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7-17-2017

### Gonzalez v. Douglas Trial Transcript of Proceedings, Day 6

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#### Recommended Citation

Reiss, Steven A.; Barrington, Luna N.; Fitzmaurice, David; Martinez, Richard M.; Chang, Robert; and Quinn, James W., "Gonzalez v. Douglas Trial Transcript of Proceedings, Day 6" (2017). *Fred T. Korematsu Center for Law and Equality*. 73.

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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.	)	July 17, 2017
	)	
DIANE DOUGLAS,	)	
Superintendent of Public	)	
Instruction, in her	)	
Official Capacity; et	)	
al.,	)	
	)	
Defendants.	)	

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Before the Honorable A. Wallace Tashima

Transcript of Proceedings

Bench Trial Day 6

Proceedings reported and transcript prepared by:

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Federal Official Court Reporter  
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Proceedings reported by stenographic machine shorthand;  
transcript prepared using court reporting software.

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1 PROCEEDINGS

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

3 THE COURT: Let me see, we are still on the  
4 cross-examination, right?

5 MR. REISS: We are, Your Honor.

6 THE COURT: Hopefully, we'll finish this morning. Go  
7 ahead, please.

8 MR. REISS: Thank you, Your Honor.

9 WITNESS, KATHY HRABLUK, RESUMED

10 CROSS-EXAMINATION

11 BY MR. REISS:

12 Q. Good morning, Ms. Hrabluk.

13 A. Good morning.

14 Q. It's been a couple of weeks, so I just want to sort of  
15 bring you back to where we left off a couple of weeks ago, and  
16 maybe what makes sense is just to sort of go through a couple  
17 of the last questions that were being asked and answered.

18 If we could call up, Jorge, the trial transcript starting  
19 with Pages 98, Line 13, going to Page 99.

20 Your Honor, I just want to get where we were. Thank you.

21 As you'll see, Ms. Hrabluk, this is the transcript of your  
22 trial testimony two weeks ago.

23 So I said: Yeah, I'm just going to go through some dates  
24 with you. So I said on February 4th, 2011, the ADE issues a  
25 request for auditors, RFQ, issues its RFQ, right? And you say

1 RFPs, yes. Then I ask: Then on or about March 11, 2011, the  
2 Arizona Department of Education hires Cambium to do the audit,  
3 right? You say correct. And then I say: And then you receive  
4 Cambium's audit plan and review it and you're fine with the  
5 audit plan, right? Answer: Yes. Question: You never  
6 criticize or tell them it's insufficient, you say it's fine,  
7 right? And you say: Right, because their plan met the scope  
8 of work. Question: Right. And then during the process of the  
9 Cambium audit, you're in regular communication with the Cambium  
10 auditors back and forth. You saw a number of those e-mails.  
11 So you're monitoring closely what the Cambium audit is doing,  
12 right? Answer: Yes. And then I go on: And at no point  
13 during this process is the Arizona Department of Education  
14 conducting its own audit, is it? Answer: No. Question: And  
15 then on May 2nd, 2011, Cambium issues its draft report. I  
16 think they sent it to you in an e-mail around 7:35 p.m. on May  
17 2nd. Right? Then you say, answer: It's possible.

18 Okay. So that's sort of where we left off, and I just want  
19 to pick up there.

20 Let's go to Exhibit 84. It's in evidence. On Page 3 --  
21 I'm sorry. On Page 3 of that exhibit, Bates number ending in  
22 559, and going to the bottom, there's an e-mail from Elliott  
23 Hibbs to you, and this is on May 9th.

24 Mr. Hibbs writes to you: Kathy, please forward the link at  
25 the bottom to Luanne --

1 Luanne is it the person at Cambium, right?

2 A. Yes, correct.

3 Q. -- and company to get a better understanding of how they  
4 missed the boat. And please let me know when you would be  
5 available today to talk about the report and what we should  
6 request from Cambium to make appropriate changes. I am  
7 available until 11:15 this morning, from 3:00 to 4:00 and after  
8 4:30. Thank you. Elliott.

9 Okay. So that is on May 9th. Right? And at that point  
10 you received the draft Cambium report, right?

11 A. Correct.

12 Q. You had not yet received the final Cambium report, which  
13 wasn't sent until May 15th, right?

14 A. Yes, I am guessing.

15 Q. And yet on May -- and, of course, by this point you  
16 hadn't -- the ADE hadn't started its own investigation. You've  
17 already testified to that, right?

18 A. Correct.

19 Q. Okay. So on May 9th, before you even receive the final  
20 Cambium report, Mr. Hibbs has already made a judgment that  
21 Cambium, quote, missed the boat. Right?

22 MS. COOPER: Objection. Foundation.

23 THE COURT: Overruled. You may answer.

24 A. Well, those are his words, yes. Those are Elliott's words.

25 BY MR. REISS:

1 Q. And -- well, then, let's go -- I think we left off with  
2 Exhibit 86. And this is an e-mail sent the next day from you  
3 to John Stollar with copies to Mr. Hibbs, Ryan Ducharme,  
4 Ducharme -- I may be mispronouncing it -- and Andrew LeFevre,  
5 right? Sent the next day, right?

6 A. Correct.

7 Q. And you write: Hi, John. You did a great job synthesizing  
8 a multitude of conversations. I'm in complete agreement with  
9 your direction and took you up on your offer to add some  
10 additional thoughts. Please use what makes sense. Words that  
11 I highlighted I'm suggesting be deleted. Words that are in red  
12 are my suggestions.

13 And this is -- if you look to the next page, what you're  
14 commenting on, it is the Cambium report outline of comments.  
15 All right. And it's three pages of comments on the Cambium  
16 report.

17 And if you turn to the last page, it says: Conclusion:  
18 The existing TUSD's MASD program of study must be terminated,  
19 suspended, immediately, and will not be permitted to operate  
20 until the Tucson Unified School District's Governing Board  
21 complies with the required and necessary action of establishing  
22 a process outline provided earlier for appropriate curriculum  
23 development. And goes on.

24 So on May 12th, before receiving the final Cambium report,  
25 you and Mr. Hibbs and Mr. Stollar had concluded -- it was



1 called a conclusion -- that the Tucson public schools' MASD  
2 program was in violation of 15-112. Right?

3 A. Even based on the draft report that we had read, yes.

4 Q. And you had not conducted any of your own investigation at  
5 that point, right?

6 A. That's correct.

7 Q. In fact, Ms. Hrabluk, you didn't have enough information at  
8 that time to make the conclusion that the MASD program violated  
9 the statute, did you?

10 A. I wouldn't -- no, I wouldn't agree with that.

11 Q. Can I direct your attention to Page 47 of the transcript of  
12 the trial in this case? Page 47, your testimony on Friday,  
13 July 3rd, was it? Sorry. June 30th. I apologize, Your Honor.  
14 June 30, the testimony in this courtroom in this case.

15 If you look at Page 47, Lines 13 to 21, and this is on your  
16 direct examination, not my cross-examination. Direct  
17 examination.

18 Question: At the conclusion of your review of the Cambium  
19 audit, did you feel that the department had enough information  
20 to determine whether the MAS classes violated A.R.S. 15-112?

21 Answer: No. We concluded we did not have enough information.

22 When you say "we," to whom are you referring? Answer: That  
23 was really a final decision by Superintendent John Huppenthal,  
24 but it was a joint decision and joint discussions between  
25 myself, John Stollar, Elliott Hibbs, and the superintendent.

1           So according to your own testimony in this courtroom,  
2 Ms. Hrabluk, on May 12th, when you and Mr. Hibbs and  
3 Mr. Stollar reached the conclusion that the MAS program was in  
4 violation of 15-112, by your own admission, in sworn testimony  
5 in this court, you did not have enough information to make that  
6 judgment. Right?

7 A. We did move forward to continue our investigation after we  
8 received the Cambium report for more information, that is  
9 correct. At the time, having read the draft Cambium report,  
10 there were definitely enough concerns.

11           So in speaking on Friday, June 30th, I was referring to the  
12 further work that we did after the Cambium report was  
13 submitted. But the Cambium report created a fair amount of  
14 concern for us, it didn't alleviate the concerns and the  
15 questions we had about the material.

16 Q. Well, let's -- you're not disavowing the testimony that you  
17 gave in this courtroom that I just read to you, are you?

18 A. No.

19 Q. Now, let's look at Exhibit 88. This is an e-mail from you  
20 to John Stollar and Elliott Hibbs on May 24th, 2011, so roughly  
21 nine or ten days after the Cambium, the final Cambium report  
22 was received. And you write: Here is our first draft of the  
23 Superintendent's response to the TUSD MASD review. Elliott,  
24 please let us know what you think. I'll bring copies to our  
25 meeting with the lawyers later today. You wrote that, right?

1 A. That's correct.

2 Q. Why were you meeting with the lawyers? I don't want you to  
3 tell me what your communications were with the lawyers. I do  
4 want to know why you were meeting with the lawyers at this  
5 point.

6 A. I absolutely don't remember, but I also do want to say that  
7 I would not have been the one that would have brought the  
8 lawyers to the meeting. That wasn't -- I understood they were  
9 going to be there, but that would never have been my call.

10 Q. Do you know whose call that would have been?

11 A. It would have come out of the superintendent's office, but  
12 I honestly don't know who made that call.

13 Q. Okay. Fair enough. Now, just looking at the next page --  
14 by the way, did you draft this proposed statement?

15 A. I helped with that draft. I no longer have a memory of  
16 exactly what I wrote or what John Stollar would have wrote. I  
17 don't remember. But I would have helped with the draft, yes.

18 Q. So just looking at the paragraph that begins "I have  
19 carefully." This is his draft response to the investigation of  
20 the Tucson Unified School District's Mexican-American Studies  
21 program, right?

22 In looking at this paragraph, the draft response says: I  
23 have carefully reviewed all comments and materials gathered  
24 from interested community members, school officials, elected  
25 officials, including our current Attorney General and members

1 of my ADE staff. In an effort to be as objective as possible,  
2 I commissioned an independent review of the MASD by external  
3 auditors.

4 So that external review was done in order to be as  
5 objective as possible, right?

6 A. Correct.

7 Q. That review included an in-depth study of published  
8 curriculum, instructional strategies, and interviews of  
9 students, teachers and community members, in addition to  
10 attempts to interview the director of the MASD, as well as  
11 their U of A partner. That is a description of the Cambium  
12 audit, right?

13 A. In the draft, yes.

14 Q. Now, in this draft statement, you nowhere say what the  
15 results of that Cambium audit are, do you?

16 A. Well, in just looking at this paragraph, no, I don't see  
17 that.

18 Q. Read the whole thing. I'll represent to you I don't see  
19 it, but if you want to read it, you can.

20 Okay. So is my representation accurate, that nowhere in  
21 this draft statement is mention made of the actual findings of  
22 the Cambium report? Right?

