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Gonzalez v. Douglas Trial Transcript of Proceedings, Day 5

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Reiss, Steven A.; Barrington, Luna N.; Fitzmaurice, David; Martinez, Richard M.; Chang, Robert; and Quinn, James W., "Gonzalez v. Douglas Trial Transcript of Proceedings, Day 5" (2017). *Fred T. Korematsu Center for Law and Equality*. 74.

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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 30, 2017 |
| |) | |
| DIANE DOUGLAS, |) | |
| Superintendent of Public |) | |
| Instruction, in her |) | |
| Official Capacity; et |) | |
| al., |) | |
| |) | |
| Defendants. |) | |

Before the Honorable A. Wallace Tashima

Transcript of Proceedings

Bench Trial Day 5

Proceedings reported and transcript prepared by:

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WITNESSES:

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KATHY HRABLUK

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Cross-Examination By Mr. Reiss

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1 PROCEEDINGS

2 (Proceedings commenced at 9:03 a.m., as follows:)

3 THE COURT: Good morning to everyone, and let's be
4 seated, please. Now, I think, let me see, yesterday we
5 finished with Dr. Cabrera, we finished with the supplemental
6 examination of Mr. Arce. So today we're taking a witness out
7 of order, right, just for the convenience of the proceedings?
8 A defense witness?

9 MS. COOPER: Yes, Your Honor, that is correct.

10 THE COURT: All right. Then let me ask you or your
11 colleague to call your witness here.

12 MR. ELLMAN: The defense calls Kathy Hrabluk.

13 THE COURT: Ma'am, just step forward here and be
14 sworn.

15 **KATHY HRABLUK, WITNESS, SWORN**

16 THE CLERK: Please speak directly into the microphone.
17 State your full name and the spelling of your last name for the
18 record, please.

19 THE WITNESS: My name is Kathryn Jill Hrabluk. My
20 last name is spelled H-r-a-b-l-u-k.

21 DIRECT EXAMINATION

22 BY MS. COOPER:

23 Q. Good morning, Ms. Hrabluk. Thank you for being here today.

24 A. You're welcome.

25 Q. Will you please briefly describe your background as a

1 teacher and administrator, beginning with your first work.

2 A. I was an educator for approximately 27 years. I began my
3 career as a special ed teacher, and I worked with children who
4 had emotional and behavioral challenges and disabilities. They
5 were across the ages of five through ten, in the elementary
6 schools. I was also a second grade teacher in an elementary
7 school for many years.

8 While I was a classroom teacher, I was also a mentor
9 teacher to new teachers that were in their first or second year
10 of working as a teacher, so I mentored new teachers.

11 I then moved into the role of district literacy coach, and
12 I was assigned to several schools. I worked with teachers on
13 their literacy instruction across the grade levels of K through
14 5, but focused on kindergarten through third grade, and that
15 job entailed coaching teachers on instructional practice, on
16 providing demonstration lessons in their classrooms with their
17 students.

18 I assessed their students, I helped teachers understand
19 their progress monitoring and final assessments and how to
20 adjust instruction based on the assessments that the children
21 had generated. I helped teachers with their lesson planning, I
22 connected district curriculum to instruction, connected state
23 standards to the district curriculum to their instruction, and
24 also worked on developing supplemental materials. There was a
25 particular focus on students that were struggling to learn how

1 to read, and I also provided intervention to those students.

2 From that role, I moved to the district office as an
3 assistant curriculum director. I was focused there on
4 literacy, language arts, and social studies.

5 I, as a district curriculum director, worked on the
6 development of state standards and the revisions of state
7 standards, and also worked with teacher teams on developing
8 district curriculum in response to any changes with revised
9 state standards. I provided professional development and also
10 worked with principals and teachers and instructional coaches
11 at the local level to improve instruction.

12 From that position, I moved to the State Department, and I
13 was initially a program specialist attached to a very large
14 federal grant focused on K-3 literacy. That grant ran for over
15 six years and was approximately \$30 million a year for Arizona.
16 That grant was focused on improving literacy for students that
17 were, one, struggling to read, and also were students that were
18 living in poverty. It was with schools that had high rates of
19 free and reduced lunch, so I worked with schools and district
20 offices across the state.

21 I provided some pretty intense and focused professional
22 development to superintendents, to district personnel,
23 principals, coaches and teachers across the state. I also
24 worked with local school districts to connect state standards
25 to their curriculum and to embed scientifically-based and

1 evidence-based reading research so that their reading
2 instruction would be effective.

3 We also did a tremendous amount of training and provided
4 support with specific assessments that were across the range.
5 So they were pre-assessment, pre-assessment, there was
6 progress-monitoring assessment done, and end-of-year
7 assessment, and the crux of that training was really to help
8 teachers understand the progress monitoring data that students
9 generate on a regular basis, on a daily, weekly, and monthly
10 basis, on how they're doing, and how do teachers understand
11 those results and adjust their instruction to make sure that
12 students continue to move forward.

13 As I mentioned, I started as a program specialist. That
14 would have been in 2002. In 2004, I moved into the position of
15 director of the Reading First grant, so I oversaw the
16 implementation of that grant across the state. I worked with
17 U.S. Department of Education, along with my responsibilities at
18 the state. I always was responsible for 30 state-wide reading
19 specialists and providing training for them, because they also
20 worked with our schools across the state.

21 In 2006, I moved into the position of deputy associate
22 superintendent, so my responsibilities expanded. Not only I
23 was responsible for K-3 literacy support at the state level, I
24 also oversaw the work with early childhood education, with the
25 21st century after-school grant, with special populations,

1 which was the refugee, migrant, and homeless grants. And my
2 responsibilities changed between two thousand -- yeah, so that
3 was deputy associate superintendent roles, as I remember.

4 In 2008, I moved into the role of associate superintendent
5 of education, and my responsibilities from 2008 through to
6 2014, when I retired, would have included overseeing the work
7 in the K-12 academic standards, school improvement, the office
8 of English language acquisition services, so the instruction
9 for English language learners, early childhood education.
10 Again, the 21st Century after-school grant.

11 I think that was probably about it. And then I retired in
12 2014.

13 Q. Thank you, Ms. Hrabluk. I'd like to ask you just a few
14 questions about some of that.

15 Now, was your experience before you began to work with the
16 K-12 standards primarily in elementary, middle, or high school
17 with respect to curriculum development, assessment and training
18 of teachers with respect to the same?

19 A. Elementary and middle school, K-8 would have been my
20 responsibilities at the district level.

21 Q. But at the department level, your responsibilities expanded
22 to K-12?

23 A. That's correct.

24 Q. Would you say that you used the same skills and standards
25 to evaluate high school curriculum as you do middle and

1 elementary school curriculum?

2 A. That's correct.

3 Q. You mentioned that you worked with K-3 literacy programs
4 for several years, and those were aimed at students who were
5 struggling to read?

6 A. Yes.

7 Q. And you mentioned those students are living in poverty and
8 have a high level of free and reduced lunch?

9 A. Yes. And that doesn't mean that those are the only
10 children that struggled to learn to read, but the federal grant
11 required that the grants at the state level be awarded to
12 schools in Arizona that had high rates of children receiving
13 free and reduced lunch.

14 Q. Do you know -- did I let you finish? Do you know what the
15 ethnographic breakdown would have been of the schools that were
16 receiving services under this federal grant?

17 A. At this point I can't give a specific percentages, but the
18 schools that we worked with had certainly significant
19 populations of English language learners, of Hispanic children.
20 We worked with many schools on a Native American reservation,
21 so those schools would have had, of course, high populations of
22 Native American students.

23 Q. You mentioned that you began with the Department of
24 Education in 2002, correct?

25 A. That's correct.

1 Q. Was Mr. Horne the superintendent at that point?

2 A. Yes.

3 Q. And was Mr. Horne committed to the success of the K-3
4 literacy program that you headed?

5 A. Yes.

6 Q. Stay for a moment on the topic of English language
7 learners. Can you briefly define that phrase for the Court.

8 A. So these are children that register in our Arizona Public
9 School System, and, upon receiving a language assessment, it's
10 determined that they do not have enough of an understanding and
11 use of the English language to be successful in a classroom,
12 and so they are to receive pretty intense educational
13 experience in learning enough English to be able to be
14 successful in the classroom.

15 Q. And one of the reasons that you're familiar with this
16 obligation is that one of your responsibilities was the
17 Department of Education's Office of English Language
18 Acquisition Services, right?

19 A. That's correct. At some point while I was an associate
20 superintendent, yes.

21 Q. Does Arizona law mandate a particular form of instruction
22 for English language learners?

23 A. Yes, it does.

24 Q. Can you just state the name of that, please.

25 A. It mandates a program where children are in a classroom

1 for -- we used to call it the four-hour block. So they're in a
2 classroom where there is intense English language instruction,
3 and that's the focus of the instruction for a significant part
4 of the day.

5 Q. Is that known as English language immersion?

6 A. Yes.

7 Q. Structured English immersion?

8 A. Yes.

9 Q. There are other methods of English language instruction,
10 correct?

11 A. That's correct.

12 Q. Is it fair to say that there is vigorous debate among
13 professionals in the field --

14 A. Yes.

15 Q. -- as to whether one form of English language instruction
16 is better than another?

17 A. Yes, that's correct.

18 Q. You worked for the Department of Education from 2002 to
19 2014, correct?

20 A. Correct.

21 Q. So approximately eight years while Superintendent Horne was
22 in charge, then four years while Superintendent Huppenthal was
23 at the helm, correct?

24 A. That's correct.

25 Q. Did you ever see Mr. Horne display any racial animus toward

1 any group while you were employed by the Department of
2 Education?

3 A. No, I did not.

4 Q. Did you ever believe that he was anything less than
5 committed to student achievement for all of Arizona's students?

6 A. I believed he was committed to the success of all students,
7 yes.

8 Q. And that would include Arizona's minority and
9 low-socioeconomic status students, correct?

10 A. Yes, that's correct.

11 Q. And then you worked with Mr. Huppenthal for four years?

12 A. That's correct.

13 Q. Did you ever witness him display any discriminatory animus
14 towards any group?

15 A. No, I did not.

16 Q. Did you believe that he was committed to the success of all
17 of Arizona's students?

18 A. Yes, I did.

19 Q. Did you ever witness him attempt to impose his own partisan
20 or political beliefs on others?

21 A. No, I did not.

22 Q. And did you ever witness Mr. Horne attempt to impose his
23 own partisan or political beliefs on others while
24 superintendent of public instruction?

25 A. No, I did not.

1 Q. Let's talk about some of the terms that we'll use in
2 discussing the evaluation of the MAS program. You referred to
3 state standards a moment ago. Can you please define those.

4 A. State standards are basically a list of what students need
5 to know and/or be able to do at each grade level in specific
6 content areas. So it's basically an end list. So at the end
7 of a particular school year in this particular content area,
8 this is what students need to be able to demonstrate mastery
9 in, or these are the skills that they need to demonstrate.

10 That would be state standards.

11 Q. Can you please define "curriculum."

12 A. Curriculum is responsibility of a school district, and
13 because the standards are just a list of what students need to
14 know and be able to do, the important work is done at the
15 district level in taking that list and then answering three
16 very significant questions. One is what is it the students are
17 going to learn, how are we going to teach them, and how are we
18 going to know that they have learned this material that they
19 need to learn.

20 So the first step in developing a curriculum is to develop
21 a scope and a sequence. So a scope of work is looking at the
22 depth of a course -- the depth of study from this list of
23 skills or topics that need to be covered. So are we going to
24 go deep or are we going to be fairly light in our study. So
25 that's the scope that needs to happen.

1 And then a sequence needs to be developed. So, from the
2 list, the district needs to determine across the entire course
3 of study, whether that's a semester or a full year, when will
4 these -- when will these skills or performance measures be
5 taught. So that's first to scope and sequence.

6 So it's basically a map of how we're going to teach from
7 the first day of school until the last day of school.

8 MR. REISS: Your Honor, I think we're straying, and
9 probably have already strayed, into expert testimony.
10 Ms. Hrabluk is not qualified as an expert, did not submit an
11 expert report. She cannot testify as an expert. She can
12 testify as to what she did. She cannot testify to opinions as
13 an expert.

14 THE COURT: Well, I agree partly with you, that she
15 has not been tendered as an expert. But as far as I can tell
16 now, you know, she's speaking from her own experience in her
17 years as a high official in the Arizona Department of Education
18 concerned with the curriculum, as I understand it, early on
19 starting at K through 3, and then, as the years went by, she
20 sort of graduated to high school, and has the experience.

21 So I think it's based on her -- she's testifying about her
22 experience as a high-level administrator in the Arizona
23 Department of Education.

24 And, to the extent there may be some opinion involved, and
25 they probably can't avoid it, the opinion is based on her own

1 teaching and administrative path. So I think it's fair to
2 permit it, but I agree, you know, it shouldn't be offered
3 strictly in the terms of an expert opinion.

4 Now, I want to let Ms. -- is it Hrabluk?

5 THE WITNESS: Hrabluk.

6 THE COURT: -- Ms. Hrabluk to know that when Mr. Reiss
7 and I say she can't testify as an expert, it really has no
8 meaning outside of the courtroom as to whether or not she has
9 any expert knowledge. It's just legal jargon on how lawyers
10 and courts handle the process by which we process opinions
11 rendered by third parties who claim to be an expert because of
12 their academic or other background. So it's not meant as a
13 reflection on the witness either way. All right.

14 But, anyway, on that basis, Mr. Reiss, the objection is
15 overruled. Not to say, you know, you shouldn't remain alert,
16 as I know you will, in case it strays too far into the realm of
17 expert testimony.

18 MR. REISS: Thank you, Your Honor.

19 BY MS. COOPER:

20 Q. I believe you were discussing scope and sequence,

21 Ms. Hrabluk.

22 A. Yes.

23 Q. Did you finish describing scope and sequence?

24 A. Yes. So now we have a roadmap, which is the beginning of
25 the development of a curriculum. So we've got a roadmap which

1 basically has just laid out the state standards. From there,
2 it becomes -- you move to and how will we instruct the
3 students. And so the next tier of curriculum design involves
4 instructional practices and also materials and resources,
5 including textbooks or supplemental materials.

