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Gonzalez v. Douglas Trial Transcript of Proceedings, Day 1

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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.)	June 26, 2017
)	9:01 a.m.
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 1

Proceedings reported and transcript prepared by:

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

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1 P R O C E E D I N G S

2 (Proceedings commenced at 9:01 a.m., as follows:)

3 THE COURT: I ask the clerk to, for the record, call
4 out the name of the case. Will you? Then we'll get the
5 appearances.6 THE CLERK: Civil matter 10-00623-AWT, Acosta, et al.
7 Vs. Huppenthal, et al., on for day one of a bench trial.

8 Counsel, please state your appearances for the record.

9 THE COURT: At least for the first day, let's get the
10 appearance of all counsel here, starting with the plaintiffs.
11 Who is here?12 MR. REISS: Yes, Your Honor. Steve Reiss of the Weil,
13 Gotshal & Manges law firm for the plaintiffs. And with me, Jim
14 Quinn, my partner emeritus.

15 MR. QUINN: Good morning, Your Honor.

16 THE COURT: Good morning to both of you.

17 MR. REISS: David Fitzpatrick (sic). Luna Barrington.

18 MS. BARRINGTON: Good morning, Your Honor.

19 MR. REISS: Bob Chang of the Korematsu Center.
20 Richard Martinez, of course.

21 THE COURT: Good morning, Mr. Martinez.

22 MR. MARTINEZ: Good to see you, Judge.

23 MR. REISS: And of course we have our support help
24 here. We have George Martorell, Joseph Rausch, who is a summer
25 associate, and Sirak Biratu, who is arranging our logistics so

1 we don't get lost.

2 THE COURT: Good morning to all of you.

3 What about for the defense? Who do we have?

4 MS. COOPER: Leslie Kyman Cooper from the Attorney
5 General's Office on behalf of defendants.

6 MR. ELLMAN: Robert Ellman, from Weinzweig for the
7 defense.

8 THE COURT: Okay. Lots of lawyers. I guess what I
9 have to say is when we get down to witness examination, you
10 know, the rule I usually follow is, unless there's some reason
11 not to, only one lawyer per witness, all right, on whatever it
12 is, direct, cross, anything else. And then when we get to any
13 kind of argument, we'll see about that.

14 Before we start the trial, there are several motions
15 that have been filed over the last few days. Some of them I'll
16 try to rule on today. But let me ask the plaintiffs -- that's
17 for today though -- what witnesses do the plaintiffs intend to
18 call today?

19 MR. REISS: Your Honor, today we intend to call Curtis
20 Acosta, Maya Arce, and depending where we are, it's conceivable
21 we would start with Mr. Huppenthal. I don't know if we'll get
22 to Mr. Huppenthal today.

23 THE COURT: Okay. I just want to know the names
24 because I don't know whether, you know, any of the pending
25 motions will impact their testimony or the examination of those

1 witnesses. It's possible they can.

2 All right. Thank you. I am going to at least rule on
3 some of the pending motions. One, there's been a motion to
4 exclude witnesses. If the motion is made timely, it's a matter
5 of right. So the motion is granted. So all witnesses are
6 excluded.

7 Counsel, presumably you know the witnesses that you're
8 going to call, so if you see any of your witnesses in the
9 courtroom, be sure to shoo them out, otherwise they may not be
10 able to testify. It's counsels' obligation to monitor the
11 courtroom for that purpose. That's motion number one.

12 Yes?

13 MR. REISS: Your Honor, if I might, I think we had an
14 agreement with the state that experts could attend for the
15 opening statements, and I would ask the Court whether witnesses
16 could simply attend for the opening statements and then be
17 excluded. There are some witnesses --

18 THE COURT: Any objection to that?

19 MS. COOPER: Yes, Your Honor. We are fine with the
20 experts attending for the opening statements, but we don't feel
21 that the witnesses should hear the State's case.

22 THE COURT: All right. Witnesses -- well, one, all
23 right, I grant that motion as far as witnesses are concerned.
24 I deny -- I mean, as far as the experts are concerned. I deny
25 it as to percipient witnesses.

1 Two, though, going further on experts, you know, some
2 experts legitimately want to listen to certain testimony
3 because it's part of the basis of their testimony -- of their
4 opinion. So if you have that kind of witness and you want that
5 expert in the courtroom during the testimony, you just have to
6 bring it up before the fact. All right? Either side, if you
7 want to do that.

8 MR. REISS: Yes, Your Honor.

9 THE COURT: That's on the exclusion of witnesses. Let
10 me see. There are two or three other motions pending. Well,
11 let me address one other, more or less, a routine motion.

12 There's a motion I think by defendants to, although it
13 applies to both sides, for leave to treat certain witnesses as
14 hostile. That's fine. There's a list of witnesses. I'm not
15 going to go through the list, I'm not going to sign a written
16 order, but if you call a witness and you believe that witness
17 is hostile, you can ask for that permission at the time you
18 start your questioning. All right.

19 As for the other half of the motion, you know, to
20 prevent the other side from asking leading questions, I'll have
21 to take that case by case. I think in some cases it might be
22 proper to ask leading questions of a friendly witness on
23 cross-examination, but, you know, there could be occasions when
24 leading questions are not inappropriate.

25 So in the general sense, I grant the motion, in other

1 words, that you can treat certain witnesses as hostile, but I
2 think you have to say so at the beginning of the examination of
3 that witness. All right. I'll say it's granted or not
4 granted. So we'll take it witness by witness.

5 The other motions pending, you know, on one of the
6 motions I think I just got -- I just read the opposition today.
7 So I'm going to think about those motions some more. I think
8 we can go ahead with the trial. I'll try to rule on that
9 motion, these motions, other pending motions, either by the end
10 of the day today, or first thing tomorrow morning. All right.
11 So I think that's soon enough.

12 Now, does counsel want to make an opening -- I don't
13 want it long, but if you had the opportunity, do you want to
14 make a brief opening statement? Either side?

15 MR. QUINN: Yes. I think we had agreed we were going
16 to do a brief opening statement for both sides.

17 THE COURT: Is that right, both sides agree? When you
18 say, "brief," what do you mean?

19 MR. QUINN: Probably no more than 30 minutes.

20 THE COURT: Does that sound about right?

21 MR. ELLMAN: Yes.

22 THE COURT: All right. This case has been long in
23 preparation. Obviously, you know, a lot of time and effort has
24 gone into it, so I think a 30-minute opening statement would be
25 appropriate, so I am going to permit that.

1 Now, any other matters we should take up before we
2 actually get to opening statement?

3 MS. COOPER: Just an administrative matter, Your Honor.
4 What's your expectation with respect to breaks and the length
5 of the trial day?

6 THE COURT: Well, I think I'd like to go from 9:00 to
7 5:00 every day. Sometimes, you know, in the past, I've gone
8 much longer in court trials, but the problem here is our
9 reporter is preparing a real-time transcript, and she's alone
10 in the courtroom, so I don't think we can go any longer than
11 that, you know, on a daily basis. I'll schedule a mid-morning
12 break, a mid-afternoon break, an hour and a half for lunch.
13 All right?

14 MS. COOPER: Thank you, Your Honor.

15 MR. REISS: Yes, Your Honor.

16 THE COURT: What I tell the jury when there's a jury
17 trial, an hour and a half is not so the lawyers can eat a big
18 lunch, but obviously you want have to have time to prepare the
19 witnesses for the afternoon, and that kind of matters. So an
20 hour and a half for lunch. All right. So that will be the
21 usual schedule.

22 Now, if we have some witness who might, you know, be
23 close to being finished by 5:00 o'clock, you know, maybe we'll
24 try to finish that witness off, but that's about it. Okay?

25 MS. COOPER: We appreciate that. We have witnesses

1 who are traveling from Phoenix, and they don't want to stay an
2 extra night.

3 THE COURT: And then, speaking of that, if you have
4 witnesses that need to be taken out of order, you know, discuss
5 it with counsel first and then, you know, if necessary, you can
6 make a motion, either side. Okay?

7 MR. REISS: Thank you, Your Honor.

8 MS. COOPER: Thank you, Your Honor.

9 THE COURT: Anything else preliminarily?

10 MR. REISS: Not from plaintiffs, Your Honor.

11 THE COURT: Okay. Then we'll start the trial with the
12 opening statements. Plaintiffs, of course, have the burden of
13 proof, and we'll hear first from the plaintiffs.

14 MR. QUINN: Good morning, Your Honor.

15 THE COURT: Good morning.

16 MR. QUINN: This case is about the elimination of the
17 Mexican-American Studies program by the State of Arizona. It
18 is essentially undisputed that the MAS program was specifically
19 targeted by the State of Arizona for elimination, a program
20 that was comprised of up to 90 percent Mexican-American
21 students.

22 There's two questions that need to be answered in the
23 context of this case. First, was A.R.S. 15-112, the statute
24 that we're attacking, enacted and/or enforced discriminatorily
25 in violation of the Equal Protection Act; and, secondly, was

1 A.R.S. 15-112 enacted and/or enforced for narrowly partisan
2 political, or racial reasons in violation of the First
3 Amendment.

4 Now, the evidence will show that the answer to those
5 questions is unequivocally yes, on both counts.

6 The program itself, and you'll hear from a couple of
7 witnesses, Curtis Acosta, who taught the program, in the
8 program for a decade, and Sean Arce, who was first a teacher
9 and then the director of the program, and then we'll tell you
10 what the program was all about, they will tell you that the
11 program used educational concepts that were widely taught all
12 over the United States.

13 It was clearly a new and innovative program, and it's
14 a program that, since its elimination, has been copied all over
15 the United States. It was a program designed to close the
16 historic achievement gap between Mexican-American students and
17 white students here in Arizona. And that is exactly what the
18 program accomplished.

19 Your Honor, you're going to hear from -- and you've
20 already probably read their direct testimony -- three experts
21 for the plaintiffs. First, Dr. Nolan Cabrera, from right here
22 at the U of A. He did a detailed regression analysis covering
23 over four years, and concluded unequivocally that this program
24 led to higher test scores, higher graduation rates, and in fact
25 the more students that took Mexican-American study program

1 courses, the better they did. It confirmed earlier studies
2 that in fact showed that this was an enormously successful
3 program.

4 The defense did not counter with an expert to try to
5 show that in fact its success was not the case. Rather, they
6 have an expert who comes in and sort of criticizes
7 Dr. Cabrera's analysis around the edges. But even the defense
8 expert admitted that the results of that study were impressive
9 and that the program, assuming that Dr. Cabrera's analysis was
10 correct, was in fact enormously successful.

11 The bottom line is, Your Honor, the program was
12 working.

13 You'll also hear from Dr. Angela Valenzuela, who is a
14 nationally known expert on curriculum. Indeed she's authored
15 the leading textbook in that regard. She has testified that
16 the program was pedagogically and substantially and
17 substantively sound.

18 In fact, she testified that the very structure and
19 pedagogy of the program were the reasons for its enormous
20 success. She will also, and has explained, the dangers of
21 what's been known as subtractive schooling, which is the notion
22 of trying to force students to assimilate. These are concepts,
23 Your Honor, that are widely accepted in education circles
24 throughout the United States.

25 The third expert, Dr. Stephen Pitti, is a Yale

1 historian, and an expert, a recognized expert, in
2 discrimination, particularly with regard to education of
3 Mexican-American students in the Southwest. He has testified
4 that in fact this statute wasn't passed in a vacuum, that there
5 was a half-dozen similar statutes in the same time period. The
6 Arizona legislators were seeking to pass statutes that dealt
7 with anti-immigration specifically focused on Mexicans,
8 including what turned out to be an infamous statute, the
9 stop-and-check statute, which was struck down by the Supreme
10 Court of the United States.

11 He also testified about code words that are used. Tom
12 Horne's reference to American values and rudeness and
13 communists, these are the kinds of code words used to hide
14 racial animus. Of course, he testified about Mr. Huppenthal's
15 racial blogs.

16 Now, I just want to briefly go over what the evidence
17 is going to show with regard to how the statute came into place
18 and how it was enforced.

19 Can we bring up the timeline, Jorge?

20 Your Honor will recall that this program for nearly a
21 decade was no problem for the State of Arizona. It was
22 strongly supported by the Tucson School District and by the
23 people of Tucson. But in April of 2006, a woman by the name of
24 Dolores Huerta, a famous and well-known civil rights expert, a
25 co-founder with Cesar Chavez of the United Farm Workers, was

1 invited to speak at the Tucson High School. And it was during
2 her speech that she asked the students what has now become the
3 focal point of how all of this started. She asked the students
4 why Republicans hate Latinos. That was not the subject matter
5 of her speech, but it came up during that -- during that speech
6 and it became a big deal. There was a lot of coverage.
7 Obviously it was a partisan statement, it was a political
8 statement.

9 And as a result of that, Superintendent Tom Horne, the
10 education superintendent at the time, asked to have his
11 assistant, Margaret Dugan, respond to the statement made by
12 Ms. Huerta. Margaret Dugan came and she gave her response.
13 She talked about being a Republican and a proud Latina, again,
14 focused on politics. And there was a protest, a silent
15 protest, by students.

16 The evidence will show, notwithstanding what Mr. Horne
17 assumed, this was not a protest by Mexican-American studies
18 students. It was a protest, a silent and respectful protest.
19 Notwithstanding of that, Mr. Horne took great umbrage, thought
20 it was rude, and assumed that the teachers from the
21 Mexican-American study program had orchestrated this particular
22 protest.

23 Now, the evidence will show that that was not the
24 case. The evidence will show that in fact the students who did
25 protest were not by any means all from the -- involved in the

1 Mexican-American studies program. There were black students,
2 there were white students, there were Mexican students who
3 protested, and they were protesting because, unlike in the
4 speech by Dolores Huerta, where students were asked -- allowed
5 to ask questions, they were specifically told that they could
6 not ask questions of Ms. Dugan, and, hence, they taped their
7 mouths and silently eventually stood and walked out.

8 This, as I said, apparently outraged Mr. Horne. He
9 then decided that he was going to target this program for
10 elimination. He wrote an open letter to the citizens of
11 Tucson, talking about how the students were rude and how the
12 Mexican-American teachers had put the students up to this, none
13 of which was true, and he urged that the Tucson School District
14 and the citizens of Tucson shut the program down.

15 The school district actually stood up and said, no, we
16 support the program. We think it's a terrific program.

17 So then Mr. Horne decides: Well, I'll see if I can
18 get legislation passed to shut the program down. And over the
19 next three years he either supported, and indeed on a couple of
20 occasions actually wrote bills specifically -- and the
21 testimony will show -- quote, to get rid of the MAS program.

22 Interestingly enough, while he was writing these
23 bills, particularly the one that was eventually passed in 2010,
24 he was also running for the Arizona Attorney General's Office.
25 Indeed, he was running, among other things, to get that

1 political office by citing his attempts to eliminate the MAS
2 program.

3 The bill was passed. And on December 30th, the last
4 day that Horne was in office, he issues a finding of a
5 violation. Unfortunately, and this goes to the procedural
6 aspects of all of this, the legislation was not yet in effect.
7 It didn't come into effect for two more days. His finding was
8 premature, and it was based on things that had happened prior
9 to the actual law going into effect.

10 The evidence will show that over the next few years,
11 Attorney General Horne boasted about eliminating the MAS
12 program as part of his political campaign.

13 Let's look at the actions that were taken by his
14 successor, who was running for his office at the same time that
15 Horne was running for the Attorney General's Office. He too,
16 Mr. Huppenthal, wanted to take credit for getting rid of the
17 MAS program. He campaigned on doing that. In fact, when he
18 was still senator, while the bill, then called HB2281, was
19 being discussed, he actually added a couple of amendments to
20 the bill, where, number one, he wanted to be sure that the
21 superintendent would be able to enforce the bill, and,
22 secondly, he didn't want it to go into effect until he was the
23 superintendent.

24 Sure enough, four days into his now superintendent
25 status, as he was sworn in on January 1st, 2011, Huppenthal

1 adopts the finding of Tom Horne. The testimony will show that
2 he adopted the finding of Tom Horne without ever even reading
3 it. Then suddenly he woke up and realized that in fact since
4 the finding by Horne was premature, he might have procedural
5 problems. So he decided then he would do his own investigation
6 and he, along with his staff, hired a company called Cambium,
7 which is a two-month study, visited a third of the classes, did
8 a variety of other -- they interviewed teachers, they had
9 seminars and interviewed students, and ultimately they
10 concluded that the program did not violate A.R.S. 15-112.

11 Notwithstanding that, Mr. Huppenthal rejects Cambium's
12 findings, and without having anyone visit any classrooms or do
13 any significant work, nothing like the work done by Cambium, he
14 simply, in June of 2011, once again, declares that the MAS
15 program violated the A.R.S. statute.

16 A few months later, after the ALJ hearings, he then
17 adopts the findings of the ALJ hearings. On January 6th, four
18 days later, under the pressure of losing funding for the
19 district, the Tucson board terminates the MAS program. A few
20 days later, textbooks are actually physically removed from the
21 MAS classes. It's not until two years later that Huppenthal
22 admits to anonymous blogs that contain racial comments
23 specifically directed at the MAS program. And he tearfully
24 apologizes.

25 In his last act, the day he left office, on June 2nd,

1 2015, he once again issues a notice of non-compliance, even
2 though the MAS program no longer exists. There was a
3 subsequent program, and, without any basis, he also finds that
4 one in violation of the law.

5 So it's pretty clear the evidence will show, that both
6 Horne and Huppenthal had their total focus on getting rid of
7 the MAS program, even though there were -- one of the things
8 that I -- important to focus on, and Mr. Horne testified to
9 this in his report, when he first issued a finding with regard
10 to the MAS program, he also noted that he believed that the
11 other -- at least two of the other ethnic programs, the
12 African-American ethnic program and the Asian-American ethnic
13 program likely violated the law as well.

14 Nonetheless, no effort was ever made by Mr. Horne or
15 Mr. Huppenthal or anybody else to actually investigate those
16 programs.

17 Just briefly, Your Honor, and Your Honor knows the law
18 probably a lot better than I do, the Ninth Circuit has made it
19 clear, and I think Your Honor has adopted it as well, that the
20 focus in determining a violation of equal protection law, are
21 the Arlington Heights factors. And the evidence is
22 overwhelming with regard to each of these factors, that the
23 factors are present here.

24 One of the things that's important to recognize, and
25 I'm sure Your Honor does, is in the context of the Arlington

1 Heights factors, the Court made it clear that it's not only
2 racial animus, but other indicators are also important. Racial
3 paternalism, willful blindness, like, for example, never
4 bothering to actually visit a teaching courtroom (phonetic).
5 Negative attitudes, like the blogs, the infamous anonymous
6 blogs of Mr. Huppenthal. And then just plain ignorance, the
7 fact that they never could quite understand what the terms like
8 La Raza or M.E.Ch.A. actually meant, indicate an overwhelming
9 bias to get rid of these programs.

10 The first factor, the Ninth Circuit has already found
11 that there was a disparate impact on Mexican-American students
12 since 90 percent of the students in the program were
13 Mexican-American, and the fact that they were terminating a
14 successful program highlights the racial bias. The historical
15 context we've already talked about that Professor Pitti has
16 gone through in detail, the contemporaneous bills, the fact
17 that the very same legislative session where this bill was
18 passed they also passed 1070, which was supported by
19 Mr. Huppenthal, 1070 being the stop-and-check law that was
20 found to be unconstitutional by the Supreme Court of the United
21 States.

22 You look at the sequence of events, the timelines, the
23 fact that they had to put -- Horne decided, notwithstanding the
24 fact the defendants now say there are other statutes that they
25 could have used to shut the program down, they went and got

1 special legislation. Why? Because they wanted to make sure
2 they could get rid of this program; the fact that Horne from
3 the very beginning had a long anti-MAS bias, which was based on
4 his own personal philosophy and, more importantly, that it grew
5 out of political speech. And all this was done in the context
6 of political campaigning by both Horne and Huppenthal.

7 There were enormous departures from procedures. First
8 of all, Horne's premature finding, the rejection of the Cambium
9 report, the fact that Huppenthal adopted Horne's findings
10 without ever reading them, the fact that they never visited any
11 courtroom, and on and on.

12 Similarly, the legislative history raises the same red
13 flags. The use of code words and stereotypes and the fact that
14 they could have relied on existing statutes.

15 And, of course, the selective enforcement. The fact
16 that they only enforced this against the MAS program, even
17 though Horne had found that two other programs likely violated
18 the law, the fact that they were aware of a charter school, the
19 Paulo Freire charter school. Paulo Freire was someone that
20 Horne and Huppenthal attacked constantly as part of the basis
21 for their finding of a violation, and yet when they found out
22 that they had approved the Paulo Freire at first one charter
23 school and then later a second one. They never bothered to
24 look into those and largely because they were majority white
25 schools. It's a typical racial double standard.

1 Finally, with regard to the First Amendment violation,
2 same facts in the context of the *Board of Education vs. Pico*
3 case, show unequivocally a violation of the First Amendment.
4 They lacked regular procedures. They ignored experts. They
5 rejected independent findings, as in *Cambium*.

6 The Court made it clear that in that case, the fact
7 that the conservative group that were getting rid of the books
8 found them to be personally offensive is simply not enough.
9 And under the analysis of *Board vs. Pico*, it's actually a lower
10 standard than the Fourteenth Amendment. You don't need racial
11 animus. All you need to show -- and we can show
12 unequivocally -- that this was -- there were partisan political
13 motives. To get elected, that's why they did this.

14 The fact was that in the campaigns of both Huppenthal
15 and Horne, the elimination of the Mexican-American studies
16 program was the centerpiece of their political campaigns.

17 And why is it that they sought the complete
18 elimination of a successful program? The fact that they did
19 that undermines the notion that there was a pedagogical basis.
20 They could have changed this. They wanted to get rid of it.
21 It was a pretext, and it remains a pretext.

22 This whole history fits into a historic pattern of
23 discrimination against Mexican-Americans in Arizona. This was
24 an innovative and groundbreaking program. It incorporated the
25 very essence of Mr. Horne's American values: Hard work,

1 respect for others, responsibility, and academic individuality.
2 And it was snuffed out, Your Honor, for all the wrong reasons.
3 Thank you.

4 THE COURT: Thank you. The defendants.

5 MR. ELLMAN: Good morning, Your Honor. This case
6 turns on motive. I used to say that a lot as a prosecutor.
7 But in all of those cases, motive was merely evidence of
8 another element.

9 Here it's elevated to the status of an element itself.
10 The plaintiffs' burden in this case is to demonstrate that the
11 legislature enacted a statute motivated by racism rather than
12 the express purposes in the statute itself, or, alternatively,
13 that not one, but two superintendents of public instruction
14 enforced that statute motivated by viewpoint discrimination
15 rather than the significant evidence that violations of the
16 statute had occurred.

17 We know from the Ninth Circuit ruling, as we go into
18 the evidence of this case, that subsections 1, 2, and 4 reflect
19 constitutionally valid pedagogical rationales. We also know
20 from the unappealed stare decisis administrative law judge
21 ruling that Tucson Unified School District in fact violated the
22 statute.

23 So that leaves whatever evidence the plaintiffs can
24 muster on two surviving fact theories. First, that the Arizona
25 legislature enacted a statute with the mentality and motivation

1 of racists. Starkly and irreducibly, that's what they have to
2 prove. They have to do it despite considerable of legitimate
3 pedagogical reasons for enacting HB2281. They have to do it
4 despite no evidence of any overtly discriminatory statements
5 during the relevant time span, and they have to do it despite
6 the facially constitutional aspects of the statute and the
7 laudable purposes incorporated within it.

8 The second theory of course is that the enforcement of
9 the statue was simply disguised viewpoint discrimination
10 despite again what were numerous obvious violations of the
11 statute found by both superintendents and ultimately affirmed
12 by a neutral arbiter after a full and fair evidentiary hearing.

13 As the evidence unfolds before you, you will find that
14 those theories have no support from any witness who actually
15 knows what happened, who actually knows what the motivations of
16 the actors were or worked with them and knows the motivations.

17 And I'm not talking simply about Tom Horne and John
18 Huppenthal when I say that, Your Honor. You are going to hear
19 testimony from a number of professionals who worked in both of
20 their administrations, and they'll all tell you the same thing.
21 They'll all tell you these were two public officials who were
22 distressed about the persuasive bias and ethnic chauvinism that
23 permeated the La Raza studies program in TUSD.

24 That Tom Horne and John Huppenthal were motivated by a
25 desire to eliminate a Marxist pedagogy of oppression and

1 indoctrinated attitudes of victimization, anger, and
2 resentment. They will tell you uniformly that Tom Horne and
3 John Huppenthal were motivated to teach students of all
4 backgrounds and all ethnicities, to value one another as
5 individuals, rather than reducing each other to stereotyped
6 exemplars of their respective races.

7 Your Honor, if there was discriminatory motive at work
8 here, these witnesses would know about it. Mark Anderson will
9 testify, a former legislator who lobbied for HB2281 in the
10 Horne administration. He knew Mr. Horne's motives. They were
11 obvious to him. They were pedagogical. They were legitimate.
12 They were not motivated by racism.

13 Margaret Garcia Dugan, who you've heard about already,
14 will also testify. She was a deputy superintendent for
15 Mr. Horne. She was a long-time educator, principal
16 administrator in over a decade working closely with Tom Horne.
17 She never observed a hint of racial or ethnic bias in any of
18 his actions, including actions related to HB2281.

19 Dr. Robert Franciosi will testify as a fact witness in
20 this case. He'll tell you that Tom Horne asked him to conduct
21 the study to measure the academic success attributable to the
22 Mexican-American studies La Raza program. He'll tell you that
23 Tom Horne did not direct him to reach any particular conclusion
24 about it and that he presented his findings to Mr. Horne. His
25 findings were that the claims of academic achievement

1 attributed to MAS were unsupportable, that Tom Horne appeared
2 to accept those findings and acted upon them without showing
3 any sign of ethnic or racial bias in his decision-making.

4 You'll hear from Kathy Hrabluck, a long-time teacher,
5 administer, a curriculum developer who worked in both the Horne
6 and Huppenthal administrations. She'll tell you that she never
7 observed any sign of racial or ethnic prejudice in either of
8 those men.

9 She'll tell you, particularly in Mr. Huppenthal's
10 case, that his opposition to the Mexican-American studies
11 program was motivated by legitimate pedagogical concerns.
12 She'll tell you that the department of education was receiving
13 complaints from Tucson residents about the Mexican-American
14 studies program and was not receiving any similar complaints
15 about any other ethnic studies program in Arizona.

16 She and another individual named Elliott Hibbs will
17 both testify about what happened with respect to the
18 enforcement of the statute in John Huppenthal's administration.

19 Mr. Hibbs has impeccable credentials as a state
20 administrator. He was appointed by four different governors to
21 lead state agencies and boards. He'll tell you that his goal,
22 as directed by John Huppenthal, was to conduct a fact-based,
23 high quality, non-partisan investigation to determine whether
24 Tom Horne's finding was valid or not.

25 He knew administrative procedure. Kathy Hrabluck knew

1 education. They worked together, they collaborated, and they
2 did so without the sort of goal-oriented dictates that someone
3 would expect if an investigation was motivated by viewpoint
4 discrimination.

5 And this is what they're going to tell you, that John
6 Huppenthal entrusted them to determine whether TUSD was
7 actually violating the statute as Tom Horne had found. They
8 had independence and latitude. They had no goal. They had no
9 agenda in fulfilling their duty. John Huppenthal neither
10 stated nor implied that they should find a violation, and they
11 both reached the same conclusion after months of examination.

12 They concluded that, irrespective of any consideration
13 related to race or ethnicity or politics or partisanship, that
14 the Tucson Unified School District was, in fact, violating the
15 statute and had subjected itself to the potential penalties
16 attached to that violation.

17 You've heard about the Cambium audit. John Huppenthal
18 could have shut down a program he was pedagogically opposed to
19 the day he took office, because there was already a finding by
20 Tom Horne.

21 You'll hear he could have waited 60 days and simply
22 stood on the ruling and withheld funding if the school district
23 had not either shut down or radically altered the structure of
24 the program, but he didn't.

25 He permitted an independent auditor to investigate.

1 The auditor they chose was the only auditor, after reaching out
2 to several, who was even willing to look at this highly
3 politicized issue. They immediately subcontracted the work
4 out.

5 You'll learn from both Kathy Hrabluck and Elliott
6 Hibbs that there were serious deficiencies in the Cambium audit
7 and despite a lack of evidence and a lack of cooperation, what
8 began as not enough information evolved into something called
9 no observable evidence by the time they were done.

10 Kathy Hrabluck, another individual named John Stollar,
11 and Elliott Hibbs unanimously concluded that that audit was
12 deficient. They reported their findings to John Huppenthal,
13 and he told them to dig deeper. He said get to the bottom of
14 this and this time do it yourselves. Investigate until you're
15 satisfied that you have enough information.

16 When they did that, they found that the MAS program
17 lacked curriculum, that it didn't have a cohesive plan of
18 instruction, that it reflected signs of indoctrination rather
19 than education. There was no balance in the teaching
20 perspective. It used inflammatory materials. Teachers were
21 not giving historical or social context to content, and, in
22 fact they were imprinting their own political and narrow
23 partisan beliefs on the students they were teaching.