23 A. Correct.

24 Q. Now, if I can direct your attention to the fourth page of  
25 this document ending in Bates 1472, the second bullet on that

1 page. The second one, Jorge, next one down. That's it.

2 Right. Thank you.

3 That says: With evidence that the director and teachers of  
4 the MASD program are not supervised by building principals --  
5 and I just want to stop you there.

6 What evidence did you have that the MASD program teachers  
7 were not supervised by building principals?

8 A. Well, that information was provided by building principals,  
9 and, you know, at this point, I -- you know, I don't know if  
10 that was explicitly outlined in the Cambium report, but it  
11 certainly came to light in conversations that the auditors had  
12 with principals, that they were not to do -- they were not  
13 responsible for classroom visits or instructional oversight  
14 with the Mexican-American Studies classrooms, that that  
15 oversight was provided by the Mexican-American Studies'  
16 director.

17 Q. Were you aware that a number of MAS courses were taught by  
18 teachers who were not in the MASD program?

19 MS. COOPER: Objection. Relevance.

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

21 A. Well, that very well could be, but there still needs to be  
22 instructional oversight by the principal.

23 BY MR. REISS:

24 Q. And were you aware that the teachers who taught MAS courses  
25 who were not in the MASD program did in fact report to their

1 principals and did in fact have oversight by their principals,  
2 people like Curtis Acosta?

3 A. Well, that wasn't what was reported by the principals, so  
4 that's -- the information is what we -- that's the information  
5 we were made aware of.

6 Q. Do you recall which principals you spoke to?

7 A. No.

8 Q. Did you speak to any principals?

9 A. This came from the Cambium auditors.

10 Q. So you didn't speak yourself to any principals, right?

11 A. Not at that time, no.

12 Q. Let's take a look at the next paragraph. I'm sorry. The  
13 one, "Focus A.R.S. 112-(A)(3)." It's further. That's it.

14 So that the first bullet says: As a result of this lack of  
15 district oversight, the evidence from the published syllabi,  
16 printed materials, and literary citations leaves no doubt,  
17 leave no doubt, that teachers can and do use materials which  
18 are designed primarily for a particular ethnic group.

19 Do you see that?

20 A. Yes.

21 Q. Now, you made that statement even though you had no idea  
22 how the materials were used, right?

23 A. The lack of information about how the materials were used  
24 was caused by a lack of curriculum, so there was no plan  
25 submitted.

1 Q. Okay. Ms. Hrabluk, you wrote -- these are your words. I  
2 assume they're your words. You said: The evidence from the  
3 published syllabi, printed materials, and literary citations  
4 leave no doubt.

5 MS. COOPER: Objection. Misstates prior testimony.

6 MR. REISS: I am reading the document.

7 MS. COOPER: You had --

8 THE COURT: Just a minute. Don't argue with each  
9 other.

10 MR. REISS: Sorry, Your Honor.

11 THE COURT: The objection's overruled.

12 BY MR. REISS:

13 Q. You wrote that, right?

14 A. Because -- okay. Is that the first question?

15 Q. I'll ask the same question I just asked, which is: You  
16 wrote that even though you had no idea how the materials were  
17 used, right?

18 A. Well, we had no idea because there was no written plan. So  
19 when we looked at the materials, we looked at them really from  
20 a literal standpoint.

21 Q. But you'll agree with me that you had no idea how the  
22 materials were used, right?

23 A. That's correct, because there was no plan.

24 Q. Okay. And you just took the materials at face value,  
25 right?

1 A. We were forced to because the materials were not put in  
2 context of a curriculum outline or an instructional plan. So  
3 we were forced to just look at the materials from a literal  
4 standpoint, because there was no further explanation submitted  
5 as to how the materials were utilized.

6 Q. So the answer to my question about whether -- did you take  
7 the materials at face value, the answer to that is yes, right?

8 A. It was our only option.

9 Q. By the way, were you aware that different MAS history  
10 courses use different materials?

11 A. It's likely, because, again, lack of a consistent plan  
12 meant -- appeared that things were random, so -- and, in fact,  
13 when the auditors were observing in history classes, all six  
14 classrooms were teaching completely different lessons  
15 disconnected from each other. So it is likely that different  
16 teachers used different materials. But, again, that speaks to  
17 the randomness.

18 Q. Right. So you were drawing this conclusion without any  
19 knowledge of how the materials were used and without any  
20 knowledge about what materials were used in what classes.  
21 Right?

22 A. Well, based on the materials that were submitted as  
23 evidence to represent the program, we -- looking at those  
24 materials, the decision was made that there were some serious  
25 concerns about the materials.



1 Q. Right. But you had no idea how the materials were used,  
2 right?

3 A. Well, when instructional materials are submitted in  
4 response to a request for curriculum materials, there is an  
5 assumption that these materials are utilized in the program.

6 Q. There was an assumption.

7 A. Well, we asked for curriculum materials, and that's what  
8 was submitted. So, yes, of course --

9 Q. Yeah.

10 A. -- those would be the curriculum materials. Otherwise, why  
11 would they be submitted?

12 Q. And you had no idea, if the materials were used, how they  
13 were used, right?

14 A. We made the conclusion that if the materials were submitted  
15 with our -- from our request, that they were being used in the  
16 program.

17 Q. Right. But you didn't know, even if they were used, how  
18 they were being used, right?

19 A. Without any explanation of how they were being utilized and  
20 how the materials were being integrated and whether there were  
21 a variety of perspectives presented to students, with all of  
22 that missing, we looked at the materials that were submitted.  
23 As -- we looked at them for their -- we looked at them  
24 literally, because that's what was submitted. So if that's  
25 what's submitted, we will assume that that's what's being used

1 in the classroom.

2 Q. All right. But you stand by your testimony earlier in this  
3 trial that you had no idea how the materials were used, and you  
4 had to take them at face value, right?

5 A. We didn't have any idea because there was no plan  
6 submitted. So -- I mean, the most basic way to use a text in a  
7 classroom is to read it. So if the text was submitted, that  
8 was going to be our thinking, that this text was used. And  
9 without a further explanation, it was used in its most  
10 simplistic way, which is reading it.

11 Q. Okay. Let's go back, Ms. Hrabluk, to the page before this  
12 in your Exhibit 88. You note, starting at the last line of  
13 that first paragraph: There have been three different  
14 studies --

15 And, Jorge, I'd incorporate that and the next three bullet  
16 points.

17 And you note: There have been three different studies  
18 examining the academic performance of students in the MASD  
19 program. And then you say: MASD study - indicates that Latino  
20 students outperform their colleagues on the AIMS tests. All  
21 right. That's one.

22 Then you say: TUSD study -- that's presumably the Tucson  
23 Unified School District study -- inconclusive in regards to the  
24 Latino students outperforming colleagues on the AIMS test.

25 And then finally: ADE study -- Arizona Department of

1 Education study -- no difference in regards to Latino students  
2 outperforming colleagues on the AIMS test. Right?

3 A. Correct.

4 Q. Where did you get this information about what those studies  
5 showed or didn't show?

6 A. Well, those were public documents --

7 Q. Uh-huh.

8 A. -- at the time, and the Mexican-American Studies Department  
9 had -- well, they were -- they were public documents, and the  
10 Mexican-American Studies Department had information that  
11 referred to their study on Latino students outperforming their  
12 colleagues, so that information was there.

13 The TUSD study, which is the district study, was public  
14 information. And so the district study basically did not  
15 support its own program study. And I was familiar with the ADE  
16 study that had been done. So it was -- those were public  
17 information pieces.

18 Q. What was the basis for your view or conclusion that the  
19 TUSD study was inconclusive?

20 A. Well, that was the finding of the TUSD study.

21 Q. You read the Cambium report, right?

22 A. Correct.

23 Q. Right. And did you read the section of the Cambium report  
24 that utilized the TUSD study?

25 A. At this point, I no longer remember that section, but the

1 fact remains the TUSD study was inconclusive in its findings.  
2 So I am not sure what the Cambium report said, but the TUSD  
3 Assessment Department did not support the Mexican-American  
4 Studies findings.

5 Q. Let's go to Exhibit 94 for a second. Okay. And this,  
6 Ms. Hrabluk, is the superintendent -- is a press release from  
7 the superintendent on June 16th, 2011, explaining, it says,  
8 important information regarding Tucson Unified School  
9 District's violation of A.R.S. 15-112. And this is an official  
10 release from the superintendent, right?

11 A. Yes.

12 Q. Okay. Let's look at the next page, very top paragraph,  
13 first paragraph.

14 While it is outside the scope of the superintendent's  
15 ruling on A.R.S. Section 15-112, it should also be noted that  
16 the auditors failed to provide an independent review of the  
17 MASD's claims of increased academic achievement for its  
18 students. The auditors merely reprinted -- reprinted TUSD's --  
19 TUSD's internal academic achievement report. Right?

20 So Cambium used the TUSD report, right, reprinted?

21 A. Well, as I am reading this, I would say that's in error. I  
22 am going to assume that the auditors merely reprinted MASD's  
23 internal academic achievement report unless, in fact, they did  
24 use the Tucson district's academic achievement report. I'm not  
25 certain what they actually used in the report right now.

1 Q. Well, the superintendent's statement said that Cambium  
2 reprinted the TUSD report, right?

3 MS. COOPER: Can you speak up?

4 MR. REISS: I'm sorry. I'm sorry.

5 BY MR. REISS:

6 Q. I said the superintendent's official statement said Cambium  
7 reprinted the TUSD's report, right?

8 A. That's what it says, yes.

9 Q. And without belaboring the Cambium report, do you recall  
10 what the Cambium report found with respect to the effect of the  
11 MAS program on student achievement?

12 A. No, I don't actually at this point in time.

13 Q. Let me try to refresh your memory. Exhibit 93. So if we  
14 first start with Page 43 --

15 I think it's one page after, Jorge, because of the cover  
16 sheet. So it would be Page 44 of the exhibit. Yeah, that's  
17 it.

18 Outcome Measure 2. And Outcome Measure 2, the outcome  
19 measure was to determine if statistically valid measures  
20 indicated student achievement occurred. And it then goes on to  
21 describe: This section is an overview of the findings that  
22 follow -- that followed in the area of Outcome Measure 2.  
23 Tucson Unified School District's Mexican-American Studies  
24 program claimed not only to improve student achievement, but to  
25 surpass and outperform similarly situated peers. The findings

1 of the auditors agree student achievement has occurred and is  
2 closing the achievement gap based on the re-analysis and  
3 findings of TUSD's Department of Accountability and Research.  
4 Data charts below indicate AIMS outcomes for reading, writing,  
5 and mathematics.