6 So that's the what we will use to instruct students. So
7 here's what we're going to instruct, and here's our timeline.
8 Here's how we are going to instruct, here are the materials
9 that we are going to be using, and all of that is installed
10 across the scope and sequence. So it's not just a textbook
11 list or just a list of resources that stand separate from the
12 scope and sequence, it's embedded in so that district
13 personnel, principals, and teachers understand that at any
14 given point during the instruction across the school year, this
15 is what will be instructed, these are the materials teachers
16 are using at that point in the curriculum.

17 And then the last piece that's critical is, to answer the
18 question, and how will we know that students are mastering the
19 skills that they need to master. And so there needs to be a
20 plan for assessment. And a strong curriculum will have a plan
21 for pretesting, because it's important to know what students
22 are already bringing to the classroom, progress monitoring
23 assessment. So that's critical for teachers, because that's
24 kind of a dip-down in a day or a week, month, to see what are
25 the students learning in the midst of this instruction and how

1 do I need to adjust my instruction tomorrow to keep them on
2 track. So there needs to be a plan for progress monitoring
3 assessments, and then there needs to be a plan for end-of-unit
4 or end-of-year assessments.

5 That has to be already planned out before instruction
6 begins because that is what teachers get and take into their
7 classrooms and then begin very important work of determining
8 how they're going to implement this plan, specifically for the
9 students in their classroom.

10 Q. Can you please distinguish between curriculum, which you've
11 just defined, and a curriculum unit.

12 A. A curriculum --

13 MR. REISS: Objection, Your Honor.

14 THE COURT: Overruled.

15 A. A curriculum unit would be a small piece of or a section of
16 a complete curriculum plan or a curriculum map. So, as I
17 mentioned, when a scope and sequence is laid out across the
18 duration of instruction, a semester, or a school year.

19 Inside of that, as we determine where our depth of
20 instruction will be, teachers do develop curriculum units. So
21 this would be a series of lessons around a particular topic.

22 So units can often be a couple of weeks to, you know, six
23 weeks, eight weeks, but it's a subset embedded in, and it's
24 really -- a unit is going to be just a connection of
25 instructional practice, instructional resources and assessments

1 wrapped around a particular topic of instruction inside the
2 broader curriculum.

3 Q. Can you please describe why a clearly defined curriculum is
4 important to you in trying to determine what's being taught in
5 a classroom?

6 MR. REISS: Objection. It's offering an opinion, Your
7 Honor.

8 THE COURT: Objection's overruled. You may answer.

9 THE WITNESS: Thank you.

10 A. A curriculum is critical -- I'm sorry. Can I ask you to
11 repeat the question?

12 BY MS. COOPER:

13 Q. Can you please describe why it's important to have a
14 clearly defined curriculum if you are trying to determine what
15 is being taught in a class at any particular time?

16 A. Well, a clearly defined curriculum is necessary to ensure,
17 one, that students will indeed receive the instruction that
18 they need to receive that school year, because it's a
19 tremendous amount of information that has to be taught to
20 students in any given school year, any given content.

21 So if we're looking across a full school year of nine or
22 ten months of instruction, you want to make sure that by the
23 end of the instructional time that indeed everything they need
24 to be taught is going to be taught. So you've got to have that
25 roadmap.

1 And also to make sure that there are plans in place that
2 provide teachers with the instructional material that they're
3 going to need as they move through this year of instruction and
4 that students are being assessed accurately.

5 So if you're going to determine -- if you're going to be
6 looking at a program, the very first thing you would look at is
7 the plan, what's your plan for instruction, and you would be
8 looking at a curriculum.

9 MR. REISS: Again, Your Honor, I don't hear that any
10 of this is based on what she actually did. I move to strike it
11 as expert opinion testimony.

12 THE COURT: I disagree. So the objection is -- I
13 disagree as to the assessment of the witness's background and
14 her job function, so the objection is overruled.

15 BY MS. COOPER:

16 Q. If you have a series of curriculum units that don't appear
17 to be connected to each other, can you tell what's being
18 taught?

19 A. You could not tell what was being taught across the length
20 of the time of instruction. You could look at a curriculum
21 unit to determine what the plan was for that short duration of
22 instruction. But, no, if you can't see the whole plan, then
23 you're not going to know how it's connected to another unit,
24 what's the rest of the plan for the rest of the school year.

25 Q. Are you familiar with the Arizona state law requirement the

1 District Governing Board's approve curriculum and materials in
2 a public meeting?

3 A. Yes, I am.

4 Q. Do you know the purpose of that requirement?

5 A. Yes. There is -- it is necessary for our public schools to
6 be transparent in what they are teaching students in
7 classrooms, the materials that they're using, the intent of the
8 instruction, because, in fact, our public school systems here
9 in the United States are to be a support for our communities.

10 So there is a requirement that as district staff, but also
11 at the state level, any development of standards that we do is
12 very transparent, and we are required to gather public input
13 and then make adjustments based on the input.

14 At the district level, it's necessary for the public to
15 have an opportunity to provide feedback to look at what the
16 district is planning to instruct, to look at the materials that
17 are going to be used, and, I mean, the school boards are
18 elected officials that represent the community, so the
19 transparency is critical for the community to be engaged and
20 aware of what is being taught in their schools.

21 MR. REISS: Your Honor, move to strike. She's
22 testifying as to the purpose of statutes, not based on her
23 personal experience.

24 THE COURT: Motion to strike is denied. The answer
25 may stand.

1 BY MS. COOPER:

2 Q. Ms. Hrabluk, I'd like to move to a particular point in
3 time, and that is January 2011, at the beginning. Mr. Horne
4 has just left office and Mr. Huppenthal has just become
5 superintendent. Did you become -- let me ask you one question.

6 While you were employed in the administration of
7 Superintendent Horne, did you have any information about the
8 Mexican-American Studies program at Tucson Unified School
9 District?

10 A. No, I did not.

11 Q. Now let's move forward to that point in time. Mr. Horne
12 has left office, Mr. Huppenthal has taken office, and
13 Mr. Huppenthal learns that -- everyone learns Mr. Horne has
14 issued a finding regarding TUSD's MAS program, and
15 Mr. Huppenthal needs to make a decision.

16 Did you participate in those first few days of
17 Mr. Huppenthal's administration in evaluating Mr. Horne's
18 finding?

19 A. No, I did not.

20 Q. When did you become involved, and how, with respect to
21 TUSD's MAS program and Mr. Huppenthal's next steps?

22 A. I don't remember exact dates, but I would have been
23 involved in team meetings to discuss the Department of
24 Education steps in moving forward after Superintendent
25 Huppenthal's finding.

1 Q. Can you recall at this point who else was involved in those
2 team meetings?

3 A. Elliott Hibbs, Stacey Morley, Andrew LeFevre. Yes, that's
4 to the best of my memory.

5 Q. So what was your first substantive involvement with respect
6 to the TUSD MAS program?

7 A. My first substantive involvement, again, looking -- would
8 have been in discussions at the Department of Education in
9 plans on how to move forward and in considering hiring an
10 outside consultant to do a review of the Mexican-American
11 Studies.

12 Q. Did Mr. Huppenthal appoint you and Mr. Hibbs to be in
13 charge of that process of determining how to move forward with
14 respect to the TUSD MAS program?

15 A. I'm not sure if it was appoint, but, yes, I did work with
16 Elliott Hibbs on that.

17 Q. Did he ask you to work with Mr. Hibbs on this issue?

18 A. That's a good -- you know what, I honestly -- I guess he
19 did. Because I remember talking with Elliott about it. I
20 don't recall a specific conversation with John Huppenthal, but
21 it's possible.

22 Q. At some point you were asked to work on this issue with
23 Mr. Hibbs, correct?

24 A. Yes, that's correct.

25 Q. And you're not clear whether it was Mr. Huppenthal or

1 Mr. Hibbs who asked that you accept that responsibility?

2 A. That's correct.

3 Q. Were you given any instructions by Mr. Huppenthal as to how
4 you were to carry out the responsibility of examining TUSD's
5 MAS program?

6 A. Superintendent Huppenthal wanted to be fair and objective
7 and had a timeline that was fairly quick in coming to -- coming
8 to some conclusions that would provide him some information on
9 how he would then move forward.

10 Q. What was Mr. Huppenthal's timeline?

11 A. As I recall, he -- there was a 60-day window that he wanted
12 to initially work with. So we were really aiming for a
13 conclusion to the review of the Mexican-American Studies
14 program by the end of April, early May.

15 Q. Do you know what the source of that 60-day window was?

16 A. No. No, I don't.

17 Q. In fact, we're talking 60 days from the beginning of
18 January, correct?

19 A. Yes.

20 Q. That was the initial timeline?

21 A. That was the initial timeline.

22 Q. Which would have been toward the beginning of March,
23 correct?

24 A. Correct.

25 Q. But even at the very beginning, it was recognized that the

1 timeline would have to -- would encompass in sometime, did you
2 say, April?

3 A. Yeah, end of April, early May.

4 MR. REISS: Objection. Leading, Your Honor.

5 THE COURT: I'm going to overrule the objection, but,
6 Ms. Cooper, I'm going to caution you, you know, try not to
7 lead. All right?

8 MS. COOPER: Yes, Your Honor.

9 BY MS. COOPER:

10 Q. Did Mr. Huppenthal tell you how to conduct the
11 investigation?

12 A. No.

13 Q. Did you feel that you and Mr. Hibbs were free to conduct
14 the investigation in the most appropriate matter -- manner
15 based on your expertise?

16 A. Yes. I mean, we certainly kept Superintendent Huppenthal
17 informed, and, as I mentioned, he did give us broad parameters,
18 fair and objective, and so then we moved forward with the
19 details of the plan.

20 Q. Can you please briefly contrast your role in this
21 investigation with Mr. Hibbs?

22 A. My role was as an educator, and Mr. Hibbs had a role as a
23 deputy superintendent. So he definitely guided the work and
24 gave feedback. So I would -- I would look for information or
25 draft information, but Mr. Hibbs would have had -- he provided

1 feedback and would have definitely had a significant influence,
2 and then he was in direct conversations with Superintendent
3 Huppenthal.

4 Q. What were the first steps that you and Mr. Hibbs took with
5 respect to this investigation?

6 A. We considered the -- we considered the elements of a review
7 of the Mexican-American Studies program, what that would
8 entail, and determined that it -- it would be wise to consider
9 using an outside consultant who had expertise in curriculum
10 review.

11 Q. Why did you think it would be wise to use an outside
12 consultant with appropriate expertise?

13 A. Well, by this time, the conversation around the
14 Mexican-American Studies program -- both locally and in areas
15 of the state, and definitely between TUSD and Department of
16 Education -- had become quite emotional, and so I think we felt
17 that it would be important to bring some impartial people to
18 the work.

19 Q. Once it was determined to retain an outside auditor, what
20 was the next step?

21 A. So the next step was to issue a request for a proposal,
22 which is what we did, and there are a multitude of national
23 organizations in the country that provide this kind of
24 curriculum review to districts on a regular basis.

25 So when we initially released the request for proposals, we

1 felt as if we would be -- you know, we were pretty confident
2 that we would receive several replies.

3 Q. What happened?

4 A. We didn't receive any. We started reaching out to
5 particular companies to ask them to take a closer look at the
6 request for proposal to reconsider whether they would be
7 interested in responding.

8 Q. Did you do any work to determine why the department had not
9 received any responses to its first request for proposal?

10 A. Well, I didn't necessarily do any work, but as I reached
11 out to some of these companies, it was the information that
12 they gave back to me to explain why they were not going to
13 respond to the RFP.

14 Q. What did those companies tell you?

15 A. They said that it was --

16 MR. REISS: Objection. Hearsay.

17 THE COURT: I am going to permit the answer, not for
18 the truth, but to explain why she went on to the next step
19 of -- I think she was talking about reaching out back to those
20 companies. But go ahead and finish your answer.

21 THE WITNESS: Thank you, sir.

22 A. I was told that the RFP was -- the work that was being
23 asked was going to be in a very politically charged atmosphere,
24 and they simply weren't interested in taking their company into
25 that arena.

1 BY MS. COOPER:

2 Q. Did anyone ever respond to the RFP that the department had
3 posted?

4 A. Yes, Cambium did respond to the RFP.

5 Q. Can you please describe who Cambium is.

6 A. Cambium is -- at the time was a national consulting company
7 that had a deep well of experts in curriculum review, in
8 instructional practices. They did a tremendous amount of
9 professional development along with consulting at the state and
10 local levels across the country.

11 Q. Were you familiar with Cambium as a result of your work
12 with the department?

13 A. Yes, I was.

14 Q. Now, I show you just briefly, this is Defendants' Exhibit
15 528, which has been admitted, and I'll show you the first page
16 to situate you. This is an e-mail chain between Mr. Peeples
17 and several other persons. Can you please identify who
18 Mr. Peeples is?

19 A. Yes. He was the director of our procurement department.

20 Q. Your name isn't indicated on this e-mail chain, but I want
21 to ask you if you were familiar with the request for quote that
22 is at the bottom of Page ADE007851.

23 A. Yes, I'm familiar with it.

24 Q. And then moving on to the next page, at the top, is that
25 your understanding of the work that was requested through the

1 request for quote that was issued to retain an independent
2 auditor to evaluate the MAS program?

3 A. Yes.

4 Q. And that identifies conducting a curriculum audit,
5 establishing the degree of alignment between the curriculum and
6 standards to determine how or if the program is designed to
7 improve student achievement, and if the curriculum is in
8 compliance with A.R.S. 15-112, correct?

9 A. Correct.

10 Q. And you recall that A.R.S. 15-112 is the statute that
11 concerns us here today?

12 A. Yes.

13 Q. Did the department retain Cambium to perform a curriculum
14 audit of TUSD's MAS program?

15 A. Yes.

16 Q. What happened next?

17 A. Shortly after that, Cambium subcontracted the actual audit
18 work to a smaller company, NAEP, N-A-P-E (sic).

19 Q. Did you know Cambium was planning to subcontract the work
20 that it had agreed to do to another company?

21 A. Initially, no, and then also, as we became aware of the
22 subcontracted work, we expected Cambium to be directly engaged
23 in supervising that work and in leading that work.

24 Q. Were you familiar with NAEP?

25 A. No.

1 Q. Why did you expect Cambium to stay involved and be
2 responsible for supervising NAEP's work?

3 A. One, that was the company that responded initially to the
4 RFP. Two, that is the company that has the expertise in
5 curriculum auditing and design. And that is the company that
6 we were in discussions with.

