

7-18-2017

Gonzalez v. Douglas Trial Transcript of Proceedings, Day 7

Steven A. Reiss

Weil Gotshal & Manges LLP

Luna N. Barrington

Weil Gotshal & Manges LLP

David Fitzmaurice

Weil Gotshal & Manges LLP

Richard M. Martinez

Law Office of Richard M. Martinez

Robert Chang

Fred T. Korematsu Center for Law & Equality

James W. Quinn

JW Quinn ADR, LLC

Follow this and additional works at: http://digitalcommons.law.seattleu.edu/korematsu_center



Part of the [Civil Rights and Discrimination Commons](#)

Recommended Citation

Reiss, Steven A.; Barrington, Luna N.; Fitzmaurice, David; Martinez, Richard M.; Chang, Robert; and Quinn, James W., "Gonzalez v. Douglas Trial Transcript of Proceedings, Day 7" (2017). *Fred T. Korematsu Center for Law and Equality*. 72.
http://digitalcommons.law.seattleu.edu/korematsu_center/72

This Report is brought to you for free and open access by the Centers, Programs, and Events at Seattle University School of Law Digital Commons. It has been accepted for inclusion in Fred T. Korematsu Center for Law and Equality by an authorized administrator of Seattle University School of Law Digital Commons.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

| | | |
|--------------------------|---|----------------------------|
| NOAH GONZÁLEZ; JESÚS |) | Case No. 4:10-cv-00623-AWT |
| GONZÁLEZ, his father and |) | |
| next friend, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Tucson, Arizona |
| vs. |) | July 18, 2017 |
| |) | |
| DIANE DOUGLAS, |) | |
| Superintendent of Public |) | |
| Instruction, in her |) | |
| Official Capacity; et |) | |
| al., |) | |
| |) | |
| Defendants. |) | |

Before the Honorable A. Wallace Tashima

Transcript of Proceedings

Bench Trial Day 7

Proceedings reported and transcript prepared by:

A. Tracy Jamieson, RDR, CRR
Federal Official Court Reporter
Evo A. DeConcini U.S. Courthouse
405 West Congress, Suite 1500
Tucson, Arizona 85701
(520)205-4266

Proceedings reported by stenographic machine shorthand;
transcript prepared using court reporting software.

1 APPEARANCES

2 On Behalf of the Plaintiffs:

3 Weil, Gotshal & Manges, LLP
4 STEVEN A. REISS, ESQ.
5 DAVID FITZMAURICE, ESQ.
6 LUNA N. BARRINGTON, ESQ.
7 767 Fifth Avenue
8 New York, NY 10153-0119
9 (212) 310-8000

10
11 Law Office of Richard M. Martinez
12 RICHARD M. MARTINEZ
13 P.O. Box 43250
14 Tucson, AZ 85733-3250
15 (520) 609-6352

16
17 JW Quinn ADR, LLC
18 JAMES W. QUINN, ESQ.
19 120 W. 45th Street, 38th Floor
20 New York, NY 10036
21 (646) 766-0073

22
23 Seattle University School of Law
24 Ronald A. Peterson Clinic
25 Robert S. Chang, Esq.
1215 E. Columbia St., Law Annex
Seattle, Washington 98122-4130
(206) 398-4025

18 On Behalf of Defendants:

19 Office of the Attorney General
20 Leslie Kyman Cooper, Assistant Attorney General
21 1275 W. Washington Street
22 Phoenix, AZ 85007-2997
23 (602) 542-8349

24
25 Ellman & Weinzweig, LLC
Robert Ellman, Esq.
330 E. Thomas Road
Phoenix, AZ 85012
(480) 630-6490

INDEX OF EXAMINATIONS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESSES:

PAGE

TOM HORNE

| | |
|-----------------------------------|-----|
| Direct Examination By Mr. Quinn | 4 |
| Cross-Examination By Mr. Ellman | 121 |
| Redirect Examination By Mr. Quinn | 172 |
| Recross-Examination By Mr. Ellman | 183 |

STEPHEN PITTI

| | |
|---------------------------------|-----|
| Cross-Examination By Mr. Ellman | 187 |
|---------------------------------|-----|

1 PROCEEDINGS

2 (Proceedings commenced at 9:12 a.m., as follows:)

3 THE COURT: Good morning, and let's all be seated,
4 please. Let me look at my notes now. Let's see. We finished
5 with the witness yesterday, Ms. Morley. I guess it's the
6 plaintiffs' next witness, right?

7 MR. QUINN: It is, Your Honor.

8 THE COURT: Would you call your next witness, please,
9 then.10 MR. QUINN: The plaintiffs call Tom Horne as an
11 adverse witness.12 THE COURT: Fine. Sir, would you step forward here
13 and be sworn, please.14 **TOM HORNE, WITNESS, SWORN**

15 MR. QUINN: Good morning, Mr. Horne.

16 Your Honor, could I approach? I want to make sure
17 Mr. Horne has a copy of his deposition in front of him, to save
18 time.

19 THE COURT: Sure.

20 MR. QUINN: Thank you.

21 DIRECT EXAMINATION

22 BY MR. QUINN:

23 Q. Mr. Horne, do you know a man by the name of John Ward?

24 A. Yes, I do.

25 Q. He's a former Tucson Unified School District teacher,

1 correct?

2 A. Correct, yes.

3 Q. And he complained going back a decade about the MAS
4 program.

5 A. Yes.

6 Q. Correct? In fact, he went to the media about it, correct?

7 A. Correct.

8 Q. And you relied on his complaints to eliminate the MAS
9 program, didn't you?

10 A. In part, I did, yes.

11 Q. You cited Ward in your open letter in 2007, correct?

12 A. Yes.

13 Q. And you also cited Ward in your finding of a violation on
14 December 30th, 2010, correct?

15 A. Yes.

16 Q. And you are aware that Mr. Ward's last involvement with the
17 MAS program was back in 2002, weren't you?

18 A. I don't remember.

19 Q. You know that he filed a complaint against the MAS --
20 several MAS teachers, correct?

21 A. I remember he filed a complaint against the district.

22 Q. And also against Sean Arce and Jose Gonzalez, correct?

23 A. If you tell me, I believe you.

24 Q. Why don't I just show you the complaint.

25 In his complaint he alleges that he -- his last contact

1 with the program was in December 2002. You have no reason to
2 disagree with that, do you?

3 A. I do not.

4 Q. And you knew that Mr. Ward was strongly opposed to the MAS
5 program, didn't you?

6 A. I did.

7 Q. And after Mr. Ward left the Tucson School District as a
8 teacher, he from time to time appeared with you at press
9 conferences when you were the Attorney General, correct?

10 A. I believe you. I don't remember it, but I did have a
11 relationship with him, and I did know him. So if you tell me I
12 did, I'll believe it.

13 Q. I'll tell you that you did, and we can all believe it
14 together.

15 A. Yes.

16 Q. And, in fact, as I mentioned, Ward actually sued the school
17 district and two former MAS educators for a million dollars in
18 damages, didn't he?

19 MR. ELLMAN: Objection. Relevance.

20 MR. QUINN: It will become relevant right now.

21 THE COURT: All right. I'll overrule the objection.
22 We'll see how far it goes.

23 You may answer the question, sir.

24 MR. QUINN: Thank you, Your Honor.

25 A. I knew he sued the district. I did not know how much

1 damages, but I'll believe you.

2 BY MR. QUINN:

3 Q. And you actually appeared at fundraisers for Mr. Ward in
4 helping him to raise money for the lawsuit, didn't you?

5 MR. ELLMAN: I renew my relevance objection.

6 MR. QUINN: Your Honor, it goes to his bias.

7 THE COURT: Well, it's pretty attenuated, you know. I
8 think I am going to sustain that objection.

9 BY MR. QUINN:

10 Q. Mr. Horne, obviously, you're a lawyer, correct?

11 A. Correct.

12 Q. And you practice law today, do you not?

13 A. Correct. I've been a lawyer for 45 years.

14 Q. I got you by one year.

15 A. I'm sorry?

16 Q. I got you by one year.

17 And you graduated from Harvard Law School back in the early
18 70s?

19 A. Correct. 1970.

20 Q. And you served as the superintendent for public instruction
21 in Arizona from 2002 to 2010, correct?

22 A. Correct.

23 Q. And then you served as Arizona's Attorney General from 2011
24 to 2014 or 2015, I guess whenever your term ended.

25 A. Yeah, January 2015.

1 Q. At one point you were also a member of the Arizona State
2 Legislature back in the 90s?

3 A. Yes, '96 to 2000.

4 Q. It's fair to say, Mr. Horne, that you played a key role in
5 the passage of Section 15-112, correct?

6 A. Correct.

7 Q. In fact, you wrote the first draft of the bill, didn't you?

8 A. Correct.

9 Q. And you had your staff at the Arizona Department of
10 Education lobby on behalf of the passage of the bill, correct?

11 A. Yeah.

12 Q. And you testified several times before the legislature in
13 support of the bill, correct?

14 A. Correct.

15 Q. And it's fair to say that you were instrumental in getting
16 it passed, correct?

17 A. Yes.

18 Q. Now, you also played a key role in the elimination of the
19 Mexican-American Studies Program in Tucson, correct?

20 A. Yes.

21 Q. You were an early critic to the program?

22 A. Yes.

23 Q. And you helped pass legislation that allowed for the
24 program to be eliminated, correct?

25 A. Yes.

1 Q. And this was something that you actually campaigned on for
2 when you were running for the Attorney General, correct,
3 getting rid of the MAS program?

4 A. I would say that's incorrect. I looked at my campaign
5 literature, and I had 12 achievements I pointed to, and not one
6 of them referred to this.

7 Q. It's true, is it not, that when you were Attorney General,
8 you often pointed to the -- your accomplishment in eliminating
9 the MAS program, isn't that right?

10 A. There were times that I did.

11 Q. You did, yes?

12 A. It wasn't one of my top 12 issues.

13 Q. And from the outset, you wanted the MAS program eliminated,
14 not changed. Completely eliminated, right?

15 A. That's correct.

16 Q. You thought it was so toxic.

17 A. Yes.

18 Q. But you never visited a MAS classroom, correct?

19 A. No. I thought that would be a Potemkin Village experience,
20 and I didn't want to have them go and put on a show for me and
21 make it seem innocuous and then what I was asked what I saw, I
22 would have to say it was innocuous. I didn't want to be in
23 that position.

24 Q. You never visited a classroom, right?

25 A. I never visited a classroom. I did offer to have the

1 Department of Education pay for a video camera to video the
2 courses so we would get a complete picture, and the district
3 turned me down.

4 Q. And you never talked to any MAS teacher about the program,
5 did you?

6 A. Actually, I did.

7 Q. I'm not talking about Mr. Ward.

8 A. No. I actually talked to some -- I actually talked to some
9 teachers, now that I think about it, that were opposed to me,
10 including one that I could tell you I remember a conversation
11 in some detail.

12 Q. You never talked to any Tucson Unified School District
13 board members about the program prior to its elimination,
14 correct?

15 A. That's correct, I did not.

16 Q. And you didn't talk to any of their administrators or
17 principals either, did you?

18 A. Not about this program. Obviously, I talked to principals
19 a lot.

20 Q. Fair enough, but we're just focusing on this program.

21 A. Right.

22 Q. Basically you talked to John Ward and maybe somebody --
23 somebody that was in favor of it, correct?

24 A. Well, I talked to all the people that are cited in my
25 findings, you know, Prew Howie and Hector Ayala and Ron

1 Silverman.

2 Q. Fair enough. We'll get to that.

3 Now, there came a time that you decided to eliminate the
4 MAS program, correct?

5 A. Yes.

6 Q. And it started when you first learned that a woman by the
7 name of Dolores Huerta had given a speech at Tucson High,
8 correct?

9 A. Well, that started the chain of events, but that didn't
10 start me wanting to eliminate the program by any means.

11 Q. Okay. Fair enough. Let's leave it that started the chain
12 of events.

13 A. Yeah.

14 Q. True?

15 A. Yes.

16 Q. Ms. Huerta was an American labor leader and a civil rights
17 activist who had worked with Cesar Chavez, correct?

18 A. Yes.

19 Q. And she gave that speech in the spring of 2006, is that
20 right?

21 A. I believe you. I don't remember the exact year.

22 Q. And you thought that -- and that was a speech in which she
23 asked students why Republicans hate Latinos, correct?

24 A. Yes. The way I heard it, she asserted that Republicans do
25 hate Latinos.

1 Q. Now, you thought that Ms. Huerta's speech constituted hate
2 speech, right?

3 A. I'm not sure if I would say that. What actually happened
4 was a lot of people were telling me that I should eliminate
5 controversial speakers, and I was very much in favor of having
6 controversial speakers in the schools. I just wanted the kids
7 to hear the other side. And so that's when I asked Margaret
8 Garcia Dugan to come down.

9 Q. Well, let me see if I can refresh your recollection.

10 MR. QUINN: Can you put up DX500, please.

11 BY MR. QUINN:

12 Q. This is a press release that you issued, from your
13 department, immediate release Friday, April 14th, 2006. Do you
14 see that?

15 A. Yeah, I do.

16 Q. It's entitled, "Superintendent Tom Horne Responds to Huerta
17 Hate Speech." See that?

18 A. Yes. And I see there I did use the word "hate speech." I
19 didn't remember it, but I stand behind it.

20 Q. Fair enough. And you say in this: Therefore, I can
21 personally testify to the inaccuracy of Mrs. Huerta's hate
22 speech. I think it's unfortunate that students were urged in
23 school assembly to ditch school. I support the precious First
24 Amendment right of students to demonstrate.

25 Do you see that?

1 A. Yes.

2 Q. And that's something -- you agree how important it is for
3 students or anybody else to have that First Amendment right,
4 correct?

5 A. Oh, yeah. We teach them that it's their precious First
6 Amendment right to peacefully assemble and petition the
7 government for redress of their grievances.

8 Q. And you offered to have one of your deputies, Margaret
9 Garcia Dugan, go down and speak to the Tucson High School
10 students, correct?

11 A. She was my chief deputy, yes.

12 Q. And you say here that she could speak to students about why
13 she is proud to be a Latina and why she is proud to be a
14 Republican. Do you see that?

15 A. Yes.

16 Q. And you, of course, are a Republican, right?

17 A. Yes.

18 Q. So you obviously wanted to kind of defend the Republicans,
19 didn't you?

20 A. No, I wouldn't say that. You need to know I was a Democrat
21 until I was 50 years old, so I'm pretty bipartisan --

22 Q. Everybody makes mistakes.

23 A. But, no, I didn't want to defend Republicans at all. I
24 just wanted students to have both sides of controversial
25 issues, which I believe very strongly they should have even

1 extreme views, but they should have them balanced so they can
2 learn critical thinking themselves.

3 Q. Now, going back to the Huerta speech, you weren't present
4 at the speech, correct, the Dolores Huerta speech?

5 A. I was not, no.

6 Q. Were you aware -- were you told that actually the speech
7 focused on the anti-immigration bill that was before the U.S.
8 Congress at the time?

9 A. The only thing I was told was -- I got all these calls
10 about people telling me I needed to stop having controversial
11 speakers at the schools and I disagreed with them.

12 Q. Were you aware there was a Sensenbrenner bill at the time,
13 in 2006? It was an anti-immigration bill that was supported by
14 Republicans in Congress? You are aware of that, aren't you?

15 A. It was supported by some Republicans but not all. You
16 can't blame all Republicans for Sensenbrenner.

17 Q. I'm not going to blame all Republicans for anything.

18 A. Okay. Good, then. That distinguishes you from Dolores
19 Huerta.

20 Q. Now, you say, obviously, that you support students'
21 precious First Amendment right to demonstrate?

22 A. I absolutely do, and we teach them that.

23 Q. But you -- and you mention that you referred to Huerta's
24 speech as hate speech. But even hate speech is protected by
25 the First Amendment, isn't it?

1 A. Absolutely.

2 Q. If someone was to say, quote, "I don't mind them selling
3 Mexican food as long as the menus are in English," would you
4 consider that hate speech?

5 MR. ELLMAN: Objection. Relevance.

6 THE COURT: Overruled.

7 A. I know what you're referring to, and I was shocked when I
8 saw it.

9 BY MR. QUINN:

10 Q. How about if someone were to say that we needed to
11 eliminate Spanish billboards, Spanish radio stations and
12 Spanish TV, would you consider that hate speech?

13 A. Same answer.

14 Q. And you know where I'm going with this, don't you?

15 A. Absolutely.

16 Q. If you were equated, for example, to being part of the KKK,
17 I assume you would consider that hate speech, wouldn't you?

18 A. Yes.

19 Q. And you know that these are all things that your successor,
20 Mr. Huppenthal, actually stated in his blogs, correct?

21 A. Yes.

22 Q. Now, in your press release, you go on to say that
23 Ms. Huerta's statement is inaccurate because Latino parents
24 supported you in your last election and that you're a
25 Republican.

1 That was part of that -- you can put it back up if you need
2 to.

3 A. Yeah, I have a plaque on my wall of "Hispanics for the
4 Children," thanking me for what I did and supporting me in the
5 election.

6 Q. In fact, isn't it true that the vast majority of Latino
7 parents in Tucson did not support your efforts to eliminate the
8 MAS program in Tucson? That's a fact, isn't it?

9 A. No. There's been no poll that I know of. I think
10 activists have opposed me, but, in my experience, many, many
11 Latinos supported me strongly when I was campaigning for
12 teaching English to their kids, and I don't really know where
13 they -- without a poll, there's no way of saying what a vast
14 majority of people --

15 Q. It's fair to say that the Tucson Unified school board
16 disagreed with your efforts to eliminate the MAS program.
17 Isn't that true?

18 A. Actually, the school board zigzagged. They voted
19 four-to-one to eliminate the program. Mr. Stedman, I think,
20 was a school board member, who visited the program, was shocked
21 by what he saw, and when John Huppenthal gave him a chance to
22 correct the program, the school board decided they didn't want
23 to do that, they wanted to eliminate it.

24 Later on, a different board took a different view and
25 earlier on a different board took a different view, but there's

1 no consistency in the view that the Tucson board took.

2 Q. During the period of time up until the time -- you wrote
3 your open letter, I believe, in 2007, right?

4 A. Yes.

5 Q. The open letter was to the citizens of Tucson and to the
6 Tucson school board, wasn't it?

7 A. It was, yeah.

8 Q. In fact, they didn't go along with your open letter, did
9 they?

10 A. Correct. The board didn't. I mean --

11 Q. Exactly, the board did not go long with your recommendation
12 to eliminate the MAS program, isn't that right?

13 A. That's correct.

14 Q. And so, as a result of that, as a result of that, you
15 determined that you needed legislation.

16 A. That's correct.

17 Q. Isn't that right?

18 A. Yes.

19 Q. So it's fair to say that during that period of time, the
20 Tucson Unified School District supported the MAS program.

21 Isn't that the fact?

22 A. During that period of time, the board disagreed.

23 Q. Thank you. Now, approximately a month later, you and

24 Ms. Dugan traveled down to Tucson for the Dugan reply speech.

25 A. That's correct.

1 Q. And you were -- you had asked her to give the speech,
2 correct?

3 A. Correct.

4 Q. And the purpose of the speech was to refute Ms. Huerta's
5 allegation that Republicans hate Latinos.

6 A. It was to give them both sides of the controversy.

7 Q. And during this speech, a group of students staged a silent
8 protest by taping their mouths, correct?

9 A. Yes.

10 Q. And those students turned their backs on Ms. Dugan?

11 A. Yeah.

12 Q. And eventually they walked out of the speech?

13 A. And they raised their fists in the air.

14 Q. And some of the students raised their fists?

15 A. Raised their fists in the air, which is a pretty extremist
16 thing to do.

17 Q. It's part of their -- it's part of their First Amendment
18 precious right, isn't it, sir?

19 A. Not in that context, no. They have a --

20 Q. I'm sorry. I'll let you finish.

21 A. Not in that context. They have a right to demonstrate, and
22 I support that, and I actively supported teaching them that,
23 but being rude to a guest speaker is the wrong context. And I
24 thought that what they were taught to do was rude, and I
25 thought it was educationally dysfunctional, because what I

1 learned over the times that I did my investigation was that
2 they were teaching to deal with problems by getting in people's
3 faces. And I think success as an adult depends on learning to
4 deal with disagreements civilly. And so I thought
5 educationally what the teachers had them do was very
6 dysfunctional, and I was concerned about that.

7 Q. I'm going to come back to that. I promise you.

8 A. Okay.

9 Q. But, apparently, it's your view that only certain kinds of
10 demonstrations are appropriate. Is that right?

11 A. No, that only -- that only in certain context
12 demonstrations are appropriate. It's not appropriate to
13 demonstrate in class. It's not appropriate to create a
14 negative environment when a guest speaker comes. You can ask
15 hard questions, but that kind of rude behavior I think is
16 inappropriate for students in a school.

17 Q. But, sir, they were not allowed to ask hard questions, were
18 they?

19 A. No.

20 Q. In fact, you knew that the students had taped their mouths
21 precisely because they were told they couldn't ask any
22 questions, isn't that true?

23 A. I viewed that as an excuse. I don't think anybody was that
24 upset about asking questions. Lots of speeches are given
25 without asking questions.

1 They seized on that as a way of having their teachers
2 create a negative atmosphere toward a different point of view,
3 which is a very consistent pattern for these teachers, and I
4 can give you a lot of evidence of that.

5 Q. You have repeatedly said, both publicly and here in this
6 courtroom, that the teachers somehow taught this behavior. Is
7 that your view?

8 A. That's my view, yes.

9 Q. Yes. And that, having not talked to MAS teachers -- you
10 didn't talk to MAS teachers at that time, did you?

11 A. Not about this issue. I did talk to MAS teachers, but --

12 Q. I'm focused on this issue. The issue now is this --

13 A. Right. Right. Yeah.

14 Q. -- First Amendment demonstration.

15 You simply concluded that, since you didn't believe that
16 the parents had taught what you deemed to be rude behavior,
17 that the teachers must have taught it. Isn't that right? You
18 assumed that, right?

19 A. No, I didn't assume it, and I didn't simply conclude it.

20 It was a conclusion I reached after studying the subject for a
21 year, after having been to hundreds of schools, maybe over a
22 thousand schools during my eight years as superintendent.

23 Never seen this behavior before or afterwards, this kind of
24 behavior, not having any reason to think that the parents of
25 these students were any different than the parents of the other

1 students around the state and in Tucson where I had been to
2 many -- I had been to many TUSD events. And then in the
3 materials that I read and the complaints I got from teachers,
4 it was consistent with what -- everything they told me about
5 what these teachers taught. So it was a conclusion I reached
6 after a lengthy investigation.

7 Q. Let me go back. Maybe you misheard my question. It's a
8 fact, is it not, Mr. Horne, that at the time that this speech
9 took place, the Dugan speech took place --

10 A. Yes.

11 Q. -- you had no personal knowledge, no personal knowledge
12 that, in fact, teachers had organized this program. Isn't that
13 a fact?

14 A. At the time of the speech, that's true.

15 Q. And you concluded this after the fact because you read
16 materials about the program. Is that your testimony?

17 A. That's one part of it. I think I gave you several factors
18 a few minutes ago.

19 Q. But at the time, having not talked to any MAS teachers or
20 administrators or, for that matter, the principals or people at
21 the TUSD --

22 A. Right.

23 Q. -- you simply concluded that the teachers must have
24 organized the protest. Is that right?

25 A. No, that's incorrect. I didn't reach a conclusion at the

1 time. It took me time to reach conclusions.

2 Q. So a year later when you were writing your open letter, by
3 then you had reached that conclusion?

4 A. That's correct.

5 Q. Is that right?

6 A. Yes. Based on a lot of evidence.

7 Q. It wasn't based on talking to anybody who was actually
8 involved, was it?

9 A. Yeah. Actually, I talked to some of the students.

10 Q. When did you talk to those students?

11 A. You know, I'm trying to remember the specific event. I
12 remember it was in a gymnasium, so it must have been a large
13 event, but I remember specifically talking to MAS students. I
14 remember one of them -- I remember saying to one of them I
15 thought that was an unfortunate incident, and she said she
16 thought it was a beautiful incident. I remember that very
17 vividly.

18 Q. So she was in support of the protest?

19 A. She was one of the protestors.

20 Q. Mmm-hmm.

21 Now, were you aware -- you were actually sitting in back of
22 Ms. Dugan at the time, right, when she gave her speech?

23 A. Yes.

24 Q. And you watched the protest, right?

25 A. Yes.

1 Q. Were you aware that many of the protestors were not MAS
2 students?

3 A. No, I was not aware of that.

4 Q. Did you know that several -- you were there -- were white
5 students, several were African-American, some were Asian? Did
6 you see that?

7 A. That could be.

8 Q. So if there was testimony in this case that, in fact, many
9 of the students that protested were not MAS students, you would
10 have no way of disagreeing with that, isn't that right?

11 A. I would have no way of disagreeing with it, but it wouldn't
12 contradict what I said. The MAS teachers could organize it,
13 and they could get other people to participate.

14 Q. They could do anything, but you have no actual evidence
15 that they actually did do that, do you?

16 A. Actually, I just recited to you several factors that came
17 out in my investigation, based on my experience and based on
18 what I found out about the program.

19 Q. I'm sorry, I don't want to cut you off.

20 A. Based on my experience speaking at many hundreds of
21 schools, based on my investigation of the program, that was the
22 conclusion I reached.

23 Q. When the students protested, they didn't make any noise,
24 did they?

25 A. They did not.

1 Q. It was a silent protest, and they walked out silently?

2 A. Yeah. Actually, what happened was, they stood up, they
3 turned their back on her, they raised their fists in the air,
4 and then the principal asked them to sit down and listen, and
5 they walked out on their principal.

6 Q. But it's fair to say these students were simply exercising
7 their First Amendment right to protest, a precious right that
8 you say. Isn't that --

9 A. I think I just testified a few minutes ago that I did not
10 think that was an appropriate context. And, you know, when you
11 talk about the First Amendment, nobody can prosecute them for
12 it, but I can certainly criticize a program which I think is
13 pedagogically unsound because it teaches them to antagonize the
14 very people that they may want to persuade.

15 Q. That's your conclusion, isn't it? That's based on your own
16 personal philosophy, isn't it?

17 A. Absolutely. I would say that's true of everything
18 involving my involvement in this case. And I didn't seek to do
19 anything to them or to prosecute them. I simply pointed out
20 that I thought --

21 Q. You weren't Attorney General then, so you couldn't
22 prosecute them, could you?

23 A. By "I didn't," I mean the government didn't. I don't think
24 the First Amendment really is involved. I was pointing out
25 that I thought there was a pedagogically unsound practice going

1 on, which is that teachers were teaching kids to be rude as a
2 way of making their point, and that I thought it would be a lot
3 better to teach them to be civil and deal with disagreements
4 vigorously and forcefully but not rudely.

5 Q. We can agree because you've so testified that you never
6 stepped a foot into an MAS classroom?

7 A. That's right, yes.

8 Q. So you personally have no personal knowledge that an MAS
9 teacher ever taught a student to be rude. Do you?

10 A. I have a tremendous amount of evidence from other teachers.

11 Q. I'm sorry. You misheard my question. I asked you whether
12 or not you personally ever observed or had -- whether you
13 personally have knowledge based on your own personal
14 observation that a MAS teacher taught a student to be rude.
15 You don't, do you?

16 A. Your statement is correct, but I think it's a little bit
17 misleading because I had a lot of evidence from other teachers.

18 Q. These are the same people that you relied on in your open
19 letter and in your findings, correct?

20 A. Correct.

21 Q. Now, on the same day that you were there, you also have
22 mentioned publicly from time to time, in fact, endlessly, that
23 you saw a librarian wearing a M.E.Ch.A. T-shirt.

24 A. Yes.

25 Q. Correct?

1 A. Yeah.

2 Q. And I think you testified previously that you went online
3 and read about M.E.Ch.A. and supposedly learned that the
4 organization was somehow closely related to the MAS program.
5 Is that right?

6 A. I read about the M.E.Ch.A. organization, and I was shocked
7 by what I read, and I publicized what I read, and I knew it was
8 at the same high school. I don't remember whether there was a
9 connection between M.E.Ch.A. and the -- yeah, actually, now
10 that I think about it, there is, because I remember seeing some
11 materials congratulating Mechistas. So I suppose I did, yeah.

12 Q. You didn't actually speak to the librarian, did you?

13 A. No. Well, I did speak to her, but I didn't -- at the time
14 I didn't know what M.E.Ch.A. was.

15 Q. You --

16 A. I didn't speak to her about her T-shirt. I definitely
17 spoke to her.

18 Q. You didn't know why she would be wearing a T-shirt like
19 that?

20 A. I would assume it was --

21 Q. You didn't ask her?

22 A. No, I didn't ask her.

23 Q. So she never told you that she herself was actually
24 affiliated with M.E.Ch.A, right?

25 A. That's correct.

1 Q. And she never told you that the M.E.Ch.A. program was
2 affiliated with the MAS program, correct?

3 A. That's correct.

4 Q. And that librarian was actually white, wasn't she?

5 A. Yes.

6 Q. She was the sister of a white teacher in the Tucson Unified
7 School District?

8 A. That, I didn't know.

9 Q. It's fair to say that you assume --

10 A. Also, I should say I don't think it's relevant whether she
11 was white or not.

12 Q. It's fair to say that you assume that the librarian was
13 affiliated with M.E.Ch.A, right, because she was wearing the
14 T-shirt?

15 A. She was wearing the T-shirt. She was showing support for
16 it, and once I read about it, I found that extremely shocking.

17 Q. You said that you were shocked about --

18 A. Very.

19 Q. -- reading about the M.E.Ch.A. organization. The M.E.Ch.A.
20 organization is actually a Latino organization that has its
21 roots back in the 1960s, correct?

22 A. Yes.

23 Q. And it was formed to protest the rights of migrant workers
24 all over the United States, correct?

25 A. I didn't read that in the website, but if you tell me that,

1 that could be.

2 Q. You're aware --

3 A. But what they were advocating on their website and in other
4 websites, including the University of Tucson M.E.Ch.A. website,
5 was essentially revolution against the American government,
6 that the borders were artificial, that the bronze continent was
7 for the bronze people. It was unbelievably racist and
8 extremely anti-American.

9 Q. You're aware there are M.E.Ch.A. chapters in hundreds of
10 colleges and high schools all over the country?

11 A. That could be, but that's -- I don't --

12 Q. Would you consider all the people that are members of those
13 M.E.Ch.A. chapters all over the country to be revolutionaries?