6 So the Cambium report used the TUSD study, right?

7 A. It appears to be, in the way they wrote that, but I don't  
8 agree with those findings. And that's not the finding that I  
9 am familiar with from the district's accountability office.

10 Q. Well, not to belabor the point, we won't go through the  
11 charts and graphs, but let's just look at Page 49 of the  
12 Cambium report.

13 Outcome Measure 2 Summary. There is a positive, measurable  
14 difference between MASD and the non-MASD comparison group of  
15 students. Data indicates that the graduation rate of students  
16 in the MASD program is higher than those not in the program.  
17 High school juniors taking an MASD course are more likely to  
18 pass the reading and writing portion of the AIMS subject tests  
19 if they had previously failed those subjects in their sophomore  
20 year. Consequently, high school seniors enrolled in the MASD  
21 course are more likely to graduate than their peers.

22 In light of the data collected and reviewed, student  
23 achievement is due to the sense of pride that develops through  
24 their accomplishments with highly effective teachers. Many  
25 research-based practices that promote enhanced critical

1 thinking and high-order comprehension of different topics is in  
2 place and used on a daily basis.

3       Regardless of program, teacher effectiveness achieves  
4 results. Effective practices, in combination with the  
5 motivation to learn for a purpose relevant to students, creates  
6 these results. Students learn to be proud, regardless of  
7 ethnicity.

8       I won't go on.

9       So when you wrote -- let's take a look back in 88.

10       Page 3 of that Exhibit, Jorge.

11       When you wrote that the TUSD study was inconclusive, that  
12 was wrong, right?

13 A. We did not agree with the Cambium report's analysis, and  
14 that is not the information that we understood at the time came  
15 from the Tucson Unified School District's accountability  
16 office. So the material that you just read sounds more -- more  
17 closely aligned to the Mexican-American Studies Department  
18 study. So it was just a section we didn't agree with.

19 Q. Did you recall whose conclusion it was that the TUSD study  
20 was inconclusive? Was that your conclusion or was that someone  
21 else's?

22 A. Well, it was initially the Tucson Unified School District's  
23 Accountability Department's analysis, and then also there would  
24 have been conversations at the Department of Education with the  
25 deputy associate superintendent for accountability. So I was

1 not doing the accountability analysis on the studies, but  
2 definitely there were conversations at the department.

3 Q. Did you ever have any conversations with Mr. Huppenthal  
4 about the TUSD study?

5 A. I no longer remember if I did.

6 Q. Okay. Just going to -- on the next page, again, of your  
7 draft statement, in that first bullet point, underneath the  
8 "violation focus A.R.S. 15-112," you note: As a result of this  
9 lack of district oversight, the evidence from the published  
10 syllabi, printed materials, and literary citations leave no  
11 doubt that teachers can and do use materials -- use materials  
12 which are designed primarily for a particular ethnic group.

13 Was it your understanding that 15-112 prohibited the use of  
14 materials designed primarily for a particular ethnic group?

15 A. It was my understanding that -- that the focus was on the  
16 instructional direction. So specific materials that might have  
17 a perspective from a particular ethnic group's point of view  
18 would not be, in and of itself, violating the law; it would be  
19 the collective focus and use of all of the materials and the  
20 collective focus of the instructional direction.

21 Q. Right, because 15-112 doesn't say anything, does it, about  
22 the use of materials?

23 A. Honestly, I don't have a memory of that. That's in the  
24 law, but the use of materials is inherent in instruction.

25 Q. Does it refresh your memory if I tell you that 15-112



1 speaks only in terms of courses or classes, not materials?

2 MS. COOPER: Objection. Argumentative.

3 THE COURT: Overruled.

4 A. Yes, that sounds familiar. And, as I mentioned, materials  
5 and the use of materials is inherent in the presentation of  
6 courses and instruction to students.

7 MR. REISS: Okay. Let's go, if we can, to Exhibit 90.  
8 I think starting on the 10th page of that exhibit, Jorge.

9 BY MR. REISS:

10 Q. This is the June 15th finding of violation by  
11 Superintendent Huppenthal. Are you familiar with this? Have  
12 you seen this before?

13 A. Yes. A number of years ago, yes.

14 Q. Did you have any role in drafting this?

15 A. I -- I don't have a memory of that, no.

16 Q. Now, again, looking at that paragraph, the second paragraph  
17 down, it says: In order to determine whether or not the Tucson  
18 Unified School District's Mexican-American Studies program  
19 violates any of the provisions of A.R.S. Section 15-112, the  
20 Arizona Department of Education, ADE, at my direction,  
21 conducted an in-depth investigation and review of the program  
22 and its curriculum, materials, content, and teaching practices.

23 This investigation included a curriculum audit conducted by  
24 a contractor and various data submitted to and gathered by ADE.  
25 After careful examination of all the available information, I

1 find there is a clear violation of A.R.S. Section 15-112 as  
2 described below.

3 Was any mention made in this official announcement of the  
4 results of the Cambium audit?

5 A. It doesn't appear to be, no.

6 Q. Do you know why Superintendent Huppenthal would refer to  
7 the fact that an independent audit was conducted, but say  
8 absolutely nothing about the results of that independent audit?

9 A. Well, I can't speak for the superintendent.

10 Q. Fair enough. Did you think the superintendent should have  
11 said anything about the results of the Cambium audit?

12 A. Well, as the elected superintendent, he is free to speak as  
13 he chooses, and in this paragraph that you've highlighted, he  
14 does refer to the fact that there was an outside curriculum  
15 audit done, plus additional investigation done. So my  
16 understanding when I read the paragraph is that he is moving  
17 forward, standing on all of the information that has been  
18 presented to him.

19 Q. And the materials that were included in this review  
20 included all of the materials that were sent to Mr. Hibbs and  
21 ultimately forwarded by you to Cambium that were sent by Laura  
22 Leighton, right?

23 A. That would have been a small piece, but it wasn't part of  
24 our review. Laura Leighton's information was not part of the  
25 department's review. We simply reviewed the material and the

1 resources and the textbooks that the Mexican-American Studies  
2 Department and the district forwarded to the department, and  
3 the material that had been presented to the Cambium auditors  
4 when they submitted their report, they forwarded any material  
5 that they had, they forwarded to the department.

6 Q. The materials that were forwarded to Cambium included all  
7 of those materials sent by Laura Leighton, right?

8 A. It's possible. It's not information -- that information  
9 was not information that I reviewed.

10 Q. And the materials would have also included blog postings,  
11 Exhibit 83. That was forwarded as well, right?

12 A. It's possible. I no longer remember.

13 Q. By the way, in your draft -- let's go back to Exhibit 88  
14 for a second. If you look at Page 2.

15 Next page, Jorge. I'm sorry. Page 4.

16 Page 4. You notice, you focus on subsection (A) (3) of  
17 15-112, and then the next page you focus on -- you say: I have  
18 concluded a thorough review of all of the information gathered  
19 concerning the legality of TUSD's MASD program. My decision is  
20 that the MASD program violates Sections (A) (2) and (A) (3) of  
21 A.R.S. 112. Right? This is your draft we just talked about,  
22 right?

23 A. The draft that I helped work on, yes.

24 Q. Right. You don't say anything about (A) (4) in this draft,  
25 right?

1 A. No, that's correct.

2 Q. Let's go back to Exhibit 90. If I could direct your  
3 attention to the next page, Ms. Hrabluk.

4 Sort of two-thirds down the page, Jorge. I'm looking at  
5 A.R.S. 15-341. Let's blow that up.

6 And superintendent notes: Additional statutory and  
7 regulatory violations and cites A.R.S. Section 15-341. Right?

8 A. Correct.

9 Q. And you were familiar with that statute, right?

10 A. Yes.

11 Q. And that statute is directly designed to reach potentially  
12 offending curriculum materials, right?

13 MS. COOPER: Objection. Calls for a legal conclusion.

14 THE COURT: The objection's overruled. I assume it's  
15 just to get her understanding of the section as a basis for  
16 further questioning.

17 You may answer.

18 MR. REISS: Thank you, Your Honor.

19 A. As I understand it, yes.

20 BY MR. REISS:

21 Q. And, in your view, the materials that were being used did,  
22 or at least could, violate Section 15-341, right?

23 A. Well, this document came out of the superintendent's  
24 office, so the previous document you were showing me was a  
25 draft that John Stollar and I would have initially produced,

1 and that would have been typical of my responsibilities as the  
2 superintendent, is wanting some information to begin to put his  
3 thoughts together.

4 This draft, or this document, came out of the  
5 superintendent's office. So, truthfully, I have no memory of  
6 anything that I might have actually produced in that document.  
7 So this would have been part of his analysis with his team in  
8 the superintendent's office.

9 Q. You were part of that team, right?

10 A. No. As an associate superintendent, I was part of a  
11 broader leadership team, but I was not part of the  
12 superintendent's office team. That would have included smaller  
13 and more connected groups. So that would have included Andy  
14 LeFevre, whose name is on the e-mail, as the communications  
15 director. It would have included Stacey Morley as his  
16 legislative liaison. It would have included Elliott Hibbs as  
17 his deputy. But, as an associate, I was not part of that inner  
18 team.

19 Q. Did you understand that A.R.S. 15-341 could have been used  
20 to eliminate offending materials?

21 MS. COOPER: Objection. Calls for a legal conclusion.

22 THE COURT: Overruled. You may answer.

23 A. As I understand -- I am an educator, and taking that  
24 experience to understanding this legislation, I do understand  
25 that, yes, that legislation might be used.

1 BY MR. REISS:

2 Q. Just going down a little bit further in that, Jorge, to the  
3 very bottom, 15-721, 722.

4 The superintendent statement cites A.R.S. Section 15-721  
5 and 15-722. Do you have any familiarity with those provisions?

6 A. Yes, I do.

7 Q. And those provisions, what do they do?

8 A. Those provisions provide transparency for programing and  
9 instruction in a public school district, and so it requires  
10 elected district board members to go through the process of  
11 determining what curriculum and programing to approve. And all  
12 of that needs to be done with public open meetings and the  
13 opportunity for public feedback. So this statute is really  
14 foundational law wrapped around public education, which is the  
15 transparency of what children are being taught.

16 Q. So those provisions could have been used to direct TUSD to  
17 go through those procedures in approving any of the materials  
18 used in the MASD courses, right?

19 A. Those statutes should have been. All superintendents in  
20 the State of Arizona need to understand Arizona educational  
21 law. That's their responsibility. As any elected school board  
22 member, one of the first tasks they have after election is to  
23 make sure that they're clear on state educational statutes.