7 Q. Do you know why Cambium subcontracted the work to NAEP?

8 A. No.

9 Q. Did Cambium auditors, to the best of your knowledge,
10 perform the work required under the contract or did NAEP
11 auditors perform the work?

12 A. NAP (sic) auditors performed the work.

13 Q. With that understanding, I am going to continue to refer to
14 "Cambium," "Cambium auditors," because that's the way that
15 we've referred to it throughout the week here. After Cambium
16 subcontracted the work to NAEP, what happened?

17 A. Shortly after they subcontracted the work, so and a -- and
18 so the contract was awarded, we were set to begin, there were
19 some significant concerns with the personnel that NAEP had
20 assigned to the Tucson School District's audit, so some
21 adjustments had to be made.

22 Q. What do you mean, "some adjustments had to be made"?

23 A. The director that had been assigned by NAEP to direct the
24 work of the curriculum audit had some previous problems,
25 challenges, and so we asked that he be removed from the project

1 because it was distracting, to say the least. And so that was
2 done.

3 Q. The first person who was supposed to be in charge of the
4 project was removed?

5 A. Yes.

6 Q. Did Cambium or NAEP appoint someone in that person's stead
7 to be in charge?

8 A. Yes, they did, but before they did, Cambium actually
9 approached the Department of Ed to consider actually dropping
10 the contract and not doing the work.

11 So, that was discussed, but Cambium agreed to stay. So
12 NAEP brought forward a secondary person to kind of direct the
13 work, and then also a person -- a new person who was going to
14 lead the work at the district level.

15 Q. Did that new person in fact lead the work at the district
16 level?

17 A. Luanne Nelson, yes.

18 Q. The person before Luanne Nelson, was that Mr. Hernandez?

19 A. Yes, Mr. Hernandez did not, because, as it turned out, he
20 also had prior history with another district that raised some
21 issues, and so he agreed to not be part of the audit at the
22 district itself, but kind of remain as an overseer, at a
23 distance.

24 Q. Then Ms. Nelson was finally appointed to be in charge at
25 the district level?

1 A. That's correct.

2 Q. Throughout this process, did your role change, this process
3 of trying to determine who's going to be in charge?

4 A. Yes, it did.

5 Q. And how did your role change?

6 A. Initially it was our intention and our best hope that by
7 hiring a competent and experienced external consultant, that
8 the work would actually unfold once they took the RFP and the
9 scope of work, that the work would unfold separate from the
10 Department of Education and would be completely managed by
11 Cambium. That was the intent of the RFP.

12 As we quickly got into the contract and the personnel that
13 were initially assigned had extenuating issues from previous
14 positions they had held and had to be removed, it created a
15 degree of uncertainty at the Department of Education. Cambium
16 actually wanted to pull out altogether.

17 So my role did change, and the superintendent and Elliott
18 Hibbs asked if I would become the contact person for the NAEP
19 contractors as they were arriving and mapping out their work at
20 the Tucson Unified School District, and so that is the role I
21 took on.

22 Q. Now that we've determined who's in charge at the district
23 level in your role, what happened next? When did the audit
24 process itself get started, and what were some of the first
25 steps that were taken?

1 A. So I no longer remember exact dates, but certainly the
2 change in personnel did eat up some precious time once the
3 contract was reviewed, and we lost, as I recall, about two
4 weeks at least.

5 The initial planning began with the superintendent of the
6 Tucson Unified School District and the associate superintendent
7 at the time to coordinate dates with the NAEP auditors when
8 they would be arriving, the material that they were going to be
9 reviewing, schedules for reviewing classrooms, and meetings and
10 focus groups that they were going to be holding.

11 So much of that conversation went between the Cambium/NAEP
12 auditors and the superintendent's office at Tucson Unified
13 School District, but I helped coordinate some of those initial
14 conversations.

15 Q. Did the auditors explain to you -- present you with a work
16 plan, so to speak, that would describe the work that they would
17 do and when they would be doing it?

18 A. Yes. So I spoke to them on average weekly, and so they did
19 inform me as to the dates that they were going to be in Tucson,
20 and what they were going to be doing, yes.

21 Q. Did the auditors present a PowerPoint presentation to you
22 and others at the department with respect to their work plan?

23 A. That I no longer have a memory of. Sorry about that.

24 Q. Let me show you not the first page of Exhibit 68, which is
25 Plaintiffs' Exhibit 68, which is admitted, but the first page

1 of an attachment, and then we'll go to the e-mail to which it's
2 attached. And this is a PowerPoint presentation?

3 A. Oh, yes. Yes.

4 Q. Do you recall this presentation now?

5 A. Yes.

6 Q. Let's go back to the e-mail that it was attached to. We
7 see that's an e-mail from you, correct?

8 A. Mmm-hmm, yes.

9 Q. And it appears to indicate that a presentation, a
10 PowerPoint presentation is attached.

11 A. Correct.

12 Q. And then you are sending Mr. Hernandez some questions,
13 correct?

14 A. Correct.

15 Q. So what are you asking for in bullet point number one?

16 A. So I am asking for more information as to who they are
17 going to be including in their interview groups, wanting to
18 make sure that they are speaking with a broad spectrum of
19 people that have some involvement or engagement with the
20 Mexican-American Studies Program to ensure that there's a
21 fairly objective and unbiased gathering of information.

22 Q. Let me back up one moment. We see that this presentation
23 is dated March 30th, 2011, correct, or this e-mail?

24 A. Yes, correct.

25 Q. It's already the end of March, and the work of the audit

1 itself has not yet started. Is that correct?

2 A. That's correct.

3 Q. How much of the school year is left?

4 A. Well, truthfully, there would be April and May, but that's
5 not eight weeks of solid instruction because at that time,
6 2011, there would be a significant window for AIMS testing in
7 April. And then in May, school would be out, you know, by the
8 third week or so of May, and so definitely instruction would be
9 winding down, students would be finishing projects, so, you
10 know, instruction would be less intense.

11 Q. It was important to us at that point to get moving,
12 correct?

13 A. Absolutely.

14 Q. Let's look at bullet point three. Can you tell me --
15 you're requesting student work, especially written responses,
16 right?

17 A. Mmm-hmm.

18 Q. Can you tell me why it was important to you that the
19 auditors review written student work?

20 A. Looking at student work is really important, it's a
21 critical dimension of a review of curriculum, because the end
22 result in education and in teaching and learning is always what
23 is the student learning.

24 So, yes, what the teacher is teaching is important, but the
25 end result is what does the student leave the classroom with,

1 what information, what thoughts, what ideas. So looking at
2 student work is going to give you an insight because the
3 student work will reflect longer periods of instruction as
4 opposed to classroom observation, which is like 30 minutes, a
5 specific point in time.

6 Q. The last highlighted point there addresses the fact that --
7 the scheduling of classroom observations, correct?

8 A. Correct.

9 Q. What's the purpose of a classroom observation in the
10 context of an audit like this one?

11 A. So the purpose would be to see, in a very limited fashion,
12 as I said, how is the written curriculum being instructed. So
13 when I talked about curriculum, there's really three large
14 aspects. There's written curriculum, instructed curriculum,
15 and assessed curriculum. And in a very strong curriculum plan,
16 all of those three connections are tightly connected. So the
17 written curriculum should be unfolding as instructed
18 curriculum.

19 So the point of a classroom observation would be to go in
20 and determine if in fact the observer can witness the written
21 curriculum unfolding in the classroom, so is there a close or
22 tight connection.

23 Q. Now, you address a concern here about scheduling. Can you
24 describe that, please, scheduling of classroom observations.

25 A. So it's always a challenge to plan unannounced classroom

1 observations even at the site level for a principal. But from
2 the aspect of the consultants coming to the district for a very
3 short length of time, that was all very public information.
4 And so there definitely was an awareness that consultants were
5 going to be -- auditors were going to be at the district, that
6 no doubt there would be classroom observations, that's common
7 knowledge that that's part of an audit plan.

8 And so, of course, information can travel very
9 quickly around a district as these observations unfold. So
10 there's, you know, a lot of challenges trying to plan
11 unannounced visits when outside consultants arrive. And then
12 also we had the added challenge of now being in April with the
13 AIMS window, and so less days to actually plan classroom
14 observations.

15 Q. You state here that your concern is that identifying a
16 specific week may unduly influence the focus of intended
17 learning outcomes. What does that mean?

18 A. So the purpose of an unannounced classroom observation is
19 to try to observe the instruction that the teacher would
20 normally have been teaching that day, and I have done countless
21 classroom observations myself. And so of course teachers want
22 to be at their best and want their students to be at their
23 best. So if there is an awareness that observations are going
24 to be happening, then it can be tricky sometimes to make sure
25 that what you're actually seeing is what would have been

1 normally taught.

2 Q. Is that the concern that you were expressing here in bullet
3 point four?

4 A. Yes.

5 Q. I want to ask you just a couple -- just a few questions
6 about this PowerPoint. I'm going to direct your attention to
7 the page bearing Bates number ending in 567. And this is the
8 timeline week one page.

9 Can you look at the highlighted language and tell me what
10 Cambium has committed to do in the first week?

11 A. They have committed to reviewing all curriculum reports,
12 internal audits, and resolutions.

13 They will schedule -- you said the highlighted parts. And
14 they will review relevant school curriculum materials and
15 program information.

16 Q. With respect to that first highlighted bullet point, that's
17 curriculum, reports, internal audits, and resolutions related
18 to the MAS program?

19 A. That's correct.

20 Q. Do you know whether Cambium accomplished that goal?

21 A. They did not.

22 Q. Next we see we have timeline week two, correct?

23 A. Correct.

24 Q. That identifies a specific week?

25 A. Yes, it does.

1 Q. Do you know whether this PowerPoint presentation, by the
2 way, that you looked at was given to TUSD?

3 A. I no longer remember if it was. But I know that they did
4 present some information to TUSD, yes.

5 Q. Do you know if they shared with TUSD the week that they
6 would be conducting classroom observations?

7 A. They would have definitely shared that information with
8 district personnel.

9 Q. Here they're committing -- do you know whether Cambium was
10 able to observe MAS classroom instruction and student learning?

11 A. They did observe in MAS classrooms.

12 Q. Did they observe MAS teachers teaching MAS topics, to the
13 best of your knowledge?

14 A. In a few of the classrooms, I believe, not all.

15 Q. Do you see here on the page that ends in Bates Number 577
16 that they're committed to classroom visitations with a thorough
17 review of curriculum materials being used in MASD classrooms, a
18 thorough review of lesson plans, and a thorough review of
19 student work?

20 A. Yes.

21 Q. Do you know whether the Cambium auditors conducted a
22 thorough review of curriculum materials being used in MASD
23 classrooms?

24 A. They did not.

25 Q. Did they conduct a thorough review of lesson plans?

1 A. No.

2 Q. Do you know how many lesson plans were available for the
3 Cambium auditors to review?

4 A. I believe that there were nine --

5 Q. I'm talking about lesson plans.

6 A. Lesson plans. Honestly, I don't remember if there were
7 very few or none, but it was very limited.

8 Q. Very limited. Just briefly, a lesson plan I think is the
9 only topic, the only term we've not defined. Can you please
10 define that term?

11 A. A lesson plan would be a teacher's plan for a particular
12 day, a particular content area and point in time. So it would
13 be right from opening the lesson through to the gist of what
14 was going to be taught, and how it was going to be taught, to
15 conclusion of the lesson. So it would be a very specific plan,
16 including materials that would be used for a particular day of
17 instruction.

18 Q. In your experience as an educator, district administrator,
19 and department administrator, is it common for teachers to
20 retain their lesson plans?

21 A. Yes.

22 Q. Finally, Cambium committed to conduct a thorough review of
23 student work?

24 A. Yes.

25 Q. Do you know if Cambium was able to accomplish that goal?

1 A. They were not able to accomplish that goal, no.

2 Q. What was the level of your involvement or monitoring in the
3 month of April, the period in which Cambium was conducting the
4 work of its audit?

5 A. I had weekly conversations with the audit team that was at
6 Tucson Unified School District. That was in April, mmm-hmm.

7 Q. Did you have any confidence or concerns as a result of the
8 conversations that were being conducted with the audit team?

9 A. I had some concerns from those conversations, yes.

10 Q. Can you please describe those.

11 A. There were limited curriculum materials being presented to
12 the auditors. There were very limited lesson plans available
13 and there was zero student work, because the auditors were told
14 by the teachers in the Mexican-American Studies program that
15 there was no requirement to retain student work, so there was
16 zero student work for them to actually look at.

17 And time was tight. They wanted to fit in their classroom
18 observations, and being able to do that was a bit of a
19 challenge. And so I became concerned that there was less time
20 being used to review the instructional materials and any
21 curriculum materials that might have been presented to them.

22 Q. Were you concerned that they weren't receiving curriculum
23 materials to review?

24 A. That was definitely shared by -- to me by the auditors,
25 that there didn't appear to be a complete curriculum, that

1 there were some pieces but that they -- they didn't actually
2 have a complete curriculum to review, but they were asking,
3 continued to ask for that material. And there was
4 instructional material that they were not sure where it fit in
5 with the instructional plans.

6 Q. Why were you concerned that the Cambium auditors were
7 reporting that they were not receiving a complete curriculum?

8 A. Well, I was concerned because an instructional program has
9 to stand on a complete curriculum. So if you don't have a
10 complete curriculum, I'm unsure as to exactly what it is there
11 is to review, what's the plan for instruction. And so I became
12 a little bit concerned as to how complete this review could
13 actually be.

14 Q. In your experience, is it common for teachers to retain
15 student work?

16 A. Yes.

17 Q. Is it uncommon for teachers to not retain student work?

18 A. Yes.

19 Q. I'm going to ask you whether by this point in time the
20 department had added another person to the team of you and
21 Mr. Hibbs that was responsible for the oversight of this
22 curriculum investigation.

23 A. Yes, John Stollar was added to the team.

24 Q. Could you tell me who John Stollar is and briefly what you
25 know about his relevant background and expertise.

1 A. John Stollar was the deputy superintendent of education,
2 and his -- he was my direct supervisor. John Stollar was
3 responsible for all of the academic divisions at the Department
4 of Education, and Elliott Hibbs was his colleague as a deputy
5 superintendent overseeing in-house operations at the
6 department.

