEFERIAN:

16 Q. In your opinion, how should the state
17 distinguish between a school that merely has a
18 breakdown or problem with its facilities versus a
19 school or district that has management problems?

20 A. You've asked a very broad question. Let me
21 try and answer it a couple of ways. No. 1, the state
22 would have a monitoring tracking system, where, if I
23 get a complaint about backed toilets and stinking and
24 overflowing bathrooms in a particular school or an in
25 a particular district, and I get a pattern of

1 Thanks for checking.

2 And at that point you log it and move on to
3 the next one. It's just a simple two-minute phone
4 call. But when you get a dozen more at that same
5 school, then you need to start looking into things.

6 And I believe in a normal year, you will
7 never hear from the huge majority of schools. You
8 never hear one complaint because no one would think
9 of calling the state for a problem that's already
10 been fixed.

11 Q. After Proposition 1A was implemented, would
12 you agree that the staff of the office of the public
13 school construction crafted program regulations,
14 procedures, forms and instructions that were fair and
15 efficient within the parameters of the law?

16 MR. ELIASBERG: Objection; vague and
17 ambiguous.

18 THE WITNESS: In general, yes, I would say
19 that the regulations and forms that were developed
20 implemented the law as fairly as they could. There
21 were -- when you say "fair and efficient," there were
22 some constraints imposed by the statute that
23 regulations couldn't change.

24 Where the statute was a little inefficient,
25 the regulations are corresponding inefficient, but,

1 yes.

2 I commend the state for doing as good a job
3 as they can. It was very generous of the voters of
4 the State of California to provide that amount of
5 money.

6 BY MR. SEFERIAN:

7 Q. Would you disagree with the statement that
8 the modernization funds provided by Proposition 1A,
9 was a bold attack on the deterioration and
10 obsolescence in California schools?

11 A. You use the phrase "bold attack," I don't
12 know if I would go quite so far. It was -- it was a
13 very big step. The attack was, if there was any kind
14 of attack, it was enabling local school districts to
15 go ahead and fix the problems that were out there
16 that had accumulated over a period of time. There's
17 such tremendous need and there was a such a
18 tremendous backlog as we saw with Proposition 47 that
19 it was a big step, but it still left a lot of work
20 undone.

21 Q. Would you agree that the professionals in
22 the school facilities planning division, saved the
23 state many times their salaries each year?

24 A. That would --

25 MR. ELIASBERG: Objection.

1 those off the shelf and out on the streets and bid,
2 which is a good thing.

3 The problem, of course is, that it -- there
4 was a billion dollars worth of needed work sitting on
5 a shelf in Sacramento. But, yes, it did get taken
6 care of. My understanding is that the complete
7 backlog was funded by Prop 47. And they were able to
8 start then the modernization allocation with the next
9 project in the door, rather than spend most of it on
10 the stuff hanging around from the last bond measure.

11 Q. In the next paragraph on page 50 when you
12 say, "There was not enough money in Proposition 1A
13 for new construction," did you have in mind an amount
14 that would have been enough?

15 A. No. That would be speculative on my part.
16 I think all this is simply describing is the factual
17 circumstances that the Prop 1A money, while it was a
18 lot of money, it ran out pretty quickly. And
19 districts with eligible projects that had already
20 identified sites and already drawn the plans, were
21 left standing, waiting for funding.

22 Fortunately, Prop 47 was approved by the
23 voters of the State of California and has allowed
24 many of these projects to move forward.

25 Q. Under heading 12 on page 50 in the first

1 THE WITNESS: -- require speculation on my
2 part. I -- I have no knowledge of how much money
3 they have saved the state in a given year.

4 Q. I'd like to ask you to refer to page 50 of
5 your report, please.

6 (Witness examining document.)

7 Near the end of the first full paragraph on
8 page 50 where you say, "The statewide
9 bond proposed for November 2002
10 will address many of these
11 applications."

12 Did you or have you made any estimate of the
13 extent to which the applications will be addressed by
14 the 2002 bond?

15 A. The November 2002 bond became Prop 47. And
16 that specifically included -- and I forgot the exact
17 number, but several billion dollars to deal with
18 precisely the backlog that's discussed on this page.
19 In fact, it's labeled as the backlog funding because
20 several billion -- Proposition 1-A's money ran out so
21 quickly -- a couple billion dollars worth of
22 modernization projects had stacked up in Sacramento.

23 These are completely designed,
24 ready-to-go-to-bid projects that were sitting on a
25 shelf. And, yes, Prop 47 did include funding to get

1 sentence when you mention per pupil grant amounts,
2 what is your understanding of how those grant amounts
3 are set?

4 MR. ELIASBERG: Objection; vague.

5 THE WITNESS: I don't have complete
6 knowledge of where the grant amounts came from. I
7 mean, it's kind of the mysterioso process. It's my
8 understanding that the -- the grant amounts were
9 based upon the funding formulas that were embedded in
10 old lease purchase program.

11 And that through the legislative and
12 administrative process, they were somehow turned into
13 per pupil grant amounts. The modernization amount
14 was an extrapolation from the cost of new
15 construction. And after that, I just don't have
16 exact details on how they were created. The grant
17 amounts are printed in the statute, and that's how
18 they became part of the program.

19 BY MR. SEFERIAN:

20 Q. Later in the sentence on page 50 when you
21 say, "Most of, if not all of, the per
22 pupil granted amount to be too
23 low to build schools to modern
24 and community standards."

25 What's the basis of that statement?

1 A. The basis of that statement is having been
2 involved with new construction projects, every
3 district I'm aware of that has the financial ability
4 has supplemented the new construction grant amounts.
5 There simply is not enough money in the grant amount
6 to build the school that is expected by the educators
7 and by the community.

8 There have been dramatic changes in codes
9 and technology since the lease purchase program. I
10 believe the fundamental benchmarking of school
11 facilities program funding grant amounts to the old
12 lease purchase program was really a step back in
13 time.

14 There's a political incentive to keep the
15 grant amounts low. It ties to a number of other
16 factors. But whatever the reason, school projects
17 I'm very familiar with, it's promised to be roughly
18 50/50 funding. The reality is it's about
19 two-thirds/one-third.

20 The state grant amount which is purported
21 that they have to cost have, actually pays about a
22 third of the cost. The district chips in an equal
23 amount and then tops it off with another third of the
24 cost of the project to be able to put in data
25 systems, modern fire alarms, playground equipment,

1 but incurs a dollar expense 20 years from now.

2 It's encouraged districts to include far
3 more portable classrooms which are really neat the
4 first year, few years; but by the 20th year, are
5 basically worn out. Whereas, a permanent brick and
6 mortar building would have 60 more years of life on
7 it.

8 So what I'm seeing is deficiency of the
9 state grant amounts has actually led to a cheapening
10 of the product which some people may interpret as
11 efficiency, but I think we need to look at that very
12 carefully, because I do not agree that it promotes
13 efficiency.

14 BY MR. SEFERIAN:

15 Q. In your opinion, what's the proper amount of
16 time that a school district could reasonably use a
17 portable classroom on campus?

18 A. The answer to that depends on so many
19 variables, it's impossible to answer simply. It
20 depends on what kind of building it is. Where it's
21 placed. How it's placed and climatic zone it's
22 placed in.

23 A cheaply built portable put on dirt n
24 Vallejo, with the ocean influences, you wouldn't even
25 see 20 years out of it. The same building on asphalt

1 grass on the field, the amenities that parents and
2 kids and teachers rightly expect in a school.

3 The grant amount is all inclusive. That's
4 all you get. So out of that funding, you have to buy
5 books for library, library shelves, cafeteria tables,
6 the whole -- everything that goes into a new school.

7 Q. Do you have any opinion about what the per
8 pupil grant amount should be in the school facilities
9 program?

10 A. That would require more analysis and is
11 beyond the scope of this. That would be a good
12 research project for some other time, but I don't
13 think it's actually part of this. I do know the
14 amount is too low. I'd have to do more research to
15 tell you what it really should be.

16 Q. Do the per pupil grant amounts in the school
17 facilities program encourage efficiency in the
18 construction of school facilities?

19 MR. ELIASBERG: Objection; calls for
20 speculation.

21 THE WITNESS: It is my experience that it
22 does not encourage efficiency. It encourages
23 cheapness, which is shortsighted in design instead of
24 a putting in a 50-year roof, you compromise and put
25 in a 20-year roof, which simply saves a dollar today

1 in the desert climate, might be fine after 20 years.
2 The interior will be badly worn, but the roof and
3 exterior system would be okay. So it really depends
4 where you are, what the building is.

5 And again, as I explained yesterday,
6 "portable" is a very ambiguous term. There are some
7 really cheap and teeny portables and some very
8 high-quality portables. If -- a lot of it depends on
9 what the manufacturer is. What the material are.
10 How it was put together. There's just so many
11 variables, it's almost impossible to say.

12 Q. If a school district would make a decision
13 to put a high-quality portable on the campus, would
14 you disagree with that in principle?

15 MR. ELIASBERG: Objection; incomplete
16 hypothetical.

17 MR. REED: Vague as to the term "high
18 quality."

19 THE WITNESS: I think portable classrooms
20 have a place, but we need to realize that they're
21 temporary buildings. That may be really nice
22 temporary buildings, but they're temporary
23 buildings.

24 And what the State of California has done,
25 like the State of Florida did before it, and other

1 states are doing today, is they are meeting today's
2 needs with temporary buildings which is building a
3 time bomb for 20 years hence. And we are
4 experiencing now the end of the life cycle of all the
5 portables put in for economy reasons in the '70s.

6 So part of the gargantuan facility crisis
7 California is facing today is because it didn't spend
8 money 20 years ago. It deferred that cost. It
9 bought a cheap Band-aid solution then. That solution
10 is collapsing. At the same time you have new growth
11 demands, so now you have two needs at once.

12 So say all the schools that bought their way
13 out of a problem 15, 20, 25 years ago, now it's time
14 to pay the piper. And that's part of the huge
15 unfunded problem we have in California and why this
16 whole thing just is hitting all at once. There
17 hasn't been a regular investment.

18 We've skipped over making that necessary
19 permanent investment. And all the temporary fixes
20 are falling apart at the same time we have new sets
21 of needs. So that's part of the whole facility issue
22 that the state needs to address now.

23 And saying that we're just going to put in
24 more temporaries is just fooling ourselves and
25 putting -- just pushing the problem out a few years.