24 Q. Are you finished? I'm sorry. I don't want to interrupt.

25 A. Well, that's the process of getting programing and

1 coursework and instructional materials to land fairly and with  
2 confidence inside of a district is the elected school board  
3 approves the material.

4 Q. So those provisions were another avenue to ensure that  
5 there was an appropriate approval process for the materials  
6 being used in the MASD courses, right?

7 MS. COOPER: Objection. Calls for a legal conclusion.

8 THE COURT: Overruled. You may answer.

9 A. Those statutes were used -- those statutes were used as the  
10 department began working with the district in reshaping their  
11 programing, but it wouldn't have been my decision. So that's  
12 why I am hesitating. It wouldn't have been my decision as to  
13 which statutes were going to be utilized by the superintendent.

14 Q. Whose decision was it?

15 A. It would be the superintendent's.

16 Q. The superintendent.

17 A. I'm assuming.

18 Q. Let's look at Exhibit 92. This is the official statement  
19 of Superintendent of Public Instruction, John Huppenthal, on  
20 his determination regarding the Tucson Unified School  
21 District's violation of A.R.S. Section 15-112, June 15th, 2011.

22 Now, I notice if we go down to the fifth paragraph on that  
23 page -- that's it, Jorge -- it says: Associate Superintendent  
24 Hrabluk outlined with great clarity the Tucson Unified School  
25 District Governing Board failed to provide the statutorily

1 required curriculum development and oversight of its  
2 Mexican-American Studies Program.

3 You see that, right? So you were very involved in this  
4 press release, right?

5 A. I would have been in the discussions, yes.

6 Q. And the superintendent -- going down towards the bottom of  
7 the page: I want to first address the foundation for my  
8 decision and the independent curriculum audit. The audit was a  
9 limited part of the overall investigation that the department  
10 had conducted. I specifically had several concerns with the  
11 audit.

12 We'll get to those.

13 Again, Ms. Hrabluk, you were involved in this statement.  
14 The statement does not mention the results of the Cambium  
15 audit, does it?

16 A. No, but I do want to clarify that I did not write this  
17 release.

18 Q. Fair enough. But it doesn't mention the results, right?

19 A. It doesn't appear to, no.

20 Q. It doesn't mention the results of a publicly financed  
21 independent study of the very issue that the superintendent is  
22 ruling on, right?

23 MS. COOPER: Objection. Asked and answered.

24 THE COURT: Overruled.

25 A. Sorry. The question?



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

2 Thank you.

3 (Reporter read back the last question.)

4 A. It doesn't appear to.

5 BY MR. REISS:

6 Q. I am not going to dwell at length on this document. The  
7 superintendent has some criticisms of the Cambium report. He  
8 says: First, two-thirds of the final audit report was beyond  
9 the scope of the legal determination I am making today.

10 Do you see that?

11 A. Yes.

12 Q. Do you recall what the superintendent was referring to?

13 A. I don't at this point, no.

14 Q. Would it help your memory if I said that two-thirds of the  
15 report were themselves items that were contained in the RFP,  
16 request for proposal?

17 A. It's possible.

18 Q. Let's look at the second paragraph. Bottom paragraph,  
19 Jorge.

20 Second, the Tucson Unified School District administration  
21 knew which week the on-site classroom reviews and interviews  
22 would be taking place.

23 Okay. "Knew which week." You were aware, were you not,  
24 Ms. Hrabluk, that was part of the audit plan, right?

25 A. Yes, because of the limited time frame, unfortunately, it

1 had to be that way.

2 Q. And you approved that plan, right?

3 A. Yeah, there were no other options.

4 Q. Right, but the superintendent is citing that as a  
5 shortcoming, and that was something in the audit plan that you  
6 approved, right?

7 A. As I recall, the time available became condensed, and so  
8 there were fewer options for days for the classroom -- once the  
9 audit began, there were fewer options for classroom  
10 observations, as I recall, and so -- and because the auditors  
11 were coming from out of state, with condensed time, that -- it  
12 really meant that the classroom visits were done in a very  
13 short length of time, as I recall.

14 Q. And you knew that going into the audit and approved it,  
15 right?

16 A. I don't recall knowing that when we went into the audit,  
17 but I do recall being aware of that as the audit was unfolding.

18 Q. Okay. The superintendent goes on to -- as a criticism: In  
19 addition, only 37 percent of the Mexican-American Studies  
20 program classrooms were observed.

21 That was part of the audit plan you approved, as well,  
22 right?

23 A. I don't recall if that number was in the initial plan. I  
24 don't recall that.

25 Q. Well, you knew they weren't going to visit every classroom,

1 right?

2 A. Right.

3 Q. So, now, let me turn to the investigation that the Arizona  
4 Department of Education conducted after receiving the Cambium  
5 report. Do you recall when that investigation began after  
6 receiving the Cambium report?

7 A. I don't recall an exact date.

8 Q. Now, during that investigation, you never spoke to a single  
9 MAS teacher, right?

10 A. Correct.

11 Q. And you can't point to a single teacher of the MAS program  
12 at TUSD who taught something that you thought violated

13 A.R.S. 15-112, right?

14 A. Correct.

15 Q. And you never determined, for example, whether Critical  
16 Race Theory by Richard Delgado was used in any MAS class, did  
17 you?

18 A. The material was submitted as curriculum material upon our  
19 request, and so we went with that material being used as part  
20 of the program.

21 Q. You assumed it?

22 A. Well, we requested material. That was the material that  
23 was submitted. And so we understood that this was the decision  
24 by the Mexican-American Studies Department and director that  
25 these were the materials that were representative of the

1 program and the instructional materials.

2 Q. But you can't point to a single teacher that you knew was  
3 using Critical Race Theory in their course, could you?

4 A. In education, when you ask for curriculum materials, it is  
5 inherently understood that that is the material that teachers  
6 are using in the classroom; otherwise, it means that teachers  
7 are using random materials.

8 So there would be an understanding that if these are the  
9 materials submitted and representative of your curriculum  
10 resources, then these are the materials being used by the  
11 teachers teaching the program.

12 Q. Right. And you were aware that different history teachers  
13 use different materials, right?

14 A. Well, the understanding is that if you're teaching a  
15 prescribed and specific program, that you're using the  
16 materials from that program.

17 Q. But you had no actual knowledge that Critical Race Theory  
18 was being used in any class, right?

19 A. It was submitted as part of the curriculum resources, and  
20 so the understanding is that is what is used. If it wasn't  
21 used by educators in the program, then why was it submitted?

22 And if it was submitted as part of an overarching group of  
23 resources and materials, then curriculum directors provide an  
24 explanation of how those materials are being used, and that was  
25 not provided to us. So we asked for curriculum resources and

1 materials, and we went with what was submitted is what teachers  
2 are using.

3 Q. And you had no idea how --

4 THE COURT: Mr. Reiss, you know --

5 MR. REISS: I'm sorry.

6 THE COURT: -- you've been over this same --

7 MR. REISS: Yes. I'm sorry, Your Honor. I'll move  
8 on.

9 THE COURT: I understand your position and I  
10 understand the witness's position.

11 MR. REISS: Got it, Your Honor. I'll move on. I  
12 appreciate that.

13 BY MR. REISS:

14 Q. By the way, you agree, do you not, Ms. Hrabluk, that in  
15 teaching controversial subjects, it's important to know how the  
16 teacher is teaching them, right?

17 A. Yes.

18 Q. By the way, no one else from the Arizona Department of  
19 Education ever observed an MAS classroom during your own  
20 investigation, right?

21 A. Not during that immediate investigation --

22 Q. Right.

23 A. -- in the month of May, yes. We did later, but not then.

24 Q. Did you, Ms. Hrabluk, examine materials that were actually  
25 being used, that you knew were actually being used in, for

1 example, the American history -- the history course at MAS?

2 MS. COOPER: Objection. Asked and answered.

3 MR. REISS: No, it's a different point, Your Honor.

4 THE COURT: The objection's overruled.

5 A. When a review of curriculum and curriculum materials is  
6 being conducted, we are looking for a full and complete map of  
7 how the materials are being utilized by the teachers.

8 When material is -- or controversial material is part of a  
9 group of resources for a program, what does become critical  
10 then is how those resources are being presented to students and  
11 the dialogue that would be unfolding in the classroom.

12 So now -- did I answer your question?

13 BY MR. REISS:

14 Q. No.

15 A. Okay.

16 Q. My question was simple.

17 A. Let me hear your question again.

18 Q. It was whether you reviewed materials you knew were  
19 actually, actually, being used in the MAS classrooms.

20 A. Okay. Thank you. The point of -- the point of a  
21 curriculum plan is to explain and identify the materials that  
22 are being used.

23 So I know -- so the materials that were submitted we  
24 reviewed with the full expectation that because they were  
25 submitted, these are being used in the program --

1 Q. Okay.

2 A. -- because no other information or explanations were  
3 provided to us.

4 MR. REISS: If I could, Your Honor, I am going to  
5 mark -- we have the books.

6 BY MR. REISS:

7 Q. Just directing your attention while we have a minute,  
8 Ms. Hrabluk, to Exhibit 93, the Cambium report, Page 88.

9 It would be 89 of the exhibit, Jorge. Let's go up to the  
10 "alignment," further up, the top of the page, Jorge.

11 Alignment to standards. It's that paragraph. This is the  
12 Cambium report.

13 It says: Every American History/Mexican-American  
14 Perspectives classroom the audit team visited had either  
15 Arizona State standards, classroom objectives, or both posted.  
16 Each teacher's instruction closely mirrored objectives posted  
17 in their room.

18 You see that, right?

19 A. Mmm-hmm.

20 Q. You just disagreed with that. You didn't find that was  
21 right, right?

22 A. Right.

23 Q. Did you agree with that observation of the Cambium report?

24 A. Well, that was their observation, so that's what they  
25 observed.

1 Q. Right. Actually observed. They were in the classrooms,  
2 right? Okay.

3 Now let's go down to the bottom of the page.

4 Textbooks: As there were a minimum of two team members  
5 attending each classroom visit, a brief review of the textual  
6 material was conducted at each site during the visits. Below,  
7 texts are identified by whether they were seen by the team in  
8 use or simply sitting on the shelves.