7 John Stollar was a very experienced high school principal
8 for many years in Paradise Valley, I believe, yes.

9 Q. Cambium conducts its work. What happens next?

10 A. They provide us with a report as it concludes.

11 Q. And did you develop concerns as you read -- did you read
12 the report?

13 A. Yes.

14 Q. Did you develop concerns about the nature and the quality
15 of the work that Cambium had performed as represented in that
16 draft audit?

17 A. Yes.

18 Q. Can you describe what those concerns were?

19 A. There didn't appear to be a flow of connecting the dots or
20 connecting statements. So they were very clear in several
21 points in their report that there was not a comprehensive
22 curriculum for the Mexican-American Studies program, that there
23 was very little for them to review in terms of instructional
24 plans, intended instructional outcomes, connections to
25 assessments. So there wasn't a curriculum for them to review,

1 and they were quite clear about that.

2 They also stated several times that their material and
3 resources that they did review clearly had a bias that were
4 inappropriate in many cases, that were inflammatory, and they
5 raised some questions as to how this material was being used,
6 that there didn't appear to be a balance of outlook or
7 thinking, that the materials seemed to be fairly biased in its
8 approach, and yet they didn't know how it was being used.

9 So there definitely were some very significant concerns
10 that were reported in their final report, and yet it didn't
11 seem to surface up to their findings, their kind of summary
12 findings.

13 Q. Was the purpose of the Cambium audit to provide information
14 that could -- that the superintendent could use to make a
15 determination as to whether the MAS program was in violation of
16 A.R.S. 15-112?

17 A. Yes. Yes.

18 Q. And how did your concerns that you've described affect the
19 ability of the superintendent and the department to make a
20 determination as to whether the MAS program was violating
21 A.R.S. 15-112?

22 A. Well, our concerns definitely made us less confident in the
23 information and the findings that the Cambium/NAEP auditors
24 shared with us. We didn't feel that that provided us with
25 good, solid, firm evidence across the board. So we felt as if

1 we needed to look further.

2 Q. Now, I want to show you an e-mail dated May 13th, 2011.

3 This is Defendants' Exhibit 537, and it's been admitted. It's
4 an e-mail chain among you, Mr. Hibbs, and Mr. Stollar. And
5 I'll show you.

6 Do you recall this e-mail and the attached comments, which
7 I'll show you in a moment when you've had a chance to look.

8 A. Yes.

9 Q. And we see here -- are these comments that you and
10 Mr. Hibbs and Mr. Stollar prepared that outlined your concerns
11 with respect to the Cambium report?

12 A. Yes.

13 Q. It notes that there was quality instruction that was both
14 commendable and concerning. Can you explain why it was
15 concerning that the MAS program displayed quality instruction?

16 A. Building a rapport with students is critical for any
17 effective teacher. Learning only happens when a student is in
18 a comfortable environment. No one learns in a fear-based
19 environment. So it's important for effective educators to set
20 a tone of welcome and acceptance in a classroom because that
21 calms a learner and prepares them to be a learner and to be
22 more open to the learning. So any good, strong, effective
23 teacher does that and knows that.

24 But the next part is absolutely critical because it is the
25 power then of the instructor to respect the openness of the

1 learner in the way you present material. Our end result in
2 education is to raise up critical thinkers who are capable of
3 looking at, listening to, investigating multiple points of
4 view, able to think critically, to analyze, to synthesize, and
5 to be able to put sound arguments together based on research,
6 based on findings.

7 So what becomes absolutely essential for these effective
8 teachers is that you lead learners down the road of learning
9 that requires them to remain open, objective, unbiased, as they
10 are absorbing learning. If --

11 Q. Did you -- I'm sorry.

12 A. If at the beginning of this point of instruction, when
13 effective teachers have developed this rapport that teachers,
14 in fact, take advantage of that openness of the learner and
15 begin to present a more biased or a more one-sided approach or
16 already have determined that this is the side of the argument
17 that I'm going to instruct you on, if that becomes the case,
18 then the students lose the opportunity to really look at
19 multiple points of view, to put different lenses on historical
20 occurrences, and it really limits their ability to grow as
21 critical thinkers and to be able to put their own sound
22 arguments together.

23 MR. REISS: Objection. Opinion. Move to strike.

24 THE COURT: The objection and the motion are
25 overruled.

1 BY MS. COOPER:

2 Q. Did you become concerned that the MAS program involved
3 teaching that was, as you described a moment ago, one-sided and
4 biased?

5 A. Based on the materials that they sent to us for review,
6 yes.

7 Q. I'm going to talk briefly about the Cambium audit itself.
8 You've read it, correct?

9 A. Correct.

10 Q. And in fact, you prepared the comments that we discussed a
11 moment ago. I'm going to ask you if you recall some of the
12 statements and conclusions that it made.

13 Do you recall if the Cambium auditors found an organized
14 MAS curriculum?

15 A. They did not.

16 Q. Do you recall how much of the curriculum and curriculum --
17 so if there was no curriculum, then there was nothing -- no
18 organized curriculum to review, correct?

19 A. Correct.

20 Q. Do you know how many or how much of the curricular and
21 instructional materials that Cambium was able to review?

22 A. Very little.

23 Q. Do you know whether Cambium was able to identify curriculum
24 units that formed a cohesive curriculum?

25 A. No, they did not.

1 Q. Do you know whether Cambium reviewed many of the
2 instructional materials and texts that were used in the MAS
3 program?

4 A. They did not.

5 Q. Do you know whether they concluded that some of the
6 materials were questionable in terms of controversial political
7 commentary and personal activism?

8 A. They did.

9 Q. Do you know whether they reviewed instructional materials
10 and texts that used words that dehumanized and belittled
11 elected officials and community leaders?

12 A. They did.

13 Q. At the conclusion of your review of the Cambium audit, did
14 you feel that the department had enough information to
15 determine whether the MAS classes violated A.R.S. 15-112?

16 A. No, we concluded we did not have enough information.

17 Q. When you say, "we," to whom are you referring?

18 A. That was really a final decision by Superintendent John
19 Huppenthal, but it was a joint decision and joint discussions
20 between myself, John Stollar, Elliott Hibbs, and the
21 superintendent.

22 Q. Were you unanimous in your view?

23 A. Yes.

24 Q. Were you concerned that the MAS program might violate

25 A.R.S. 15-112?

1 A. Yes.

2 Q. What did you decide to do?

3 A. We determined that we would do a more intense review of the
4 materials that had been submitted to the Department of
5 Education, and also the materials that had been submitted to
6 the Cambium/NAEP auditors that they hadn't finished reviewing.
7 So we took all of those materials and did a fairly intense
8 review of those materials.

9 Q. And what was your conclusion when you had completed that
10 task?

11 A. When we had completed that task, we included that there in
12 fact was no full curriculum for the Mexican-American Studies
13 program classes; that the textbooks and the resource materials
14 that the department had submitted for review were just
15 standalones, they were lists of textbooks and we had many of
16 them submitted to us, but we had no idea how they were used,
17 what other materials were used to balance an outlook, and so we
18 had to take them at face value, and so we did.

19 Q. I'm going to take you back to the Cambium audit and ask you
20 just a couple of more questions before we move on.

21 Do you know how many MAS classrooms Cambium auditors were
22 able to review in elementary school where MAS teaching was
23 occurring?

24 A. I believe they observed approximately 34 percent of the
25 classroom. So they observed three elementary classrooms, of

1 which only one classroom was teaching a Mexican-American
2 Studies Program lesson. The other two were teaching standard
3 language arts and math instruction. They observed, I believe,
4 three middle school classrooms, of which only one was
5 instructing a Mexican-American Studies Program lesson. One
6 classroom, a teacher was on her planning time, and I believe
7 another classroom was a bilingual math class, I believe.

8 They did instruct -- or they did observe also at the high
9 school level. I believe they saw five lit classes, of which
10 only two were actually instructing lessons attached to the
11 Mexican-American Studies program. And they also saw
12 approximately six history classes, American history classes.

13 They expressed some very significant concerns because all
14 six classes were teaching very divergent lessons, like -- very,
15 very different lessons, and so concerned about scope and
16 sequence.

17 And they observed four social justice classes, of which,
18 understandably so, at the end of the school year, students were
19 simply working on -- individually on projects that needed to be
20 completed. So they didn't actually observe any instruction in
21 those classes.

22 So while they did observe in classes designated of
23 Mexican-American Studies Program classes, they actually
24 observed very, very few lessons.

25 Q. How useful was the information that Cambium collected as a

1 result of these classroom observations to you and the other
2 members of the department in reaching a conclusion about
3 whether the TUSD MAS program was in violation of A.R.S. 15-112?

4 A. It was not particularly useful, no.

5 Q. Let's go back to your review of the materials. Is this
6 taking place in May now?

7 A. Yes.

8 Q. And school isn't out yet. Did you consider visiting MAS
9 classes?

10 A. At this point, because it was quite clear to us that there
11 was not an established curriculum, so there's not a roadmap,
12 there's nothing to connect our classroom observation to in
13 terms of a larger plan, intent and goal. So at this point,
14 further classroom observations, and especially at the end of
15 the school year, didn't seem to be particularly relevant.

16 Q. As you reviewed the materials that were available to you at
17 that time, did you develop a concern that the MAS classes were
18 advocating ethnic solidarity --

19 MR. REISS: Objection.

20 BY MS. COOPER:

21 Q. -- in violation of A.R.S. 15-112?

22 MR. REISS: Leading, Your Honor.

23 THE COURT: It is, but I'll permit it. Objection
24 overruled.

25 THE WITNESS: Can you repeat the question, please.

1 BY MS. COOPER:

2 Q. Your role at this point in time was to determine whether
3 the MAS classes were violating A.R.S. 15-112, or to help the
4 superintendent reach that conclusion, correct?

5 A. That's correct.

6 Q. Can you please tell us what conclusions you reached with
7 respect to the MAS classes in compliance with A.R.S. 15-112?

8 A. The materials the Mexican-American Studies Program had
9 submitted to the department were reviewed, and we determined
10 that there was a particular focus and a bias in the material
11 that was submitted. So we did have some very significant
12 concerns because there wasn't additional resources or material
13 to help us see how a balance of information and instruction was
14 provided to students.

15 Q. Let me ask you: Cambium, we noted, found the presence of
16 questionable materials in the classrooms, correct?

17 A. Correct.

18 Q. Would you have recommended that the superintendent find a
19 program in violation based solely on the presence of
20 questionable materials?

21 A. You mean like a single book or --

22 Q. Correct.

23 A. No.

24 Q. Why not?

25 A. Again, what's critically important, especially in the study

1 of history, is that students are provided a well-rounded and
2 balanced approach with multiple lenses looking at particular
3 historical events. So the appearance of one book is not the
4 issue. The question would be, and what else are you providing
5 to students in terms of instruction? So one book wouldn't be a
6 reason to have a finding that they were in violation, no.

7 Q. Do you know whether Mr. Hibbs and Mr. Stollar shared your
8 concern that the TUSD MAS program appeared to be in violation
9 of A.R.S. 15-112?

10 A. Yes.

11 Q. Did Mr. Stollar assist in the review of materials?

12 A. Yes.

13 Q. And Mr. Hibbs shared that conclusion as well?

14 A. Yes.

15 Q. Was your conclusion based on your review of all of the
16 materials that you saw?

17 A. Yes.

18 Q. And did you then -- let me step back a moment.

19 Do you know whether the MAS director spoke with the Cambium
20 auditors about his department?

21 A. He did not.

22 Q. Would it have been useful for you to have heard from the
23 MAS director with respect to his responsibilities over the MAS
24 program?

25 A. Yes, it would have been useful. We certainly would have

1 expected that the director of a district program would have
2 sound knowledge about the complete curriculum that he or she
3 was directing across multiple classrooms. A director would
4 normally have the responsibility of not only helping to develop
5 the curriculum, but having a deep understanding of how it
6 unfolds in the classroom. So speaking to the director would
7 have certainly been a benefit.

8 Q. Are you familiar with the knowledge that you would expect a
9 director of a department to have because you have served in
10 such a role?

11 A. That's correct.

12 Q. Is it possible that the director of the MAS program could
13 have provided you information about it that would have
14 influenced the conclusion that you reached with respect to
15 whether or not the program violated the law?

16 A. It's possible, as long as he could have provided some of
17 the missing pieces that we apparently didn't have in the
18 material that was submitted, yes.

19 THE COURT: Let me ask, Ms. Cooper, how much longer do
20 you have on your direct? Just give me a guess.

21 MS. COOPER: Not that long, but probably --

22 THE COURT: Is it more than 5 or 10 minutes?

23 MS. COOPER: Probably, but not much more than that.

24 THE COURT: In other words, I'm just wondering
25 whether, it's moving on, maybe we should take a recess.

1 MS. COOPER: I think so, and that might make that
2 number get smaller.

3 THE COURT: All right. So you can review your
4 materials and --

5 MS. COOPER: Exactly.

6 THE COURT: -- and Mr. Reiss can crank up. All
7 right. We will stand in recess now, right, for our mid-morning
8 recess.

9 (A recess was taken from 10:38 a.m. to 11:04 a.m.)

10 THE COURT: All right. Be seated, please. We are
11 still on direct, right?

12 MS. COOPER: Yes, we are, Your Honor.

13 BY MS. COOPER:

14 Q. We discussed a moment ago that one questionable text or
15 material does not, in and of itself, necessarily raise
16 concerns, right?

17 A. That's correct.

18 Q. But is it possible for instructional materials on their
19 face to appear biased and inappropriate when measured against
20 A.R.S. 15-112?

21 MR. REISS: Objection. Is it possible?

22 THE COURT: I'll sustain the objection.

23 BY MS. COOPER:

24 Q. Did you see materials, Ms. Hrabluk, that on their face
25 appeared to be biased and inappropriate as measured against

1 A.R.S. 15-112?

2 A. Yes.

3 Q. I'm going to look at a curriculum unit -- this is
4 Defendants' Exhibit 570 -- which has been admitted.

5 Do you see that this is a curriculum unit entitled: The
6 Struggle For Ethnic Studies in Tucson: Protection Under the
7 First and Fourteenth Amendment? And it's for high school
8 students.