1 Even places like Elk Grove that claim to be
2 building to state standards, supplement the amount of
3 money they spend on each and every school through
4 their mella rous. They have a huge additional tax
5 that flows in every year to pay the additional
6 increment to meet the expectations of their
7 community.

8 BY MR. SEFERIAN:

9 Q. What did you mean at the end of the first
10 sentence on page 50 under heading 2, when you said
11 modern and community standards?

12 A. One of the issues you have to get to is that
13 the State of California really does not have adequate
14 school facilities standards. We have some plumbing
15 code issues. There's some shoulds. There's some
16 fire alarm issues. There's structural requirements.
17 But what is a community standard and the statewide
18 standard, so every community comes up with its own
19 standards.

20 For example, most schools expect to have
21 some kind of playground equipment. But you go
22 through the state guidelines, there's not a word in
23 there about playground equipment. Just that the
24 district ought to put some in.

25 There's no requirement that the cafeteria

1 It's not solving it.

2 BY MR. SEFERIAN:

3 Q. Would you disagree that there are some
4 school districts that are able to build schools
5 without supplementing the per pupil grant amounts in
6 the school facility program?

7 A. It is correct that some districts do build
8 with state grant only. Some of those districts are
9 financial hardship districts that have no
10 alternative. Some of those are just so close to
11 being broke, that's all they can do.

12 But when you visit those schools, it's
13 immediately apparent the deficiency is due to that
14 budgetary constraint. The playgrounds are not
15 finished out. The buildings are -- tend to be
16 extremely monotonous and just lined up because you
17 don't have the money to do anything different.

18 There tends to be an excess number of
19 portable classrooms on that campus. There tends to
20 be minimal site development.

21 So, yes, it is correct to say that some
22 districts do that. Is it adequate? It's getting by,
23 but it's really not the same. And it's clearly a
24 different facility than is built in a district that
25 has more financial resources.

1 have any kind of long lasting durable tables. Just
2 that kids have to be able to sit down somewhere.

3 There's no real requirement that the fields
4 have grass on them, or that the grass have irrigation
5 systems.

6 So modern community expectations are that
7 schools will be like parks. They'll have grass to
8 play on. Hard court to play basketball and
9 volleyball on. They'll have playground structures.
10 They'll have cafeterias that are usable by the
11 community. That they will be a complete system.
12 There will be books in the library.

13 Many districts are finding that the state
14 grants are not adequate to provide all these things.
15 And it is really tough to tell a kid you can have
16 grass or library books, but you can't have both.

17 Q. When you use the term "modern and community
18 standards" on page 50, are those standards that you
19 were referring, a discrete set of standards that are
20 written somewhere?

21 MR. ELIASBERG: Vague as to "discrete."

22 THE WITNESS: I believe if you were to look
23 at -- look through the professional literature and
24 look at the award winning schools and the schools
25 that are funded with local resources, you'll see a

1 very consistent pattern of what a new school looks
2 like. It has grass. It has library books. It has
3 data hookups. It has a fire alarm system that's
4 fully integrated and functional. It has enough
5 parking spaces.

6 You won't find that in state guidelines.
7 But you will find it by looking at what people who
8 are able to supplement the state program are actually
9 doing. So it's one of those things -- they're
10 commonly accepted standards out there. They're
11 expectations, the community sees what the next
12 community had built and that becomes their
13 expectation.

14 It's not that you will not build a school
15 and not be able to afford the grass and the
16 playground.

17 And the grass on the playground is just an
18 illustration. It's not firm hard criteria between
19 good and bad.

20 You'll find schools that are built with no
21 computer hookups so that the kids cannot access the
22 internet. You have empty conduits running around,
23 but they can't afford the wires. That child is
24 disadvantaged in compared to the expectation that his
25 classroom -- his or her classroom can hookup to the

1 A. Title 24 says that every school building
2 shall be built in accordance with that code or shall
3 not be built at all, so of course.

4 I mean, you may get a structurally sound
5 shell, but it is possible to build buildings that
6 comply with the structural safety requirements of
7 Title 24 by the state grant? Whether that's a
8 complete and adequate school is a different
9 question. But, No. 1, is shall comply with the
10 structural safety requirements.

11 And No. 2, of course, you can build the
12 structure, but you can build the amenities in there
13 that students and teachers require is a different
14 question. So again, it gets into the balancing act.

15 Q. And the next sentence on page 50 when you
16 use the term "common response," that's an anecdotal
17 estimation as opposed to an analytical study; is that
18 correct?

19 MR. ELIASBERG: Objection; vague.

20 THE WITNESS: I'll answer that by saying
21 my -- I've got 25 years of experience in this field,
22 and I've been personally involved in design and
23 construction and opening of new schools. I just was
24 intimately involved in building a brand new school.
25 It's more than anecdotal. It's a pattern you start

1 internet and see what's going on in another part of
2 the world.

3 BY MR. SEFERIAN:

4 Q. Would you agree that the school buildings
5 constructed through the state school facilities
6 program are constructed in accordance with the
7 guidelines of the building code?

8 MR. ELIASBERG: Every school constructed,
9 lacks foundation. Calls for speculation.

10 THE WITNESS: That's a very technical
11 question, and I'm not sure I can give a full answer.
12 Schools in California are built in accordance with
13 Title 24 which is slightly different that the Uniform
14 Building Code. In some ways it's more stringent, and
15 some ways it's more vague.

16 Structurally it's more stringent than the
17 Uniform Building Code. I believe Title 4 does
18 incorporate the plumbing codes, for example. But
19 that's, again, a very technical question. You should
20 ask the state architect for information on that.

21 BY MR. SEFERIAN:

22 Q. Do you have any opinion regarding whether
23 the per pupil grant amounts in the school facilities
24 program are sufficient to allow school buildings to
25 be built in accordance with Title 24?

1 seeing over and over again.

2 In the case of middle schools, the state
3 grant is severely and distressingly low. Middle
4 schools built under state grant amounts are really in
5 trouble. And I think the state even is recognizing
6 that there's a big, big problem in the middle
7 schools.

8 But even for elementary schools, again, it's
9 not one case, it's not an antidote, it's a repetitive
10 widespread pattern of deficiency where the local
11 district has to chip in about a third of the cost of
12 the final product over and above the matching and
13 state and local grants just to get the school that
14 everybody thought they were building in the first
15 place.

16 If this happened once, we'd claim somebody
17 was indulgent. But when it happens, once, twice,
18 three times, virtually every single case, there's a
19 pattern here. And I think we're seeing a very
20 widespread pattern.

21 BY MR. SEFERIAN:

22 Q. To your knowledge, have there been any
23 studies of that issue of the precise portion of the
24 total construction costs that is covered by the per
25 pupil grant amounts in the school facility program?

1 A. I do not know of any broad studies of that
2 topic. There have been several attempts to evaluate
3 the state grant amounts. But again, the starting
4 point for those has always been what did the state
5 pay for back in 1978 under the lease purchase
6 program, rather than what do we need today in 2003.

7 In 1978 we didn't have the computer in every
8 classroom. So just that one change -- you didn't
9 have VCRs in every classroom. Expectations have
10 changed. The student of today is not the student of
11 the '70s.

12 BY MR. SEFERIAN:

13 Q. And what's wrong with the students of the
14 '70s?

15 MR. REED: It's their rock and roll music.

16 MR. HAJELA: Too many grew up to be
17 lawyers.

18 BY MR. SEFERIAN:

19 Q. The next sentence on page 50, what other
20 funds were you referring to when you said district
21 and financial assets supplement state granted to
22 other funds?

23 MR. ELIASBERG: Asked and answered.

24 THE WITNESS: The sentence on page 50 that
25 you're referring to, the other funds typically are

1 computer lab. They'll jam the computers in a corner
2 of the library. Take out the computer lab. You
3 figure out a way -- the district -- that no other
4 resources -- and needs the school -- you figure out a
5 way to make it fit.

6 I've seen schools where they've deleted an
7 entire wing or two of classrooms and just lined up
8 some other leased portables because they ran out of
9 money. It's not good, but you do what you have to do
10 when you don't have any other choice.

11 Q. Referring again to the same sentence 60 --
12 page 50, would you agree that districts without other
13 funding are able to construct facilities that comply
14 with earthquake safety, fire and safety standards and
15 access standards?

16 A. Your statement is whether districts that had
17 to cut back their project due to budget can build
18 earthquake safe and fire safe buildings, yes. I
19 mean, that's -- no argument there. You know, it may
20 not be an adequate school. It may not be a complete
21 school, but it will meet fire- and earthquake-safety
22 standards.

23 You know, good old cinder block buildings
24 meet earthquake and fire standards too. It's -- the
25 question is what are we trying to do for the children

1 locally approved bond measure funds are developer
2 fees collected locally.

3 Sometimes there's redevelopment pass-through
4 money or sale of property money or just accumulated
5 capital reserve funds of the district. You also find
6 districts tapping their cafeteria fund to buy tables
7 for the cafeterias. Just digging in every pocket
8 they can to make the project whole because of the
9 deficiencies in the state grants amounts.

10 BY MR. SEFERIAN:

11 Q. In the next sentence on page 50, when you
12 use the word "space," what were you referring to?

13 A. The sentence, I think, you're referring to
14 says, "Districts without other funding
15 must cut back space, quality or
16 some other item to fit within
17 the budget."

18 The way you cut back space is you don't
19 build the multipurpose room. So on raining days, the
20 kids have to eat lunch in their classrooms, that the
21 school cannot have a school play. You can't have
22 school assemblies unless you go out on the
23 playground.

24 You will see brand new schools in California
25 built without multipurpose rooms. You'll see no

1 of this state in the future?

2 Can you build utterly stripped-down basic
3 schools? Yes, the state grant is adequate to build a
4 stripped down school.

5 But that is not equal to the school in the
6 next community. It's not equal in all areas of the
7 state.

8 If you're out in desert climate, you can't
9 have school assemblies in the middle of the
10 playground because it's 100 degrees at ten o'clock in
11 the morning; wherein, maybe a more temperate coastal
12 climate, you could.

13 So when we're looking for an equitable,
14 fair, across-the-state program, saying that if they
15 meet fire code and earthquake code, really is not
16 getting to the essence of what is a school supposed
17 to be. We can compel kids to go to school. We have
18 compulsory attendance in this state.