9 Seen in use: The American Vision. Right?

10 So you would accept, Ms. Hrabluk, The American Vision was  
11 actually seen in use in an MAS history course, right?

12 A. Yes.

13 MR. REISS: Your Honor, I don't know how we want to  
14 mark these. It's a whole book. It's heavy. I have some  
15 snippets from the book, but I'll take Your Honor's advice on  
16 what you want to do with this in terms of --

17 THE COURT: If you have excerpts --

18 MR. REISS: I have excerpts I can show.

19 THE COURT: -- separately copied, I think you should  
20 use those, yeah.

21 MR. REISS: Okay. And just so the witness can be  
22 holding it.... (Handing the book to the witness.)

23 BY MR. REISS:

24 Q. You would accept the Cambium conclusion that they actually  
25 saw that book being used, right?



1 A. Yes.

2 Q. Okay. Did you examine that book in your review?

3 A. You know, it's possible. I don't have a memory. If it was  
4 submitted by -- in accordance to our request for curriculum  
5 materials, then I would have reviewed it.

6 Q. And do you have any memory that in that book, which is over  
7 a thousand pages, no more than 30, but probably, more  
8 accurately, 18 pages deal with Mexican-Americans in the United  
9 States?

10 A. Six years later, I have no memory whatsoever.

11 Q. Okay. Let me just -- again, I am not going to dwell on  
12 this, but that's the cover.

13 Let me direct your attention to -- I think it's Page 490.  
14 The Imperialist Vision. The Main Idea. A desire for world  
15 markets and belief in the superiority of Anglo-Saxon culture  
16 led the United States to assert itself as a world power. Okay?

17 MS. COOPER: Objection. Relevance.

18 THE COURT: On what basis?

19 MS. COOPER: There's no showing that this was being  
20 used in a classroom.

21 THE COURT: Well, maybe that's where he's trying to  
22 get. I don't know. Objection's overruled.

23 MR. REISS: I think we established, Your Honor, that  
24 the Cambium report actually observed this being used in the  
25 classroom, and Ms. Hrabluk has no basis to disagree with that

1 observation.

2 THE COURT: Well, but no one said anything about this  
3 page being used.

4 MR. REISS: Okay. Fair enough, Your Honor.

5 BY MR. REISS:

6 Q. By the way, does that idea alone, is that something that  
7 you would object to being taught in the classroom?

8 A. No.

9 Q. Okay. Let's look at the next page. Anglo-Saxonism: The  
10 work which the English race began when it colonized North  
11 America is destined to go on until every land that is not  
12 already the seat of an old civilization shall become English in  
13 its language, in its religion, in political habits, and  
14 traditions to a predominant extent in the blood of its people.  
15 John Fiske, quoted in The Expansionists.

16 A. Yes, I see it.

17 Q. Do you have any objection to that being taught in a history  
18 classroom?

19 A. Not to being presented as the thinking in 1898 by John  
20 Fiske, no.

21 Q. Right. It would depend how it's being taught.

22 A. Exactly.

23 Q. But that quote itself could be interpreted to violate  
24 15-112, could it not?

25 MS. COOPER: Objection. Calls for a legal conclusion.

1 THE COURT: Objection's overruled.

2 You know, those objections about legal conclusions about  
3 this very statute, this is a statute that the Office of  
4 Education is mandated to administer and enforce and interpret.  
5 You know, to an ordinary lay witness, that would be a good  
6 objection, but not to the associate superintendent of the  
7 Office of Education.

8 MS. COOPER: Understood, Your Honor.

9 MR. REISS: Could you read back the question.

10 (Reporter read back the last question.)

11 A. As a stand-alone quote, all by itself, regardless of what  
12 else was taught in 180 days of instruction, I wouldn't expect  
13 so.

14 BY MR. REISS:

15 Q. Then why don't we turn to Exhibit 94. You've seen this  
16 before. This is a press release. Important Information  
17 Regarding Tucson Unified School District's Violation of A.R.S.  
18 Section 15-112. We talked about this a little earlier. Let's  
19 go to the third page of this exhibit.

20 And these are citations from -- of materials that the  
21 superintendent has deemed violative of 15-112, right? Okay.

22 Let's look at Number 2B. From 500 years of Chicano History  
23 in Pictures. 2B: Ever since the birth of the U.S., its rulers  
24 had dreamed of expanding across the continent. So the Anglo  
25 expansionists first took over Texas by deception and force.

1 They deliberately provoked the war on Mexico in 1846-48. The  
2 invasion ended with the Treaty of Guadalupe Hidalgo. U.S.  
3 forces treated the Mexicans living there as a conquered  
4 inferior race.

5 That passage is cited by the superintendent as violating  
6 15-112, right?

7 A. In addition to the others, so, again, cumulative, rather  
8 than a single isolated.

9 Q. And that passage isn't any more or any less violative of  
10 15-112 than the passage I just read you from the history book,  
11 is it?

12 A. As a -- just as a stand-alone, I'd say it's comparable,  
13 yes.

14 Q. Okay. By the way, you don't think simply having a poster  
15 of Che Guevara in a classroom violates 15-112, do you?

16 A. No.

17 Q. Now, I believe you testified on your direct examination,  
18 Ms. Hrabluk, that you did not witness Superintendent Huppenthal  
19 display any discriminatory animus to Mexican-Americans, right?

20 A. That's correct.

21 MR. REISS: Let's put up the demonstrative. This was  
22 the demonstrative, Your Honor, that was previously used with  
23 Mr. Huppenthal. The State has seen it before.

24 BY MR. REISS:

25 Q. Ms. Hrabluk, I am going to go through a number of blog

1 postings made by former Superintendent Huppenthal between  
2 December 14th, 2010, right before he became superintendent, and  
3 May 30th, 2013, when he was still superintendent. All right?

4 Okay. And by the way, you retired in 2014, right?

5 A. That's correct.

6 Q. Okay. And when exactly in 2014?

7 A. July 5th.

8 Q. Okay. So let's look at the first one. Were you aware that  
9 on December 14th, 2010, then Senator, soon to be Superintendent  
10 Huppenthal, posted the following blog: No Spanish radio  
11 stations. No Spanish billboards. No Spanish TV stations. No  
12 Spanish newspapers. This is America. Speak English.

13 Were you aware that he posted that blog?

14 A. No, I wasn't.

15 Q. Okay. Let's look at the next blog. December 15th, 2010:  
16 The rejection of American values and embracement of the values  
17 of Mexico in La Raza classrooms is the rejection of success and  
18 embracement of failure.

19 Were you aware that he posted that blog?

20 A. No, I wasn't.

21 Q. Let's look at the next one. December 16th, 2010: I don't  
22 mind them selling Mexican food as long as the menus are mostly  
23 in English.

24 Were you aware he posted that blog?

25 A. No.

1 Q. Let's look at the next one. January 4, 2011. He is now  
2 the superintendent of education and your boss.

3 January 4, 2011: La Raza means "the race." It doesn't  
4 mean the Mexican race unless you use it as a shorthand for  
5 that. But it is also shorthand for classroom studies that  
6 depict America's founding fathers as racists, poisoning  
7 students' attitudes towards America.

8 Were you aware that he posted that blog?

9 A. I wasn't aware of any of the blogs until after I retired  
10 and they became public. So I only became -- if you want to  
11 read them all, I just will have the same answer for all of  
12 them. I was completely unaware of his blogs while I was  
13 working at the department.

14 Q. So when you testified that you never saw any racist  
15 activities or any activities by Superintendent Huppenthal that  
16 displayed animus against Mexican-Americans, you weren't aware  
17 of any of these blog postings, were you?

18 A. So my statement was correct, that I did not witness any  
19 undue behavior or writings by the superintendent. My  
20 experience with the superintendent was solely within my  
21 responsibilities as an associate within the department. So my  
22 conversations with the department were -- with the  
23 superintendent were strictly during business hours.

24 Q. So, as you're testifying, you were not aware of a number of  
25 other activities that Superintendent -- engaged in by

1 Superintendent Huppenthal that might well be viewed as  
2 displaying animus against Mexican-Americans, right?

3 A. I was not aware of any of that.

4 MR. REISS: I think we're almost done, Your Honor. I  
5 think I have a couple of questions.

6 BY MR. REISS:

7 Q. Ms. Hrabluk, I know -- this is always a difficult process,  
8 but I know you're a career educator, and you obviously care a  
9 great deal about education and improving education. Is that  
10 right?

11 A. That's fair.

12 Q. And if there were a program that did dramatically increase  
13 the educational results of Mexican-American students, you would  
14 be in favor of that program, right?

15 A. Yes. In fact, there are programs that can make great  
16 gains, and, absolutely, I would support them.

17 Q. So if there was a significant positive relationship between  
18 taking Mexican-American Studies courses and academic  
19 achievement, you would be in favor of that, right?

20 A. Yes. Valid reliable data over -- and consistent over  
21 several years and, as I said, was reliable data, yes, of  
22 course.

23 Q. Right. And if there was solid, reliable data consistent  
24 over several years that MAS courses significantly increased the  
25 passing rate of Mexican-American students on AIMS courses, you

1 would be in favor of that, right?

2 A. Again, valid, reliable consistent data over years, yes.

3 Q. Right. And if there was reliable, consistent data that  
4 taking MAS courses increased the graduation rates of  
5 Mexican-American students, you'd be in favor of that, right?

6 A. Yes.

7 Q. And if there was consistent reliable data that these  
8 positive trends increased the more Mexican-American Studies  
9 classes Mexican-American Studies students -- Mexican-American  
10 students took, you would be in favor of that, right?

11 A. So, just to clarify, you're asking me that if reliable  
12 consistent data showed that the program was effective, that it  
13 should be made available to even more Mexican-American  
14 students? Is that what you were asking me?

15 Q. Well, sort of, yes, but I'll take that one.

16 A. My own question. Any program that is effective in helping  
17 students learn so that they can be successful, not only in high  
18 school but in post-secondary choices that they make, needs to  
19 be supported by their district. That's our job, is to educate  
20 students to success.

21 MR. REISS: Thank you, Ms. Hrabluk. I have no further  
22 questions.

23 THE COURT: Let me ask, Ms. Cooper, you have just a  
24 few minutes or -- because, if not, we'll take a recess.

25 MS. COOPER: I think it would be best if we took our



1 recess, Your Honor.

2 THE COURT: All right. Then we'll stand at recess at  
3 this time and resume in about 15 minutes or so.

4 (A recess was taken from 10:30 a.m. to 10:54 a.m.)

5 THE COURT: Let's all be seated. We are now on the  
6 redirect, right?

7 MS. COOPER: Yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. COOPER:

10 Q. Good morning, Ms. Hrabluk.

11 A. Good morning.

12 Q. Thank you for coming back.

13 A. You're welcome.

14 Q. Was it an easy decision to determine whether the TUSD MAS  
15 program violated the statute?

16 A. No.

17 Q. What made it difficult?

18 A. The lack of curriculum material definitely made it  
19 difficult, a lack of a full scope and sequence with a clear  
20 outline of how materials were used, an outline of lesson  
21 directions across the 180 days. A lack of all of that  
22 information didn't give, you know -- what was missing was a  
23 clear picture of the course of instruction across 180 days. So  
24 that made it difficult.