9 Do you know if this is one of the curriculum units that you
10 reviewed?

11 A. I don't have a memory of that at this point.

12 Q. Did you review curriculum units like this one?

13 A. Yes.

14 Q. I want to look at some of the information and ask you
15 whether it raises any concerns. We see here --

16 MR. REISS: Objection, Your Honor. She doesn't recall
17 having reviewed this.

18 MS. COOPER: I asked her --

19 THE COURT: The objection is overruled.

20 BY MS. COOPER:

21 Q. This unit is introduced by stating that the political,
22 social, and economic ramification of this state's
23 anti-immigrant and anti-Mexican legislation have caused outrage
24 across the nation.

25 The next paragraph continues: This legislation is an

1 attack on our ancestral connections to this land, this earth,
2 our way of being, our way of living.

3 Does content like this in a curriculum unit raise any
4 concerns for you with respect to compliance with A.R.S. 15-112?

5 MR. REISS: Objection. Calls for speculation.

6 THE COURT: Overruled. You may answer.

7 A. Yes.

8 BY MS. COOPER:

9 Q. Can you please describe the concerns that this content
10 raises for you?

11 A. As an introduction to, I'm assuming, the lessons coming up,
12 it appears to have a particular bias.

13 Q. I ask you to look at the highlighted lesson five and ask
14 you -- which is on the page ending in 686 of Exhibit 570 -- and
15 ask you whether that lesson raises any concerns for you with
16 respect to compliance with A.R.S. 15-112?

17 A. Well, it's, yes, a bit of a red flag, in defense of ethnic
18 studies. What I'd be looking for somewhere else would be a
19 balance, because this is a very specific approach to this
20 lesson.

21 Q. Let me show you highlighted language on Page 700, which is
22 part of the In Defense of Ethnic Studies lesson that we looked
23 at a moment ago, and it indicates at bullet point eight that an
24 activity will be to provide groups with a copy of the five
25 stages of critical praxis to use as a guide to take action to

1 defend ethnic studies, that the students will then select which
2 of the action plans will be implemented by the class community
3 and that students will then implement their action plan.

4 Does this assignment raise any concerns for you with
5 respect to compliance with A.R.S. 15-112?

6 A. Yes.

7 Q. Could you please describe those concerns?

8 A. It has a very singular approach. There is already a
9 determination about what the students will be thinking, what
10 they will be determining. That's already been shaped by the
11 lesson. And so, in fact, their assignment is very narrowly
12 determined, that their assignment is to defend the ethnic
13 studies program.

14 That's a very narrow focus, and it's a very singular focus,
15 you know, as opposed to an approach that has multiple
16 viewpoints that's really encouraging children to analyze and
17 think critically to form their own conclusions. This lesson
18 appears to provide the conclusion for the student.

19 Q. Could you describe for me an assignment in a class related
20 to Arizona's ethnic studies law that would not, in your view,
21 violate A.R.S. 15-112?

22 A. Well, the assignment could still end in an action plan. It
23 could still end in, for instance, setting an argument for or
24 against, but that has to be open-ended as a conclusion. So the
25 lesson needs to be directing students to really form their own

1 learning and to build their own knowledge base based on
2 multiple viewpoints, based on their own research, and based on
3 the components of putting together a sound argument. That
4 would be a more objective approach to a lesson, particularly
5 around a controversial topic.

6 Q. Does the fact that this curriculum unit addresses the topic
7 of Arizona's ethnic studies law in and of itself raise any
8 questions in terms of compliance with A.R.S. 15-112?

9 A. No, not at all. In fact, I think that it is important that
10 high school students are brought into discussions about current
11 events and to issues that are prominent and important, not only
12 in their local communities, but in their surrounding state
13 communities and across the nation. They are going to be our
14 next level of adult citizens, and so certainly in our public
15 high schools, there should be rich discussion and debate.

16 Q. I want to direct your attention to a page entitled: From
17 Manifest Destiny to Manifest Insanity and then direct your
18 attention to the language in the first paragraph:

19 Truth is, he -- referring to Tom Horne -- has a vendetta
20 against Raza studies since Dolores Huerta proclaimed in 2006 at
21 Tucson High that Republicans hate Latinos. Horne, who
22 constantly denigrates her as Cesar Chavez's former girlfriend,
23 and his allies, have spent the past several years trying to
24 prove her right.

25 Does this information in this curriculum unit raise any

1 concerns for you with respect to compliance with A.R.S. 15-112?

2 A. Yes.

3 Q. Could you please describe those concerns?

4 A. Again, it has definitely a singular approach. There is
5 clear bias from the writer in the way information is presented.

6 Q. Is this a unit that appears on its face to be promoting a
7 biased viewpoint?

8 A. It appears to be so, yes.

9 Q. Is this the kind of material that you reviewed that helped
10 you form the conclusion that TUSD's MAS program was in
11 violation of A.R.S. 15-112?

12 A. Yes.

13 Q. I'm going to step back and ask about your knowledge of
14 Tucson Unified School District based on your experience at the
15 Department of Education.

16 Do you know, between the years of 2002 and 2011, what the
17 reputation of TUSD was in terms of academic performance?

18 MR. REISS: Objection. Relevance.

19 THE COURT: Overruled. You may answer.

20 A. In general, it was a district that struggled to have a
21 strong result of student learning. So they -- the results from
22 AIMS, definitely needed improvement.

23 As I worked with TUSD pretty intensely in our Reading First
24 grant, they had very significant issues with young students in
25 kindergarten through third grade that were, in fact, not

1 learning to read, and taking that struggle into higher grade
2 levels only increased their propensity to struggle in school.

3 So it was a district that had some real challenges in
4 ensuring that their students -- that the majority of their
5 students reached some strong success points.

6 BY MS. COOPER:

7 Q. Did you know how it compared to other similarly situated
8 districts? And by "similarly situated districts," I mean
9 urban, similar ethnographic makeup, similar range of students
10 at particular socio-economic status.

11 MR. REISS: Objection. Relevance.

12 THE COURT: The objection is overruled.

13 A. It was not as successful as other, you know, relatively
14 comparable districts in terms of student achievement.

15 BY MS. COOPER:

16 Q. Did you ever have any indication that TUSD was improving
17 over time?

18 A. There were pockets of improvement, certainly, as there are
19 in any large districts, but it remained a challenge for the
20 district as a whole to have -- to really have across the board
21 systematic improvement with their student achievement that was
22 sustainable.

23 Q. Let's go back to the conclusion of the investigation
24 regarding the MAS program. The department -- after the
25 department concluded its review of the materials that it was

1 able to obtain, what happened?

2 A. Superintendent Huppenthal decided, I would say, came to the
3 conclusion, that the Mexican-American Studies program was in
4 violation of A.R.S. 115, so he issued that decision, and, then,
5 from there, plans were made in moving forward.

6 Q. Now, did you participate in discussions that preceded
7 Superintendent Huppenthal's decision to issue the finding of
8 non-compliance in June of 2011?

9 A. Yes, I did.

10 Q. Were Mr. Hibbs and Mr. Stollar part of those discussions as
11 well?

12 A. Yes, they were.

13 Q. Briefly describe the conclusions that the three of you
14 reached with respect to TUSD's compliance with A.R.S. 15-112.

15 A. So just to clarify, that would be Mr. Hibbs, Mr. Stollar,
16 and myself?

17 Q. Yes.

18 A. Well, we reached the conclusion that, based on the material
19 that the district and the Mexican-American Studies program had
20 submitted, that the program was in violation of the
21 legislation.

22 Q. Was that a unanimous conclusion among the three of you?

23 A. Yes, it was.

24 Q. Do you know if that information was conveyed to
25 Mr. Huppenthal?

1 A. Yes, it was.

2 Q. After Mr. Huppenthal issued his decision in June 15th of
3 2011, are you aware of what action TUSD next took?

4 A. Yes.

5 Q. What did TUSD do?

6 A. TUSD moved forward to close the Mexican-American Studies
7 program. They reassigned teachers that had been assigned to
8 the Mexican-American Studies program, and they gathered up the
9 resources, materials, textbooks, that the Mexican-American
10 Studies program had been using.

11 Q. Do you recall whether TUSD appealed Mr. Huppenthal's
12 June 2011 finding?

13 A. At that time, they did not.

14 Q. Do you recall an administrative hearing process with
15 respect to Mr. Huppenthal's June 2011 finding?

16 A. Yes.

17 Q. Did you participate in that process?

18 A. Yes, I did.

19 Q. And do you recall that that process occurred in the late
20 summer and early fall of 2011?

21 A. Yes.

22 Q. Did you give a deposition or testify at the administrative
23 proceeding?

24 A. I did.

25 Q. Do you recall whether the department received more

1 information from TUSD regarding the materials that were
2 being -- had been used in the MAS program?

3 A. We did receive additional materials.

4 Q. Do you have any idea at this point in time of the volume of
5 those materials as compared to what you had been able to review
6 during your investigation in May of 2011?

7 MR. REISS: Objection. Relevance.

8 THE COURT: It's overruled.

9 A. Substantial. The quantity of materials that we received
10 that summer were significant. I mean, I don't have exact
11 numbers, but it was quite a bit.

12 BY MS. COOPER:

13 Q. Did you participate in the review of those materials?

14 A. I did.

15 Q. And did you continue to have concerns that TUSD's MAS
16 program was in violation of A.R.S. 15-112 based on your review
17 of those materials?

18 MR. REISS: Objection. Relevance. Post-dates.

19 THE COURT: Objection. Sustained.

20 BY MS. COOPER:

21 Q. Do you know whether those materials were part of the
22 administrative proceeding?

23 A. Yes, they were.

24 Q. The administrative proceeding occurred and then an
25 administrative decision was issued. Did you participate in the

1 decisions and discussions that occurred -- any decisions and
2 discussions that occurred at the department after the
3 administrative law judge issued his decision?

4 A. Yes, I would have participated in some discussions.

5 Q. Do you recall the administrative law judge's decision?

6 A. Yes.

7 Q. Do you recall it in any detail at this point?

8 A. Not in detail.

9 Q. Do you recall what occurred after the administrative law
10 judge issued his decision?

11 A. Yes. The discussions that occurred at the department were
12 wrapped really around support that the department was willing
13 to provide to TUSD in terms of developing a complete and full
14 curriculum for Mexican-American or the ethnic studies as they
15 moved forward to potentially rebuild the program.

16 Q. Let me ask you, when you began investigating the TUSD MAS
17 program, did you have any view about whether it was in
18 violation of A.R.S. 15-112?

19 A. No.

20 Q. Did you believe that you were able to fulfill the duty of
21 completing an investigation in a fair and impartial way?

22 A. Yes.

23 Q. Did you believe that was true as well for the other members
24 of the team, Mr. Hibbs and Mr. Stollar?

25 A. From my observations of them, yes.

1 Q. Did you participate in the decision that was made after the
2 ALJ's order came out with respect to whether to accept, reject,
3 or modify that decision that Mr. Huppenthal made?

4 Let me start over. Are you aware that Mr. Huppenthal made
5 a decision to accept the ALJ's recommendation?

6 A. Yes.

7 Q. Did you participate in any way in Mr. Huppenthal's decision
8 to accept the ALJ's recommendation?

9 A. At this point I don't have a memory of that.

10 Q. Do you have an opinion as -- can ethnic studies classes
11 benefit students?

12 MR. REISS: Objection. Calls for opinion.

13 THE COURT: Sustained.

14 BY MS. COOPER:

15 Q. Have you had any experience with ethnic studies classes
16 yourself?

17 A. Myself?

18 Q. Yes, as an administrator at a school.

19 A. No.

20 Q. Are you opposed to ethnic studies classes?

21 A. No.

22 Q. Do you have a belief as to whether TUSD could have
23 reformulated its MAS classes to come into compliance with the
24 law?

25 MR. REISS: Objection. Calls for an opinion.

1 THE COURT: The objection is sustained.

2 BY MS. COOPER:

3 Q. Did you view it as necessary that TUSD had to terminate its
4 classes to be in compliance with the law?

5 MR. REISS: Objection. Same objection.

6 THE COURT: Sustained.

7 BY MS. COOPER:

8 Q. Did you or any other members of the department team make
9 your decision based on discriminatory animus towards
10 Mexican-Americans?

11 A. No.

12 Q. Did you or any other members of the department team make
13 your decision based on political, partisan, or racist motives?

14 A. No.

15 Q. Did you see anything that suggested to you that
16 Mr. Huppenthal made his decision based on discriminatory animus
17 towards Mexican-Americans?

18 A. No.

19 Q. Did you see anything to suggest to you that Mr. Huppenthal
20 made his decision about TUSD's MAS program based on political,
21 partisan, or racist motives?

22 A. No.

23 MS. COOPER: No further questions at this point.

24 THE COURT: Okay. Cross.

25 MR. REISS: Thank you, Your Honor.

1 THE COURT: I'm not trying to limit you or tie you
2 down, Mr. Reiss, but can you give us an estimate how long you
3 think you'll be. That was really whether you think you'll
4 finish today.

5 MR. REISS: I think, Your Honor, I should be able to
6 do this in an hour to an hour and a half.

7 THE COURT: Okay. Now, is it -- let me ask, is it
8 going to interfere with anybody who is planning to go out of
9 town today to stay here another hour, hour and a half?
10 Speaking, in other words, of somebody who might have a plane to
11 catch. No? All right. Let's proceed.

12 MR. REISS: Okay. Your Honor, thank you.

13 CROSS-EXAMINATION

14 BY MR. REISS:

15 Q. Ms. Hrabluk, my name is Steve Reiss.

16 MR. REISS: Your Honor, many people mispronounce it.

17 BY MR. REISS:

18 Q. And I am one of the counsel for the plaintiffs in this
19 case. We've never met before, right?

20 A. That's correct.

21 Q. If I ask a question that you don't understand, I'll try to
22 ask you a better question. Okay? Just tell me if you don't
23 understand my question. All right?

24 A. Okay.

25 Q. You were just asked a number of questions about Defendants'

1 Exhibit 570, right? This was the curriculum guide that you
2 said you didn't remember seeing, right?

3 A. Not specifically, no.

4 Q. No. In fact, were you aware that this curriculum guide was
5 discussed at a summer institute program in 2010?

6 A. It's possible.

7 Q. Do you have any knowledge whatsoever that this curriculum
8 plan was ever used in any MAS course?

9 A. I don't know.

10 Q. You don't know?

11 A. Mmm-mmm.

12 Q. So you don't have any knowledge that this was ever used in
13 any Mexican-American Studies course, right?

14 A. That's correct.

15 Q. Now, just a little bit about your background, Ms. Hrabluk.
16 You worked for then Superintendent Horne, right, and that would
17 have been from 2002 to 2010?