14 A. No, I don't think that's necessarily --

15 Q. You're not concerned about a revolution coming too soon as
16 a result of M.E.Ch.A. chapters?

17 A. No, I'm not concerned about revolution, I'm concerned about
18 miseducating kids.

19 Q. The bottom line is that M.E.Ch.A. is a -- I'm sorry.

20 A. It's a pedagogical concern. It's not a concern for a
21 revolution. It's a concern for what is being propagandized,
22 not even taught, because it's so one-sided, but what was being
23 propagandized to these kids.

24 Q. It's fair to say that M.E.Ch.A. is a well-known advocacy
25 group, isn't it?

1 A. I didn't know about it until I encountered it in Tucson and
2 then read about it.

3 Q. I think you testified before that you never personally
4 talked to anyone at the Tucson Unified School District board
5 about the MAS program, correct?

6 A. That's correct.

7 Q. And you didn't raise your concerns about the MAS program to
8 the board, correct?

9 A. That's correct. To my open letter, really. Wait a second.
10 I should say the first thing I did after I talked to some
11 people after the event was -- and found out about the MAS
12 program, which was at that time called Raza studies -- was to
13 ask for the materials, and the district refused to give them to
14 me.

15 They went to the local newspapers, who wrote editorials
16 against me, and said that Tom Horne should butt out and shut
17 up, and I said I would not be intimidated. Any citizen had a
18 right to see them, and I certainly had a right to see them, and
19 I eventually got the materials.

20 So I would say my first experience with the TUSD board on
21 this issue was a conflict. But on many other issues I was
22 extremely supportive of many of their programs, which I
23 propogandized around the state, including their Opening Minds
24 for the Arts, which I thought was an outstanding program in the
25 state.

1 Q. You had made known your views about the MAS program
2 publicly from time to time, correct?

3 A. Say that again.

4 Q. You had made your views known about the MAS program
5 publicly from time to time, correct?

6 A. Oh, yeah.

7 Q. And in June of 2007, you wrote an open letter to the
8 citizens of Tucson about the MAS program and your
9 recommendation that it be eliminated, correct?

10 A. That's correct.

11 Q. And let's have PX22. This is an excerpt from your open
12 letter?

13 A. Correct.

14 Q. And you talk about -- you say: It is fundamentally wrong
15 to divide students up according to their racial group. Do you
16 see that?

17 A. Yes.

18 Q. Now, there were several different ethnic studies programs
19 that the Tucson Unified School District had, correct?

20 A. There were four.

21 Q. There were African-American, Asian-American, Native
22 American, and Mexican-American, correct?

23 A. Yes.

24 Q. And it's true, is it not, that students could voluntarily
25 choose which program, if any, that they would actually

1 participate in? Right?

2 A. That's correct.

3 Q. So an African-American could choose to take
4 Mexican-American Studies programs, right?

5 A. Yeah.

6 Q. And a Native American could take Asian and so forth,
7 correct?

8 A. Yes.

9 Q. It was totally voluntary, right?

10 A. Yes.

11 Q. So when you say that it's fundamentally wrong to divide
12 students up according to their racial group, in fact, the
13 students were making their own decisions as to which particular
14 area -- which particular ethnic studies program they wanted to
15 be involved with. Isn't that true?

16 A. Yes. But the overwhelming percentages were members of that
17 ethnic group. And the way I wrote the statute was not that it
18 was exclusive to that ethnic group, but that it was primarily
19 directed to that ethnic group.

20 I've cited in numerous written materials my debate against
21 Sean Arce on national television in which he talked about the
22 reason they used the word "Raza" studies was because he wanted
23 the students to connect with their native roots, the DNA inside
24 them.

25 And Hector Ayala told me about non-minority students who

1 complained to him that they took ethnic studies and got dissed
2 for being white. And he said: Well, why did you take the
3 course? And they said: I don't know, I needed a social
4 studies course.

5 Q. It's fair to say that nobody is dividing up students when
6 the students themselves are choosing which program to be
7 involved in. Isn't that true?

8 A. I don't agree. I think it's wrong to have courses that are
9 primarily designed for students of a given ethnicity. I have
10 personally strengthened the standards to teach about the
11 contributions of different groups and to require that those be
12 taught; but I think those should be taught to everybody, and
13 kids should not be taught just to learn about their own group.
14 I think school is to raise students' horizons, not to narrow
15 them.

16 Q. And that's your personal philosophy, right?

17 A. Absolutely.

18 Q. Okay. Now, again, in your "personal observations" section
19 of your letter --

20 A. Yes.

21 Q. -- you see that you talk about: I believe that the
22 students did not learn this rudeness at home, but from their
23 Raza teachers. Right?

24 A. Yes.

25 Q. Then you go on to say that -- I think in that same

1 paragraph -- that a small group of La Raza students protested
2 and treated Ms. Dugan rudely, correct?

3 A. I assume so, yeah.

4 Q. You see it now on the screen? In fact, you had no personal
5 knowledge that it was the Raza students who were protesting,
6 correct?

7 A. Well, by that time, I did. And if you go back to the
8 prior -- the prior screen.

9 Q. Sure.

10 A. Can you do that?

11 Q. We're doing it.

12 A. I gave my primary reason for what I said in the preceding
13 sentence.

14 In hundreds of visits to schools, I've never seen students
15 act rudely and in defiance of authority except in this one
16 unhappy case. I don't believe the parents of these students
17 were any different from other parents. I think what was
18 different was the La Raza teachers, whose activities I knew in
19 great detail by this time.

20 Q. Again, that's just your assumption. You were never in a
21 classroom. You have no idea what these teachers were actually
22 saying to students.

23 A. That's absolutely incorrect.

24 MR. ELLMAN: It is asked and answered.

25 A. It is not my assumption. It is a conclusion I reached

1 after a year of investigation, extensive investigation. I've
2 been a lawyer for 40-something years. I knew how to do an
3 investigation, and I did an extensive one, and that was the
4 conclusion I reached after that investigation.

5 Q. And your investigation involved -- since you didn't talk to
6 anybody at the Tucson School Board or MAS teachers that are
7 actually teaching, as opposed to those who hadn't taught in
8 five years, your investigation involved reviewing materials
9 that you got from the Tucson School Board that related to the
10 MAS program. Isn't that right? That was what -- that was the
11 extent of your investigation?

12 A. I think your statement is incorrect. Four of the five
13 teachers were current teachers, so that -- and that was my
14 primary source, what the teachers told me they had observed.

15 And part of what they told me had to do with the
16 intimidation exercised against teachers to say anything against
17 the Raza studies program. So if five were willing to talk to
18 me because some were retiring or some had retired, I drew the,
19 I think, reasonable conclusion that many others would have
20 talked to me if they had felt free to do so, based on the
21 shocking things that were observed by teachers of what was
22 going on in these classrooms.

23 Q. These were not MAS teachers, were they?

24 A. They were -- well, Ward was a -- I think a history teacher
25 into whose class MAS teachers from the Central District Office

1 came to teach, so he was sitting there while they were
2 teaching.

3 Q. And that was back in -- he stopped back in 2002, right?

4 A. Yes.

5 Q. That was five years before you wrote your open letter.

6 A. Well, the evidence I had showed that it continued. There
7 was no change.

8 Q. Now, you go through a number of issues in your open letter.
9 You refer to one section called "textbooks."

10 A. Yes.

11 Q. And you talk about a textbook called Occupied America,
12 right?

13 A. Yeah. The mere title is -- I think shows what kind of
14 propaganda it is.

15 Q. You're aware that Occupied America is a textbook that is
16 used all over the United States.

17 A. I am not aware of the extent to which it's used. I was
18 sent it by the Tucson district, and I read it and I was shocked
19 by it.

20 Q. You mentioned that one of the things that shocked you was
21 that you found it strange to find a textbook in an American
22 public school taking the Mexican side of the Battle of the
23 Alamo.

24 A. Yeah.

25 Q. Do you see that?

1 A. Yeah. Celebrating the fact --

2 Q. Let's --

3 MR. ELLMAN: Can we let the witness answer the
4 question, please.

5 A. Celebrating the fact that the United States lost that
6 battle and everybody there was murdered afterwards when they
7 tried to surrender.

8 Q. In fact, the Americans lost the battle, right?

9 A. Everybody teaches that. But nobody else celebrates the
10 fact that the Mexicans won and murdered the people that were in
11 the fort. In Mexican public schools, I would expect it, but
12 not in taxpayer-supported American public schools --

13 Q. And again --

14 A. -- unless you give both sides. If you want to be
15 controversial, that's fine, but not as a means of propaganda.

16 Q. But you have no idea whether or not both sides were, in
17 fact, given, do you? You weren't in a classroom.

18 A. Absolutely, I have idea that both sides were not given. I
19 have it from the textbooks I read. I have it from the teachers
20 I spoke to. I have it from a wealth of evidence. I have it
21 from the conclusions of the administrative law judge, who found
22 specifically that you can teach about oppression, which I agree
23 with, but that this was a one-sided, propagandistic effort.

24 And I have it by the statement of the chairman of the
25 department, who is quoted as saying these are radical teachers,

1 and a lot is going to be taught in these classes that
2 conservatives don't like. So he, himself, is saying openly
3 that he's using this as propaganda and not to subject students
4 to differing controversial views, which I am entirely in favor
5 of, but that's not what he was doing.

6 Q. And you're a conservative who didn't like it.

7 A. Well, I don't know. I'm conservative on some issues, but
8 not on all issues. And many people have accused me of being a
9 Republican in name only.

10 Q. Now, you also mentioned in this open letter that -- you
11 mentioned the librarian and her M.E.Ch.A. T-shirt, right?

12 A. Yes.

13 Q. And you -- under one of the sections, you talk about
14 teaching the wrong things about literature. Do you remember
15 that section? We'll pull it up.

16 Here you say that you got a letter from a student and one
17 of these letters states that, quote: All that the English
18 classes teach is mainly about some dead white people, closed
19 quote.

20 A. Right. There was a student from the African-American
21 Studies.

22 Q. And then you go on to say, after quoting this: I believe
23 schools should teach the students to judge literature by its
24 content and not by its race. Correct?

25 A. By the race or gender of the author.

1 Q. Or gender of the author, right?

2 A. Absolutely.

3 Q. And, in fact, as you just mentioned, the letter that you
4 just received, which you quoted from, was actually from an
5 African-American student, and he was talking not about the MAS
6 program, he was talking about the African-American program.

7 Correct?

8 A. That's true. And the bill that I wrote referred to all the
9 programs.

10 Q. And you did not mention in your little excerpt, did you,
11 that this letter came from an African-American student in the
12 context of a letter you were writing to eliminate the MAS
13 program. Right?

14 A. If I didn't, it wasn't a deliberate omission. I would
15 readily say that. As I say, the bill I wrote was directed at
16 all of these programs.

17 Q. Well, Mr. Horne, this letter is a piece of advocacy, isn't
18 it? You're a lawyer. It's a piece of advocacy.

19 A. Yes.

20 Q. And so by --

21 A. It's a piece of advocacy, but it's also consistent with my
22 belief as a public official that I should be transparent and I
23 should share my observations with the public.

24 Q. Well, by not actually disclosing that the -- this reference
25 that you quoted from came from an African-American student, who

1 was, in fact, supporting the African-American student program,
2 wasn't he?

3 A. I assume so.

4 Q. He actually thought it was a good program, right?

5 A. Yes.

6 Q. But you write -- you quote this, leaving the impression, do
7 you not, that this is somebody complaining about the MAS
8 program. Isn't that right?

9 A. That was not deliberate. You're making a big issue of it.
10 I didn't -- it was not a deliberate omission.

11 Q. It's taken out of context, isn't it?

12 A. I don't know if it's taken out of context. My -- the
13 sentence -- if you had said to me, please add that he is an
14 African-American in the African-American Studies program, I
15 would have been happy to do it. I didn't -- it wasn't -- it
16 was not a deliberate omission.

17 Q. You also talk about an investigative report by a reporter
18 of The Arizona Republic, right?

19 A. Yes.

20 Q. And his report was basically based on things that John Ward
21 told him, correct?

22 A. In part, yes.

23 Q. And you go over, again, to talk about John Ward on the next
24 page, correct?

25 A. Correct.

1 Q. And you make reference to the fact that the director of the
2 ethnic studies program, the MAS program, kept a portrait of Che
3 Guevara on the wall of his classroom. Right?

4 A. Yes.

5 Q. And that troubled you somehow?

6 A. Very, very much.

7 Q. Did you know that the posters that were put up were put up
8 at the request of students, not the teachers?

9 A. Well, I think the teachers should have -- should have
10 talked to them about values. I think Che Guevara stands for
11 the opposite of American values. America believes in
12 democracy, individual liberty, rule of law, mutual tolerance.

13 Che Guevara is adamantly opposed to all of those things.
14 He shoots people who disagree with him. And I think it's
15 pretty bad to be teaching people at taxpayer-funded public
16 schools to hold up as a hero someone who believes the exact
17 opposite of every precious American value, such as democracy,
18 individual liberty, rule of law, and mutual tolerance.

19 Q. Up on the same wall were pictures of Martin Luther King.

20 A. I totally agree with that.

21 Q. And a picture of JFK?

22 A. I was on the march where he gave his famous speech.

23 Q. And pictures of JFK and the Kennedy brothers?

24 A. Yeah. And John Kennedy said race has no proper role in
25 American law or life, and that's my philosophy, too, and I

1 think that's the American philosophy.

2 Q. Because you believe in American values, right?

3 A. Absolutely.

4 Q. Now, obviously not everybody agreed with your position with
5 regard to the MAS program, correct?

6 A. Yes.

7 Q. And you're familiar with a man by the name of Bill Straus?

8 A. Yeah.

9 Q. And Mr. Straus is or was the regional director for the
10 Anti-Defamation League?

11 A. Yeah, but I don't think he knows anything about this
12 program.

13 Q. Well, let me show you a document, PX034. Do you recall
14 having a series of e-mails back and forth with Mr. Straus in
15 January of 2010, shortly before you began pushing for the
16 legislation that ultimately led to this lawsuit?

17 A. Yeah. Bill Straus and I had a disagreement, but I don't
18 know why he's any kind of expert on this. I don't think he
19 knows anything about it.

20 Q. He was regional director of the Anti-Defamation League,
21 correct?

22 A. That has nothing to do with this.

23 Q. One of the things that the Anti-Defamation League focuses
24 on, isn't it true, is First Amendment rights?

25 A. Is what?

1 Q. First Amendment rights, free speech?

2 A. Yes.

3 Q. So -- and Mr. Straus was the Arizona regional director of
4 the ADL, correct?

5 A. He was. I thought -- but, you know, I think one of the
6 primary objectives of ADL is prejudice reduction. And I used
7 their program -- I was, for 24 years, a member of a school
8 board, for Arizona's third largest district, and I used their
9 prejudice reduction program. And I thought his support of this
10 program was ironic because this program produces prejudice, and
11 ADL, as an organization --

12 Q. Excuse me. He disagreed with you on that, didn't he?

13 A. Yeah.

14 Q. He didn't think it produced prejudice, did he?

15 A. Well, he had no way of knowing. He hadn't investigated
16 that.

17 Q. But you were sending material to Mr. Straus to try to
18 convince him, weren't you, that this was a bad program, right?

19 A. I think I may have sent him some materials in response to
20 what he said.

21 Q. And --

22 A. Persuading him was not my -- was not on my agenda
23 necessarily, but in response to his criticism, I sent him some
24 materials.

25 Q. And you had sent him, in fact, a -- I guess an e-mail from

1 a teacher, Ron Silverman, in which he talked about various
2 issues relating to the ethnic studies program in Tucson, right?

3 A. Yeah, including the efforts to silence him.

4 Q. He never actually mentions the MAS program in his e-mail,
5 does he, Mr. Silverman?

6 A. If you tell me that, I'll believe you.

7 Q. I'll tell you that.

8 A. Okay.

9 Q. And you sent along this e-mail to Mr. Straus saying:
10 Please read it carefully. Right?

11 A. Yeah.

12 Q. And Mr. Straus responded to you: I did read it carefully.
13 It's interesting that he doesn't necessarily want to end the
14 ethnic studies programs, but just categorize it differently. I
15 have also delved deeply into all of this, that I already know
16 that folks have lined up for and against the program. The fact
17 that you sent an e-mail from someone aligned against it is
18 certainly no surprise to me, nor did it provide --

19 THE COURT: Mr. Quinn, we're having a little
20 trouble -- we're having a little trouble hearing you when you
21 bend down --

22 MR. QUINN: I'm sorry.

23 THE COURT: -- below the lectern.

24 MR. QUINN: It's my -- I am having cataract surgery
25 soon, Judge, and so I am having trouble sometimes seeing.

1 Maybe I'll read it off of the screen. Okay.

2 THE WITNESS: I had the surgery also. It's very
3 helpful.

4 MR. QUINN: Good to know.

5 BY MR. QUINN:

6 Q. So, pretty clearly, Mr. Straus disagreed with your
7 philosophy.

8 A. Absolutely, but I don't know why it matters. He doesn't
9 know anything about it.

10 Q. He was head of a group that focuses on, among other things,
11 racial prejudice, correct?

12 MR. ELLMAN: Objection. Relevance.

13 THE COURT: Well, it's also repetitive. You just
14 asked him that a few minutes ago. And answer the question
15 yourself.

16 BY MR. QUINN:

17 Q. Now, beginning in 2008, you began lobbying for legislation
18 to ban the MAS program, correct?

19 A. Correct.

20 Q. And your first effort, I believe, was a bill that was
21 introduced by Russell Pearce in 2008?

22 A. I think I testified in my deposition that I had nothing to
23 do with the Russell Pearce bill, if I am not mistaken.

24 Q. Well, okay.

25 A. I certainly didn't write that bill.

1 Q. You supported the bill, didn't you?

2 A. Probably.

3 Q. Yeah.

4 A. I didn't write it. I had a totally different approach than
5 Russell did.

6 MR. QUINN: Can we have PX026. Before we do that, can
7 you go back to the prior exhibit, the Straus one, please, front
8 page.

9 BY MR. QUINN:

10 Q. Down at the bottom, in Mr. Straus's e-mail to you, he says
11 that: You weren't at the last board meeting, but because so
12 many of our board members have taken an interest in this issue,
13 there was tremendous desire on the part of board members to
14 hear the other side of this issue from Mr. Romero.

15 Do you see that?

16 A. Yes.

17 Q. Mr. Romero at the time was the administrator of the MAS
18 program.

19 A. Yeah. And you're reminding me, I did talk with Auguste
20 Romero, probably many times, actually. So I misspoke when I
21 said I hadn't talk to MAS teachers. I did talk to Auguste
22 Romero.

23 Q. He goes on to say that he was going to invite Mr. Romero to
24 speak at the board.

25 A. Yeah.

1 Q. Did you attend that meeting?

2 A. No. I was campaigning for Attorney General, and I was
3 traveling a lot.

4 Q. Going back to PX26, this was House Bill 1108. This was the
5 bill that was introduced by Mr. Pearce, which I think you said
6 you did support, correct?

7 A. I think I did. I don't remember specifically, but I assume
8 I would have.

9 Q. And the bill would -- according to this draft:

10 A public school in this state shall not include within the
11 program of instruction any courses, classes or school-sponsored
12 activities that promote, assert as truth or feature as an
13 exclusive focus any political, religious, ideological or
14 cultural beliefs or values that denigrate, disparage or overtly
15 encourage dissent from the values of American democracy and
16 western civilization, including democracy, capitalism,
17 pluralism, and religious toleration.

18 See that?

19 A. The reason I felt I could support it was because of the
20 word "exclusive." I am strongly in favor of students being
21 taught about criticisms of capitalism. For example, I think
22 they should know all about Marx.

23 Q. But it's fair to say this is a fairly broad bill in terms
24 of what was being covered, right?

25 A. Yes. And I didn't write it, as I said.

1 Q. And this particular bill also goes on to, on the second
2 page, the bill would not allow organizations to operate on the
3 campus of the school, university, or community college if the
4 organization is based in whole or in part on race-based
5 criteria.

6 A. Right.

7 Q. Right. So that would have excluded, for example, a -- any
8 club for -- Irish club or Jewish club, or Spanish club, or
9 whatever. Isn't that right?

10 A. Yeah.

11 Q. You would agree with me that's pretty broad, isn't it?

12 A. Yeah.

13 Q. And, in fact, this bill did not pass, correct?

14 A. Correct.

15 Q. So the following year, in 2009, you were working with, I
16 think it was Senator Paton offered another bill that you, in
17 fact, had drafted, correct?

18 A. That's correct.

19 Q. And that was a bill that was aimed at ridding Tucson of the
20 ethnic studies program and particularly the MAS program,
21 correct?

22 A. Well, all of the programs. The bill didn't relate
23 particularly to the MAS program. The reason I focused on that
24 was because that's the only evidence that I had in enforcement.
25 But the bill did not single out the MAS program.

1 Q. But you drafted that -- this bill, correct?

2 A. I believe I did, yeah.

3 Q. It's fair to say that your focus was on the MAS program,
4 correct?

5 A. That was the program I had the evidence on.

6 Philosophically, I disagreed with dividing students up by race,
7 but the only program I had evidence on was the MAS program. It
8 was the only -- the only program that anybody complained about.
9 I didn't have a single complaint about any other program from
10 anybody, and I had a tremendous amount of complaint about
11 that --

12 Q. Well, in the bill that ultimately became law --

13 A. Yes.

14 Q. -- there's no requirement in enforcement that you receive
15 complaints, is there?

16 A. There's an evidentiary issue there. You have to win -- all
17 these bills had a provision for an adversary proceeding as an
18 appeal from my determination, and I would have to have evidence
19 in those proceedings, and I would -- I would -- we had a tough
20 enough time with MAS where I had an overwhelming amount of
21 evidence. It would have been hopeless to start with one of the
22 programs, although I hoped eventually to eliminate them all.

23 Q. Let me reask my question because maybe you misheard it.

24 It's true, is it not, that there's nothing in the actual
25 bill that was passed that requires there be complaints before

1 you enforce the law? Isn't that right?

2 A. That's true. It's just a matter of evidence. You have to
3 prove the criteria that are set forth in the statute.

4 Q. No question pending. You know how it works.

5 A. I was adding to my previous answer.

6 Q. Okay. Fair enough.

7 Now, in connection with the bill, the 2009 bill that you
8 drafted, you actually issued a press release, didn't you?

9 A. Probably.

10 MR. QUINN: Can we have PX28?

11 BY MR. QUINN:

12 Q. In the middle --

13 A. This is not a press rerelease. This is a bill in -- this
14 is an article in the Star.

15 Q. Yes, but I'm going to focus on the middle, which refers to
16 your press release.

17 A. Okay.

18 Q. Okay. This is an article about your press release.

19 A. Yes.

20 Q. And it says, in the middle of this article, referring to
21 your news release of Friday, quote: I have tried for two years
22 using publicity and persuasion to attempt to convince the
23 Tucson Unified School District to put a stop to this
24 dysfunctional program. They have refused. The next step is
25 legislation.

1 Right?

2 A. Yeah.

3 Q. And the dysfunctional program you were referring to is the
4 MAS program, right?

5 A. Well, ethnic studies, in general. But I had the most
6 evidence, as I said --

7 Q. Well, could you take a look at your --

8 A. In fact, in that sentence, I use the word "ethnic studies
9 programs," not "MAS."

10 Q. Could you take a look at your deposition, Page 69, Lines 16
11 through 24?

12 A. Page 59?

13 Q. 69, 15 through 24.

14 A. Yeah. Okay. Yeah.

15 Q. I asked you: It's fair to say that your focus at this
16 period of time, based on your own personal experience with
17 regard to what happened, the Dugan incident, that the focus was
18 particularly with regard to the Mexican-American Studies
19 Program.

20 Answer: Yes. The problem brought to my attention was the
21 La Raza studies program. My philosophical objection was to all
22 programs that divide kids up.

23 A. Yes, that's my testimony. Incidentally --

24 Q. And you stand --

25 MR. ELLMAN: May the witness answer the question,

1 please?

2 THE COURT: Hold it. You're both talking over each
3 other now. All right. Who wants to go first?

4 A. It's a very minor thing, but the transcript you gave me is
5 numbered differently, just so you know.

6 BY MR. QUINN:

7 Q. I'm sorry?

8 A. The transcript you gave me is different because. That's
9 not page 59, those lines.

10 Q. I'm sorry. It was 69.

11 A. It was 69. Okay. Yes. That was my answer.

12 Q. And you stand by that, right?

13 A. Yes.

14 Q. The article, down further in the article, there's a
15 statement that -- keep going down. The third paragraph from
16 the bottom.

17 There is a statement that says that TUSD long has defended
18 the programs in the face of criticism from Horne and Paton,
19 saying that they resulted in higher test scores for students
20 who complete them.

21 Do you see that?

22 A. Yes.

23 Q. That's correct. That was the position of the Tucson
24 Unified School District, correct?

25 A. It's correct it was the position of the district, but it is

1 not correct that that was the correct statement. The district
2 was misrepresenting that.

3 Q. I believe you actually at one point asked Mr. Franciosi to
4 do a study about that? Isn't that right?

5 A. Well, yes, but there was also an earlier study, and I don't
6 remember who did the earlier study, but Franciosi responded
7 that TUSD published a study. Franciosi responded on it showing
8 that it was incorrect, and, to his everlasting credit, the
9 administrator responsible at TUSD admitted that Franciosi was
10 correct. I thought that was very brave of him.

11 Q. When you asked Mr. Franciosi to do that study, it was
12 focused only on MAS, correct?

13 A. Yes, because that was the study he was responding to.

14 Q. But you didn't ask him to do a study on any of the other
15 ethnic programs, did you?

16 A. No. He was just responding to what -- the thing he was
17 responding to was issued by the head of the MAS program, so he
18 was responding to that.

19 Q. Well, you were the one who directed him to do the study,
20 right?

21 A. Yes.

22 Q. And you didn't direct him to do a study on any of the other
23 programs, correct?

24 A. No. I asked him to check what had been stated by the
25 director of the MAS program.

1 MR. QUINN: Can we have PX27?

2 BY MR. QUINN:

3 Q. This is the draft of the bill that was -- that Senator
4 Paton was going to introduce, right?

5 A. Okay.

6 Q. And this was the one that you drafted?

7 A. Yes.

8 Q. And in your draft, you focus on two points:

9 A school district or charter school in this state shall not
10 include in the program of instruction any courses or classes
11 that either, one, are designed primarily for pupils of a
12 particular ethnic group, and, two, advocate ethnic solidarity
13 instead of the treatment of pupils as individuals.

14 Right?

15 A. Yes.

16 Q. And that was your language that you drafted?

17 A. Yes.

18 Q. You also included in the bill that the superintendent of
19 public instruction would be the one to enforce the -- would be
20 the one to enforce the statute, right?

21 A. That's what you would expect me to do.

22 Q. I'm sorry. I just misheard you.

23 A. I said that's what you'd expect me to do. I was the
24 superintendent of public instruction.

25 Q. You included that in your bill, right?

1 A. Yes.

2 Q. This bill also did not pass, correct?

3 A. Correct.

4 Q. It didn't get out of -- it didn't get out of committee, did
5 it?

6 A. I don't remember, but that could be.

7 Q. But you persisted, did you not?

8 A. I did.

9 Q. And so in the winter of 2010, you introduced yet another
10 bill, this time in the -- in the House, right?

11 A. Well, I didn't introduce it. I think --

12 Q. I'm sorry, you're right. You asked Representative
13 Montenegro and several others to introduce it.

14 A. Yeah, Representative Montenegro, who is himself a Central
15 American immigrant.

16 Q. And you thought the fact that he was a Hispanic was a plus
17 in trying to get the bill passed, right?

18 A. Yeah. He didn't like being stereotyped, and I agree with
19 him.

20 MR. QUINN: Can we have DX509?

21 BY MR. QUINN:

22 Q. This is HB2281, right?

23 A. Yes.

24 Q. Go to the next page.

25 Again, this is the language that you had originally drafted

1 the year before?

2 A. That's correct.

3 Q. And, again, it focuses on designed primarily for pupils of
4 a particular ethnic group or advocating ethnic solidarity, et
5 cetera.

6 By the way, the section that are designed primarily for
7 pupils of a particular ethnic group, that was ultimately found
8 to be unconstitutional, wasn't it.

9 A. Yes.

10 Q. By the Ninth Circuit.

11 A. Yes.

12 Q. Again, you included, as one I suppose would suspect, that
13 you, you being the superintendent of public instruction, would
14 enforce the bill, right?

15 A. Right.

16 Q. Now, you asked some of your folks at the ADE to lobby on
17 behalf of the bill, right?

18 A. Yes.

19 Q. And one of the people that you asked was Mark Anderson,
20 correct?

21 A. If -- was Mark already in the department?

22 Q. Yes.

23 A. Okay. Mark had been the chairman of the education
24 committee.

25 Q. Yes. He previously had been in the legislature as chairman

1 of the education committee in the House, right?

2 A. Yes.

3 Q. And then he came to work for you at the ADE?

4 A. Right.

5 Q. You also had working with you a man by the name of Todd

6 Bayne?

7 A. I don't remember that.

8 Q. Okay.

9 A. I don't think he worked for us. He must have been with the
10 legislature. Art Harding was the one who lobbied for me.

11 Q. Yeah, Art Harding. He also worked --

12 A. I think Todd Bayne was probably with the legislature.

13 Q. Fair enough. Okay.

14 So Bayne would have been someone on the legislative side --

15 A. Right.

16 Q. -- at the time that you were trying to get this bill
17 passed.

18 A. If you tell me, I believe you. I don't remember.

19 Q. Let's take a look at PX33, which is in evidence. And this
20 is a series of e-mails, we'll start from the bottom up.

21 Starting with Mark Anderson to Todd Bayne, dated February 3,
22 2010.

23 This was during the period of time that you were trying to
24 get the bill passed, correct?

25 A. Yes.

1 Q. And Anderson indicates that there was a pushback, was there
2 not, by Representative Crandall with regard to some of the
3 language in the bill?

4 A. Yes.

5 Q. Crandall was the -- I guess the chairman of the House
6 education committee at the time?

7 A. Okay.

8 Q. Actually, he had replaced Mark Anderson.

9 A. Okay.

10 Q. Now, Anderson says to Bayne:

11 Todd, I am working with Representative Crandall and
12 Superintendent Horne on HB2281. We are trying to come up with
13 an amendment to A.R.S. 15-112(A)(1). This one sentence is the
14 sticking point.