24 The overall impression was that the Mexican-American
25 studies program was portraying the United States as a racist

1 society, that teaching was always framed in terms of oppression
2 and that students were taught to distrust rather than evaluate,
3 and they were learning to become angry and resentful at
4 authority in general and white people specifically.

5 So at the end of their investigation, they unanimously
6 concluded that there was a violation, and John Huppenthal
7 accepted their recommendation and their conclusions.

8 You'll hear from all of those administrators evidence
9 that will demonstrate that any responsible educator would have
10 taken remedial action based on what they had learned.

11 Tom Horne of course will testify about the saga, as
12 the Ninth Circuit calls it, that began with Ms. Huerta's
13 speech. You'll find that he took measured evidence-based
14 actions, as an attorney would, which of course he is, that he
15 gathered information and sorted through it, which is not what a
16 racist would do.

17 His open letter did a lot more than denounce rudeness.
18 It included much of the factual information that ultimately led
19 to his finding about what the teachers in the Mexican-American
20 studies program were doing and saying, the materials they were
21 using, and the complaints from teachers in the district itself.

22 He'll tell you what he did, Your Honor, and he'll tell
23 you why he did it. He'll tell you that he designed and
24 supported legislation to eliminate race and class-based
25 resentment in our schools, not to promote it.

1 He did not depart from normal procedures under
2 Arlington Heights. You'll learn that he utilized rather than
3 avoided the normal procedures. He drafted a bill, and he
4 testified in support of it. These are the normal procedures.

5 Both he and John Huppenthal were legislators. They
6 will tell you that HB2281 was passed in compliance with the
7 same rules and the same procedures that applied to all bills,
8 and they'll tell you that the bill itself was designed with
9 multiple layers of review by neutral administrative and
10 judicial tribunals.

11 The department of education even pays the cost of an
12 appeal from an adverse ruling and districts that come into
13 compliance after violations, even have a mechanism to recapture
14 lost funding. This is the opposite of departing from normal
15 procedures under Arlington Heights.

16 The issue that Tom Horne -- excuse me -- the finding
17 that Tom Horne actually issued on January 1st, 2011, is replete
18 with evidence and was affirmed by an administrative law judge.

19 John Huppenthal is a career public official and
20 legislator, many years of experience in the area of education.
21 He'll tell you that HB2281 was passed with no unusual procedure
22 and no hidden agenda.

23 He'll tell you his vote, and as far as he could tell,
24 the votes of his colleagues, relied on testimony and materials.
25 It cleaned up the division of authority between the

1 superintendent and the Board of Education.

2 He was not the supervisor at the time, of course, but
3 he did inherit Tom Horne's finding when he took over the
4 Department of Education as the superintendent. And you'll see
5 from his testimony, as confirmed by Hrabluck and Hibbs, that he
6 did what a goal-oriented racist would not do. He didn't accept
7 Tom Horne's finding. He permitted an independent
8 investigation. He entrusted three eminently capable
9 non-partisan career professionals to handle it.

10 He did things he didn't have to do to make sure that
11 the Mexican-American studies program had an opportunity to
12 demonstrate that it didn't violate the statute. And there was,
13 as I said, a unanimous conclusion that it did, a unanimous
14 conclusion that the audit was deficient and that they needed to
15 investigate further.

16 Given this body of evidence, the plaintiffs have no
17 choice to prevail here, except to try and taint John Huppenthal
18 based on his sincerely held but racially neutral pedagogical
19 beliefs, that the best and perhaps only path to success for
20 people in the United States from any background is to speak
21 English fluently and the best way to ensure that is to speak
22 English exclusively in classrooms.

23 It's not a radical idea. It's not a racist idea.
24 It's not a partisan political belief. It's not a badge of
25 white supremacy. It's a pedagogical principle grounded in his

1 experience and embraced by many other educators, and it
2 certainly applies to students of all races and ethnicities.

3 He may have overstated his pedagogical views, and he
4 may have occasionally phrased them in questionable terms in the
5 rhetorical street fighting known as blogging, but you'll learn
6 when he testifies that he's anything but a racist.

7 He has no desire to diminish the cultural identity of
8 Mexican-Americans or to minimize racism or historical
9 oppression, but he does believe that instruction has to be
10 balanced and directed to developing critical thinking and that
11 it must not to foment resentment and blame or provide excuses
12 for failure.

13 Knowing that their case cannot win if this Court
14 accepts the testimony of John Huppenthal and people who
15 actually know him, their witnesses will try to taint him by
16 association. They'll actually try to prove that individuals
17 named Russell Pearce and Laura Leighton were really the people
18 behind John Huppenthal's decisions.

19 The flaw, of course, is that John Huppenthal is John
20 Huppenthal, and when he testifies, you will learn that he
21 pursued educational policies the way he pursued all issues by
22 examining the information available to him and drawing his own
23 conclusions.

24 Like Tom Horne, he wanted to prohibit partisan
25 indoctrination masquerading as curriculum that simply examined

1 the Mexican-American perspective. He wanted to replace the
2 curriculum built on ethnic solidarity with a curriculum that
3 taught students to treat and value each other as individuals
4 and not be taught to hate or resent people of other races or
5 classes, just like the statute says.

6 So the testimony in this case is going to divide very
7 neatly along two lines, Your Honor. You're going to have
8 witnesses who know the defendants and work closely with them,
9 and you're going to have witnesses who don't know the
10 defendants, but are still willing to theorize that they might
11 have meant something, even though they never said it.

12 You'll hear from witnesses who have no stake in the
13 Department of Education's investigation of the Tucson Unified
14 School District, and you'll have witnesses who are emotionally
15 and professionally invested in the Mexican-American studies
16 program.

17 The plaintiffs' witnesses who do not know Tom Horne or
18 John Huppenthal and who are not with them when bills were
19 debated and decisions were made will offer the only thing they
20 can in their testimony: Conjecture. They're going to tell you
21 that neither of the superintendents of public instruction nor
22 the legislators who voted for HB2281 meant what they said.

23 Even though they stated their reasons in public
24 documents and in public debate, under intense scrutiny and
25 subject to withering opposition, the plaintiffs' witnesses will

1 tell you that it was all just illusion, that they were speaking
2 in some sort of code, and that the bill they passed and the
3 findings they developed were an elaborate hoax perpetrated by
4 liars.

5 That's not a rhetorical point, Your Honor. You're
6 actually going to hear about a rap song written by a
7 Mexican-American studies teacher who is going to testify here
8 for an audience that included Mexican-American students in
9 which he literally called John Huppenthal and Tom Horne
10 mentirosos, which is the Spanish word for liars.

11 Their witnesses are going to theorize about hidden
12 racism in a statute that expressively requires schools to teach
13 students to treat and value each other as individuals and not
14 to be taught to resent or hate people for reasons related to
15 race or class, and without any ability to peer into the minds
16 of the legislators or the superintendents. Their witnesses are
17 going to hypothesize, based on historical episodes of
18 discrimination and academic theories about semantics that the
19 motivation of Arizona legislators were the exact opposite of
20 their stated intentions as enshrined in the bill that became
21 law.

22 What you won't see is the evidence that the plaintiffs
23 told the Ninth Circuit they were going to produce when they
24 were trying to avoid summary judgment.

25 You're not going to see, for example, e-mails of

1 legislators evincing discriminatory intent. You're not going
2 to see information regarding the historical backgrounds
3 surrounding the passage of HB2281 that this Court wasn't aware
4 of some five years ago. You're not going to hear additional
5 evidence with respect to John Huppenthal's treatment of the
6 Cambium report beyond what you already knew, almost five years
7 ago. And you're not going to hear about complaints the
8 Department of Education received about other ethnic studies
9 programs. You won't hear testimony by anyone with knowledge
10 that any legislators voted for HB2281 because they wanted
11 Latino students to fail in life. You're not going to hear
12 testimony that they wanted to maintain an achievement gap or
13 that they simply disliked Latinos and wanted to deprive them of
14 educational opportunity. Yet that is what these plaintiffs
15 theorize, and that's what they have to prove to prevail.

16 You'll see from the defense witnesses the confirmation
17 of what the defense has been telling this Court for seven long
18 years: That two highly educated and accomplished Arizona
19 public officials opposed the La Raza program in the form it
20 took in Tucson because it was politicized, divisive, separatist
21 and propagandist, that its content was biased, and that it
22 taught students to see themselves as exemplars of a race or
23 ethnicity rather than as individuals who had control over their
24 own future. Those are bona fide valid legitimate pedagogical
25 concerns and nothing more.

1 Thank you.

2 THE COURT: All right. Thank you.

3 It's almost 10:00 o'clock. I think we'll take a
4 recess now, and then after the recess, plaintiffs, be ready to
5 have your first witness, all right?

6 MR. QUINN: Very well, Your Honor.

7 THE COURT: All right. We'll stand in recess for
8 about 15 minutes.

9 (A recess was taken from 10:00 a.m. to 10:15 a.m.)

10 THE COURT: Okay. Time for the plaintiffs to call
11 their first witness.

12 MR. QUINN: Thank you, Your Honor. The plaintiffs
13 call as their first witness Curtis Acosta.

14 THE COURT: All right, sir. Step forward. Around
15 here, over here, and be sworn.

16 MR. ACOSTA: Up here, Judge?

17 THE COURT: Yes, right up the stairs, right next to
18 the seat. Raise your right hand.

19 CURTIS ACOSTA, WITNESS, SWORN

20 THE CLERK: You may have a seat. Please speak
21 directly into the microphone. State your full name and the
22 spelling of your last name.

23 THE WITNESS: Yes. My name is Curtis Acosta.

24 A-c-o-s-t-a.

25 Did I need to spell my first name?

1 THE COURT: That's fine.

2 MR. QUINN: Your Honor, Mr. Acosta does have a problem
3 with his hearing in his left ear. So we just want you to know,
4 if you ask him a question, he's not ignoring you.

5 DIRECT EXAMINATION

6 BY MR. QUINN:

7 Q. Good morning, Mr. Acosta.

8 A. Good morning.

9 Q. Could you please describe for us your educational
10 background?

11 A. Yes. I received a bachelor of arts degree from Willamette
12 University in Salem, Oregon in 1994. I then came to Tucson,
13 Arizona and received a teaching certification in English in --
14 at the University of Arizona in 1995. I received a master's of
15 arts degree at the University of Arizona here in Tucson in
16 language, reading, and culture in 2009 and then my Ph.D. in
17 2015 at the University of Arizona in language, reading, and
18 cultural.

19 Q. I guess I can call you "doctor."

20 A. You can call me "doctor" if you'd like.

21 Q. Now, you mentioned that you received your teaching
22 certificate from the University of Arizona in 1995. Now, when
23 did you begin your teaching career?

24 A. I was actually -- I started teaching at Tucson High School,
25 that semester, the fall semester of 1995, and I remained on the

1 following semester as a long-term substitute, and then I was
2 hired by Tucson Unified School District to teach English at
3 Tucson High School in the following year, fall of 1996.

4 Q. After you were hired by the Tucson school district to
5 teach, what school were you teaching at?

6 A. I taught at Tucson High School. That's the original school
7 that I taught at.

8 Q. And did you move to another school?

9 A. Yeah. I taught at two schools. I taught at two schools in
10 the past, and during my career at TUSD, I taught at Tucson
11 High. I had two different stints there, and then in between I
12 taught at University High School.

13 Q. What kind of high school was University?

14 A. University High School is our public prep school, college
15 preparatory school. It's been renowned for years as one of the
16 best high schools in all of the country. U.S. News and World
17 Report rates it --

18 (Reporter requests the witness to slow down.)

19 A. University High School is a college preparatory public
20 school here at Tucson Unified School District, and it's pretty
21 nationally renowned. It's been consecutively or consistently,
22 rather, in the top 10 rankings in the U.S. News and World
23 Report as one of the best schools in America.

24 Q. Now, how long were you at University High?

25 A. I was there for two years.

1 Q. What did you do next?

2 A. I went back to Tucson High School. That's where my heart
3 was at, so I transferred back.

4 Q. Into the -- which department?

5 A. English department at Tucson High School.

6 Q. Now, how long did you stay at the Tucson High School?

7 A. I was there from -- my second stint from 2001 all the way
8 to 2013, when I resigned.

9 Q. That was approximately 11 years?

10 A. Yeah, 11 to 12.

11 Q. After you resigned teaching at Tucson High School, what did
12 you do next?

13 A. I started a consultation as -- work as a consultation --
14 consultant, rather, in education. I became incorporated in
15 August of 2013. And I did that in order to finish my Ph.D.,
16 which I was writing my dissertation at the time.

17 Q. You said you were doing consulting work. What kind of
18 consulting work did you enter into?

19 A. Yeah, I currently do it as well. We've grown. It's been a
20 lovely journey. Mostly it's teacher training. So I do
21 workshops with school districts. They contract me to help them
22 in terms of culturally responsive and relevant or sustaining
23 types of pedagogy and curriculum.

24 Q. Did you do that just here in Arizona?

25 A. No, actually I do that nationwide.

1 Q. What are some of the school districts that you consult for?

2 A. Yeah, my current clients are mostly in California. I work
3 at Napa Valley Unified School District. I worked also at
4 Roosevelt High School, Joint Unions High School District. It's
5 hard with all these acronyms.

6 And then we have clientele also in -- coming up this next
7 school year in Edmonds, Washington.

8 Q. Now, in addition to doing your consulting work, do you also
9 have another position?

10 A. Yes. I'm an assistant professor at the University of
11 Arizona South in language and culture and education.

12 Q. Now, going back to your time at Tucson High School, what
13 did you teach at Tucson High School?

14 A. I taught English and then later Latino literature.

15 Q. What was your course load like?

16 A. My course load? It was -- it would vary. I've taught
17 everything from freshmen to seniors. The earlier parts of my
18 career I taught mostly freshmen and juniors and then with
19 Mexican-American studies, as a Latino literature teacher, I
20 taught juniors and seniors Latino literature. And the course
21 load during those years, most of the -- my classes, my five
22 preps were Latino literature classes.

23 Q. Now, were you a member of the Mexican-American Studies
24 department at Tucson High School?

25 A. No, I wasn't. I was actually a teacher on site at Tucson

1 High School. That was my -- that was who I directly reported
2 to. That's where my -- that's where I was housed. And I was a
3 Tucson High teacher.

4 Q. So you remained a member of the English and language art
5 department?

6 A. Right. I was an English teacher in the English department.

7 Q. Now, what was the size of the Tucson High School while you
8 were there?

9 A. It's a big school. It was a lot of years, so it would
10 fluctuate anywhere from about 2800 to 3200 students.

11 Q. What was the student composition at Tucson High School
12 during the time you were there?

13 A. Again, you know, fluctuation, ballpark figures, somewhere
14 in the high 60s to low 70 percent Latino, Mexican-American
15 Latino students and probably somewhere in the high teens to low
16 20s Europeans-American students or white students. And then
17 the next largest ethnic group was African-American students,
18 traditionally anywhere from about 7 to 12 to 13 percent.

19 Q. Then were there other smaller groups?

20 A. Yeah. We had Native American students and Asian-American
21 students and multiracial students as well, and that would
22 compromise the rest.

23 Q. Was Tucson High School a magnet school?

24 A. It is a magnet school.

25 Q. What does that mean?

1 A. So a magnet school is, schools are allowed to emphasize
2 certain -- certain arts or certain -- arts, in the case of
3 Tucson High, certain educational programs. So we were an art
4 and performance magnet, as well as a science and technology
5 magnet, and the magnet is used for the purposes of attracting
6 students from around the district, not just in your home zone,
7 to attend the school. So students had freedom, parents had
8 freedom to enroll in Tucson High School.

9 Q. Now, could you describe just briefly the staffing at Tucson
10 High School?

11 A. We were a large staff, anywhere from about 140 to 100 and I
12 think 70 or 80 at times faculty.

13 Q. And how many people -- what was the staff of the English
14 department?

15 A. We were large as well. With high school students, they get
16 English every year, so we were 20 to 25 teachers at times.

17 Q. Now, during your course of teaching there, did you report
18 to -- who did you reported to?

19 A. My direct report would always be some member of the
20 administrative teach. So we usually had one principal and four
21 to five assistant principals, and they would rotate through by
22 department. So that way, you know, I was a former union --
23 union head at my site, so I know that the purposes were to make
24 sure that there wasn't any antagonism between -- by -- that
25 would accrue through years of being the same evaluator with the

1 same department. So you wanted to keep things fresh, and a
2 fresh pair of eyes is always good for evaluative purposes.

3 Q. Did you report to anybody from the Mexican-American studies
4 program?

5 A. Never.

6 Q. Did they have anything to do with overseeing your work?

7 A. Nope.

8 Q. Now, how did you first get involved with the MAS program at
9 Tucson High?

10 A. Well, as a young teacher, some of my first experiences
11 were -- I think the department called it actually Hispanic
12 studies at the time. They used to hold like a summer institute
13 or summer conference. So those were my earlier memories.

14 Also, I knew Sean Arce personally outside of my teaching
15 role. And so when Sean was later hired after I started
16 attending some of these summer institutes as one of the first
17 employees of the Mexican-American studies department, after the
18 name changed, that's where the connection really began.

19 Q. Okay. Mr. Arce was an employee of MAS?

20 A. Right.

21 Q. He later became the director?

22 A. That's correct.

23 Q. Just briefly describe for us, what was the MAS program?

24 A. Well, the MAS program was created to address and eliminate
25 the achievement gap. So to use more laymen's terms toward

1 achievement gap, historically student outcomes for
2 Mexican-American students and other students of color
3 traditionally have been much lower than European-American
4 students or white students, and so thus we call the data
5 points, if you were looking at a bar graph, that there's a gap,
6 and that gap between the populations is called the achievement
7 gap, and scholarly -- you know, education scholarship.

8 And so our program was specifically created to address and
9 eliminate that so that we could actually change the trajectory
10 of the traditional failing Mexican-American student experience.

11 Q. This gap, what did that involve?

12 A. It usually involved graduation rates. It involved test
13 scores from standardized tests, report cards. You know, grade
14 point average, in other words. Behavior, such as discipline
15 rates, things such as that.

16 Q. And what was your understanding of how the MAS program was
17 to deal with that gap?

18 MR. ELLMAN: Objection, Your Honor. Foundation, and I
19 believe this is approaching expert testimony.

20 THE COURT: Sustained.

21 BY MR. QUINN:

22 Q. In the context of your experience, what did you do to make
23 an effort to deal with the education gap?

24 A. Well, what I did in my classroom is to take a different
25 approach to pedagogy and curriculum that had been traditionally

1 offered and been proven not to be successful with that student
2 population.

3 And one of the things that we would receive all the time
4 are students would come to us. We would receive them injured,
5 or their self-esteem would be really low, as far as the way
6 they felt about themselves as young people, but also as
7 educated people. And so we wanted to deal with that
8 self-image, simultaneously, building a sense of academic
9 identity. So we did that through curriculum and pedagogy that
10 I can explain later if you want.

11 Q. Could you explain or expand on what you mentioned,
12 curriculum and pedagogy, what's the difference?

13 A. So the curriculum is the what. It's what we teach, the
14 materials, if you will. In my case, the stories, the novels,
15 the plays, right, as an English teacher. And pedagogy is the
16 art of it, the how we teach, you know, choosing the right
17 methodologies for your classes and in your teaching practices.

18 Q. Now, in your experience, how did you hope to achieve
19 eliminating that gap? What were you going to do?

20 A. One of the first things we wanted to do is -- that
21 American -- in the English department, the junior year was
22 traditionally -- and it was even when I was in school --
23 American literature. But it was usually American literature
24 through a European American lens.

25 And I think many of us understand that, you know, education

1 traditionally has been Eurocentric. And so what we wanted to
2 do is enter into the student's experiences in school, some
3 literature and some curriculum that reflected their lives that
4 reflected their communities. So if they were reading a story,
5 they could see themselves. So if they were reading a story,
6 they could see their abuelita, their grandma, their tías, their
7 aunts and uncles.

8 That was the first time -- many of my students would say
9 this is the first time not only that they saw themselves or
10 their family or their community in this, but also it was the
11 first time they read a book at all.

12 Q. Why was that important?

13 A. If we're trying to talk about breaking cycles of poverty,
14 cycles of violence, cycles of incarceration the
15 Mexican-American community has had for generations, then we
16 need some way to engage our students in education, because
17 education is a conduit to, you know, integrating into all the
18 wonderful institutions of our country, and for them to have
19 personal self-worth as well, and to be physically engaged,
20 Democratically engaged in this country.

21 And so we had to get them -- we had to -- somehow something
22 had to change. So one of the things we changed is what the --
23 what they are actually reading, and the fact that it reflected
24 who they were.

25 And for my students who weren't of Mexican-American

1 descent, it was a window into the lives of their friends and
2 neighbors.

3 Q. Now, with regard to the classes you taught and other
4 classes that you're aware of, was there open enrollment?

5 A. Always.

6 Q. How did that work?

7 A. Back in the old days we had arena registrations. The
8 students would go to a table --

9 Q. Slow down.

10 A. Back in the old days we had something called arena
11 registration, and so the students would come to either the
12 cafeteria or the gym, and they would get stickers for their
13 classes. So any student could line up and get a sticker for a
14 class, and then we became automated and students would do that
15 work with their counselors about selecting their -- the English
16 classes they want.

17 So they could take AP, English, honors English, they could
18 take African-American literature, they could take
19 Mexican-American or Latino literature.

20 Q. Did Mexican-American students get any preference with
21 regard to getting into the MAS program?

22 A. None whatsoever.

23 Q. What happens if there were too many slots? What did you
24 do?

25 A. We opened up -- in the old days, a waiting list, and then

1 later they would just create the sections with -- to fit the
2 numbers of the students.

3 Q. Now, did you have, in the courses that you were teaching, a
4 particular focus in terms of what you were trying to
5 accomplish?

6 A. Yes.

7 MR. ELLMAN: Your Honor, I objected, because the line
8 of testimony doesn't seem relevant to any of the Arlington
9 Heights factors or the motivations of the actors.

10 THE CLERK: I'm sorry, can you speak into the
11 microphone.

12 THE COURT: All right. It is pretty attenuated. He
13 is not your witness on that subject, so I mean, keep it short.
14 I'm going to overrule the objection, but keep it short.

15 MR. QUINN: Fair enough, Your Honor. I do think it's
16 relevant.

17 THE COURT: You don't have to explain. Just ask your
18 question.

19 MR. QUINN: Very well.

20 BY MR. QUINN:

21 Q. Again, did you have a particular focus in your classes in
22 terms of how you were going to try to accomplish those goals?

23 A. Yes. My major focus was for my students to become engaged
24 in school again. And that way we could -- we could create a
25 sense of -- we also pedagogically, the how of teaching, we

1 wanted to create an environment of sharing, of community, a
2 climate where the students could take risks. That was really
3 important because in the past, some of their past experiences
4 with school, they weren't feeling engaged, and some of their
5 skills had really atrophied, so there was some embarrassment
6 there. And so by creating that sense of community, the
7 students were able to take those risks that they needed in
8 order to get to those fact -- the skill sets that we know they
9 needed in college and the university level.

10 Q. In your courses, and to your knowledge, did you teach
11 victimization --

12 A. Never.

13 Q. -- of the students?

14 A. No. We were too busy working hard and making up for the
15 skills that had atrophied, like I said earlier, to ever think
16 of ourselves as victims.

17 Q. Did you teach that Mexican-Americans should hate or dislike
18 white students?

19 A. No. That was antithetical to what we did, and it would
20 have been offensive for me personally because I'm bi-racial and
21 I love my mom and she's a pretty Swedish lady, and so I have an
22 affinity for white people. My mom didn't like that term. She
23 liked me to refer to her where she was from, you know, her
24 heritage. But yeah, no, that would have been difficult for me
25 personally.

1 MR. ELLMAN: Your Honor, I'm going to move to strike
2 the response as non-responsive to the --

3 THE COURT: All right. The motion is denied, but I am
4 going to caution the questioner and the witness, you know, I
5 mean, how he feels about his mom obviously is not an issue in
6 this case, right?

7 MR. QUINN: I think that's fair.

8 THE COURT: I don't know why you want that answer, but
9 I said keep it short.

10 MR. QUINN: Understood, Your Honor.

11 BY MR. QUINN:

12 Q. Did you teach Marxist philosophy in your case?

13 A. Never.

14 Q. In any of your classes, was there ever any attempt to stir
15 up resentment against Euro American or white people?

16 A. No.

17 Q. In addressing the failing Mexican-American student
18 experience, did that require you to treat other students
19 differently?

20 A. Not at all. I really think it was -- it was -- for my
21 students who weren't of Mexican-American descent, they would
22 routinely consistently say that the classes were just as
23 powerful for them, and for a myriad of different reasons.
24 Sometimes it was because they wanted -- they had some insight
25 into this part of the region and who their neighbors were, and

1 sometimes it was just curiosity and falling in love with some
2 of the literature.

3 Q. We're going to get to some of that in a minute, but how big
4 were your classes, typically?

5 A. They were packed. I had 36 desks, and there usually were
6 almost all the way full. But to be fair, I should say it was
7 anywhere from 30 to 36 per class.

8 Q. And on average, how many of the students who took your
9 classes were of Mexican-American heritage?

10 A. Probably about -- you know, if you look at the totality of
11 my years, about 85, 85 to 90 percent.

12 Q. Did you encourage ethnic solidarity over individuality in
13 your classes?

14 A. No.

15 Q. Why not?

16 A. Well, there needs to be a balance between yourself as a
17 part of a community, no matter how we want to identify, and
18 your own individual -- your own individuality. And so I wanted
19 to make sure those things were at least balanced in my
20 classroom at all times. It was even indicative in the way I
21 differentiated instruction, how we -- and to use less education
22 jargon, teacher jargon, the assignments that we gave, I made
23 sure there was individual assignments accompanying with group
24 work. So there was a sense of responsibility in both places.

25 Q. Now, in your Latino literature classes, did you just teach

1 Latino authors?

2 A. No.

3 Q. Describe for us, I think -- let me ask you this. You
4 testified -- or maybe you didn't testify -- what classes did
5 you teach for the most part, particularly after you were in the
6 MAS program?

7 A. I mostly taught Latino literature classes.

8 Q. Did you teach both juniors and seniors?

9 A. I did.

10 Q. Describe for us how you differentiated when you were
11 teaching juniors on the one hand and seniors on the other in
12 the MAS program.

13 A. Since they were both called Latino literature, I had to be
14 mindful that students my junior year that were going to take
15 the senior class were going to get something different. And so
16 I saw them not only as separate units per year, but also as the
17 continuum of four semesters, or two years.

18 So the first semester, the on-boarding year, if you will,
19 when I received my students for the first time in our Latino
20 literature classes, that junior year was mostly American
21 literature through Mexican-American authors.

22 However, we were also doing a research paper, so the
23 research was varied authors. In fact, probably mostly folks of
24 European descent or European American white authors of the
25 research. And then the senior year I wanted it to be --

1 because -- I should go back for a second.

2 Many of my students had never read anything that reflected
3 their region, their families, and so that's why the on-boarding
4 year was that. That was more like the mirror, and then the
5 window, as I spoke about earlier in my testimony, the senior
6 year was the window to other places, other populations.

7 So I would read -- The Tempest was a critical piece, The
8 Devil's Highway. And then I wanted to make sure that other
9 Latinos were -- not just the Mexican-American experience, but
10 the Junot Diaz part, the author, Junot Diaz, he's a Pulitzer
11 Prize-winning author of Dominican American descent, and some
12 Puerto Rican authors as well, so -- because that's a much
13 different world experience, life experience than
14 Mexican-American students in the Southwest.

15 And I was also cognizant of always having women voices
16 because the traditional canon is very stocked up with -- it's
17 very male centric, and so both the junior and senior year had
18 strong female voices as well.

19 Q. Now, you mentioned The Tempest. I assume that's
20 Shakespeare's play?

21 A. That's correct.

22 Q. Why did you think that was particularly relevant in your
23 MAS literature class?

24 A. Well, I remember reading Ronald Takaki when I was a student
25 teacher and my mentor teacher's class, a book called A

1 Different Mirror, and it's a multicultural version of American
2 history. He has this amazing chapter called The Tempest in the
3 Wilderness where he's making the connection between the
4 colonization of the East Coast with what happened in -- to the
5 Irish by the English in I think the 15th century -- forgive me,
6 I'm not a historian. So it was really Shakespeare's only play
7 where he made commentary about our continent and the issue of
8 his time, which was finding this whole different group of
9 people. So I always thought it was really relevant and
10 important for American students to read what the barred was
11 saying about the Americas, right?

12 And so it also has issues of nativism, which being an
13 Arizona teacher and our issues over the last 20 years
14 discussing immigration, our students are hearing those messages
15 all the time, and it's in the rhetoric of their elected
16 officials. I wanted them to see the connection there within
17 what Shakespeare was saying about the indigenous folks of what
18 he called, in essence, Barbados versus the rhetoric that we
19 were still having in the 21st century. That was one of the
20 reasons.