19 We order them and their parents to show up
20 at school. And to say that it won't catch on fire
21 and the roof won't fall down, really is kind of
22 missing the daily experience.

23 Q. To what extent should costs be a
24 consideration in the construction of public school
25 facilities?

1 MR. ELIASBERG: Vague and ambiguous,
2 incomplete.

3 THE WITNESS: The question you've asked is
4 -- is what consideration should go to costs. I
5 would agree with your proposition that there
6 shouldn't be a blank check and people can build
7 whatever in the world they want to build.

8 On the other hand, when costs becomes an
9 oppressive factor of the design, you end up barely
10 minimal, barely adequate minimalistic schools.

11 And what we're seeking here is a balancing
12 point of where there is an educationally appropriate,
13 comfortable, clean and safe school for the children
14 who are compelled to attend on a daily basis so they
15 can get the education and pass the state testing and
16 eventually graduate from high school.

17 Yes, cost is a factor. And, yes -- you
18 know, it -- it's hard to quantify that there's a
19 minimum dollar amount.

20 Again, what's being reported in this section
21 of the report is that looking at a large number of
22 schools that have been built under this program, the
23 complete schools, the adequate schools, all required
24 supplemental funding.

25 Those that did not have supplement funding

1 school. You have to have -- as opposed to a private
2 job. There are bonding requirements, bidding
3 requirements, insurance requirements. There's the
4 new law, thanks to Speaker Weston, AB1506 on the
5 payroll enforcement now.

6 It's hard to find contractors. And in
7 remote areas and in growing areas of the state where
8 there are not a lot of established contractors, it's
9 tough to get people to bid on your jobs. There
10 simply are not that many firms that have the bonding
11 capability, the insurance capability and the correct
12 licenses to build a school.

13 So it does cost quite a bit. In a big
14 metropolitan area with a lot of contractors, you can
15 get a better bid. Materials cost vary all over the
16 state. It cost more to build in the northern half of
17 the state because materials have to be shipped in.
18 Urban areas, in particular, cost a -- significantly
19 more.

20 You have to have security that you don't
21 have in other places. You have to have other cost
22 adjustments. There are some adjustments included in
23 the program, but again, they tend not to be
24 adequate.

25 So depending on where you are, depending on

1 had to strip things out of the project to make the
2 budget fit. That says to me, in absolutely clear
3 terms, that there's a budgetary problem with the
4 grant amount. And that's what Section 2 on page 50
5 is addressing.

6 BY MR. SEFERIAN:

7 Q. In your opinion, under the current per pupil
8 grant amounts of the school facilities program, is
9 cost an oppressive factor in the design?

10 A. Currently I would say, yes, it is;
11 particularly for middle schools. Especially in the
12 case of middle schools, it's very oppressive.

13 But whether your building elementary, middle
14 or high school, to stay completely within the budget,
15 suggested by the state grant amounts, you must give
16 up something. You must give up your multipurpose
17 room, your computer lab, grass on the playground,
18 carpeting, parking spaces, something.

19 You simply cannot build what's needed in an
20 attractive format, get out it there in a durable
21 permanent building under the budget that's allowed.

22 Q. Do the construction costs of public schools
23 vary to any significant extent across the state?

24 A. They vary to a tremendous degree across the
25 state. It is very difficult to build a public

1 the kind of school you're building, yes, costs do
2 vary around the state.

3 Q. The last sentence on page 50 of your report,
4 when you refer to "hardship eligible districts," are
5 you aware of hardship eligible districts who apply
6 for funding under the school facilities program but
7 were unable to construct the project that was
8 needed?

9 MR. ELIASBERG: Objection; vague. What's
10 "the project that was needed"?

11 THE WITNESS: Make sure I understand your
12 question properly. I am aware of hardship eligible
13 districts who did apply and as a consequence of
14 accepting the hardship funding, simply chopped and
15 chopped at their project until they made the budget
16 fit, and then they went ahead and built it because
17 they had to.

18 I think there's a perception that some
19 people are abusing the hardship rules. The realty is
20 people in there are there because they're utterly
21 dependant on the state and do not have the local
22 funds after trying to raise the money locally. And
23 because they have no funds to supplement it, they
24 make the project work by cutting, cutting, cutting.

25 The hardship rules further require you to

1 defer projects and focus on the immediate projects
2 you have. So in that sense, projects have not been
3 built because they've been deferred.

4 But, no, I'm not aware of anyone who has
5 been unable to build. They didn't build what they
6 wanted, but they were able to build.

7 BY MR. SEFERIAN:

8 Q. On the next page of your report, page 51, at
9 the end of the first paragraph where you say,
10 "This is proposed to be addressed
11 in as yet undetermined extent of
12 2002 bond."

13 Have you made the determination as to what
14 extent the issue was addressed in the 2002 bond?

15 A. The comment you're referring to refers back
16 to the -- in Proposition 1A to the proceeding
17 sentence which says, in Proposition 1A every school
18 got the same grant amount regardless of if it was 25
19 years or 55 or 75 years old.

20 Proposition 47 said that schools that are
21 greater than 50 years old, gets an additional
22 allowance. That was part of the bond. It did get
23 passed and is now part of the regulations and funding
24 program.

25 It's my personal opinion that the additional

1 1977/1978. They didn't have lead based paint then.
2 It was already banned in California. You don't have
3 to spend that money.

4 But when you're back here replacing the
5 entire electrical backbone system, adding fire
6 alarms, adding handicapped access compliance,
7 frequently adding elevators, abating lead paint,
8 looking for asbestos that was often put in later in
9 the 1950s, it's tremendously expensive.

10 What it's doing, though, is preserving older
11 schools frequently in older built out communities
12 which is right where they're needed. So there's
13 virtue to it. It's often cost effective. It's often
14 preserving historic buildings, but it's expensive.

15 So rather than go on a need-based formula
16 for very old buildings, the state simply flapped on
17 -- flipped on an additional increment that said,
18 okay, we know you have a huge -- but here's a little
19 bit of money, make it work.

20 We're grateful there's an additional
21 allowance, but I'm -- I'm highly suspicious that it
22 will not be enough in most cases.

23 Q. Do you believe it will be enough in some
24 cases?

25 A. Potentially it is enough in some cases.

1 increment will not be sufficient for many very, very
2 old schools. And yet, I'm grateful that the state
3 included an additional allowance for those very old
4 schools.

5 And without going into more detail, because
6 I don't believe any of those projects have actually
7 been started, we'd have to wait a little bit until
8 the first project gets completed and then do an
9 evaluation. It's a brand new part of the program
10 that's just happening now as we speak.

11 Q. What's the basis for the statement you made
12 in your previous answer about the insufficiency?

13 A. That's based on my personal experience
14 working in very, very old schools where virtually
15 every building system has to be upgraded and brought
16 into current codes. You have tremendous abatement
17 costs.

18 Back in the old days, plumbing contained a
19 great deal of lead solder. So virtually, the entire
20 plumbing system has to be pulled to get the lead out
21 of the building. There's frequently lead-based
22 paint. So you end up stripping layer after layer
23 after layer of paint, sometimes dating back to the
24 1920s and the 1930s.

25 A 25-year-old school was built in

1 Again, it's a site-by-site issue, and I -- at this
2 time we just don't have any factual data to make a
3 conclusion.

4 Q. Do you have any opinion about what the
5 allowance for the 50-year-old building should be?

6 A. No, I don't. That would require some
7 research that's beyond the scope of this project.

8 Q. Is it accurate to say the districts can also
9 obtain supplemental modernization grants for projects
10 of a certain type or located in certain areas?

11 A. There are some cost adjustments that are
12 part of the program. And you're correct in noting
13 that certain geographic areas do have increments.

14 When you look at them, they tend to be
15 extremely remote areas of the state, or extremely
16 costly areas in which to build. The other
17 adjustments are, frankly, targeted very narrowly at
18 certain kinds of needs.

19 What we're talking about is the holistic
20 view of what is modernization. There just isn't
21 enough money in it. Again, we're grateful for the
22 funding. It's a big help. It's just not enough. So
23 there's a whole layer of need that's remaining out
24 there even after you've modernized with state funds.
25 But it's a good program. It's working. It is

1 helping. It's just not enough. It's not broad
2 enough. It's not getting all the needs, but it's
3 better than nothing.

4 Q. Do you have any criticisms of those
5 adjustments that you mentioned in your answer?

6 A. Only that some of them don't seem to be
7 adequate for the additional costs that are incurred
8 by the school districts in doing the work that's
9 required to earn those adjustments.

10 MR. ELIASBERG: It's been about an hour.
11 In another 10 or 15 minutes, whenever there's a good
12 logical time, let's take a break.

13 MR. SEFERIAN: Okay.

14 (Recess.)

15 BY MR. SEFERIAN:

16 Q. On page 51 of your report --

17 A. Sure.

18 Q. -- in the first paragraph under Section 3,
19 what's the basis for the last sentence in that
20 paragraph?

21 A. The last sentence in the first paragraph
22 under heading 3 on page 51 says, "During
23 this time, school districts often
24 are reluctant to undertake major
25 repairs as the repairs overlap

1 reluctant to undertake major repairs," is that based
2 on anecdotal evidence?

3 A. That's based -- yes. And my personal
4 observation of behavior of school officials based
5 with that exact dilemma.

6 BY MR. SEFERIAN:

7 Q. On page 61 of your report, in the first
8 paragraph under Section 4, in the second sentence
9 when you use the terms "systematic review process,"
10 what are you referring to?

11 A. What Section 4 is addressing, and what that
12 sentence in particular is focusing on, is the state
13 has gone to a block grant modernization grant. So
14 you're given a chunk of money to do your
15 modernization project.

16 If you're a district that just loves
17 technology, you might get fiber optic access, big
18 screen TVs, CDs. Who knows what you might get in all
19 the rooms and never fix the roof. The state doesn't
20 care. The state has no review process to make sure
21 the dollars go to where the needs are.

22 So they've deferred entirely to the local
23 agency saying here's the money. This fixes your
24 problem. This is your one and only lifetime bite at
25 the apple. And how you spend is 100 percent your

1 with modernization work already
2 designed and approved."

3 MR. ELIASBERG: Discussed yesterday.

4 THE WITNESS: This was discussed
5 yesterday. And as I said yesterday, that the timing
6 question here is the time gap between when Prop 1A
7 modernization money ran out and the funding was
8 expected to be replenished by the November 2002
9 bond.