18 A. That's correct.

19 Q. Okay. And then you went to work for Superintendent
20 Huppenthal in 2010 until you retired in 2014. Is that right?

21 A. That's correct.

22 Q. Okay. During your entire career in academia, in academics,
23 you never focused on ethnic studies, did you?

24 A. No.

25 Q. In fact, you never taught a class in ethnic studies, did

1 you?

2 A. No.

3 Q. And your professional teaching experience was at the
4 elementary and middle school level, am I right?

5 A. That's correct.

6 Q. So you never taught a high school class, right?

7 A. That's correct.

8 Q. And you never taught an ethnic studies class at any level,
9 elementary, middle, or high school, right?

10 A. That's correct.

11 Q. By the way, had you ever done a curriculum review?

12 A. Yes.

13 Q. Prior to this instance?

14 A. Yes.

15 Q. Now, you were asked a number of questions by Ms. Cooper
16 about Superintendent Horne's motives. Were you aware that
17 while you were working for Superintendent Horne in 2008 -- 2007
18 or 2008, that he issued an open letter to the citizens of
19 Tucson attacking the Mexican-American Studies Program?

20 MS. COOPER: Objection. The document speaks for
21 itself.

22 THE COURT: He wants to know if she knew about it.
23 The objection is overruled.

24 A. I became aware of it as a citizen in Arizona, but I was not
25 made aware of it as an employee of the Department of Education

1 at the time.

2 BY MR. REISS:

3 Q. You became aware that, right?

4 A. Mmm-hmm.

5 Q. And you became aware of it when Superintendent Horne issued
6 the letter, right?

7 A. Yes.

8 Q. And that letter attacked the Mexican-American Studies
9 Program, right?

10 A. Well, he raised concerns about the Mexican-American Studies
11 Program.

12 Q. And he did that before there was any review whatsoever of
13 the Mexican-American Studies Program, right?

14 MS. COOPER: Objection. Foundation.

15 THE COURT: Overruled.

16 BY MR. REISS:

17 Q. Right?

18 A. Correct.

19 Q. Because the review of the Mexican-American Studies Program
20 didn't start until Statute 15-112 was actually in effect,
21 right?

22 A. Correct.

23 Q. And the statute didn't come into effect until January 1st,
24 2011, right?

25 A. That's possible, yes.

1 Q. And if you don't know, please say you're not sure, that's
2 fine. So Superintendent Horne issued his letter raising, at a
3 minimum, concerns about the Mexican-American Studies Program in
4 the Tucson Public Schools some three years before 15-112 was in
5 effect, right?

6 A. Correct.

7 Q. Before that statute was even a gleam in any legislator's
8 eye, right?

9 MS. COOPER: Objection. Counsel is testifying.

10 MR. REISS: It's cross, Your Honor.

11 THE COURT: Well, it's a little bit argumentative.
12 Sustained.

13 MR. REISS: Thank you.

14 BY MR. REISS:

15 Q. Now, in 2010, you were still working for Superintendent
16 Horne, right?

17 A. Correct.

18 Q. And Mr. Huppenthal became the superintendent on January 3rd
19 of 2011, right?

20 A. Correct.

21 Q. You were working in the Department of Education during the
22 election season in 2010, right?

23 A. That's correct.

24 Q. Right. Were you aware that Mr. Huppenthal, then a senator,
25 ran for superintendent of education on the platform of, quote,

1 "Stop La Raza"? Closed quote. Are you aware of that?

2 A. I don't have a memory of that really.

3 Q. If you knew it at the time, would that have affected your
4 views of Superintendent Huppenthal's motivations?

5 A. I am finding -- yeah, it's possible.

6 Q. Let me stick with the period December 2010. Superintendent
7 Horne is still the superintendent. By the way, you're aware,
8 are you not, Ms. Hrabluk, that he becomes the Attorney General
9 of the State of Arizona in January 2011, right?

10 A. Yes.

11 Q. Okay. Were you aware at the time that Superintendent Horne
12 issued a finding on December 30th, 2010, finding that the
13 Tucson Unified School District was in violation of Section
14 15-112, were you aware of that at the time?

15 A. I became aware of it after the fact, yes.

16 Q. After the fact?

17 A. Yes.

18 Q. So Superintendent Horne never spoke with you about that
19 finding before he made it?

20 A. No.

21 Q. Never consulted with you at all?

22 A. No.

23 Q. Do you know whether Superintendent Horne consulted with
24 anyone at the Department of Education before he issued that
25 finding?

1 A. I am not aware.

2 Q. You're not aware. As far as you know, he just issued it by
3 himself, is that right?

4 A. No, that's not correct.

5 MS. COOPER: Objection. Speculation.

6 A. What --

7 THE COURT: Just a minute.

8 MR. REISS: I just asked her awareness, Your Honor.

9 THE COURT: Objection sustained.

10 BY MR. REISS:

11 Q. Are you aware of anyone who Mr. Horne consulted with at the
12 Department of Education prior to issuing that finding on
13 December 30th or 31st of 2010?

14 A. As per my responsibilities at that time at the department,
15 I was not privy to many conversations that the superintendent
16 had with other employees, and so my answer to that is I am not
17 aware of any conversations he had.

18 Q. Okay. Fair enough. Now, you then transitioned -- you
19 stayed at the Department of Education when Mr. Huppenthal
20 assumed his position as superintendent, right?

21 A. Yes, correct.

22 Q. By the way, was there any induction ceremony or swearing in
23 ceremony for Mr. Huppenthal?

24 A. Yes, there most likely was.

25 Q. Were you there?

1 A. Honestly, I don't have a memory of it.

2 Q. Okay. But there would have been a swearing in ceremony,
3 you think?

4 A. I would expect so, yes.

5 Q. And Mr. Huppenthal was sworn in on the afternoon, to the
6 best we know, January 3rd. And at the time Mr. Huppenthal was
7 sworn in, what was your position in the Department of
8 Education?

9 A. I was an associate superintendent.

10 Q. And were you in contact with Mr. Huppenthal from the start?

11 A. From the start of?

12 Q. His ascendancy, or his election, I should say, to the
13 superintendent position.

14 A. Can you clarify "in contact with"? As an associate
15 superintendent, I was never an elected official. I am a career
16 educator. I had responsibilities with a particular division at
17 the Department of Education, and that position as associate
18 superintendent did entail being part of the executive team. So
19 if there were meetings that the superintendent called for the
20 executive team, I would have been part of those meetings, as
21 per my responsibilities for the division that I oversaw. But I
22 didn't have ongoing -- I was not part of the superintendent's
23 inner circle, nor was I part of his inner office, and in fact I
24 worked in a completely different building in the city.

25 So that's why I am asking for some clarification, or I want

1 to qualify that the conversations that I would be participating
2 in at the department would be, namely, in meetings that were
3 called by the superintendent and most often executive team
4 meetings.

5 Q. As one of his first acts in office, Superintendent
6 Huppenthal issued a declaration accepting former Superintendent
7 Horne's finding that the Tucson Unified School District was in
8 violation of 15-112. Do you recall that?

9 A. Yes.

10 Q. And were you part of that decision made by Superintendent
11 Huppenthal?

12 A. No.

13 Q. No. So you had nothing to do with it.

14 A. No.

15 Q. Do you know if Superintendent Huppenthal consulted with
16 anyone at the Tucson Unified -- I'm sorry, strike that.

17 Do you know if Superintendent Huppenthal consulted with
18 anyone at the Arizona Department of Education before he issued
19 that statement accepting former Superintendent Horne's finding?

20 A. Again, per my responsibilities, I was not aware of all of
21 the conversations that the superintendent had and who he spoke
22 to. So, in answer to your question, I am not aware of
23 conversations that he had or didn't have.

24 Q. Okay. And then there was -- did there come a time when
25 Superintendent Huppenthal asked you to get involved in

1 reviewing this issue of whether or not TUSD was in violation of
2 15-112, right?

3 A. Correct.

4 Q. And do you recall when that was?

5 A. I don't exactly, no.

6 Q. At the time Superintendent Huppenthal issued his acceptance
7 of former Superintendent Horne's finding, you were a senior
8 person at the Department of Education, right?

9 A. Correct.

10 Q. Did you find it odd that as one of his very first acts in
11 office, Senator Huppenthal would issue a finding that the TUSD
12 was in violation of 15-112?

13 MS. COOPER: Objection. Relevance. Misstates the
14 document.

15 THE COURT: Well, I don't know about misstatement, but
16 I don't think it's event as to whether she found it odd or not.
17 So I sustain the objection.

18 BY MR. REISS:

19 Q. Were you aware of any questioning within the Department of
20 Education after Superintendent Huppenthal made that
21 announcement about the basis for his announcement?

22 A. Not that I recall.

23 Q. So you're not aware of anyone saying: "How could he do
24 that?"

25 A. At this time I don't recall those conversations, no.

1 Q. Now, Superintendent Huppenthal treated Mr. Horne's finding
2 as a valid finding that TUSD was in violation of 15-112, right?

3 MS. COOPER: Objection. Misstates the document.
4 Calls for a legal conclusion. Misstates the evidence.

5 THE COURT: It's overruled. You can answer.

6 THE WITNESS: Can you repeat the question.

7 MR. REISS: The court reporter can read it back.

8 (Reporter read the previous question.)

9 A. Yes.

10 BY MR. REISS:

11 Q. And, to your knowledge, Ms. Hrabluk, Superintendent
12 Huppenthal never voided or otherwise invalidated Horne's
13 finding, right?

14 A. Right.

15 Q. Now, you testified that there came a time when the Arizona
16 Department of Education decided to hire an independent auditor
17 to audit the MAS program, right?

18 A. Correct.

19 Q. And that was done because there was a need for an impartial
20 review, right?

21 A. Correct.

22 Q. And was it Superintendent Huppenthal's decision to hire the
23 auditor?

24 A. Yes, it was his final decision.

25 Q. And, ultimately, as you've testified, the Department of

1 Education hired the Cambium group, right?

2 MS. COOPER: May I ask the witness to speak up a
3 little bit, please.

4 THE WITNESS: Yes. Sorry.

5 MR. REISS: Are you comfortable? Just speak into the
6 mic.

7 BY MR. REISS:

8 Q. Right? Question pending. Superintendent Huppenthal hired
9 the Cambium group as the independent, impartial auditor, right?

10 A. Correct.

11 Q. And the primary purpose of this audit was to determine
12 whether TUSD was in violation of 15-112, right?

13 A. Correct.

14 Q. I think you noted that the audit, Cambium was operating on
15 a fairly tight time frame, right?

16 A. Yes.

17 Q. And that time frame was just one imposed by the Department
18 of Education, right?

19 A. Yes. The superintendent was wanting to be able to reach a
20 conclusion before the end of the school year, and part of the
21 reason for that was his additional decision as to whether to
22 withhold funds. And that's going to impact how the district
23 would move forward the next school year, so he was quite
24 cognizant of a timeline that would give him some information
25 before the end of the school year.

1 Q. Right, and because he had issued, he had accepted
2 Superintendent Horne's finding and had given the Tucson School
3 District 60 days to come into compliance, right?

4 A. Correct.

5 Q. Now, there was a request for a proposal issued, right? You
6 testified about that on your direct, right?

7 A. Yes.

8 Q. And you were familiar with that, right?

9 A. Yes.

10 Q. And there was a scope of work included in that proposal,
11 right?

12 A. Correct.

13 Q. And you were familiar with that, right?

14 A. Correct.

15 Q. And this request, the request, RFQ, that was also reviewed
16 by the Attorney General's Office, right?

17 A. I believe so, yes.

18 Q. And Tom Horne was the Attorney General at the time, right?

19 A. Yes.

20 Q. And the scope of work addressed things that needed to be
21 done to perform the audit properly, right?

22 A. Correct.

23 Q. And let's show Plaintiffs' Exhibit 62.

24 You were asked about this on your direct, but this is the
25 scope of work, right?

1 A. Yes.

2 Q. And the purpose, to conduct a curriculum audit of TUSD's
3 Mexican-American Studies Department, to establish the degree of
4 alignment between MASD's curriculum and the relevant Arizona
5 state standards established by the state board of education.
6 That's one.

7 To determine, one, how, or if, TUSD's MASD programs are
8 designed to improve student achievement, and, two, if
9 statistically valid measures indicate student achievement
10 occurred. And, three, to determine whether MASD's curriculum
11 is in compliance with A.R.S. 15-112(A). Right?

12 A. Correct.

13 Q. The establishment of the degree of alignment between MASD's
14 curriculum and the relevant Arizona state standards is a
15 separate purpose, is it not, than determining whether MASD's
16 curriculum is in compliance with A.R.S. 15-112? There are two
17 distinct purposes, right?

18 A. They are connected.

19 Q. But they are distinct, right?

20 A. I would disagree with you.

21 Q. Do shortcomings in a curriculum violate 15-112?

22 A. No.

23 Q. Thank you. Now, in conducting this audit, the auditors
24 were required to do a number of things, right?

25 A. Correct.

1 Q. They were required, among other things, to conduct a series
2 of classroom visits, right?

3 A. Correct.

4 Q. And you've received from Cambium an outline of the work
5 they were going to perform, right?

6 A. Correct.

7 Q. And you were asked about that, right, on direct?

8 A. Yes.

9 Q. And that was Plaintiffs' Exhibit 68. We can just show that
10 to you, Ms. Hrabluk.

11 Focusing you, Ms. Hrabluk, on the very first page, this is
12 an e-mail from you to Jeffrey Hernandez, and that very first
13 line: Thank you for forwarding the work plan outline. It
14 appears to cover our scope of work, although I do have a few
15 questions or comments.

16 And then you had some, right? So you were reviewing the
17 scope of work of the Cambium audit from the very beginning,
18 right?

19 A. Correct.

20 Q. During the time Cambium was conducting its audit, did you
21 ever tell them that the work was not sufficient, ever?

22 A. I had conversations on a regular basis with Luanne Nelson,
23 who was directing the work at the district level, and I was --
24 I did continue to ask: Are you making sure that you are
25 reviewing all of the materials? Are you making sure that the

1 classroom observations are unannounced? Are you making sure
2 that your focus groups are full?