15 Then he says:

16 We need to satisfy Tom Horne, who wants to be able to get
17 rid of the La Raza program in Tucson.

18 Do you see that?

19 A. Yes.

20 Q. And that's -- that's a correct statement, isn't it?

21 A. It's not the way that I would have said it. I would have
22 said I want to get rid of all of the ethnic studies programs,
23 but the one that first attracted my attention, the one I have
24 evidence for, is the MAS program. I would not have said it the
25 way Mark did.

1 Q. But that's the way Mr. Anderson said it.

2 A. That's the way he said it.

3 Q. And he was working closely with you during this period to
4 get the bill passed, wasn't he?

5 A. I wouldn't say he was working closely. Art Harding was
6 working closely with me.

7 Q. Let's go up to the next e-mail. This is one from Bayne
8 back to Anderson later that day, and he talks about making some
9 changes in the possible -- language changes in the bill, and
10 then he goes on to say: I think the language in Paragraph 2
11 would still capture the La Raza program.

12 Do you see that?

13 A. Yeah.

14 Q. And that's the MAS program, right?

15 A. Yes.

16 Q. In the course of these mails, neither Mr. Anderson nor
17 Mr. Bayne referred to any of the other ethnic studies programs,
18 do they?

19 A. Correct.

20 Q. They're just focused on the La Raza program, right?

21 A. Right, but the bill refers to all of them. The bill that I
22 wrote refers to all of them. These e-mails don't.

23 Q. Fair enough. But the focus of this discussion was the
24 La Raza program, correct?

25 A. Yes.

1 Q. And then we move up this chain, and Mark Anderson sends to
2 you the e-mail from Bayne asking you what do you think. Do you
3 see that?

4 A. Yes. Incidentally, these e-mails do indicate that Bayne
5 worked for the legislature.

6 Q. Yes, I noticed that as well, in the e-mail address.

7 A. Right.

8 Q. Then moving further up, you respond a few minutes later to
9 Anderson, quote: "His first paragraph is acceptable. After
10 removing 'primarily,' I would add at the end of the sentence
11 'even if students of other races are permitted to attend.'"
12 Closed quote.

13 A. Yes.

14 Q. And you added that because you knew, in fact, other
15 students of other races were, in fact, permitted to attend,
16 right?

17 A. Yes.

18 Q. And so that particular language actually never did make it
19 into the bill, did it?

20 A. The word "primarily" remained.

21 Q. Right.

22 A. Yes.

23 Q. And so it's fair to say during the course of this process
24 of getting the bill passed, you were pretty involved, weren't
25 you?

1 A. I was very involved.

2 Q. You were, you know, watching the language, making sure that
3 it -- one of the things you wanted to make sure was that it
4 was, in fact, going to reach the La Raza program, right?

5 A. Well, all the ethnic studies programs, not just La Raza.
6 That would be a very misleading statement to say I wanted to
7 make sure it reached the La Raza program. I wanted to be sure
8 it reached all the ethnic studies program.

9 Q. Your focus, as you just testified, was on the
10 Mexican-American students program.

11 A. Well, it was the one that brought the problem to my
12 attention, and it was the one that I had evidence about, it was
13 the one that I had complaints about. But philosophically, I
14 was opposed to all the programs, and the legislation was
15 directed at all the programs.

16 Q. Now, what happened was that Representative Crandall,
17 instead of following your language, did a strike everything
18 bill and put in new language for this bill. Correct?

19 A. Well, you're remembering details of legislative history
20 that I don't remember.

21 Q. The details are important --

22 A. Huh?

23 Q. -- we're going to try to refresh your recollection. Fair
24 enough?

25 A. Fair enough.

1 Q. Okay. Let's go see DX512. In this version, which was the
2 Crandall version --

3 A. Yeah.

4 Q. -- he has deleted your two paragraphs. Correct?

5 A. Yes.

6 Q. And instead, he has inserted two new paragraphs: One, to
7 promote the -- that classes could not promote the overthrow of
8 the United States Government; or, two, promote resentment
9 toward race or class of people.

10 A. Yes.

11 Q. Right?

12 A. Yes.

13 Q. And he also made a change where it would no longer be the
14 superintendent to enforce the bill, but it would be the State
15 Board of Education, right?

16 A. Right.

17 Q. And you were concerned, were you not, that this bill would
18 not, in fact, reach the La Raza program? Right?

19 A. No. Paragraph 2 would have reached the La Raza program. I
20 disagreed with number one. I had no evidence that anyone
21 promoted the overthrow of the United States Government. I
22 didn't see any reason to include that.

23 I thought the second provision was fine, but I wanted to
24 have my two provisions in, as well. And that was the
25 ultimate -- I think that was the ultimate compromise.

1 Incidentally, Crandall -- I don't know if you're interested
2 or not. But Crandall was a vendor to the Department of
3 Education, who I cut off. I brought it in house. So Crandall
4 and I were not friendly.

5 Q. Fair enough. Let me show you -- you say that you thought
6 that this version of the bill was okay. It would actually
7 reach the La Raza program. Is that right?

8 A. I thought Paragraph 2 would, but I was not satisfied with
9 the bill written that way. I wanted my two provisions in
10 there, as well, and that was the ultimate compromise.

11 Q. Well, let me show you an e-mail from Mark Anderson to
12 Michele Reagan, dated February 25, 2010, a few days after the
13 earlier e-mail chain.

14 And here, Anderson is writing to Michele Reagan. She was a
15 representative in the legislature, right?

16 A. Yes.

17 Q. She was a Republican, right?

18 A. Yes.

19 Q. And he says that -- he's referring to the ethnic studies
20 bill, obviously, HB281. He said: We are hoping that you will
21 support Representative Montenegro as he attempts to amend the
22 bill -- his bill on the floor. The Amendment is needed because
23 the bill is watered down in committee to the point that it
24 passed 8-0. In other words, as it currently stands, the bill
25 will not effectively reach the La Raza program at TUSD.

1 You see that?

2 A. I see it. I disagree with it.

3 Q. Well, is it --

4 A. He did not consult with me when he wrote this.

5 Q. Mr. Anderson had concluded, had he not --

6 A. Yes.

7 Q. -- that, in fact, the bill would not effectively reach the
8 La Raza program. And you were concerned about that, as well,
9 weren't you?

10 A. No. Actually, I disagree. I can prove that it promoted
11 resentment against other races with a wealth of evidence,
12 actually. He did not consult with me when he wrote this.

13 Q. All right. So he was -- he was just misinformed; is that
14 right?

15 A. On this particular thing, he was, yeah.

16 Q. It's fair to say that Mr. Anderson was working under your
17 direction, wasn't he?

18 A. Not under my close direction. He was -- theoretically, he
19 was below me on the organizational chart, but I was working
20 primarily with Art Harding on the bill. Mark was helping
21 out -- that wasn't his -- lobbying was not Mark's job. He was
22 in certification, as I remember it. But he was helping out
23 because he had been chairman of the education committee, so he
24 had views on it.

25 Q. And you had asked him to help out, didn't you?

1 A. Probably did, yeah. But as I say, he was not working
2 closely with me. Art Harding was. Art Harding was our
3 lobbyist. Mark Anderson was in charge of certification.

4 Q. Once again, in his discussion about the bill being watered
5 down, he doesn't mention any other program other than the
6 La Raza program, does he?

7 A. He doesn't. I wrote the bill, and I referred to all the
8 groups.

9 Q. You asked Representative Montenegro to add an Amendment to
10 the Crandall bill, right?

11 A. Yes.

12 Q. And DX513 is that amendment, isn't it?

13 A. Yep.

14 Q. And this simply adds back the language that you had
15 originally drafted in 2009 and then again put in the bill in
16 2010, right?

17 A. That's correct.

18 THE COURT: Mr. Quinn, maybe this is a good time to
19 take our morning recess.

20 MR. QUINN: That's fine, Your Honor.

21 THE COURT: We'll take our morning recess at this
22 time. It will be about 15 minutes.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: All right. The Court is now in recess.

25 (A recess was taken from 10:32 a.m. to 11:00 a.m.)

1 THE COURT: All right. Let's all be seated.

2 Mr. Quinn, you may resume with your direct examination.

3 MR. QUINN: Thank you, Your Honor.

4 BY MR. QUINN:

5 Q. Mr. Horne, the bill that we just looked at or the amendment
6 that we just looked at, DX513, eventually was, in fact,
7 incorporated into the HB2281 that passed the House, correct?

8 A. Correct.

9 Q. And you had mentioned I think earlier that one of the
10 reasons you wanted Mr. Montenegro to sponsor the bill and I
11 guess also sponsor the amendment was the fact that he was
12 Hispanic, right?

13 A. I thought that was an advantage, but I think he probably
14 volunteered. I don't think I asked him.

15 Q. But you thought it was an advantage because of his race,
16 correct?

17 A. Yes.

18 Q. So even though you've testified before that race shouldn't
19 matter, sometimes it does matter. Isn't that right?

20 A. It shouldn't.

21 Q. But it does.

22 A. It never should as an ideal. Sometimes in life there are
23 imperfections. But my philosophy is that it is completely
24 irrelevant to anything, that race plays no role in American law
25 or life.

1 Q. Now, after the bill passed the House, it obviously also had
2 to go to the Senate, right?

3 A. Yes.

4 Q. And in the Senate, that was I guess Senator Huppenthal's
5 committee, correct?

6 A. Yes.

7 Q. And you also ran into some opposition to the bill in the
8 Senate, did you not?

9 A. I don't remember, but, again, I believe you.

10 Q. Well, let me see if I can refresh your recollection.

11 MR. QUINN: Can we have PX55, please?

12 BY MR. QUINN:

13 Q. Now, Mr. Anderson was also involved, along with Art
14 Harding, in getting the bill through the Senate, correct?

15 A. Art Harding was the most involved. He was my lobbyist.

16 Q. I understand, but my question was Mr. Anderson was
17 involved --

18 A. Yes, I'm sorry.

19 Q. -- at your direction to get the bill passed in the Senate
20 as well, correct?

21 A. Yes.

22 Q. And here is an e-mail of a month or two later from Mark
23 Anderson to Art Harding, the subject matter being HB2281, and
24 he says: Art, I just read the Section F of HB2281.

25 This was the Lopez Amendment. Do you remember who

1 Mr. Lopez is or was?

2 A. Vaguely.

3 Q. He's a senator on the education committee.

4 A. Yes.

5 Q. And Anderson goes on to say that: In my opinion, this guts
6 the bill. TUSD will be able to say that the La Raza program is
7 about, quote, "the historical oppression of the Latino people,"
8 closed quote, which is continuing today with the passage of
9 SB1070.

10 Then it goes on to say the La Raza program will not be shut
11 down after all. Do you see that?

12 A. Yes.

13 Q. Mr. Anderson again is focused on the La Raza program, not
14 the other ethnic studies programs, isn't that right?

15 A. Yes, and again that's him and not me.

16 Q. But you were his boss, weren't you?

17 A. I'm sorry?

18 Q. You were his boss, weren't you?

19 A. Yes, a couple of layers up, and he was not working close
20 with me -- closely with me. Art Harding was. I wasn't aware
21 of this e-mail. I wouldn't have agreed with it at all. I
22 believe it's perfectly proper and should be that people taught
23 about the historical oppression of the Latino people. It just
24 shouldn't be a one-sided propaganda.

25 Q. He references in the context of this e-mail the passage of

1 SB1070, correct? Do you see that?

2 A. Yeah, I do.

3 Incidentally, this e-mail shows his position, which is
4 director of certification, rules and procedures.

5 Q. No, I understood. You testified to that before. My
6 understanding, though, that at your request he was involved in
7 lobbying.

8 A. Yes, but not closely with me with the way Art was.

9 Q. In any event, he makes a reference to SB1070, and that was
10 the bill, was it not, that was also being debated at this same
11 time, correct?

12 A. Yes.

13 Q. And that was a bill that was kind of a controversial bill,
14 was it not?

15 A. Extremely.

16 Q. It was a bill that would require that police officers would
17 inquire if they had supposedly a reasonable basis as to the
18 immigration status of somebody that they had stopped, correct?

19 A. I don't remember that. I think it required them if they
20 had reasonable sus -- well, I am trying to remember exactly
21 what it said. I remember something about if you knew someone
22 was here illegally, you had to contact ICE. That was what that
23 was.

24 Q. It involved, did it not, that the -- a requirement that
25 police officers acting on reasonable suspicion could ask a

1 suspect what was his or her immigration status?

2 A. Yes, if there's reasonable suspicion, yes, that's correct.

3 Q. And the Mexican-American community, in particular, was
4 against that bill, weren't they?

5 A. Many of its leaders were, yes.

6 Q. Eventually --

7 A. It actually showed a surprising number of Mexican-Americans
8 that supported it, interestingly, but the leadership certainly
9 didn't. I would say the majority certainly did.

10 Q. Eventually, some significant portions of it were held
11 unconstitutional by the Supreme Court, right?

12 A. Some portions were; other portions were upheld.

13 Q. Determined to be discriminatory?

14 A. Some portions.

15 Q. In any event, again, Mr. Anderson is only focused on the
16 La Raza program being shut down, not -- or not being shut down,
17 and not any of the other ethnic studies programs.

18 A. Yes. And, again, that's him and not me.

19 Q. Eventually, the Lopez Amendment, whatever it was, was
20 defeated, correct?

21 A. Yes.

22 Q. The bill with your language in it was, in fact, passed by
23 the Senate as well and became part of Arizona 15-112, right?

24 A. Correct.

25 Q. In connection with the bill, you testified, did you not,

1 both before the House and the Senate?

2 A. Yes.

3 Q. And at the hearing, you began your testimony in support of
4 HB2281 by recounting the speech by Dolores Huerta where she
5 said that Republicans hate Latinos, correct?

6 A. Yes. That was the beginning of the chronology.

7 Q. And then you recounted what happened during the Dugan
8 speech a month or so later, right?

9 A. Yes.

10 Q. And you reiterated your opinion that students that
11 protested Ms. Dugan's speech were rude and they taught -- and
12 that they were taught that by the MAS teachers, right?

13 A. Correct.

14 Q. Even though, as we have talked about, you yourself
15 personally had no personal knowledge, other than what you read,
16 that that, in fact, was true, correct?

17 A. I had a lot of evidence and -- and judges and lawyers often
18 proceed on the evidence that they gather rather than on their
19 having been there.

20 Q. You went on to talk about in your presentation complaints
21 that you received. Specifically, you mentioned John Ward
22 complaints, correct?

23 A. Yes.

24 Q. Those were complaints that, with regard to Mr. Ward, would
25 have gone back at this time probably seven or eight years,

1 correct?

2 A. Yes, but I had a lot of evidence that the same policies had
3 continued.

4 Q. You, in fact, relied on the same complaints that you had
5 included in your open letter three years earlier, correct?

6 A. Yes.

7 Q. So it's fair to say that your testimony both before the
8 House and the Senate was based on events that had happened
9 several years before, dating back to your open letter, correct?

10 A. No. In part. But I had -- I had very current information.

11 Q. Well, you mentioned in your presentation again a reference
12 to the librarian wearing the M.E.Ch.A. T-shirt. That was in
13 your open later, right?

14 A. Yes, M.E.Ch.A.

15 Q. M.E.Ch.A. I'm sorry. I'll get it right some day.

16 At one point I think you mentioned the M.E.Ch.A. group,
17 which says that North America is a land for bronze people.

18 A. Right.

19 Q. Do you remember that?

20 A. Vividly.

21 Q. And that bothered you, right?

22 A. Yes. It was a profoundly racist statement.

23 Q. Now, you also testified that after reviewing the materials
24 from the MAS program, you determined that the primary textbook
25 for the program was the Pedagogy of the Oppressed by a man by

1 the name of Paulo Freire, right?

2 A. Yes. The TUSD website said that.

3 Q. And you testified that Paulo Freire was a well-known
4 Brazilian communist and that the book Pedagogy of the Oppressed
5 included sources like Marx and Engels and Lenin and Fran Che
6 Guevara, right?

7 A. Correct.

8 Q. But you knew, because you'd read the book, that Paulo
9 Freire also cites many other sources, including the humanistic
10 philosopher Eric Froem, existential philosophers like John Paul
11 Sartre, existential and feminist philosophers like Simone
12 de Broglie and Christian theologians and ethicist Rhinehold
13 Niebuhr. Right?

14 A. Yes.

15 Q. All of that's included in his book, isn't that right?

16 A. Yes.

17 Q. The book covers a lot of different issues, doesn't it?

18 A. Yes.

19 Incidentally, my disagreement with it was not only the fact
20 that he was a Marxist and relied heavily on, as you mentioned
21 Marx, Lenin, Engels, Che Guevara, but was a pedagogical one,
22 because he taught that if the teachers in the front of the
23 class and the students have to absorb what he teaches, he is
24 oppressing them, you know, and I don't know how you would learn
25 physics without having the teacher teach it to you. But that

1 is his pedagogy, that the teacher should be by your side and
2 not in the front of the class actually imparting information to
3 you. And I had a very strong pedagogical argument with that
4 because I think knowledge is important.

5 Q. I never did learn physics from a teacher, but we can go on.

6 You'll recall at the hearing one of the representatives --
7 this is in a House hearing I guess -- Representative
8 Young-Wright told you about a charter school in Tucson called
9 the Paulo Freire Freedom School?

10 A. Yeah. It was the first I had ever heard of it.

11 Q. And do you recall that she told you that it was totally
12 devoted to the Paulo Freire curriculum and his theories?

13 A. I do.

14 Q. And she also told you that she spoke to parents of the
15 children who attended the school and they were pleased with the
16 charter school. Do you remember that?

17 A. She did, yeah.

18 MR. QUINN: Can we just put up the clip for a second.

19 PX35.

20 (Video playing.)

21 BY MR. QUINN:

22 Q. Now, in your testimony, with the going back and forth with
23 Representative Wright, you indicated that if that were the
24 case, you were concerned about the -- the fact that there were
25 would a school teaching Paulo Freire philosophy as part of its

1 pedagogy, correct?

2 A. Yes.

3 Q. But you didn't follow up on this concern that you
4 expressed, isn't that true?

5 A. That's true. I didn't initiate any investigations. I only
6 responded when I got complaints. I wasn't an investigative
7 agency.

8 Q. You never bothered to contact anyone about the Paulo Freire
9 Freedom School?

10 A. Correct.

11 Q. You never tried to determine what was being taught there,
12 isn't that right?

13 A. That's correct.

14 Q. Are you aware that there's now two Paulo Freire charter
15 schools, but that the student population of the school that
16 Ms. Wright was referring to was a majority white school?

17 MR. ELLMAN: Objection.

18 A. I was not aware of that. I was not aware of that, and I
19 don't consider the race of the students to be relevant at all.
20 I was pleased to learn that my designee on the charter board,
21 Mary Gifford, had voted against chartering those schools.

22 BY MR. QUINN:

23 Q. But they were chartered nonetheless, weren't they?

24 A. Yes.

25 Q. Now, you also testified in front of the Senate education

1 accountability and reform committee with regard to the hearings
2 on 2281.

3 A. Yes.

4 Q. Again, you started by giving the background with regard to
5 Dolores Huerta and the Dugan speech, and you mentioned John
6 Ward again and the M.E.Ch.A. T-shirt. All sound familiar?

7 A. I am a public servant, and I can be repetitive.

8 Q. Senator Lopez, who apparently had opposed or put in an
9 amendment, also asked you at this hearing whether you had
10 visited any of the classes in question with regard to the MAS
11 program. Correct?

12 A. Yes.

13 Q. And, as you've testified, in fact, you never did visit a
14 MAS program.

15 It's true, is it not, that both with regard to your
16 testimony in front of the House and your testimony in front of
17 the Senate, the only ethnic study program that you talked about
18 was the MAS program. Correct?

19 A. That was the only one I had evidence on.

20 Q. Was the only one you talked about, correct?

21 A. Yes, because it was the only one I had evidence on. I
22 couldn't talk about things I didn't have evidence about. I did
23 talk, though, also about my philosophy that students should not
24 be divided by race, and that applied to all the programs.

25 Q. And that's the philosophy that was reflected in your open

1 letter to the citizens of Tucson.

2 A. Yes. I think it's in the preamble to the bill as well.

3 Q. Do you recall having a back-and-forth with Senator Lopez
4 during the hearings regarding whether you knew what ethnicities
5 would have been in those classrooms?

6 A. I think so.

7 MR. QUINN: Why don't we show the clip.

8 (Video playing.)

9 BY MR. QUINN:

10 Q. Now, in fact, the La Raza studies were not just for La Raza
11 kids, they were for any kids, correct?

12 A. We've discussed that earlier, yes. It was predominantly --
13 it was expressed that it was for them, it was predominantly
14 them, and I thought that was wrong.

15 Q. Stay with me for just a second.

16 A. Sure. Yeah.

17 Q. The truth is that the La Raza study program, the MAS
18 program, was open to people of any ethnicity, correct?

19 A. Yes.

20 Q. And that was true with regard to the Native American
21 program, the Asian American program, and African --

22 THE COURT: Haven't you been over this before already?
23 I think it's repetitive.

24 MR. QUINN: I am sorry, Your Honor.

25 THE COURT: I think you made that point before the

1 recess.

2 BY MR. QUINN:

3 Q. And you were aware, weren't you, that, in fact, there were
4 white students taking MAS --

5 A. I did, and I know that they complained about being dissed
6 for being white in the classroom.

7 Q. Did they complain to you?

8 A. No, to Hector Ayala.

9 Q. And you mentioned that, in your testimony, that it sounded
10 like the Old South. You're referring to slavery?

11 A. I'm sorry?

12 Q. When you mentioned in your testimony that it sounded like
13 the Old South, were you referring to slavery?

14 A. No. I was referring to segregation. That's what they did
15 in the south before civil rights. They put African-American
16 kids in one class, and they put the white kids in another
17 class.

18 Q. You just agreed with me that, in fact, anybody could take
19 any one of the classes, so they weren't being divided by race.

20 A. I did, but I also told you that it was designed for them,
21 the curriculum said it was for them, their leader testified in
22 a nationally televised debate with me that he wanted to appeal
23 to the DNA inside them, which could only be the kids that were
24 of that background. And it was a division of kids by race, and
25 I thought that was wrong. And the white kids who took the

1 course, because they didn't know any better, ended up
2 regretting it because they got dissed for being white. And
3 they had to sit there while they were told not to fall for the
4 white man's traps, which is another quotation from Hector
5 Ayala.

6 Q. Are you finished?

7 A. Which I think you would agree is a racist statement.

8 Q. You're finished?

9 A. Yes.

10 Q. Now, there came a time after the law was passed -- by the
11 way, am I correct that Senator Huppenthal made a couple of
12 changes in the bill that ultimately got passed?

13 A. Again, I'll believe you. I don't remember.

14 Q. Well, for example, didn't he add a provision that the
15 effective date of the legislation was January 1, 2011?

16 A. Yes.

17 Q. And at that time Senator Huppenthal was, in fact, running
18 for your job, right?

19 A. Yes.

20 Q. And you were running for somebody else's job as Attorney
21 General, right?

22 A. Yes, and I was opposing John in the primary, by the way,
23 but go ahead.

24 Q. And I guess your assistant, Mary Dugan, was running against
25 Huppenthal, right?

1 A. Yeah, Margaret Garcia Dugan.

2 Q. I'm sorry. Margaret Garcia Dugan was running against
3 Huppenthal.

4 A. And I was strongly supporting her and opposing him.

5 Q. And she ultimately lost; obviously Huppenthal won.

6 A. Yes. Democracy is imperfect.

7 Q. So by his amending the statute so it would not become
8 effective until January of 2011, he would presumably be able to
9 enforce the statute if you won, correct?

10 A. Yes.

11 Q. And there came a time, did there not, that after both you
12 and Mr. Huppenthal had won your elections, in December of 2010,
13 Mr. Huppenthal met with you and asked you, because he had --
14 strike that -- and asked you not to issue a finding in
15 connection with the MAS Program. Correct?

16 A. I don't remember that, but if he testified to that, I
17 won't -- I don't have a specific memory enough to contradict
18 him.

19 Q. You have no basis to contradict testimony in this courtroom
20 to that effect?

21 A. Right.

22 Q. And assuming that, in fact, that meeting did take place,
23 you did not follow Huppenthal's request that you not issue a
24 finding, correct?

25 A. Correct.

1 Q. In fact, you did issue a finding dated December 30th, 2010,
2 correct?

3 A. Correct. And then I updated it January 1st.

4 Q. We're going to get to that.

5 A. Okay.

6 MR. QUINN: Before we do the side-to-sides, can I have
7 up DX525.

8 BY MR. QUINN:

9 Q. And attached to this, which we'll -- this e-mail is, in
10 fact, your finding, correct?

11 A. Yes.

12 Q. That's your signature, and it's dated December 30th, 2010,
13 right?

14 A. Yes.

15 Q. And it was -- you determined to issue it the next day,
16 correct, or two days later, on January 1?

17 A. Yes.

18 Q. And that was because the statute wasn't effective until
19 January 1, correct?

20 A. Yep.

21 Q. But you actually made your finding two days before that,
22 right?

23 A. Yes.

24 Q. And you made that finding based on information you had that
25 was prior to the statute going into effect, correct?

1 A. It was based on three years of investigation of a problem
2 that had gone on for a very long time.

3 Q. But you understood that the statute wasn't retroactive,
4 right?

5 A. But it wasn't explicit either way, really.

6 Q. The statute did not explicitly state it was retroactive.
7 Isn't that correct?

8 A. It did not explicitly state that, but you can't make a
9 finding except based on what's happened in the past.

10 Q. The statute wasn't in effect when you made that finding,
11 correct?

12 A. When I initially issued it, it was not, but I reissued it
13 on January 1st.

14 Q. Let's just focus when you made the finding. You made the
15 finding on December 30th, 2010, correct?

16 A. That's when I -- that's when I issued it.

17 Q. And, in fact, the statute was not in effect on December
18 30th, 2010.

19 A. That's correct.

20 Q. Okay. And it's fair to say that much of the information
21 that is contained in your finding dated back to your open
22 letter in 2007, correct?

23 A. Yes.

24 Q. And just so we can just briefly do this, so we don't have
25 to spend a lot of time, we've done a side-by-side that shows

1 your letter from 2007 and your finding in 2010.

2 A. I admit to having plagiarized myself.

3 Q. You kind of cut and pasted the letter, right?

4 A. Yes.

5 Q. So we have -- the philosophy was basically word --

6 virtually word for word, correct?

7 A. Yes.

8 Q. And then we talk about the testimony of different

9 witnesses, and in your open letter, on the left side, we're

10 talking about information that was supplied by Mr. Ward and the

11 newspaper article that Mr. MacEachern had written back in 2006,

12 I guess.

13 A. Yes. I've already agreed with you that I cut and pasted

14 the letter.

15 Q. Right. Well, just bear with me.

16 A. Okay.

17 Q. And so basically the same information is displayed in your

18 finding, correct?

19 A. Yeah.

20 Q. Similarly, for example, you mentioned Hector Ayala, who you

21 relied on for your open letter in two thousand and --

22 A. Yeah. Even though he was actually a Mexican immigrant, he

23 was accused of being the white man's agent by the head of the

24 Raza studies program.

25 Q. And that was one of your bases in 2007 and again in 2010,

1 right?

2 A. Yes, and --

3 Q. This is all information -- I'm sorry, I don't want to cut
4 you off. This is all information that was somewhat dated,
5 isn't it?

6 A. Is what?

7 Q. Dated.

8 A. I don't consider it dated.

9 Q. It's old.

10 A. There was no -- there were no changes made during those
11 years.

12 Q. How would you know that? You never went to a classroom.

13 A. Because I was -- I had teachers who were reporting to me,
14 and I was reading materials, and as time went on, they kept
15 reinforcing each other.

16 Q. Now -- and then you also talked about the written
17 materials, and again, you refer to the Pedagogy of the
18 Oppressed, Occupied America, the Mexican-American -- all the
19 same books, right?

20 A. Yes, which were still in use.

21 Q. But you had no idea how they were being used, did you?

22 A. Yes, I had an idea how they were being used because I had
23 the testimony of the teachers. That was -- the testimony of
24 the teachers was my primary evidence. The textbooks were my
25 secondary evidence.

1 Q. Now, in the course of your -- let's go to the second page
2 of the actual findings itself, Page 2. You note that: Please
3 note that any violation of any one of the above four items
4 constitutes a violation of the statute. Right?

5 A. Yes.

6 Q. Then you go on to say, a couple of paragraphs below, that:
7 Three of the four programs could be found in violation under
8 Criteria 3 -- the one that is ultimately determined to be
9 unconstitutional -- courses designed primarily for pupils of a
10 particular ethnic group. Correct?

11 A. Yes.

12 Q. And the other programs that you were referring, in addition
13 to the MAS Program, were the African-American Studies Program
14 and the Asian-Pacific, I believe it's called --

15 A. Right.

16 Q. -- Studies Program. Right?

17 A. Yeah. In my very next sentence, I said the only course as
18 to which I had evidence was the Raza studies program.

19 Q. You actually say the only -- you refer to complaints. You
20 don't actually mention the word "evidence," do you?

21 A. Yeah. They're synonymous here. The only complaints I
22 received were about the Raza studies programs, and that was
23 true, and that continues to be true.

24 Q. And we established before that there is nothing in the
25 statute that requires there to be complaints about a program

1 for you to enforce the statute. Isn't that right?

2 A. I agree, but you can't enforce it without evidence.

3 Q. In any event, you made no effort to seek to enforce --
4 notwithstanding the possibility of a violation, you made no
5 effort to even investigate these other programs to determine
6 whether or not they were in violation of the statute. Isn't
7 that right?

8 A. That's correct. I was not an investigative agency. I
9 responded to complaints, but I did hope, in the long run, to
10 eliminate all these programs because I had a philosophical
11 problem with the division of kids by race.

12 Q. Do you recall telling me at your deposition that you didn't
13 do this -- didn't do any investigation because you didn't --
14 you weren't looking for trouble? Do you remember saying that
15 to me?

16 A. I don't, but if you tell me I said it, I'll believe you
17 without you having to show it to me.

18 Q. Okay. We'll save time. I'll tell you you said it, you
19 weren't looking for trouble.

20 A. Okay. Yeah. But "by not looking for trouble," I mean, I'm
21 not -- I'm not going into places asking people about things
22 unless I've got complaints.