21 The other reason is I didn't want them to go to college and
22 not having read Shakespeare. We had a really safe and
23 nurturing environment to take risks. So Shakespeare is a great
24 risk. You can ask any English teacher, it's tough stuff. So I
25 wanted them to make sure when they went across the street to

1 the University of Arizona that they had the confidence that
2 they know they could not only hang in there, but succeed.

3 Q. You mentioned The Devil's Highway. What was that?

4 A. The Devil's Highway was a book by Luis Alberto Urrea about
5 a border crossing that goes terribly wrong, and it's one of the
6 most powerful accounts I've ever read. It has Urrea's amazing
7 effort of switching the points of view so the myriad and
8 diverse points of view towards immigration from the Border
9 Patrol to politicians that made up the -- the reasons why they
10 made up NAFTA, et cetera, the crossers themselves, all those
11 are represented in there. And The Devil's Highway is actually
12 a stretch of land that's just west of here, so it also had real
13 tangible connection to my students.

14 We would get on Google Maps and it was right there, that
15 stretch, and we could take a look at the satellite image of
16 what these crossers were going through, and it's a true story,
17 so it was really powerful. My students always thought it was
18 one of the more powerful works that they read.

19 Q. Is he an American author?

20 A. Yes, he is.

21 Q. You mentioned including feminist literature. Give an
22 example of that.

23 A. Well, my junior year, I really liked to use So Far From God
24 by Ana Castillo because it not only is written by a
25 Mexican-American woman, but it's also -- all the protagonists

1 are women. The men are like parsley on the plate in that
2 novel. So the central focus is the Mexican-American female
3 experience.

4 And then also, the senior year, I wanted to make sure that
5 like -- that I had different voices besides Mexican-American
6 voices, so I know I read Jane Yolen, who is a Canadian author.
7 She has a really cool story called Lost Girls where she flips
8 the Peter Pan myth and we learn it from the point of view of
9 Wendy amongst like Ana Castillo, again, short stories, Sandra
10 Cisneros and other authors who are women.

11 Q. What was your understanding when you were teaching MAS,
12 what the MAS program was based on?

13 A. Well, it was based on research. For me, the primary lens
14 that we were using were three in particular. One was here from
15 the University of Arizona, my own -- my own scholarly -- the
16 post that preceded me, my teachers, is a better way to say it,
17 they did a study here in Tucson looking at the benefits of
18 tapping into household -- what they called household funds of
19 knowledge. That became the catch phrase, funds of knowledge,
20 of Mexican-American and Latino students. How our students came
21 to the classroom, already with cultural assets and that we
22 could tap into those assets, so that was one frame that we
23 used.

24 Another frame that we used was Angela Valenzuela,
25 subtractive schooling. And what that showed us was more

1 evidence that tapping into our students' cultural assets or the
2 personal human wealth they bring to the classroom could be a
3 launching point for education -- educational achievement and
4 positive academic outcomes.

5 And the third lens --

6 Q. I'm sorry. You mentioned subtractive --

7 MR. ELLMAN: I am going to object. Excuse me, I have
8 a motion, Your Honor.

9 THE COURT: Go ahead. Speak into the microphone.

10 MR. ELLMAN: I am moving to strike that answer as
11 inappropriate expert testimony.

12 THE COURT: The motion is denied because it's based I
13 think largely on his personal experience. Ask your next
14 question.

15 But, you know, I think you're getting into an area
16 that -- maybe it's background, but it's background -- you don't
17 need much more. I don't think there's any issue, is there, on
18 what you're inquiring into?

19 MR. QUINN: I think there is, Your Honor, because what
20 we heard in the opening statement was that this was -- this
21 whole program was Marxist theory, it wasn't pedagogically
22 sound, et cetera.

23 What I am trying to show here is all of that is a
24 pretext, and, in fact, it was pedagogically sound. It was
25 based on an enormous amount of research, and it was taught

1 properly.

2 THE COURT: But the question is -- I don't think
3 that's a question the Court has to decide. The question is not
4 whether or not it was pedagogically sound. It's the state of
5 mind and the motive of the superintendent. Right?

6 MR. QUINN: I agree with that, Your Honor, but in
7 order to -- they're using this pedagogy Marxist theory and all
8 this as a pretext for saying that, in fact, they had only the
9 purest of motives.

10 And, you know, obviously, we don't have to show that
11 either Huppenthal or Horne outwardly made racist statements,
12 okay, although we can do that with Huppenthal. All we have to
13 show is under all of these circumstances, in fact, given the
14 narrow focus on the Mexican-American studies program, and
15 particularly the fact that it was all Mexicans, that that was
16 the -- that they passed this law, and they enforced this law to
17 get rid of this, and I think the implication, the overwhelming
18 implication was it was done with improper motivation.

19 So the reason we're doing this is just to show that,
20 in fact, the courses that were taught were taught in a normal,
21 well-researched basis and not done on some -- a bunch of crazy
22 people talking about overthrowing the Government, which is what
23 they seem to imply.

24 THE COURT: Mr. Ellman?

25 MR. ELLMAN: Your Honor, none of what opposing counsel

1 just described is relevant to the motivations of the state
2 actors in this case, and both claims turn on that. I believe
3 all of this testimony frankly is irrelevant.

4 THE COURT: Well, you know, I, frankly, think it's
5 pretty close to irrelevant. In a sense, it really doesn't
6 matter how sound pedagogically the program was because I don't
7 think the attack was that it was pedagogically unsound. That's
8 not the basis of the ruling. So, you know, to say it's
9 pedagogically sound doesn't directly, you know, attack the
10 claimed motivation.

11 MR. QUINN: Well, Your Honor --

12 THE COURT: I mean hardly inferentially. Right? I
13 mean, was there ever -- well, let me ask this. Did the
14 defendant say, either superintendent say that one reason they
15 granted the -- they -- they -- what's the word? -- they
16 abolished the program was because it was pedagogically unsound.

17 MR. QUINN: Absolutely. That was one of the bases.

18 THE COURT: Just a minute though. But that broad
19 ground is not a basis for eliminating the program under the
20 statute. The statute doesn't say you can eliminate a program
21 pedagogically unsound. There are three or four specific
22 reasons.

23 MR. QUINN: That's correct, Your Honor. But they used
24 the pretext of it being pedagogically unsound to emphasize
25 their belief that this was -- this was a program that was

1 focussed only on ethnic solidarity and on, you know, an
2 improper effort to teach the students to not like white
3 students or whatever. Those are the things they stated in
4 their findings.

5 THE COURT: Well, I think it's -- you know, I think
6 they're irrelevant if there is -- the theory is quite
7 attenuated, so I'm asking you not to go on with it.

8 MR. QUINN: That's fair, Your Honor. I don't have a
9 lot.

10 THE COURT: I'm not going to strike it, but, you know,
11 it's hardly worth considering. It's almost a waste of time
12 because I don't think it's an issue.

13 Go ahead.

14 BY MR. QUINN:

15 Q. Okay. You had mentioned a couple of bases for the program
16 from a research basis. What were the others?

17 A. So the third one would be the work of Christine Sleeter and
18 her work as a multi -- multicultural education scholar, which
19 later that terminology changed to culturally responsive and
20 relevant. And then eventually her work now or those last
21 15 years have been about ethnic studies. So that was pivotal
22 to us as well.

23 Q. Now, just switching topics, which I know the Judge wants me
24 to do, who was -- do you know who Paulo Freire is?

25 A. Yes, I know who Paulo Freire is.

1 Q. Who is he?

2 A. He was --

3 Q. Or was?

4 A. He was an educational theorist, a scholar. He started --
5 he was from Brazil. He's one of the most well-renowned and
6 well-read educational scholars in teacher preparation programs
7 throughout America.

8 Q. Did students in your class read Paulo Freire material?

9 A. Not regularly, no.

10 Q. Is Paulo Freire's teaching actually taught in teaching
11 schools here in the United States?

12 A. Yes. It's probably one of the more popular texts used in
13 the teacher preparation program.

14 Q. Now, you mentioned that -- earlier that there is goals in
15 terms of outcome for students, were your focus. And I think
16 you mentioned dropout rate and discipline and grades and
17 attendance and so forth.

18 Based on your personal experience, how did the MAS program
19 achieve those goals?

20 A. Well, I believe we were successful because our model of
21 education was based upon the students, student-centered rather
22 than teacher-centered. And so when the students started
23 becoming engaged in the work that I've described earlier, their
24 attendance rose, their attendance, by coming to the school, and
25 their work started becoming more consistent and better.

1 They were able to achieve -- in the state standardized
2 tests they were excelling there. So that was all part of that
3 initial engagement through it being student-centered based on
4 the research that I explained earlier.

5 MR. ELLMAN: Your Honor, I'm going to move to strike
6 the answer again as expert testimony, notwithstanding the way
7 the question was phrased on experience. It's an expert's
8 answer.

9 THE COURT: That objection is overruled. Ask your
10 next question.

11 MR. QUINN: Thank you, Your Honor.

12 BY MR. QUINN:

13 Q. What about with regard to -- this is, again, your personal
14 experience with regard to dropout rates, attendance.

15 A. My graduation rates were on average for the years that I
16 was teaching at the Tucson High School Latino literature
17 anywhere from 95 to 98 percent.

18 Q. And how did that compare previously to your experience?

19 A. I think the last time I looked at the statistics, because
20 we used to have the statistics pretty handy back in the day,
21 compared to their peers, it was somewhere around 60 percent,
22 their peers, just like them.

23 MR. ELLMAN: I am going to move to strike again, Your
24 Honor, because this is statistical expert evidence. There is
25 no study or report by this witness.

1 THE COURT: Overruled.

2 BY MR. QUINN:

3 Q. Based on your personal experience, what was the bottom line
4 result of the program in your involvement, both qualitatively
5 and quantitatively?

6 A. Everything pointed to elimination of the achievement gap,
7 that we were on a trajectory that our students could be
8 successful in college, they were graduating, and that, beyond
9 that, they could be successful if they didn't go to college as
10 well because they have the critical thinking skills and the
11 collaborative learning experiences, group learning experiences
12 to work together.

13 Q. Let me go back to some previous testimony just briefly.
14 Explain your relationship with the MAS department.

15 A. Sure. So, as I explained earlier, I was a Tucson High
16 School teacher. There were some of us that were, like myself,
17 we were teachers at specific sites versus those that were
18 housed in the Mexican-American studies department. So we did
19 work collegially as a team. So that's how -- that was a common
20 phrase that I used to use for all of us together. But we
21 didn't -- many of us didn't work in the department itself.

22 Q. And how were you supervised and evaluated in terms of your
23 performance?

24 A. I was supervised -- I'm sorry. I was supervised by
25 administration at Tucson High School. And they would do formal

1 evaluations twice a -- twice a year, each semester, as well as
2 informal observations, drop-ins, unplanned, unplanned visits
3 into my classroom, unbeknownst to me, and that's how my
4 relationship worked and my evaluations worked.

5 Q. How often were you evaluated?

6 A. I was evaluated a few times a year.

7 Q. How often did the administration come in and visit your
8 classrooms?

9 A. I got pretty popular there for a while. So much more than
10 two.

11 Q. Now, were there standards that applied to your classroom
12 teaching?

13 A. Of course. The Arizona state standards were something that
14 I knew about because I actually -- my teaching career started
15 before standardized testing really took hold. And so when the
16 Arizona Instruments and Measures Standards, the AIMS test,
17 started, it kind of shook up the teacher work force because
18 this was something new. And from that point forward everything
19 we did were aligned -- everything I did as a teacher both at
20 Tucson High School and University High School were aligned to
21 state standards.

22 Q. How did you go about ensuring that what you were teaching
23 in the classroom lived up to the state standards?

24 A. Well, personally, I always felt that the state standards
25 were a baseline and not a finish line. And that was reinforced

1 when I went to University High School, because there wasn't so
2 much of an emphasis on meeting the state standard there because
3 this is a school where we expected our kids to be eligible to
4 go to ivy league schools, Stanford, to be able to go to the UC
5 system. So there was a real pressure on exceeding the
6 standards that the Arizona state had established as that
7 baseline, as I brought up before. And those experiences really
8 helped me when I went back to Tucson High, the years I helped,
9 you know, develop my part of the Mexican-American studies
10 curriculum and the department.

11 Q. Were there any standards that were imposed on you by people
12 in the Mexican-American studies program?

13 A. Never.

14 Q. Did they ever tell you what to teach?

15 A. Never.

16 Q. Or how?

17 A. Never.

18 Q. Now, did you have lesson plans?

19 A. Of course. Every teacher -- every good teacher, at least,
20 needs lesson plans.

21 Q. What are lesson plans?

22 A. Well, lesson plans are a daily breakdown of units that
23 usually teachers create far ahead of time.

24 Q. Were those lesson plans made available to your superiors
25 and the administration at Tucson High School?

1 A. Always. It was standard practice for -- during your
2 observation, the two observations that we received, the formal
3 ones, to have lesson plans made available for your evaluator,
4 and you would go over them if need be. But usually with my
5 evaluators, we never talked about my lesson plans. They were
6 too -- our conversations were all about the learning that they
7 sought that was happening in the classes.

8 Q. Did the MAS department play any role in the development of
9 your lesson plans?

10 A. No.

11 Q. How did you go about developing the materials that you
12 utilized in your -- teaching your classes?

13 A. Yeah. There's no Latino literature for high school student
14 textbook, so what I had to do was look at both the resources we
15 have on hand or the resources that could be made available that
16 fit into the experience we wanted our students to have, that
17 reflective experience of their lives.

18 So we would have to go find the books. So I would read on
19 my own, I would develop lesson plans from those books, from
20 that literature I would develop essay prompts, you know, all
21 the scaffolding that one needs to get to the -- what we call
22 the formative assessment -- I'm sorry -- summative
23 assessment -- all the scaffolding that's needed in order to get
24 to the summative assessment. We call this formative
25 assessment, which is, you know, the stepping stones to get to

1 the skill that we want perfected or exceeded. And so that was
2 all on us because of the lack of traditional resources that
3 schools had.

4 And, as well, I used topical things as well for my
5 students. So hip-hop was a vehicle that, you know, the
6 students and I shared. So sometimes we would analyze hip-hop
7 in the class. But I wouldn't just narrow it to hip-hop,
8 because not all of my students were hip-hop heads like me. So
9 we would -- it would be a musical analysis, and then -- because
10 we had to start moving with the times, as far as media
11 analysis, as the technology was really starting to take hold of
12 education. The students needed to be able to analyze film,
13 analyze media, analyze news clips so they could avoid falling
14 into the trap of fake news.

15 Q. Now, did you prepare a syllabus for your classes?

16 A. Of course. In fact, we were developing syllabi in our
17 classes before they were required, and this was part of the
18 entire experience we wanted our students to have. We wanted to
19 rupture what they had felt before, which a lot of times they
20 were experiencing a deficit perspective, low expectations. So
21 we wanted them to be prepared for what they were going to
22 receive in college.

23 I mean the first syllabus I ever received when I was a
24 student was in college. I didn't know what it was. So we
25 wanted to stop that, that cycle from happening. And so we had

1 syllabi, course description letters home to our students. Very
2 transparent.

3 Q. Now, you mentioned that you created lesson plans. How did
4 your -- and you taught junior literature and then senior
5 literature. How did your lesson plans differ with regard to
6 your junior lesson plan versus your senior lesson plan?

7 A. As I mentioned earlier, I wanted -- I didn't want to
8 replicate myself even though the two sections had the same
9 name. I wanted to go deeper into certain -- the senior year
10 into certain, certain issues or certain experiences,
11 experiences more than issues, because it was really the
12 literature that drove the classes.

13 So the first semesters together, the junior year, if you
14 will, those were -- those assignments were a lot of
15 self-reflection, personal narratives that we built up to
16 literary analyses and then a research project.

17 For my seniors, since many of them I had, I looped. That's
18 a teacher term for when you have a class back to back years.
19 When I was looping with my students, I wanted -- I knew where
20 they were, both, you know, in their cognitive ability, both in
21 their skill sets. So I knew where we could jump off from. So
22 we started with literary analyses. We jumped into stories and
23 literature and built up into ethnographic research.

24 Q. What is ethnographic research?

25 A. Ethnographic research is qualitative research done within

1 communities. So, for instance, in my class, to make it more
2 specific, they were doing a project where they were -- they
3 were trying to find stories that weren't represented in Tucson
4 mainstream, what Tucson was to them in the mainstream
5 narrative, if you will. This was a counternarrative
6 assignment.

7 And so the students decided whom out there in Tucson, the
8 voices that they wanted to capture. So they developed research
9 questions. They conducted interviews. They were recorded.
10 They did transcriptions.

11 Workout I was doing during my graduate studies. I wanted
12 them to do a version of that so that they were understanding
13 what was going to be asked of them in the future.

14 And then also rhetorical analysis is what I was about to
15 say, because that was so difficult for me when I was growing
16 up, I wanted them to have that experience before they went off
17 to college.

18 Q. By the way, are you a native Spanish speaker?

19 A. No, I'm not. I have a Dora, the Explorer Spanish level,
20 unfortunately.

21 Q. Now, let's talk a little bit about the classroom
22 environment in your classroom. How did you go about developing
23 a classroom environment?

24 A. I really am a huge proponent of collaborative learning and
25 working in groups, because I know that's what exactly the

1 experience that they're going to have out in the world. So one
2 of the things that we wanted to do is to make sure that our
3 room looked like -- it was conducive to that.

4 So I had, like, 36 desks that were in groups of six. And
5 what that allowed us to do is not only develop a sense of team
6 at those -- in those tables but to move the teams around, break
7 them up, in other words, so that they were working with new
8 people throughout the year.

9 And that added to the class climate and culture in a way
10 where you weren't in a class -- you were there all year and
11 didn't know the person at the back of the class or in the front
12 of the class.

13 And that was also indicative of a morning recitation we
14 would do every day. It was -- that perspective dovetailed into
15 a Mayan phrase "In Lak'ech," which the American playwright Luis
16 Valdez wrote a stand about, which is -- In Lak'ech means you
17 are my other me. In Lak'ech, so it's I-n, and then another
18 word, L-a-k, another word E-c-h.

19 And in that poem, you know, just to break it down in
20 English, it emphasizes respect, it emphasizes equality, it
21 emphasizes empathy and love, all tenets that we wanted to
22 emphasize and that I believe our country emphasizes when we're
23 at our best.

24 Q. Did you have a clap that you did?

25 A. We did.

1 Q. What was that all about?

2 A. We would do a clap to signify the start of class every day.
3 It's called the unity clap. It was an homage to the work of
4 Cesar Chavez and Dolores Huerta, who were founders of the
5 United Farm Workers movement.

6 Q. Did you have posters in your classroom?

7 A. I did.

8 Q. What kind of posters?

9 A. We had all sorts of posters, student work, historical
10 figures, civil rights figures, topical figures, pictures of
11 former students.

12 Q. What kind of historical figures?

13 A. Everyone from like Gandhi, Martin Luther King, Jr., the
14 Kennedys. I have a great picture of the Kennedys during the
15 Cuban Missile Crisis I really like. They're in silhouette,
16 both Bobby and John. Anybody that knows the Mexican-American
17 experience knows the Kennedys were the first Mexican-American
18 president. So that always has to be up in your room.

19 And also -- let's see. Che Guevara was very popular with
20 some people that visited my room. Emiliano Zapata, Dolores
21 Huerta, Cesar Chavez.

22 Q. Who chose the posters to be put up in your classroom?

23 MR. ELLMAN: I'm going to object to the relevance,
24 Your Honor.

25 THE COURT: Sustained.

1 BY MR. QUINN:

2 Q. There's been a lot of discussion in reference to something
3 called La Raza. What does that phrase actually mean?

4 A. So La Raza means -- it's a synonym for the people, or in
5 Spanish, la gente. That's how Spanish speakers hear it. Even
6 me, with my rudimentary Spanish in the community, I know what
7 it means. It's an inclusive term, versus the way it's been
8 characterized before.

9 Q. You say it's an inclusive term. How did you understand
10 it's been mischaracterized?

11 A. Sure. It's an inclusive term because it's more akin to
12 like the Panethnic term "Latino" or "Latina." So, for
13 instance, if we were at a table where somebody was from Brazil,
14 somebody was from the Dominican Republic, somebody was from El
15 Salvador, somebody was from Mexico, somebody was from the
16 United States, and they were sitting at a table, you could say
17 that table is filled with Raza, right? All those folks are
18 Raza.

19 In fact, we had a Brazilian dear colleague of ours who was
20 in the Mexican-American studies department and she would refer
21 to that term rather than the Mexican-American term as a
22 connective point, and so I think our students that weren't of
23 Mexican-American descent but Latino also saw that as a
24 connective point.

25 Q. Was it --

1 MR. ELLMAN: Excuse me, counsel, I want to move to
2 strike that answer as linguistic expert testimony for which the
3 witness is not --

4 THE COURT: Motion is granted. Answer stricken.

5 Ask your next question.

6 BY MR. QUINN:

7 Q. Was the term, in your understanding, meant to imply
8 separatism or racial superiority?

9 A. Never.

10 Q. Did racial superiority or inferiority ever play a role in
11 any class that you were involved in?

12 A. Never.

13 Q. Why not?

14 A. Again, it was antithetical to the way we viewed education.
15 First of all, you know, yeah, I guess that would be the first
16 point.

17 Second of all, that's illegal and unprofessional behavior
18 and unethical behavior for a teacher to do.

19 But if I go back to In Lak'ech, if we were saying that
20 every morning and then all of a sudden -- that doesn't jive
21 with the idea of everybody being superior to one another. We
22 were emphasizing equality, we were emphasizing common humanity
23 every single day in our classroom.

24 Q. Did you hear people from the Department of Education refer
25 to the MAS program as La Raza?

1 A. I did.

2 Q. In what context did you hear that?

3 A. I heard it from -- and read it from Mr. Horne on a number
4 of occasions. And he used it to mean -- as a synonym for the
5 race. And the implications of that is like some brown
6 superiority or brown supremacy.

7 And like I said earlier, that's not the word that I know.
8 That's not the phrase that I know.

9 Q. Did you hear Mr. Huppenthal use that phrase in
10 advertisements in his political campaign?

11 A. I did. And I heard him also on -- I think it was Democracy
12 Now, Amy Goodman asked him about those ads.

13 MR. ELLMAN: I am going to request that the witness be
14 directed to answer only the question asked.

15 THE COURT: I think he answered the question there.
16 What was it about the answer that --

17 MR. ELLMAN: It was the second part of the answer.

18 THE COURT: You mean that he heard it on Democracy
19 Now?

20 MR. ELLMAN: Correct, Your Honor.

21 THE COURT: All right. It's overruled. Go ahead.

22 BY MR. QUINN:

23 Q. Did you hear -- that's fine.

24 Now, are you familiar with something called M.E.Ch.A.?

25 A. Yeah, I'm familiar with M.E.Ch.A.

1 Q. Can you tell us what M.E.Ch.A. is?

2 A. M.E.Ch.A. is a student club. It was a student club at my
3 high school, and it's a student club organization in many
4 schools around the nation.

5 Q. How long has M.E.Ch.A. been around?

6 A. I think about 50 years now.

7 Q. And how did it come about being founded?

8 A. It was founded by students of Mexican-American descent, and
9 I believe in colleges. I'm not much of a historian on
10 M.E.Ch.A., but that's my knowledge. It was used as a student
11 group, a student organization at university level originally.

12 Q. Is it some kind of subversive Marxist organization?

13 A. No. No, it isn't.

14 Q. What does it do? You have personal familiarity with
15 M.E.Ch.A. at Tucson High?

16 A. Yeah, I was the sponsor and co-sponsor most of the years.
17 The Mexican-American studies department had classes at Tucson
18 High.

19 Q. And what does the group actually do?

20 A. Well, one of the things I was most proud of and still
21 happening to this very day is the Unity Festival. So our
22 M.E.Ch.A. students would apply for grants, sometimes with the
23 city, sometimes with foundations that were -- that benefited --
24 that would look for youth engagement. And they would use those
25 funds to provide an all-day festival, multicultural hip-hop

1 festival, both arts, workshops that were about different --
2 like diverse issues, whether they be LGBT issues, immigration,
3 Muslim folks. Those are all the folks in the past that had
4 given presentations during the festival. But it started mostly
5 as a hip-hop show for the students because they really
6 identified with hip-hop culture, and graffiti boards and spray
7 cans were on our campuses. It was held on a Saturday, so in
8 essence, it was youth culture at the center of their school.

9 So I think that's kind of -- when we talked about the
10 engagement earlier and when I was talking about our classes
11 being student centered, the Unity Festival that M.E.Ch.A.
12 provided and sponsored every year is an example of that.

13 Q. Was it just Mexican-American students?

14 A. No, it was everybody. It was a very diverse group of folks
15 from all around Tucson. Many of them weren't even Tucson High
16 students at all. They were community folks that really liked
17 hip-hop or wanted -- wanted to have a day out in the less
18 intense sun of Arizona.

19 Q. From time to time, did people wear M.E.Ch.A. T-shirts?

20 A. Yeah, of course. You have to wear a M.E.Ch.A. T-shirt when
21 you go to a state event -- well, you don't have to, but it's a
22 pride that your M.E.Ch.A. T-shirt design looks better than
23 other M.E.Ch.A. clubs around the country.

24 Q. Now, who is -- switching topics again, who is Dolores
25 Huerta?

1 A. Dolores Huerta is a Mexican-American woman who is probably
2 one of the most pivotal figures in the history of our country
3 when it comes from a Mexican-American perspective and
4 viewpoint.

5 Q. Did she come to Tucson from time to time?

6 A. Yes, she did.

7 Q. In what context?

8 A. She usually came to town, from my experiences, during Cesar
9 Chavez week of events leading up to our annual march on the
10 south side of Tucson, in honor of Cesar Chavez's birthday, so
11 she would come to give like a real experience of that history,
12 of who we were honoring and why.

13 Q. Do you recall that she was invited to speak at Tucson High?

14 A. Yes, I recall that.

15 Q. And what was your understanding of who invited her to
16 speak?

17 A. My understanding was it was the -- not only the Chavez
18 coalition that would provide the programing for the week and
19 also sponsor the march, but also obviously our principal needed
20 to give the okay as well.

21 And I remember in subsequent news articles him saying that
22 he would -- he stood by his decision to allow Ms. Huerta to
23 speak, so that gave me an indication that Dr. Morado was a part
24 of that.

25 Q. Dr. Morado was the principal?

1 A. Yes.

2 Q. Now, were students required to attend the Huerta speech?

3 A. No.

4 Q. How does that usually work in terms of when folks give --
5 when speakers are invited?

6 A. Yeah, this one was -- it was unusual. Usually when
7 speakers are invited, some classes know ahead of time and/or --
8 or there's a sign-up assembly ahead of time.

9 But I remember over the loud speaker, through the entire
10 campus, Dr. Morado announced that she was coming, and that if
11 anybody wanted to go hear her speech, just go ahead. The
12 teacher obviously had to go with their class, and that she
13 would be speaking. So it was an open invite, which was unusual
14 for the times.

15 Q. Were you present when Ms. Huerta gave her speech?

16 A. Yeah. I knew she was coming early on. I was a little
17 nervous when Dr. Morado did the announcement that my seats
18 would be taken. I was already signed up with my class.

19 Q. Did Ms. Huerta make some controversial comment?

20 A. I remember that speech pretty clearly. It's because she
21 had a very interesting take on what was going on nationally.
22 There was a lot of tension in our community around the
23 Sensenbrenner bill that was in Congress, which was an
24 immigration bill.

25 And her take during the speech was that the Sensenbrenner

1 bill and these subsequent immigration bills were a distraction
2 from the current war efforts in the Middle East and
3 Afghanistan. But I hadn't heard that take before, so it stood
4 out to me.

5 Then as she was articulating that point, she said, take a
6 look at who is sponsoring this legislation, it's Republicans,
7 and then she said the infamous phrase, Republicans hate
8 Latinos.

9 Q. After that speech, what was the fall-out from that
10 particular phrase?

11 A. Well, the reaction at the time in the auditorium was there
12 were a lot of people that applauded, a lot of the students
13 applauded, or made young noises of affirmation.

14 But after that, things got pretty intense with national
15 media. I remember Mr. Horne being on local news. The Internet
16 was just kicking about at that time, so we knew he was doing
17 interviews in Phoenix as well.

18 Q. Did it go viral?

19 A. It went viral, yes, it did. I remember Bill O'Reilly on
20 the O'Reilly Factor was talking about it. So it was a pretty
21 big moment.

22 Q. And what happened next?

23 A. The district -- Mr. Horne surprised -- he surprised me,
24 much like Ms. Huerta's comments kind of surprised me. He said
25 that he doesn't think controversial speakers were a bad thing,

1 that they just need to hear the other side. I'm not a big
2 person about binaries or that kind of dichotomous thinking, but
3 the -- our TUSD district obviously opened up their door to
4 another speaker, because they were getting a lot of attention
5 that was not positive.

6 And so days later, I believe Mr. Horne made plans to come
7 down to Tucson High School, and I was surprised then as well
8 that he let us know it wasn't going to be himself giving a
9 speech, but his Deputy Margaret Garcia Dugan.

10 Q. Did Ms. Dugan -- what was the set-up for the -- her
11 presentation?

12 A. Right before -- right before -- a couple days before, I
13 think the day before the speech, the visit and the speech, our
14 students were asking if they could have a dialogue with
15 Mr. Horne, and I guess Ms. Dugan as well. Because there was a
16 question and answer period that Ms. Huerta had.