3 So, in that sense, did I come right out halfway through the
4 audit to tell them that they were not doing a great job, I
5 don't recall that, but, on the other hand, I had consistent
6 conversations with them, reiterating the expectations that they
7 were going to fulfill the contract completely.

8 Q. Plaintiffs' Exhibit 67. Let's go to the fourth page of
9 this.

10 By the way -- I'm sorry. Let's look at the first page.
11 This is from -- this is an e-mail chain from you to Elliott
12 Hibbs and John Stollar, dated March 24th, 2011, forwarding a
13 press release, right?

14 A. You know, I am not sure if that's -- I can see that the
15 subject line says "Press Release Shell." Other than that, I
16 don't have a memory.

17 Q. Let's turn to the last page of that exhibit, Page 4. Now,
18 you testified there were some changes in personnel with respect
19 to Cambium, but ultimately those personnel changes were
20 resolved and Cambium was going ahead with the audit, right?

21 A. Correct.

22 Q. And on March 24th there was an announcement by the
23 Department of Education, and it says -- and let's start with
24 that, the last sentence in the first paragraph. It says: The
25 Arizona Department of Education, ADE, will now oversee the

1 audit team and contract directly with its members to complete
2 the project. And it goes on: The department is pleased with
3 the audit team in place and the work accomplished to date, said
4 Andrew LeFevre, ADE's director of public relations. ADE has
5 full confidence in the current audit team and their ability to
6 remain impartial and unbiased as they continue their review of
7 TUSD's Mexican-American Studies program. Right?

8 A. Yes.

9 Q. And that was accurate at the time?

10 A. That's what it reads, yes.

11 Q. It was accurate, right?

12 A. It was accurate on March 24th, yes.

13 Q. Now, you mentioned that you were in rather constant contact
14 with the lead auditor for Cambium, right?

15 MS. COOPER: Objection. Misstates prior testimony.

16 MR. REISS: I'm not --

17 THE COURT: Objection sustained. You can answer yes
18 or no.

19 BY MR. REISS:

20 Q. You were in constant contact with the Cambium auditors,
21 right?

22 A. Regular.

23 Q. Regular?

24 A. Contact.

25 Q. Regular contact with the Cambium auditors. And that was

1 weekly? More than weekly? How regular was your contact?

2 A. Weekly.

3 Q. Weekly. Okay. And that contact was with Luanne Nelson?

4 A. That's correct.

5 Q. Okay. And you had a very good sense of what the auditors
6 were doing because of that regular weekly contact, right?

7 A. Yes.

8 Q. And you would suggest to Ms. Nelson things that she should
9 be doing in an encouraging way, I assume.

10 A. Correct.

11 Q. During that entire time, before the issuance of the Cambium
12 report -- by the way, do you know when the Cambium report was
13 issued?

14 A. I don't recall the exact date.

15 Q. That's okay. It was a long time ago. Would it refresh
16 your memory if I told you that there was a draft report
17 circulated on May 2nd, 2011?

18 A. That sounds reasonable.

19 Q. And a final report less than two weeks after that on
20 May 15th? Does that strike a bell?

21 A. That sounds reasonable.

22 Q. During the entire time before the draft report was issued
23 on May 2nd, 2011, did you ever notify anyone at the Department
24 of Education in writing that the auditors were in any way
25 deficient in their performance?

1 A. I don't recall putting it in writing. I do know that I had
2 conversations with John Stollar.

3 Q. Nothing? Not an e-mail in writing to John Stollar?

4 A. I don't recall if I did or didn't put it in an e-mail, but
5 I do know I had conversations with him.

6 Q. So whatever supposed deficiencies there were in the way
7 this audit was being conducted, they weren't important enough
8 to be put into writing, right?

9 A. I'm not sure that at the time the word "deficiency" is the
10 right word. I had some concerns about their ability,
11 Cambium/NAEP's auditors' ability to actually complete the full
12 scope of work.

13 Luanne Nelson continued to assure me that it was going to
14 get done, but I had a growing concern. I don't know that I --
15 I was at the point where I would call it a deficiency yet,
16 because the audit was unfolding still at the time. She was
17 assuring me it was going to get done while also telling me that
18 they were really pressed for time.

19 Q. So Cambium -- when did Cambium begin its audit? Do you
20 remember? It was March?

21 A. They were scheduled to begin, as I recall, around the
22 middle of March. But then with the personnel changes, they
23 really didn't get going until, I think it was early April;
24 hence, that was the reason for the press release that you just
25 brought forward a few minutes ago. There was some adjustments

1 with the personnel that really did impact the timeline.

2 Q. And during that -- so there was at least six or seven weeks
3 during the time -- from the time they began to the time they
4 issued their report, right?

5 A. Correct.

6 Q. During that six- or seven-week period, did you ever have a
7 meeting with the Cambium auditors to tell them of your
8 concerns?

9 A. Well, we talked weekly on the phone, and I did meet with
10 Luanne in Tucson. I honestly don't remember what the date was,
11 but I believe Elliott Hibbs and I met with Luanne Nelson in
12 Tucson.

13 They were not local, so they were flying in and out of the
14 Tucson Airport directly, and they were -- I don't remember --
15 Luanne, her home state is Florida. So they were coming from
16 different points.

17 Q. Did you ever send Ms. Nelson an e-mail during the time they
18 were conducting their audit outlining your concerns with the
19 audit?

20 A. I don't recall sending an e-mail outlining my concerns
21 because, again, they were not -- part of the structure of the
22 audit did not require NAEP/Cambium auditors to submit to the
23 Department written examples or written early findings. So we
24 were really touching base by our phone conversations in
25 checking with expected work and was that accomplished.

1 So the work was still unfolding. I was expecting, because
2 of assurances they provided, that that work was going to get
3 done. We didn't get it done this week, Kathy, but we're going
4 to be doing it over the weekend. We're taking the materials
5 back with us, and we're going to be reviewing from our home
6 base before we come back.

7 So there was always an assurance that that work was going
8 to get done. Cambium is a national consulting company with a
9 very strong reputation, and so it would be reasonable to expect
10 that they would find their way through to conclude with a
11 complete review.

12 Q. Right. And there is not a single written document anywhere
13 between the time Cambium begins its audit until the time they
14 give their final report, they issue their draft report, that
15 indicates any deficiencies with their audit, right?

16 MS. COOPER: Objection. Counsel is testifying.

17 THE COURT: Overruled. You may answer.

18 A. Honestly, I just don't have any memory of that.

19 BY MR. REISS:

20 Q. So part of the audit was the classroom visits, the
21 unannounced classroom visits, right?

22 A. Yes.

23 Q. And the Tucson School District officials were informed
24 there would be unannounced classroom visits. They knew the
25 week, right?

1 A. That would have been a discussion, yes, between the NAEP
2 auditors and the district office, yes.

3 Q. And they had to know the week, right, because they had --

4 A. Yes.

5 Q. Yeah. As far as you know, Ms. Hrabluk, no MAS teacher was
6 ever given advanced notice that an auditor would be in their
7 class, were they?

8 A. As far as I know, that's correct.

9 Q. So let's take a look at Plaintiffs' Exhibit 71. Let's take
10 a look at the next page, ending in Bates 343. If you look
11 down, there's an e-mail from Jeffrey Hernandez to you, April
12 5th, 2011.

13 Kathy: I hope you're doing well. I have been trying to
14 keep you updated with the process that is happening as the
15 audit moves forward. I hope you have been finding the e-mails
16 helpful. Below you will find the questions that will be used
17 during the stakeholder interviews that will take place this
18 week and next. Please review and let me know your thoughts.
19 Also, did you have a chance to look at the questions I sent you
20 over the weekend? And we have some of them there that are time
21 sensitive. Thanks.

22 Okay. You received that e-mail, right?

23 A. Yes.

24 Q. And then flip back to the previous page, towards the
25 bottom, and there's an e-mail from you to Mr. Hernandez, and it

1 says: The questions you've sent are fine.

2 And then it continues on after a couple of paragraphs: Has
3 the district directed you to include Richard Martinez in any
4 scheduling notifications for interviews? He is the lawyer for
5 the 11 teachers who have filed a lawsuit against the state
6 Board of Education. Do you see that?

7 A. Yes.

8 Q. So you testified earlier, Ms. Hrabluk, that you did not
9 talk to the director of the MAS program, right?

10 A. That's correct.

11 Q. Do you know why you could not talk with him?

12 A. Well, it became clear to me or evident to me, I was
13 informed that he wasn't going to speak to us because of the
14 lawsuit that he was engaged in.

15 Q. Right. Okay. Now, the e-mail from Mr. Hernandez is sort
16 of typical of the e-mails that were going on between you and
17 the auditors at this time, checking in, asking you questions,
18 right?

19 A. Mmm-hmm.

20 Q. Because they knew you were monitoring the audit, right?
21 And they were touching base with you rather consistently,
22 right?

23 A. Correct.

24 Q. Just let's look at another one. I am not going to through
25 too many of these. But let's look at Plaintiffs' Exhibit 74.

1 This starts another e-mail from Jeffrey Hernandez to you, and
2 it's forwarding another e-mail chain. And if you look down,
3 this is from Luanne Nelson, and she's giving you information
4 about on-site focus group interviews, right?

5 A. Correct.

6 Q. Because focus group interviews were one part of the audit
7 plan, right?

8 A. That's correct.

9 Q. She wanted to keep you informed about what they were doing
10 to comply with the audit plan, right?

11 A. Correct.

12 Q. Now, were you familiar with a woman named Laura Leighton?

13 MS. COOPER: Objection. Beyond the scope of direct.

14 THE COURT: I can't tell you because obviously this is
15 preliminary, so it's overruled at this point. So you can
16 answer.

17 A. I was aware of her at the time, yes.

18 BY MR. REISS:

19 Q. And were you aware that, to put it mildly, Laura Leighton
20 had a point of view about the Mexican-American Studies Program?

21 A. Yes.

22 Q. What was that point of view?

23 A. It was a very critical point of view against the
24 Mexican-American Studies Program.

25 Q. Fair to say her point of view was racist gibberish?

1 A. Well, it was inflammatory.

2 Q. But you, nevertheless, received information from Laura
3 Leighton that you forwarded to Cambium, right?

4 A. Yes. That was on the request of Elliott Hibbs.

5 Q. Right. And you did that on more than one occasion, right,
6 Ms. Hrabluk?

7 A. Yes.

8 Q. In fact, Ms. Hrabluk, you specifically sought out
9 information from Laura Leighton to convey to the auditors,
10 right?

11 A. I did not specifically seek out information. As I
12 recall -- I did not specifically reach out to Laura Leighton to
13 look for information from her, no.

14 Q. Well, let's look at Plaintiffs' Exhibit 72. Let's start at
15 the bottom of that second page. The very last e-mail, I know
16 it's a little hard to -- we'll try to blow it up for you,
17 Ms. Hrabluk. This is from Laura, Laura Leighton, to Elliott
18 Hibbs: Dear Elliott, important, from Laura, give these
19 attachments to your ind. auditor (especially the middle
20 attachment).

21 And then it continues on the next page: Yesterday I got
22 this info from Raza studies after an information demand. Check
23 out the middle attachment and see the books they are using,
24 such as "Occupied America," "Mexican-American Heritage."
25 Right?

1 A. Mmm-hmm.

2 Q. And then if you flip back to the preceding page, middle
3 e-mail, from you to Luanne, you say: Hi, Luanne. A
4 constituent, Laura Leighton, contacted ADE and forwarded this
5 information regarding the MASD studies. I believe she
6 participated in a 2007 review as a paralegal. Would you please
7 review the material she has forwarded and also include her in
8 the interview process?

9 Right? You wrote that to the Cambium auditors, right?

10 A. Yes, that was on a request -- by request.

11 Q. Request from Mr. Hibbs?

12 A. Yes.

13 Q. Now, let's look at Plaintiffs' Exhibit 73. We'll start
14 down at the bottom. Again, that's an e-mail from Laura: You
15 may wish to check out this class also. "Occupied America" is
16 one of the worst books. Right?

17 And then if you go up the chain, that next e-mail is from
18 Mr. Hibbs to you: FYI, Kathy, please forward this and the
19 following e-mails to the investigating team. Right?

20 A. Mmm-hmm.

21 Q. And then moving up to the next e-mail, in fact, as
22 Mr. Hibbs requested, you then forward this to the auditors,
23 right?

24 A. Correct.

25 Q. Right. Hi, Luanne. The individual I e-mailed you about

1 yesterday, Laura Leighton, has sent some additional materials
2 (sic) to ADE that I would appreciate your team taking under
3 consideration. I'll be forwarding you several additional
4 documents. You may already have some of this information, but
5 if not, please include it in your review process. Right? You
6 wrote that?

7 A. That's correct.

8 Q. In fact, let's look at Plaintiffs' Exhibit 78. You wanted
9 to make sure that the auditors were considering Laura
10 Leighton's information, right?

11 A. One of a number of people in the community, yes.

12 Q. Okay. And so you write, Friday April 29th, it's an e-mail
13 from you: Hi, Luanne. I appreciate you taking the time to
14 speak with Laura Leighton this week.

15 And then we continue on: The string of e-mails I sent you
16 April 6 and 7 include numerous attachments, numerous
17 attachments, all originating from Laura with her contact
18 information and a request to please include her in your
19 community interviews. I also forward you information on April
20 22nd that further supported the information she sent. There
21 were several reference and citations from specific books that
22 are believed to be on the reading list of the MASD studies
23 program. When we spoke last Friday, I did request that you
24 review the material on the adopted reading list to determine if
25 the text runs counter to the legislation. Right?

1 Then at the bottom you say: It is important that the
2 reading material is reviewed. Right?

3 A. Correct.

4 Q. So you're sending the auditors all these things being sent
5 by Laura Leighton, who, to put it charitably, has a fairly
6 extreme point of view, right?

7 A. She has an extreme point of view, yes.

8 Q. By the way, it wasn't just e-mails from Laura Leighton that
9 you were sending to the audit team. Let's just look briefly at
10 83. This is an e-mail from Ryan Ducharme, or Ducharme -- I'm
11 not sure how to pronounce his name -- to Elliott Hibbs, John
12 Stollar and you, right? Do you know who Mr. Ducharme is?