10 Many districts had applied for funding and
11 been approved, but were not given any money because
12 the state was out of money. So they had an approved
13 project, and they had done all the planning work.
14 They were all ready to go. They just didn't have any
15 money to do work. And there was a natural reluctance
16 to get in and fix something if you were going to come
17 in and fix something if the state were going to come
18 in and fix it anyway, if and when the state got
19 money.

20 And this is the backlog funding, the \$1.9
21 billion of modernization backlog funding that was
22 part of Prop 47 in November 2002.

23 BY MR. SEFERIAN:

24 Q. In that sentence on page 51 where you say,
25 "During this time school districts often are

1 choice.

2 Now, that very same district may have a
3 turnover administration who may not like technology,
4 but they're stuck with it and they can never ever
5 come back and ask for more.

6 So the current law says if the school has
7 ever been modernized with state funding, it's
8 ineligible for new funding, period. Ineligible. So
9 whether the money is wisely spent, whether there's
10 enough bang for the buck, whether all the needs are
11 met or whether the basic human life needs are met,
12 simple, there's no tracking by the state. There's no
13 oversight. No monitoring. No tracking. No
14 reporting.

15 Q. In the work that you perform for this case,
16 have you described or completely outlined what the
17 systematic review process should be to ensure those
18 state dollars are meeting the needs of students?

19 A. I have not completely outlined it. That's
20 beyond the scope of this report. What I'm
21 identifying here is that there's a problem. The
22 extent to which we simply don't know because the
23 state is not monitoring this data in any possible
24 way. Because the state doesn't track, it cannot
25 report it.

1 I don't really know how big this problem
2 is. But I'm -- I am aware that because billions of
3 dollars are falling out the door and nobody is really
4 seeing whether it's meeting some, most or all of the
5 needs, we really don't know.

6 So this is flagging that there's a problem.
7 It's seemed like it would be a very prudent thing for
8 the state to do.

9 I believe in terms of budgeting future state
10 funding and determining how big the problem is in the
11 future, we need to have some of this data. But no,
12 it's not -- it wasn't my charge, and it's not my role
13 here to come up with the system for the State of
14 California. It would not be difficult to do.

15 There's standard building categories and the
16 tracking can be done. And they've invented computers
17 to handle the arithmetic, so it's simply setting up
18 the procedures to do that attainability tracking.

19 Q. In the next sentence on page 52 of your
20 report, what did you mean when you said "performance
21 requirements"?

22 A. I'm in the right section here. Performance
23 requirements are monitoring of how the work is
24 actually done and what work actually got completed.
25 So if I were to submit modernization plans, saying I

1 -- these are grant programs given to the local
2 district, and the exact tracking is not really part
3 of the program.

4 There is closeout tracking to make sure the
5 dollars did get, in fact, spent and that there's a
6 contract and that the work got done and signed off
7 and proper reports got filed. But there's no
8 accountability or tracking or monitoring in the sense
9 of did they used for the needs facing the schools
10 that ultimately lead to the conditions of the kids in
11 that school.

12 BY MR. SEFERIAN:

13 Q. In your opinion, is it a common problem that
14 a district will receive modernization funding for a
15 project, but not perform that project, perform a
16 different project without notifying the state?

17 A. I don't believe it is a widespread problem,
18 but it does occur. And again, without a statewide
19 database, it's impossible for me to render a
20 competent judgement on how widespread the problem
21 is. But I do know of at least several cases in my
22 own personal experience, so that leads me to believe
23 if I were to have more contact with more places, we
24 would see more instances.

25 Q. In your opinion, should the state verify

1 intend to replace the 35-year-old roof, then later
2 changed my mind into a change order and don't replace
3 the roof, and instead install big-screen TVs, the
4 state has no knowledge of that. It is entirely my
5 decision. Meanwhile, the state has a school with a
6 35-year-old roof that's very likely to be leaking.

7 Now, it could be there's a perfectly good
8 rationale for that action. At that point, it seems
9 like the state should ask the district for why they
10 made that choice. Because what we don't want to see
11 is that same district have the roof fail and all the
12 beautiful brand new TVs and fiber optic cables get
13 ruined by the rain.

14 Q. In your opinion, is that a frequent
15 occurrence in California public schools, that a
16 district will receive modernization funds for a
17 certain project and spend the funds on a different
18 project without notifying the state?

19 MR. ELIASBERG: Objection; assumes facts.
20 Incomplete hypothetical.

21 THE WITNESS: You've asked hypothetically
22 is it possible. The requirement here is that the
23 structural requirement in the fire- and life-safety
24 requirements be checked by DSA.

25 On the other side of the ledger, no, this is

1 with each modernization project by a school district
2 that the actual project that was submitted is the
3 project that was completed?

4 A. The state presently has a monitoring system
5 based on the DSA inspection protocols. So that if
6 the plan said you're going to put up a two-by-six
7 structural member here, that -- that actually gets
8 put in place.

9 In terms of changing the finishes and the
10 other treatments, including roofing, if it's
11 nonstructural, it's not monitored. There's simply
12 cost accounting at the end to make sure that there
13 was a proper contract issued that amounted to the
14 amount of money that was allocated out.

15 So nobody says was the roof the greatest
16 need or the bathrooms the greatest need.

17 Again, the hypothetical would be if you had
18 a really stinky bathroom, but chose to upgrade the
19 technology system, that's perfectly okay, and that
20 choice could be made. It seem like, at least,
21 someone should ask why don't you fix the really
22 stinky bathroom before you extend the capability of
23 the school to some high-tech stuff.

24 Q. Are you saying that if the school district
25 receives modernization or funding for a roof

1 replacement, that the state should actually check
2 whether the roof was replaced?

3 A. The question you've been asking over the
4 last two days, suggests that the state believes that
5 the modernization program is a major step toward
6 meeting the upgrading needs of California schools. I
7 disagreed in parts with that and agreed with parts of
8 that.

9 What this section is getting to is that if a
10 school district applies for modernization funding
11 which is once in a lifetime in that building
12 occurrence, and it says I'm going to change the roof
13 and fix the stinking bathrooms, there's no actual
14 monitoring by the state to make sure the stinky
15 bathrooms got fixed and a new roof got put on. That
16 the district has complete autonomy at a local level
17 to change the focus of that project, to choose the
18 priorities it wants.

19 Anything that fits within the broad
20 definition of modernization, is game. So you may
21 have a perfectly up to date ADA compliant bathroom in
22 one building and an touched unmodernized stinky
23 bathroom in another building. In the state's mind,
24 that's perfectly okay.

25 We're saying as to the kids involved, at --

1 prudent for the state, which clearly has a role in
2 the educational outcome that will occur within that
3 school, to make sure that the priority needs are, in
4 fact, met. Local autonomy is great if it gets the
5 job done.

6 But what we have here is a state system with
7 zero follow through on account -- in monitoring.
8 Zero. There's none. There's no connection between
9 identifying the highest priority needs of the school
10 and how the state's money got spent. They're simply
11 bring in your plans, we check them for structural
12 safety, fire safety and access.

13 We give you the money, and then we check at
14 the end of the job to make sure you have receipts.
15 There's a disconnection. There's no follow through.
16 There's no statewide reporting. No one knows if the
17 old roofs are getting fixed.

18 And it just seems like a very prudent action
19 for the State of California, which has shown that it
20 ultimately will be paying all or part of the bill on
21 these projects, to be collecting and monitoring some
22 kind of the data about what, in fact, is going on out
23 there. We don't know if all the bathroom repairs got
24 deferred or not. We don't know if 2 percent or 98
25 percent got deferred. Simply don't have any

1 somebody has to say why did you make that choice?
2 Why did you invest in upgrading technology when
3 you've got a stinky bathroom? The kids what to know
4 why. Why do I have to go to a stinky bathroom? And
5 the kid in the wheelchair got a brand new bathroom,
6 which is great and necessary, but the rest of the
7 kids didn't. And these choices are real live choices
8 that are made every day out there in the real world.

9 And yet here the state says this is the pot
10 of money to fix the problem, and yet it doesn't make
11 sure the problem really got fixed. It just says
12 here's a grant, take it away and spend it. We'll
13 check whether your checkbook balances at the end of
14 the project.

15 Q. If you assume that a school district applies
16 modernization funding for a new roof and you also
17 assume that that roof is the most pressing
18 modernization need for that district or that school,
19 in your opinion in this situation, would it be
20 necessary for the state to verify that the roof was
21 actually replaced with that modernization grant?

22 MR. ELIASBERG: Objection; vague as
23 necessary, and it may call for a legal conclusion.

24 THE WITNESS: I -- what I'm proposing in
25 Section 4 on page 52 is that it would be really

1 statewide database.

2 BY MR. SEFERIAN:

3 Q. Further down in that paragraph on page 52,
4 you write by performance standards, I refer to
5 requiring that roof be replaced on a specified
6 interval or certificate that no replacement is
7 needed.

8 Should those type of standards be uniform
9 statewide, in your opinion?

10 A. In the deferred maintenance program in other
11 place, there already are standards that built-up
12 composition roof is expected to last 20 years. If a
13 district reports that that built up composition roof
14 is 35-years old, it would seen that the state should
15 say are you planning to replace the roof. If not,
16 explain why.

17 And it may be that the district has another
18 source of funding and will be replacing that roof
19 anyway, which is a perfectly good reason.

20 What you don't want to have is a district
21 say, whoops, we forgot about the roof, and then come
22 right back and say we now have a roofing crisis. So
23 within the possible range of local actions, if
24 something is scheduled or overdue for replacement or
25 major repair, there should be some kind of

1 accountability that those needs are being met.
2 Right now you've got deferred maintenance
3 funding over in one pocket. You've got modernization
4 money over here. There's no coordination at all.
5 There's an assumption that somebody is coordinating
6 at the local level, but it's simply an assumption by
7 the state with no monitoring or follow through or
8 reporting.

9 Q. When you use the term "performance
10 standards" on page 52, is it your opinion that those
11 types of standards should be uniform across the
12 state?

13 MR. ELIASBERG: Asked and answered.

14 THE WITNESS: I believe that certain --
15 these are defined as performance standards. And it
16 -- it should be that performance standard would say
17 is the roof weathertight? Does the roof leak? You
18 know, those are performance standards. Not
19 necessarily how much did you pay for it, or how long
20 has it been up there?