17 So unfortunately, what I remember is there was a fax given
18 to the front office, the principal's office that had a list
19 of -- I guess "demands" is a big strong -- parameters for
20 attending the speech. There was like no signage, no backpacks.
21 Those are the ones I remember off the top of my head. A lot of
22 nos.

23 And one of the nos that was the most upsetting to the
24 students was no dialogue with the students. They weren't going
25 to have a question and answer period at all.

1 Q. Now, when you say "the students," are you talking about
2 just MAS students?

3 A. No. By that time, since it had been viral, the campus was
4 buzzing and there was -- there was disappointment beyond
5 Mexican-American students. The ones I heard the most
6 obviously, since they were my students, were those in our
7 classes.

8 Q. You mentioned before that in the Huerta speech, students
9 were allowed to ask questions of Ms. Huerta?

10 A. That's true, yes.

11 Q. How did that work?

12 A. When she said that infamous line, I'll never forget because
13 one of my students looked at me because he's Latino and he's a
14 young Republican, and I kind of went like, I don't know, you
15 know, at that point what to do. I was just like, hey. I
16 shrugged my shoulders, for the record.

17 But then she said there's time for Q and A. And so I told
18 him -- I won't use his name -- I said, go ahead, go up there.
19 There was a microphone and a line. I said, go get in line. We
20 were pretty close to the front. He was about five people --
21 about seven people back, and about four people got called on,
22 and then we ran out of time. So I wanted him to have that
23 experience of debate and discourse with her.

24 MR. ELLMAN: Your Honor, I am going to request an
25 admonition to direct the witness to answer only the question

1 and not delve into narrative responses that stray beyond the
2 scope.

3 THE COURT: I think at this point it's an excellent
4 idea.

5 Mr. Acosta, just answer the questions asked. Don't
6 volunteer any further information, all right?

7 THE WITNESS: Okay. Thank you.

8 THE COURT: Go ahead. We don't want to hear your
9 personal antidotes.

10 THE WITNESS: I understand.

11 BY MR. QUINN:

12 Q. Mr. Acosta, did you attend the speech that was given by
13 Ms. Dugan?

14 A. I did.

15 Q. Was Mr. Horne in attendance?

16 A. Yes, he was.

17 Q. Where was he?

18 A. He was sitting behind Ms. Dugan. She was at the lectern
19 and he was sitting right behind her.

20 Q. During that speech, was there a student protest?

21 A. Yes, there was.

22 Q. Could you describe for the Court what that protest
23 involved.

24 A. It was a silent protest, where students stood up at a
25 particular part of the speech, removed outer shirts to reveal

1 T-shirts with slogans on it. One of the slogans that I
2 remember -- I hope it's not too anecdotal -- you can silence my
3 voice, but never my spirit. The students also put blue duct
4 tape over their mouths and stood quietly, pretty politely
5 during the rest of her speech.

6 Q. Was it rude in any way, in your experience?

7 A. Not for a protest, no.

8 Q. How did Mr. Horne react?

9 A. He got pretty angry. He got red, I should say. And then
10 he leaned over in an aggressive manner.

11 Q. Were the students who were protesting limited to students
12 who were involved in the Mexican-American studies program?

13 A. Could you repeat the question?

14 Q. Yes, I'm sorry. What was the make-up of the protestors?
15 Was it limited to MAS students?

16 A. No, it wasn't.

17 Q. Describe other students that were involved in the protest.

18 A. All different types of students ethnically, from what I
19 could tell. And students that I didn't recognize, so that's
20 why I knew they weren't in our program. Because at that time I
21 was teaching the classes and I knew who was in our program.

22 Q. Was this protest organized or encouraged by the faculty of
23 the MAS program?

24 A. Not at all.

25 Q. Now, subsequent to this event in I guess April of 2006,

1 what happened next with regard to Mr. Horne's reaction to the
2 program -- to the protest?

3 A. The next thing I recall is an open letter to the citizens
4 of Tucson. I remember reading that the first time it was
5 included in our local newspaper, the Arizona Daily Star.

6 Q. What was the response by the Tucson School Board?

7 A. It was a very --

8 MR. ELLMAN: Objection. Foundation.

9 BY MR. QUINN:

10 Q. If you know.

11 THE COURT: All right. You can answer if you know.

12 A. Yeah, our superintendent had a press conference, and he
13 asked some of my students to be a part of the press conference.

14 Q. And at the press conference, what position did the Tucson
15 superintendent take with regard to the program?

16 A. It was supportive of our program.

17 Q. Now, did you come to learn, subsequent to -- by the way, in
18 the open letter from Mr. Horne, did he ask to eliminate the MAS
19 program?

20 A. Yes, he did.

21 Q. Did you come to learn subsequent to that efforts by
22 Mr. Horne and others to have legislation that would deal with
23 ethnic study programs?

24 A. I was aware of that.

25 Q. How did you become aware of that?

1 A. I was a union head at my campus, or representative, and the
2 union folks that were tied to the efforts in Phoenix, they made
3 me aware of legislative efforts once they saw -- they were
4 more -- they were privy to them earlier than I was, and then
5 they let us know.

6 Q. Now, did there come a time when the then Senator John
7 Huppenthal made a class visit to your class?

8 A. Yes, he did.

9 Q. When was that, approximately?

10 A. It was I believe 2010, the spring of 2010.

11 Q. Let me -- could you describe for us how that visit came
12 about?

13 A. I was e-mailed by district officials and made aware that
14 Mr. Huppenthal at the time, or Senator Huppenthal at the time
15 was -- wanted to make a visit. They selected a day that was
16 very inconvenient to observe a normal class, because I was
17 proctoring in the ACT exam, not just myself, but our entire
18 campus, was proctoring the ACT exam. And so our school day was
19 completely changed. So we had a half day.

20 My senior class were to report after noon for 20-minute
21 classes, and I thought that was a really awful idea, because I
22 had heard before that we would change our class -- Mr. Horne
23 had once said that we would change our classes, and Ms. Dugan
24 said this as well, if they ever visited our classroom. And so
25 I implored the district to go to some of my colleagues at

1 different high schools that were having a normal day, and that
2 was denied. I guess he made it clear he wanted to be in my
3 classroom.

4 Q. What happened? What happened during that class? Tell me
5 how you set it up, in light of the fact that it was not going
6 to be a normal class.

7 A. Yeah, I was concerned as an educator that, with 20-minute
8 classes, or 25 minutes, however short, one-third of the time,
9 less than that, that we weren't going to be able to be very
10 productive. Normally, in those days, I would meet with my
11 students individually, go over some work they were missing or,
12 you know, work on some skills, you know, toward an assignment
13 they were doing. I didn't want to do that in front of
14 Mr. Huppenthal. I thought that would look even worse.

15 I didn't want to move on into any content that half my
16 students might not show up, and so I decided to have a circle
17 and a dialogue. So we created a circle in the classroom and a
18 dialogue. And I felt that that would be the most clear
19 representation of what we were teaching in the class because he
20 could hear directly from the students.

21 Q. And was there a dialogue between the students in your class
22 and Mr. Huppenthal?

23 A. Yes, there was.

24 Q. How long -- as it turned out, how long did the class
25 actually go?

1 A. About an hour. Maybe a little bit more.

2 Q. So you went over the 20- to 25-minute time limit.

3 A. Right. It was pretty interesting. I had students from the
4 next period coming in and the circle kept getting bigger and
5 bigger.

6 Q. Now, was there a visual record of the visit by
7 Mr. Huppenthal to your class?

8 A. Yes, there is.

9 Q. How did that -- how did that come about? I take it you're
10 not normally videotaping your class.

11 A. That's true, I'm not normally doing that. However, there
12 were film makers filming a documentary based upon what was
13 going on with our program. And so they would regularly visit,
14 and they were there, and they filmed that dialogue with
15 Mr. Huppenthal.

16 Q. Did they film the entire class?

17 A. They did.

18 Q. And have you recently had the opportunity to review the
19 video?

20 A. I have.

21 Q. Is there anything -- when you reviewed that video, was
22 there anything that was edited out of it?

23 A. No.

24 Q. So it's a complete record of Mr. Huppenthal's visit?

25 A. Yes, it is.

1 MR. QUINN: Your Honor, I am going to offer the
2 videotape of that visit. I am going to save time. I am not
3 going to play it.

4 THE COURT: First of all, does it already have a
5 number?

6 MR. QUINN: 156. PX156.

7 THE COURT: Any objection?

8 MR. ELLMAN: No objection.

9 THE COURT: Exhibit 156 is admitted.

10 BY MR. QUINN:

11 Q. By the way, just for the record, does the video accurately
12 set forth what happened during that period?

13 A. Absolutely.

14 THE COURT: I think you already asked that.

15 MR. QUINN: I'm getting on in years, and I repeat
16 myself, Your Honor. I apologize.

17 BY MR. QUINN:

18 Q. I just want to show a very, very brief clip from the video.

19 (Video playing.)

20 BY MR. QUINN:

21 Q. Who was that student?

22 A. That's Mark.

23 Q. Was he one of your better students?

24 A. Yeah, he became one of my better students. It didn't start
25 out that way. He was a good boy, but his skills -- he had a

1 high aptitude, but he wasn't very -- but through our years
2 together, he got there.

3 Q. Now, was that little excerpt typical of the dialogue that
4 went back and forth between the students and Mr. Huppenthal?

5 A. Yes.

6 Q. Were the students rude to Mr. Huppenthal in any way?

7 A. No.

8 MR. ELLMAN: I'm sorry. I could not hear the
9 question.

10 MR. QUINN: I didn't hear you.

11 MR. ELLMAN: I could not hear your question. Would
12 you mind repeating it?

13 BY MR. QUINN:

14 Q. I just asked were the students rude in any way to
15 Mr. Huppenthal during his visit?

16 A. No, they were not. Not at all.

17 Q. Did there come a time that you became aware that the
18 Arizona Department of Education was going to have an audit of
19 the Mexican-American studies program?

20 A. Yes, I was aware of that.

21 Q. How did you learn that?

22 A. I was aware of that first. We had heard that when
23 Mr. Huppenthal became state superintendent, he was clear in his
24 press conferences and press releases that he wanted to audit
25 our program, and then district officials let us know that that

1 indeed was happening.

2 Q. Did the folks from Cambium visit your class?

3 A. They did.

4 Q. How many people from Cambium visited your class?

5 A. There were two, two auditors that visited my class, from
6 what I recall.

7 Q. Was this class -- was it one of your regular classes?

8 A. Absolutely.

9 Q. Did you know in advance what day the Cambium folks would be
10 visiting your class?

11 A. I did not know what day.

12 Q. Did there come a time that you learned that the Cambium
13 report was issued and determined that there was not a violation
14 of the law under Section 15-112?

15 A. Yes.

16 MR. ELLMAN: Object to the characterization.
17 Misstates the evidence.

18 MR. QUINN: I'll rephrase, Your Honor.

19 BY MR. QUINN:

20 Q. What did you come to learn with regard to the Cambium
21 report?

22 A. I'm sorry. When?

23 Q. What did you come to learn?

24 A. That we were -- of the Cambium report, that our classes
25 were -- did not have any violations. In fact, there was some

1 evidence of practices that they thought were excellent, and
2 they also had some narrative in there about the content and the
3 themes that kind of matched what I said earlier about peace,
4 love, and whatnot.

5 Q. Notwithstanding the Cambium report, did Mr. Huppenthal,
6 nonetheless, make a finding of violation?

7 A. He did. He did find us in violation.

8 Q. When he made that finding, did he refer to the Cambium
9 report?

10 A. No, he didn't.

11 Q. How did you come to find out there was a Cambium report?

12 A. We were waiting for it to be produced. It kept getting
13 delayed by the superintendent's office. And then in June, I
14 believe, there was a press conference where Mr. Huppenthal said
15 we were indeed in violation, and it was after that that he
16 released the Cambium report. So it was kind of backwards.

17 And then that's -- after we found out we were in violation
18 from his press conference, we read the Cambium report and found
19 that there was no violation found in the audit.

20 Q. Now, how did the Tucson school district respond to
21 Huppenthal's finding of a violation?

22 A. They exercised their due process. None of us actually knew
23 what that due process was. That was explained to us as we went
24 forward. And they challenged it, appealed rather, with an
25 administrative law judge hearing.

1 MR. ELLMAN: I'm going to move to strike that as
2 non-responsive and a legal answer rather than a factual one.

3 THE COURT: The motion is granted. Answer stricken.

4 BY MR. QUINN:

5 Q. Did there come a time when the MAS program was officially
6 shut down?

7 A. Yes.

8 Q. When was that?

9 A. In January of 2012.

10 Q. And how did you come to learn that the program was going to
11 be officially dismantled?

12 A. There was a dialogue at a school board meeting in early
13 January of 2012 where they discussed the penalties the state
14 were going to apply to the school district, the millions of
15 dollars that were going to be lost if the program remained.
16 And they used that as justification to, what they said, suspend
17 but really meant terminate our program.

18 Q. How did your students react when they heard the news?

19 MR. ELLMAN: Objection. Relevance.

20 THE COURT: Sustained.

21 BY MR. QUINN:

22 Q. As part of that process, did you have a discussion with
23 focus in the administration as what you could teach now that
24 the program was being shut down?

25 A. Yes, we did.

1 Q. And what was that dialogue?

2 A. The dialogue was -- it was actually after -- the next day
3 but not prior to my students visiting the class -- coming to
4 class. So I was confused about what actually I was allowed to
5 do and what I meant.

6 So the dialogue with the district was -- sorry. It wasn't
7 the district. It was with my assistant principal, now
8 Dr. David Mandel, and it was with Dr. Morado who would at that
9 same meeting, become the assistant superintendent. That's why
10 it gets a little confusing. He was one day my principal and
11 then the very next day he was the assistant superintendent. So
12 technically he was a district official at the time and not my
13 principal.

14 The direction I received was from Mr. Mandel, who said that
15 we should use the Kowal report, which is the administrative law
16 judge report, as a guide, and he said stay away from terms such
17 as "race," "ethnicity," "oppression," and "class." So that was
18 the direction we were given.

19 Q. Did you talk about some specifics of whether -- things that
20 you could or could not teach?

21 A. Yes. I was concerned. I was about to teach *The Tempest*.
22 There is issues of race and class and oppression in that play.
23 So I articulated, gave a synopsis. I won't give -- I'll spare
24 the Judge my synopsis of the *tempest*. Once I gave the synopsis
25 to my superiors, they said -- the quote was: "You should throw

1 it out."

2 Q. Throw out The Tempest?

3 A. Yeah.

4 Q. Did there come a time after you -- after the program was
5 dismantled that you went and taught MAS literature off campus?

6 A. I did.

7 MR. ELLMAN: Objection. Relevance.

8 THE COURT: Sustained.

9 BY MR. QUINN:

10 Q. With regard to -- going back for a second to the
11 dismantling, were there textbooks removed and other books
12 removed from the classrooms as a result of the dismantling?

13 A. Yes, there were.

14 Q. Was that done in front of the students?

15 A. Yes, it was.

16 Q. Did you personally box up books to be disposed of?

17 A. Yes, I did.

18 Q. What were some of the books that you determined, given that
19 rationale that you had to get rid of?

20 MR. ELLMAN: Objection. Relevance.

21 THE COURT: Sustained.

22 BY MR. QUINN:

23 Q. One last area. Are you familiar with the Paulo Freire
24 Freedom School here in Tucson?

25 A. I am.

1 Q. How did you come to be aware of the Paulo Freire Freedom
2 School?

3 MR. ELLMAN: Objection. Relevance.

4 THE COURT: Sustained.

5 MR. QUINN: Your Honor, can I explain?

6 THE COURT: No. Ask your next question.

7 MR. QUINN: Okay.

8 BY MR. QUINN:

9 Q. Would you -- have you ever been inside the Paulo Freire
10 school?

11 MR. ELLMAN: Objection. Relevance.

12 MR. QUINN: Your Honor, this goes to the disparate way
13 that they treated --

14 THE COURT: I'll overrule it. See how far we get with
15 this.

16 MR. QUINN: Thank you, Your Honor.

17 BY MR. QUINN:

18 Q. Have you ever been inside that school?

19 A. I have.

20 Q. Under what circumstances?

21 A. A few summers ago my colleagues and I hosted fellow
22 educators for a conference, and we used the Paulo Freire
23 Freedom School as the site.

24 Q. What was your understanding of the school's teaching
25 philosophy?

1 MR. ELLMAN: Objection. Relevance.

2 THE COURT: Sustained. I mean, that visit is not a
3 relevant visit as far as I am concerned.

4 MR. QUINN: Well, Your Honor, just to make a record,
5 we believe it is relevant because both Huppenthal and Horne
6 were aware of the Paulo Freire school.

7 THE COURT: He never visited. As part of a convention
8 or something like that. That's not relevant. It's not during
9 the school day when the school is in session.

10 BY MR. QUINN:

11 Q. When you were inside the school, what did you observe?

12 MR. ELLMAN: Objection. Relevance.

13 THE COURT: Sustained.

14 BY MR. QUINN:

15 Q. Do you know the racial demographics of the school?

16 MR. ELLMAN: Objection. Relevance.

17 THE COURT: Sustained. It's for lack of foundation.

18 MR. QUINN: Well, can I establish a foundation?

19 BY MR. QUINN:

20 Q. Did you have an opportunity to go on to the Arizona
21 Department of Education website --

22 A. I have.

23 Q. -- with regard to the Paulo Freire school?

24 A. I have.

25 Q. And looking at that website, what did you determine with

1 regard to the demographics?

2 MR. ELLMAN: Objection. Hearsay.

3 THE COURT: Hearsay. Sustained.

4 MR. QUINN: Your Honor, you wanted me to establish his
5 foundation. That's his foundation. It's based on their own --

6 THE COURT: Well, if the foundation is hearsay, it's
7 not sufficient.

8 BY MR. QUINN:

9 Q. Did you have, from your personal observation -- where is
10 the Paulo Freire school located?

11 A. It's located a couple blocks away from Tucson High School.

12 Q. Did you from time to time have the opportunity to see the
13 student body that was at the Paulo Freire?

14 A. I wouldn't say so, no.

15 MR. QUINN: I have nothing further, Your Honor.

16 THE COURT: All right. It's about 10 minutes to 12:00
17 now. I assume the cross will be over 10 minutes. Will it?

18 MR. ELLMAN: I can assure you it will, Your Honor.

19 THE COURT: All right. I think we'll take a little
20 bit of a quick recess for lunch. We'll break now for lunch at
21 10 to 12:00. We'll start back, what, 10 to 12:00, 10 to
22 1:00 -- 1:20. All right? An hour and a half. So we're at
23 recess until 1:20 p.m.

24 (A recess was taken from 11:46 a.m. to 1:25 p.m.)

25 THE COURT: Let's all be seated. Let me ask, who was

1 it, Mr. Quinn? You're through with direct, right? Or you have
2 some follow-up questions?

3 MR. QUINN: I have an item that I do want to raise
4 with the Court --

5 THE COURT: Go ahead.

6 MR. QUINN: -- that relates to the discussion we were
7 having right at the end. I was asking Mr. Acosta about the
8 website that he reviewed relating to the racial makeup of the
9 Paulo Freire School.

10 THE COURT: Yes, some website supposedly of what, the
11 Department of Education or something like that?

12 MR. QUINN: Yes. It's an official Arizona government
13 website.

14 THE COURT: Okay.

15 MR. QUINN: And Your Honor ruled that it was hearsay,
16 but, with due respect, I think two points. One, it's not
17 hearsay. It's an admission by the State of Arizona, number
18 one. Number two, it's clearly a government -- official
19 government document, as to which Your Honor can take judicial
20 notice.

21 And so I would like to still ask him that question,
22 and in the alternative make an offer of proof with regard to
23 what it is that the website actually says.

24 Obviously Your Honor has ruled that this Paulo Freire
25 issue is relevant, and certainly the racial makeup of that

1 school is relevant, in showing the disparate treatment with
2 regard to how they dealt with the Mexican-American Studies
3 program and teachings by that -- by that school.

4 THE COURT: Well, first of all, let me ask, what is
5 the testimony you want to get? You want to get -- I'm not
6 speaking of the substance, but of the foundation, that he
7 looked at the department website and he saw X. Is that right?

8 MR. QUINN: And he saw what the racial makeup is of
9 that school, because it was published on the website.

10 THE COURT: Now, how is that different from saying,
11 yes, I had a certified copy of a document from the Department
12 of Education that's in my office, and I remember reading it,
13 this is what it said.

14 MR. QUINN: Well, Your Honor, it could be a shortcut
15 because --

16 THE COURT: Wait a minute. But isn't that hearsay?

17 MR. QUINN: I don't believe it's hearsay if --

18 THE COURT: Why not? He's talking about some other
19 statement.

20 MR. QUINN: First of all, the statement is an
21 admission. He could testify to what the admission was.

22 THE COURT: No, but it's -- we don't know what the
23 admission is except by his representation.

24 MR. QUINN: Well, Your Honor, we're prepared to make
25 an offer of proof and actually put in the document -- the

1 website --

2 THE COURT: Well, in fact, isn't that one of the
3 exhibits that's part of your motion to amend the pretrial
4 order?

5 MR. QUINN: Yes, it is, Your Honor.

6 THE COURT: All right. So I'm familiar with that. I
7 haven't crossed that bridge yet.

8 Mr. Ellman, are you standing for some purpose other
9 than just to exercise yourself?

10 MR. ELLMAN: I was prepared to respond if you wanted,
11 Your Honor.

12 THE COURT: Go ahead. Go ahead and respond.

13 MR. ELLMAN: First of all, the document itself might
14 fall within an exception to the hearsay rule, but the testimony
15 of recalling it would not. It would remain hearsay. We have
16 objected to the admission of the document in the first place,
17 and even if the plaintiffs could overcome the hearsay objection
18 and the foundation objection, it remains irrelevant in the
19 defendants' view. Thank you.

20 THE COURT: All right.

21 Mr. Acosta, where do you live? You live in Tucson?

22 THE WITNESS: I do.

23 THE COURT: All right. And what kind of work are you
24 doing now? Consulting work?

25 THE WITNESS: And also I'm a professor at the

1 University of Arizona South.

2 THE COURT: All right. So you'll be around town next
3 few weeks, won't you?

4 THE WITNESS: I will be.

5 THE COURT: Maybe not -- you can't be available at
6 any, say, you know, particular date now or at this time,
7 sometime during that period you'll be available, right?

8 THE WITNESS: I would be.

9 THE COURT: All right. I am going to defer this then.
10 Because, one, it's tied up with the ruling on the motion to
11 amend the pretrial order, which includes, you know, as I
12 recall, I guess it must be -- it must be a shot of the website,
13 huh, something like that?

14 MR. QUINN: It is, Your Honor.

15 THE COURT: So depending on how the ruling goes on
16 that, you know, you can call him back, if you need to, to
17 testify about that. Okay?

18 MR. QUINN: Okay. Thank you, Your Honor.

19 THE COURT: So you're reserving your right?

20 MR. QUINN: Yes.

21 THE COURT: So with that, can we start the cross?
22 Okay. Mr. Ellman, you're going to do the cross?

23 MR. ELLMAN: Yes, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. ELLMAN:

1 Q. Good afternoon, Dr. Acosta. My name is Rob Ellman. I'll
2 be conducting your cross-examination this afternoon. My first
3 question is whether you've ever met Tom Horne?

4 A. I haven't.

5 Q. My second question is whether the Mexican-American Studies
6 program at one time was called the La Raza studies program?

7 A. No, it was not.

8 Q. It was not? Was La Raza ever in the title of the program?

9 A. Not La Raza, no.

10 Q. Can you tell me what other titles it had?

11 A. Yes. As I testified earlier, I think at one time it was
12 called the Hispanic studies program, then it became the
13 Mexican-American -- sorry -- Mexican-American/Raza studies
14 program, with a slash in between Mexican-American and Raza.

15 Q. All right. Thank you. And the Mexican-American Studies
16 courses in high school are only taught to juniors and seniors;
17 is that correct?

18 A. At Tucson High School, that's correct.

19 Q. Okay. You referred earlier to having lesson plans for your
20 Latino literature class?

21 A. Yes.

22 Q. Were those available out in your classroom at all times or
23 were they simply submitted for approval?

24 A. Could you repeat the question a little bit louder.

25 Q. Were the lesson plans available in your classroom from day

1 to day or were they simply made available for the evaluation
2 you referred to?

3 A. No, I always had my lesson plans with me every day.

4 Q. All right. You testified about the Cambium report. Did
5 you actually read it?

6 A. I'm sorry?

7 Q. Did you read the Cambium report?

8 A. Yes, I did.

9 Q. Okay. Do you recall that as of 2011, when the Cambium
10 report was completed, it stated that there were 454 Latino
11 literature students throughout the district. Do you remember
12 that?

13 A. I can't recall the specific number at the time.

14 Q. All right. Do you have any reason to think that number
15 would be inaccurate, or does it seem correct to you?

16 A. I'd have to speculate, but it seems about right.

17 Q. Okay. And there were, according to Cambium, approximately
18 just under 53,000 students at that time. Does that seem right
19 to you as well?

20 A. Again, without any documentation in front of me, a
21 speculation would be that sounds about close to where -- TUSD,
22 correct?

23 Q. Correct.

24 A. Yes.

25 Q. Okay. And you stated that literature drove the instruction

1 in your Latino literature class?

2 A. Yes.

3 Q. Okay. Not the state standards?

4 A. Well, both. Both come together, yeah.

5 Q. All right. And I believe you stated that -- well, let me
6 ask a preliminary question. The Latino literature classes that
7 you taught were part of the Mexican-American Studies program,
8 weren't they?

9 A. They were classes in Tucson Unified School District. The
10 course, catalog numbers, they had been approved by the school
11 board, and then I was a Tucson High School teacher.

12 Q. But I'm asking about the Latino literature course itself,
13 was that not part of the Mexican-American Studies curriculum?

14 A. Well, it doesn't work that way, the way you're asking the
15 question. Were they a part of the Mexican-American Studies
16 program, yes. But they were actually Tucson High School
17 classes and TUSD classes.

18 THE COURT: Well, Mr. Acosta, just a minute now.
19 Weren't all the courses taught at MAS Tucson High School
20 courses?

21 THE WITNESS: TUSD classes -- courses, yes.

22 THE COURT: All right. Go ahead, Mr. Ellman.

23 BY MR. ELLMAN:

24 Q. You were one of the developers of the Mexican-American
25 Studies program curriculum; is that correct?

1 A. I developed the Latino literature classes that I taught.

2 Q. And I believe you testified that there was no textbook for
3 your class?

4 A. That's correct.

5 Q. Okay. And do you remember the Cambium audit report listing
6 all of the books that were listed for use in the Latino
7 literature classes?

8 A. I remember there was a list of books.

9 Q. You don't have any quarrel with what was in that list,
10 correct?

11 A. I would have to review it. If you had it handy, it would
12 be easier for me to give you a clearer answer.

13 Q. All right. I believe that you created something called
14 prompts for use in your classroom, is that correct?

15 A. Yeah, essay prompts.

16 Q. Can you tell me what the purpose of those are?

17 A. Prompts are what teachers, English teachers, or history
18 teachers write in order for students to have guidance to answer
19 an essay question.

20 Q. I want to know if you wrote the following prompt. I'm
21 going to quote it and ask you if it's accurate. For the
22 record, this is Exhibit Number 557D. According to the exhibit,
23 it's dated March 25, 2011, so I'm quoting now. So please
24 listen carefully, and let me know if this is accurate.

25 The audience encounters Mexicano and Chicano individuals

1 that exploit or abuse people of their own cultural and
2 ethnic heritage. Simultaneously, the immigration laws of
3 this country, which are largely crafted by middle-aged
4 European American men, serve as the framework which creates
5 this environment for exploitation and abuse? In well
6 considered essay, compare the ethical issues along ethnic
7 lines. End quote.

8 Do you remember writing that prompt?

9 A. Yes.

10 Q. Does that prompt promote resentment toward an ethnic group?

11 A. No. It's a comparison essay.

12 Q. The middle-aged European American men, would you agree
13 you're referring to white men there?

14 A. Well, I'm more comfortable with the language I chose, yes.

15 Q. But the answer is "yes"?

16 A. European American men.

17 Q. And is European American men, or the language that you
18 chose, another way of saying white men?

19 A. Yes.

20 Q. Okay. And you're saying that they perpetrated -- excuse
21 me -- they created an environment for exploitation and abuse.

22 A. Yes.

23 Q. You don't think that promotes resentment against white
24 people?

25 A. No.

1 Q. I believe you also said, and I'm now referring to a
2 statement at your deposition: That you utilized or
3 operationalized indigenous epistemologies and cosmologies that
4 provided a humanizing perspective upon education.

5 Do you agree with that statement?

6 A. Yes.

7 Q. Okay. Were you providing a humanizing perspective because
8 you believed your students had been dehumanized?

9 A. No.

10 Q. Were you aware of any other ethnic studies programs using
11 the indigenous epistemologies and cosmologies that you were
12 using?