13 A. He was, in the early days, with Superintendent Huppenthal's
14 immediate executive support team.

15 Q. He was not an MASD supporter -- I'm sorry. He was not an
16 MAS supporter either, was he?

17 A. You know, honestly, I am not going to judge. I don't know.

18 Q. That's fine. I just want your honest answers. So if you
19 don't know, you don't know. But this blog was forwarded to the
20 audit team, right?

21 A. That's what it appears to be, yes.

22 Q. Now, on May 2nd, Cambium sent its draft audit report to the
23 Department of Education, right?

24 A. Correct.

25 Q. And despite all this information that was being sent to the

1 Cambium auditors, including all this negative information from,
2 among others, Laura Leighton, the Cambium auditors concluded
3 that the MAS program did not violate 15-112, right? That was
4 in their draft audit report, right?

5 A. Correct.

6 Q. By the way, that draft audit report was a long, lengthy
7 report, right?

8 A. Probably. I don't actually recall the length of it.

9 Q. Fair enough. Over a hundred pages, do you remember?

10 A. I honestly don't.

11 Q. Now, after you received the draft report, you continued to
12 send Ms. Nelson information about the Tucson Unified School
13 District Mexican-American Studies Program, right?

14 A. I don't have a memory of that at this point, so I don't
15 know.

16 Q. Well, let's look at Plaintiffs' Exhibit 84. If we start at
17 the last page, which is the beginning of the e-mail chain, it's
18 an e-mail from Andrew LeFevre from Mr. Hibbs and Ryan Ducharme.
19 It says: Elliott, the below link is to a video I think is very
20 important for TUSD audit team to see in order to put the
21 historical context of the program in perspective. Do you see
22 that?

23 A. Yes, I see it.

24 Q. Okay. And then moving up the chain -- by the way, do you
25 recall what this video link was?

1 A. No, I don't.

2 Q. You don't recall that it was very negative on the MAS
3 program?

4 A. Sorry, I honestly don't recall.

5 Q. Next e-mail up the chain from Elliott Hibbs to you: Kathy,
6 please forward the link at the bottom to Luanne and company to
7 get a better understanding of how they missed the boat. And
8 please let me know when you would be available today to talk
9 about the report and what we should request from Cambium to
10 make appropriate changes. I am available until 11:15 this
11 morning, from 3:00 to 4:00, and then after 4:30.

12 This is on May 9th, 2011, right, Ms. Hrabluk?

13 A. That's correct.

14 Q. And the draft report is received on May 2nd. Cambium's
15 final report is received on May 15th, and -- and let's look up
16 the chain. Let's look at the next one. In fact, it's from you
17 to Luanne: Please take a look at the video link below. We do
18 have some serious concerns about the draft report, and Elliott,
19 John Stollar, and I will be meeting later this afternoon. I
20 know how much time and effort has been invested in the work to
21 date, but there are some inconsistencies that we will need to
22 discuss. Hopefully we can talk tomorrow. If you have some
23 time this afternoon, please give me a call.

24 That's May 9th. You wrote that, and you sent her the video
25 link, right?

1 A. Correct.

2 Q. And then final e-mail in the chain. It's from Luanne to
3 you, copies to Mr. Hernandez: Hello, Kathy. Thank you for
4 sharing the video link. There have been many over the past
5 couple of weeks. Right?

6 And then it goes on to say in the second paragraph:

7 We would be more than happy to discuss matters with you, as
8 we have been suggesting the same since last week, which is why
9 we submitted the draft so that we may have such important
10 discussions. Right?

11 A. Correct.

12 Q. Now, I believe you testified that, after receiving the
13 final Cambium report on May 15th, you determined that you
14 needed to do some additional investigation, right?

15 A. Correct.

16 Q. And, by the way, from the time you received the draft
17 report on May 2nd until the final report was issued on May
18 15th, you continued to have concerns, as Mr. Hibbs put it, that
19 Cambium was missing the boat?

20 A. So, just to qualify, was I personally continuing or was the
21 department continuing? I am not sure who you are asking was
22 who was continuing to have concerns.

23 Q. What did you understand the comment that Cambium was
24 missing the boat to mean?

25 A. I understood that Elliott Hibbs had some concerns.

1 Q. He didn't like the result, right?

2 A. He had some concerns.

3 MS. COOPER: Objection. Argumentative.

4 BY MR. REISS:

5 Q. So you begin your independent investigation after the final
6 report is issued and received May 15th. You've testified to
7 that, right?

8 A. Correct.

9 Q. So now let's take a little review of the process. So the
10 Arizona Department of Education issues a request for the scope
11 of work on February 4th, 2011, soliciting auditors, right?

12 A. Sorry. Could you repeat the question, please?

13 Q. Yeah, I'm just going to go through some dates with you. So
14 I said on February 4th, 2011, the ADE issues a request for
15 auditors, RFQ, issues its RFQ? Right?

16 A. RFPs, yes.

17 Q. Then on or about March 11th, 2011, the Arizona Department
18 of Education hires Cambium to do the audit, right?

19 A. Correct.

20 Q. And then you receive Cambium's audit plan and review it and
21 you're fine with the audit plan, right?

22 A. Yes.

23 Q. You never criticize it or tell them it's insufficient, you
24 say it's fine, right?

25 A. Right, because their plan met the scope of work.

1 Q. Right. And then during the process of the Cambium audit,
2 you're in regular communication with the Cambium auditors back
3 and forth. You saw a number of those e-mails. So you're
4 monitoring closely what the Cambium audit is doing, right?

5 A. Yes.

6 Q. And at no point during this process is the Arizona
7 Department of Education conducting its own audit, is it?

8 A. No.

9 Q. And then on May 2nd, 2011, Cambium issues its draft report.
10 I think they sent it to you in an e-mail around 7:35 p.m. on
11 May 2nd. Right?

12 A. It's possible.

13 Q. And then in between the time the Arizona Department of
14 Education gets the Cambium draft report on May 2nd and the time
15 that the Arizona Department of Education gets the final report
16 on May 15th, you have meeting with Mr. Hibbs and Mr. Stollar,
17 right, to discuss the draft report?

18 A. Correct.

19 Q. Let's look at Plaintiffs' Exhibit 86. And the second
20 e-mail down. This is from John Stollar to you, Elliott Hibbs,
21 Ryan Ducharme, Andrew LeFevre: Colleagues, please review the
22 attached, add any input, specific citations in the report that
23 support your point or mine and send them to me ASAP. Thank
24 you. John. Right?

25 A. That's what it reads, yes.

1 Q. And this is May 12th. Before the Department of Education
2 had even started to conduct any independent or additional
3 review, right? Right?

4 A. I believe that this -- these e-mails are in regards to
5 reviewing the Cambium report, which would have been what would
6 be expected because we purchased the work and the report. So
7 they sent us the draft, and it's logical that we would be
8 reviewing it.

9 So I'm not certain, just looking at this one particular
10 e-mail, if that's attached to our reviewing the Cambium report.

11 Q. Well, all I'm saying is you had not started your own
12 independent review because you hadn't gotten the final Cambium
13 report, right?

14 A. Correct.

15 Q. Good. Let's look at the conclusion. Page 4 of this
16 e-mail.

17 MS. COOPER: Objection. There's a much better copy of
18 this document --

19 MR. REISS: I'll use this copy. Thank you.

20 BY MR. REISS:

21 Q. Conclusion. This is on May 12th. Conclusion: The
22 existing TUSD's MASD program of study must be terminated,
23 suspended immediately and will not be permitted to operate
24 until the Tucson Unified School District's governing board
25 complies with the required and necessary action of establishing

1 a process outline provided earlier for appropriate curriculum
2 development that includes full alignment to state standards and
3 along with full and complete transparency with the process and
4 the instructional model.

5 MS. COOPER: Objection. This document in this form,
6 which does not include the color in which the original obscures
7 important information that the witness should have in order to
8 be able to answer counsel's question.

9 THE COURT: I think you're trying to coach the
10 witness.

11 MR. REISS: I think she is, Your Honor.

12 THE COURT: The objection is overruled. You can
13 inquire into that on redirect.

14 MR. REISS: Thank you, Your Honor.

15 BY MR. REISS:

16 Q. So on May 12th, 2011, before receiving the final Cambium
17 report, and before even starting to conduct your own
18 investigation, you and Mr. Hibbs and Mr. Stollar had already
19 concluded that the MAS program was in violation of 15-112,
20 right?

21 MS. COOPER: Objection. Argumentative.

22 THE COURT: Overruled. You may answer.

23 A. Based on the information that we read in the draft report
24 from Cambium, that -- and that -- that -- we had reviewed the
25 draft report in detail, and so this internal document -- and

1 there were other pieces to it -- is based on what we had seen
2 in the draft report that had raised some very serious concerns.
3 So....

4 BY MR. REISS:

5 Q. Your concerns were with inadequacies in the curriculum,
6 right?

7 A. Concerns in also what the NAEP auditors had put into the
8 report, a lack of -- a lack of any kind of systematic plan.
9 There were no curriculum outlines to review there.

10 So in reviewing their report, our concerns were heightened.
11 They weren't alleviated, they were heightened. That was --

12 Q. Are you finished? I'm sorry. I don't want to cut you off.

13 A. I'm done.

14 Q. At the time you reach this conclusion, no one in the
15 Arizona Department of Education had visited a single
16 Mexican-American Studies class, right?

17 A. That would be correct.

18 Q. And the e-mail was requesting support for this conclusion,
19 right?

20 A. I don't recall. I think that's potentially what John
21 Stollar was requesting.

22 Q. Again, let's go back to the first page, from John Stollar
23 to you, Elliott Hibbs, Ryan Ducharme, Andrew LeFevre.

24 Colleagues: Please review the attached. Add any input,
25 specific citations in the report that support your point or

1 mine and send to me ASAP.

2 Your point was to find the MAS program in violation of
3 15-112, right?

4 A. Our point was to address our serious concerns.

5 Q. At this point in time, Ms. Hrabluk, you had received the
6 draft Cambium report, right? You received that on May 2nd?

7 A. That sounds reasonable.

8 Q. And that report had reached exactly the opposite
9 conclusion, that the MAS program did not violate 15-112, right?

10 A. That was their summary, yes.

11 Q. Now, let's stay with that exhibit for a minute.

12 THE COURT: Mr. Reiss, let me ask you --

13 MR. REISS: Yes, Your Honor.

14 THE COURT: Give me an estimate. How much more of
15 your --

16 MR. REISS: Maybe, I think a half an hour.

17 THE COURT: Half an hour. You have redirect, right, I
18 assume.

19 MS. COOPER: We do. I am concerned for the witness
20 who's been on the stand since 9:00 o'clock this morning, Your
21 Honor.

22 THE COURT: All right. I think we're going to have to
23 shut this down in the next five or ten minutes at the latest,
24 because I don't think we're going to get through the rest of
25 the direct or the cross and the direct, and who knows about

1 redirect.

2 So we're going to have to ask the witness to come back at
3 our next session. So you want to recess now or do you want
4 five or ten more minutes?

5 MR. REISS: I think this may be a convenient stopping
6 point, Your Honor.

7 THE COURT: As good as any.

8 MR. REISS: As good as anything, Your Honor.

9 THE COURT: All right. Then I'm going to -- the
10 witness can step down now, but I'm going to ask you to return,
11 right. Now it's going to be at -- what date are we convening,
12 July 17th?

13 MR. REISS: July 17th, Your Honor.

14 THE COURT: July 17th at 9:00. If that's not a date
15 you can make it, you can confer with Ms. Cooper, I'm sure. The
16 lawyers will arrange some other date for you to come back if
17 that becomes necessary.

18 MR. REISS: Your Honor, because the witness is
19 currently on the stand and testifying on cross-examination, I
20 would ask that the witness be directed not to confer with her
21 counsel during the pendency of this exam now.

22 THE COURT: No, I'm not going to give such an
23 instruction. I am trying to remember if I've ever given it in
24 a civil case or not. I guess I haven't under these
25 circumstances.

1 It's not any different, you know, than going from direct to
2 cross and back to redirect, and so, you know, they will confer
3 during that period. So I'm not going to so instruct the
4 witness. But maybe she doesn't want to talk to her anyway.
5 All right. You are excused now.

6 THE WITNESS: Thank you.

7 THE COURT: Let me ask counsel, then, we're going
8 to -- did I get it correct, July 17, right?

9 MR. REISS: Yes, Your Honor.

10 MS. COOPER: That's the correct date, Your Honor. And
11 I may obviously have misunderstood, but there is no need, in
12 view of the persons on our team and Ms. Hrabluk, as I
13 understand it, to stop today at this time, and I am concerned
14 for Ms. Hrabluk's schedule the week of July 17th. It's not an
15 impossibility, I don't mean to suggest that, but -- and I
16 understand that counsel on this side may want to leave our fair
17 state, or you, Your Honor, but if it's possible to complete
18 Ms. Hrabluk's testimony today, it would be the preference of
19 the state to do so.

20 THE COURT: I just think -- I think I told everybody
21 we're going to quit today more or less around noon, and it's
22 closer to 1:00 now.

23 MS. COOPER: I misunderstood, Your Honor.

24 THE COURT: I think I should try to stick with that.
25 I have no idea what plans anybody has made in reliance on that.

1 So we're going to recess now. I understand it's inconvenient
2 for the witness to come back, but --

3 MS. COOPER: That's fine.

4 THE COURT: On the other hand, you can give her a
5 ride. So we expect her back at 9:00 o'clock on the 17th,
6 unless, in the meantime, you know, counsel confer and you have
7 some other schedule you'd rather go with, because this witness
8 is out of order, or you have some expert type of scheduling,
9 all that kind of stuff. So I am going to leave it to counsel
10 to confer and to, you know, hopefully come to some agreement on
11 the order of witnesses to call our next week.

12 MR. REISS: That's fine, Your Honor.

13 MS. COOPER: Okay.

14 THE COURT: Anything else we have to take up today?

15 MR. REISS: No, Your Honor.

16 MS. COOPER: No, Your Honor.

17 THE COURT: Okay. We're going to be at recess until
18 July 17 at 9:00, and I wish all counsel a happy 4th of July.

19 MS. COOPER: You as well.

20 MR. REISS: Same to you, Your Honor.

21 THE COURT: We're at recess.

22 (Proceedings concluded in this matter at 12:44 p.m.)

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C E R T I F I C A T E

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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 30th day of
June, 2017.

s/A. Tracy Jamieson
A. Tracy Jamieson, RDR, CRR