21 If the district says the roof is watertight
22 and does not leak and we do not expect it to leak
23 within ten years, maybe there's no need to reroof at
24 all. You're fine. You pass. That's a performance
25 standard.

1 The paint on the wall is good. Maybe in
2 Coachella Valley, it's bleached by the sun and needs
3 to be repainted. In Ventura, the sun is less intense
4 and after 10 years, the paint is perfectly good. In
5 Vallejo you have ocean mist damage and needs to be
6 repainted.

7 The performance standard is the paint good
8 so that it's protecting the surface of the wall that
9 holds the school together, not some arbitrary
10 standard. So that's the reason that the term
11 "performance standard" is used here.

12 The state has an interest in knowing that
13 the school is being adequately maintained. Not in
14 whether it's pink paint or blue paint or yellow
15 paint. That's a different issue. It's simply is the
16 paint continuous and adequate? Is the roof
17 weathertight? Do the bathroom fixtures work? That's
18 -- that's important. Not necessarily age.

19 BY MR. SEFERIAN:

20 Q. In that same sentence on page 52, when you
21 say replace on a specified interval or certify that
22 no replacement is needed, what's the value of that
23 certification?

24 A. The value of the certification -- again, it
25 gets back to a performance standard where if somebody

1 at the local level looks at that roof, does an
2 adequate -- you know, a reasonably competent
3 inspection, and says this roof is perfectly okay. It
4 doesn't need to be replaced and has a lot of years'
5 life left in it, there's no point in replacing the
6 roof.

7 It's -- it's just like the tires on your
8 car, maybe they have 40,000 miles, but they still
9 have a bunch of tread, why get rid of them? If they
10 have 35,000 miles and they're bald, it's time to
11 replace them.

12 So what you do is you look at the object.
13 You look at is it capable of performing the job it's
14 intended to do. You're tires are bald, you replace
15 them even if the warranty isn't up yet. If the
16 warranty is up, but they've got plenty of life in
17 them, why replace them if they're in good shape?

18 So again, it's saying look at the
19 performance of the building system, not the age, the
20 date or any other arbitrary criteria. That's what is
21 most important.

22 Q. Under the current system, do the school
23 districts have any incentive to, for example, replace
24 roofs on a specified interval?

25 MR. ELIASBERG: Incomplete hypothetical.

1 Calls for speculation.

2 THE WITNESS: Under -- I'm sorry. The way
3 you said under the current system, which system the
4 modernization or deferred maintenance or --
5 BY MR. SEFERIAN:

6 Q. For example, under the modernization system
7 in the school facilities program, do districts have
8 any incentive to -- to replace roofs on a specified
9 interval or determine whether any particular roof in
10 a school district needs to be replaced?

11 MR. ELIASBERG: Same objection; plus
12 compound.

13 THE WITNESS: Under the current
14 modernization program within the school facilities
15 program, no, a district has no incentive at all to do
16 that. In fact, there's almost a disincentive to do
17 that because roofing is an eligible cost under
18 deferred maintenance. And if you really, really
19 neglect it and you get into a critical hardship, then
20 you can get critical deferred maintenance money for
21 it.

22 So rather than have a rational proactive
23 system of maintaining and improving the quality of
24 schools, there's this catch-is-catch-can system that
25 leaves incredible discretion to the local level and

1 leaves the state liable for the failure of the
2 building system at some future date.
3 When you do apply for state modernization
4 because it has to go through DSA for the full review,
5 the first layer peeled off the top is for
6 architectural design. The second layer peeled off is
7 for handicapped, the ADA compliance. The next layer
8 peeled of the type is -- off the top is fire and life
9 safety. Then whatever is left over, you get to
10 allocate to your building needs.

11 And again once you -- and to use the example
12 about of the stinky bathrooms. If you start working
13 in that bathroom, you have to bring the entire
14 facility up to code. And that often can eat up a
15 majority of your -- of your modernization allowance.

16 So there's actually an incentive to
17 districts to focus on one boys, one girls bathroom,
18 get those up to ADA compliance and completely ignore
19 the other bathrooms and leave them with their
20 problems. Because once you get in there and start
21 working, you got to bring the whole thing up to
22 code.

23 So there's this almost perverse incentive
24 built into the system. If there was enough money, it
25 wouldn't be a question. Of course you get the entire

1 think with performance standards would say look at
2 the paint isn't totally gone. We want to do
3 carpeting this year. We're going to paint next
4 year. That's fine. That's okay. Because both needs
5 are getting addressed. And local flexibility says
6 this one can be done this year -- and this one can be
7 done next year.

8 The problems come in when they say I don't
9 have enough money, so I'm going to carpet and never
10 paint. And then after seven, eight, nine, ten years,
11 the paint is so thin that the stucco is eroding.
12 Then you have structural damage, and then you're
13 getting water penetration. Then you've got interior
14 damage, wiring damage. Now, you've got a horrible
15 mess.

16 The point is the state has invested billions
17 and billions and billions of dollars in these
18 schools, they need to have basic maintenance. There
19 needs to be a little bit of accountability, a little
20 bit of structure, a little bit of education from the
21 state on how to maintain this incredibly expensive
22 investment of the taxpayers of California. Right
23 now, there's nothing; and that's a gap.

24 BY MR. SEFERIAN:

25 Q. In a hypothetical situation, if a school

1 campus modernized. But because there isn't enough
2 money, you have to make these tough choices and
3 neglect a needy bathroom in case you want to paint
4 the building or change the door or fix the windows or
5 whatever needs to get done.

6 BY MR. SEFERIAN:

7 Q. Referring to the last full sentence on page
8 52 of your report, where you talk about the
9 painting. If you assume that there was a schedule
10 that called for a school to be painted in a given
11 year, but the school preferred to spend that money on
12 something else, for example, a new carpeting, should
13 the school district have that option, in your
14 opinion?

15 MR. ELIASBERG: Incomplete hypothetical.

16 THE WITNESS: Yeah, again, you're asking a
17 hypothetical. Let me answer that. If you -- again,
18 I want to go back to performance standards and if the
19 guidelines -- the manufacturer's recommendations says
20 that this paint will last five years and five years
21 are up, and the school should be painted.

22 It's starting to get a little thin in
23 places. And this -- the school says the carpeting is
24 really the higher priority, and we're going to do
25 that and paint next year. That should be -- and I

1 district were -- were faced with a classroom where,
2 for example, carpeting was worn out for that school
3 year, the district decides it would rather buy new
4 desks, is that something that is a type of a decision
5 that you believe a school district should be allowed
6 to make?

7 MR. ELIASBERG: Incomplete hypothetical.

8 THE WITNESS: You're asking a hypothetical
9 about desks versus carpeting and should they be
10 allowed a little bit of flexibility. I would -- I
11 would support any kind of system that says the local
12 should have that ability. As long as they show that
13 if the carpet isn't replaced this year and desks are
14 a higher need, the carpet will be -- the carpet
15 replacement need will be addressed within a timely
16 fashion.

17 What can't happen and does happen today is
18 we plan on doing the carpeting. We're tight on
19 money. We buy desks. We ignore the carpeting until
20 it becomes a significant major problem. That's
21 wrong. That can't happen.

22 But if the plan is carpet this year, desk
23 next year and you find out you need desks this year,
24 there's no problem switching. Maybe you do an extra
25 shampooing. You do an extra little bit of carpet

1 care. It's the same choice you would make in your
2 own home if you suddenly had to change the water
3 heater or change the sprinkler system or whatever the
4 needs at your house are.

5 That's the real world we live in. And it
6 might be different for different schools within a
7 school district. So a little bit of flexibility is
8 okay.

9 The key ingredient there is that the local
10 district is made aware of the need to replace the
11 carpeting on a cyclical basis. And there's some
12 tracking of the fact that they're actually doing it.
13 And after a number of years, it's clear that the
14 carpet should be replaced and wasn't replaced, that
15 somebody explained why it wasn't replaced.

16 Too much of the state operates on a squeaky
17 wheel syndrome. And you've got a, poor school with
18 non-English speaking parents who just accept their
19 fate. And then you've got the squeaky-wheel school
20 with the Harvard graduate parents who are writing
21 letters to the school board and calling the newspaper
22 and saying fix the carpet in my kid's school. Which
23 school is going to get the carpeting?

24 And so what you have then are the better
25 schools with the aggressive proactive parents get

1 into better facilities, attracting more, better
2 parents; getting more, better stuff; getting the new
3 desks.

4 The other school is slowly sinking under the
5 waves. And that's how we've ended up with this
6 two-tier school system that we end up with within the
7 State of California, which isn't acceptable. There
8 are huge differences between the good schools and the
9 bad schools. This case is about the bad schools
10 where you don't have the squeaky-wheel parents and
11 the repairs aren't getting done because that money is
12 slowly drifting over to the better schools.

13 BY MR. SEFERIAN:

14 Q. Would you agree that school districts are
15 aware through guidelines in the modernization program
16 of the expected life of certain school facility
17 component?

18 MR. ELIASBERG: Calls for speculation.

19 THE WITNESS: I'm not aware -- I don't
20 believe there are guidelines of that nature in the
21 modernization program.

22 BY MR. SEFERIAN:

23 Q. I'm going to ask you to look at the first
24 full paragraph on page 53?

25 A. Are you referring to the paragraph under

1 heading No. 5?

2 Q. Yes.

3 A. Okay.

4 Q. When you site the working group and the LAO
5 that recommend the total overhaul of the way
6 financial school renovation and construction -- when
7 you wrote that, was that as an endorsement of that
8 proposition? Do you agree with that?

9 MR. ELIASBERG: Vague as to that
10 proposition.

11 THE WITNESS: The sentence you're referring
12 to is neither an endorsement. It's simply a
13 statement that says the facilities working group
14 recommended an overhaul and the legislative analyst
15 had similarly recommended an overhaul.

16 In the next paragraph is where I share my
17 opinions on the matter. But here it's just saying
18 that these two broadly based -- the broadly based
19 facilities working group of the joint committee, a
20 lot of people working a lot of hours on this issue
21 had come with the recommendation.

22 The legislative analyst has looked at this
23 for, at least, two, if not three years, and they came
24 up independently with a very similar recommendation.

25 We don't have a rational system in

1 California. And both groups recommended a move
2 towards a more rational predictable and stable
3 system. That's an observation being reported in the
4 first paragraph.