13 A. Could you repeat that.

14 Q. Were you aware of any other ethnic studies programs
15 anywhere that were using the indigenous epistemologies and
16 cosmologies that you had developed for your Mexican-American
17 Studies program?

18 A. Other programs besides Mexican-American Studies?

19 Q. Other programs in other schools.

20 A. No.

21 Q. They were cutting edge, in your view?

22 A. I wouldn't say that, no.

23 Q. Okay. Weren't they a pedagogical experiment?

24 A. I wouldn't say that, no.

25 Q. Did you consciously decide to teach reading and writing

1 through a cultural lens with a social justice emphasis and
2 disregard the stacks of practice tests that were provided for
3 you? Do you remember making a statement along those lines?

4 A. I don't recall at this time without any documentation that
5 could help me recollect that.

6 Q. All right. Do you know whether you wrote in your doctoral
7 dissertation that you had done that for the other program you
8 referred to?

9 A. I'm sorry. Could you say that again.

10 Q. Do you remember that language from your doctoral
11 dissertation?

12 A. I don't remember it.

13 Q. All right. I believe you stated that you did not know when
14 the Cambium auditors were going to be in your classroom?

15 A. I did not know the specific day.

16 Q. Did you know the week they were going to be there?

17 A. I did.

18 Q. Okay. And the day that they arrived, did you know what
19 time they were going to be there or did they simply show up?

20 A. They simply showed up.

21 Q. Okay. I believe you characterized the Cambium auditors'
22 conclusions in your testimony as describing the program as
23 peace, love and whatnot. Do you remember that testimony?

24 A. Yeah.

25 Q. All right. But isn't it true that the Cambium audit, and

1 I'm referring now for the record to Exhibit 93, and Page 34,
2 states that:

3 Three of the nine MASD curriculum units analyzed by the
4 auditors contained an overabundance of controversial
5 commentary inclusive of political tones of personal
6 activism and bias evidenced in the introductory section of
7 a unit.

8 Furthermore, if said course units underwent an approval
9 process, words used to dehumanize or belittle any elected
10 official or community leader would have been eliminated out
11 of respect.

12 Do you agree that that's a reflection of a finding that the
13 MAS program was composed of peace, love and whatnot?

14 A. I'm going to have to -- I apologize that you're going to
15 have to repeat it again.

16 Q. I won't repeat the quote. You heard the quote, correct?

17 A. I did.

18 Q. Okay. Are you standing on your testimony that the Cambium
19 auditors found that the Mexican-American Studies program
20 reflected peace, love and whatnot?

21 A. Yes.

22 Q. Despite that statement?

23 A. Yes.

24 Q. Okay. You testified that John Huppenthal visited your
25 classroom in I believe you said the spring of 2010?

1 A. Yes.

2 Q. Could that have been 2009, by the way? Or are you
3 confident it was 2010?

4 A. I'm not confident that it is 2010. It could have been
5 2009.

6 Q. All right. Dr. Acosta, I realize that was several years
7 ago. But to be clear, that was not a normal class, but rather
8 a discussion with students, correct?

9 A. As I said in my testimony, correct.

10 Q. Okay. So for better or worse, it's not an example of MAS
11 teaching that really would inform an evaluator in a normal way,
12 correct?

13 A. Sure.

14 Q. Okay. I'm going to move on to some of the materials you
15 referenced that you used in your Latino literature class. You
16 stated at one point that you did not regularly use Paulo
17 Freire's text. Is that correct?

18 A. That's right.

19 Q. So you did use it at some point, or at least occasionally,
20 is that right?

21 A. I used it one year, along with Plato and another
22 philosopher and decided that wasn't the way to go. The
23 students weren't as engaged with it. It was inaccessible.
24 And, to be honest, the other literature I had at the time is
25 much more powerful.

1 Q. So the answer is yes?

2 A. Yes, I did at one time.

3 Q. Did you use his book entitled Pedagogy of the Oppressed?

4 A. I used in that one time a selection from a textbook that
5 excerpted a piece from Pedagogy of the Oppressed.

6 Q. Are you aware that the Cambium audit concluded that
7 Pedagogy of the Oppressed was questionable content and not age
8 appropriate for high school students?

9 Do you remember reading that?

10 A. I don't recall that right now.

11 Q. You said that you were banned from using The Tempest in
12 your classroom. Is that correct?

13 A. Yes, that's correct.

14 Q. I'd like to talk about The Tempest for a minute. I believe
15 at -- in your testimony, you -- and at your deposition -- you
16 said that it was about Europeans in Barbados.

17 Do you remember about that?

18 A. Yes.

19 Q. How many times have you read The Tempest, incidentally?

20 A. Well over 15 times. 20 times maybe.

21 Q. Does it refer anywhere in the entire text to Barbados?

22 A. No. He uses a different term. Shakespeare often did that
23 with names. He would -- he would switch them up a little bit,
24 play with the spelling.

25 Q. What term did he use?

1 A. I can't recall at the moment. I haven't read -- although
2 I've read *The Tempest* many times, I haven't read it in a few
3 years.

4 Q. But your take on *The Tempest*, if we can call it that, your
5 perspective that you were teaching was that the Europeans who
6 landed on Barbados in Shakespeare's play then enslaved the
7 indigenous people. Is that correct?

8 A. Actually in the introduction is -- to the text that we were
9 using, that were provided by my high school, the introduction
10 brings up the fact that it was in the new world, and that's the
11 expert, the Shakespearean expert, who's much better than me at
12 this, said that it was akin to Barbados.

13 Enslaved? There is -- there are moments in *The Tempest*
14 where Prospero, one of the protagonists, is confronted as being
15 enslaved by Caliban, one of the natives to the island.

16 Q. Isn't it other the other way around, Prospero had enslaved
17 Caliban? Isn't that correct?

18 A. No. That's what I was saying, that Caliban was saying
19 you've treated me as a slave. I was trying to give a little
20 more context for the play.

21 Q. So the Caliban figure in your teaching was indigenous to
22 the Western Hemisphere?

23 A. Not in my teaching. We read it as Shakespeare wrote it.
24 So he was native to the land they were on.

25 Q. Which was Barbados.

1 A. Or akin to it. With the name change, yes.

2 Q. Okay. And Caliban was the son of Sycorax. Is that
3 correct?

4 A. Mmm-hmm. That's correct.

5 Q. Sycorax was from Algiers, wasn't she?

6 A. Yes.

7 Q. So how could Caliban have been an indigenous person of
8 Barbados?

9 A. Caliban was born there on the island, not in Algiers.

10 Q. He was born on the island, but he was Algerian?

11 A. He was of Algerian descent, but he was a native to the
12 island. You can see now why it was so ripe to talk about in my
13 in my classroom.

14 Q. Is the play an allegory then in your view about Europeans
15 going to Barbados and enslaving indigenous people there?

16 A. The play isn't about enslavement. And that's pretty
17 reductive in my estimation. It's about love. It's about
18 familial -- being usurped by your own brother. So there's some
19 familiar treachery. There's many things.

20 But there is also an element of -- there's an element of
21 indigenous rights, if you will. I mean, that's a bit far, a
22 bit of a stretch I guess I would say right now, but it's
23 definitely an element of the play that's quite interesting.

24 And, if you remember my testimony, I was talking about
25 Ronald Takaki had used it as an allegory to his work in his

1 book A Different Mirror, about the colonization experience in
2 the United States.

3 But I was just -- we were using that as one of many
4 different ways to engage the students in what was going on in
5 the play and for me to teach them Shakespeare.

6 Q. Ronald Takaki, incidentally, is a historian, correct?

7 A. Yes.

8 Q. You were using his text in your English language class?

9 A. I was using an article that he wrote that helped frame
10 The Tempest, yes.

11 MR. QUINN: I'd like to show the witness his
12 deposition testimony at Pages 122 and 123 at this time.

13 MR. REISS: Do you have a copy, Counsel?

14 MR. ELLMAN: Yes.

15 BY MR. ELLMAN:

16 Q. Can you see the exhibit in front of you, Dr. Acosta?

17 A. Yes.

18 Q. At page 123, third line down, don't you state: "Barbados
19 is the island that the Europeans end up encountering"?

20 A. Yeah.

21 Q. And there's a couple of native characters that are enslaved
22 and through the magic of one of the main characters Prospero.
23 Do I have that correct?

24 A. That's correct.

25 Q. So you explained to your students, according to your

1 deposition testimony, there are issues in the play of race,
2 colonization, power, specifically of European power against
3 native new world North Americans, correct?

4 A. Yeah, that was part of the lens of The Tempest.

5 MR. ELLMAN: I'll rest with that.

6 MR. QUINN: I'm going to object certainly because it's
7 not impeaching. I don't know why he's reading from it. It
8 doesn't impeach the witness.

9 THE COURT: We'll see where it goes. Objection is
10 overruled.

11 MR. ELLMAN: I'll rest there, Your Honor. I'm done
12 with this exhibit.

13 BY MR. ELLMAN:

14 Q. And I'd like to talk about some of the other materials that
15 were used in the Latino literature class. I am going to refer
16 now to the Cambium audit at Page 117.

17 One of the materials identified there is entitled "At the
18 Afro-Asian Conference in Algeria," by Ernest Guevara, better
19 known as "Che Guevara."

20 Do you agree that was one of the materials used in the
21 Latin literature class?

22 A. Yes. I taught that once.

23 Q. That's not a novel or a play or a poem, is it?

24 A. No, it's a speech.

25 Q. It's a speech he gave in 1965, is that right?

1 A. That's correct.

2 Q. And in this speech it says: It is imperative to take
3 political power and get rid of the oppressor classes.

4 Do you remember that from the speech?

5 A. I don't.

6 Q. Do you have any reason to believe that that's not in the
7 speech?

8 A. I have no reason to believe it's not in the speech.

9 Q. And the speech text also states -- I'm going to ask if you
10 remember this:

11 If the imperialist enemy, the United States, or any
12 other, carries out its attack against the underdeveloped
13 peoples and the socialist countries, elementary logic
14 determines the need for an alliance between the underdeveloped
15 peoples and the socialist countries.

16 Do you remember language to that effect in the Guevara
17 speech.

18 A. Without the speech in front of me, sir, no, I don't.

19 Q. All right.

20 A. I have no reason to believe it's not in the speech, as I
21 said before.

22 Q. So can we assume for our purposes here that it is?

23 A. Sure.

24 Q. Don't you agree that that teaches your students class-based
25 resentment and ideology?

1 A. No.

2 Q. No. And why is that?

3 A. Well, I had a pretty solid liberal arts background, and we
4 learned many different philosophies from many different points
5 of view. And so, to me, because we're reading something
6 doesn't put it in the proper context of how we were analyzing
7 it or how the students were asked to analyze it for my
8 classroom.

9 Q. This is an English language course offered for core credit,
10 correct?

11 A. Sure.

12 Q. And you believe there's independent literary value in Che
13 Guevara's speech in 1965?

14 A. It wasn't a staple of my curriculum, but I don't -- yes,
15 there is value in that, of course.

16 Q. Do you remember another writing that you used in your class
17 entitled "Savage Inequalities"?

18 A. Yes.

19 Q. And that's about racial segregation in America's schools,
20 correct?

21 A. It's about -- from a certain period in time, it's a window
22 into educational inequities during -- I would say Jonathan
23 Kozol did the research in the '80s, late '80s, early '90s.

24 Q. Were you teaching a course about educational inequities or
25 Latino literature?

1 A. Of course I was teaching a course on -- it's called -- in
2 Latino literature, it's called a research paper, and so we were
3 allowed to at that time go get research from different --
4 different walks of life, education being one of them. Criminal
5 justice could be another, environmental sustainability. So
6 that research was used in our classes as a model to how, you
7 know, how I got my Ph.D.

8 Q. It's not a novel or essays, is it?

9 A. No, but one of our requirements is to teach students how to
10 write research papers, thus, we must read research.

11 Q. Do you remember a material called "Justice, a Question of
12 Race," by Roberto Rodriguez?

13 A. I do.

14 Q. And that was not a novel, was it?

15 A. It was a memoir, I believe.

16 Q. Would you agree that the following description of "Justice,
17 a Question of Race," is accurate:

18 Is an indictment of a society that sanctions
19 police brutality against minorities and a testament to human
20 courage and perseverance in the pursuit of justice.

21 Do you agree that's accurate?

22 A. Could you repeat what I'm --

23 Q. Certainly. Is characterization of justice a question of
24 race? I'd like to know if you believe it's an accurate
25 characterization.

1 A. Of the book?

2 Q. Of the book.

3 A. Yes.

4 Q. You also used Cesar Chavez's address to the Commonwealth
5 Club of California, correct?

6 A. I did.

7 Q. And that was a speech?

8 A. Yes, it was.

9 Q. And do you agree with me that Cesar Chavez is one of
10 America's great heros?

11 A. Yes, I do.

12 Q. So you taught your students about Cesar Chavez in your
13 English language class?

14 A. We read the speech.

15 Q. All right. Is he considered to be a literary figure or a
16 political leader?

17 A. In my class he wrote a speech, and we were studying the
18 speech.

19 Q. Did you teach your students about Cesar Chavez's attitude
20 toward the La Raza movement?

21 A. No.

22 Q. Are you aware of what Cesar Chavez's attitude toward the
23 La Raza movement was?

24 A. No.

25 Q. Would you be surprised to learn that he strongly

1 disapproved of the La Raza movement because he considered it to
2 be racist?

3 A. I wouldn't -- I wouldn't -- I would have to speculate at
4 that point. That's beyond my expertise.

5 MR. ELLMAN: All right. I'd like to introduce another
6 impeachment exhibit. For the record, what I am describing is
7 an article published in 1969 in the New Yorker magazine called
8 "Profile Cesar Chavez" by Peter Mathieson in which he
9 interviews Cesar Chavez and quotes from him extensively.

10 THE COURT: Is this a numbered exhibit?

11 MR. ELLMAN: No. This is an impeachment exhibit.

12 MR. QUINN: Your Honor, I'm not sure how a 55-year-old
13 speech or article involving Cesar Chavez is impeachment
14 material for this witness. What is he impeaching?

15 THE COURT: Let's try to find out. If that's an
16 objection, it's overruled.

17 BY MR. ELLMAN:

18 Q. All right. Mr. Acosta, can you see the exhibit in front of
19 you?

20 A. I did.

21 Q. The quotation I am talking about is highlighted. It reads:

22 I hear more and more Mexicans talking about
23 La Raza to build up their pride, you know, Chavez told me.
24 Some people don't look at it as racism, but when you say La
25 Raza, you are saying an anti-gringo thing, and it won't stop

1 there. Today it's anti-gringo, tomorrow it will be anti-negro,
2 and the day after it will be anti-Filipino, anti-Puerto Rican.
3 And then it will be anti-poor Mexican and anti-darker-skinned
4 Mexican. We had a stupid guy who just wanted to play politics
5 with the union, and he began to whip up La Raza against the
6 white volunteers, and even had some of the farm workers and the
7 pickets and the organizers hung up on La Raza. So I took him
8 on. These things have to be met head on.

9 Have I read that correctly?

10 A. Yes.

11 MR. QUINN: Your Honor, I stand by my objection. It's
12 not impeaching. He's just reading from a 50-year-old article.

13 THE COURT: Overruled.

14 BY MR. ELLMAN:

15 Q. Do you disagree with Cesar Chavez's interpretation of
16 La Raza?

17 A. I do.

18 Q. You mentioned the Institute for Transformative Education in
19 your earlier testimony?

20 A. I did not.

21 Q. You did not? Are you familiar with the Institute For
22 Transformative Education?

23 A. Yes.

24 Q. Can you tell us what that was?

25 A. It was a summer institute, more like a conference, that

1 Tucson Unified School District hosted, and it changed locations
2 from -- I think sometimes it was at Pima Desert Vista Campus,
3 and then it was at the U of A a few years.

4 Q. Was the Transformative Education Institute part of the
5 Mexican-American Studies program?

6 A. Yes.

7 Q. And did it present sometimes unit plans for instruction in
8 MAS classes?

9 A. Yes.

10 Q. And a unit plan, incidentally, is that for about a week's
11 worth of teaching?

12 A. It varies.

13 Q. I want to refer to another impeachment exhibit at this
14 time.

15 MR. ELLMAN: I was mistaken, Your Honor, it's actually
16 an exhibit. I am looking for the number now. I beg your
17 pardon for the delay.

18 We are looking at 570, for the record.

19 BY MR. ELLMAN:

20 Q. I am going to show you first the cover page.

21 My first question is whether you recall the 12th Annual
22 Institute for Transformative Education.

23 A. I don't recall it off the top of my head, no.

24 Q. All right. Does it look familiar --

25 MR. QUINN: Your Honor, we objected to this exhibit

1 based on, among other things, foundation.

2 MR. ELLMAN: I'd like an attempt to lay a foundation,
3 Your Honor.

4 THE COURT: All right. Go ahead.

5 BY MR. ELLMAN:

6 Q. All right. Are you familiar with -- if you look in the
7 middle of the page, it says it's by Maria Christina Federico
8 Brummer. Do you know her?

9 A. Yes, I do.

10 Q. Is she with the Tucson Unified School District
11 Mexican-American Studies department?

12 A. Currently?

13 Q. Was she when you were teaching there?

14 A. Yes.

15 Q. Okay. And does this appear to be a high school grade level
16 unit plan proposal?

17 A. It looks like a cover page to me.

18 Q. Let's move to the second page then. Perhaps you can tell
19 me there.

20 If you look at the last paragraph on the page, it says:
21 This unit centers on the investigation of HB2281.

22 Does this appear to be a unit lesson plan?

23 A. Yes, it does.

24 Q. And looking further in that same paragraph at the
25 highlighted portion, it says -- just read with me: The

1 commitment to combat the aggressive dehumanization of our
2 community culminates this unit.

3 Then as you go further down, it says: Students will take
4 action to promote and defend ethnic studies courses and
5 curriculum.

6 Have I read that accurately?

7 A. Yes.

8 Q. So this is a unit plan in which the teachers will have
9 students develop action plans to promote and defend ethnic
10 studies courses and curriculum, correct?

11 A. Without seeing the entire unit, I am not going to be able
12 to substantiate that question, no.

13 Q. All right. Let's look at Page 700 of the same document.
14 If you look at the highlighted portion it says: Groups will
15 present their action plans to the class. Students will then
16 select which of the action plans will be implemented by the
17 class community.

18 Would you read that to mean that students are required in
19 this course to develop action plans to defend the ethnic
20 studies program?

21 A. To develop plans for the community as it's stated here,
22 yes, I would say that.

23 Q. All right. I want to show you Page 704 from that document.
24 And this time I am not directing you to the highlighted
25 portion, but the top. It says: Additional teacher resources.

1 So your understanding, based on your experience going
2 through these institutes, is that the unit plan sometimes
3 provided additional resources for teachers, correct?

4 A. Yes.

5 Q. Sort of a bibliography --

6 A. Yes.

7 Q. -- fair statement? Okay. And the top material here is an
8 article by Dr. Cintli Rodriguez entitled "From Manifest Destiny
9 to Manifest Insanity." Have I read that correctly?

10 A. Yes.

11 Q. Do you know Dr. Rodriguez?

12 A. I do.

13 Q. Now I am showing you Page 705 of the same document. And
14 this is -- let me lower it slightly. This is entitled "From
15 Manifest Destiny" --

16 MR. QUINN: Excuse me. I have been waiting for him to
17 lay a foundation. He wasn't asked whether he's ever seen it
18 before, he's familiar with it. It seems to me that it's
19 improper.

20 MR. ELLMAN: Your Honor, he stated that he's attended
21 these institutes in the past, that lesson plans are developed,
22 and this appears to be a lesson plan.

23 THE COURT: The objection as to foundation is
24 overruled.

25 MR. ELLMAN: All right.

1 BY MR. ELLMAN:

2 Q. So this is the article that was identified in the previous
3 page, as far as you can tell, correct, Dr. Acosta?

4 A. I'm sorry, could you say that again.

5 Q. This is the article that was referenced on the prior page,
6 as far as you can tell? It appears to be?

7 A. Yeah. I couldn't see the title because I was looking at
8 the text that was highlighted. Yes.

9 Q. All right. And they're talking about HB2281 and other
10 laws, correct?

11 A. I haven't read it yet.

12 Q. Okay. Do you remember the cover page I showed you?

13 A. I do.

14 Q. Okay. Do you remember that it referenced HB2281?

15 A. Yes.

16 Q. Okay. Now I want to read the circled highlighted paragraph
17 in the middle of the page.

18 It says: These Arizona laws are part of a spasmodic
19 reaction to this demographic shift and attempt to maintain
20 a political and cultural dominance over brown peoples seen
21 as less than human and as defeated peoples. These laws
22 seek to maintain this narrative of conquest. This is why
23 the loss of lives of some 5,000 Mexicans and Central
24 Americans, primarily indigenous peoples, in the Arizona
25 Sonora Desert in the past dozen years mean little in this

1 clash. The same is true in regards to the recent killings
2 of two Mexicans by U.S. agents along the U.S./Mexico border.

3 Have I read that correctly?

4 A. Yes.

5 Q. Would this type of material, in your view, stir up
6 resentment against a race or class of people?

7 A. No. It's difficult to tell from the context of how it was
8 used. This is -- this is not -- this is an excerpt. It's not
9 pedagogically in the situation of the classroom. So I have no
10 idea how this was being used in the classroom. It could have
11 been a critique of this very sentiment.

12 Q. Based on your knowledge of Cintli Rodriguez, would that be
13 consistent with the types of things she writes?

14 A. I'm sorry. Could you say that again.

15 Q. Based on your knowledge of Dr. Cintli Rodriguez, would that
16 be consistent with the type of thing that she writes, to use
17 that as a critique?

18 A. I think I was confused because he -- it's a "he."

19 Q. I'm sorry. I beg your pardon. He. All right. My
20 mistake.

21 A. Dr. Rodriguez has written many things. His scope is fairly
22 large. Do I think this is something he wrote? His name is on
23 it, yes.

24 Q. Okay. You referred to the Unity Festival --

25 A. I did.

1 Q. -- in your testimony earlier. Some of your MAS students
2 were responsible for organizing those, is that correct?

3 A. Yes.

4 Q. In 2011, you wrote a rap song for the purpose of performing
5 it at the Unity Festival, didn't you?

6 A. I did.

7 Q. This is Exhibit 575 I am referring to now. And the rap
8 song you wrote was intended for an audience that obviously
9 included MAS students and other students, correct?

10 A. I never performed --

11 Q. I understand. But my question is whether you intended to
12 perform it.

13 A. Well, I didn't perform it, so I was -- I was writing a poem
14 to a really nice beat.

15 Q. Didn't you say during your deposition that you wrote it for
16 the purpose of performing it at the Unity Festival, but you
17 didn't actually perform it?

18 A. I traditionally performed at the Unity Festival, but not
19 that year. Things were very hectic.

20 Q. But you composed this?

21 A. I did.

22 Q. And you did it for the Unity Festival, didn't you?

23 A. Yeah, I composed it if I had the time.

24 Q. Okay. In this rap song you wrote, you called
25 Superintendent Pedicone a butt-kissing wanksta who runs the

1 school district like a prison, didn't you?

2 A. I used a pseudonym for him at the time.

3 Q. Okay. So you used a different word for "prison"?

4 A. I said a different word for Dr. Pedicone.

5 Q. Oh, okay. Dr. Pedi?

6 A. Yes.

7 Q. Let me read it and ask you if it's accurate:

8 I'm something like phenomenon. This place is like a
9 panopticon. Dr. Pedi in the tower and intercom. We know
10 whose side that wanksta's on. It's not mystery -- I know whose
11 butt they kissing.

12 Have I read that accurately?

13 A. Yes.

14 Q. Okay. And you wrote that to perform it at the Unity
15 Festival, but didn't actually perform it, correct?

16 A. I wrote it.

17 Q. Okay. And you agree that you're referring to the
18 superintendent of the Tucson Unified School District as a
19 butt-kissing wanksta?

20 A. No. You're condensing the poem into pros, and so, no, it
21 doesn't align that way.

22 Q. It doesn't. Is Dr. Pedi a reference to Dr. Pedicone?

23 A. It is.

24 Q. And "that wanksta," that's not a reference to him?

25 A. That one is a reference to him.

1 Q. Would you agree with me that's highly derogatory?

2 A. No.

3 Q. Would you agree with me that that promotes resentment?

4 A. No.

5 Q. Would you agree with me that that's inappropriate for high
6 school students?

7 A. It wasn't for high school students.

8 Q. Didn't you testify earlier that the Unity Festival was
9 organized by high school students and attended by high school
10 students?

11 A. That's true. Amongst community members and adults and all
12 sorts of different folks.

13 Q. In the same --

14 A. It was a public event, sir.

15 Q. I understand. You also write:

16 It's not mystery. I know whose butt they kissin'. They
17 smile and wave, but run the district like a prison.
18 Stoogeman keeps frontin', but he's an imposter. Talks a
19 hole in your head but it's just caca de la vaca.

20 Is that what you wrote?

21 A. I did.

22 Q. All right. And Stoogeman, is that a disguised reference to
23 someone?

24 A. It wasn't a disguised reference. It was just a pseudonym.

25 Q. And who were you referring to there?

1 A. Dr. Stegeman. He was the school board president at the
2 time.

3 Q. So you're calling -- in your poem you're calling the school
4 board president a stooge?

5 A. No, in my poem I'm calling him Stoogeman.

6 Q. Stoogeman?

7 A. Mmm-hmm.

8 Q. What was the literary purpose of that characterization?

9 A. It was a more jovial way of using his name.

10 Q. A jovial way of calling him a stooge?

11 A. No, it's just -- it was fun to say.

12 Q. And he --

13 A. Poetry, part of it is pleasing to the air.

14 Q. There is no question pending, Dr. Acosta.

15 A. Sorry.

16 Q. You wrote: He talks a hole in your head, but it's just
17 caca de la vaca, correct?

18 A. Yes.

19 Q. And you're still referring to this allegorical character
20 who appears to be Dr. Stegeman, correct?

21 A. Correct.

22 Q. And "caca de la vaca," does that mean cow excrement?

23 A. Yes.

24 Q. Okay. So you're saying that Dr. Stegeman talks cow
25 excrement?

1 A. Yes.

2 Q. Okay. And further down, in the poem, you also write: I
3 call out mentirosos like Horne and Huppenthal, any Neanderthal
4 that needs another Geritol.

5 Now, you're referring overtly there, I assume, to Tom Horne
6 and John Huppenthal, correct?

7 A. Yes.

8 Q. Okay. And you're making fun of them for being old?

9 A. No, it's just a really good rhyme. Huppenthal is hard to
10 rhyme with.

11 Q. So you didn't mean anything when you said that they need
12 another Geritol, you were just groping for a rhyme?

13 A. I stand by my --

14 Q. And you did not mean to refer to their age?

15 A. No.

16 Q. And at that time John Huppenthal was the superintendent of
17 public instruction for the State of Arizona, correct?

18 A. Correct.

19 Q. Would you agree with me that what you wrote was extremely
20 disrespectful?

21 A. No.

22 Q. Would you agree with me that it's inappropriate for high
23 school students?

24 A. No.

25 Q. Would you agree with me that it promotes resentment against

1 authority?

2 A. No.

3 Q. This is written from the first person, correct?

4 A. Yes.

5 Q. Who is the hero in this rap?

6 A. There's no hero.

7 Q. The author writes at the end: I'd die for this justicia
8 like the last scene in Glory, right?

9 A. Yeah.

10 Q. Okay. So the first person -- character in this poem,
11 written by you, says that he's willing to die for justice like
12 in the last scene of the movie Glory --

13 A. Correct.

14 Q. -- is that correct? But you're not the hero of this poem?

15 A. No. That's not how poetry works. It's a point of view,
16 right? So the first person is a point of view. That's not
17 necessarily confessional.

18 Q. So your answer is "no"?

19 A. Right.

20 MR. ELLMAN: I don't think I have anything further,
21 Your Honor.

22 THE COURT: Okay.

23 MR. ELLMAN: Thank you.

24 THE COURT: Any redirect?

25 MR. QUINN: Yes, Your Honor. Briefly.

1 THE COURT: Go ahead.

2 REDIRECT EXAMINATION

3 BY MR. QUINN:

4 Q. Was that a hip-hop poem?

5 A. It was.

6 Q. You kind of like hip-hop?

7 A. I do.

8 Q. Hip-hop is often kind of light comedy?

9 A. Yes. It's satirical at times.

10 Q. You referred in the poem to Horne and Huppenthal as
11 mentirosos, right?

12 A. Yes.

13 Q. What does that mean?

14 A. Mentirosos, m-e-n-t-i-r-o-s-o-s. It means someone who is
15 not truthful.

16 Q. Liars?

17 A. Yes.

18 Q. Why did you refer to Mr. Huppenthal and Mr. Horne as liars?

19 A. Mr. Horne had, in his open letter, mischaracterized what
20 happened at the events in the auditorium during Ms. Dugan's
21 speech. I found that offensive.

22 Mr. Huppenthal at times had mischaracterized on the
23 campaign trail after visiting my classroom his experiences. He
24 had said that the founding fathers were being bashed, and as
25 you can see from the short excerpt we had, and there's more in

1 the raw footage, that it was a completely respectful and
2 positive discourse. So that was also a moment where I thought
3 they were being dishonest for political gain.