23 Q. With regard to this finding, you made your determination
24 dated December 30th, 2010, correct?

25 A. Yes.

1 Q. And you issued it the next day, January 1st, 2011 --

2 A. Well, I think it was a Monday. January 1st was a Monday, I
3 think, wasn't it? Well, no --

4 Q. Actually, I can go back and show you you issued it on
5 January 1st.

6 A. Okay. Yeah. That would have been a Friday, I guess, and
7 Monday was the 4th.

8 Q. Actually, it was a Saturday.

9 A. Okay.

10 Q. January 1st was a Saturday.

11 A. Okay. And I was sworn in --

12 Q. That's a day that we can agree school was presumably not in
13 session.

14 A. Right. And then -- yeah. And then January 3rd I was sworn
15 in in the afternoon as Attorney General. So in the morning I
16 still had -- I was still in the position of superintendent.

17 Q. Correct. And so on the face of the statute, at least, it
18 was not to be applied retroactively, correct?

19 A. The statute didn't explicitly say that, but I didn't see
20 how you could enforce it unless you were -- you dealt with the
21 history of it.

22 Q. Well, Mr. Huppenthal determined to make his own
23 investigation, didn't he?

24 A. He did. I disagreed with him, but he did.

25 Q. And he went out and hired a group to determine whether it

1 was a violation, The Cambium Group, right?

2 A. Yeah. That was a big mistake.

3 Q. And that's because The Cambium Group found that, in their
4 view, the program, MAS Program, was not in violation of the --

5 A. That would not be my answer. It was a big mistake because
6 they proved exactly what I predicted, which is they were
7 subjected to Potemkin villages. The classes pretended to be
8 harmless, and based on the testimony I had from teachers and
9 the written materials I had, the courses were extremely toxic.
10 But they didn't show that to them because they were putting on
11 a show for them.

12 Q. You are just arguing that, Mr. Horne. You weren't there.
13 You have no idea what, in fact, the observers from Cambium saw
14 during the period of their examination.

15 A. I know what they reported. They didn't report any of the
16 things that were reported by the teachers who were actually
17 there, when people weren't being studied and were showing what
18 was actually going on.

19 Q. Maybe they didn't report it because it wasn't happening.
20 That's possible, isn't it?

21 A. It wasn't happening at the moment they were there, but it
22 was happening in general in the courses because -- for which I
23 had overwhelming evidence both from the teachers and from the
24 written literature. And they were subjected to a Potemkin
25 village, and they were shown a show, and they believed it. And

1 that's exactly the reason I didn't go.

2 Q. Isn't it fair to say that the statute itself couldn't be
3 applied to behavior that occurred before it went into effect?
4 You're a lawyer. You know that, don't you?

5 A. Well, my view was that it was a continuing situation and
6 that it needed to stop.

7 MR. QUINN: Could you read back the question.

8 (Reporter read back the last question and answer.)

9 THE WITNESS: I stand by that answer.

10 BY MR. QUINN:

11 Q. Let me ask you one more time. Yes or no, it's fair to say,
12 is it not, that the statute could not be enforced based on
13 things that had happened before its enactment?

14 MR. ELLMAN: Objection. Asked and answered.

15 THE COURT: Well, asked, but maybe not the answer he
16 expected. So I'll give the witness one more opportunity to
17 answer, if he wishes to take the opportunity.

18 THE WITNESS: I stand by my answer. It was a
19 continuing situation. It wasn't a changing situation.

20 MR. QUINN: We'll move on.

21 BY MR. QUINN:

22 Q. Now, one of the things that you referred to in your finding
23 was.... Yes.

24 So one of the things that you referred to in making the
25 determination that the MAS Program violated the statute was the

1 district's website description, correct?

2 A. Yes.

3 Q. And you quote part of that, and you determine that based on
4 the website alone, that's evidence of a violation, correct?

5 A. Yes.

6 Q. And, in fact, there were also website descriptions of the
7 African-American program and the Asian-American program.

8 A. Yes.

9 Q. Weren't there?

10 A. Yes.

11 Q. And those websites -- let's take a look at PX57. This is
12 the African-American Studies website, which says: Frequently
13 asked questions: What does African-American Studies do? AASD
14 strives to improve the academic achievement of African-American
15 students and to promote cultural sensitivity by working
16 collaboratively with the TUSD community.

17 Then it goes on to talk about: Our goal is to equip TUSD
18 personnel to better educate African-American students and to
19 provide support for classroom teachers and diversity training.

20 Do you see that?

21 A. Yes.

22 Q. And, in fact, this is very similar, is it not, to the
23 website that you looked at with regard to the Mexican-American
24 Studies Program, isn't it?

25 A. It is. Actually, I did inquire about this, and I was told

1 that this was primarily a tutorial program to improve their
2 academic achievement, which I thought was fine. And also, when
3 it says: Provide support for classroom teachers and diversity
4 training, I think that's fine, too. I actually -- I required,
5 in the standards I promulgated as superintendent of schools,
6 that the contributions of minority groups be included and I
7 gave specifics that they had to include in the teaching. So if
8 the students are all together and they're learning about each
9 other's backgrounds, I am all for it.

10 Q. Well, doesn't this indicate that the program is designed
11 primarily for African-American students? That's what it says.

12 A. Which sentence are you reading from?

13 Q. When it says: AASD strives to improve the academic
14 achievement of African-American students, they don't mention
15 white students, they don't mention Asian students or Native
16 students, do they? They mention African-American students --

17 A. Yes. But if it's academic tutoring, I have no program with
18 that.

19 Q. Let's take a look at the Asian-Pacific website. This is
20 PX66. Frequently asked questions: What populations does the
21 Asian-Pacific American Studies serve? We serve all Asian and
22 Pacific Islander, API, students and families in the TUSD.

23 Do you see that?

24 A. Yeah.

25 Q. What services do you provide? We advocate on behalf of all

1 API students and families. Do you see that?

2 A. Yes.

3 Q. So it's fair to say, certainly with regard to the first
4 sentence, that this program also was designed primarily for a
5 particular ethnic group, in this case, Asian-Americans. True?

6 A. True. But I did inquire and I was told that it was
7 academically an excellent program.

8 Q. So based on the fact that this was an academically
9 excellent program, you left it alone, even though that's not a
10 criteria under the statute, is it?

11 A. Well, I left these other programs alone because I had no
12 evidence against them. I proceeded against the only program I
13 had evidence against, and it was my hope that eventually I
14 really -- even though there were some good things about the
15 programs, philosophically I didn't like dividing kids by race.
16 And so I was hoping eventually that they would all be
17 eliminated, which was the statute I wrote. But I started with
18 the program as to which I had evidence and complaints.

19 It's a remarkable. In all that time, I had an overwhelming
20 number of complaints, some of them very bitter complaints,
21 about Raza studies, and zero complaints about any other
22 program. It was just a pure historical accident that a group
23 of radical teachers was organized in that particular program.
24 It had nothing to do with what the ethnicity was.

25 Q. The other programs continued, didn't they?

1 A. Yes. Well, I don't remember what happened after the
2 four-to-one vote.

3 Q. Now, earlier we already talked about Ward. In your
4 findings, you also refer to Teacher Number 2.

5 A. Yes.

6 Q. Teacher Number 2 was actually someone by the name of Prew
7 Howie, correct?

8 A. Correct.

9 Q. And she had sent some materials to your deputy, Ms. Dugan.
10 And she was complaining about the MAS program, but she also was
11 complaining about another program, wasn't she?

12 A. I don't see it.

13 Q. Okay. Well, we've got more of it here.

14 A. Can you -- can you pull --

15 Q. Sure. Let me call it out.

16 She writes in her e-mail to Ms. Dugan that: I taught
17 Native American literature in the Cholla, I guess, High School
18 and had difficulty when Native American -- when the Native
19 American advisor told my students that a white person should
20 not be teaching the class.

21 Do you see that?

22 A. Yeah. I think that's a terrible thing for somebody to say,
23 but I was prohibited by federal law from proceeding against the
24 Native American program.

25 Q. But you were concerned about something like that, weren't

1 you?

2 A. Absolutely.

3 Q. You were barred by federal law from eliminating the
4 program, but you certainly had the ability to go down and
5 investigate whether or not there was a problem, correct?

6 A. Well, my understanding was federal law preempted in that
7 area and I didn't touch it.

8 Q. You didn't want to make trouble.

9 A. Well, "trouble," meaning when I refer to "trouble," I refer
10 to going into a school and trying to find out if there's a
11 problem, as opposed to receiving complaints and responding to
12 those complaints. That was not -- I was not an investigative
13 agency. I didn't have the staff to send people to all
14 different schools and see if they could find something wrong.

15 Q. Now, in your open letter, you also refer to some testimony
16 at the Senate Judiciary Committee in the context of the
17 legislation. I believe it's on Page 7.

18 MR. QUINN: Could you call that up, please.

19 BY MR. QUINN:

20 Q. You write that: During the hearings of the Senate
21 Judiciary Committee on the ethnic studies bill, the school sent
22 a number of students to testify how much they loved ethnic
23 studies. A senator asked a girl whether she could have learned
24 the things she spoke about in other courses.

25 She responded, and you quote: "No. Before I took this

1 course, I didn't realize I was oppressed. Now that I took this
2 course, I realize I am oppressed."

3 Do you see that?

4 A. Yes.

5 Q. That never happened, did it?

6 A. I was there. It did happen.

7 MR. QUINN: Okay. Let's play the tape of this
8 testimony.

9 (Video playing.)

10 BY MR. QUINN:

11 Q. Now, she never said what you quoted, isn't that right?

12 That's her testimony. That's her actual testimony.

13 A. Well, my -- my memory was that the question was asked by
14 Senator Huppenthal, so it might be a different portion of it.
15 I do think what she says is similar. It's not exactly what I
16 said. But I also have a memory of Senator -- I've said this
17 many times -- that Senator Huppenthal was the one who asked the
18 question, so my guess is that there's another portion of the
19 transcript.

20 Q. Well, if someone finds it, we'll be happy to look at it.

21 A. Okay. But I do -- to me, this was a really key point,
22 because people who immigrate to this country do it because it's
23 the land of opportunity, and they expect us to teach the kids
24 that this is the land of opportunity and if they work hard they
25 can achieve what they want to.

1 And to teach them that they're oppressed I think is very
2 counterproductive to the pedagogy, and I think it's very
3 counterproductive to what the parents expect us to teach these
4 kids.

5 Q. Isn't it true that the same senator also asked this same
6 student whether she felt the course taught her to be
7 anti-American. Do you remember that?

8 A. I don't remember that, no.

9 MR. QUINN: Play it.

10 (Video playing.)

11 BY MR. QUINN:

12 Q. Do you recall witnessing that testimony?

13 A. I don't recall it, but I think -- first of all, I think
14 that it's directly contrary to the testimony of other teachers
15 who say that the program is very anti-American, and, secondly I
16 know Chevraunt very well, and he was adamantly opposed to this.
17 He's very liberal.

18 Q. He wasn't testifying, the young lady was testifying, right?

19 A. He worded the question to indicate what answer he was
20 looking for.

21 Q. Isn't it fair to say that the young lady testified that in
22 her experience -- and she's the one actually in the
23 courtroom -- in the classroom, not you. In her experience --

24 THE COURT: I don't think it's a fruitful inquiry or a
25 response for either of you to try to determine what's in the

1 that high school girl's mind.

2 MR. QUINN: We'll move on, Your Honor.

3 BY MR. QUINN:

4 Q. Now, you had determined, I believe you indicated earlier,
5 that the total elimination of the program was the only way to
6 get, in your view, the Tucson Unified School District to comply
7 with the statute, correct?

8 A. Yes.

9 Q. And before releasing your finding on December 30th, your
10 December 30th finding, you didn't discuss with the Tucson
11 Unified School District how the MAS program could be modified
12 to comply with the law, did you?

13 A. Correct.

14 Q. It never really crossed your mind that there might have
15 been ways to improve the MAS program. Correct?

16 A. I did not think so. I thought that -- I mean, I studied it
17 very closely, and I thought we're dealing with the Potemkin
18 Village problem again. These teachers were so ideological that
19 they would tell you whatever you wanted to hear as far as
20 reforming the curriculum and then behind closed doors they
21 would do whatever they wanted to do. I had a lot of evidence
22 of that. So I did not think that was fruitful.

23 John Huppenthal did. He tried to negotiate a change in the
24 curriculum. Those negotiations were fruitless, but he tried.
25 I thought he was foolish to try, but he tried. And in the

1 order that he issued, it did give them a chance to come into
2 compliance. And the TUSD school board made the decision not to
3 do that but to terminate the program by a vote of four-to-one.

4 Q. Do you recall in your crusade to get rid of the MAS program
5 that you had a press conference with Ms. Dugan at your side to
6 talk about a protest that was going on in support of the MAS
7 program?

8 A. I don't recall it.

9 MR. QUINN: Let's put up the clip.

10 (Video playing.)

11 BY MR. QUINN:

12 Q. Mr. Horne, you have no basis for knowing whether or not any
13 of the folks who were dressed in the brown uniforms were
14 actually MAS students, do you?

15 A. I don't know that, no.

16 Q. And, in fact, you're aware that the Brown-Shirt Movement is
17 a nationally recognized Hispanic group that has absolutely
18 nothing to do with the MAS; isn't that true?

19 A. I don't know if that's true or not. I know that what we
20 observe here is consistent with what I was told, that the
21 teachers told me that the other teachers were teaching, it's
22 consistent with the written materials I saw, and it appears to
23 me to be a slavish following of Che Guevara, who, as I told
24 you, contradicts every single American value that I think the
25 country believes in.

1 Q. Have you ever gone on the website to see what the
2 Brown-Shirt Movement was about?

3 A. No.

4 Q. So you have no idea whether it has anything to do with Che
5 Guevara?

6 A. It looks to me like Che Guevara. He wears those kinds of
7 costumes.

8 Q. Why, because of the brown suit?

9 A. I'm sorry?

10 Q. Because of the brown suit? I didn't see Che in any of the
11 pictures.

12 A. No, but they have a picture of Che in the classroom, and he
13 is dressed very similarly.

14 Q. Okay.

15 A. Maybe you think this is appropriate for them to be taught
16 in the public schools.

17 Q. They were out protesting. They weren't teaching anything
18 in the public school, were they? They were outside protesting
19 you. Correct?

20 A. I believe you, sure. There was a lot of that.

21 They had a play called the Killing of Tom Horne, where a
22 student wore a mask that was made up of my picture and he ended
23 up dead on the ground at the end of the play.

24 Q. I'll just leave that one be.

25 A. I didn't hear what you said. I have a film of that, by the

1 way.

2 Q. Some day we'll get to look at it.

3 A. Okay.

4 Q. Mr. Horne, this isn't the first time that you, as
5 superintendent, eliminated a program that largely benefited
6 Mexican-Americans; true?

7 A. That is so untrue, it reflects genius of untruth.

8 Q. Back in 2003 --

9 A. I have never eliminated any program that benefited
10 Mexican-Americans. The two programs I eliminated, this one and
11 the bilingual program, were done because I was very concerned
12 about that we improve the education of Mexican-Americans, and I
13 had a tremendous amount of academic support for the idea that
14 the English language learners needed to have English immersion.
15 A tremendous amount of support. To say that I eliminated two
16 programs that benefited Mexican-American students is an
17 absolute genius of untruth.

18 Q. You did, in fact, eliminate the bilingual education
19 program, right?

20 A. Yes.

21 Q. And most of the folks that were involved in that program
22 were of Hispanic origin, correct?

23 A. Most but not all. I actually cut off funding to the Window
24 Rock district because they were using English language funding
25 for Navajo immersion, and I cut off their funding. I had a big

1 fight with the governor about that, but I did it.

2 Q. But most of them were Hispanic, and most of those were
3 Mexican, correct?

4 A. Yes.

5 Q. Now, you recall --

6 A. And you'll remember, as I testified in my deposition,
7 there's a tremendous amount of academic support that the way to
8 improve these kids' academic performance was to immerse them in
9 English. A very extensive study, two very extensive studies,
10 supported that. And I spent more time as superintendent -- in
11 my eight years of superintendent of schools, I spent more time
12 on improving the academic performance of English language
13 learners than any other single thing I did.

14 Q. And there were also studies that disagreed with that?
15 Isn't that correct?

16 A. I assume there would have been, but this was a meta
17 study -- I gave you the reference to it -- that found that kids
18 in English immersion outperformed the kids that were bilingual
19 in their graduation rate, in their admission to college, a
20 three-quarters of a year advantage in academic progress, and an
21 admission to high status occupations, almost two-to-one
22 difference in favor of English immersion over bilingual.

23 Q. Do you remember appearing on a CNN program with Larry
24 Dobbs -- Lou Dobbs?

25 A. Yes.

1 Q. And one of the things that you were discussing with him was
2 the elimination of the bilingual program, right?

3 A. Probably, yeah.

4 MR. QUINN: Can we have XP023?

5 BY MR. QUINN:

6 Q. Up top on this, Mr. Dobbs is referring to a federal judge
7 has ordered Arizona to spend more money on teaching English to
8 students, et cetera. And then you go on. In response, you
9 say: It's good to be here. You're about to have the world's
10 toughest sheriff. That would be Sheriff Arpaio.

11 A. Yes.

12 Q. And now you have the world's toughest state superintendent
13 of schools. That would be you.

14 A. That would be me.

15 Q. And he asked you a series of questions, and you go down to
16 what you just had up.

17 Dobbs says: Well, I'm serious. The idea in Arizona, which
18 is borders -- I think he means state -- which has one of the
19 largest populations -- rather than say illegal, we'll say
20 newly-arrived Spanish-speaking students -- you don't have a
21 bilingual education in state schools.

22 And you say: Well, I eliminated it. They were doing it
23 before I took office. The voters actually passed it. And so
24 I'm the guy who eliminated bilingual education in Arizona.
25 Kids aren't taught in Spanish anymore, they're taught in

1 English. Correct?

2 A. Yes.

3 Q. And that was something you were very proud of.

4 A. Very proud of, and very well supported by the academic
5 literature. And the sole motive was to improve their academic
6 performance. To suggest that I did it because it benefited
7 bilingual Hispanic students is ridiculous.

8 Q. Now, there came a time, did there not, where the U.S.

9 Department of Justice opened an investigation with regard to
10 certain practices that the Arizona Department of Education was
11 involved in during your superintendency?

12 A. Yes.

13 Q. And that was a program where people from your department
14 were going into the classrooms where there were English
15 language learners and determining whether or not the teachers
16 had -- could speak, in your view, proper English, right?

17 A. Well, if they were fluent in English, that was a
18 requirement of no child -- that was a specific requirement of
19 No Child Left Behind, that teachers of English language
20 learners be fluent in English, and we followed that
21 requirement. And then another federal lawyer comes and
22 criticizes, which is, I suppose, typical of the federal
23 government.

24 Q. In fact, the teachers that were being monitored had been
25 approved by the State of Arizona in terms of their English

1 fluency, isn't that right?

2 A. Well, they could teach any other subject, but they weren't
3 fluent to teach English language learners.

4 Q. They were teaching students in the Arizona schools, and if
5 they were fluent enough to teach history, presumably they would
6 be fluent enough to teach English language learners, wouldn't
7 they?

8 A. Absolutely not. Absolutely not. If you're teaching
9 English-speaking kids history and you mispronounce a word,
10 they'll know that you mispronounced the word, or you have bad
11 grammar, they'll know you have bad grammar. Any informed
12 parent would want his child to learn English from someone who
13 is fluent in English. And it was a federal requirement.

14 MR. QUINN: Can we have up PX99. Specifically call up
15 the section in the middle.

16 BY MR. QUINN:

17 Q. This was a letter that was sent on August 26, 2011. That
18 was after your -- you had left office. Huppenthal was by then
19 the superintendent. Right?

20 A. Yes.

21 Q. But it refers to complaints that they had received while
22 you were in office, and specifically it says that the complaint
23 specifically alleged that ADE enforces a policy, procedure, or
24 practice that results in the removal of teachers from ELL --
25 that's English language learner classes -- based on the

1 determination that their spoken English is accented or
2 ungrammatical.

3 A. That's a completely false charge. There was never a
4 complaint about teachers being accented ever. Many teachers
5 taught English language learners who were accented. The
6 question was if they weren't fluent or if they were not
7 grammatical. There was never a problem with the teachers being
8 accented. This was a false charge.

9 Q. The U.S. Department of Justice and U.S. Department of
10 Education went on to say that the complainant further alleged
11 that the policy may also have unlawfully discriminated against
12 ELL students who previously had been taught by the teachers who
13 had been removed by the policy. Do you see that?

14 A. I think what you have here -- yeah, it was ridiculous.

15 Q. What was ridiculous was --

16 A. We were trying to be sure that the kids were taught by
17 teachers who would actually teach them English.

18 Q. They were concerned that what you were doing, what the ADE
19 was doing, was a violation of Title 7, right?

20 A. If you tell me. But they're wrong. They're wrong.

21 Q. Go to the next page. The government was looking into this
22 as a violation of Title 7.

23 A. The Department of Justice was, but the Department of
24 Education, the Federal Department of Education was enforcing
25 rules on a statute that required that teachers of English

1 language learners be fluent.

2 Q. Now, in fact, the department agreed to stop this monitoring
3 program, correct?

4 A. Huppenthal did. I never would have. I was prepared to
5 fight it in court.

6 Q. The concern here that they raise up on the screen, it says
7 that: ADE's on-site monitoring process included on-site visits
8 to LEAs.

9 What are LEAs? If you don't know, that's fine.

10 A. I'm sorry. What are you asking?

11 Q. It refers to LEAs. LEAs. In that section. I was just
12 asking what they were.

13 A. EA refers to education agency. The L, I forget.

14 Q. It goes on to say: To monitor the ELL teachers in English
15 fluency using subjective evaluations, examples of concerns
16 documented by ADE during their on-site classroom visits include
17 "the" being pronounced "da," "another" being pronounced
18 "anuder" and "lives here" pronounced "leeves here."

19 Do you see that?

20 A. That was never reported to me. And I will tell you that
21 the monitor's first step was always to provide tutoring to the
22 teachers, and whether or not they were moved out of English
23 language classes was up to those schools.

24 Q. In any event, based on the change in policy that Huppenthal
25 initiated, the Justice Department and the Education Department

1 determined to discontinue their investigation, correct?

2 A. I totally disagreed with Huppenthal. I thought it should
3 have been fought in court.

4 Q. But based on getting rid of the policy, they discontinued
5 the investigation, right?

6 A. Yeah.

7 Q. You also, did you not, actually institute an investigation
8 into another school district. The -- I believe it's pronounced
9 Ajo, but I may be wrong.

10 A. Yes.

11 Q. The school district, which borders on Mexico. Correct?

12 A. Yes. Because they were accepting students who were
13 actually residents of Mexico. If you're a resident of the
14 United States, you're entitled to be educated even if you're
15 undocumented, but if you're a resident of Mexico, your parents
16 pay taxes in Mexico, not in the United States, so you should be
17 going to Mexico schools or paying tuition.

18 Q. You were aware when you entered into this investigation
19 that some of these students were actually U.S. citizens,
20 weren't you?

21 A. Yeah, they were children of border guards, I think.

22 Q. So they were U.S. citizens.

23 A. Yeah, but still the law is -- incidentally, I didn't
24 initiate the investigation, it was another situation brought to
25 our attention. But the law is it is determined not by

1 citizenship and it is not determined by whether you're here
2 legally. It's only determined by whether you're a resident
3 with your parents. Because you're not paying taxes here. So
4 if you're going to come to an American school, you should be
5 paying tuition. The country to which you're paying taxes is
6 obligated to provide you with your education.

7 Q. Well, it's true, is it not, that residents of other states,
8 border states, are allowed to be taught in Arizona schools,
9 correct?

10 A. Only if there's --

11 Q. Utah. Nevada.

12 A. That's incorrect. If there's an agreement between Arizona
13 and a border state where we will exchange students, that's
14 permissible, but normally it's not permissible. Usually, if
15 there's an exchange, that's a mutually beneficial situation.

16 THE COURT: Mr. Quinn, let's take our noon recess.
17 It's after 12:00.

18 MR. QUINN: That's fine, Your Honor.

19 THE COURT: We'll take our noon recess. Mr. Horne,
20 you may step down.

21 I want to talk to the lawyers for just a minute. We'll
22 reconvene, by the way, at -- 12:15? -- 1:45. Let me ask the
23 lawyers to stay just a couple of minutes.

24 Just give me this. How much longer do you think you
25 have on your direct?

1 MR. QUINN: 40 minutes maybe.

2 THE COURT: And, Mr. Ellman, are you going to do the
3 cross?

4 MR. ELLMAN: I am.

5 THE COURT: Can you give me a guess?

6 MR. ELLMAN: I am going to say two hours.

7 THE COURT: All right. Okay. I just want to get a
8 handle of where we are and how slowly we're going. But we'll
9 reconvene then at -- what did I say? 1:45, right?

10 MR. QUINN: Okay.

11 THE COURT: We are at recess.

12 (A recess was taken from 12:12 p.m. to 1:52 p.m.)

13 THE COURT: Good afternoon. Let's all be seated.

14 MR. ELLMAN: Good afternoon, Your Honor.

15 MR. QUINN: I can proceed, Your Honor?

16 THE COURT: Yes, please, Mr. Quinn.

17 MR. QUINN: Thank you.

18 BY MR. QUINN:

19 Q. When we left off before the break, Mr. Horne, we were
20 talking about the Ajo School District issues.

21 A. Yes.

22 Q. And I believe you testified that you had concerns that
23 non-residents of Arizona were being taught in that school
24 district, right?

25 A. It was contrary to law, unless they paid tuition.

1 Q. And, in fact, you determined that you wanted to investigate
2 that issue, correct?

3 A. Only after we had received complaints. We had not
4 initiated it.

5 Q. And indeed, you sent investigators down to that school
6 district, did you not, to determine, as best you could, whether
7 or not the law was being violated?

8 A. I didn't have any investigators. I sent Doug Nick, who was
9 my federal liaison, actually, as -- to do it.

10 Q. Well, do you recall appearing again on CNN in connection
11 with this issue?

12 A. Yes, I think so.

13 Q. And this time, you were interviewed, I guess, by a stand-in
14 for Mr. Dobbs, somebody by the name of Kitty Pilgrim. Do you
15 recall that?

16 A. I'm not remembering, but, again, I believe you.

17 MR. QUINN: Could you bring up the portion of the CNN
18 transcript.

19 BY MR. QUINN:

20 Q. This was an interview that aired in May of 2005, I believe.
21 Does that sound about right?

22 A. Yes.

23 Q. And you were asked a series of questions, and you
24 responded: Actually, citizenship is not relevant. The
25 question is residence.

1 A. That's correct.

2 Q. If you're not a resident of Arizona, you can't attend the
3 schools funded by taxpayers. Then you go on to say: And so we
4 then conducted our own investigation. We got videotape of
5 students crossing the border. We got an investigator to visit
6 the trailer park and was told by an employee that they issue
7 the utility receipts, and that the county superintendent was
8 accepting them as proof of residency.

9 Do you see that?

10 A. Yes. When I referred -- when I used the word
11 "investigator," I was talking about Doug Nick.

12 Q. You told Ms. Pilgrim, and I am quoting now: "We then
13 conducted our own investigation." Correct?

14 A. Yes.

15 Q. And you had previously testified in this Court that you
16 weren't an investigative agency, right?

17 A. Yes, we're not.

18 Q. But in this particular case, you did conduct your own
19 investigation, didn't you?

20 A. Well, as I explained, we got a complaint. I sent Doug -- I
21 had no investigators. I sent Doug Nick down, who is the guy
22 that normally dealt with Congress for me.

23 Q. And he went to trailer parks and asked a lot of questions.
24 Is that right

25 A. Yes. And took videotapes.

1 Q. And eventually --

2 (Parties speaking simultaneously barely discernible.)

3 A. It was an --

4 Q. -- you --

5 A. -- for him, actually.

6 Q. I'm sorry. I don't want to cut you off.

7 Eventually you then -- you took steps to actually fine the
8 school district, did you not?

9 A. Yes.

10 Q. Now --

11 A. But that trailer park was empty, by the way. It was listed
12 as people's residences and it was empty.

13 Q. I'm sorry, I just -- I didn't hear you, sir.

14 A. I'm sorry. The trailer park was being listed as students'
15 residences and was empty. It was in Lukeville, which is on the
16 American side of the border, and the trailer park was making
17 money essentially selling utility receipts to people who did
18 not live there in order to try to establish residency for them.

19 Q. Okay. That's what your investigator was able to determine,
20 correct?

21 A. That's what Doug Nick found out, yeah.

22 Q. Now, during your campaign for Attorney General, you did, in
23 fact, campaign on the issue of the MAS studies program, didn't
24 you?

25 A. Well, I told you that I did speak about it, but that it

1 wasn't -- but I had -- I looked at my campaign literature,
2 which had 12 issues, and that wasn't one of my 12 issues. So
3 it wasn't a prominent issue but I did talk about it.

4 Q. Well, you had a website, didn't you, for your campaign, for
5 your Attorney General campaign?

6 A. Yes.

7 Q. Now, let me show you -- this is from actually the decision
8 of the Ninth Circuit in this case. That was the decision that
9 led to this trial.

10 A. Okay.

11 Q. Correct?

12 A. All right.

13 MR. QUINN: And could you call up the page.

14 BY MR. QUINN:

15 Q. And the Ninth Circuit noted during its decision -- okay.

16 It says: At the same time as Huppenthal ran for
17 superintendent, former Superintendent Horne ran for the office
18 of Arizona Attorney General. And then it goes on to say that:
19 On his Attorney General election website, he stated in a
20 video -- do you remember doing a video on this?

21 A. I don't remember it, no.

22 Q. He stated in the video, quote: "I fought hard to get the
23 legislature to pass a law so that I could put a stop to the
24 Raza Studies Program."

25 That would be the Bill 2281, right?

1 A. Yeah. I don't know I actually said that. You have that in
2 brackets there.

3 Q. The -- well, that's what the Ninth Circuit put in.

4 A. Oh, okay.

5 Q. Okay. I didn't do that.

6 A. Okay.

7 Q. Okay. Then it goes on and says: And as the Attorney
8 General, I will give legal aid to the Department of Education
9 to be sure that we do put a stop to it.

10 Do you see that?

11 A. Yeah, I did that. In fact, I argued this case at the
12 District Court level to this Judge.

13 Q. I recall. You argued summary judgment.

14 A. Yes.

15 Q. So in your video you only referred to the Raza Studies
16 Program, right? You didn't refer to the ethnic studies program
17 for African-Americans, for Asian-Americans, or for Native
18 Americans, right, just the La Raza program.