5 BY MR. SEFERIAN:

6 Q. In the next sentence on page 53 where it
7 says, in part, "The recommendations
8 generally provide for a guarantee
9 annual per student allocation of
10 funds for facilities means."

11 Do you support that recommendation?

12 A. I believe that as it's presently proposed in
13 the two sets of recommend, it would be a better
14 system than the start and stop, changeable
15 unpredictable system we have now.

16 Q. Why do you say it would be a better?

17 A. It would allow predictability. Now, before
18 I get further into this answer, I want to point out
19 the second paragraph here which has a very, very
20 important caveat.

21 Once the schools are brought to a level
22 starting field, a level playing field, so that don't
23 have 50-year-old schools that have never been
24 modernized and brand new schools that are in very
25 good shape, once you level out the playing field, a

1 predictable stable ongoing system would be better.
 2 And then there could be guidelines on
 3 replacement. There could be monitoring of how the
 4 budget is invested, and everybody would be keeping up
 5 with the problem.

6 What we have now is what this huge
 7 disparating condition of schools. And to abruptly
 8 shift to a per pupil annual allocation, would be a
 9 windfall to the brand new schools in good shape and a
 10 severe detriment to the older schools that are not in
 11 good shape.

12 So with the caveat that first you have to
 13 level the playing field and then shift to a different
 14 system. It would be a better system and would avoid
 15 having schools get into fairly desperate need of
 16 modernization before you can apply to the state and
 17 go down and get them fixed up.

18 The idea is prevention rather than
 19 restoration. It's kind of the HMO plan for school
 20 facilities, rather than calling in the ambulance
 21 every once -- every 25 years.

22 So we're trying to get into preventive
 23 measures. Keep them current. Keep them modern.
 24 Constantly invest then you don't have crises ever
 25 25 years.

1 Q. The level of playing field, you would do a
 2 second and possibly a third round of modernization?

3 A. That's one technique. Greater minds than
 4 mine at the state may come up with a better method.
 5 But it seems like that would be the most direct way
 6 to address the disparity in facility conditions post
 7 modernization that we see today.

8 I might add to that, yesterday we talked
 9 about the fingertip facts that had an estimate of
 10 modernization needs in it. This second, even third
 11 round of modernization is nowhere included. So that
 12 would be in addition to the cost, the many billions
 13 of dollars of future modernization need that was
 14 shown on that list.

15 The state people merely looked at the
 16 current program in its current expectations. That
 17 once you modernize, you're done forever. In reality,
 18 the cost is huge.

19 Q. When you say that a way to level the playing
 20 would be a second or a third round of modernization.
 21 Was it within your work in this case to perform any
 22 estimates of the cost of leveling the playing field?

23 A. No. I don't have any hard data. If we had
 24 a statewide inventory of the condition of schools, it
 25 would be fairly easy to extrapolate from where

1 Q. How would you level the playing field as you
 2 used that term in your answer?

3 A. Unfortunately, you've hit on one of the more
 4 difficult aspects of this entire problem. It's my
 5 personal belief that there needs to be almost a
 6 modernization to round for older schools that were
 7 inadequately modernized in the first round. There
 8 simply was not enough money in the first round of
 9 modernization grants. Another rounds to go back and
 10 finish the job would be very appropriate.

11 In some schools there may even be a need for
 12 a third round. This additional round should be more
 13 needs based where an older school with severe needs
 14 would get a little bit more money than -- would get
 15 more money than a newer school with less severe
 16 needs.

17 The goal is the performance standard of all
 18 the building systems brought up to current code and
 19 current functionality. Did the playground get
 20 fixed? Did the asphalt play yard get replaced? Is
 21 the broken concrete gone? Does the roof have another
 22 10 or 15 years of life in it?

23 These are very basic questions, but it's
 24 what you want if you were trying to level the playing
 25 field across all the schools in State of California.

1 schools are today to where they need to get to level
 2 the playing field. But since we lack that essential
 3 piece of data and that inventory, it would be pure
 4 speculation on my part.

5 I do know from schools that are finishing
 6 and closing out their modernization project, that
 7 we're simply struck by the amount of work that did
 8 not get done. We're grateful for what did get done,
 9 but there's so as much apparent work that simply had
 10 to do to get to third.

11 So it's still out there. It's not going to
 12 go away. It will come back. It has to be dealt with
 13 some day. But right now, there's no anticipation
 14 that the state will be there to help deal with that
 15 problem. I think it's a sleeping monster we have to
 16 deal with.

17 Q. When you say a second and third round of
 18 modernization in the context of leveling the playing
 19 field, are you referring to modernization of
 20 buildings that have already been modernized?

21 A. That's correct. Most schools that have just
 22 gone through modernization have a long list of needs
 23 that were unable to be addressed with the grant
 24 amounts that were provided by the state. Districts
 25 had to cut stuff out of the project to fit within

1 that budget.

2 So even districts that did partial
3 supplementation of their own funding, still have work
4 to be done. Again, we're playing 40 and 50 years of
5 catch up in many of these cases. We're going into
6 1950 era schools, bringing them up to current codes
7 for heating, electrical, signals systems. Most cases
8 you had to completely replace your fire alarm
9 system.

10 All the little requirements just to get your
11 project approved ate the modernization money. It
12 never got into the improvement and real needs of the
13 classrooms. A lot of work got done, don't get me
14 wrong. A lot of work still has to be done. And that
15 we can't forgot.

16 Q. When you use the term "level the playing
17 field" in your answer, is that what you're referring
18 to on page 5 of your report when you said I share the
19 concerns of legislative analyst that not all the
20 schools in the state are at the same starting point?

21 A. The starting point, playing fields, yes,
22 same thought.

23 Q. In your opinion, are there any other ways
24 that schools in the state could be at the same
25 starting point other than a second and possibly a

1 changing out heating, you really can't do that with
2 kids around. It's just not safe. It's not
3 practical.

4 You have summer vacations in some schools.
5 In year-round schools you don't have a summer
6 vacation. You have a day, maybe a weekend. But you
7 -- at best, you have a week off. And you simply
8 cannot do major work in a week or a weekend or a
9 day.

10 Q. In your opinion, would any negative
11 consequences flow from a guaranteed annual per
12 student allocation of funds for facility needs?

13 A. As is explained on the middle paragraph of
14 page 53, if you first don't equalize a starting
15 point, there will be severe negative consequences to
16 the most needy schools. If you were to first, level
17 the playing field or get everybody to the same
18 starting point, there appear to be many advantages to
19 a steady predictable stable flow of funding from the
20 state to the districts for major maintenance needs.

21 So with the caveat that first, you've got to
22 get everybody to the same place or somehow deal with
23 the underlying dissimilarity in conditions of
24 schools, the concept seems very valid. The details,
25 obviously, will determine how good it is.

1 third round of modernization?

2 A. I believe there are several different
3 approaches that could be taken. For example, the
4 state deferred maintenance program could be increased
5 and the state role supplemented. Right now, the
6 state is deficit funding deferred maintenance and
7 depriving schools of the ability to maintain their
8 facilities adequately. It's promised a dollar and
9 delivered 83 cents this year.

10 It could change that ratio and start
11 promising \$2 and delivering \$2 and the districts
12 would, over time, catch up. There are a number of
13 strategies you could use to basically get the money
14 out to do the work that needs to be done.

15 The problem you get into is so much of this
16 work is so invasive that you basically need to a
17 modernization-like project where you shut down a
18 classroom and go in and finish the ceiling, the roof,
19 the windows, the doors. It's extraordinarily
20 difficult to piecemeal when you've got kids in the
21 school.

22 You can come in and clean on a daily basis
23 and may be do a little interior painting. But when
24 you're talking about ripping cabinets off and
25 replacing with new cabinets, changing out plumbing,

1 Q. If there was a system implemented which
2 generally provided for a guaranteed annual per
3 student allocation of funds for facility needs, would
4 there be any risk that some portion of that
5 allocation would not be necessary?

6 MR. ELIASBERG: Objection; incomplete
7 hypothetical. Calls for speculation.

8 THE WITNESS: I believe you could construct
9 some hypothetical where somebody would have
10 maintenance money. It's not difficult if you will
11 get categorical programs if the school district has
12 excessive carryover from year to year, the subsequent
13 years grant is reduced until you use up your
14 carryover.

15 The point here is to commit to these
16 projects. And I think it would be very simple and
17 very practical to establish a system where you could
18 accumulate money for a few years and address a bunch
19 of needs in one year, or any other system you had.

20 The idea is that there'd be some kind of
21 accountability in the plan to keep your schools well
22 maintained year after year after year after year, so
23 that we can't find ourselves in the situation where
24 school facilities have been badly neglected for many
25 years, and now we're doing extraordinary catch up

1 measures.

2 Q. Near the bottom of page 53 in the sentence
3 where you say this situation is inherent in a system
4 with equally funding irrespective of needs.

5 What did you mean in that sentence?

6 A. The sentence you're referring to is in the
7 middle of a paragraph that describes how some schools
8 in the modernization program came in with grossly
9 inadequate electrical systems, nonfunctioning fire
10 alarms. Terrible sewage and drainage systems, bad
11 pavement, bad structural requirements, seismic needs,
12 busted windows, everything else.

13 A few miles away in another district that
14 had more adequately maintained its schools, you had
15 fully functional electric power signal. Your fire
16 alarms worked. One school got a new sewer, a new
17 transformer, some pavement, some seismic upgrades,
18 and no paint, no carpeting, no tiles, no white
19 boards.

20 The other school got a fresh coat of paint,
21 nice new playground, upgrades to the library. They
22 carpeted and got all kinds of nice little features.

23 What you have is unequal schools before,
24 unequal schools after. There's something wrong with
25 that picture. So here what SB-50, AB-16 created was

1 truly have serious needs.

2 Q. In your opinion, should the modernization
3 funding be allocated statewide solely on the basis of
4 facility need?

5 A. I believe it would be a more rationale basis
6 to allocate the money. You could even take the
7 current grant amount, which is a basic amount, which
8 is okay if a school starts in pretty good shape. It
9 allows you to catch up on few items.

10 And then the schools that have tremendous
11 backlog of needs, should be getting -- or have the
12 ability to apply for additional supplemental money to
13 get caught up. So when they do this very invasive
14 and disruptive modernization program, instead of just
15 nibbling at the edges and not dealing with the
16 amenities in the classroom that the kids see every
17 day, you could totally remodel the school. Get it up
18 to speed. Then in the future, a program like the
19 legislative analyst is proposing makes a lot of
20 sense.