4 Q. Now, you were shown an ex -- or read an excerpt from the
5 Cambium report that talked in terms of the fact that there was
6 controversial commentary inclusive of political overtones, et
7 cetera. Do you remember that?

8 A. Yes.

9 Q. Let me read you the following sentence, which was not read
10 to you by counsel, after that sentence: It is important to
11 note that it cannot be determined if these units are currently
12 being taught or continue to be distributed as their use was not
13 observed in the audited window.

14 Now, you were also asked certain questions with regard to
15 the Cambium report.

16 Notwithstanding the excerpts that were read to you, what
17 was the ultimate decision of the Cambium report with regard to
18 the legality of the MAS program?

19 A. The Cambium report found no violation.

20 Q. Now, you were also asked questions about La Raza. Could
21 you describe for the Court the difference between La Raza and
22 simply the word "Raza"?

23 A. Yeah. Well, obviously there's an article there, la, the.
24 But Raza, the way we used it, again, it was as
25 Mexican-American/Raza studies, it was used to identify with the

1 rest of the Latino population in our school district. It's
2 inclusive and not exclusive to Mexican-American. So we wanted
3 to make sure that was clear.

4 La Raza sometimes -- and I don't -- it was difficult with
5 the excerpt from Mr. Chavez, because there was also a La Raza
6 Unida Party, so -- at his time, during his time. So I am not
7 sure if he was using "La Raza" to mean what we were talking
8 about earlier in my testimony, or perhaps Mr. Chavez was
9 talking about La Raza Unida Party. So it can get convoluted
10 because the term has been used by groups in the past.

11 Q. That was something that was written 70 years ago, a few
12 years before the Mexican-American Studies program, right?

13 A. Yeah. Just a few.

14 Q. Now, you were asked about the fact that you had, as part of
15 your program, part of your class, had referred to or had the
16 students read a speech by Che Guevara and also some material,
17 savage inequities and something about the question of race, a
18 memoir. What was the purpose of teaching those?

19 A. Some of those -- savage inequalities was pretty much a
20 staple. That was because I taught juniors every year and we
21 did a research project, so I wanted to give them a larger scope
22 of educational research and experiences as a model for research
23 they might do, and they got to choose their research. I was
24 never dogmatic. That was against our program, the ethics of
25 our program and all our beliefs.

1 So they got to choose, but I wanted them to have like a
2 model lesson about educational research. And I was going to
3 grad school at the time, so I was able to bring things from the
4 University of Arizona, my master's and doctoral program, that
5 would be accessible to them so they could see contemporary
6 research as well, see how the world has changed in education,
7 or whether it's changed or not.

8 So that was that piece.

9 The Guevara and Mr. Rodriguez's works, I used -- and I
10 would do this every once in a while. Actually I would do this
11 every year, which is I would try something new, and if it took
12 with the students, if it was engaging to them, then I would
13 continue. If it wasn't engaging, I would set it aside.

14 Both the works that were referred to, Mr. Rodriguez's work
15 and the Guevara speech, were not popular with my students, and
16 so we moved on. I could find speeches by other folks.

17 Q. Was there any purpose -- was the purpose to somehow teach
18 oppression or overthrow the oppressors?

19 A. No.

20 MR. QUINN: I think that's all I have, Your Honor.
21 Thank you.

22 THE COURT: Okay. Any further cross?

23 MR. ELLMAN: No, Your Honor.

24 THE COURT: Okay. Dr. Acosta, thank you very much,
25 sir. You may step down. You are excused subject to possibly

1 being recalled, but, if you are, the lawyers will get ahold of
2 you and give you plenty of notice.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Next witness, please.

5 MS. BARRINGTON: Your Honor, the plaintiffs call Maya
6 Arce as our next witness.

7 THE COURT: Would you step this way onto the witness
8 stand and be sworn.

9 MAYA ARCE, WITNESS, SWORN

10 THE CLERK: You may have a seat. Please speak
11 directly into the microphone. State your full name and the
12 spelling of your last name for the record.

13 THE WITNESS: My name is Maya Arce. It is spelled
14 M-a-y-a, last name, A-r-c-e.

15 DIRECT EXAMINATION

16 BY MS. BARRINGTON:

17 Q. Good afternoon, Maya. I am going to just start with a few
18 background questions. How old are you?

19 A. I am 19 years old.

20 Q. Do you attend college?

21 A. Yes.

22 Q. Which college do you attend?

23 A. The University of Arizona.

24 Q. Can you tell the Court what you are studying in college.

25 A. I am a pre computer science major and a -- minoring in

1 Spanish.

2 Q. Are you involved in extracurricular activities at the U of

3 A?

4 A. Yes. I am in the U of A mariachi group.

5 Q. What is your racial or ethnic identity?

6 A. Mexican-American.

7 Q. What does that mean to you?

8 A. It means I was born here in the United States and I come
9 from Mexican heritage.

10 Q. And how does it make you feel to be Mexican-American?

11 A. Proud. I'm proud to be an American and proud of my
12 culture.

13 Q. Where did you attend high school?

14 A. Tucson High Magnet School.

15 Q. And when did you graduate?

16 A. 2016.

17 Q. How long did you attend Tucson High for?

18 A. All four years.

19 Q. Where did you attend middle school?

20 A. Safford International Baccalaureate Magnet School.

21 Q. How about elementary school?

22 A. Davis Bilingual Elementary School.

23 Q. Which school district is Tucson High part of?

24 A. Tucson Unified.

25 Q. How about Davis Bilingual?

1 A. Tucson Unified as well.

2 Q. Have you ever heard of the Mexican-American Studies program
3 at TUSD?

4 A. Yes, I have. My father was the co-founder of the program.

5 Q. Can you tell me what you know about the MAS program at
6 TUSD?

7 A. I know that it was a program that had classes that included
8 Mexican-American history, perspective, literature, and art.

9 Q. What is your understanding as to why the MAS program was
10 created?

11 A. Well, the Mexican-American perspective is not really
12 included in school, and that is why it was created.

13 Q. Why was it important for to you see Mexican-Americans
14 represented in the curriculum?

15 A. I believe that it is important for every student to see
16 themselves in the curriculum, and when you see yourself in the
17 curriculum, it makes it more relatable and easier to learn new
18 concepts.

19 Q. Have you ever taken any MAS classes at TUSD?

20 A. In elementary school, we would have some teachers from the
21 program come and do a weekly mini lesson.

22 Q. What did you learn from your MAS teacher in elementary
23 school?

24 A. I learned how to count to 10 in the Aztec language Nahuatl.

25 (Reporter requests spelling.)

1 A. Nahuatl. It's -- I'm not sure how to spell it. N-a --

2 MS. BARRINGTON: Can we get you the spelling maybe
3 after?

4 A. And we went over the four Aztec energies and also some
5 Mexican-American folktale stories.

6 Q. What did you think about those MAS classes that you took?

7 A. I thought they were interesting, and I thought it was -- I
8 thought it was interesting to be able to learn about stories in
9 class that I, like, have heard from my family members or
10 grandparents.

11 Q. Did you take any MAS classes when you were at Safford?

12 A. No. They were not offered there.

13 Q. Did you take any MAS classes when you were at Tucson High?

14 A. No. By the time I was a freshman, the program had already
15 been eliminated.

16 Q. Did you take any MAS classes outside of TUSD?

17 A. I did. I took a class on Sunday --

18 MS. COOPER: Objection, Your Honor. Classes outside
19 of -- classes offered by TUSD are not relevant. They weren't
20 addressed by the state.

21 THE COURT: It's overruled. This is just background.
22 Go ahead. You may answer the question.

23 THE WITNESS: Okay.

24 A. Okay. With Dr. Acosta.

25 BY MS. BARRINGTON:

1 Q. What kind of class was that?

2 A. It was a Mexican-American literature class.

3 Q. And can you tell the Court what you studied in that class?

4 A. We read several books and texts, and we learned how to
5 interview someone, learned how to transcribe that interview,
6 practice public speaking skills and presenting skills.

7 Q. Why did you decide to take that class?

8 A. I wanted to experience the MAS class for myself in high
9 school since I wasn't allowed to do that.

10 Q. What did you think about Dr. Acosta's class?

11 A. I thought it was -- other than it being really interesting,
12 it really pushed me academically, especially -- I took it when
13 I was a freshman. Being a freshman reading college-level text
14 really pushed me academically.

15 I just had only wished that I could have done that in TUSD
16 at my school, rather than having to go outside of class on a
17 Sunday.

18 Q. So did Dr. Acosta's class help you?

19 A. Yes, it definitely did, especially later in high school
20 when I would take AP literature classes, I think it prepared me
21 for those a lot.

22 Q. When did you take Dr. Acosta's class?

23 A. My freshman year of high school.

24 Q. Where was the class taught?

25 A. At a community center.

1 Q. Did you get any credit for the class?

2 A. Yes. Three college units.

3 Q. Did you get any credit from TUSD for the class?

4 A. No.

5 Q. Why did you take the class for only one year?

6 A. It just became more difficult. Realistically, it's not
7 that easy to go outside of school on a Sunday, and I had a
8 really busy schedule.

9 Q. What kind of classes did you take your freshman year at
10 U of A?

11 A. I took Honors English class, Mexican-Americans in Pop
12 Culture class, Trigonometry, Introduction to Computer
13 Programming, and Spanish.

14 Q. Why did you decide to take the Mexican-Americans in Pop
15 Culture class?

16 A. I was really glad to see that Mexican-American Studies was
17 at my university. So once I saw that it was offered, I took
18 the first chance I could to sign up for it.

19 Q. What kind of extracurricular activities were you involved
20 in when you were at Tucson High?

21 A. I was on the golf team for a little while. I was in
22 M.E.Ch.A Club. It's M-E-Ch-A. It's an abbreviation. I was in
23 theater. I was the president of mariachi club. I was on the
24 newspaper team.

25 Q. Can you tell the Court what the M.E.Ch.A. Club is?

1 A. It stands for Movimiento Estudiantil Chicano de Aztlan.

2 It's M-o-v-i-m-i-e-n-t-o, then E-s-t-u-d-i-a-n-t-i-l,

3 C-h-i-c-a-n-o D-e A-z-t-l-a-n. I hope I got that right.

4 Q. Okay. I'm sorry. What did the M.E.Ch.A. Club do?

5 A. It was a community organizing club, and most of the year we

6 were preparing for the Unity Festival.

7 Q. Can you tell the Court a little bit about the Unity

8 Festival?

9 A. It was an annual festival that had music, food, and it was

10 just a place for where the community and the school could come

11 together.

12 Q. Who attended the Unity Festival your freshman year?

13 A. Mostly Tucson High students and I would say faculty, but it

14 was a lot smaller than the previous years that I had attended.

15 Q. Why do you think that was?

16 A. I think just because the community was discouraged after

17 the ban on Mexican-American Studies.

18 Q. How did you become involved in this case?

19 A. Well, I grew up around Mexican-American Studies. Like I

20 said before my father, was a cofounder, and after the ban I

21 took it upon myself to become a plaintiff in this case.

22 Q. Why was that?

23 A. I decided to become a plaintiff because I believe in

24 standing up for what I think is right, and I believe that I am

25 a voice for those who otherwise may not be heard, for my

1 ancestors, for my community members and for -- sorry --
2 generations to come.

3 MS. BARRINGTON: Nothing further, Your Honor.

4 THE COURT: All right. Any cross?

5 MS. COOPER: Just briefly.

6 CROSS-EXAMINATION

7 BY MS. COOPER:

8 Q. Good afternoon, Ms. Arce. I'm Leslie Cooper. We met when
9 I took your deposition. Congratulations on becoming a Wildcat.
10 I promise no spelling questions. I just have a few questions
11 for you this afternoon.

12 Now, your parents, they have a college education, correct?

13 A. Yes.

14 Q. Your father has a college degree?

15 A. Yes.

16 Q. And a master's?

17 A. Yes.

18 Q. He has his Ph.D. or is very close?

19 A. He's very close.

20 Q. And your mother as well, she has a college degree?

21 A. Mmm-hmm. A master's.

22 Q. Can you tell the Court what the AIMS test is very briefly,
23 the Arizona instrument to measure standards. Do you recall
24 that test?

25 A. Yeah. It was a standardized test that I remember taking in

1 elementary school and middle school, and I think, like, part of
2 my high school they changed it to a different test.

3 Q. Changed it to AZ Merit, but you took AIMS as a sophomore,
4 right?

5 A. I believe so.

6 Q. Did you pass it at that time?

7 A. Yes.

8 Q. You graduated in high school, graduated from my school in
9 four years, correct?

10 A. Mmm-hmm.

11 Q. You took AP classes in high school, right?

12 A. Yes.

13 Q. What does AP stand for?

14 A. Advanced placement.

15 Q. What are advanced placement classes?

16 A. They are, like -- I would say, like, Honors classes. They
17 usually have college course material and texts.

18 Q. They are rigorous classes at a college level, correct?

19 A. Yeah, a lot of work.

20 Q. And you take a test at the end, correct?

21 A. Mmm-hmm.

22 Q. If you choose to.

23 And if you do well enough on that test, you get college
24 credit, correct?

25 A. Mmm-hmm.

1 Q. And you took several AP classes, didn't you?

2 A. Yes.

3 Q. You took AP Literature?

4 A. Yes.

5 Q. AP Statistics?

6 A. Yes.

7 Q. AP American Government?

8 A. Yes.

9 Q. Any others?

10 A. AP U.S. History. I did not take AP Government. It was
11 just normal Government.

12 Q. Normal Government. So you took three AP classes, right?

13 A. I took AP Music Theory.

14 Q. So four?

15 A. Yeah.

16 Q. And you listed several of your activities that you
17 participated in in high school, and I tried to make a good list
18 so that I wouldn't duplicate any of them, but I wanted to make
19 sure that I have everything.

20 You were a volunteer at Davis Bilingual Elementary while
21 you were in high school, right?

22 A. Yeah.

23 Q. And you were a volunteer mariachi teacher teaching violin
24 to elementary students, correct?

25 A. Yes.

1 Q. Then you also got a job at Correo Elementary?

2 A. Yes.

3 Q. Teaching violin?

4 A. Yes.

5 Q. Mariachi violin?

6 A. Yes.

7 Q. You were in orchestra?

8 A. Yes.

9 Q. And then you were a speaker before your sophomore year at
10 the Free Minds, Free People Conference in Chicago?

11 A. Yes.

12 Q. Now, you attended an International Baccalaureate middle
13 school, right?

14 A. Yes.

15 Q. Can you tell the Court what the International Baccalaureate
16 Program is?

17 A. I would say that it's similar to a school that has Honors
18 classes. They're like Honors classes. I would say they're
19 just more project based.

20 Q. But they're an academically rigorous curriculum.

21 A. Yes, correct.

22 Q. Now, if I use the phrase "culturally relevant courses,"
23 will you know what I am referring to?

24 A. Yes.

25 Q. Those are classes that are offered by TUSD currently, and

1 they are culturally relevant courses in a variety of subject
2 matters for students that may be taught it from a
3 Mexican-American perspective or from an African-American
4 perspective, correct?

5 A. Yes.

6 Q. Have you ever taken any of those classes, Ms. Arce?

7 A. No, I did not.

8 Q. Just a yes or no.

9 A. Okay.

10 Q. Do you know whether it would be possible to see yourself in
11 the curriculum as a competent young Mexican-American woman in
12 these culturally relevant classes taught from an
13 Mexican-American perspective?

14 A. I don't think so. I think that --

15 Q. Yes or no?

16 A. No.

17 Q. And what is your basis for stating whether or not you might
18 see yourself in the curriculum of the culturally relevant
19 courses that are taught from a Mexican-American perspective?

20 THE COURT: Just a minute. Just to be clear, when you
21 say "curriculum," you mean taking the course?

22 MS. COOPER: Yes. I am sorry.

23 A. I just think that, if they are a replacement to the
24 Mexican-American Studies program, that there would be no reason
25 to ban Mexican-American Studies in the first place. So I just

1 don't think that the material is, I mean, is up to par, in my
2 opinion.

3 BY MS. COOPER:

4 Q. Is that based on your attendance at any class?

5 A. No.

6 Q. Is that based on your discussions with any teaches who
7 teach culturally relevant courses from a Mexican-American
8 perspective?

9 A. No.

10 Q. Is that based on a conversation with any of your friends
11 who have taken such classes?

12 A. No.

13 MS. COOPER: No further questions.

14 THE COURT: Any redirect?

15 MS. BARRINGTON: Just very briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. BARRINGTON:

18 Q. Maya, you recall Ms. Cooper asking you about the CRC
19 classes, the culturally relevant curriculum courses?

20 A. Mmm-hmm.

21 Q. Why don't you think that you would have seen yourself in
22 the CRC curriculum?

23 A. I think that they are, I would say, a filtered version of
24 the Mexican-American Studies classes because -- I mean or else
25 under the bill they would be banned as well.

1 MS. BARRINGTON: Okay. No further questions, Your
2 Honor. Thank you.

3 THE COURT: Ms. Arce, thank you very much for your
4 testimony. You are excused. But I have to say I would only
5 give you only a C for spelling. Thank you.

6 (Laughter.)

7 THE COURT: Next witness, please.

8 MR. REISS: Your Honor, the plaintiffs call John
9 Huppenthal. This may be a sensible time to take a break, but
10 it's up to Your Honor.

11 THE COURT: The direct will be --

12 MR. REISS: The direct will be --

13 THE COURT: Maybe a little bit lengthy. That's a good
14 suggestion. We'll take our -- our recess now and get to the
15 next witness right after the recess. All right. We are in
16 recess.

17 (A recess was taken from p.m. 2:39 p.m. to 3:02 p.m.)

18 THE COURT: Let's be seated, and I ask the plaintiff
19 to call your next witness.

20 MR. REISS: Yes, Your Honor. The plaintiffs call John
21 Huppenthal.

22 THE COURT: All right, sir. Would you step forward
23 here and be sworn.

24 **JOHN HUPPENTHAL, WITNESS, SWORN**

25 THE COURT: Take a seat, please. Thank you, sir.

1 MR. REISS: Your Honor, I would request permission to
2 examine Mr. Huppenthal as an adverse witness.

3 THE COURT: That's fair enough. You can treat him as
4 an adverse witness.

5 MR. REISS: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. REISS:

8 Q. Good afternoon, Mr. Huppenthal.

9 A. Good afternoon.

10 Q. Good to see you again.

11 A. Nice to see you.

12 Q. Mr. Huppenthal, let's just go through some of your
13 legislative background. You were in the Arizona Senate from
14 1992 to 2000, right?

15 A. Yes.

16 Q. And then you were in the Arizona Senate again from 2005 to
17 2010, right?

18 A. Yes.

19 Q. And in between those two stints in the Senate, you were in
20 the Arizona House of Representatives, right?

21 A. Yes.

22 Q. While you were in the Senate, were you the chair of any
23 committees in the Senate?

24 A. I chaired education and I chaired judiciary and I chaired
25 the Republican caucus during that time.

1 Q. You were the chair of the Education Committee from 2009 to
2 2010, is that right?

3 A. Yes.

4 Q. When were you chair of the Judiciary Committee?

5 A. I chaired so many committees, but I believe it was the two
6 years before that.

7 Q. Okay. Now, I'm going to ask you about a number of pieces
8 of legislation that were passed between the 2006 and 2010 time
9 period during which you were in the Senate. Okay?

10 MR. REISS: And, Your Honor, I have --

11 THE COURT: Just a minute. You have an objection?

12 MS. COOPER: Yes, Your Honor. I believe that this
13 legislation that is the subject of part of the disagreement in
14 the amended -- with respect to plaintiffs' motion to amend the
15 final pretrial order, it might be appropriate to address our
16 objections in that regard all at once rather than piecemeal.

17 MR. REISS: Your Honor, we included in the motion to
18 supplement the pretrial order, there are exhibits that are
19 literally the statutes I'm going to ask him about and the
20 zoning record, which we did frankly, for the convenience of the
21 Court and for Mr. Huppenthal's convenience, in the event he
22 wanted to see the actual legislation I'm going to ask him
23 about, they're all highly relevant.

24 MS. COOPER: We disagree that they're relevant at all.
25 They're on a variety of topics. None of them have anything to

1 do with education. It was made quite clear in the plaintiffs'
2 motion that the reason that they intend to ask Mr. Huppenthal
3 about this legislation is that they intend to assert all of
4 this legislation was racist as well. That is manifestly
5 inappropriate to make those such strong assertions about this
6 legislation in this proceeding, when, as this Court knows, it
7 has taken many years to get to the question of whether this
8 single statute is racist in origin.

9 MR. REISS: Your Honor --

10 MS. COOPER: It's inappropriate aspersion on the
11 members of the legislature who voted on those bills and wholly
12 inappropriate in terms of context.

13 MR. REISS: Your Honor, I'm mystified why the State
14 would be embarrassed about legislation proposed and most of
15 which was enacted in this state between 2006 to 2010. It's
16 absolutely clear in Arlington Heights factors that the
17 surrounding history, especially the history of legislation, is
18 highly relevant. The State is -- I know it's rather shocking
19 to hear the State, that they don't want the Court to listen to
20 evidence of Arizona statutes, the path between 2006 and 2010.

21 THE COURT: It might be shocking to you, but it's not
22 shocking to me. It's at best -- I'm not ruling a hundred
23 percent on the motion now, but it's at best marginally
24 relevant.

25 MR. REISS: Your Honor --

1 THE COURT: In other words, these statutes have
2 nothing to do with education, right? And some of them are
3 quite old in their passage. It's sort of like asking -- you
4 know, I was talking to my law clerk the other day about, for
5 instance, could you bring up, say, a judge's vote on an en banc
6 hearing, voting against taking we'll say a second amendment
7 case en banc to say he's prejudiced against the second
8 amendment?

9 MR. REISS: No, Your Honor.

10 THE COURT: It's that attenuated, these things, in my
11 view. So anyway, I'm not ruling on it now. But for now, I am
12 going to sustain the objection. You cannot ask him questions
13 about those old statutes and old bills.

14 MR. REISS: All right, Your Honor. These are not old
15 statutes.

16 THE COURT: So the objection is sustained in other
17 areas aside from education.

18 MR. REISS: Can I ask him about those that were
19 contemporaneous with 2281 in that very legislative session,
20 portions of which were struck down as unconstitutional?

21 THE COURT: Well, maybe later, but not today.

22 MR. REISS: Your Honor, I would if the objection
23 stands, would make a proffer as to what I would ask --

24 THE COURT: Well, you'll get plenty of chance to do
25 that. But let's get on with the questions.

1 BY MR. REISS:

2 Q. Well, let's get to the statute that you were involved with,
3 Mr. Huppenthal, that is at issue in this case, 15-112. You're
4 familiar with that statute, right?

5 A. Yes.

6 Q. Okay. Now, did the Arizona Department of Education ask you
7 to sponsor 2281 or sponsor the legislation that became 15-112?

8 A. Yes.

9 Q. And did you initially refuse to sponsor that legislation?

10 A. I did.

11 Q. And you initially refused to sponsor that legislation
12 because you are a believer in local control of education,
13 right?

14 A. Yes.

15 Q. And, in fact, the Arizona Department of Education was
16 worried that you would oppose the bill because it was known
17 that you were a believer in local control of education, right?

18 A. Yes.

19 Q. But ultimately, ultimately, you came to be a proponent of
20 Section 15-112, right?

21 A. Yes.

22 Q. Now, let's explore the reasons why you changed your mind,
23 right, from being a proponent of local control of education to
24 a proponent of Section 15-112.

25 By the way, at the time this legislation was being

1 considered, you knew, did you not, that the Tucson School
2 District wanted and supported the Mexican-American Studies
3 program, right?

4 A. I didn't change my mind. Public policy is always a
5 balancing of conflicting principles that you can hold at the
6 same time and you have to balance them.

7 Q. Okay. But my question was, at the time you started to
8 support 15 -- the bill that ultimately became 15-112, you knew
9 the Tucson School District was supportive of and wanted to keep
10 the Mexican-American Studies program, right?

11 A. Yes.

12 Q. So, for local control, if it was local control that was
13 preeminent, Tucson School District would have been able to keep
14 the Mexican studies program, right?

15 A. Yes.

16 Q. Okay. Now, you changed your mind. And let's look at some
17 of the reasons why --

18 A. I would disagree that I changed my mind. There is a
19 difference between supporting a bill and being a prime sponsor
20 of it.

21 Q. Okay. Fine. Let's look at the reasons why you supported
22 the bill, okay? Play Huppenthal 1.

23 MR. REISS: By the way, I'm sorry, Your Honor. This
24 is from Plaintiffs' Exhibit 144, which is admitted into
25 evidence.

1 THE COURT: Okay. Mr. Huppenthal, you're on the
2 screen.

3 THE CLERK: This has been admitted?

4 MR. REISS: Yes, it's been admitted.

5 MS. COOPER: I'm not showing that on my list.

6 THE COURT: I didn't hear you. You're not sure of
7 what?

8 MS. COOPER: I'm not sure that exhibit has been
9 admitted.

10 MR. REISS: Your Honor, this is the Precious Knowledge
11 film. It was the subject of a motion in limine, and Your Honor
12 ruled in writing in the motion in limine that we could ask the
13 witnesses about clips in which they actually appear. And
14 that's exactly what I am doing.

15 THE COURT: That would be sufficient for a foundation
16 to inquire of the witness. Go ahead. So if that's an
17 objection at this stage, it's overruled.

18 MR. REISS: Thank you, Your Honor.

19 THE CLERK: So this can be published, is that correct?
20 Judge, this can be published?

21 THE COURT: Yeah.

22 (Video playing.)

23 BY MR. REISS:

24 Q. So what made you a supporter of House Bill 2281, which
25 became 15-112, was your concern that the MAS courses were, I

1 think, quote: Planting evil ideas in the students' minds,
2 right? That's what you said, right?

3 A. I would not characterize it that way.

4 Q. But you said that, right?

5 A. I didn't catch the evil ideas. I caught that they were --
6 from what I said there, I didn't hear that phrase.

7 Q. We can replay it, but you said it.

8 A. Well, the idea that -- the idea that you have oppression
9 taking place in society and that's a dominant theme of the
10 class, I thought that was an unhealthy idea, at least.

11 Q. And what basis did you have to say that the
12 Mexican-American Studies program was planting evil ideas in the
13 minds of the MAS students?

14 A. Well, again, the -- we went through an extensive
15 investigation of what was going on in the class. I went down
16 there and sat in the class myself and witnessed what I felt
17 were a number of inappropriate things. So there was quite a
18 collection of evidence to come to a conclusion. I don't know
19 that I would phrase it as evil ideas, but ideas that would be
20 of great concern.

21 Q. Now, I want to be clear about time frame. I'm talking
22 about prior to the passage of 2281, which became 15-112. Prior
23 to the passage of 2281, what information did you have to
24 justify a concern that the MAS program was planting evil ideas,
25 your phrase, your words, in the students' mind?

1 A. Well, I had gone out and looked at all of the seminars and
2 webinars and different training opportunities that they give
3 for Mexican-American Studies, and it was in looking at all of
4 that material that was coming out of those training
5 opportunities that raised a number of concerns about it.

6 And in evaluating the legislation itself, the legislation
7 itself, when you read it, it stands on its own merits. It
8 doesn't have to stand in any kind of context about a specific
9 class. You can just read the provisions of the bill itself and
10 they just make common sense.

11 Q. All right. But, again, let me be clear. All the things
12 you just talked about, did you do those before the passage of
13 2281, or after?

14 A. My going out and investigating all of the training that was
15 taking place for Mexican-American Studies teachers, that took
16 place before the passage.

17 Q. Okay. Do you know if you ever publicly, or in the
18 legislature, referred to your examination of these training
19 materials as a reason for opposing the Mexican-American Studies
20 program, or are you just saying that now for the first time?

21 A. I do an extraordinary amount of reading regarding public
22 policy. I talk about some of it. I don't --

23 MR. REISS: Your Honor, I'd ask that the witness
24 respond to my questions.

25 THE COURT: I think it's a straightforward question.

1 Can you answer the question that's asked, please.

2 A. I don't have any specific recollection one way or the
3 other.

4 MR. REISS: Well, let's look at Huppenthal 2. And,
5 Your Honor, again, this is part of Exhibit 144, which the Court
6 has admitted, as long as they are portions of Mr. Huppenthal,
7 and this is a portion of Mr. Huppenthal.

8 (Video playing.)

9 MS. COOPER: This is not Mr. Huppenthal's.

10 MR. REISS: It will be in about a second. These are
11 the legislative hearings on 2281. This is --

12 THE COURT: I assume it's just a prelude --

13 MR. REISS: It is.

14 THE COURT: -- to Mr. Huppenthal's own words.

15 MR. REISS: It is, Your Honor. It is.

16 (Video playing.)

17 BY MR. REISS:

18 Q. This is the legislative hearing on 2281, is it not?

19 A. I don't -- I don't know specifically.

20 Q. I'll represent to you that it is.

21 A. I would imagine that it is. I can't recall any other
22 interaction between myself and Mr. Romero.

23 Q. In voicing your concerns that led to your support or that
24 motivated your support for 2281, you said several times that
25 you had, quote, "suspicions" about what was going on in the MAS

1 classes. What was the basis for those suspicions?