19 A. I don't know. That's in brackets, so I really don't know.

20 Q. Well, that's what the Ninth Circuit put in.

21 A. Yes.

22 Q. So that was their understanding.

23 A. I understand.

24 Q. They obviously saw the video. Correct?

25 A. Yes.

1 Q. Now, when you became Attorney General, you took some
2 other -- before we get to that, during your campaign for
3 Attorney General, as you indicated, you campaigned on several
4 different issues. We now know one of them was stopping
5 La Raza. But you also campaigned on other issues that related
6 to Mexican-American or Hispanic-related issues.

7 Let me show you an excerpt from one of your campaign
8 speeches.

9 (Video playing.)

10 Q. That was the campaign speech you gave when you were running
11 for Attorney General?

12 A. Yes.

13 Q. And you were kind of ahead of your time about building the
14 wall, weren't you?

15 A. I favored building the wall.

16 Q. And you also mentioned in your speech a reference to the
17 ethnic studies program, right?

18 A. Yes.

19 Q. And that was a reference to the legislation that you had
20 passed relating to ethnic studies, right?

21 A. Yes.

22 Q. These were all things that you thought were great
23 accomplishments, right?

24 A. I thought they were accomplishments. As I mentioned, it
25 wasn't one of my top 12.

1 Q. And in 2014, you ran for reelection as Attorney General,
2 right?

3 A. Yes.

4 Q. And you had television ads, correct?

5 A. Yes, uh-huh.

6 Q. And let me show you one of those ads.

7 (Video playing.)

8 Q. Now, that picture, that's the Sheriff Arpaio who recently
9 was cited for contempt for illegally profiling Hispanics?

10 A. Is this guilt by association?

11 Q. I'm just trying to identify, is -- that's the same sheriff,
12 isn't it?

13 A. It is, and you know that. But I am not responsible for
14 what he does.

15 Q. He was backing you, wasn't he?

16 A. Yes.

17 Q. Now, when you became Attorney General, you took a number of
18 other steps that related to immigration-related issues. In
19 fact, at one point you sued the County of Maricopa, did you
20 not?

21 A. Are you talking about the community college?

22 Q. Yes.

23 A. Yes.

24 Q. And that lawsuit had to do with a federal program, did it
25 not?

1 A. It was an issue of free tuition, I think, for undocumented
2 students.

3 Q. And had to do with a program that is called the Deferred
4 Action for Childhood Arrivals Program.

5 A. Yes.

6 Q. DACA. Right?

7 A. Yes.

8 Q. And you were suing Maricopa County because they had a
9 policy of charging in-state tuition to immigrants who were
10 granted deferred action status under DACA, right?

11 A. I did. I should say, as Attorney General, there were a
12 number of times I took action to enforce the law, even if I did
13 not agree with the policy. I wanted the kids to be educated.
14 I did not agree with the policy, but I thought I was obligated
15 to enforce the law.

16 Q. And you sued the County of Maricopa, right? And the case
17 was -- and you also knew that the federal government considers
18 the recipients of DACA to have a lawful status here in the
19 United States, right?

20 A. For certain purposes, yeah.

21 Q. And that case --

22 A. In fact, on the issue of driver's licenses, I refused to
23 bring a lawsuit because I thought DACA did allow them to have
24 driver's licenses. The Governor's Office had to hire their own
25 lawyer on that one, and that created a lot of tension between

1 us, actually.

2 Q. Yeah.

3 A. But on this one --

4 Q. Your DACA case got thrown out, right?

5 A. Yeah. But on this one -- wait a second. My DACA case?

6 No, it's been --

7 Q. The case that we were just referring to. The federal judge
8 dismissed your complaint, didn't he, saying that this was a
9 federal issue, not a state issue?

10 A. I thought this was a state court decision that was just
11 recently reversed by the Arizona Court of Appeals.

12 Q. That may be the case. That may be the case.

13 A. So the position was affirmed when -- one of the reasons I
14 proceeded with that was the people in that part of my office
15 were adamant that it was really a violation of the law. I was
16 very reluctant to do it because I wanted the kids to get
17 educated. But they were adamant that that really was the law,
18 and so I felt compelled by that.

19 Q. Okay.

20 A. And the Court of Appeals -- the Court of Appeals backed
21 them up.

22 Q. There also came a time when, in the desegregation case, the
23 Fisher Mendoza case, you put in an objection to a unitary
24 status plan?

25 A. Yes.

1 Q. And what you were objecting to was the fact that the Court
2 had ordered the Tucson School District to come up with a new
3 program that was culturally relevant, right?

4 MR. ELLMAN: I want to object to the relevance of this
5 line of questioning, Your Honor.

6 THE COURT: Well, it's -- well, I think it's, at this
7 point, at least marginally relevant, so I'll permit the
8 questioning for at least a little while longer.

9 You may answer.

10 A. Yeah, I did. The other side argued that that was not
11 reinstating the MAS Program, that it was just culturally
12 relevant classes. I still thought it was a bad idea.

13 BY MR. QUINN:

14 Q. But your concern, in filing the objection, was that
15 implementing this curriculum would -- and I think I am quoting
16 now: Prompt the return of the discredited Mexican-American
17 Studies Program. Correct?

18 A. That was my concern. The other side argued that it would
19 not.

20 Q. During the course of your campaign for Attorney General in
21 2014, do you recall that you gave a speech at the -- at Oro
22 Valley, which is not too far from here?

23 A. Yeah.

24 Q. And during that speech --

25 MR. QUINN: Why don't you put up the section.

1 BY MR. QUINN:

2 Q. This is an article that is actually reporting on your
3 speech. And it starts with: Horne vows to continue crusade
4 versus ethnic studies. And it states that: During a town hall
5 on border security and immigration issues, Arizona Attorney
6 General Tom Horne told the crowd that he would continue to
7 battle against Tucson Unified School District's
8 Mexican-American Studies Program.

9 Do you see that?

10 A. Yes.

11 Q. And that was what you told the crowd, right?

12 A. Yes.

13 Q. And then you went on to say, quote: "I went on a crusade
14 against it and destroyed the entire program," closed quote.

15 A. Yeah. I did --

16 Q. -- Horne said proudly.

17 A. I did use the word "crusade," and I will tell you my whole
18 life I've been a crusade against racism in all of its forms and
19 manifestations. And that's -- and I think this profoundly is a
20 race-based program, which teaches kids to value what race they
21 were born into, rather than their individual qualities.

22 Q. And you're talking about the Mexican-American Studies
23 Program.

24 A. Yes.

25 Q. Then you went on to say that: Now they're trying to revive

1 it -- and I presume that's a reference to the Fisher Mendoza
2 unitary status report -- but as Attorney General, I am
3 fighting. Right?

4 A. Well, it could be a reference to this case.

5 Q. And also to this case.

6 A. Yeah.

7 Q. Okay.

8 A. And here I am.

9 Q. Yes, you are. Finally, on the last page of this article,
10 in the middle of the page, it states that -- bear with me one
11 second. The article states, finally, that: Both Horne and
12 Huppenthal's previous campaigns relied heavily, heavily, on
13 their fight against the MAS Program. And that's a true
14 statement, isn't it?

15 A. Well, I don't agree with that. I told you already that I
16 looked at my website and I looked at my campaign literature and
17 I had 12 achievements that I emphasized and this was not one of
18 them.

19 Q. And one of the things that was on the website was your
20 pledge, your crusade to stop La Raza, wasn't it?

21 A. Well, a different part of the website, but where I listed
22 my 12 issues, my 12 major accomplishments, that was not there.
23 So it wasn't -- when you say major issue, it wasn't one of my
24 top 12. It was an issue.

25 Q. It was an issue?

1 A. Yeah.

2 Q. To stop La Raza?

3 A. Absolutely.

4 MR. QUINN: Nothing further.

5 THE COURT: All right. Ready for cross?

6 MR. ELLMAN: Yes, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. ELLMAN:

9 Q. Mr. Horne, where were you born?

10 A. In Montreal, Canada.

11 Q. So are you, yourself, an immigrant?

12 A. I am.

13 Q. How long have you lived in Arizona?

14 A. Since '71.

15 Q. You've expressed during your direct testimony your personal
16 views on the subject of race, but I'd like to ask you what's
17 behind your view.

18 A. Well, I regard racism as the biggest evil in human history
19 and in contemporary human life, and my very strongly felt
20 philosophy, which I believe is the philosophy of this country,
21 is that we're all individuals and what matters is what we know,
22 what we can do and what is our character and not what race
23 we've happen to have been born into. That's as deep a belief
24 as one can have.

25 And you asked me what lay behind it. I suppose a lot of

1 things. Part of it I will say is personal. My parents were
2 Polish-Jewish refugees from Hitler. All of their considerable
3 extended families were killed in the Holocaust. So I know on
4 an almost firsthand basis how evil racism can be.

5 My parents also were I would say eastern European
6 intellectuals. When they came to the United States and they
7 saw people expressing racial prejudice, they thought only the
8 most vulgar people would have thoughts like that. And so I
9 didn't grow up with an atmosphere of racism as some other
10 people do, although most overcome it.

11 I was also a bookworm as a child, and in literature it is
12 prominent what I called the Romeo and Juliet theme, that tribal
13 chauvinism can squelch individual expression, and my study of
14 American history tells me this is a very important value in the
15 United States.

16 The United States is the only country that is not based on
17 background. If you say you're French, your ancestors probably
18 were French for thousands of years, or English or German or any
19 other country, but in the United States we're all from
20 someplace, and what binds us is our ideals, and one of those
21 ideals is what I expressed, we're all individuals.

22 The Fourteenth Amendment says that each individual is
23 entitled to equal protection, not each group is entitled to
24 equal protection. I think I agreed with Justice Harlan's
25 dissent in Plessy, which expressed this thought very

1 eloquently.

2 I mentioned earlier John Kennedy's statement, "Race plays
3 no proper role in American life or law," and this is among my
4 deepest beliefs. So when the opposing attorney uses the word
5 "crusade," my whole life has been a crusade against racism.

6 I served on a school board for 24 years, implemented
7 prejudice reduction programs. I had a very active civil rights
8 group in my Attorney General's Office, and this is something I
9 believe very deeply.

10 Q. You mentioned that you were present when Martin Luther
11 King, Jr. gave his "I have a dream speech"?

12 A. Yeah, I participated in that march. It was -- in contrast
13 to what the opposing attorney was talking about -- the rudeness
14 in this case -- was a very positive experience. President
15 Kennedy told the federal government to cooperate. Driving down
16 from New York to Washington, all the toll gates were open so we
17 could drive down without stopping. The federal people were
18 helping with security and all kinds -- help in all kinds of
19 things. And it was a very positive expression, it wasn't the
20 kind of rudeness that we're talking about here.

21 And, of course, in that speech, he gave the ultimate
22 expression of what I believe is the American ideal, that we're
23 entitled to be -- our children entitled to be judged by the
24 content of their characters and not the title -- the color of
25 their skins. And I think that the public school system plays a

1 very important role, in that it draws kids in from different
2 backgrounds and it's supposed to teach them to treat each other
3 as individuals and not what race they were born into. So when
4 I encounter a program that does just the opposite of that, I
5 think that's a problem.

6 Q. We've been expressing this in terms of racism, but I assume
7 your views also apply with respect to ethnicities?

8 A. Yes.

9 Q. Have you ever been to Mexico?

10 A. Many times. I had a very close relationship with the
11 Department of Education of Sonora, which is our neighboring
12 state, the neighboring state of Mexico. I was with them many
13 times in Mexico. They were at my home many times. I played
14 the piano for them. We had a good relationship.

15 As Attorney General, I -- we had a program in Mexico. They
16 had a system of trials that was a written system, not an oral.
17 They didn't have oral trials. It was all written reports.
18 They're moving toward oral trials as a way of dealing with
19 corruption and drug cartels, and they don't have lawyers who
20 are used to that.

21 So I instituted a program to train Mexican state attorneys
22 general and their staffs in conducting oral trials. I did that
23 out of our budget. We didn't charge anything. And so I
24 developed good relations with the attorneys general of those
25 states, and the Attorney General of Sonora gave me a plaque,

1 which hangs on my wall, thanking me for my help to them.

2 Q. Before your official visits to Mexico and before
3 delegations from Mexico visited you here, did you travel to
4 Mexico for pleasure?

5 A. Many times. But once I became Attorney General, I was told
6 it wouldn't be safe because of my work against the drug
7 cartels.

8 Q. Do you speak Spanish?

9 A. Well, when we were implementing English immersion, I was
10 arguing that the kids can learn English, so I thought I should
11 reciprocate and learn Spanish, which I taught myself, and I
12 learned enough to do all my interviews in Univision and
13 Telemundo in Spanish.

14 I've read just about every Mexican history book in the
15 Phoenix Public Library in Spanish, and I've made Mexico history
16 one of my hobbies, and it's a way of reading Spanish books.

17 Q. You referred earlier to the time you served on a school
18 board. That was the Paradise Valley School District, wasn't
19 it?

20 A. Yeah. It has a funny name, but it's Arizona's third
21 largest district.

22 Q. That doesn't correlate to the town of Paradise Valley,
23 correct?

24 A. No.

25 Q. Large geographically?

1 A. Yeah, it's northeast Phoenix.

2 Q. Would you describe it as diverse?

3 A. Yeah. I think about a third of our schools were Title I
4 schools.

5 Q. Did you introduce antiracism programs when you were on that
6 board?

7 A. Yeah, I mentioned that. We -- I insisted that we have
8 prejudice reduction programs in our schools, and we did.

9 Q. Did you do that in connection with ADL?

10 A. Unfortunately, yes. But Bill Strauss wasn't the executive
11 director at that time.

12 Q. But that -- and that's not the only thing you did when you
13 were serving on the school board in terms of antiracism,
14 correct?

15 A. Yeah.

16 Q. And you mentioned a plaque presented to you by English for
17 the Children. Do you remember that?

18 A. Yeah. That's one of the plaques on my wall. It has a
19 picture of a bunch of Hispanic students and their parents. It
20 was an organization called English for the Children, and it
21 expressed thanks to me for what I did for the education of
22 Hispanic kids.

23 Q. When you were at the legislature, did you promote education
24 funding? Did you seek to increase it or seek to reduce it or
25 neither?

1 A. Well, I started a group of pro education Republicans which
2 met in the basement, so we were called the basement group, and
3 I was the organizer of that, and we held out on the budget.
4 They tried to pass the budget with Republican votes only, and
5 we wouldn't go on the budget unless we got a substantial
6 increases in the education budget, which we did, and that
7 caused some people to accuse me of being a RINO, which is a
8 Republican in name only.

9 Q. Did your commitment to education have anything to do with
10 the race or ethnicity of students?

11 A. No. As I said, I consider race to be utterly irrelevant to
12 anything.

13 Q. Let's fast forward a little bit to the time when you
14 learned of what MEChA was.

15 A. Yes.

16 Q. You said you went to MEChA website, is that right?

17 A. Yes.

18 Q. And you mentioned -- I think you said "University of
19 Tucson." Did you mean University of Arizona?

20 A. Yes. I didn't realize I said "University of Tucson."

21 Q. You took quotes from those websites in your open letter to
22 Tucson and in your findings, did you not?

23 A. Yes. The quotes that I used were actually all from the
24 MEChA website, but I understand -- but I've seen the University
25 of Arizona website that has similar quotes.

1 Q. I am putting up on the overhead the current website from
2 the University of Arizona MEChA organization, and I'd like you
3 to look at the paragraph under the caption: El Plan Espiritual
4 de Aztlán.

5 Do you see on the second line it refers to the brutal
6 gringo invasion of our territories?

7 A. Yes.

8 Q. And then in the line below that, it refers to the land of
9 Aztlán?

10 A. Yes.

11 Q. Do you know what Aztlán refers to?

12 A. Yes. Aztlán refers to the Southwest United States that was
13 won in the war against Mexico in 1845 to 1848. It includes
14 California, Arizona, New Mexico, parts of Colorado, Utah, a few
15 other states.

16 Q. If you look at the line below that, do you see that it
17 refers to reclaiming the land of their birth, consecrating the
18 determination of our people of the sun, declaring the call of
19 their blood as their power, responsibility, and inevitable
20 destiny?

21 A. Yes. And I saw many references in the materials that I
22 reviewed after I started this investigation to the idea that
23 Aztlán should not be part of the United States, that it should
24 either be part of Mexico or independent, and that they keep
25 referring to the artificial borders, which are the borders of

1 the United States.

2 Q. I'd like for you to look at the paragraph right below that
3 as well, the second sentence: Aztlán belongs to those who
4 plant the seeds, water the fields and gather the crops, and not
5 the foreign European. We do not recognize capricious frontiers
6 on the bronze continent.

7 Have I read that correctly?

8 A. Yeah.

9 Q. Do you remember seeing that when you went to the website?

10 A. Yeah, very vividly. And, you know, they talk about the
11 foreign Europeans. I remember reading a conference of ethnic
12 studies type programs, where somebody gave a speech in which he
13 said that if the Europeans couldn't learn the native language,
14 they should go back to Europe where they come from, which means
15 he apparently didn't realize that Spanish is a European
16 language.

17 Q. And then, finally, if you look at the paragraph below it,
18 which begins "Brotherhood unites us," the sentence that begins
19 on the third line: With our heart in our hands and our hands
20 in the soil, we declare the independence of our Mestizo nation.
21 We are a bronze people with a bronze culture.

22 Do you remember reading that at the time?

23 A. I do. And this is what I say is the exact opposite of what
24 I believe the American philosophy, which is we are individual
25 people. This is a purely racist appeal.

1 Q. Is that ultimately what informed your view about what was
2 happening in TUSD when you could observe a librarian wearing a
3 M.E.Ch.A. T-shirt.

4 A. Retrospectively. At the time I saw it, I didn't know what
5 it was, but people started to tell me about it, and then I
6 looked it up, and then I thought back, that this is not the
7 support -- the sort of philosophy that should be advertised on
8 the T-shirt of a staff member.

9 Q. That's one source, but were you aware of other sources of
10 information about MEChA as well? Did you review any other
11 material review, such as speeches, conference materials,
12 anything like that?

13 A. I think with respect to M.E.Ch.A, I relied mainly on the
14 website.

15 Q. On the day that Margaret Garcia Dugan gave her speech, you
16 testified that -- I am not sure you testified to this. I want
17 to ask you about it, though. Were you approached by some
18 students?

19 A. Yeah, I haven't testified to it actually. As we were
20 leaving, three African-American girls came up to us, addressed
21 themselves to Margaret and thanked her with a degree of
22 enthusiasm which is beyond the normal enthusiasm of polite
23 students. And the -- what was clear to me was that the
24 atmosphere of Mexican nationalism in the school was as
25 offensive to them as African-Americans as it was to other

1 people.

2 Q. Do you recall what they actually said to you and Margaret?

3 A. It was just -- it was just -- they were just thanking her.

4 It was the way they were thanking her that struck me.

5 Q. Did you talk to any of the protesting students who walked
6 out of the auditorium?

7 A. Yes, I did testify to that earlier.

8 Q. So did they ask you questions?

9 A. No. We just had a dialogue. It was a friendly dialogue.
10 But it was clear, you know, that was one of my sources, that it
11 was the Raza studies students who did the protest, and I think
12 I described some of the -- some of the dialogue I had with them
13 at the time.

14 Q. What is your understanding of what "La Raza" means?

15 A. "La Raza" means "the race." I've checked -- I started out
16 with my own Spanish and English dictionary. I've checked a
17 number of other dictionaries. They all say "La Raza" means the
18 race. When they say it doesn't mean "the race," it means "the
19 people," they're being deceptive. The word for "the people" is
20 "la gente." "La Raza" means "the race," and it's described in
21 that way in every dictionary that I've checked, and as well as
22 checking online.

23 Q. Did you ever pressure the Tucson Unified School District to
24 drop "Raza" from the name of the Mexican-American Studies
25 Program?

1 A. No, I never discussed it with them at all.

2 Q. With respect to the actions you took regarding the
3 Mexican-American Studies Program, did that have anything to do
4 with the fact that most of the students in the classroom were
5 Mexican-Americans?

6 A. No. No.

7 Q. So you did not take action because the students were
8 primarily Hispanic, correct?

9 A. No, absolutely not. It was the racist atmosphere that was
10 being promulgated as reported to me by the teachers and as I
11 read in the written materials that was upsetting to me. As I
12 have said a couple of times, to me, racist ethnicity is
13 irrelevant. It doesn't tell you anything about the individual,
14 and I think to teach them that it does is contrary
15 to American -- very important American values.

16 Q. You mentioned in your direct testimony a number of teachers
17 who spoke to you about what was going on in the
18 Mexican-American Studies Program, correct?

19 A. Yes.

20 Q. I'd like to talk a little bit about what they told you. My
21 first question is you did include some statements and
22 information from them in your findings that you issued on
23 January 1st, 2011, correct?

24 A. That was my primary source. My secondary source were the
25 written materials. My primary source were the teachers.

1 Q. This is from Exhibit 525. Let me start with Paragraph E.
2 This is Hector Ayala. Did you know Mr. Ayala?

3 A. He was a good friend of Margaret Dugan, and so I knew of
4 him, but I think I may have met him for the first time when I
5 went down. Maybe not. I may have met him at an earlier trip.
6 I made many visits to Tucson Unified School District, most of
7 them positive.

8 Q. You've referred already in your testimony to a couple of
9 these statements, that he was accused by the director of Raza
10 studies at that time of being the white man's agent and he
11 reported that students who took the Mexican-American Studies
12 Program informed him that they were taught not to fall for the
13 white man's traps. Is that accurate?

14 A. I just want to point out, Hector is himself, was born in
15 Mexico and is himself a Mexican immigrant. He is also a superb
16 teacher of English literature and he has high academic
17 standards. So he was as shocked at what was going on as I was.

18 Q. Did you have any reason to doubt the veracity of what
19 Hector Ayala was telling you?

20 A. He had no motive not to tell me the truth.

21 If I am not mistaken, three of the of five teachers quoting
22 my findings were either from Mexico or of Mexican background.

23 Q. John Ward was one of those teachers, correct?

24 A. Yes.

25 Q. And despite his name, he is Hispanic?

1 A. Correct.

2 Q. Now, this is from Page 5, and there is some overlap between
3 what Doug MacEachern wrote and what John Ward also individually
4 reported to you, correct?

5 A. Yeah, it was essentially the same. But in my findings, I
6 prefer to cite another source if I can, but I knew this myself
7 personally.

8 Q. Okay. I want to show you the language here under the
9 caption: "Ward has written further on this subject." And I
10 believe that's from the MacEachern article, is that right?

11 A. Yes, but I also heard it directly from Ward.

12 Q. And he's complaining that TUSD uses taxpayer-funded
13 programs to indoctrinate students based primarily on ethnic
14 divisions in the belief there is a war against Latino culture
15 perpetrated by a white racist capitalist system.

16 Do you remember reading that passage at the time?

17 A. Yeah. It's exactly the opposite of what the school should
18 be doing. They should -- they should teach about oppression,
19 they should have radical views and conservative views, they
20 should have controversy, but they shouldn't be indoctrinating
21 students and turning them against the country that their
22 parents brought them to because this is the land of
23 opportunity.

24 Q. If you look at the next paragraph, which begins with the
25 word "cause," I want you to look at the third line at a

1 sentence that begins: A climate of outright intimidation has
2 stopped many from standing up to this group for fear of being
3 labeled racists.

4 Do you see that?

5 A. Yes. That's also very disturbing.

6 Q. Is that what you were referring to earlier when you said
7 that some teachers felt free to speak with you because they
8 were retiring, but others you felt were not forthcoming?

9 A. Yeah. I had that directly from Hector and others.

10 Q. And then, finally, the very next paragraph, effect --

11 A. When he says later this is an anti-intellectual atmosphere
12 to intimidate people against speaking out against the
13 indoctrination of students.

14 Q. You agree with that, correct?

15 A. Well, I believe him. He said it, and I believe him.

16 Q. Did you have any reason the not to believe what John Ward
17 was telling you?

18 A. No. I had confirmation from other teachers, and I had
19 substantial confirmation from the written materials that I
20 reviewed, and these were the materials that TUSD chose to send
21 me after I asked for those materials.

22 Q. And then finally, there is a paragraph that begins with the
23 word "effect," still on Page 5, about two-thirds of the way
24 down, that states: Impressionable youth in TUSD have literally
25 been reprogramed to believe that there is a concerted effort on

1 the part of a white power structure to suppress them and
2 relegate them to a second-class existence. This fomented
3 resentment further encourages them to express their
4 dissatisfaction through the iconoclastic behavior we see, their
5 contempt for all authority outside of their ethnic community,
6 and their total lack of identification with a political
7 heritage of this country.

8 Have I read that correctly?

9 A. Yeah. And the problem is multiple. I mean, there's the
10 obvious racist element there. But in addition to that, there's
11 the pedagogical element. These kids should be taught that if
12 they work hard they can achieve their dreams, to motivate them
13 to do that.

14 If they're told that it's useless because they're going to
15 be oppressed or that's an excuse, that is a -- works against
16 their motivation, and I think is pedagogically terrible.

17 Q. The reference to expressing dissatisfaction through
18 iconoclastic behavior and contempt for authority outside of
19 their ethnic community, do you think that the behavior you
20 witnessed during Margaret Garcia Dugan's speech was an example
21 of that phenomenon?

22 A. Yes. And I've had several other experiences like that.

23 Q. Can you describe what those were.

24 A. Well, I mentioned the killing of Tom Horne.

25 At one time at the state capital, I was actually doing an

1 interview in Spanish in Univision. And some people who were
2 supporters of this program spotted me and they surrounded me
3 and they followed me to my car, harassing me.

4 And there were also some -- when I came down to argue this
5 case to Tucson, a lot of students on the street, I think,
6 acting in what appeared to be an intimidating way.

7 All of these things, in my opinion, teach them the wrong
8 way to persuade people of something. If you want to persuade
9 people of something, the thing to do is to be logical and
10 reasonable and persuasive. And getting in people's faces is a
11 way to antagonize them. And so I think these students were
12 being badly prepared for adulthood.

13 Q. You testified earlier that another of the teachers was Ron
14 Silverman. Do you remember that?

15 A. Yes.

16 Q. Do you remember him reporting to you directly in e-mail --
17 I'm just going to quote it: I have been called racist by
18 fellow Tucson High teachers, members of the Ethnic Studies
19 Department, and students enrolled in the department's classes.
20 Do you remember that?

21 A. I do. And he said that the teachers actually encouraged
22 the students to harass him in that way.

23 Q. There's a --

24 A. You can imagine the atmosphere in the school when that
25 happens.

1 Q. So I assume that was another point of fact that concerned
2 you about what was happening.

3 A. Yeah. And it's one of -- a lot of evidence that the --
4 this was the ethnic studies program that promoted the behavior
5 that I've described. And if you look down further, he says, on
6 Teacher Number 2 -- that's Prew Howie, I guess.

7 Q. Yeah. I'm going to ask you about her, as well. Teacher
8 Number 2 is Prew Howie, right?

9 A. Yes.

10 Q. Okay. And what you learned from Prew Howie in an e-mail,
11 which was sent to Margaret Garcia Dugan, appears on this
12 document after Caption B, Teacher Number 2, quote: "I heard
13 him --" referring to an ethnic studies teacher "-- tell his
14 students that the U of A is a racist organization because only
15 12 percent of students are Latino, and they do not support the
16 Latin students there. I heard him tell students that they need
17 to go to college so they can gain the power to take back the
18 stolen land and give it back to Mexico."

19 A. Yeah. This is consistent with the MEChA website. And it's
20 consistent with other materials that I read, some of which I
21 quoted in these findings. And it's certainly unpatriotic to
22 say that a part of our country should be taken away from the
23 country.

24 Q. At the bottom of that paragraph, she stated: He personally
25 told me that he teaches his students that Republicans hate

1 Latinos. Do you remember hearing about that?

2 A. Yes.

3 Q. Was that disturbing to you?

4 A. Well, it's more stereotyping.

5 Q. In the time you were investigating TUSD, I believe you said
6 you requested materials from the district?

7 A. Yes.

8 Q. And initially they refused to provide them?

9 A. Yes.

10 Q. And went to the newspapers and you continued to request the
11 materials.

12 A. Yes.

13 Q. And eventually --

14 A. They did supply them.

15 Q. Okay. Do you remember specifically what you asked for?

16 A. Just the materials for the courses.

17 Q. Okay. From the Mexican-American Studies courses?

18 A. Yes.

19 Q. Okay. Did you review all of the materials they sent you,
20 or did you just selectively review them?

21 A. I reviewed everything -- I read some of the books and I
22 read -- with other books, I read either most or all of them.

23 Q. What about Pedagogy of the Oppressed?

24 A. I read the Pedagogy of the Oppressed from cover to cover.

25 Q. Do you remember if it contained any illustrations?

1 A. Yeah. In the hardback version -- I noticed that your
2 colleague has the soft -- paperback version. That doesn't have
3 it, but the hardback version has pictures in the back, and
4 they're pictures of classes in the Soviet Union as an example
5 of how to do things.

6 Q. Did you receive A Field Guide for Achieving Equity in
7 School?

8 A. Yeah. That was one of the more disturbing things.

9 Q. I'm going to refer you now to Page 9 of Exhibit 525, the
10 middle paragraph. That's the material we were just referring
11 to, correct?

12 A. Yes.

13 Q. Okay. So among the statements in this classroom material
14 for Mexican-American Studies Program that you received directly
15 from the Tucson Unified School District, it states everything
16 in that paragraph, and that includes statements such as --
17 let's start at Line 2: We often hear people referred to as
18 being privileged, which usually is a comment pertaining to the
19 individual's financial or economic status. In courageous
20 conversation, however, privilege takes on a different meaning.
21 It refers to the amount of melanin in a person's skin, hair,
22 and eyes. This is followed by a table -- now, this is your
23 description, I presume, is that correct?

24 A. Yes.

25 Q. In parentheses? This is followed by a table which

1 promulgates racial stereotypes by detailing the differences
2 between, quote, "white individualism and colored group
3 collectivism."

4 Was that disturbing to you?

5 A. Well, this is --

6 THE WITNESS: Your Honor, this is the most vulgar kind
7 of racism you can imagine. They are stereotyping people
8 according to their race. They're saying these are the
9 qualities of colored people and these are the qualities of
10 white people. White people dominate the conversation, white
11 people interrupt a lot. And colored people have all good
12 qualities, white people have all bad qualities.