25 Q. Why did the lack of that information make it difficult to

1 reach a decision about whether or not a violation existed?

2 A. Well, the material that -- much of the material that we  
3 reviewed could be construed as controversial or challenging to  
4 teach, and so it would have been very helpful to have the  
5 material put in context of a broader scope and sequence for the  
6 direction of the program, what the intention was for  
7 instruction, how students were going to be taught, and how the  
8 material was going to be used.

9 And then down to a little bit more detail inside of  
10 connected units and lessons, it would have been very helpful to  
11 understand how students were being presented with multiple  
12 perspectives, how they were being encouraged to think  
13 critically about material that was being presented to them, and  
14 how they were being taught to build their own sound arguments.  
15 So without any of that being in place, it was challenging to  
16 determine how the material was being utilized.

17 Q. Did you see information from which you could draw the  
18 conclusion that multiple perspectives were being offered in the  
19 MAS classes?

20 A. I don't recall. But that certainly wouldn't have been my  
21 overall impression, no.

22 Q. Do you recall seeing materials that would have led you to  
23 conclude that sound thinking was being taught in the MAS  
24 classes?

25 A. Well, much of the material that we reviewed appeared to

1 have a more singular focus and direction. So it wasn't clear  
2 to us how multiple perspectives would be brought to a lesson.

3 Q. What is the problem that arises for you when you're  
4 reviewing materials and you see a preponderance of the material  
5 has a singular focus?

6 A. Well, the whole -- the whole point of effective instruction  
7 is to -- in education is to teach students how to think. And  
8 in this day and age, where we are provided with volumes of  
9 information, it's important to make sure that students are  
10 being trained in how you navigate through all of this  
11 information, what is factual information, what is opinion,  
12 what's re -- what are reliable sources, what are not reliable  
13 sources.

14 When we are immersing students in controversial subjects,  
15 which at the high school level certainly can be appropriate  
16 with a good teacher, we want to make sure that what we're  
17 really teaching children is how to become aware of multiple  
18 perspectives. If there is conflict in the community or in  
19 society as a whole, where is that conflict coming from, and  
20 what are these conflicting sides saying? What information do  
21 they stand on?

22 And as an individual, even, more broadly, a citizen of this  
23 country, how do you -- how do you navigate through this  
24 information and begin to build your own sound argument and  
25 rational thinking when there is a lot of very disparate

1 information out there.

2 So that's -- that's what effective instruction does, is  
3 underneath the initial content you're using, the purpose is to  
4 teach students how to think and how to form sound arguments  
5 themselves.

6 Q. Is the concern when you see materials with a singular focus  
7 that students are not being taught how to think, but instead  
8 being taught what to think?

9 A. Yes. If the material has a more singular focus, then it  
10 could be that what students are going to learn has already been  
11 predetermined, and the material that's going to get you there  
12 is presented to the students.

13 Q. Was it your concern, based on your review of the MAS  
14 materials that were made available to you that had this  
15 singular focus, that the MAS students were being taught what to  
16 think rather than how to think?

17 MR. REISS: Objection. Leading, Your Honor, at this  
18 point.

19 THE COURT: Overruled. You may answer.

20 A. The concern was a lack of information about a balance.  
21 What else was being presented, what other information was being  
22 presented, what other perspectives, that wasn't -- that  
23 information was not presented to us, it wasn't made clear to  
24 us. So we just reviewed the material that was in front of us,  
25 and it did appear to have a singular focus.

1 Q. Was the kind of determination that you are called to help  
2 make in connection with deciding whether the TUSD MAS program  
3 violated the statute a determination that was part of the  
4 ordinary course of business or out of the ordinary course of  
5 business for you?

6 A. It would have been out of the ordinary course of business.

7 Q. Did it call on you, however, to apply the skills and  
8 knowledge that you have gained in your years as an educator to  
9 a new question?

10 A. Yes. My involvement with this work was strictly as a  
11 career educator. That was my perspective, and that was the  
12 experience that I brought to this work.

13 As I have mentioned before, there were others involved in  
14 final decisions, and my piece was strictly from an educator's  
15 point of view.

16 Q. Did you understand that the MAS program was intended to  
17 help a vulnerable group of students in at least one purpose?

18 A. Yes, I was generally aware of that, yes.

19 Q. Was it difficult for you to conclude that a program that  
20 was designed or intended to help a vulnerable group of students  
21 violated state law?

22 A. Yes.

23 Q. You were asked briefly about some passages from a history  
24 textbook. Do you recall that testimony a few minutes ago?

25 A. Yes.

1 Q. Are you familiar generally with the kinds of textbooks that  
2 are used in high school classes in Arizona, high school history  
3 classes?

4 A. Six or seven years ago, when I was working at the  
5 department, I would have generally been familiar.

6 Q. Do you believe that the history textbooks that districts  
7 adopt -- based on your experience, do you believe that the  
8 history textbooks that are used by districts in Arizona provide  
9 balance and context and analysis for the information contained  
10 within them?

11 A. Yes.

12 Q. You were also asked some questions about Mr. Huppenthal's  
13 blogging, do you recall that?

14 A. Yes.

15 Q. Do the blogging comments that you saw cause you to want to  
16 change your answer with respect to whether discriminatory  
17 animus influenced the decision to find the MAS program in  
18 violation of A.R.S. 15-112?

19 MR. REISS: Objection, Your Honor. With respect to  
20 Mr. Huppenthal's state of mind, she can't testify to that.

21 MS. COOPER: I am asking her for what she saw as she  
22 participated in the decision.

23 THE COURT: I am not sure exactly now what you're  
24 asking. Maybe you should restate the question with Mr. Reiss'  
25 objection in mind.

1 BY MS. COOPER:

2 Q. I want to ask you what you witnessed -- I want to ask you  
3 about what you witnessed as the decision to fund the TUSD MAS  
4 program in violation of the statute was made. And I want to  
5 ask you whether knowledge of Mr. Huppenthal's blogging  
6 comments, which you gained after you left the department,  
7 causes you to want to change your answer with respect to  
8 whether you saw discriminatory animus influence that decision.

9 A. My review of the Mexican-American Studies material and  
10 resources and my recommendations to the superintendent were  
11 strictly based on my experience as an educator with curriculum.  
12 So I looked at the material strictly as an educator and looked  
13 for evidence of how it was used and what the intended learning  
14 outcomes were for students. So that is the information that I  
15 brought to the superintendent.

16 So that thinking of mine back in 2011 wouldn't change,  
17 regardless of what else I was unfamiliar with that was going  
18 on, because the only thing that I personally brought to the  
19 table was my experience as an educator.

20 Q. You relied solely on your experience as an educator to make  
21 the recommendations that you made with respect to the MAS  
22 program? Do I understand that correctly?

23 A. That's correct.

24 Q. You spoke briefly about student achievement this morning.  
25 I want to ask you whether student achievement is relevant in

1 determining whether a violation of A.R.S. 15-112 exists, to  
2 your knowledge.

3 A. It isn't -- it wouldn't -- student achievement is not  
4 directly tied to the legislation, but it certainly becomes a  
5 critical aspect of the impact of a program. And because it was  
6 a claim made by the Mexican-American Studies Department, that  
7 was really -- that argument that it was very effective with  
8 Latino students, that argument was put forward with the  
9 intention of making sure that the program continued.

10 So that's kind of a long answer. I don't know if I  
11 answered your question.

12 Q. I think you did. Thank you, Ms. Hrabluk.

13 A. Okay.

14 Q. Was it part of your job, in connection with your evaluation  
15 at the MAS program, to evaluate the claims with respect to  
16 student achievement?

17 A. No. At the department we had a separate accountability  
18 department and a deputy associate superintendent of  
19 accountability, so that person's expertise would have been  
20 utilized.

21 Q. And you have experience yourself in designing programs that  
22 the purpose of which is to increase student achievement,  
23 correct?

24 A. Correct.

25 Q. Did you see -- did anything that you saw in your review of



1 the MAS program materials that were available to you indicate  
2 that the MAS program could be promoting student achievement as  
3 you understand that that would be done?

4 A. What was missing, lacking, was evidence, a sound argument,  
5 of how this program was effective and why it was effective. So  
6 when we, in education, implement a program that initially has  
7 the intention of improving student achievement, we put in place  
8 in the program a series of benchmarks, the process for how we  
9 will check how are the students doing, and, as we move through  
10 the curriculum or the program, how are they doing, and are they  
11 actually improving.

12 So what becomes critical then is -- sorry. Part of the  
13 overarching curriculum map includes assessment plans that will  
14 ensure that you are tracking student achievement in short  
15 durations that can then also include longer durations or the  
16 full year.

17 So that's why I spoke about consistent and reliable data  
18 and, in most cases, over several years, because what becomes  
19 really important is you do need to know this is where the  
20 students were before they started the program. So you have to  
21 have some kind of a plan for a preassessment, knowing that  
22 students have come, especially at the high school level, from  
23 all kinds of experiences and all kind of coursework. But what  
24 are you going to use as your benchmarks?

25 And if we look at -- if we look broadly at assessment and

1 what we expect students to be able to do, it's definitely to be  
2 able to read and write at grade level. So even if you're going  
3 to use reading and writing skills as your -- as your  
4 preassessment, then what you have to do is make sure that  
5 you've got aligned assessments throughout.

6 So depending how at risk the students are, every couple of  
7 weeks or every six weeks, eight weeks, you're doing a drop-down  
8 for some kind of benchmark assessment to see how students are  
9 doing.

10 It's a bit of a long explanation to say that, then, when a  
11 program director is going to begin to say this program is  
12 effective for this group of students under these conditions  
13 with this type of instruction, you need to be able to show that  
14 whole picture. So you need to be able to say this group of  
15 students started here and then, with this instruction, this is  
16 the improvement, and then, when we saw a lack of improvement,  
17 here's how we made the adjustment.

18 So you have to be able to show data that is throughout the  
19 program and then at the conclusion of the program and then  
20 across several years to make sure that the conclusions remain  
21 consistent. Because children bring all kinds of experiences  
22 and stories to a classroom, and any teacher will tell you that  
23 one -- some years are fantastic and other years are a lot more  
24 challenging.

25 So if you're really going to start to do a study of a

1 program, you're going to want to make sure that it's across a  
2 large group of students over several years, regardless of who's  
3 in the classroom or, in many cases, even regardless of who's  
4 instructing, so -- because if you're going to argue that the  
5 program is effective, then you're going to want to make sure  
6 that you've got control over the variables.