2 A. Well, I don't recall the exact time frame, but I took the
3 time to pull all of Paulo Freire's works and actually read his
4 books, and then following that legislative meeting, I scheduled
5 time to actually go into the class and personally observe it.
6 Again, the legislation stood on its own merits. The terms of
7 the legislation were straightforward and --

8 MR. REISS: Again, Your Honor, I would request that
9 the witness answer my question.

10 THE COURT: You've answered the question. Ask your
11 next question.

12 MR. REISS: Thank you, Your Honor.

13 BY MR. REISS:

14 Q. By the way, in this testimony in the Senate, you cited your
15 concerns about Paulo Freire, Pedagogy of the Oppressed, right?

16 A. Mmm-hmm.

17 Q. And the use of Paulo Freire, Pedagogy of the Oppressed, was
18 a constant concern of yours, was it not?

19 A. Yes.

20 Q. Now, you later became -- and we're going to talk about
21 this. You later became superintendent of education, but were
22 you aware that there were charter school -- there was at least
23 at that time a charter school -- subsequently there were two --
24 a charter school in Tucson that was named the Paulo Freire
25 School?

1 A. Yes.

2 Q. As superintendent of education, given your concern about
3 Pedagogy of the Oppressed and the author who was Paulo Freire,
4 did you ever make any effort whatsoever to look into the Paulo
5 Freire School?

6 A. Yes.

7 Q. Oh, you did. When was that?

8 A. I don't recall the exact time frame, but I went out to
9 their website, tried to get a sense of the nature of the
10 school, that type of thing.

11 Q. So you just went to the website?

12 A. Yes.

13 Q. You never visited the school?

14 A. No.

15 Q. And you never had an audit or investigation of the school?

16 A. No.

17 Q. And by the way, when you went to the website, did you find
18 out that the majority of the Paulo Freire student body was
19 white?

20 MS. COOPER: Objection.

21 THE COURT: Just a minute.

22 MS. COOPER: Objection. There's no foundation.

23 THE COURT: No. I overrule the objection, but I am
24 not going to accept the answer for the truth of the matter
25 asserted.

1 MR. REISS: Fine, Your Honor.

2 THE COURT: Go ahead.

3 A. No. I don't recall any description on the website of its
4 demographic makeup.

5 BY MR. REISS:

6 Q. You knew about the Paulo Freire school, right?

7 A. Yes.

8 Q. And you were very upset about the use of "Pedagogy of the
9 Oppressed" by Paulo Freire and the MAS courses, right? Right?

10 A. When we were dealing with the legislation at hand, I
11 expressed my concerns. We have lots of vibrant debates taking
12 place in --

13 MR. REISS: Objection, Your Honor. I would really
14 like the witness to answer my questions.

15 THE COURT: He said he expressed his concern.

16 BY MR. REISS:

17 Q. Mr. Huppenthal, I really don't want to cut you off, but I
18 really do find it necessary to keep you confined to my
19 questions.

20 A. Okay. No problem.

21 Q. And I think you've testified, other than looking at the
22 website, did you conduct any investigation into the Paulo
23 Freire schools?

24 A. No.

25 Q. Now, you visited one MAS class, right?

1 A. Yes.

2 Q. And that was Curtis Acosta's class, right?

3 A. Yes.

4 Q. And the -- and that class was videotaped, right?

5 A. I don't know to what extent. There was a camera in there,
6 and they were filming.

7 Q. All right.

8 A. But I don't know to what extent, how much of it was filmed.
9 I've never seen the film itself.

10 MR. REISS: Fair enough. And the Court has admitted
11 that tape, and I would certainly encourage the Court -- I
12 certainly wouldn't do it here -- but at the Court's leisure TO
13 view that entire 70-minute tape.

14 BY MR. REISS:

15 Q. That was the only MAS class that you ever visited, right?

16 A. Yes.

17 Q. Curtis Acosta's class, right? Only one, right?

18 What was it about that class that bothered you?

19 A. There were a number of things that I left with concerns
20 about.

21 Q. What were your concerns? And on what basis did you have
22 them?

23 A. The poster of Che Guevara up on the wall. There's just an
24 ample historical record that Che Guevara led the slaughter of
25 about 14,000 Cubans who were killed for no other reason than

1 their -- their speech that they were conducting.

2 Q. What speech was that? What speech was that?

3 A. The Cuba ban. There was a wholesale slaughter of Cubans,
4 and there was ample evidence that Che Guevara was directly
5 involved in that slaughter, and these were people killed for no
6 other reason than for their political beliefs.

7 Q. So you personally were not a fan of Che Guevara, right?
8 Right?

9 But you understand, do you not, that large swaths of the
10 world, South America, view Che Guevara as a hero? You're aware
11 of that, right?

12 A. I am.

13 Q. Okay.

14 A. And I think it's toxic.

15 Q. You think it's toxic, right?

16 A. I think the evidence suggests strongly as toxic.

17 Q. But you also acknowledge that there are significant
18 populations all throughout Central and South America that have
19 a different view, right?

20 A. Yes.

21 Q. By the way, let's look at some of Curtis Acosta's class,
22 the class that you visited and that upsets you. So let's play
23 Huppenthal 3.

24 (Video playing.)

25 Q. One of your problems with Che Guevara and apparently what

1 was going on in the MAS classrooms was that you viewed it as a
2 threat to the cultural conditions that you subscribed to,
3 right?

4 A. Yes.

5 Q. By the way, let's play Huppenthal 4.

6 (Video playing.)

7 BY MR. REISS:

8 Q. So you were concerned that what was happening in the MAS
9 classrooms was somehow a threat to our culture of freedom?

10 A. I was more concerned about the students in the class and
11 what kind of attitudes they would formulate for their own
12 personal success than I was so much about the threat to the
13 overall freedom in society.

14 To get the message that you're oppressed and that you're a
15 victim, I just don't feel like it's a healthy message for
16 students to have that framework about everything in life.

17 Q. Did you think that Mexican-American culture didn't value
18 freedom and success in the same way as the culture that you
19 were advocating?

20 A. I don't believe that classroom valued that at all.

21 Q. And that --

22 A. In the same way whatsoever.

23 Q. And that conclusion that you've just voiced was based on
24 your sitting in that classroom, right, and looking at a Che
25 Guevara poster, right?

1 A. No.

2 Q. What else happened in that classroom that formulated that
3 conclusion?

4 A. Augustine Romero made remarks, and he described Benjamin
5 Franklin as a racist, and Benjamin Franklin led the Abolition
6 Society in Pennsylvania. They became the first state in the
7 nation to outlaw slavery. He, out of his own business wealth,
8 he created the very first schools for African-Americans in the
9 United States. He freed his own slaves, and when the first
10 Congress came into session, he put right on the table the
11 outlawing of slavery in the Northwest Territories and made that
12 the very first priority.

13 So to have Benjamin Franklin described to these students,
14 impressionable students, as a racist, when he is Benjamin
15 Franklin and should be in the pantheon of the civil rights era,
16 that was of deep concern to me.

17 Q. Okay. Well, it's hard for me to dis Benjamin Franklin
18 because I'm from Philadelphia, but -- but Benjamin Franklin's
19 solution to the slavery issue, do you know what it was? It was
20 to send all the blacks back to Africa. Right?

21 A. That's not my understanding, but --

22 Q. There's ample historical documentation.

23 THE COURT: You're not testifying.

24 MR. REISS: No. You're right, Your Honor.

25 THE COURT: I don't want any more comments like that

1 from you.

2 A. I would be absolutely on board for a complete description
3 of Benjamin Franklin, not only -- not just to describe him as a
4 racist but all of what he did positively, plus all of these
5 issues back then.

6 I am not one for saying indoctrinate the students, say
7 Benjamin Franklin was great. Present both sides of the
8 picture. That's what I would think would be a healthy
9 discussion for these students to understand the attributes and
10 flaws of our society.

11 Q. Is it not fair to call someone who wanted to send all
12 blacks in the country back to Africa a racist?

13 MS. COOPER: Objection, Your Honor. Lack of
14 foundation, speculative.

15 THE COURT: Sustained.

16 BY MR. REISS:

17 Q. Let's look at some other clips of that class. The class,
18 Mr. Huppenthal, was a mix of students, right? It wasn't all
19 Mexican students, all Mexican-American students, right?

20 A. Yes.

21 Q. And there were white students, there were other students in
22 the class, right?

23 A. Yes.

24 Q. And you knew from your observation and participation in
25 that class that the other students thought very highly of the

1 class, right?

2 A. Yes. I myself had a very positive impression of Curtis
3 Acosta.

4 MR. REISS: Let's play Huppenthal 6.

5 (Video playing.)

6 THE COURT: Just a minute. Would you cut that off?

7 Is the purpose for that to lay a foundation for a question to
8 him? Why are you playing that? It's not his testimony. It's
9 not his words. This is some student, your know, giving her
10 version of what happened to her and all that. Why are you
11 playing that?

12 MR. REISS: Well, I --

13 THE COURT: You know there's a limine ruling, right?

14 MR. REISS: I do, Your Honor.

15 THE COURT: Why are you playing that?

16 MR. REISS: Well, I was playing it to confirm to
17 Mr. Huppenthal that there were non-Mexican-American students
18 that were positive about the class. He's admitted that --

19 THE COURT: See, you're using that portion of the
20 video for purposes I told you you could not use it for. I
21 don't want any more of that, otherwise, I'm going to strike all
22 of the videos. All right?

23 MR. REISS: Your Honor, we can stop that clip. I'm
24 fine with that.

25 THE COURT: I don't want anymore of those long

1 introductory comments. If I have those, I'm going to prevent
2 you from using any of the videos. That's going to be the
3 sanction.

4 MR. REISS: All right, Your Honor. Understood.

5 BY MR. REISS:

6 Q. Let's go, Mr. Huppenthal, to -- the Senate Education
7 Committee held hearings on the bill that became 15-112, right?

8 A. Yes.

9 Q. And during those hearings, you spoke about your experience
10 in Mr. Acosta's class, right?

11 A. I don't recall that directly, but I very well might have.

12 Q. Okay. Let's -- Plaintiffs' Exhibit 51, which I believe is
13 in evidence, it would be starting at Page 130.

14 I'm sorry, Your Honor. It is a video. This is the
15 hearings in the Senate before the Senate Education Committee.
16 Again, this is Mr. Huppenthal, and this exhibit is in evidence.
17 Huppenthal 7.

18 (Video playing.)

19 Q. That was your appearance during that Senate hearing, right?

20 A. Yes.

21 Q. And you focussed again on the remark about Ben Franklin,
22 right? And you said it was, I believe, outrageous to call Ben
23 Franklin a racist, and you said it was completely inappropriate
24 to trash our founding fathers. Right?

25 So that was your view, and you didn't want a contrary view

1 expressed in the classroom. Right?

2 A. No. I feel strongly that you can present the range of
3 truths about all of history, including the founding fathers,
4 and that would be completely acceptable.

5 What I was concerned about is just simply a one-sided
6 description of people that doesn't represent the truth. When
7 you have a figure like Benjamin Franklin, who was the president
8 of the Abolition Society, first, you know, led the effort to
9 make Pennsylvania the first state to make slavery illegal, make
10 slavery illegal in the Northwest Territories, the very first
11 priority of the very first Congress of the United States, you
12 know, there's a lengthy list there.

13 Is it appropriate to discuss the warts along with that?
14 Absolutely. The negatives? Absolutely, it's appropriate.

15 Q. Now, the comment about Ben Franklin that offended you
16 wasn't made by Curtis Acosta, was it?

17 A. No, it was made by the founder of the ethnic studies
18 program.

19 Q. And this was Curtis Acosta's class, right?

20 A. Yes.

21 Q. And you don't know what went on in any of Curtis Acosta's
22 other classes, do you?

23 A. No, I don't.

24 Q. Now, let's continue our journey on the passage of 15-21.
25 Do you recall, Mr. Huppenthal, you put forth an amendment to

1 2281 that gave the superintendent of education the power to
2 enforce 15-112, right?

3 A. Yes.

4 Q. And without that amendment, the superintendent of education
5 would not have had the authority to enforce 15-112, right?

6 MS. COOPER: Objection. Assumes facts not in
7 evidence.

8 THE COURT: I missed that. What fact does it assume
9 that's not in evidence?

10 MS. COOPER: Well, he hasn't presented -- he's in the
11 middle of the legislative history, I presume, because he's
12 talking about an amendment. He doesn't have the state of the
13 bill as it was when it was amended or the nature of the
14 amendment. He's asking --

15 THE COURT: But what fact does it assume?

16 MS. COOPER: It's assuming that the diversion that was
17 in existence at the time gave the superintendent no authority
18 to enforce the bill. I don't believe that's correct.

19 THE COURT: Do you disagree with that, Mr. Reiss?

20 MR. REISS: I do. That's why Mr. Huppenthal offered
21 the amendment. I can ask him.

22 THE COURT: All right, ask him.

23 BY MR. REISS:

24 Q. Without that amendment, would the superintendent of
25 education alone have had the authority to enforce 15-112?

1 A. I don't recall the specific amendments that I offered that
2 day. There's all sorts of different ways that amendments can
3 be made to the bill outside of that specific education
4 committee. But assuming that it didn't have that authority
5 when it came in, it would have had that authority after my
6 amendment.

7 MR. REISS: Just because I think the record is
8 unclear, I am going to --

9 BY MR. REISS:

10 Q. You recall your deposition, Mr. Huppenthal, right?

11 A. Yeah, eight hours.

12 Q. It's not as bad as going to the dentist. Page 13 of
13 Mr. Huppenthal's deposition, starting at Line 6 -- let's say 7:
14 Okay. What about the second amendment that you made to the
15 bill that ultimately became 15-112?

16 And then there's an answer. You say: I'd have to -- I'd
17 like to -- first one I'd have to have somebody tell me what
18 it did. I'm sure I could recall if somebody just refreshes
19 me.

20 And I asked you: Do you recall whether it concerned who
21 had the power to enforce the statute?

22 Answer: Yes.

23 Okay. And what do you recall about that?

24 Answer: My recollection, you know, is -- is that I wanted
25 to empower both the state board and the superintendent to

1 be able to take that action.

2 Question: And normally it would have been -- been the
3 state board that had the authority, and your amendment also
4 gave that authority to the superintendent. Is that right?

5 There was an objection.

6 Answer: I believe so.

7 Is that right?

8 A. Yes.

9 Q. And, Mr. Huppenthal, why was it that you wanted to amend
10 the bill so that the superintendent alone had the power to
11 enforce 15-112?

12 MS. COOPER: Objection. Misstates the testimony that
13 he just read.

14 THE COURT: Overruled.

15 MS. COOPER: The superintendent alone?

16 THE COURT: It's overruled. You may answer.

17 A. That falls under the purview of superintendent authority,
18 being able to take action. To me, it was just simply logical.

19 BY MR. REISS:

20 Q. I'm sorry, I just didn't --

21 A. To me, it was just simply a logical place for that
22 authority to reside, with the executive, as opposed to the
23 state board.

24 Q. Wasn't it because you were planning on running for
25 superintendent of education?

1 A. No.

2 Q. By the way, at that time, had you planned to run for
3 superintendent of education?

4 A. Can you refresh me as to the time? I believe so, yes.

5 Q. April of 2010.

6 A. Yes.

7 Q. You had planned to run for superintendent, right?

8 A. Oh, yes.

9 Q. Now, Mr. Huppenthal, you also put forth a second amendment
10 to 2281, and that amendment delayed the effective date of the
11 enforcement of 2281. Do you recall that?

12 A. Yes.

13 Q. Okay. And you delayed the effective date of enforcement
14 until January 1st, 2011, right?

15 A. Yes.

16 Q. And why did you delay the effective date of enforcement?

17 A. I didn't want the political environment to influence any
18 kind of executive actions that would be taken in regards to
19 that piece of legislation.

20 Q. And at the time of this Amendment that delayed the
21 effective date until January 1st, 2011, Mr. Horne was the
22 superintendent of education, right?

23 A. Yes.

24 Q. Mr. Horne was obviously, ultimately ran for Attorney
25 General and won. Do you recall --

1 MR. REISS: I withdraw that remark, Your Honor.

2 BY MR. REISS:

3 Q. When did you start your campaign for superintendent of
4 education?

5 A. Well, you know, I guess the time somebody starts a campaign
6 is when they print the nomination petition and they get their
7 first signature.

8 And I don't have the specific recollection as to when I --
9 when I did that act. I don't recall that specifically. But I
10 think what you're trying to get at is was I planning on running
11 or did I intend to run at the time that all of this was taking
12 place, and the answer is yes.

13 Q. Okay. Thank you, Mr. Huppenthal. And in your campaign for
14 superintendent of education, you campaigned on a platform to
15 stop La Raza, right?

16 A. Yes.

17 Q. That was an important part of your campaign, right?

18 A. Yes.

19 Q. And by "La Raza," what did you mean?

20 A. La Raza, the specific meaning of the words, means "the
21 race." But its meaning in the context of a Republican primary
22 campaign, it became shorthand for stop the slandering of the
23 founding fathers, stop the unbalanced examination of the
24 founding fathers, stop indoctrination of students into a
25 Marxist oppressed/oppressor framework.

1 So it just became shorthand for a -- it was a way of
2 communicating with Republican primary voters.

3 Q. It was a shorthand to campaign for the elimination of MAS,
4 right?

5 A. Or to ensure that it had reform. Because the law itself
6 allowed time to reform the programs and to have a public
7 adoption of a new curriculum by the school board; to make sure
8 that what was going on in those classes was something that
9 everybody could be proud of.

10 Q. But in campaigning on a platform of stop La Raza, that was
11 a message to Republican primary voters that you were
12 campaigning to eliminate the MAS program, right?

13 A. No. We have ethnic studies taking place in school
14 districts all across the state without complaint. And the
15 statute itself allowed for reform of the program.

16 So it was basically -- it was not to end Mexican-American
17 Studies. It was to ensure that we know -- that you would know
18 what's going on in any class that you would have an interest
19 in, and that you would have a curriculum adopted by a school
20 board in an open public meeting and you could be confident that
21 everybody could be proud of what was going on in those classes.

22 Q. Did La Raza refer to any ethnic study program other than
23 MAS?

24 A. No.

25 Q. Now, you were successful and you became the superintendent

1 of education of the State of Arizona, right?

2 A. Yes.

3 Q. And do you recall on what day you took office as the
4 superintendent?

5 A. I'm assuming -- my recollection is January 3rd, but I
6 wouldn't be surprised if I was off by a day.

7 Q. I will represent to you that January 1st of that year,
8 2011, was a Saturday, January 2nd was a Sunday, January 3rd was
9 a Monday.

10 A. Okay.

11 Q. And you believe you were sworn in on January 3rd?

12 A. Yes.

13 Q. Do you know if it was the morning or afternoon?

14 A. I believe it was the afternoon.

15 Q. So January 4th, 2011 was your first full day in office as
16 the superintendent of education of Arizona, right?

17 A. I believe so, yes.

18 Q. Plaintiffs' Exhibit 59, I think there's a similar defense
19 exhibit, 525.

20 MS. COOPER: Pardon me?

21 MR. REISS: 525. I think the plaintiffs -- I'm sorry,
22 the defendants had -- there is an objection to 59, I think
23 simply, Your Honor, on the grounds that they believe it's not
24 complete, although it's an exhibit we got from the State.

25 MS. COOPER: Well, I see 525, and what was the other

1 number, please?

2 MR. REISS: Plaintiffs' Exhibit 59, which is
3 Mr. Horne's initial finding of violation.

4 MS. COOPER: I think it's incomplete because it
5 doesn't include the cover e-mail, which is included in the
6 Defendants' Exhibit 525, the prior e-mail dated January 1st,
7 2011.

8 MR. REISS: That's fine, Your Honor, we can use the
9 defense exhibit.

10 THE COURT: 525?

11 MR. REISS: Defense Exhibit 525.

12 THE COURT: All right.

13 MR. REISS: Why don't we go to the page after that,
14 Jorge. Yeah, that's it.

15 BY MR. REISS:

16 Q. Now, Mr. Huppenthal, January 4th was your first full day in
17 office as superintendent, right?

18 A. Yes.

19 Q. Did you become aware that Mr. Horne, on December 30th,
20 2010, made the finding that the Tucson Unified School District
21 was in violation of 15-112?

22 A. Yes.

23 Q. You became aware of that, right?

24 A. Yes.

25 Q. And in fact, let's look at Plaintiffs' Exhibit 60, which is

1 in evidence. I am going to come back to 59, but let's look at
2 60. I apologize. This is Plaintiffs' Exhibit 60. And it's
3 for immediate release, January 4th, 2011, right? And it's the
4 Arizona Department of Education, Office of Superintendent John
5 Huppenthal. January 4th, 2011 is your first full day in office
6 as superintendent, right?

7 A. Yes.

8 Q. Now, let's go to the next page. Let's look at the second
9 paragraph. Do you see that?

10 While I have read Superintendent Horne's finding of
11 violations by TUSD, I have not had the opportunity to
12 review all the facts and evidence he has compiled in this
13 matter, and therefore, will not prematurely comment on
14 specifics.

15 Do you see that?

16 A. I do.

17 Q. And your statement in this press release on your first full
18 day in office as superintendent, finding a violation of Section
19 15-112, your statement that I read Superintendent Horne's
20 finding of violations was false, right?

21 A. Could you repeat that.

22 Q. Your statement in this press release that you had read
23 Superintendent Horne's finding of violation by TUSD was false
24 because you had not read that finding, right?

25 A. I think I was orally briefed on it. But I think you're

1 correct, that I did not -- to my recollection, I don't recall
2 reading it, but I may have, but I don't recall reading it.

3 Q. Do you recall during your deposition, you're telling me
4 when I showed you this document that it was the first time you
5 saw it?

6 A. Yes. But I'll say again, the tornado-like quality of that
7 first week in office, there was an enormous number of things
8 that were coming through. So I may have read it and could have
9 completely forgotten about it because so many things were
10 happening, and so many things landed on top of that finding
11 subsequent to that.

12 Q. So there was a big pile of things to do your first day in
13 office, right?

14 A. Huge.

15 Q. Huge?

16 A. Yeah.

17 Q. But the thing that floated to the very top of the pile was
18 for you to say, "I'm totally on board with Tom Horne's finding
19 that the Tucson Unified School District is in violation of
20 15-112," right? That was like the first thing you did?

21 MS. COOPER: Objection. Argumentative. Misstates the
22 document. Misstates prior testimony.

23 THE COURT: The objection is overruled. You may
24 answer, Mr. Huppenthal.

25 A. I think it was the top priority of my public information

1 officer. I don't believe it was my top priority.

2 BY MR. REISS:

3 Q. It was issued for you, right?

4 A. Yes.

5 Q. Now, you say in the first paragraph:

6 Given the evidence that I have reviewed as of today, I
7 support Superintendent Tom Horne's decision that a
8 violation of one or more provisions of A.R.S. Section
9 15-112 (the statute created by passage of HB2281) as occurred
10 by the Tucson Unified School District.

11 Right?

12 As of that date, January 4th, 2011, the only classroom you
13 had ever visited in an MAS class was Curtis Acosta's class,
14 right?

15 A. Yes.

16 Q. And, in fact, you never visited any other MAS classroom
17 ever, did you?

18 MS. COOPER: Objection. Asked and answered.

19 THE COURT: I don't remember. So I'll overrule the
20 objection.

21 MR. REISS: Thank you, Your Honor. I may have the
22 same problem.

23 THE COURT: So the question -- there's a pending
24 question, right?

25 MR. REISS: Yes.

1 THE WITNESS: The answer is yes.

2 BY MR. REISS:

3 Q. Now, if you look down --

4 A. The thing to keep in mind is that the statute itself had a
5 cleanup --

6 Q. Mr. Huppenthal, there's no pending question. There's no
7 pending question.

8 A. Okay.

9 Q. I am sorry, I really do hate to be rude, but the way this
10 works is I have to ask a question, and you get to answer it.
11 Okay?

12 If you look down to where it starts with A.R.S. Section
13 15-112 (A). Do you see that?

14 We should expand that, Jorge, to include...keep on going.

15 One of the reasons you found that there was violation in
16 this January 4th announcement was you found that there was a
17 violation of Section 15-112(A) (3) because the MAS courses were
18 designed primarily for the peoples of a particular ethnic
19 group. Right?

20 A. That was in Superintendent Horne's finding.

21 Q. And you were -- you agreed with that finding, right?

22 A. I don't know that I agreed with that particular finding. I
23 think I agreed with the overall conclusion that the courses
24 were in violation of the statute.

25 Q. And of course (A) (3) was ultimately struck down as

1 unconstitutional, but at the time (A) (3) was in effect. Right?

2 A. Yes.

3 Q. And what Mr. Horne cited and you repeat in this January 4th
4 announcement as the basis for finding a violation of
5 Section 112(A) (3) is an excerpt from frequently asked questions
6 on the MAS web page. Right?

7 A. Yes.

8 Q. Question: What students does the Mexican Mexican-American
9 studies department serve? Answer: The Mexican-American
10 Mexican-American Studies department was formed to specifically
11 enhance the academic success of Latino students.

12 That was the basis for your agreeing with Mr. Horne
13 that the MAS violated 112(A) (3). Right?

14 A. I don't know that that specifically was the basis. I agree
15 on the overall conclusion that the program was in violation.

16 And I also wanted to move on to the next step, which was
17 the healing phase, which was, okay, if you're in violation,
18 what happens next? Well, you have an examination of the
19 curriculum and the lesson plans, and you -- you focus on
20 getting the school board to clean the whole thing up and make
21 sure that what's going on in those classes is something that we
22 can all be proud of.

23 Q. Do you know if Mr. Horne ever looked at the websites for
24 the African-American Studies program or for the Asian Pacific
25 American Studies program?

1 A. I believe he did, but I don't know that specifically.

2 Q. Did you ever look at the websites for those two ethnic
3 studies programs?

4 A. I remember reading an analysis of not only the
5 Mexican-American Studies but also the other ethnic studies
6 groups and seeing a discussion of the issues. I don't recall
7 specifically what that analysis did, but I recall seeing an
8 analysis of those issues.

9 Q. Do you recall whether the websites for those other two
10 ethnic studies programs also said that their programs were
11 primarily designed for students in their ethnic group?

12 MS. COOPER: Objection. Foundation.

13 MR. REISS: I'm asking if he recalls.

14 THE COURT: The objection is overruled.

15 A. I don't -- I don't recall that analysis, or I don't -- I
16 don't recall seeing those descriptions.

17 BY MR. REISS:

18 Q. Did you ever ask anyone on your staff to look at the
19 websites for the other ethnic studies programs to see if they
20 had similarly offending notices on their websites to the one
21 that Mr. Horne found and the one that you affirmed with respect
22 to the Mexican-American Studies program?

23 A. I remember spending a lot of time trying to understand at a
24 very profound level why there was so much explosive controversy
25 associated with ethnic studies at Tucson Unified School

1 District when all these other school districts were doing
2 ethnic studies without a bit of controversy.

3 So I remember analytically looking at the Paulo Freire
4 Charter School, trying to understand, how come we're not seeing
5 these explosive complaints there, and forming some general
6 opinions about why that was so. But I don't recall the
7 specifics of that analysis.

8 I talked to people in other school districts about their
9 ethnic studies program trying to get a handle on this.

10 MR. REISS: Again, Your Honor --

11 BY MR. REISS:

12 Q. Mr. Huppenthal, I'm going to ask you again to just try to
13 confine your answer to my question. I don't mean to cut you
14 off, but we need to be efficient about this.

15 Let's, again, come back to the basic question. To your
16 knowledge, you never instructed anyone on your staff and you
17 did not personally look at the websites for the
18 African-American Studies program or the Asian American Studies
19 program, right?

20 A. I don't recall doing that specifically.

21 Q. If we can go back, Mr. Huppenthal, to Exhibit 59.

22 Page 2 of that exhibit, Jorge.

23 If you look at the -- that paragraph, Jorge, the one that
24 says Tucson Unified. You got it. Blow that up.

25 In Mr. Horne's finding of the December 30th that you

1 adopted, he noted, quote:

2 Tucson Unified School District has four courses under
3 the heading of ethnic studies three of the four programs could
4 be found in violation under criterion 3 -- meaning (A) (3) --
5 courses designed primarily for pupils of a particular ethnic
6 group. However, all of the complaints received by the
7 superintendent of public instruction have been as to one of
8 those programs: Mexican-American Studies, previously known as
9 Raza/American Studies. Therefore, this finding is as to that
10 program alone.

11 MS. COOPER: Objection. Misstates prior testimony.

12 MR. REISS: I'm reading a document, Your Honor.

13 THE COURT: The objection is overruled.

14 BY MR. REISS:

15 Q. Despite that notation by Mr. Horne in his finding on
16 December 30th that the other ethnic -- at least two other
17 ethnic studies programs could be in violation of (A) (3), to
18 your knowledge, you did not instruct your staff to investigate
19 those other programs. Right?