13 And, you know, one of the things I believe in is logic, and
14 if it's wrong for white people to be prejudiced, it's wrong for
15 anybody to be prejudiced. This is as vulgar an expression of
16 racism and stereotyping as one can have, to actually have a
17 table showing what are the qualities of people of this race and
18 what are the qualities of people of the other race.

19 And this is being given to impressionable teenagers, which,
20 if they -- if there is no contradiction of it, they will have
21 this racist view for their whole life.

22 BY MR. ELLMAN:

23 Q. You also refer to the textbook Occupied America. Do you
24 remember that?

25 A. Yes. That was one of the textbooks supplied to me. They

1 supplied me Occupied America and the Mexican-American Heritage
2 and the Pedagogy of the Oppressed.

3 Q. Okay. And that work contains a segment of a speech by José
4 Angel Gutiérrez. Do you know who that was, by the way?

5 A. Well, he's described in the book as a leader.

6 Q. And the speech quoted from said -- and I'm pointed right to
7 the middle of this page: We are fed up. We are going to move
8 to do away with the injustices to the Chicano. And if the
9 gringo doesn't get out of the way, we will stampede over him.
10 Gutiérrez attacked the gringo establishment angrily at a press
11 conference and called upon Chicanos to kill the gringo, which
12 meant to end white control over Mexicans.

13 A. Yeah. This is a good example of distortion of language,
14 which goes in two exactly opposite directions. On the one
15 hand, a leader says, kill the gringo, and the book says, that
16 doesn't mean kill the gringo, it means end white control.
17 Well, he didn't say, end white control. He said, kill the
18 gringo. That was the language.

19 In the other direction somebody makes a statement that he
20 does not intend to be racist, and that, on the face of it, is
21 not racist. And what they do is they fabricate code words
22 which enable them to accuse anybody of being racist because
23 they say, even though he didn't say something racist, he was
24 really using what -- their invented code words.

25 So if I say I observed the students being rude, which was

1 an observation that I had, they say "rude" is a code word, and
2 therefore I am being racist, which is a despicable smear on my
3 character and an illustration of the distortion of language,
4 which goes in both directions.

5 To "kill the gringo" means something different. A
6 statement that is not racist in any way in intent or in its
7 ordinary meaning is invented to be racist by fabricating a code
8 word philosophy.

9 Q. Did you take this quotation out of context?

10 A. No. You can -- I would challenge the other side to find
11 any context that changes the meaning of any quotation that I've
12 given.

13 Q. Does that apply to all of the quotations?

14 A. Yes, my challenge stands for all of my quotation.

15 Q. And I'm not going to try and cover anything, but this is
16 from Page 8 of the same document. There is an essay in one of
17 the materials sent to you from TUSD called Aztlán, the Lost
18 Land. I'm indicating here just below the middle of the page.

19 This reads -- this passage from that material reads: But
20 to Chicanos, the southwest is more than just their place of
21 residence. It is their homeland, their lost homeland, to be
22 precise, the conquered northern half of the Mexican nation. In
23 the mind of the Chicanos, this immense territory remains their
24 patrimony. Mexicans are indigenous to and disposed (sic) of
25 the region. Chicanos view southwest --

1 THE COURT: That was "dispossessed."

2 MR. ELLMAN: Oh.

3 BY MR. ELLMAN:

4 Q. Dispossessed of the region. Chicanos view the southwest as
5 an extension of Mexico and Latin America, a Mexican region
6 spreading beyond what is regarded as an artificial boundary.

7 Have I quoted that correctly?

8 A. Yeah.

9 Q. And is that the artificial boundary you referred to
10 earlier?

11 A. This is one of many examples where they referred to our
12 borders as an artificial boundary, and where the clear message
13 is that -- well, you saw one of the teachers had said she heard
14 somebody say: Go to college so that you can get Aztlán back
15 for Mexico.

16 Q. Did you also receive a text entitled Critical Race Theory?

17 A. Yeah. That's the -- of all the things, that's the most
18 shocking of all of it.

19 Q. Why is that? What content in that shocks you?

20 A. All right. Well let me -- now, this I received from them
21 as one of their textbooks.

22 THE WITNESS: Here's a quote, Your Honor: Unlike
23 traditional civil rights, which embraces incrementalism and
24 step-by-step progress, critical race theory questions the very
25 foundation of the liberal order, the very foundation of liberal

1 order, including equality theory, legal reasoning -- they're
2 against legal reasoning -- enlightened rationalism -- which I'd
3 like to get back to -- and neutral principles of constitutional
4 law. They're against neutral principles of constitutional law.

5 Now, when they say they're against enlightenment and
6 rationalism, what they're saying is something you find in
7 extremist movements, which is emotions are everything,
8 reasoning is nothing. And I view that as one of the principle
9 problems we have in the world today.

10 BY MR. ELLMAN:

11 Q. The materials that we've been quoting from in the last few
12 minutes contain material you considered disturbing. But did
13 you also receive materials that you felt had appropriate,
14 balanced content?

15 A. No. And these were all chosen by TUSD. I would have been
16 all for -- I would have been all for controversial statements
17 if it was on both sides.

18 Q. Well, you were asked on direct examination how you could
19 know how these materials were used if you never visited the
20 classrooms.

21 A. Yes.

22 Q. Did the materials themselves, received from TUSD, inform
23 your judgment on that matter?

24 A. Well, there were several things. Number one, I got these
25 from TUSD. I asked them for the materials. Of course, they

1 sent it. They didn't send anything that showed balance. It
2 was all one direction. It was all the propagandism of -- that
3 the administrative law judge referred to about things that
4 would be fine to teach in a balanced context, but that were
5 propagandized all in one direction.

6 Secondly, I had the reports of the teachers about what was
7 being taught in the classroom, which was confirmed by the
8 written materials. You had John Ward saying they teach the
9 kids to be against western civilization. We just saw a
10 sentence -- I can't imagine anything more against civilization
11 than to say, I'm against enlightenment, rationalism, the rule
12 of law, and constitutional reasoning.

13 And so everything fit together. So it wasn't an out of
14 context thing where I jumped to a conclusion at all. The
15 things were consistent.

16 Q. And you did not express this until you wrote the open
17 letter to Tucson, correct?

18 A. Just a year later. So I had a year to investigate.

19 Q. Did you -- I know your investigation involved more than
20 reviewing materials, but did you rely on materials from any
21 source other than the Tucson Unified School District?

22 A. No, I did not.

23 Q. So you did not rely on information from a woman named Laura
24 Leighton?

25 A. I did not.

1 Q. Did Laura Leighton have any impact on the findings you
2 reached at the end of December of 2010?

3 A. No. I preferred to rely on what I got from the school
4 district itself, which I considered, in effect, an admission.

5 Q. Would you have investigated similar complaints about
6 non-Hispanic ethnic studies courses if you had received such
7 complaints?

8 A. Absolutely. And it would have been very possible. Based
9 on what I've read and have firsthand accounts of what's
10 happened, for example, in some African-American Studies
11 Programs at universities, they're equally as shocking as this.

12 It's pure historical accident that this group of radical
13 teachers formed around one or two leaders in this program. It
14 could have easily been in the African-American Studies Program
15 or in the Native American Studies Program.

16 Q. You were asked about a Paulo Freire Freedom School. I only
17 have one question on that topic, which is: Was your decision
18 not to investigate the Paulo Freire Freedom School related in
19 any way to the ethnicity or race of the students attending that
20 school?

21 A. I didn't know what race or ethnicity they were. I didn't
22 make a conscious decision. It never came to my attention,
23 other than in that hearing from the legislator and then again
24 in this case. But the essential fact is, I didn't get any
25 complaints, and I was responding to complaints. I was not

1 initiating, I was responding to complaints.

2 Q. There was a reference to a report prepared by

3 Dr. Franciosi. Do you remember that?

4 A. Yes.

5 Q. Okay. Did you ask him to conduct that study?

6 A. Yes.

7 Q. And why did you ask him to do that?

8 A. Well, because there was a newspaper story about a report
9 that had come out from the head of the MAS program, or at that
10 time the Raza studies program, claiming that it was
11 academically beneficial. I had seen a report earlier. I can't
12 remember who did it, but I had received a report earlier that
13 said it was of no value academically. And so I asked
14 Dr. Franciosi to check, and he did a study and found that it
15 was incorrect. And, as I mentioned earlier, I have everlasting
16 admiration for the TUSD administrator who braved the
17 intimidation that we've read about and said publicly that he
18 thought Dr. Franciosi was correct.

19 Q. Do you believe Dr. Franciosi performed his study in a
20 professional manner?

21 A. Oh, yeah. He was very professional in everything he did.

22 Q. Do you believe he did so objectively?

23 A. Yes.

24 Q. Did you tell him or imply what conclusions he should reach?

25 A. No. And if I had, he would have quit.

1 Q. Then, finally, did you accept the conclusions in his report
2 as valid?

3 A. Yes.

4 Q. And did you rely on them in -- among the other
5 considerations for your actions in this case?

6 A. Yeah.

7 Q. When you were a state legislator, was there pervasive
8 anti-Mexican sentiment in that body?

9 A. I didn't encounter any anti-Mexican sentiment. People were
10 concerned about illegal immigration.

11 Q. Did that remain a concern in the 2006 to 2011 time frame

12 A. Yes.

13 THE WITNESS: The times were different then than they
14 are now, Your Honor. We had 200,000 people a year coming
15 across the Tucson sector of the border.

16 The federal government had properly staffed and constructed
17 the San Diego part of the border and reduced illegal
18 immigration there by 94 percent, so the number was about 7,000
19 a year coming across there. But in the Tucson sector, it was
20 200,000 a year. And that was disturbing to the -- I think the
21 whole state.

22 The person who ran against me for Attorney General in the
23 general election in 2010, after I defeated Andrew Thomas, had
24 started out against 2010, and when she went to meetings and
25 found out that even Democrats were in favor of 2010, she said

1 in the debate against me that the reason she was against it was
2 it wasn't tough enough.

3 So that had no credibility, but that illustrates the way
4 the population was reacting to the fact the federal government
5 had done its job in San Diego and was not doing its job in the
6 Tucson sector, and they wanted the state to do something
7 because the federal government was not doing something. That
8 was a perfectly reasonable conclusion to draw.

9 I think we should have a wall. San Diego has a terrific
10 wall. You can drive for miles and miles and miles. It's a
11 very high fence that nobody could get over.

12 But it had nothing to do with anti-Mexican sentiment. I
13 never heard anybody say, make a racist remark or say anything
14 that I viewed as critical of Mexicans or Mexican-Americans.

15 Q. Well, what about the 2010 time frame when you were lobbying
16 in support of HB2281, would you say there was pervasive
17 anti-Mexican sentiment in the legislature at that point?

18 A. No. I had to persuade people. It's failed twice. The
19 Republicans that were friends of mine, like Michele Reagan, who
20 is now the secretary of state, who at first was not for it. I
21 had to do -- I had to show people what we're looking at here,
22 make them realize how toxic this program was. I would say to
23 the contrary. The sentiment had to be overcome at the
24 legislature. It wasn't a preexisting sentiment.

25 Q. In the course of lobbying for the bill, communicating with

1 legislators and even testifying in two committee hearings, did
2 any legislator express animosity towards Mexican-Americans?

3 A. Never.

4 You know what, it's a terrible conflation really to be
5 against something that is going against the country's laws and
6 the federal government is ignoring and the problem is massive.
7 It's not true anymore, but it was then, 200,000 a year. And to
8 convert that into racial prejudice, that's completely
9 illogical.

10 Q. I want to restate your answer and ask you if it's accurate.
11 Do you feel that people are conflating anti-illegal immigration
12 with anti-Mexican?

13 A. Well, clearly.

14 And the other thing is, conflating illegal immigration with
15 being against immigration. I myself am an immigrant. I've
16 given many speeches about the contributions of immigrants to
17 this country. I compiled a great set of statistics showing
18 that immigrants contribute far in excess of their ratio to the
19 American share of Nobel prizes, of patents, of
20 entrepreneurship. One-half of the start-ups that are worth a
21 billion dollars or more were started by immigrants.

22 So I am a strong advocate of the contribution. That's why
23 America is great, because people with initiative left their
24 countries and came here. I am a strong advocate of
25 immigration. But I am also a strong advocate of respect for

1 law.

2 When I held the office of Attorney General where my
3 responsibility was to enforce the law. And the concern was the
4 law breaking, the concern was not ethnic. That's not to say
5 there weren't some prejudiced people in the public, but I don't
6 think that was true with the majority of the public, and
7 certainly not true of the legislators, and I knew them all.

8 Q. Did you design HB2281 to apply only to Mexican-Americans?

9 A. No. It applies to all ethnic studies.

10 Q. As far as you know, were all of the rules of procedure
11 followed in passing HB2281?

12 A. Yes.

13 Q. Was there anything unusual about the lobbying process?

14 A. No.

15 Q. Did HB2281 go to public hearings?

16 A. Yeah, there definitely was public hearings. And the fact
17 that I was lobbying as hard as I did was not that unusual for
18 that particular issue. I was -- I lobbied for a lot of bills
19 at the legislature pertaining to education, one of which was to
20 require that students pass an objective test to graduate from
21 high school, which the two preceding school superintendents had
22 refused to enforce, even though they put it into place -- the
23 first one put into place. Had to fight at the legislature
24 every year to keep it because parents complained that their
25 kids weren't graduating because they weren't passing the test,

1 and I said tell the kids -- sorry -- tell them to tell their
2 kids to study, and then they will.

3 And then after I left, Huppenthal eliminated it. I was the
4 only superintendent who enforced that law to say the high
5 school diploma has meaning, and if you have a high school
6 diploma, you have passed a test that proves that you have
7 knowledge and skills, and that was one of the reasons I
8 described myself as the toughest superintendent in the country.

9 But what I was trying to say, so I had to lobby hard for
10 that. There were newspaper reporters who said that the
11 legislature should give me an office down there because I was
12 there a lot.

13 Q. Was there a hidden agenda in lobbying for passage of HB2281
14 related to race or ethnicity?

15 A. No.

16 Q. Was it a pretext from what were really discriminatory
17 motives?

18 A. No. I'm an extreme antiracist. I fight against racism
19 wherever I find it, and I have my whole life.

20 Q. Was HB2281 intended to impose the legislature's narrow
21 partisan viewpoints on Arizona schools?

22 A. No. As a person who wrote it, I was an open advocate of
23 controversy in the schools. I thought they should get both
24 sides. They should learn about communism. They should learn
25 about Marxism. They should learn conservative theories. There

1 should be a clash of ideas in the classroom so that they would
2 become independent thinkers, and that was the spirit with which
3 I wrote the law.

4 Q. The bill and the manner in which you drafted it, does it
5 give the Superintendent of Public Instruction an ability to
6 dictate what a school must teach?

7 A. Well, no. The bill prevented creating resentment against
8 other races when the school should be doing exactly the
9 opposite. It did not specify what they should teach.

10 Now, as the superintendent, I had that power from other
11 statutes to set the standards, and, in doing so, I insisted
12 that they teach the contributions of minority cultures to all
13 students so they would appreciate each other.

14 Q. Those standards remain embedded in Arizona state standards
15 as far as you know, correct?

16 A. As far as I know, yes.

17 Q. And what grades do those apply to?

18 A. Kindergarten through 12th grade.

19 Q. I believe you said that this process began in 2006, and
20 over the course of the next year, you obtained many of the
21 materials and the statements that you later relied on for your
22 finding.

23 A. Yes.

24 Q. Over the course of the next four years, did you ever have
25 any indication that the content or manner of instruction in the

1 Mexican-American Studies Program was changing?

2 A. No, there was no indication, and I continued to
3 investigate. I read transcripts of conferences that were held
4 and where I came up with some of the other quotations that I
5 mentioned here today.

6 Q. Did you have any reason to believe that the instruction was
7 going to be different in January 2011 than it was in January
8 2010 or January 2009?

9 A. No. All the indications were that it had gone on for a
10 very long time and that it stayed that way and it would stay
11 that way.

12 Q. In the finding itself, you concluded that the program had
13 to be terminated. Can't a program simply come into compliance
14 with A.R.S. 15-112?

15 A. Well, John Huppenthal thought so. I did not think so
16 because I -- it was my view that, based on a lot of information
17 I had about what the teachers were doing in the classroom, they
18 would agree to whatever curriculum you said they should agree
19 to, and they would do what they wanted in the classroom and it
20 was beyond reform. That was my view.

21 Q. Is that what you mean when you say Potemkin Village?

22 A. Yes.

23 Q. I had to Google it. So can you explain what Potemkin
24 Village means.

25 A. Sure. In the 1780s, Catherine the Great conquered Crimea,

1 and the area was utterly devastated. The Russians were
2 bragging to other countries that they were rebuilding it. And
3 so she took a tour on a raft in the Dnieper River to see the
4 rebuilding.

5 Well, there had been no rebuilding. So Potemkin, who was
6 one of her lovers and was in charge of the rebuilding,
7 developed movable villages, movable prosperous villages. So
8 the raft would come to a village, and they would have this
9 movable -- it would look like a prosperous village, which it
10 wasn't. And as soon as the raft went on down the river, they
11 would rush the movable village to the next village. And behind
12 these movable villages was utter devastation and poverty and
13 misery.

14 So a Potemkin Village is a show to indicate one thing when
15 in fact it's the fact opposite. And that's what I believe
16 happened with Cambium, that's what I believe would happen if I
17 visited, and that's why I felt that this was -- that if John
18 Huppenthal made a deal, which he tried very hard to do, I
19 thought that's what would happen, they would agree to a
20 curriculum and they wouldn't abide by it.

21 Then in his findings, he gave them a chance to reform it
22 and they made the decision not to. They voted four-to-one to
23 eliminate the program.

24 Q. The way that you designed HB2281, what are a school
25 district's options after the department finds them in violation

1 of 15-112?

2 A. They have a right to an adversary hearing before an
3 administrative law judge, which they had, and he made the
4 findings, and they're exactly the same as my view, which is
5 it's perfectly proper to teach about oppression and to teach
6 controversial things, but it's -- but he found that it was a
7 propagandistic effort, it wasn't teaching them different
8 things, and that that was -- that's exactly my view.

9 Q. I think you've testified to your views on English
10 immersion. Was there a particular study you -- a particular
11 study that stands out you relied on for your view?

12 A. Yes. It was a study by a man named Guzman. It was in a
13 periodical called Education Next, which is published by
14 Harvard, Stanford, and two other research institutions. It was
15 a meta study. They had I think four criteria, and on every one
16 of the four criteria the students in English immersion greatly
17 outperformed the students in bilingual; including, as I think I
18 mentioned earlier, in access to high status occupations, a
19 difference of almost two-to-one. And in academic achievement,
20 the kids were ahead. English immersion were ahead three
21 quarters of the year more than the kids who were in bilingual
22 education.

23 We duplicated the study by reviewing 70,000 files in the
24 Department of Education. We came to the same conclusion. We
25 actually showed the kids after 6th grade were over a year ahead

1 if they had been in immersion as opposed to bilingual
2 education.

3 Q. Is English immersion intended to detach children from their
4 cultural identity?

5 A. No. It's intended for them to learn English. You know, a
6 judge that's a friend of mine told me she had a witness in
7 her -- in her courtroom who needed a translator, and that
8 witness was born in the United States. So the bilingual
9 programs were failing to teach the kids English.

10 In English immersion, you want the kids to become
11 proficient in English.

12 Once they become proficient in English, then if they want
13 to do bilingual, I'm all for it. Because -- I'm all for
14 bilingualism. Somebody who is -- there are a lot of studies
15 showing someone who is bilingual does better academically than
16 someone who has one language. But you have to start with
17 English immersion, and then you can move to the bilingualism.

18 Q. So English immersion is not intended to eliminate the use
19 of Spanish or any other language.

20 A. No. I think once the student becomes proficient in
21 English, I'm all for them learning academic Spanish.

22 Q. Does your view on English immersion apply only to
23 Spanish-speaking students?

24 A. No. I mentioned earlier the Navajo situation. I also had
25 complaints from Navajos because the kids were asked -- to

1 determine whether they would be tested for English language
2 classes, they were asked four questions, one of which was is
3 there anybody in your household who speaks a language other
4 than English? And a lot of these Navajo kids had, like, a
5 grandmother who spoke Navajo, so they said yes.

6 So then they tested them. The kids failed to test, even
7 though English was their only language, for academic reasons.
8 And then these kids were put in classes designed for Spanish
9 speakers.

10 This was pedagogically awful, and they complained to me,
11 and so I changed it to one question, and that question was:
12 What's your primary language?

13 The federal government came along, just as with the issue
14 of fluency, and complained. I was ready to fight it, and when
15 John Huppenthal became superintendent he gave in to them.

16 Q. Let me ask you about the statute you just referred to.
17 What I am putting up for your display -- I think you can see
18 the citation. It's 20 USC Section 62886. I want to take you
19 to Subsection C, captioned "Teacher English Fluency."

20 Is this the statute you were referring to?

21 A. Yes.

22 Q. And, to be clear, Arizona -- I should say Arizona schools
23 were eligible entities receiving subgrants from the federal
24 government, is that correct?

25 A. Yes.

1 Q. And this requires them to certify that teachers in any
2 language instruction, educational program for English learners
3 that is or will be funded under this part are fluent in English
4 and any other language used for instruction, including having
5 written and oral communications skills.

6 A. Yeah. The federal government -- the Department of
7 Education required us to do this, and then the Justice
8 Department came along and criticized us for it. I was prepared
9 to fight it. John Huppenthal gave in.

10 Q. Setting aside the indoctrination, as you described it, and
11 problems you found with TUSD's Raza studies program, do you
12 believe ethnic studies are a good idea?

13 A. No. I believe the historical and the proper function of
14 the public schools are to take kids in from different
15 backgrounds and teach them to treat each other as individuals
16 and value each other as individuals and not pay attention to
17 what race they happen to have been born into.

18 Q. Now, putting up for your review the prefatory section to
19 the statute we've been discussing, and that's A.R.S. 15-111,
20 Declaration of Policy, and it states:

21 The legislature finds and declares that public school
22 pupils should be taught to treat and value each other as
23 individuals and not be taught to resent or hate other races or
24 classes of people.

25 Did you draft that?

1 A. I wrote that, yes.

2 Q. Is that the true intent behind A.R.S. Section 15-112?

3 A. Yes.

4 Q. Does eliminating ethnic studies mean that Latino kids will
5 not learn who Che Guevara was or that African-American kids
6 will not learn about African slavery?

7 A. No. I think they should learn about those things, but they
8 should learn them in an academic context, not in a
9 propagandistic context.

10 Q. Is there a philosophical or pedagogical basis for that?

11 A. Yeah. The way for children or students to think critically
12 is to be presented with contrasting ideas and for them to have
13 to think through those ideas. I think that's a very important
14 part of education.

15 Q. So is it fair to say then that if students are taught one
16 concept, it's healthy for them to hear what the dissent from
17 that is.

18 A. It's necessary if you're educating kids as opposed to
19 propagandizing them.

20 Q. Finally, I want to show you some excerpts from the
21 plaintiffs' pretrial proposed findings of fact and conclusions
22 of law, which has been filed as document number 428 in this
23 case. Read along with me, if you will.

24 The first one I have isolated here says: Without any
25 evidence or follow-up inquiry, Horne made two on-the-spot

1 race-based assumptions about the protesting students. One,
2 that they were all part of the MAS program, and, two, that they
3 did not learn this rudeness at home but from their MAS
4 teachers.

5 Can you tell me if that is accurate and truthful?

6 A. No, it is not accurate. I did not make any assumptions.

7 At the time my conclusions were a result of later
8 investigations. And to say that -- students, like all the
9 other students I had observed throughout the state, learned to
10 be polite at home but learned this from these MAS teachers. To
11 say that that's race-based is a slander. That is -- that is an
12 observation that has absolutely nothing to do with race. And I
13 think it's despicable.

14 Q. I'd like you to focus on the second segment now, which is
15 from paragraph 35 of the document. It states in the first
16 sentence: In his effort to discredit the Mexican-American
17 Studies Program, Horne supposedly reviewed selective materials
18 from certain Mexican-American Studies classes.

19 Is that accurate?

20 A. No. I reviewed all the materials that were sent to me by
21 TUSD. I did not choose them, TUSD chose them, and I declined
22 to review materials that were sent to me by third parties. I
23 reviewed only what was sent to me by TUSD.

24 Q. Now, look at the next segment. This is from paragraph 40.
25 It states: Horne gave the citizens of Tucson a biased and

1 unbalanced account of the Mexican-American Studies Program that
2 also contained numerous mischaracterizations.

3 Do you agree with that characterization of what you did?

4 A. That was all -- everything in my report were quotations
5 either from written materials or from what teachers reported.
6 I put them in quotation marks. And I haven't been shown,
7 despite a challenge, a single instance in which context would
8 change the meaning of what I said or what the quotation I gave
9 said.

10 Q. The next segment is from paragraph 43. It states: Horne
11 ignored the Democratic choice of the citizens of Tucson and
12 used his official position as superintendent to force his own
13 personal agenda.

14 Is that accurate?

15 A. No, it's not. First of all, the choice of the citizens of
16 Tucson depended on the time, because, as I mentioned, there was
17 a time when the school board could have reformed the program,
18 and they voted four-to-one to end it. And that had in part to
19 do with Stedman and possibly some other school board members
20 visiting the classes and being shocked by what they said.

21 Now, I don't have any ability to force my personal agenda
22 on anybody, certainly not in this context. What I have the
23 ability to do is to tell the public what I observe, and I think
24 that's my obligation as a transparent public official.

25 So at the end of my direct examination when the opposing

1 counsel said did I refer to this in my campaign, yeah, I
2 thought it was an obligation to inform people of what I
3 observed and what I thought was a proper role for the schools
4 in a democratic society.

5 The sovereignty rests with the people. It rests with the
6 people of the United States. It rests with the people of
7 Arizona through their elected representatives. Local
8 government is an instrumentality of the state. The local
9 government has that power if the state chooses to give it. The
10 true democratic choice rests with the sovereign people, and
11 that's either the United States in some contexts or, in this
12 context, that's the State of Arizona.

13 So it's the MAS people who are showing contempt for the
14 Democratic choice of the people of Arizona, through their
15 elected representatives. And they're the sovereign, not the
16 local school board, which, as I say, at some points was on one
17 side of the issue and on some points was on the other side of
18 the issue. And all I could do was report my observations and
19 use my powers of persuasion. I was to not have the power to
20 force anything on anybody, nor did I desire to do so.

21 Q. The next paragraph is number 45, and it states: The
22 prevailing anti-Mexican-American sentiment in the legislature
23 manifested itself in various anti-immigrant and
24 anti-Mexican-American ballot initiatives and proposed
25 legislation.

1 Do you agree with that statement?

2 A. No, it's all false. There was no anti-Mexican-American
3 sentiment, there was no anti-Mexican-American ballot
4 initiative, and there was no anti-Mexican-American legislation
5 as it reflects the conflation I talked about earlier between
6 feeling concern that the federal government was ignoring its
7 responsibility and we were getting 200,000 people a year across
8 the border when San Diego was getting 7,000. And that has
9 absolutely nothing to do with being anti-Mexican-American. In
10 fact, the polls showed many Mexican-Americans were supportive
11 of legislation to curtail illegal immigration.

12 Q. Paragraph 48 states: Horne, motivated by the rudeness he
13 saw during the silent protest, sought to enact a new statute
14 exclusively designed to get rid of the Mexican-American Studies
15 Program.

16 Is that true?

17 A. No. The protest was -- incidentally, I think in one of the
18 findings they said the students put their hands in the air.
19 They didn't put their hands in the air. It was a fist, what
20 you see from totalitarian movements, the raised fist.

21 But it wasn't the rudeness that motivated me to do the
22 statute, it was a year of investigation after I observed that,
23 and after people started telling me what was going on, after I
24 saw the written materials, and then that was publicized. So
25 teachers came to me. It was a very long, involved, intensive

1 process that led me to my conclusions. It was not a
2 seat-of-the-pants reaction to one incident.

3 Q. Paragraph 50 states: Horne's effort to enact legislation
4 targeting the Mexican-American Studies Program, like many other
5 pieces of legislation aimed at Mexican-Americans, used racial
6 code words.

7 So let me start with that. Were you using racial code
8 words?

9 A. I never used a racial code word in my entire life.

10 Q. Then it says: Examples of these code words included
11 portraying Mexican-Americans as rude, unpatriotic, un-American,
12 lazy, dirty, illegal, welfare cheats, and communists.

13 A. I've never used any of those words except "rude," and
14 that's what I observed. It had nothing to do with racial
15 motivation. I observed students acting in a rude way, and I
16 thought it was pedagogically bad that the teachers had
17 instituted that with them.

18 Q. It goes on to say: Other code words included the misuse of
19 terms or ideologies such as "Aztlán," "La Raza," and
20 "M.E.Ch.A." Understood correctly, "Aztlán" is a deeply rooted
21 phrase in Mexican-American history to refer to the southwest of
22 the United States, as a way of providing a sense of continuity
23 to contemporary Mexican-American communities in that region.

24 Do you, first of all, agree with that characterization of
25 what "Aztlán" means?

1 A. No. We've shown the Court several quotations from their
2 own literature, which indicates that they want Aztlán to secede
3 from the United States.

4 Q. And then it states --

5 A. As well as reports by teachers saying that they want the
6 kids to go to college for the purpose of leading a struggle to
7 get Aztlán back for Mexico.

8 Q. Then it states: La Raza, meaning "the people," when used
9 by Mexican-Americans, conveys pride in Mexican-American
10 history.

11 Do you agree with that characterization of what La Raza
12 means?

13 A. No, that's a whitewash. The word "La Raza" means "the
14 race." Every dictionary says that. The word for "the people"
15 is "la gente." And the National Council of La Raza was in the
16 newspaper just two days ago, decided to change their name
17 because they are not fooling anybody with that term.

18 And I think anyone who would belong to an organization
19 called "the race," imagine if a white person belonged to an
20 organization called "the race," you'd be pretty condemnatory of
21 that person, you wouldn't want them around you.

22 Q. Your views on racism, incidentally, don't depend on whose
23 ox is getting gored, so to speak.

24 A. That wouldn't be logical. If racism is wrong, it's wrong
25 for everybody.

1 Q. Finally, it says: M.E.Ch.A, a student movement that
2 started in the 1960s during the anti-Vietnam era is a student
3 organization with chapters in schools and colleges nationwide
4 and with diverse membership. Horne's scare mongering about
5 MEChA conflated its current widely accepted structure with that
6 of its original founders some 50 years ago.