21 What we have, though, is everybody got a
22 dollar. And if you ever had a lot of need, your a
23 dollar ran short. If you didn't have at lot of
24 needs, you got the same dollar and you could do the
25 little niceties. That should be rectified. So a

1 a system of equal payments irrespective of need. The
2 only adjustment AB-60 (sic) is triggered by age,
3 which is a small step towards rectifying that need.

4 But where you had a school in very needy
5 condition, in a poorly maintained district, I've seen
6 cases where virtually the entire modernization grant
7 got sunk into basic infrastructure systems and the
8 kids attending the school barely know that they have
9 anything different.

10 Maybe the lights don't flicker and may be
11 some of the gurgles are out of the pipes and water
12 tastes better. Another school got a fresh coat of
13 paint, brand new carpeting and nice new storage
14 cabinets and new library cards and all kinds of
15 amenities.

16 Why that is equal? It doesn't make sense.
17 So this is a new level of discussion for the state to
18 we equalize the condition so all kids have the same
19 opportunities. So it's not to say the modernization
20 program is bad, it's to say it never should have
21 happened. It's just so -- say blind spot in that
22 program, and it's failed to meet the needs of a great
23 number of kids.

24 So this whole paper, this whole discussion
25 is about meeting the needs of the kids in the schools

1 needs-based system would be much more practical and
2 much more efficient overall for the state.

3 MR. ELIASBERG: Can we take two minutes
4 just for a bathroom break?

5 (Recess.)

6 BY MR. SEFERIAN:

7 Q. In your opinion, should the state change to
8 a needs-based modernization program that provides
9 modernization funding irrespective of the age of the
10 buildings that will be modified?

11 MR. ELIASBERG: Compound question.

12 THE WITNESS: You asked a two-part question
13 there. Should the state change to a needs-based
14 modernization program? My answer to that would be
15 yes.

16 Should it be completely irrespective of the
17 age of the building? I don't have enough evidence or
18 knowledge to that answer that part of it. Age of
19 building clearly is a criteria -- criterion. But I
20 can't answer your -- second part of your question
21 there.

22 BY MR. SEFERIAN:

23 Q. Would you agree that in a needs-based system
24 of modernization funding, need would not be the only
25 factor in determining where the allocations went?

1 MR. ELIASBERG: Objection; calls for
2 speculation.
3 MR. REED: Can you repeat the question?
4 THE WITNESS: Can you read that one back?
5 MR. SEFERIAN: I'll rephrase it.
6 THE WITNESS: You want to rephrase it.
7 Okay.
8 BY MR. SEFERIAN:
9 Q. Okay. When you say that there should be a
10 needs-based system of modernization funding, do you
11 believe that there is other criteria that should be
12 included in that system other than need?
13 A. I believe other factors could be added in,
14 but I believe that the definition of need would
15 encompass most of the factors. There might be an
16 urban adjustment required, a security adjustment.
17 Maybe a geographic adjustment.
18 There potentially are others. I'd have to
19 see more details on what's being proposed. It's
20 potential there are others, but the key would be to
21 meet the needs of the facility to reach some minimal
22 standardized condition for the kids that will be
23 attending that school. That's the key.
24 Q. Was it within the scope of work that you
25 performed in this case to detail the contours of a

1 needs-based modernization program?
2 A. It was not within the scope of work for this
3 project, no.
4 Q. Would a needs-based modernization program
5 provide any incentive to school districts to not
6 fully maintain certain facilities?
7 MR. ELIASBERG: Incomplete hypothetical.
8 Calls for speculation.
9 THE WITNESS: I think I could construct a
10 situation where someone would do that. It would be
11 -- again, we're talking about a major reform of the
12 entire modernization funding program. If that's a
13 concern of the state or some other agency, I'm sure
14 that could be addressed.
15 There is a current requirement that a
16 district start committing 3 percent of its general
17 fund budget to ongoing maintenance needs of the
18 district. That's a step towards achieving the
19 stopping of deterioration of the buildings.
20 If you're required to spend 3 percent of
21 your money, you're not allowing things to go to pot
22 so you can maximize modernization.
23 It's hypothetically possible somebody could
24 play the game, but I think most people are simply
25 trying to do a better job and maintain the facilities

1 they've got. I wouldn't worry about a hypothetical
2 abuse of the system.
3 The realities is the current grant is not
4 adequate for severely needy schools. And this would
5 be a major step toward remedying that area of need.
6 BY MR. SEFERIAN:
7 Q. Is it your opinion that the current deferred
8 maintenance program provides incentives for school
9 districts not to fully maintain their facilities?
10 A. I think, in a very limited way, it does. If
11 -- for example, if you're deferred maintenance plan
12 says you're going to reroof in a year, you're -- you
13 loose some incentive to do extensive roof repairs
14 this year. So you'll do the minimal patching because
15 you know you're going to get it done next year.
16 Again, let's step a back minute and go back
17 to an earlier discussion that said a competent
18 well-run facilities program doesn't allow roof
19 leaks. And whether they patch this year or reroof a
20 year earlier or keep up with the roof repairs,
21 however they do it based on their individual
22 circumstances, they get the job done.
23 And what we're talking about are
24 hypothetical extreme cases where they're neglecting
25 their needs to maintain the building.

1 The real core issue that we're talking about
2 with modernization is that some buildings have more
3 needs than other buildings. Yet the dollars are
4 equal for all buildings. That's the inequity to be
5 addressed.
6 The deferred maintenance program, again, is
7 driven by budget. It's leveled, but it's -- the
8 intent there is to keep up with major periodic
9 maintain rather than to deal with the underlying
10 major repair needs that are normally addressed in
11 modernization program. The deferred maintenance has
12 a different purpose and different expectation, so
13 it's truly a different program.
14 Q. Do you believe it's a prevalent occurrence
15 that some school districts intentionally do not
16 perform proper facility maintenance because of the
17 incentives provided by the deferred maintenance
18 programmed?
19 A. I do not believe it's prevalent. It's rare
20 to occasional. Again, the deferred maintenance
21 program has been deficit funded by the state. The
22 promises made. The money isn't there.
23 So districts, frankly, are doing as much as
24 they can with the money they have because they never
25 know when the deficit is going to get bigger. So

1 they need to actually divide the deficit funding over
2 a period of years.

3 Districts are encouraged to get the work
4 done quickly and cheaply -- or as quickly as possible
5 because you never know when the state funding is
6 going to start deteriorating further.

7 Again, it's one of these programs where the
8 States made a promise and note met it's financial
9 part of the deal, and the school districts are kind
10 of left hanging. So most school districts are doing
11 a very good job of trying to keep up. There are a
12 lot of demands on their money. They're doing what
13 they can with the money they have.

14 And the deferred maintenance program has
15 done a good job of getting money out and keeping up.
16 But there's this problem of the underlining huge
17 needs that it can't address. It's not meant to
18 address. And it still needs to be addressed at some
19 time in the future.

20 Q. Are you aware of any other states that have
21 a needs based modernization-type program?

22 A. I'm not personally aware of any other
23 states. I have not done the research.

24 Q. Have you seen any studies analyzing the
25 recommendations of the master plan working group and

1 overcrowded schools have access to that type of
2 funding. Whereas students from tract maps or other
3 kinds of growth or noncritically overcrowded
4 campuses, do not have eligibility or access to the
5 critically overcrowded schools funding.

6 But it doesn't prioritize. It just is a
7 gate keeper. You either are eligible or you are not
8 eligible.

9 BY MR. SEFERIAN:

10 Q. Under Section 7 on page 54 of your report,
11 where you say it should be noted that the state has a
12 large outreach effort. Do you have any criticisms of
13 the state's outreach effort?

14 A. Again, I -- I think if you read through this
15 entire section that's labeled Section 7, the state
16 does a fairly good job of getting mailings out to
17 superintendents and facility directors, and does have
18 a fairly active program. The website isn't as
19 current as it used to be, but there is a lot of
20 information there.

21 What is lacking and what is pointed out in
22 Section 7 is that no one at the state level that I'm
23 aware of, is looking at the list of districts, the
24 list of known needs, and saying did this district
25 actually apply. There's no inventory of districts in

1 the LAO as is discussed on pages 52 and 54 of your
2 report?

3 A. I don't believe there have been any actual
4 studies on that. It's simply too new. These things
5 both occurred within the last year, and people are
6 digesting them and thinking about them and that will
7 happen -- occur during this legislative session.

8 Q. In the first paragraph under that second
9 sentence of page 54 of your report, would you agree
10 that the critically overcrowded schools program does
11 prioritize between existing students and overcrowded
12 schools and projected --

13 MR. ELIASBERG: Asked and answered on
14 critically overcrowded schools for about an hour and
15 a half yesterday.

16 THE WITNESS: Was that your question?

17 No. It does not -- I do not agree with
18 that. District's eligibility is generated through
19 various sources, including overcrowded schools and
20 tract maps and whatever other kinds of eligibility
21 they have. The critically overcrowded schools
22 program take a portion of that eligibility and allows
23 it to be used in certain circumstances.

24 So, no, it does not give any priority. What
25 it does is it that students enrolled in critically

1 need. There's no inventory of schools that have not
2 yet been modernized. No one is saying who are we not
3 hearing from?

4 What they are doing is sending a letter out
5 there to the masses, everybody in the state gets
6 one. But if they don't hear anything back, nothing
7 ever happened.

8 Many years ago there was a program in the
9 State Department of Education where a state
10 representative contacted every district every year to
11 say how are things going? Do you have needs? Are
12 you aware of this? When was the last time you did
13 your work? Are you up to date? That's gone away.

14 So now it's entirely applicant driven. So
15 if an applicant applies, they're heard from. If they
16 don't apply, there's no follow up, no tracking, no
17 monitoring. No questioning saying why hasn't this
18 district applied? What's going on out there? Do
19 they need help?

20 Unless the mail -- post office returns the
21 letter, there's no real knowledge if the mail got
22 misdirected or never got delivered in the first
23 place. There's just -- it got sent out and that's
24 the end of the story.

25 Q. Would you agree that the state notifies all

1 school districts and other entities it can receive
2 facilities funding about all of the facilities
3 programs that are available through the state?

4 MR. ELIASBERG: Objection; all the
5 facilities program.

6 THE WITNESS: For the major programs,
7 mailings do go out. Whether they're read and
8 understood is not a known fact. Simply putting
9 something in an envelope and putting a stamp on it,
10 it's part the job.