20 A. Yes.

21 Q. Now, let's go back to Exhibit 50. I'm sorry. 60. 60,
22 Your Honor.

23 The third page of that, Jorge. This paragraph here, the
24 second from the bottom, TUSD.

25 And in your January 4th, 2011, finding of violation, you

1 wrote as part of your finding:

2 TUSD's administration and governing board have the
3 responsibility to ensure their programs come into full
4 compliance with A.R.S. Section 15-112 within 60 days of
5 Superintendent Horne's official finding. I extend to TUSD's
6 administration my full resources and commitment and those of
7 Arizona Department of Education to help them accomplish
8 this task.

9 So you adopted Mr. Horne's finding and gave the Tucson
10 school district 60 days to come into compliance. Right?

11 A. Yes.

12 Q. Mr. Horne's finding of violation was made on December 30th,
13 2011. If we look at Exhibit 59, the last page of that exhibit.

14 MS. COOPER: Objection. The document 525 indicates
15 the finding was sent on January 1st, 2011.

16 MR. REISS: We'll look at what the document says, Your
17 Honor.

18 BY MR. REISS:

19 Q. The actual finding by then Superintendent Horne, the last
20 page: Conclusion. Superintendent of Schools finds that the
21 Tucson Unified School District is in violation of A.R.S.
22 Section 15-112 and A.R.S. Section 15-843, and, pursuant to
23 those statutes, the school district has 60 days to eliminate
24 the Mexican-American Studies course, however they are
25 named, and has 90 days to eliminate the race-based

1 discipline rules. Failure to comply with those time
2 periods will subject the Tucson Unified School
3 District to having 10 percent of its budget withheld.

4 Right? Date, December 30, 2010.

5 Now, Mr. Huppenthal, you were very deeply involved in the
6 amendment and passage of 2281. Right?

7 A. Yes.

8 Q. And you specifically authored the amendment that delayed
9 the effective date until January 1st, 2011. Right?

10 A. Yes.

11 Q. And here we have a finding of violation of that statute
12 made by then Superintendent Horne on December 30th, 2010. The
13 statute is not even in effect, is it?

14 A. The --

15 Q. Is it?

16 A. No. As of the date this is typed, yes, the statute is not
17 in effect.

18 Q. Now, Mr. Huppenthal, you've been a legislator, a long
19 career as a legislator. Right? I think it's four years in the
20 House and then 14 years in the Senate. Right?

21 A. Yes.

22 Q. Have you ever seen a statute -- a violation of a statute
23 found before the statute goes into effect?

24 A. I've seen all kinds of strange things.

25 Q. Have you ever seen that?

1 A. I'd have to think about it. But it is -- that's the date
2 that the memo was typed. I'm not sure that was the date that
3 this was issued.

4 My recollection is that he issued his finding on
5 January 3rd, not December 30th.

6 Q. He issued the directive. He made the directive. There's
7 the dates in front of you, right? December 30th, right?

8 A. I'm assuming that's the date it was typed.

9 Q. And he -- he says: And pursuant to these statutes, the
10 school district has 60 days. He doesn't say 60 days from the
11 day after tomorrow. Right? He says 60 days. And the date
12 that's --

13 THE COURT: Mr. Reiss, you're getting argumentative.

14 MR. REISS: Sorry.

15 THE COURT: You said that's what the document says.

16 MR. REISS: Okay.

17 THE COURT: It could have been mistyped or somebody --
18 he doesn't know. You're just arguing with the witness.

19 MR. REISS: Understood, Your Honor. And I'll move on.

20 BY MR. REISS:

21 Q. By the way, the finding, apparently Mr. Horne, you're
22 saying that it was issued January 1st?

23 THE COURT: I thought you said you were going to move
24 on.

25 MR. REISS: I just want to put in the record -- maybe

1 it's in the record. January 1st was a Saturday, Your Honor.

2 THE WITNESS: No. Your Honor, I said January 3rd. My
3 recollection is that he issued his finding on the morning of
4 January 3rd.

5 BY MR. REISS:

6 Q. And what is that based on?

7 A. That's what I recall. Maybe I recall it incorrectly.

8 Q. Let's go to the first page of that document.

9 THE COURT: Oh, no, no, you said you're going to move
10 on.

11 MR. REISS: All right, Your Honor. I'll move on.
12 That's not what the document says.

13 THE COURT: Try to keep your word. Okay?

14 MR. REISS: I do, Your Honor. I will try.

15 BY MR. REISS:

16 Q. Now, didn't there come a time -- there came a time, did
17 there not, when, Mr. Huppenthal, you decided to do an audit of
18 the MAS program. Right?

19 A. Yes.

20 Q. And to hire an outside auditor. Right?

21 A. Yes.

22 MR. REISS: Okay. Let's look at Exhibit 62, which is
23 in evidence, Your Honor.

24 A. I would say this, is that I didn't personally decide to
25 hire an auditor or an outside auditor. I turned the entire

1 investigation over to my senior staff, and I gave them the task
2 of appropriately coming -- doing our own analysis and coming to
3 our own conclusions, and they, separate and apart from me,
4 decided to hire an auditor.

5 Q. You had authorized that though, right?

6 A. Yes. They came and informed me about it.

7 Q. And were you informed about the basic scope of work of the
8 audit?

9 A. I don't recall the specific briefing, but I have a
10 knowledge about it, and I understood conceptually what they
11 were supposed to do.

12 Q. Showing you, Mr. Huppenthal, what's Plaintiffs'
13 Exhibit 62 --

14 MR. REISS: Which, Your Honor, is in evidence.

15 BY MR. REISS:

16 Q. Do you recall seeing this document?

17 A. No, I don't.

18 Q. I just want to look at the scope of the work, the purpose.
19 Just looking at the purpose, I want to ask you if this is
20 consistent with your recollection of the purpose of the audit:

21 Purpose: The Arizona Department of Education has the
22 following purposes for establishing this scope of work request:
23 To conduct a curriculum audit of Tucson Unified School
24 District's --

25 A. Yes.

1 Q. That was the scope, the things that are listed there.

2 Right?

3 A. Yes.

4 Q. Okay. And do you remember how much money was authorized to
5 conduct this audit?

6 A. I don't recall.

7 Q. And this was the hiring of an independent outside
8 consulting firm to conduct the audit, right? It wasn't going
9 to be done internally?

10 A. Yes.

11 Q. And was the hiring of an outside firm to conduct a
12 curriculum audit or other audit a common event in the
13 Department of Education?

14 A. I mean, the Department of Education hires a lot of
15 contractors, so I don't -- I wouldn't describe it as uncommon
16 or common.

17 Q. To your knowledge, was there any other curriculum audit
18 authorized by the Department of Education that used an outside
19 curriculum auditor other than this one?

20 A. Not of this nature, no.

21 Q. And I may have asked you this. Do you recall -- I'm sorry,
22 Your Honor.

23 Do you recall how much money was authorized for this audit?

24 A. I don't.

25 Q. \$110,000 ring a bell?

1 A. That rings a bell.

2 Q. Now, there was an RFQ, request for proposal, sent out. By
3 the way, and Cambium was ultimately hired to do the audit,
4 right?

5 A. Yes.

6 Q. Okay. Did anyone on your staff question the competency of
7 Cambium to do this audit?

8 A. No.

9 Q. Now, let's look at Exhibit 63. Did you have a desire to
10 make sure that the auditors hired to do this audit were
11 conservative enough?

12 A. I don't recall that conversation with Elliott.

13 Q. So this e-mail, on March 3rd, 2011, before the audit starts
14 with Cambium, is from Elliott Hibbs, right? He's on your
15 staff, right? And it's to Stacey Morley with a copy to Kathy
16 Hrabluk. They're all senior people on your staff, right?

17 A. Yes.

18 Q. And it says: Stacey, John expressed concern to me that we
19 inform the legislature about the select of Cambium Group to
20 conduct our TUSD investigation rather than hear it from
21 others. He also mentioned that some people would research
22 Cambium to determine whether they were conservative enough
23 or too liberal in their thinking.

24 Is the "John" referred to in this e-mail you?

25 A. Likely. The two people here, Kathy Hrabluk and Elliott

1 Hibbs, were the senior people that I regarded as point people
2 on the investigation, and I was completely comfortable -- these
3 are people that have just an absolutely impeccable education
4 career, so I was completely comfortable with them doing the
5 analysis and letting the shoes drop where they may.

6 I just was -- I think probably what this -- I was just
7 giving them a caution as to what kind of bricks might be thrown
8 at them from any direction.

9 Q. And the bricks would be thrown if Cambium wasn't
10 conservative enough, right?

11 A. At least from that direction. There were also a ton of
12 bricks thrown at Cambium from the left side of the aisle, too.
13 So they were catching incoming from both directions.

14 Q. Now, your staff kept you informed about the audit, right?

15 A. We didn't -- we did not have frequent briefings on the
16 progress of the entire thing. We had occasional briefings, but
17 they weren't very frequent. This was -- intentionally this was
18 not occupying a lot of my time as superintendent. We had
19 several hundred students that are involved in ethnic studies in
20 the Tucson Unified School District. I viewed my priority as
21 keeping the eye on the ball. We have 1.1 million students that
22 I was responsible for helping to assist them to get the maximum
23 value from our education system. And I felt like the ethnic
24 studies issue had the potential to be the tip of the tail
25 wagging the dog, and I didn't want that to happen. So I was

1 not briefed frequently on the course of the investigation.

2 Q. Fair enough. But your staff was involved in overseeing the
3 Cambium investigation, right?

4 A. Yes.

5 Q. They were very involved, right?

6 A. Very involved.

7 Q. Very involved. And in fact, let's look at 67. Last page,
8 Jorge. That's it. In fact, there was a release that basically
9 said the Arizona Department of Education to oversee audit of
10 the Mexican-American Studies program, right?

11 A. Yes.

12 Q. And, again, to call out the first paragraph, this is on
13 March 24th, 2011.

14 In light of the recent media coverage surrounding National
15 Academic Partners, a firm hired by Cambium Learning Group to
16 help conduct the Mexican-American studies curriculum
17 audit. The Arizona Department of Education will now
18 oversee the audit team and contract directly with its
19 members to complete the project.

20 Right? That was your understanding, ADE staff was going to
21 oversee the audit team?

22 A. You know, this is our public information office issuing a
23 release. My sense of it is a touch different than this; that
24 there was a lot more independence by Cambium than what is being
25 expressed in this release.

1 Q. But you don't deny that your staff oversaw the audit,
2 right?

3 A. No, they oversaw the audit.

4 Q. And then the next paragraph notes:

5 The department is pleased with the audit team in place and
6 the work accomplished to date, said Andrew LeFevre, ADE's
7 director of public relations. ADE has full confidence in
8 the current audit team and their ability to remain
9 impartial and unbiased as they continue their review of the
10 TUSD's Mexican-American Studies Program.

11 And that was true, right?

12 A. You know, these are public information officers writing
13 releases. I think you -- anything the public information
14 office puts out, you take with a little bit of a grain of salt.

15 Q. You don't think that what was put out by your public
16 information officer was true?

17 A. I think it certainly was aspirationally true.

18 Q. It doesn't say we "hope," it says we're "pleased," right?

19 A. Yep, it does.

20 Q. And as far as you know, consistent with this press release,
21 your staff did oversee the audit, the Cambium audit, right?

22 A. Yes.

23 Q. Now, Mr. Huppenthal, Cambium issued a draft report, right,
24 a draft audit report?

25 A. I don't have a specific recollection of the draft report

1 separate from the final report.

2 Q. Okay. So you don't recall actually receiving a draft
3 report?

4 A. You know, there was a lot of stuff going on in that time
5 period. I may have received a draft report. I don't have a
6 specific recollection of it.

7 Q. But you did receive the final report, right?

8 A. Yes.

9 Q. And you reviewed the final report, right?

10 A. Yes.

11 Q. You read it?

12 A. Mmm-hmm. Yes.

13 Q. So let's look at Exhibit 93.

14 MR. REISS: It's in evidence, Your Honor.

15 BY MR. REISS:

16 Q. Let's look at Page 4 of the report.

17 The audit purpose. Audit purpose. The purpose of the
18 Tucson Unified School District Mexican-American Studies
19 Department curriculum audit is to determine, one, how or if
20 the Tucson Unified School District Mexican-American Studies
21 Department Programs are designed to improve student
22 achievement; two, if statistically valid measures indicated
23 student achievement occurred; and three, whether the
24 Mexican-American Studies Department's curriculum is in
25 compliance with A.R.S. 15-112(A).

1 That was the audit purpose, right?

2 MS. COOPER: Your Honor, it's not so much an
3 objection. I don't think this is in evidence, and I'm not sure
4 it's the final. I need to see the second page of the exhibit.
5 My description indicates this is a May 2nd document, and I
6 don't believe that was the final. I believe the final was May
7 16th.

8 MR. REISS: You have the final. I'm not sure it's
9 changed.

10 MS. COOPER: I'd like the record to reflect that it's
11 not the final.

12 THE COURT: I'm sorry, the record to reflect that it's
13 not the final what?

14 MS. COOPER: It's not the final copy of the Cambium
15 audit.

16 MR. REISS: Did you supply us with the final copy?

17 MS. COOPER: Did we supply you with it? Yes, we did.

18 MR. REISS: Is it marked as a defense exhibit?

19 MS. COOPER: No, we sent you -- I mean, I don't think
20 the Court wants to hear about --

21 MR. REISS: Okay. Your Honor --

22 MS. COOPER: -- information we sent you a few days ago
23 in this regard --

24 THE COURT: Well, I think it's sufficient for your
25 question.

1 MR. REISS: Thank you. It is, Your Honor.

2 Absolutely, it is. Thank you, Your Honor.

3 BY MR. REISS:

4 Q. Now, let's look at what the Cambium audit found with
5 respect to each of those three audit purposes. Okay? And
6 let's go to Page 18 of the Cambium audit.

7 First, let's look at the first paragraph under Findings and
8 Conclusions. And starting with the scope:

9 The scope of this audit is defined within the confines of
10 curriculum; therefore, peripheral events and actions will
11 not be appraised. Whereas the Mexican-American Studies
12 Department has experienced changes over the years, what may
13 or may not have been taught in previous years was not
14 considered against until the current legislation.
15 Furthermore, within the diagnostic phase of this audit,
16 many departments (sic) collected or resources reviewed may
17 no longer be in use.

18 The Cambium audit was designed to look at what was going on
19 in the present, right?

20 A. Yes.

21 Q. And with respect to the first purpose of the audit, why
22 don't we look at the next paragraph down. Outcome Measure 1.
23 And the outcome -- the first audit purpose was to determine how
24 or if Tucson Unified School District Mexican-American Studies
25 Department Programs are designed to improve student

1 achievement. And it says -- by the way, I'm sorry. This is a
2 long report, right? This is a long report, right?

3 A. Yes.

4 Q. Well over -- with appendices, well over a hundred pages,
5 right?

6 A. In my world that's not a long report.

7 Q. Mine neither. Fair enough. But it's a long report. It's
8 thorough, it's comprehensive, detailed, right?

9 A. I just read one on performance pay in Texas that was 467
10 pages.

11 Q. This one wasn't that long, but it was long, right?

12 A. Yeah.

13 Q. So that's why I'm just going to read the highlights and the
14 conclusions.

15 This section is with respect to Outcome Measure 1. This
16 section is an overview of the findings that follow in the area
17 of Outcome Measure 1:

18 Tucson Unified School District's Mexican-American Studies
19 Department Programs are designed with the intention to
20 improve student achievement based on the audit team's
21 findings of valuable unit and lesson plans, engaging
22 instructional practices, and collective inquiry strategies
23 through values of diversity and intercultural proficiency.
24 However, within the observable parameters, as detailed
25 within this section's findings, the curriculum auditors did

1 not observe flawless curriculum execution. Right?

2 A. Yes.

3 Q. So they said that you thought the outcome was good, but
4 they weren't uncritical. They didn't stand back and say
5 everything was hunky dory, right?

6 A. Yes.

7 Q. Okay. By the way, going back to the way they conducted the
8 audit, on Pages 12 and 13, the use of sources on Page 12,
9 Jorge.

10 You'll see that they wrote: The most common type of
11 information in our culture is information pretending to be
12 objective, yet possessing a hidden agenda of persuasion or a
13 hidden bias. Consider the Internet. It ranges in its
14 accuracy, reliability and value. Unlike most traditional
15 information media, no one needs to approve the content before
16 it's made public.

17 We certainly know that.

18 The auditors diligently collected documents of accurate and
19 credible sources, which provided reasonable, balanced,
20 objective and consistent information free of bias.
21 Therefore, striving to locate and use as many primary
22 sources of information along with qualitative and
23 quantitative data was of grave importance to the integrity
24 of this significant curriculum audit.

25 Right? They wanted to conduct an audit with true

1 integrity, unbiased and uninfluenced by improper sources,
2 right?

3 MS. COOPER: -- objection, Your Honor. The document
4 speaks for itself.

5 THE COURT: Sustained.

6 BY MR. REISS:

7 Q. Okay. Now, if you look, Mr. Huppenthal, at the bottom of
8 Page 38. It did note that the curriculum audit team reviewed
9 specific questionable texts cited from multiple curriculum
10 reading lists over the years. These excerpts outline the
11 specific commentary for each book. Words in italics indicate
12 the alleged controversial verbiage/topics.

13 So the Cambium audit looked at controversial materials,
14 right? They said that?

15 A. Yes.

16 Q. They also conducted focus groups with respect to the MAS
17 program, right?

18 A. I have no knowledge of that.

19 Q. And I'm not going to take the Court's time to read some of
20 those comments because they're in the report.

21 We talked about Outcome Measure 1, the curriculum. Let's
22 talk about Outcome Measure 2. And let's look at -- I'm sorry.
23 With respect to Outcome Measure 1, let's just take a look at
24 Page 18 and the summary of their conclusions with respect to
25 Outcome Measure 1, bottom paragraph.

1 This section is an overview of the finding that follow in
2 the area of Outcome Measure 1. Tucson Unified School
3 District's Mexican-American Studies Department Programs are
4 designed with the intention to improve student achievement
5 based on the audit team's findings of valuable unit lesson
6 plans.

7 Again, actually I think we've done this. We've read that.
8 That was Outcome Level 1. So let me move on to Outcome Level
9 2, Page 43 of the report.

10 Outcome measure 2. The outcome was -- that had to be
11 investigated was determine if statistically valid measures
12 indicated student achievement occurred.

13 And, again, the summary: This section an overview of
14 the findings that follow in the area of outcome measure 2.
15 Tucson Unified School District's Mexican-American Studies
16 Department programs claim not only to improve student
17 achievement, but to surpass and outperform similarly
18 situated peers.

19 The findings of the auditors agree student
20 achievement has occurred and is closing the achievement gap
21 based on the reanalysis and findings of TUSD's Department of
22 Accountability and research. Data charts below indicate AIMS
23 outcomes for reading, writing, and mathematics.

24 Right? And were you aware of that finding?

25 A. I am. And... I'll just leave it at that for right now.

1 Q. Okay. And to put little numbers to the finding, on
2 Page 47, right underneath the charts:

3 It is apparent that students enrolled in MASD courses in
4 high school graduate in the very least at a rate of 5 percent
5 more than their counterparts in 2005, and, at the most, a rate
6 of 11 percent more in 2010. Students who complete an MASD
7 course during their senior year of high school are more likely
8 to graduate than compared to non-MASD counterparts.

9 Right? You are aware of that finding?

10 A. Yes. How much weight I put on it is another issue.

11 One of the hardest things to do in education is to overcome
12 association error. Any kind of analysis like that,
13 instantaneously, I'm knowing it's a superficial analysis that's
14 most likely committing association error and there was a more
15 in-depth analysis where they actually studied the gains
16 associated with students. So you had a pre and a post, and
17 they analyzed it from that standpoint, and it presented a
18 different picture.

19 Q. Well, we're going to hear a much more in-depth analysis in
20 this trial.

21 But let's look at Page 49, which is outcome measure 2
22 summary. And, again:

23 There is a positive measurable difference between MASD and
24 non-MASD comparison group of students. Data indicates that the
25 graduation rate of students in the MASD program is higher than

1 those not in the program. High school juniors taking an MASD
2 course are more likely to pass the reading and writing portion
3 of the AIMS subject tests if they had previously failed
4 those subtests in their sophomore year. Consequently, high
5 school seniors enrolled in an MASD course are more likely to
6 graduate than their peers.

7 The next paragraph explains why that phenomenon
8 occurred. Let's look at the next paragraph:

9 In light of the data collected and reviewed, student
10 achievement is due to the sense of pride that develops through
11 their accomplishments with effective teachers. Many
12 research-based practices that promote enhanced critical
13 thinking and high-order comprehension of difficult topics
14 is in place and used on a daily basis.

15 Regardless of program, teacher effectiveness
16 achieves results. Effective practices in combination with the
17 motivation to learn for a purpose relevant to students create
18 these results. Students learn to be proud, regardless of
19 ethnicity, and are motivated to exceed and excel.

20 It would be remiss if the curriculum auditors did not point
21 out the fact that many variables may enhance student
22 achievement. For further statistical analysis regarding
23 specific ethnicity groups and income status level as it's
24 correlated to graduation and dropout rates. Please see the
25 appendix.

1 MS. COOPER: Objection. The document speaks for
2 itself. Counsel is merely reading paragraphs into the record.

3 MR. REISS: I was going to ask him if he was aware of
4 that, Your Honor. It's pretty important.

5 THE COURT: That objection is overruled if you follow
6 up with a question.

7 MR. REISS: I will, Your Honor.

8 BY MR. REISS:

9 Q. And were you aware of that explanation as to why the
10 Mexican-American Studies program was so successful?

11 A. Yes.

12 Q. Let's look at --

13 A. But I -- I would dispute that that analysis can -- you can
14 conclude anything from that analysis. So I would revisit that
15 question, and I would -- I would -- you're supposing something
16 that's not necessarily a fact at all, that the Mexican-American
17 Studies program was causative of that.

18 I'm not saying that it wasn't. I'm just saying that that
19 analysis is not sufficiently rigorous to be able to tell you if
20 it's causative.

21 Q. Well, we'll have other witnesses who address that,
22 Mr. Huppenthal.

23 Let's talk about outcome measure 3. That's the one I think
24 of most interest right now. Let's look at Page 50.

25 Outcome measure 3 is to determine whether the

1 Mexican-American Studies Department curriculum is in compliance
2 with A.R.S. 15-112A. Right?

3 This section of the curriculum audit provides evidence and
4 findings in relation to outcome measure 3. During the
5 curriculum audit period, no observable evidence was present to
6 indicate that any classroom within Tucson Unified School
7 District is in direct violation of the law, A.R.S. 15-112A. In
8 most cases, quite the opposite is true. Consider, if classes
9 promoted resentment or ethnic solidarity, then evidence of
10 an ineffective learning community would exist within each
11 school aligned with the Mexican-American Studies Department.
12 That was not the case. Every school and every classroom
13 visited by the auditors affirmed that these learning
14 communities support a climate conducive to student achievement.

15 You were aware of that finding, right?

16 A. Yes.

17 Q. Now, the audit separately analyzed whether there were
18 violations of each subsection of 15-112A. Right? Separately
19 analyzed whether there were violations of subsection --

20 A. I don't have a specific recollection of that.

21 Q. With respect to subsection (A) (2), that is, whether
22 promotes -- the MAS programs promote resentment toward a race
23 or class of people. Let's look at Pages 53 and 54.

24 With respect to whether there was a violation of subsection
25 (A) (2), the report addressed this on a

1 school-level-by-school-level and course-by-course basis. Did
2 it not?

3 A. I don't have a specific recollection on that.

4 Q. Let's go back and refresh.

5 Elementary school observation: No observable evidence
6 exists that instruction promotes resentment towards a race or
7 class of people.

8 Middle school observation: No observable evidence exists
9 that the instruction promotes resentment towards a race or
10 class of people.

11 High school, Latino literature observation: No observable
12 evidence exists that instruction promotes resentment towards a
13 race or class of people.

14 High school, American history/Mexican-American perspectives
15 observation: No observable evidence exists that instruction
16 promotes a resentment towards a race or class of people.

17 High school, American government/social justice
18 observation: No observable evidence exists that instruction
19 promotes resentment towards a race or class of people.

20 And I think the next page we probably have the high
21 school, Chicano art. Same conclusion.

22 Were you aware of those specific findings and conclusions
23 of the audit?

24 A. Yes.

25 Q. And with respect to (A) (2), in summary, on Page 55,

1 specifically with respect to (A) (2), the summary, the Cambium
2 auditors found:

3 No observable evidence exists that instruction within
4 Mexican-American Studies Department promotes resentment towards
5 a race or class of people. The auditors observed the opposite,
6 as the students are taught to be accepting of multiple
7 ethnicities of people. MASD teachers are teaching Cesar Chavez
8 alongside Martin Luther King and Ghandi, all as peaceful
9 protestors who sacrificed for people and ideas they believed
10 in. Additionally, all ethnicities are welcomed into the
11 program, and these very students of multiple backgrounds are
12 being inspired and taught in the same manner as
13 Mexican-American students. All evidence points to peace as the
14 essence for program teachings. Resentment does not exist in
15 the context of these courses.

16 Were you aware of that finding?

17 A. Yes.

18 Q. With respect to (A) (2). Yes, right?

19 A. Yes.

20 Q. Finally, let's look at (A) (4). And let's go to Page 60.

21 These, again, are specific findings with respect to whether the
22 MASD classes and courses violated subsection 4 of 15-112.

23 School level by school level, course by course findings:
24 Elementary school observation.

25 THE COURT: I don't think it's necessary to read each

1 subset --

2 MR. REISS: Your Honor, okay. I'll move on.

3 BY MR. REISS:

4 Q. You're aware with respect to every school --

5 THE COURT: If they're all the same and you want to
6 make the representation that the claims are the same, you can
7 do that, but you don't have to read each one.

8 MR. REISS: Thank you, Your Honor.

9 BY MR. REISS:

10 Q. I'll represent to you that with respect to every level of
11 school, elementary, middle, and with respect to every MAS
12 course taught in high school, the finding was the same, namely,
13 no observable evidence exists that instruction advocates ethnic
14 solidarity instead of treating pupils as individuals.

15 Will you accept that representation?

16 A. No, I don't. And you've gotten to the core of the issue as
17 it relates to the audit, that people don't misbehave when
18 they're being observed. And so --

19 MR. REISS: Your Honor, that's not my question.

20 THE COURT: I think you misunderstood his question.
21 The first question is: Do you accept his representation that
22 that finding was made as to all schools, elementary school,
23 whatever, middle school, high school, so forth, that the same
24 finding was made for all the schools --

25 THE WITNESS: Yes.

1 THE COURT: -- by Cambium.

2 He accepts it. Yes.

3 MR. REISS: Thank you, Your Honor.

4 BY MR. REISS:

5 Q. And you were aware of that, right?

6 A. Yes.

7 Q. With respect to the entirety of 15-112A, with respect to
8 the entirety of that statute, all subsections, let's look at
9 Page 63 of the report.

10 Outcome measure 3 summary:

11 During the curriculum audit period, no observable
12 evidence was present to suggest that any classroom, any
13 classroom, within Tucson Unified School District is in direct
14 violation of the law A.R.S. 15-112A. Schools associated with
15 MASD courses promote a culture of excellence and support a safe
16 and orderly environment conducive to learning. Teachers
17 collectively are building nurturing relationships with
18 students and work to improve student achievement and as
19 identified in numerous focus group interview sessions. A
20 culture of respect exists, and students receive additional
21 assistance beyond the regular classroom instruction to support
22 their academic learning.

23 As a result, students from many ethnicities are
24 physically sitting in Mexican-American Studies Department
25 classes and are learning that different perspectives are

1 valuable, that Americans come from many backgrounds, and that
2 being an American means that all people are accepted.

3 If this program were revised with significant
4 modifications and made available to more students, it is likely
5 there would be even more diversity of students within the
6 course.

7 Were you aware of that finding with respect to 112, 15-112
8 of the statute?

9 A. Yes.

10 THE COURT: All right. I think this is a good place
11 to take our break. It's 5:00 o'clock, so we will adjourn for
12 today. We'll start tomorrow at 9:00.

13 The first thing we're going to take up, I am going to
14 rule on the remaining -- I think the two motions, right? One
15 for, I think, judicial notice, the other to modify the pretrial
16 conference. That shouldn't take more than, I don't know, 10,
17 15 minutes, but then we'll get on with the further examination
18 of Mr. Huppenthal.

19 Mr. Huppenthal, you may step down at this time. We'll
20 see you in the morning. Anything else counsel want to bring up
21 before we adjourn?

22 MR. REISS: No, Your Honor. No, Your Honor.

23 MS. COOPER: Could we talk briefly about the
24 scheduling of witnesses for tomorrow?

25 THE COURT: What do you mean by "scheduling"? Do you

1 know who he's going to call?

2 MS. COOPER: Well, I'm not sure. This morning I
3 got --

4 THE COURT: Talk to him, all right? Talk to him. I'm
5 sure you can work it out.

6 MR. REISS: Thank you, Your Honor.

7 THE COURT: All right. We're in recess.

8 (Proceedings concluded in this matter at 4:58 p.m.)

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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 26th day of June, 2017.

s/A. Tracy Jamieson
A. Tracy Jamieson, RDR, CRR