7 Do you agree with that statement?

8 A. I can prove that that's false because the internet didn't
9 exist 50 years ago. I got my information from their own
10 website. The University of Arizona MEChA website is very
11 current, and they use the same language.

12 Q. Paragraph 51 of the document states: As extensively
13 chronicled by Dr. Stephen Pitti, a Mexican-American historian
14 at Yale, the use of code words, mischaracterizations and
15 outdated information reflects willful ignorance, racial
16 paternalism and animus against Mexican-Americans.

17 Do you agree with that statement?

18 A. No. If you have a statement that is not intended to be
19 racist and on the face of it the language is not racist, to
20 fabricate a code word in order to label someone as racist when
21 they're not is a very deceptive practice.

22 Q. Second to the last paragraph, number 70, same document. On
23 December 30, 2010, before the statute was even in effect, Horne
24 issued a finding that the Mexican-American Studies Program
25 violated A.R.S. Section 15-112.

1 Can you explain what actually happened in that time frame?

2 A. Well, I mean, I made an error. I issued it on
3 December 30th, and I corrected the error by reissuing it on
4 January 1st.

5 Q. Then, finally, paragraph 73. Horne also cited complaints
6 from former and present teachers, though some of these
7 complaints were not about the Mexican-American Studies Program;
8 rather, they were about other ethnic studies programs in TUSD.

9 Is that accurate?

10 A. No. They've cited a letter I received from a student in an
11 African-American studies program, but that was not a complaint
12 from a parent. So the only other thing they have is a brief
13 reference by Prew Howie about somebody telling her that a
14 non-Indian shouldn't be teaching the Indian studies program,
15 which I agree is a wrongful statement. But, as I said, the
16 federal government precluded me from having anything to do with
17 the Indian studies program.

18 Every single complaint -- and there were many, many of
19 them. Not only from teachers which we talked about here,
20 parents who testified -- it was in the newspaper, parents
21 testified at school board meetings about their kids being
22 racialized in that way or being scorned in school because they
23 weren't Mexican-Americans. Multiple complaints. They were all
24 about that one program.

25 I did not receive a single complaint about any other

1 program. If I had received complaints about another program, I
2 would have proceeded against it. The choice of that program
3 among those ethnic studies programs is purely a matter of
4 historical accident.

5 That happens to be the program where you have got this
6 group of radical teachers. It could have easily happened -- it
7 could have as easily happened with the African-American Studies
8 programs. For purely historical accidental reasons, it didn't.
9 I took action against the program where I had the complaints
10 and where I had the evidence, but I wrote the legislation to
11 apply to all, and my philosophical belief was a hope that
12 eventually they would all be eliminated and students would be
13 taught together in classrooms where students of different
14 backgrounds were brought together, taught about the
15 contributions of different cultures, which I required in my
16 standards, and taught to treat each other as individuals.

17 THE COURT: Mr. Ellman, is this as good of a place as
18 any to take our recess?

19 MR. ELLMAN: I have two more questions. Whatever you
20 prefer.

21 THE COURT: Then you're through?

22 MR. ELLMAN: Should I finish?

23 THE COURT: Then you'll finish with your cross. Let's
24 do that. It will be a natural place to break.

25 BY MR. ELLMAN:

1 Q. All right. In your experience with the way that Arizona
2 agencies and boards are set up, is it typical for a board to
3 have enforcement authority, or is that usually delegated to the
4 executive?

5 A. It can be either one. The legislature -- I had been a
6 legislator. I knew all 90 people in the legislature, and so
7 there were -- during those years they tended to favor me and
8 give more power to the superintendent and less to the state
9 board. Historically, the board handled all policy issues.
10 Legislation that passed while I was there gave me that power in
11 many situations. So it could be either one.

12 As the bill was passed, it could be either one. The board
13 could do it or the superintendent could do it. Either way it
14 was subject to an adversary proceeding before an administrative
15 law judge, which then was subject to appeal by the courts.

16 Q. Finally, was racial animus or viewpoint discrimination any
17 part of your motivation in drafting, lobbying for, or enforcing
18 HB2281?

19 A. No, racial animus is that which I fought against my whole
20 life. I consider it to be the biggest evil in human history,
21 and I have always done everything I can to fight against racial
22 animus. And it was the racial animus that I encountered that
23 made me feel it was important to use my influence to see to it
24 that schools teach the kids to treat each other as individuals
25 and not on the basis of what race they were born into.

1 MR. ELLMAN: I have no further questions, Your Honor.

2 THE COURT: All right. Then at this point we'll take
3 our afternoon recess. All right. Come back for the cross.
4 We'll stand at recess.

5 (A recess was taken from 3:31 p.m. to 3:41 p.m.)

6 THE COURT: All right. Let's all be seated.

7 MR. QUINN: May I proceed, Your Honor?

8 THE COURT: This is redirect, right?

9 MR. QUINN: I guess it's redirect. Recross. I'm not
10 even sure what we've determined it. But it's "re."

11 THE COURT: Go ahead.

12 REDIRECT EXAMINATION

13 BY MR. QUINN:

14 Q. In response to one of the questions that counsel asked you
15 relating to ethnic studies programs, you raised a concern, I
16 think, and you used the term "tribal chauvinism." Do you
17 recall that?

18 A. Yes. I was referring to literature. That was what I
19 called the Romeo and Juliet theme in literature, is that tribal
20 chauvinism tends to suppress individual expression.

21 Q. And that was one of your concerns in connection with the
22 MAS program, that it would tend to impact individual --
23 individual --

24 A. Expression.

25 Q. -- expression.

1 A. Yeah, I didn't use the word "tribal" in that context. I
2 used it in the literature context. Yes, it does suppress
3 individuals.

4 Q. You're not saying that the MAS program was tribal
5 chauvinism, right?

6 A. Not tribal chauvinism, but it was ethnic chauvinism.

7 Q. Ethnic chauvinism?

8 A. Yes.

9 Q. Now, you testified about the fact that you go to Mexico a
10 lot and you have no -- you've had people from Mexico come to
11 your home and you played the piano.

12 Is that some form of some of my best friends are Mexicans?

13 A. No. I utterly reject that proposition.

14 Q. With regard to M.E.Ch.A, which we've discussed a lot, and
15 you've looked at the website, you don't actually have any
16 evidence that the things that were on the MEChA website were
17 actually taught in MAS classrooms, do you?

18 A. Well, they weren't -- no. There were some themes that I
19 quoted during my testimony. What do they call -- brave racial
20 discussions, materials that were in the MAS program, are
21 similar to some of the MEChA themes.

22 Q. Right.

23 A. Right.

24 Q. But my question was not what materials that you've reviewed
25 but whether or not you had any personal knowledge that things

1 that were on the MEChA website were actually taught in MAS
2 classrooms. You don't, do you?

3 A. I have no personal knowledge of anything other than what I
4 am told by teachers or what I read in materials.

5 Q. And you also mentioned again the librarian T-shirt.

6 A. Yeah.

7 Q. And your belief that somehow meant that it was tied to the
8 MAS program, right?

9 A. Well, I didn't say that the T-shirt was tied to the MAS
10 Program. I thought the T-shirt -- with respect to
11 retroactively -- I didn't appreciate it at the time, but
12 retroactively I thought the T-shirt indicated something very
13 negative about the atmosphere at the school. I don't think I
14 ever said anything about her being directly involved in the MAS
15 Program.

16 Q. Well, if she had been wearing a gay rights T-shirt, would
17 you have just assumed that she was gay?

18 A. No.

19 Q. And what about if she was wearing a Black Lives Matter
20 T-shirt, would you assume that she was pro-blacks?

21 A. No. And I didn't assume that she was Hispanic either. I
22 felt that she was advertising an organization whose literature
23 I have quoted in Court is horrendous. Now, that is not
24 something I made up. This is my quotations of what they said,
25 and here she is advertising that organization.

1 Q. But, sir, you have no idea whether she ever saw the website
2 and had any idea what was on the website, right? Maybe she
3 just liked the T-shirt. That's a possibility, isn't it?

4 A. It's very remote.

5 Q. Very remote. Okay. Fair enough. Well, you also mentioned
6 in your testimony that pedagogy is critical, right?

7 A. Pedagogy is, what did you say?

8 Q. That pedagogy, in the context of education, is critical,
9 right?

10 A. Absolutely.

11 Q. And I think there has been testimony here, in the context
12 of education, that the curriculum is the "what" and the
13 pedagogy is the "how" that things are taught. Right? You
14 would agree with that, wouldn't you?

15 A. Sort of. I take the -- I believe the -- I take it a step
16 backward. Having been state superintendent, the standards --
17 which I wrote then and which were approached by the state
18 board -- is the "what" and the curriculum is the "how." But
19 the pedagogy is also part of the "how."

20 Q. Okay. Fair enough. And with regard to the pedagogy part
21 of the how --

22 A. Yes.

23 Q. -- you testified that you just reviewed materials that were
24 given to you by the TUSD, right?

25 A. Yes.

1 Q. So you didn't have an ability to see how those materials
2 were being taught in the actual classrooms, did you?

3 A. Well, I was told that by the teachers.

4 Q. I am asking you personally. You didn't have -- you didn't
5 have that experience.

6 A. I've been saying that consistently. I did not go into the
7 classroom.

8 Q. And the teachers that told you whatever they told you were
9 all against the Mexican-American Studies Program, weren't they?

10 A. Yes.

11 Q. Now, we've had some testimony -- by the way, there was a
12 back-and-forth with regard to the issue or the concept of
13 Aztlán, and you --

14 A. Incidentally --

15 Q. I'm sorry. Were you just going to add to -- fine. Go
16 ahead.

17 A. Just adding to the answer I was just giving, I did talk to
18 teachers that were part of the ethnic studies program, and if I
19 gave a contrary impression, that was a mistake. I did talk
20 to -- I did talk to teachers that were part of the program.

21 Q. But in terms of your open letter and your finding in
22 December of 2010, you relied on teachers that were against the
23 program, right?

24 A. Yes. I mean, I had friendly discussions with teachers that
25 were part of the ethnic studies program, but they were friendly

1 disagreements.

2 Q. Now, with regard to Aztlán, you gave some testimony about
3 that, right?

4 A. Yes.

5 Q. You're not seriously concerned that we're going to give
6 back the Southwest of America to Mexico, are you?

7 A. No.

8 Q. We're not giving up the Grand Canyon, are we?

9 A. We're not giving up this courthouse.

10 Q. Or this courthouse.

11 A. But, no. It's a pedagogical concern. It was the way the
12 kids are being taught and how they would then act as adults
13 that was my big concern.

14 Q. Now, you testified that you developed state standards to
15 ensure that classes were inclusive of all races and cultures.

16 A. Yes.

17 Q. And I want to show you what's now in evidence as Exhibit
18 231, which is a textbook that there was testimony about the
19 other day, The American Vision. I'll just -- it's up on the
20 screen. The testimony was that this actually was one of the
21 books that the Cambium auditors saw in use in several of the
22 classrooms when they did their audit.

23 A. It was not supplied to me by TUSD when I asked for the
24 materials.

25 Q. And the materials that you got were something -- would have

1 been back in 2007, right?

2 A. Yes.

3 Q. And now we're talking about the audit, which was three
4 years later, in 2010, right?

5 A. Okay.

6 Q. And, in fact, the Cambium audit makes clear in several
7 different places that this particular textbook was in use in
8 MAS classrooms.

9 MR. ELLMAN: Objection. This is improper impeachment.
10 He was not familiar with the book and wasn't supplied with the
11 book.

12 THE COURT: Well, I'm not sure where Mr. Quinn is
13 going. Is that what it's for, impeachment?

14 MR. QUINN: Yes, in part, it is, Your Honor.

15 THE COURT: I'm going to sustain the objection because
16 that's something -- he said, you know, he was not -- not part
17 of the curricular materials when he did his study, and it was
18 not, you know, part of any report until 2010, way after he
19 left. So I sustain the objection.

20 MR. QUINN: I'll ask it a different way.

21 THE COURT: Okay.

22 MR. QUINN: Okay.

23 BY MR. QUINN:

24 Q. You had testified that you developed these state standards
25 in order to make sure that all of the races and cultures were

1 inclusive, that there would be inclusiveness.

2 A. Yes. I actually -- there were some already when I took
3 office but I added significantly to them, because I believe
4 that people should learn about different cultures.

5 Q. Well, in this particular book, which is about 1100 pages
6 long, there's only 18 pages that are devoted to either
7 Mexican-Americans or Latinos. You would agree with me that
8 that's pretty properly inclusive, isn't it?

9 A. Oh, sure, sure. I advocate teaching about Latino culture
10 and Latino contributions and African-American contributions,
11 Asian contributions, and so on.

12 Q. You also testified that you're philosophically against all
13 ethnic studies. Correct?

14 A. Yes.

15 Q. And there's a lot of folks out there that disagree with you
16 on that. Correct?

17 A. On that and many subjects.

18 Q. And, in fact, there are many ethnic studies programs taught
19 all over America, aren't there?

20 A. I don't know. I would be surprised.

21 Q. You'd be surprised that they have ethnic studies programs
22 in New York City or in Los Angeles? You'd be surprised of
23 that?

24 A. I don't know. But I would be surprised if it was used all
25 over the country. I think -- I didn't hear much what -- you

1 know, we had quite a major controversy here. I was on national
2 television many times about this, and nobody brought to me --
3 my attention these kind of programs in other states.

4 Q. Your concern, I think you testified, about these ethnic
5 studies programs, is they can become propaganda and devolve
6 into indoctrination? Is that your --

7 A. Well, the findings of the administrative law judge is that
8 that's exactly what happened, that he thought what they taught
9 was proper if it was taught in the proper context, but that it
10 was, in fact, propaganda. It was one-sided, it was designed to
11 produce a belief result that the teachers were promoting, not
12 designed to get kids to think for themselves.

13 Q. And you testified before that you had -- as a lawyer, you
14 have a high respect for the law.

15 A. Absolutely.

16 Q. As hopefully we all do here in this room.

17 A. Yeah.

18 Q. But notwithstanding that, you were prepared to issue a
19 finding with regard to this program even before the law went
20 into effect. Isn't that right?

21 A. Well, I made a mistake, and I corrected it.

22 Q. And the reason -- oh, one more --

23 A. I never pretended to be perfect.

24 Q. That's hard to believe.

25 You also mentioned you were -- you thought what was

1 particularly rude was that the students -- some of the students
2 raised their hand in a fist. Right?

3 A. They put their fists in the air. I read your proposed
4 finding of fact that they put their hands in the air. You put
5 your hand in the air if you're in class to ask a question. You
6 put your fist in the air as a -- I mean, I've seen a lot of
7 movies about the 1930s in Germany where people put their fists
8 in the air.

9 Q. Well, when those two African-American athletes raised their
10 fists in the air in 1968 in the Olympics in Mexico City, do you
11 think that was rude, or were they simply having a protest?

12 A. I thought it was rude as heck. They were representing this
13 country, and they did that. I was -- I was not pleased with
14 that.

15 Q. One last question. Isn't it true that --

16 A. They had benefited in this country. They had been -- they
17 had the honor of being Olympic athletes, and they were -- they
18 were downgrading their country in an international forum. You
19 think that's good?

20 Q. And, as Americans, they had the right to protest, didn't
21 they?

22 A. I'm not saying that the government should prosecute for
23 them for it. I have a First Amendment right to criticize them
24 for it.

25 Q. When you made your finding on 12/30/10, 2010, that wasn't

1 really a mistake, was it?

2 A. Yes, it was.

3 Q. Okay. Isn't it true, Mr. Horne, that the reason why you
4 made that finding at that time was that you wanted to take
5 credit for eliminating the program because you thought it would
6 be healthy to you politically? Isn't that the truth?

7 A. Absolutely not. If you don't get the idea from my
8 testimony that this is a deeply held belief on my part, I don't
9 think you've been listening.

10 And the mistake that I made was to issue it on December
11 30th, rather than January 1st. I could have done -- I did do
12 it on January 1st, and I eliminated it because I believed
13 strongly that it needed to be eliminated.

14 Q. And you --

15 A. It was absolutely not political.

16 Q. You --

17 A. The same thing when you were saying I used it in a
18 campaign, I have an obligation to tell the public what my
19 observations are and what my beliefs are, and that's what I
20 did.

21 Q. And you issued that ruling notwithstanding the fact that
22 the incoming superintendent asked you not to, correct?

23 A. Well, John and I had a lot of disagreements.

24 Q. I'm correct, aren't I? He asked you not to and you --

25 MR. ELLMAN: It's a mischaracterization of the

1 testimony. He did not recall.

2 A. I didn't remember the conversation. If you're telling me
3 it happened, I'll agree, but I personally don't remember it.

4 But I'm telling you that he and I disagreed about a lot of
5 things, and that's one thing I disagreed with him about --

6 BY MR. QUINN:

7 Q. Fair enough. I wasn't at the meeting, but there is
8 testimony to that effect.

9 A. I accept that.

10 MR. QUINN: Okay. Nothing further.

11 THE COURT: Any further cross?

12 MR. ELLMAN: Just a couple of questions, Your Honor.

13 RE-CROSS-EXAMINATION

14 BY MR. ELLMAN:

15 Q. With respect to the MEChA T-shirt the librarian was
16 wearing, was the emblem itself problematic after you learned
17 what MEChA represented?

18 A. Well, the emblem involves a stick of dynamite and a weapon,
19 so the emblem tells you a lot. But I don't remember whether
20 the emblem was on her T-shirt or not. All I remember was that
21 she was wearing a MEChA T-shirt, and I later found out what
22 that meant.

23 Q. The presence of a T-shirt, a MEChA T-shirt, in the high
24 school is, itself, problematic to you, isn't it?

25 A. Yes. I mean, you know, schools -- First Amendment rights

1 are unlimited for adults. For students, there are some
2 limitations. We don't let them wear T-shirts that advertise
3 marijuana.

4 So -- and again, I am not saying she should be prosecuted
5 for it, but I am critical of it because when I read about
6 MEChA, it was profoundly racist, you know, talking about this
7 is country for the bronze peoples. And here she is advertising
8 that on her T-shirt. I thought that was pretty bad. I would
9 not compare that to gay rights. I am a supporter to gay
10 rights.

11 Q. Is the problem similar to the Che Guevara poster being up
12 on the wall along with icons like Kennedy and MLK?

13 A. Yeah. Che stands for everything contrary to this country.
14 He doesn't believe in democracy. He believes in dictatorship.
15 He doesn't believe in individual liberty. He puts people in
16 jail or shoots them for disagreeing with him. He doesn't
17 believe in the rule of law.

18 They would line people up against the wall and shoot them
19 if they worked for a bank and they thought they were
20 counter-revolutionaries. It was called "paredón." The word
21 for wall in Spanish is "pared," and they made the word
22 "paredón." And I read -- one of the books I read from the
23 Phoenix library was by an Argentinian -- sorry -- was by an
24 Argentinian leftist that said any true supporter of the
25 revolution is a supporter of paredón.

1 He certainly doesn't believe in mutual tolerance. He does
2 not believe in American values. He believes in the opposite of
3 those values.

4 And you have a First Amendment right to advocate all those
5 things, but not on the taxpayer's dime and not in our public
6 schools.

7 Q. And isn't there a profound conceptual difference then, in
8 your point of view, between teaching students about Che Guevara
9 and creating an icon of Che Guevara?

10 A. Yeah. I think they should be taught about him, but I don't
11 think he should be worshipped.

12 Q. And I am going to show you a MEChA emblem. This is from
13 the national MEChA dot org website. Is this the emblem you
14 were referring to?

15 A. Yes. I don't remember if that was on her T-shirt, but that
16 was their emblem on their website. In the left claw of the
17 eagle is a stick of dynamite, and in the right claw is a weapon
18 that was used by native peoples of this continent.

19 Q. And the stick of dynamite, just for the record, is -- the
20 fuse is lit, isn't it?

21 A. Yes. Next to the beak of the eagle the fuse is lit.

22 MR. ELLMAN: Thank you. Nothing further.

23 MR. QUINN: Nothing further, Your Honor.

24 THE COURT: All right. Then, Mr. Horne, thank you
25 very much, sir.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: You may step down, and you are excused.

3 MR. HORNE: Thank you very much, Your Honor.

4 THE COURT: The plaintiffs, I assume, have another
5 witness we can at least get started with?

6 MR. REISS: We do, Your Honor. Our expert, Stephen
7 Pitti, is available, and he is here in court.

8 THE COURT: Great. Let's get started.

9 Would you step forward here, sir, if you're the witness,
10 and be sworn.

11 THE CLERK: Would you raise your right hand.

12 **STEPHEN PITTI, WITNESS, SWORN**

13 MR. CHANG: Good afternoon, Your Honor. I'd like to
14 submit to the Court our previously filed direct testimony of
15 the declaration of our expert, Dr. Stephen Pitti. During the
16 first week of trial, you denoted our expert's declaration as
17 Exhibit A, so -- or Exhibit EA, so perhaps this would be called
18 Exhibit EB.

19 THE COURT: That would be fine. And that would be
20 a -- constitute the witness's direct testimony?

21 MR. CHANG: Yeah. And may I give a copy to our
22 witness?

23 THE COURT: That's fine. And I assume -- I mean,
24 you've explained to the witness the slightly altered procedure,
25 right, about --

1 MR. CHANG: Yes.

2 THE COURT: -- going direct to cross-examination and
3 so forth?

4 MR. CHANG: Yes.

5 THE COURT: And that you'll have a chance on direct.
6 All right. Let's get on with the cross-examination,
7 Mr. Ellman.

8 MR. ELLMAN: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. ELLMAN:

11 Q. Good afternoon, Dr. Pitti.

12 A. Good afternoon, counsel.

13 Q. Welcome to Arizona.

14 A. Thank you.

15 A. My name is Rob Ellman, and I'll be conducting
16 cross-examination today on the content of your declaration. My
17 understanding is that you're a historian specializing in the
18 Mexican-American experience?

19 A. Yes.

20 Q. And not --

21 THE COURT: Would you just get -- or pull the mics
22 just closer to you. Thank you.

23 BY MR. ELLMAN:

24 Q. So you are not an expert in the experience of American
25 politicians, correct?

1 A. I am a American historian who was trained as a U.S.
2 historian broadly, with special expertise in Mexican-American
3 history.

4 Q. You don't hold a degree in political science, do you?

5 A. I hold a degree in U.S. history.

6 Q. So the answer is "no"?

7 A. "No."

8 Q. Okay. Do you hold a degree in psychology?

9 A. No.

10 Q. Linguistics?

11 A. No.

12 Q. Do you have a law degree?

13 A. No.

14 Q. If you'll look at your declaration at Paragraph -- excuse,
15 Page 20, Paragraph 51. Just let me know when --

16 A. I think the copy I have does not have numbered paragraphs.

17 Q. Are you looking at a document that's marked Document 392 at
18 the top?

19 THE COURT: It looks like he's looking at Exhibit A.

20 THE WITNESS: Exhibit B, Document 392-2.

21 BY MR. ELLMAN:

22 Q. Is that your declaration?

23 A. Expert report of Stephen J. Pitti?

24 Q. No, I am talking about your declaration, Dr. Pitti, which
25 constitutes your direct testimony.

1 A. Would you remind me of the page and paragraph?

2 Q. Yes. It's page 20, paragraph 51. It actually maybe starts
3 on page 21.

4 A. I have it on page 21.

5 Q. Okay. If you'll take a look at that paragraph, would you
6 agree that it's a brief exposition on the interdisciplinary
7 facets and development of Mexican-American Studies and it
8 explains what scholars and educators in that field do?

9 A. Please give me a second to re-read the paragraph.

10 Q. Sure.

11 A. This is a paragraph about the field of Mexican-American
12 Studies, how it's developed, what the field constitutes. It is
13 an interdisciplinary field, I do teach in that field.

14 Q. Do you have a degree in education?

15 A. I do not.

16 Q. Have you ever taught Mexican-American Studies?

17 A. Yes.

18 Q. What was your experience teaching it?

19 A. I have been teaching Mexican-American Studies for 20 years.

20 Q. In high schools or --

21 A. In college.

22 Q. Have you ever taught it in a high school?

23 A. As I said in my deposition, I have taught in high schools
24 for a day at a time but not as a regular employee of a high
25 school. And I've worked with high school teachers.

1 Q. Okay. Have you ever lived in Arizona?

2 A. No.

3 Q. Have you ever spent an extended period of time in Arizona?

4 A. How do you define "extended period of time"?

5 Q. More than a month?

6 A. No, not at one time.

7 Q. More than a week?

8 A. I think I have spent more than a week. I was asked in my
9 deposition if I had spent longer than two weeks, and the answer
10 was no.

11 Q. Did you come to Arizona to do some of your research in this
12 case?

13 A. On this trip?

14 Q. No, on this case, in preparing your expert report.

15 A. No. I was not afforded the opportunity to come to Arizona
16 to do research because of the short time frame.

17 Q. And if you'll look at page 6, paragraph 15 of your
18 declaration.

19 A. Yes.

20 Q. This states that you are an expert in the use of code words
21 that disguise animus and are used to advance political
22 objectives. Correct?

23 A. It says I have developed that expertise, yes.

24 Q. Is there anything in your 17-page curriculum vitae about
25 code words?

1 A. Yes.

2 Q. There is?

3 A. The publications that I have written are about code words
4 to a significant extent. The first book that I wrote, the
5 Devil in Silicon Valley, is to a significant extent. The
6 subtitle is about racism in Northern California, which is
7 itself about code words.

8 Q. But the CV itself doesn't refer to code words anywhere,
9 does it?

10 A. You asked me if there was anything on the CV in which code
11 word -- that refers to code words, so I am suggesting that
12 there is, that it refers to work that I have done that centers
13 on code words and the use of code words. I'm not sure if you'd
14 find the actual words "code words" on the CV, if that's your
15 question.

16 Q. That is my question.

17 A. I think my answer might be no.

18 Q. Have you ever lectured on the topic of code words?

19 A. Yes.

20 Q. Have you published articles on the subject of code words?

21 A. Again, code words, as I understand them, and as used in the
22 historical profession, is a very broad way of talking about
23 race and racism and racialization.

24 So racialization has taken a turn in recent years to focus
25 on how code words have come to stand in and replace an older

1 style of biological racism. So, yes, I have worked on and I
2 have written about the use of code words in American history
3 and American society, and I have taught extensively about that
4 topic.

5 Q. Does the book Devil in Silicon Valley -- is that the name
6 of it? Does it actually use the term "code words" in the text?

7 A. I don't recall that it does. But it does certainly rely on
8 the idea of code words in the formulation of its argument.

9 Q. How does one become an expert in the use of code words that
10 disguise animus?

11 A. Reading the scholarship.

12 Q. Can you prove that words are disguising animus or do you
13 just surmise it from source materials?

14 A. I'm sorry, that seems like a vague question. Could you
15 rephrase that, please.

16 Q. Can you actually prove that words are disguising animus, or
17 do you simply surmise it from the source materials?

18 A. I followed the established and well-established practice in
19 academia and in the historical profession, in particular, that
20 does draw on interdisciplinary methods to show that code words
21 have come to play an important role in politics in this country
22 and elsewhere. I don't think that's merely surmising or
23 guessing at answers. I think that, again, is a recognized
24 methodology using recognized evidence to come to determinations
25 that seem to have validity by other members of the academy and

1 that work on these topics, pass through peer review and are
2 reviewed by others who have expertise, and that's how we know
3 whether or not the work seems to have merit in the academy.

4 Q. So is the study of code words an academic discipline?

5 A. No.

6 Q. So you can't get a degree in code word usage, can you?

7 A. Not to my knowledge.

8 Q. And who is the leading practitioner in this widely
9 accepted -- of this widely accepted interpretive methodology
10 that you refer to?

11 A. It's a widely enough seen -- set of scholars, scholarship
12 that I think there would be debate about who the most prominent
13 people in the field are. I cite a number of them extensively
14 in my report. The person I probably cite the most is Ian Haney
15 Lopez, a law professor at the University of California at
16 Berkeley.

17 Q. Not a social scientist, correct?

18 A. A law professor with some social science training.

19 Q. Is there any empirical study contained in the book he wrote
20 on Dog Whistle Politics?

21 A. Yes.

22 Q. There is? Can you describe that for me.

23 A. The empirical study is a use of data that he relies upon to
24 build his argument.

25 Q. Okay. Would you agree with me, at least, that history is

1 not considered a hard science based on its epistemological
2 limitations?

3 A. Considered by whom?

4 Q. I'm sorry, what was your question?

5 THE COURT: He said "by whom."

6 BY MR. ELLMAN:

7 Q. No, I am asking your opinion. Would you characterize
8 history as a hard science?

9 A. History is normally, in universities, categorized as a
10 humanities field, although sometimes it's categorized as a
11 social science field. So it really depends on the university.
12 I've never seen it categorized as a science, although there are
13 scholars who work in the sciences who are historians. So in my
14 own home department, we have historians of science and
15 historians of medicine who are trained as scientists and have
16 deep expertise in the sciences and they write about the
17 sciences. They use kind of empirical evidence and data that
18 science -- scientists are familiar with in tracking the
19 scientific profession.

20 Q. So some people who are historians have science backgrounds,
21 but history itself is not a hard science?

22 A. Some people who are historians also are appointed in
23 science departments.

24 Q. You can't apply the scientific method to historical
25 research, can you?

1 A. That's not true, actually. One of the most famous and most
2 important books in the historical profession actually did
3 exactly that. It looked at the way in which -- it was called
4 the Structure of Scientific Revolutions, and it thought about
5 the way in which science as a field developed over time and
6 tried to take the scientific method to think about how history
7 as a profession had changed over time.

8 Q. Can you employ the scientific method to determine whether
9 someone is or is not using a code word?

10 A. That's not my area of expertise. If you're asking if a
11 person could do that, I don't know the answer to that. That's
12 not my area of expertise.

13 Q. Didn't you say earlier that you are an expert on the
14 subject of code words that disguise animus and are used to
15 advance political objectives?

16 A. I said also that I am not a scientist.

17 Q. Let's take an example from page 3 of your report. I think
18 that is the Exhibit Number 2, document 392. Do you see -- let
19 me know when you have that page in front of you, Dr. Pitti.

20 A. Yes. Page 3, Exhibit B?

21 Q. Yes. Do you see a statement that says: Politicians and
22 activists working on behalf of ballot initiatives and
23 legislative acts created a political atmosphere that encouraged
24 opposition to Mexicans and Mexican-Americans by white voters in
25 21st century Arizona?