7 So that's what I -- so you -- that wasn't presented to us.  
8 So that would definitely be information that would have been  
9 definitely appreciated.

10 Q. Did you see any evidence that such information was  
11 presented to Cambium and analyzed by them?

12 A. No. It's -- my memory now is not as strong. I am  
13 assuming, based on the report, the Cambium report, that they  
14 saw the Mexican-American Studies Department report, but I don't  
15 believe that a presentation was made to them or an explanation.

16 Q. Did you see any evidence that Cambium conducted an analysis  
17 of the kind of preassessment, drop-down assessment, and  
18 postassessment activity that you described a moment ago?

19 A. No, they did not.

20 MS. COOPER: Thank you, Steve. I may be here a little  
21 bit early.

22 BY MS. COOPER:

23 Q. You were shown a quote from a book by Elizabeth Martinez  
24 this morning. Do you recall that?

25 A. Yes.

1 Q. And I want to put in front of you a page from the Cambium  
2 audit and direct your attention -- this is Page 36 of the  
3 Cambium audit, and direct your attention to Figure 15.

4 Do you see that: Identifies questionable sources of  
5 appropriate texts?

6 A. So that's off the screen.

7 Q. I'm sorry.

8 A. That's okay.

9 Q. Okay. And then do you see that the third box identifies  
10 books of questionable content? Can you please identify for me  
11 the third bulleted book listed as questionable content by the  
12 Cambium auditors?

13 A. Martinez, Elizabeth, 1991, 500 Years of Chicano History in  
14 Pictures.

15 Q. You were asked on June 30th about some e-mails that were  
16 sent to you by Ms. Laura Leighton. Do you recall that fact?

17 A. Yes.

18 Q. This is Plaintiffs' Exhibit 72, which I believe is  
19 admitted, and I want to direct your attention to the pages that  
20 end in 11 and 12.

21 And that's an e-mail that begins at the very bottom of the  
22 page, and we see that's an e-mail from Ms. -- do you believe  
23 that's an e-mail from Ms. Leighton to Mr. Hibbs?

24 A. Yes, most likely.

25 Q. And then we have an e-mail from you to Ms. Luanne Nelson,

1 who was with -- was she with Cambium or NAEP?

2 A. She was with NAPE.

3 Q. Okay. So the e-mail -- let's focus, first of all, on the  
4 e-mail from Ms. Leighton to Mr. Hibbs. At the top she says:  
5 Yesterday I got this information from Raza studies after an  
6 information demand.

7 Do you know what information demand she is referring to  
8 there?

9 A. I am assuming that she put in a request for public  
10 information to the Tucson Unified School District.

11 Q. Would that be known among state and local government  
12 employees as a public records request?

13 A. Yes. Public records, yes.

14 Q. Okay. Did Ms. Leighton ever tell you that she obtained her  
15 information about what was being used in the Raza studies  
16 program pursuant to a public records request to TUSD?

17 A. I don't recall.

18 Q. Did you learn that from someone else, do you believe?

19 A. Well, I would have seen it in this e-mail, I am assuming,  
20 but I don't remember.

21 Q. Okay. You see here that she identifies two books, correct?  
22 Can you tell the Court which books that she identifies here.

23 A. Occupied America and Mexican-American Heritage.

24 Q. Is she telling ADE in this e-mail that these are examples  
25 of materials that are being used in the MAS program?

1 A. That appears to be what she's sharing in the e-mail, yes.

2 Q. Do you know if the TUSD MAS program had these books in use  
3 or available for use?

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

5 THE COURT: Overruled.

6 A. I do remember the book Occupied America as being either on  
7 a book list or one of the books that was submitted. And at  
8 this point, I am not sure about Mexican-American Heritage,  
9 whether that was a book that was submitted.

10 BY MS. COOPER:

11 Q. Okay. Let's look again at Table 15 of the Cambium audit,  
12 the same page that we were looking at before, Page 36. Do we  
13 see that Occupied America is listed as being a book of  
14 questionable content used in the Foundations of the Xicano  
15 Movement curriculum unit?

16 A. Yes.

17 Q. Do we also see that just below it, the book,  
18 The Mexican-American Heritage, by Carlos Jimenez, is also  
19 identified as questionable source -- questionable sources in  
20 the MAS program?

21 A. Yes.

22 Q. What did you do with the information that you received from  
23 Ms. Leighton about the materials that were being used in MAS  
24 classes?

25 A. With Elliott's request, I did pass those -- that

1 information to Luanne.

2 Q. And, in fact, is that what we see in this e-mail here from  
3 Kathy -- from you, Kathy Hrabluk, to Ms. Nelson and others?

4 A. Yes, that's correct.

5 Q. Did you ask Ms. Nelson to review the information, the  
6 materials that were sent by Ms. Leighton?

7 A. Yes. Part of their scope of work was to speak with or  
8 review comments or information gathered from the public at  
9 large. So that would have been kind of the context for this.

10 Q. Did you ask Ms. Nelson to make sure that Ms. Leighton was  
11 included in the interview process that Cambium was required to  
12 conduct as part of its scope of work?

13 A. It's possible. I think it's possible that Ms. Leighton  
14 requested an opportunity to participate, and that was passed on  
15 to Luanne.

16 Q. Okay. So it's possible that Ms. Leighton asked to  
17 participate, and you passed that along, you say?

18 A. Yes. Yes.

19 Q. Or it's possible that you simply asked that she be  
20 interviewed?

21 A. That's correct.

22 Q. And --

23 A. Honestly, I don't remember.

24 Q. Okay. Was it important to you that the focus group process  
25 include participants with a wide variety of perspectives and

1 knowledge about the MAS program?

2 A. Yes. This -- the Mexican-American Studies Program had been  
3 a controversial program in Tucson for a number of years.

4 This -- the controversy was not new, and it had been going on  
5 for a number of years. And there were strong opinions on both  
6 sides of the argument, and neither side feeling as if they were  
7 heard, because, again, none of the parts of the program or the  
8 material or the curriculum had been presented and adopted in a  
9 public forum in front of the school board.

10 So the controversy continued so -- in the community at  
11 large, because there just was a lack of transparency as to what  
12 was actually being taught, what materials were being used. So  
13 the controversy kind of just continued and fed off of itself.

14 So it was important initially, from the Department's  
15 vantage point, that people in the community who had opinions  
16 about the Mexican-American Studies Program should have an  
17 opportunity to at least be able to share those comments.

18 Q. Did you want supporters of the MAS program to be included  
19 in the focus groups?

20 A. Yes, by all means.

21 Q. Did you want detractors of the MAS program to be included  
22 in the focus groups?

23 A. Again, because the controversy had existed for quite a  
24 while in the community, it was important that everybody who had  
25 an opinion and wanted to be heard would have an opportunity to



1 do just that.

2 Q. Did you direct the auditors to exclude anyone from the  
3 focus group process?

4 A. No.

5 Q. Are you aware that anyone else from ADE did so?

6 A. I am not aware, no.

7 Q. What did you expect Ms. Nelson to do with the materials  
8 that she forwarded -- that you forwarded to her from  
9 Ms. Leighton?

10 A. I expected her to take a look at them. If, in fact, some  
11 of the material that was forwarded to her was already material  
12 that she had at hand that was -- that she would have been  
13 reviewing with her team, then she was to note that.

14 Q. I'll put in front of you Plaintiffs' Exhibit 78, which is  
15 an admitted exhibit that was discussed last week. You can see  
16 there's -- it's an April 29th e-mail. It appears to be from  
17 you to Ms. Nelson. Right?

18 A. Correct.

19 Q. And that is the e-mail that I want to focus your attention  
20 on. You are talking to Ms. Nelson about several topics,  
21 including the fact that she had spoken with Ms. Leighton in  
22 review of materials, and you say that she has forwarded  
23 information. There were several references and citations from  
24 specific books that are believed to be on the reading list of  
25 the MASD studies program.

1           Let me ask you first, did you believe that the materials  
2 that came from Ms. Leighton were used in the MAS program?

3       A. At the time my request to Luanne would have been to make  
4 sure that those materials were on the reading list that had  
5 been submitted by the Mexican-American Studies Department. So  
6 there certainly was to be a check.

7       Q. You didn't assume that the materials that Ms. Leighton sent  
8 came from the MAS program, you asked Ms. Nelson to check if  
9 they were?

10      A. Yes. Yes.

11      Q. And so that may be what you're referring to in the next  
12 sentence: When we spoke last Friday, I did request that you  
13 review the material on the adopted reading list to determine if  
14 the text runs counter to the legislation.

15           In an earlier conversation and in attachments forwarded to  
16 you, it was noted that some of the books used in the MASD  
17 program may be listed under the African-American Studies  
18 reading list. It is important that the reading material is  
19 reviewed.

20           Do you recall at this point why you were emphasizing to  
21 Ms. Nelson that it was important that reading material in the  
22 MAS program be reviewed?

23      A. Because the reading material would have been a critical  
24 foundation of the curriculum, and, again, the scope and  
25 sequence, and the review of the reading material would provide

1 some insight as to the direction of the scope and sequence of  
2 instruction and the intended outcomes for learning.

3 Q. This mail is on April 29th, 2011. Was that near the end of  
4 the audit period?

5 A. Yes.

6 Q. Did you have any concerns at this point that the auditors  
7 had an opportunity to review all of the reading material with  
8 respect to the MAS program that had been provided to them?

9 A. I don't recall having a concern at that time. My  
10 expectation was they were completing all of the required work  
11 that they had agreed to do. So my expectation at that time was  
12 that they were indeed doing a complete review of the reading  
13 material.

14 Q. Was a complete review of the reading material something  
15 that the Cambium auditors had been retained to do?

16 A. Yes.

17 Q. Did Ms. Leighton's views about the MAS program influence  
18 your conclusions? Let me ask you this, first of all: Did you  
19 have an understanding as to what Ms. Leighton's views about the  
20 MAS program were?

21 A. I had an understanding, yes.

22 Q. Can you please state that understanding.

23 A. It was my understanding that Ms. Leighton was not a  
24 supporter of the Mexican-American Studies, that she had extreme  
25 concerns and was -- preferred to have the program eliminated by

1 the district.

2 Q. Did Ms. Leighton's views about the MAS program influence  
3 your views about the MAS program?

4 A. No.

5 Q. Do you have any reason to believe that Ms. Leighton's views  
6 about the MAS program influenced the auditors?

7 A. No.

8 Q. Do you have any reason to believe that Ms. Leighton's views  
9 about the MAS program influenced the eventual determination  
10 that the MAS program did not comply with the statute?