11 I am aware of small districts
12 superintendents who are educators by training who are
13 just overwhelmed by the facility program. Then get
14 it. They read it. They don't understand it. They
15 don't what to do with it. They put it in the to do
16 file and forget about it. That district is not being
17 well served.

18 After three months, four months, five months
19 of silence, somebody should pick up the phone and
20 call them and say did you read our letter? Do you
21 understand there's a timeline?

22 For example, in the critically overcrowded
23 school program, there's a very strict time window to
24 apply. If you don't apply, you never get the money.
25 Where's the follow up to make sure that all those

1 list of who is eligible. I think they have a list,
2 but I'm not sure. And I don't know how it's been
3 distributed.

4 To my knowledge there's been no outreach
5 effort to make sure that those districts avail
6 themselves or make a decision not to pursue the
7 funding.

8 BY MR. SEFERIAN:

9 Q. In addition to mailing, would you agree that
10 the state conducts meetings and workshops through the
11 state regarding its programs and the funding that's
12 available?

13 A. Yes, I will agree with you that the state
14 does this. I have to say that state, OPSC and
15 Departments of Education, and other departments such
16 as DTSC and DSA are doing a much better job than they
17 have in the past of making themselves available,
18 holding workshops, getting information out there.
19 They're making an effort.

20 Is it targeted and are the people showing
21 up, that's a different question. So for the people
22 who do show up and the regulars and the people who
23 are intimately familiar with the program, there's a
24 great deal of information, a great deal of access.

25 It's the people who don't come to the

1 districts are, in fact, aware of it and either
2 applying or have made a conscious decision not to
3 apply.

4 BY MR. SEFERIAN:

5 Q. In your opinion, are there any districts who
6 would be eligible under the critically overcrowded
7 school programs who are unaware of that program's
8 existence?

9 A. I have no --

10 MR. ELIASBERG: Objection; speculation.

11 THE WITNESS: I have no basis to feel one
12 way or the other. It would not surprise me at all
13 that there are districts that are eligible that are
14 not aware of either their eligibility or of the
15 details of that program.

16 The difference -- the reason I particularly
17 mention that program is that if the money is not used
18 up by a particular date, it reverts to a different
19 pot of money. With the other program, it's been more
20 of an ongoing program.

21 But on the critical overcrowded school, if
22 you don't apply, you don't get it, period. It's a
23 very strict time limit.

24 Has anyone contacted those districts, I
25 don't know. I don't even if the state has a complete

1 meetings, who don't read the notice, who don't
2 understand that it applies to them, those are the
3 people who are being left out.

4 What Section 7 is talking about, is that
5 some students in some districts are left out because
6 they're district administrators don't understand that
7 they're district has this potential to apply.
8 There's some districts that don't understand the
9 financial hardship and are eligible, but don't know
10 how to fill in the forms, so they don't make the
11 effort. They don't do it.

12 Q. Do you believe it's a prevalent occurrence
13 that school districts do not apply for state
14 facilities funding because they don't know how to
15 fill out the forms?

16 A. I can't quantify it because I've never seen
17 a comprehensive analysis. But I truly believe that
18 there's some number of districts who are unable to
19 effectively participate in the program because they
20 just don't understand it, are overwhelmed, overworked
21 or whatever reason.

22 I've personally seen districts that did not
23 pursue applications they had and essentially lost
24 their eligibility because they were asked to deal
25 with the paperwork. They did not understand how to

1 do it. They didn't understand the process. It's
2 very intimidating at first. Once the district
3 received the help, they were able to participate.

4 So again, it's the people you don't hear
5 from you worry about, not the people that you
6 constantly here from.

7 Q. If there's a district that doesn't
8 understand the facility funding process, are there
9 people available, in your opinion, at the state who
10 would answer their questions or assist them with the
11 applications?

12 MR. ELIASBERG: Objection; vague.

13 THE WITNESS: Yes, I have seen cases where
14 a district did not know how to pursue funding and
15 somebody took them down and introduced them to the
16 appropriate state people who did provide a great deal
17 of help. So it shows that the system works once the
18 connection is made.

19 But what paragraph -- or Section 7 is
20 talking about is, is the state watching to see who is
21 not even applying. Once they identified that a
22 district is not applying, it is not pursuing their
23 applications, there are people at the state on the
24 state payroll who can help the district overcome the
25 barriers.

1 A. I'm not clear on what you would categorize
2 as prevalent. I don't believe this is a huge
3 problem. But if it's 100 percent of the school
4 districts in the state, that's 100 school districts.
5 So it's prevalent in the sense that it's more than a
6 few.

7 Exactly how big the problem is, I don't
8 know. I really don't know. Again, there's no
9 statewide tracking or reporting of the thousand 60
10 plus or minus eligible agencies. About 850 are in
11 the program, but 200 are not. I don't know why the
12 200 are not.

13 I know some districts simply are not
14 eligible. They're -- for various reasons. But they
15 are even eligible for some modernization funding.

16 Q. What is the basis of your statement that
17 there's more than a few districts who are not in the
18 modernization program by administrative oversight?

19 A. I have personal knowledge of a group of
20 districts in a very remote area of the state who
21 simply were not aware that they were eligible. When
22 they became aware of it, the county superintendent
23 organized an effort to help them with the paperwork
24 and got them eligible and got funding out there.

25 And by again, coordinating the contracts was

1 But what's missing here is the monitoring to
2 make sure that the people who are eligible are
3 applying. The people who don't apply, are not
4 eligible or there is a reason they're not
5 participating in the program.

6 BY MR. SEFERIAN:

7 Q. In the first sentence of the last paragraph
8 on page 54 where you say, "The failure
9 of the districts that need funds
10 to apply for them is not a
11 hypothetical problem."

12 Was it within the scope of your work for
13 this case to make any estimate of the extent of that
14 problem?

15 A. Again, because the state has no database and
16 does not track or report this information, I don't
17 have any way to analyze that. It was not within my
18 scope of work to do the original research to identify
19 that the number or breadth of districts that are not
20 participating.

21 Q. On page 55 of your report, referring to the
22 first sentence in the last paragraph on that page, do
23 you believe that it's a prevalent problem that school
24 districts did not participate in the modernization
25 program because of administrative oversight?

1 able to get a contractor down there to do the
2 modernization work that was, in fact, very much
3 needed.

4 So again, this was stumbled on by the County
5 Office of Education just by fluke. And it happened
6 to be an individual who was proactive enough to help
7 out. The state could have tracked that, but choose
8 not to for whatever reason.

9 Q. I just have one more question on this
10 section. On page 56 of your report in the last
11 sentence of Section 7, do you believe it's a
12 prevalent problem that poorly managed school
13 districts are less likely to put together bond
14 programs because of poor management?

15 MR. ELIASBERG: Objection; vague as to
16 prevalent.

17 THE WITNESS: Poorly managed districts tend
18 to have a lower reputation with their community.
19 They tend not to be able to get their needs
20 organized. Yes, I think you can see that poorly
21 managed districts tend not to be out there running
22 bonds. In many cases the bonds wouldn't pass even if
23 they were to run them because everybody knows that
24 there are problems of the school district.

25 Community trust in the district is key to

1 the approval of bond issues. And districts that are
2 struggling and flailing tend not to pass. So there
3 are other reasons bonds don't pass, but that is a
4 reason.

5 And it takes a lot of work, a lot of
6 cooperation, a lot of planning and it takes real
7 energy to organize and pull together a bond program
8 and then organize a fund-raising effort. It takes a
9 motivated leader.

10 And sadly, districts that have needs but
11 don't have leadership and don't have good management,
12 tend not to be able to do this. They tend to be
13 locked out of the modernization program. They tend
14 not to be able to upgrade their schools. And the
15 story goes on.

16 BY MR. SEFERIAN:

17 Q. Have you seen any studies that have analyzed
18 whether districts that did not put together a bond
19 program, the reason for that failure was poor
20 management?

21 A. I have not seen studies of that. Again, I
22 don't do management studies. I do know from personal
23 experience in conversation with other people working
24 in the area where people have tried to even help
25 school districts get going on a bond program, and the

1 district wasn't able to organize its own efforts.

2 As we said in an earlier session, you tend
3 not to find one thing broken in a poorly managed
4 district. You tend to find a lot of things broken.

5 In a well-managed district, you tend to find
6 very, very few things broken because they fix things
7 as it happens.

8 MR. SEFERIAN: You want stop?

9 THE WITNESS: Stop at Section 7.
10 (Time adjourned 5:15 p.m.)
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1 STATE OF _____)
2 COUNTY OF _____)
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7 I, ROBERT CORLEY, the undersigned, declare
8 under penalty of perjury that I have read the
9 foregoing transcript, and I have made any
10 corrections, additions or deletions that I was
11 desirous of making; that the foregoing is a true and
12 correct transcript of my testimony contained therein.

13 EXECUTED this _____ day of _____,
14 2003, at _____, _____.
(city) (state)

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17 _____
18 ROBERT CORLEY
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1 REPORTER'S CERTIFICATE
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3

4 I, JANE H. STULLER, CSR No. 7223, Certified
5 Shorthand Reporter, certify;

6 That the foregoing proceedings were taken
7 before me at the time and place therein set forth, at
8 which time the witness was put under oath by me;

9 That the testimony of the witness and all
10 objections made at the time of the examination were
11 recorded stenographically by me and were thereafter
12 transcribed; that the foregoing is a true and correct
13 transcript of my shorthand notes so taken.

14 I further certify that I am not a relative or
15 employee of any attorney or of any the parties, nor
16 financially interested in the action.

17 I declare under penalty of perjury under the
18 laws of California that the foregoing is true and
19 correct.

20 Dated this 27th day of February, 2003.
21
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23

24 JANE H. STULLER, C.S.R. No. 7223
25

1 REPORTER'S CERTIFICATION OF CERTIFIED COPY

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I, JANE H. STULLER, CSR No. 7223, a
Certified Shorthand Reporter in the State of
California, certify that the foregoing pages 201
through 391, constitute a true and correct copy of
the original deposition of ROBERT CORLEY, taken on
February 11, 2003.

I declare under penalty of perjury under
the laws of the State of California that the
foregoing is true and correct.

Dated the 27th day of February, 2003.

JANE H. STULLER, C.S.R. NO. 7223