1 A. Yes.

2 Q. Can you prove that's true?

3 A. It's my contention, Counselor, based on my training as an
4 historian, my engagement with the historical profession, my
5 understanding of historiography of the histories written about
6 Arizona, of my examination of the sources that you see listed
7 in the very long bibliography here that, yes, in fact, a
8 historian can make a compelling argument that this is true, and
9 that's exactly what I've done.

10 Q. So you are saying that you can prove the truth of that
11 statement?

12 A. I am saying that in -- as an historian, I can make -- I can
13 show that, in fact, politicians and activists working on behalf
14 of ballot initiatives and legislative acts created a political
15 atmosphere that encouraged opposition to Mexicans and Americans
16 by white voters in a way that would be recognizable to those
17 who are not necessarily scientists but do understand the
18 historical method, yes.

19 Q. So is your answer yes, you can actually prove that that
20 statement is true?

21 A. I can prove to the satisfaction of people who believe in
22 the method that I used, yes.

23 Q. But that can't be replicated scientifically, can it?

24 A. What would that replication look like, Counselor?

25 Q. Is there a cause and effect methodology that would support

1 your conclusion?

2 A. I am a little confused by the question. I am not sure if
3 you're asking me to work as an astronomer or what kind of field
4 of the sciences I might model my scholarship on. This is an
5 established historical practice, Counselor. I've been working
6 as a historian for 20 years. I have degrees in the field. I'm
7 a full professor in the field in perhaps the top department in
8 the country. I am working with evidence the way that
9 historians have worked with evidence for many, many decades.

10 If your question is am I a scientist, the answer is no.

11 Q. And the conclusion that you reached that we just quoted is
12 based on surmising and interpreting, correct?

13 A. Did I use those terms here in this paragraph, Counselor?

14 Q. You described your expertise as examining public discourse
15 for code words as a wide widely accepted interpretive
16 methodology to surmise whether or not animus affects or helps
17 to determine political outcome. So would you agree with me
18 that your conclusion is based on surmising and interpreting, or
19 did you employ some other methodology here?

20 A. I don't hear surmising as a methodology, so I think to me
21 you're conflating two things. Historians look at facts, and I
22 have tried to look at the facts of the case and to understand
23 the facts of the case and to put those in some order and to
24 make sense of them.

25 That is the act of historical interpretation that is

1 recognized by scholars, by scholarship, that is recognized by
2 the academy in many different forms.

3 If you're asking whether I am a scientist --

4 Q. I am not. You've answered that question. Thank you.

5 A. So I am working as an historian does to make historical
6 interpretations that are understood to have validity as
7 historians understand them.

8 Q. When were you first retained to do the study you did in
9 this case?

10 A. That was in the deposition. I believe it was December
11 2015.

12 Q. Just for clarity, Dr. Pitti, I am not asking you whether
13 things are in your deposition, I am simply asking for your
14 answer. So if you don't mind, please couch it that way
15 instead.

16 2015. Will you look at page 6 of your declaration.

17 A. Of the declaration?

18 Q. Yes.

19 A. Yes.

20 Q. Okay. Bottom of the page, it says, under number 18: My
21 report addressed the following questions. And B is: Have
22 Mexican-Americans been subject to racial discrimination and
23 racial animus?

24 Have I read that correctly?

25 A. Yes.

1 Q. Didn't you already have a strongly held opinion about the
2 answer to that question before you began your research?

3 A. I have read and studied that topic for a number of years,
4 and I believe that I was probably retained because of my
5 expertise in answering that question. Not just what you might
6 think of as a yes-or-no answer, but actually the capacity to
7 explore and explain that question, to find nuance in an answer,
8 and to understand the evidence, the historical evidence, that
9 might contribute to the writing of a report like this one.

10 Q. In 2015, before you began your research, didn't you already
11 firmly believe that Mexican-Americans had been subject to
12 racial discrimination and racial animus?

13 A. Thanks to the scholarship that I had read, the research
14 that I had done, the teaching that I had done, yes. I
15 understood that racial discrimination and racial animus play a
16 role in the American history, in U.S. history, just as all
17 members of the U.S. historical profession understand that.

18 It would have been hard to find an American historian who
19 does not know something about the history of racial animus and
20 racial discrimination directed at Mexican-Americans in the
21 United States. I think that I brought to this a deeper
22 understanding than most, given my expertise.

23 Q. But you did believe before you began your study that
24 Mexican-Americans had been subject to racial discrimination and
25 racial animus, didn't you?

1 MR. CHANG: Objection. Asked and answered.

2 MR. ELLMAN: If I could get an answer, I would rest.

3 THE COURT: Objection sustained. He's answered about
4 as much of an answer you're going to get.

5 BY MR. ELLMAN:

6 Q. All right. Your research method consisted of examining
7 primary and secondary materials, is that right?

8 A. Yes.

9 Q. And did anyone help you identify those materials?

10 A. I received some guidance from counsel. And I would also
11 say that I rested heavily on my training as an American
12 historian, my work in graduate school, in which I read some of
13 these things, the teaching and scholarship that I have done in
14 recent years. So not all of what you see in the bibliography
15 that contributed to the writing of this report was research
16 that I was doing for the very first time. In that sense, there
17 was a process of collaboration over many years insofar as I
18 depended upon some interaction with colleagues, experts at
19 other places, but nothing direct in the months in which I was
20 actually writing the report.

21 Q. But plaintiffs' counsel supplied you with some materials,
22 correct?

23 A. Correct.

24 Q. Did you interview Tom Horne?

25 A. No.

1 Q. Or John Huppenthal?

2 A. No.

3 Q. Or any Arizona legislators?

4 A. No.

5 Q. Legislative staff?

6 A. No.

7 Q. Lobbyists?

8 A. No.

9 Q. Did you analyze John Huppenthal's voting record?

10 A. Yes, to some degree I did do that. I was aware, for
11 example, that -- of some of what he voted on, not much of that
12 I believe made it into my report. We would have to go back
13 into the report to see how much was in there. But I was aware
14 of John Huppenthal's voting record, his involvement in SB1070,
15 for example, as one of the co-sponsors, and some of his other
16 actives and votes as an elected official.

17 Q. My understanding is that you reviewed the legislative
18 hearings, but only after you had submitted your report and
19 reached your conclusions, is that correct?

20 A. No. As I said during the deposition -- and I'm sorry to
21 refer to that again -- I did look at the website in which the
22 legislative transcripts, I think, are housed in advance of
23 writing the report, that it didn't figure into the report. So
24 I think I said this in the deposition, that, in fact, I did --
25 I had looked at them, but I had not fully processed them, and I

1 didn't see them as particularly helpful in the writing of the
2 report. I had attended to them more carefully since finalizing
3 the report.

4 Q. You didn't conduct any surveys, did you?

5 A. No.

6 Q. Did you conduct any statistical analysis, for example,
7 comparing how many times Tom Horne or John Huppenthal used code
8 words compared to anybody else? Anything like that?

9 A. No. That's not in keeping with the methods in the field of
10 study that I've been describing for you.

11 Q. Because that's beyond surmising, isn't it?

12 A. I don't understand the question.

13 Q. All right. Well, we'll move on then. Was your report peer
14 reviewed?

15 A. No. It's my understanding the reports are generally not
16 peer reviewed, and I was not encouraged or asked --

17 Q. I just asked if it was peer reviewed or not, and your
18 answer is "no."

19 Will you look at your declaration at page 17, paragraph 41,
20 please.

21 A. Yes.

22 Q. Okay. If you'll go down to line 6, it says: Horne, as
23 superintendent, led the effort by the Arizona Department of
24 Education in 2010 to require school districts to remove
25 instructors with heavily accented or ungrammatical English.

1 Have I read that correctly?

2 A. Yes.

3 Q. What is your factual basis for saying that Mr. Horne led
4 that effort?

5 A. I don't recall that detail at the moment, Counselor. I
6 believe that the substance that would back up that claim is
7 actually in my report to the Court.

8 Q. So you're saying that you cited a source for that in your
9 report?

10 A. I am saying I would need more time to go back into the
11 report itself and find those details.

12 Q. You quote a sociolinguist as observing that the educational
13 policies are inseparable from a broader anti-immigrant agenda,
14 including restrictions and policing of opinions. Do you see
15 that, or do you remember writing that?

16 A. We're still on page 17, paragraph 41?

17 Q. Mmm-hmm.

18 A. I do.

19 Q. Okay.

20 A. That's elaborated more fully in the report itself.

21 Q. Okay. So in that portion of your report, you're reporting
22 what someone else observed, correct?

23 A. I'm following the methods of an historian.

24 Q. Well, is the answer -- are you reporting what she observed?

25 A. In -- yes, reporting the findings of another scholar.

1 Q. All right. So you're relying on someone else's anecdotal
2 observation?

3 A. No. That's scholarship. It's not anecdotal observation.
4 That's peer reviewed scholarship that passed muster with fellow
5 academics and that I judged to have merit and to fit into this
6 report.

7 Q. Well, tell me, then, how did Jennifer Leeman come to that
8 conclusion?

9 A. Well, we would have to -- to answer that question, we would
10 have to go back to the report itself and to actually to the
11 article by Jennifer Leeman that I cite there.

12 Q. But you don't remember, as you sit here today on the
13 witness stand?

14 A. Jennifer Leeman was -- is or was -- at least at the time
15 she was an assistant professor at George Mason University, who
16 also worked for the U.S. Census Bureau and did research in
17 Arizona. I believe it was quantitative research that's well
18 respected in the field. I'd be happy -- we can dig into the
19 details of that scholarship, but as you know, I don't have that
20 article in front of me here today on the stand.

21 Q. When you characterize Tom Horne as leading an effort to
22 require school districts to remove instructors, are you talking
23 about instructors of English language learners?

24 A. I believe I am. Again, the details are in the report
25 that this was -- but I am not sure that it was exclusively

1 English language learner instructors, though I think that those
2 instructors, in particular, were identified as of particular
3 concern.

4 Q. Were you aware of a federal statute that requires states to
5 certify that teachers of English to English language learners
6 be fluent and have written and oral communication skills?

7 A. I can't recall if that's in the report itself, Counselor.
8 What I do recall is that --

9 Q. Are you familiar with that statute?

10 A. As I said, I'm not -- I don't recall today whether I wrote
11 about that statute.

12 Q. So you don't remember --

13 THE COURT: Let him finish his answer.

14 MR. ELLMAN: All right.

15 A. I don't recall whether I wrote about that. As you know, I
16 have an almost hundred-page report with a lot of details in it.
17 Perhaps you can remind me whether or not the statute is
18 mentioned in the report.

19 What I do, of course, recall is that linguists at the
20 University of Arizona and others around the country were
21 critical of this action in the State of Arizona that conflated,
22 as perhaps you just did, the issue of fluency and the issue of
23 accented English. In other words, it is to say that one can
24 speak fluent English, but also speak accented English, and that
25 the concern expressed in this public policy, as I recall, was

1 about speakers of accented English providing bad examples, bad
2 models for kids in their classrooms.

3 Q. You didn't speak to Tom Horne about this, did you?

4 A. No.

5 Q. Okay. So you -- and what was your source for stating that
6 it was an effort to remove instructors with heavily accented or
7 ungrammatical English?

8 A. May I go back to the report itself and find those
9 paragraphs?

10 Q. Of course, certainly.

11 A. Okay. Counselor, I think at least -- I think the -- I
12 think the answer is on Page 51 of Exhibit B. This is my
13 report, the paragraph beginning: Efforts to eliminate ethnic
14 studies program in the state after 2007 -- that's the paragraph
15 that notes that as a member of the House Education Committee,
16 State Representative Tom Horne played a key role in promoting
17 the Proposition 203 effort.

18 I'm citing here scholars O'Leary and Sanchez and two
19 different articles that they wrote, that goes -- this is the
20 bottom of page 51 and the middle of page 52.

21 Q. Does that have to do with the heavily accented or
22 ungrammatical statement?

23 A. If you read on to page 52, you'll see that it does.

24 Q. The statute I referred to a moment ago was not among your
25 primary or secondary sources, correct?

1 A. Are we talking about --

2 Q. The fluency statute.

3 A. -- proposition 203?

4 Q. No. We're talking about the federal statute I just told
5 you about that requires a state to certify that teachers of
6 English as a second language be certified as fluent in order to
7 receive federal funds.

8 A. I don't recall that being in my bibliography.

9 Q. If you had interviewed people who make Arizona education
10 policy, maybe you would have considered the effect of that
11 statute in your analysis when you describe what Tom Horne did.

12 A. Is that a question?

13 Q. Is that true?

14 A. I'm sorry. Could you rephrase that as a question, please.

15 Q. All right. If you had interviewed people who make Arizona
16 education policy, perhaps you would have learned that Tom Horne
17 had a duty to enforce that statute. But you didn't do that,
18 did you?

19 A. I think your question assumes that the statute passed in
20 Arizona was meant to further the federal statute. Am I
21 understanding --

22 Q. No, I'm not referring to any Arizona statute at all. I am
23 only asking you about the federal statute that requires states
24 to certify the fluency of English language teachers.

25 A. Counselor, in my preparation for today, I did not prepare

1 myself to talk about a federal statute that you are introducing
2 today. So I can't tell you what my questions for Tom Horne
3 would have been had I interviewed him in the brief window of
4 time I had to write this long report.

5 Q. The fact that Tom Horne had a duty to enforce a federal law
6 that required English language fluency among teachers is a
7 relevant fact here, isn't it, when you're accusing him of
8 leading an effort to remove instructors with heavily accented
9 or ungrammatical English?

10 A. I don't see myself accusing anyone here, Counselor.

11 Q. All right. Will you turn to your declaration at page 23,
12 paragraph 54.

13 A. Yes.

14 Q. Okay. There's a statement that says: Horne appears to
15 have assumed that the Mexican-American Studies Program used
16 primary materials -- speeches, works of poetry and fiction and
17 visual materials -- to endorse political positions, rather than
18 to illustrate the development of American history, politics,
19 and culture.

20 Have I read that correctly?

21 A. Yes.

22 Q. And it also says: Horne's criticism completely
23 misunderstands the role that primary materials play in teaching
24 and makes the critical error of assuming that the inclusion of
25 primary source material equates with endorsement of what is

1 stated in the primary source material. Is that correct?

2 A. Yes. You skipped two sentences, but those sentences are
3 both on the same page.

4 Q. Okay. So I'm going to try and understand the point you're
5 making in those two passages with a hypothetical. Would you
6 agree with me that it's okay to teach high school kids about
7 Nazi Germany in a history class?

8 A. Yes.

9 Q. And would you agree with me that if you put a poster of
10 Adolf Hitler up on the classroom wall next to Abraham Lincoln
11 and John F. Kennedy, that's not okay?

12 A. I would be highly suspect of a teacher doing that. I would
13 be interested in knowing why they would do such a thing and
14 what the pedagogical imperative or thinking was of a teacher
15 who would do that. If this is sort of seen as a pantheon of
16 heros, as some classrooms think about their walls, then, yes, I
17 would be very concerned about that.

18 But there may be other reasons why a teacher would put an
19 image, even an objectionable image, of someone I would in no
20 way see as a hero up on a wall.

21 Q. So you think there's a legitimate pedagogical reason in
22 some cases to put up a poster of Adolf Hitler on the wall of a
23 classroom?

24 A. That's not quite what I said, Counselor. What I said is I
25 would want to know what the pedagogical reason was in order to

1 judge whether or not I thought that the reason was sound.

2 Q. Doesn't that necessarily mean that there's a hypothetical
3 scenario in which that would be okay with you?

4 A. No, not necessarily.

5 Q. Then why would you need to know what the pedagogical
6 purpose is in order to evaluate it?

7 A. I think, Counselor, some of our problem is that you're not
8 understanding the nature of scholarship. I am approaching your
9 answers with an open mind because I don't actually know the
10 answer. But I am prepared to be surprised. I am prepared to
11 learn. I am prepared to be informed about things that I don't
12 know. I'm not approaching this scenario, this hypothetical
13 scenario, sure that I understand the answer.

14 I would be interested in hearing the reasoning behind a
15 teacher who would -- who would be doing such a thing and to
16 understand why they would put Abraham Lincoln next to Adolf
17 Hitler, what is the comparison that is being offered, what is
18 the connection being claimed.

19 Q. So you will not say categorically that it's always
20 inappropriate to put a poster of Adolf Hitler up on the wall of
21 a classroom?

22 A. I don't -- this is not a subject matter that is in my
23 report, Counselor. This is not something I've given a lot of
24 thought to. This is not an area I claim expertise, what
25 posters go up on walls.

1 Q. Well, you --

2 A. But I -- so I feel that I'm commenting a bit outside of
3 what I've brought before the Court today as an expert witness.

4 I don't feel like I could tell you whether there is a
5 moment, a place, a person who could put up a poster of Adolf
6 Hitler and be able to defend that decision. I say that not as
7 a person who idealizes Adolf Hitler.

8 Q. I'm not accusing you of idealizing Adolf Hitler.

9 A. Thank you.

10 Q. It's merely a hypothetical, because I'm attempting to
11 establish the parameters of your statement that Tom Horne has
12 failed to distinguish between endorsing political positions and
13 equating primary source material with endorsement of what is
14 stated. So I'm trying to give you just an example to work
15 with.

16 A. Thank you. I appreciate that opportunity. So let me talk
17 a little bit on that point, since you've given me that chance,
18 Counselor.

19 As you can see in the longer report, this is, of course,
20 what you're reading here in the declaration, a summary of a
21 much longer discussion in the report itself in which I show
22 that Horne and others who commented on the Mexican-American
23 Studies Program seem to have taken pieces of primary sources,
24 small quotes from primary sources that were used in
25 Mexican-American Studies classrooms apparently, and taken them

1 to be endorsements of positions by the teachers themselves.

2 This, it strikes me, is comparable to someone who teaches
3 the Lincoln-Douglas debates in 19th century American history
4 class being accused of endorsing the position of Stephen
5 Douglas, who was, of course, a pro-slavery politician in that
6 period.

7 We can -- what I was -- what I show in the report is that
8 one cannot take out primary sources and assume that this is --
9 these are the voices of the teachers themselves; that these are
10 the perspectives of the teachers themselves. These are
11 perspectives perhaps that the teachers are looking to introduce
12 students to, much as, in your example, a teacher would probably
13 want to introduce students to the perspective of Adolf Hitler,
14 not to endorse that perspective, but, in fact, to allow
15 students to understand that perspective, grapple with it, see
16 where it came from, see what its logical conclusions might be.

17 Were that to be part of a pedagogy, the discussion of Mein
18 Kampf in a classroom, I think that could be actually a very
19 productive type of pedagogy. And I would not accuse a teacher
20 who presented the history of Nazi Germany with themselves
21 promoting those words by anti-semites and others in that
22 period.

23 My argument that I -- and I think what I show, to my mind
24 convincingly, through the evidence as an historian, Counselor,
25 is that the way that these materials were understood by people

1 who were looking at the program from the outside was limited
2 and rather stereotypical in the way in which the teachers and
3 the program was depicted.

4 Q. You've introduced a number of topics into the discussion,
5 Doctor. So let me isolate two of them. Are you suggesting
6 that Tom Horne or John Huppenthal are both were just focused on
7 certain materials to the exclusion of others? Is that part of
8 the problem, just to put it in simpler terms, please?

9 A. I apologize if my terms were not simple enough. But what I
10 was trying to say was that there was, in the discussion of the
11 Mexican-American Studies Program in the public sphere, which is
12 to say, you know, in speeches, in the blog posts of John
13 Huppenthal and elsewhere, there is a way in which certain
14 examples were focused upon as emblematic and illustrative of
15 the perspectives, the arguments, the ideas of Mexican-American
16 Studies educators, teachers.

17 Those arguments oftentimes focused on some important key
18 words, key words like Aztlán and key words like MEChA and key
19 words like La Raza, which were drawn out and highlighted in the
20 discussion by these elected officials to depict the program as
21 a particular sort of threat, seems to me. And that -- but that
22 relied heavily on a particular reading, a narrow reading, I
23 think, a decontextualized reading often of the primary sources
24 that were embedded sometimes in books on the shelves of the
25 classes, as I understand it, from the Cambium report.

1 Q. Do you know what books Tom Horne reviewed?

2 A. What I can tell you is that I know that he cited the
3 Rodolfo Acuña, *Occupied America*, and that he drew passages in
4 particular out of that book to make the case. One of those
5 important passages was Acuña quoting an activist from the late
6 1960s who spoke in ways that Tom Horne found objectionable and
7 that, for Tom Horne, from what I can see in the historical
8 record and the written record that I analyzed as a scholar,
9 this was reflective not just of this activist from the 1960s,
10 but also of the book's author, because the book quoted this
11 person, used this primary source in his scholarship. And by
12 extension because the book was in the classroom, seemingly it
13 was reflective of the perspective of Mexican-American Studies
14 educators, as well.

15 Q. Do you know specifically which books Tom Horne reviewed?

16 A. No. I know that John Huppenthal claimed to have read all
17 of them.

18 Q. I didn't ask you that, sir.

19 A. But I don't recall if Tom -- knowing -- it may be in my
20 report, counselor, but I don't recall at the moment knowing
21 what Tom Horne reviewed.

22 Q. Getting back to the first part of a couple questions back,
23 I think you said initially a poster of Adolf Hitler on the wall
24 would be problematic. Did you say that?

25 A. I would have to have that read back for me. I don't know

1 that. I think I would agree with the term problematic, that it
2 would require a lot of explanation.

3 Q. Is that because it implies an endorsement of what Adolf
4 Hitler stood for?

5 A. I think it might be seen to imply that.

6 Q. You think a poster of Adolf Hitler on the wall might be
7 seen to imply that --

8 A. Yes.

9 Q. -- or not necessarily?

10 A. Absolutely.

11 Q. And teaching about what Hitler did would be acceptable
12 pedagogy, do you agree?

13 A. Yes. If done well, yes.

14 Q. And endorsing what he stood for would be unacceptable
15 pedagogy?

16 A. I think that's true.

17 Q. Are you aware that the reading list for the Latino
18 literature classes in the Mexican-American Studies Program
19 included a speech that Che Guevara gave in 1965 to a body
20 called the Second Economic Seminar of Afro-Asian Solidarity?

21 A. I don't recall knowing that, Counselor. What I know of the
22 reading list came from the Cambium report. So if it was listed
23 in the Cambium report, then I would have seen that information,
24 but at the moment I don't recall.

25 Q. Rather than show you the document again, I am just going to

1 quote from that Che Guevara speech. For the sake of accuracy,
2 I'll put it up on the display.

3 I'd like to draw your attention to the highlighted portions
4 of this document. Che Guevara speaks of the defeat of
5 imperialism here. Do you see that?

6 A. Yes.

7 Q. And then he speaks of the struggle against imperialism, for
8 liberation from colonial or neocolonial shackles being carried
9 out by means of political weapons, arms, or a combination of
10 the two. Do you see that?

11 A. Yes.

12 Q. Then here he says we must fight against imperialism.

13 A. Yes.

14 Q. And here he characterizes the United States as the
15 imperialist enemy. Correct?

16 A. My screen does not go far enough down.

17 Q. I apologize. I'm referring to this sentence right here.
18 The question was: He characterizes the United States as the
19 imperialist enemy, correct?

20 A. It says: If the imperialist enemy, the United States, or
21 any other, so I suppose you may be reading it correctly.
22 You're asking me to skim something long, and you're doing what
23 I discourage my students from doing, which is pulling quotes
24 out without reading the entire document.

25 Q. Do you think there is additional context necessary to

1 understand what Che Guevara is advocating in this speech?

2 A. Perhaps. I would be very interested in knowing -- I can't
3 see the date now. It's disappeared from my screen. But I
4 would be interested in knowing the context in which this
5 speech was given and who he was speaking to. And that's not to
6 quibble. That's to say that we teach our students to think
7 about context, and that's part of the historical method, and to
8 read documents carefully and not to come to quick judgments
9 based upon flash or key words that strike us as objectionable
10 in the present.

11 Were this a speech by Steven Douglas from the 1850s, there
12 would also be very objectionable content, but I might certainly
13 ask my students or high school students to read that, even if
14 that content used racial epithets that are in no way acceptable
15 today, nor were they then, or that advocated slavery.

16 So but we would -- we might want to confront that document
17 as a group of people involved in an educational project to
18 understand something beyond the document. So I would be
19 interested to know more about this document and about how it
20 was being used.

21 THE COURT: Mr. Ellman?

22 MR. ELLMAN: Yes, sir.

23 THE COURT: One more question. Then we'll recess for
24 day.

25 MR. ELLMAN: I better pick a good one.

1 BY MR. ELLMAN:

2 Q. If you accept my representation that this speech by Che
3 Guevara is virulently anti-American, if you accept that for
4 purposes of my question, wouldn't it be problematic to put a
5 poster of Che Guevara up on a classroom wall, just as it would
6 be problematic to put a poster of Adolf Hitler up on a
7 classroom wall?

8 A. Counselor, it's very difficult for me to answer a question
9 in which you equate Adolf Hitler with any other historical
10 figure. I am always sensitive when people pull the Hitler card
11 and do this, which is to say, ask a historian like myself to
12 agree that putting Che Guevara up on the wall would be as
13 objectionable as putting up Adolf Hitler. That's a difficult
14 question to answer.

15 Q. That is not the question.

16 A. Maybe you could ask me that again.

17 Q. I'm not asking you that question. I'm asking you based on
18 the same principle that makes it problematic to put up the
19 Hitler poster, isn't it also problematic to put the Che Guevara
20 poster up?

21 A. It's problematic to put up posters on walls, Counselor,
22 without having a pedagogical reason. I would say that I was
23 always interested in knowing what teachers put up on their
24 classrooms and what they're trying to accomplish by the
25 messaging that they're asking their students to look at every

1 day on the walls that surround them.

2 I would like to think that good teachers are thoughtful
3 about that, that they put up -- if they have images of
4 historical figures, that they're doing that for reasons that
5 align with their educational mission and the plan of the
6 classroom, of the class itself.

7 Again, as I said, one could imagine explaining why you
8 would want a poster of Adolf Hitler up if that was consistent
9 with understanding German history, the history of Naziism, the
10 history of anti-semitism, not to endorse those positions, but
11 perhaps to make sure that these themes, these concepts, this
12 history was present for students in the classroom.

13 I would say that for Che Guevara there would be -- and for
14 Adolf Hitler and Abraham Lincoln -- there would be questions
15 about why are these images up in the classroom, what are
16 they -- what is the teacher trying to accomplish in putting
17 these up for students to see.

18 MR. ELLMAN: All right. Thank you. I'll rest for
19 today, Your Honor.

20 THE COURT: That's good. All right. We're going to
21 stand at recess now. Dr. Pitti, you may step down. You are
22 excused for the day. We'll see you at 9:00 o'clock in the
23 morning. All right?

24 Let me ask counsel a couple of questions now.

25 Let's see. Just give us a guess how much more cross you

1 have. I'm not trying to tie you down.

2 MR. ELLMAN: I understand, Your Honor.

3 THE COURT: Give me a broad range.

4 MR. ELLMAN: Two hours.

5 THE COURT: Something like that. All right.

6 And do you have some idea of the redirect?

7 MR. CHANG: It would depend on what counsel covers
8 during the remainder of the time. Probably half an hour.
9 Probably much shorter.

10 THE COURT: All right. So we're going to get to
11 somebody else tomorrow, right?

12 MR. REISS: Yes, Your Honor.

13 THE COURT: Is that your --

14 MR. REISS: Dr. Valenzuela.

15 THE COURT: Is that your third expert?

16 MR. REISS: Yes, Your Honor. And our last witness.

17 THE COURT: Will she take most of the day?

18 MR. REISS: Again, her direct is in. I think the
19 critical question on timing is how much cross is going to be
20 done.

21 THE COURT: Okay. And then I said you have, what, two
22 or three witnesses more, right, Mr. Ellman.

23 MR. ELLMAN: Yes, that's correct, Your Honor.

24 THE COURT: Which is like a day? Your guess?

25 MR. ELLMAN: I am going to defer to Ms. Cooper on

1 this. She has a little better handle on it.

2 MS. COOPER: I believe, Your Honor, that a day might
3 be tight, as something to depend on because, of course, we
4 don't know how long, but I don't think two days it will be
5 necessary for Dr. Haladyna and the remaining witnesses.

6 MR. REISS: No, Your Honor. Without totally tying
7 myself down, I really do not envision a lengthy cross of
8 Dr. Haladyna, and I don't envision a very lengthy cross of
9 Mr. Hibbs, who is one of their other witnesses. I really do
10 think Dr. Haladyna's cross is going to be less than an hour. I
11 think Mr. Hibbs' cross is probably an hour to an hour and 15
12 minutes. Again, I'm giving you the best estimate I have right
13 now.

14 THE COURT: The reason I am asking, yesterday I said,
15 well, it looks for sure we're going to go into Monday. Now I'm
16 not so sure. Let me think about it overnight, then, and we'll
17 see what happens tomorrow.

18 Any questions, any questions?

19 MR. REISS: No, Your Honor.

20 THE COURT: By the way, I want to give you some a
21 little leeway now. I think yesterday we talked a little bit
22 about closing argument.

23 MR. REISS: Yes, Your Honor.

24 THE COURT: Now, I think throughout the -- at the
25 beginning of the trial, I said you're limited to one lawyer per

1 witness, right. Now, I don't know whether on closing argument,
2 you know, you want to divide up the time or not. If you do, I
3 think, you know, you can have, say, two lawyers on each side,
4 right, if you want. In other words, you know, you can divide
5 up for the plaintiffs, the first part or, you know, one lawyer
6 can do the opening, and the other can do the rebuttal. But
7 anyway, I am giving leeway to split your arguments up if you
8 want to. But still an hour.

9 MR. REISS: Thank you, Your Honor.

10 MR. ELLMAN: Understood.

11 MS. COOPER: Thank you.

12 THE COURT: We can stand at recess now, all right?

13 MR. ELLMAN: Yes, Your Honor.

14 THE COURT: See you all at 9:00 o'clock.

15 (The hearing was adjourned at 5:05 p.m.)

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, A. TRACY JAMIESON, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true and accurate transcript of the proceedings contained herein, held in the above-entitled cause on the date specified therein, and that said transcript was prepared by me.

Signed in Tucson, Arizona, on the 19th day of July, 2017.

s/A. Tracy Jamieson
A. Tracy Jamieson, RDR, CRR