11 A. No.

12 Q. Did you have any concerns that TUSD was not providing all  
13 of the materials related to the MAS program to the auditors?

14 A. I no longer remember if I had concerns during the audit. I  
15 did have concerns once the draft was completed, and in  
16 conversations that I had with Luanne, that definitely the  
17 material that was presented to the auditors was incomplete.

18 Q. What were the bases of your concerns that the materials  
19 provided to the auditors were incomplete?

20 A. Well, even in the Cambium report, and certainly in  
21 conversations that I had with Luanne Nelson, she stated that  
22 there didn't appear to be a complete curriculum or scope and  
23 sequence, so it was difficult to determine how the materials  
24 were being utilized and what the plan for instruction was  
25 across the 180 days.

1 Q. Did you receive any materials about the MAS program from  
2 supporters of that program, to your knowledge?

3 A. I don't believe so.

4 Q. If you had, would you have sent them to the auditors to  
5 conduct the same kind of review that you asked them to conduct  
6 with respect to the materials that Ms. Leighton supplied?

7 A. Yes, certainly.

8 Q. Last week the topic of the fact that the MAS program  
9 director would not participate in the Cambium audit arose. Do  
10 you recall that?

11 A. Yes.

12 Q. If the MAS program director had set aside his concerns  
13 about this lawsuit and talked to you, what questions would you  
14 have asked him?

15 MR. REISS: Objection.

16 THE COURT: Sustained.

17 BY MS. COOPER:

18 Q. If the MAS director had talked to you, what questions would  
19 you have asked?

20 MR. REISS: Objection.

21 THE COURT: Same question. Sustained.

22 BY MS. COOPER:

23 Q. Would you have considered information that the MAS director  
24 provided to you in your evaluation of whether the MAS program  
25 violated the statute?

1 A. If the director -- I am assuming that the material that was  
2 submitted to the auditors and also then to the Department of  
3 Education, I am assuming that those are resources and materials  
4 that the director was aware had been submitted. But if I had  
5 had an opportunity to sit down and have a discussion with the  
6 director, I certainly would have looked for some information  
7 about the broader scope and sequence from his vantage point in  
8 directing the entire program across multiple grade levels and  
9 content areas. I would have looked for some clear information  
10 as to, again, scope and sequence of the instruction, the  
11 intended outcomes, the assessments that were being done, and  
12 how the materials were being utilized.

13 Q. I want to ask you to define a couple of terms, if I may,  
14 with respect to the word "materials." Is it correct to think  
15 of at least two kinds of materials in connection with the MAS  
16 program, with those being "instructional materials" and  
17 "curricular materials"? Or are those the same?

18 A. In general, I would say they're the same.

19 So can I clarify?

20 Q. Please.

21 A. Not to get too much into the weeds, but, broadly speaking,  
22 curricular materials could also include training materials for  
23 teachers. So, because when you put a curriculum together with  
24 a full scope and sequence, and especially if you are changing  
25 direction with instruction or it's a new program, then teachers

1 are clearly going to require some professional development and  
2 some direction.

3 So the support for teachers and the professional  
4 development for teachers and even needed coaching for teachers  
5 would be part of the scope and sequence, more broadly, of the  
6 curricular materials, and then instructional materials would be  
7 specific to what teachers are using in the classroom.

8 Q. You've testified that you reviewed materials from the MAS  
9 program, correct?

10 A. Correct.

11 Q. Were you aware that the MAS program kept materials that its  
12 teachers could use on a shared drive that they had access to in  
13 hard copy at the district office on various media, such as CDs,  
14 DVDs and flash drives, and that teachers teaching MAS materials  
15 could create and keep their own curricular and instructional  
16 materials?

17 MR. REISS: Objection. Foundation.

18 MS. COOPER: I'm asking if she's aware.

19 THE COURT: No. The objection is sustained.

20 BY MS. COOPER:

21 Q. In your review of the materials in connection with  
22 determining whether a violation of the -- whether the MAS  
23 program violated the statute, did you purposefully omit from  
24 any -- from your review any materials that you believed to be  
25 used in the MAS program?

1 A. No.

2 Q. I am going to turn now to classroom visits. Are you  
3 experienced in conducting classroom observations, Ms. Hrabluk?

4 A. I was, yes.

5 Q. Can you explain how you evaluate -- what's the purpose of a  
6 classroom observation then, please?

7 A. The purpose of a classroom observation is to determine the  
8 degree to which a teacher is implementing the written  
9 curriculum. So first you have curriculum, which, again, I've  
10 spoken to a few times, the broad scope and sequence and all of  
11 the pieces inside of that that provide a roadmap for a teacher;  
12 and the curriculum provides a roadmap across the 180 days right  
13 through to units of instruction that may be six or eight weeks  
14 through to daily instruction in the classroom. So this written  
15 curriculum is multilayered, and this is the roadmap for the  
16 teacher.

17 A classroom observation is really strictly to determine the  
18 degree to which the teacher is implementing the written  
19 curriculum. So a classroom observer would have to have some  
20 knowledge of the curriculum from which the teacher is leaning  
21 on to provide this instruction to the classroom.

22 Q. Do you know how you would evaluate classroom teaching in a  
23 class -- as an observer where you don't have that written  
24 curriculum?

25 A. Well, some pretty significant pieces would be missing. I



1 mean, it still -- so what's missing is the -- how is the  
2 instruction of today fitting into the larger picture? Is it --  
3 larger picture of instruction across the program, semester, 180  
4 days.

5 What would be difficult to determine is how is the  
6 students' learning today an indication of if they are on track  
7 inside of the curriculum to be successfully learning what is  
8 intended to be taught, and how the teacher is -- as the lesson  
9 moves on, how has the teacher connected prior learning and  
10 prepared the students to take on the next day's learning or  
11 future learning. So when you don't have that picture, you're  
12 really just looking at that immediate present moment of  
13 teaching.

14 Q. Is it correct to think of that kind of classroom  
15 observation as a snapshot?

16 A. Oh, absolute -- any classroom observation is a snapshot.  
17 But a snapshot of a teacher who is teaching within a standing,  
18 fully adopted curriculum gives you a clear picture of this  
19 teacher's intended purpose inside of the broader curriculum.

20 So if my purpose is to make sure that children understand  
21 fourth grade math by the time they're finished fourth grade and  
22 I am being observed, what needs to be clear to that observer is  
23 today's instruction; where does it fit in in the scope and  
24 sequence, and is it clear that the students, by how they're  
25 responding today, is it clear that they have mastered these

1 previous skills that they should have, and, again, am I  
2 preparing them for future learning.

3 Q. Did you understand that the Cambium auditors agreed to  
4 conduct classroom observations as part of the work that they  
5 were to do?

6 A. Yes.

7 Q. Did you expect that the Cambium auditors would observe MAS  
8 teachers teaching MAS classes in their classroom observations?

9 A. Absolutely. I mean, it was very public knowledge in the  
10 Tucson area that there were outside auditors looking at the  
11 Mexican-American Studies Program. Certainly, life happens, but  
12 it wasn't a mystery to too many people that the audit was going  
13 on at the district.

14 Q. Did you believe that Cambium understood that it was to  
15 observe MAS teachers teaching MAS classes for its classroom  
16 observations, for its evaluation of the MAS program?

17 A. Yes. Because classroom observations normally are a part of  
18 a curriculum audit. And, again, it isn't necessarily the  
19 linchpin. And that is, I know, an interesting point, because  
20 when we talk about teaching and learning, the most important  
21 part of our whole business is what unfolds in the classroom  
22 every day with an effective teacher and learners.

23 But when we are doing an audit of a curriculum that is  
24 being presented to students, the absolute critical piece is the  
25 planned roadmap. That's essential. If you don't have that,

1 then when you go into a classroom, you are simply looking at  
2 what that teacher has chosen to instruct for that moment in  
3 time, that 30 minutes.

4 And so it very well could be an interesting lesson, but  
5 when we're looking at an entire program, how does that one  
6 little piece of 30 minutes fit into the full and complete  
7 intentional scope and sequence of a program.

8 Q. At the conclusion of the audit, when you were reviewing the  
9 draft, did you develop any concerns about the adequacy of the  
10 Cambium auditors' classroom observations?

11 A. Yes. Again, they saw relatively few actual  
12 Mexican-American Studies Program lessons. So it would have  
13 been more beneficial if they had actually been able to observe  
14 more lessons from the Mexican-American Studies Program.

15 But, again, what really was the missing piece was this  
16 complete curriculum, because it's hard to determine exactly  
17 what you're looking at in a classroom if you don't have a  
18 roadmap. I mean, it's a little bit like trying to build a  
19 skyscraper. If I looked at construction workers for 30  
20 minutes, it's hard pretty hard to determine if they're on track  
21 with the blueprint and the construction schedule just because I  
22 look at -- watch them for 30 minutes. I mean, I need to see  
23 their work for 30 minutes in context of the full and complete  
24 plan.

25 And, again, in education, that full and complete plan needs

1 to be adopted by the local school board so there's approval for  
2 all of this. I need to know that as a classroom observer that  
3 when I go in to watch a teacher teach, that that teacher,  
4 again, is operating within the curriculum and that this  
5 curriculum has been publicly vetted and approved and adopted by  
6 the elected school board. So now we're down to business about  
7 how this unfolds in the classroom.

8 But if all of those other pieces are missing, I can observe  
9 a poor teacher or an effective teacher for 30 minutes, and it  
10 becomes all relatively irrelevant to the question of what's  
11 being taught over the course of this program.

12 Q. Did ADE, to your knowledge, consider conducting classroom  
13 visits of the MAS classes as part of its own investigation?

14 A. In the short term, because the -- the reason I am  
15 hesitating is there were classroom observations done, but not  
16 in this narrow time frame and --

17 Q. My question is confined to this time frame of May/June.

18 A. So we didn't. And the reason for that, again, is we would  
19 have found ourselves in the same boat as the auditors, as you  
20 are observing classroom instruction with no foundation or  
21 relevancy to a standing and adopted curriculum. So, again,  
22 where do we place this in the context of the written  
23 curriculum? We wouldn't have been any farther ahead.

24 Q. Were you asked -- you were asked last week whether -- or a  
25 couple of weeks ago whether you have ever done a curriculum

1 review. Do you recall that?

2 A. Yes.

3 Q. Do you know how many curriculum reviews you've done?

4 A. So, at this point, maybe that's three years retired, I  
5 honestly don't remember. But I would have done curriculum  
6 reviews while I was at the school district, so within my own  
7 school district.

8 And I would have worked with school districts while I was  
9 at the Department in doing curriculum reviews with --  
10 specifically with their literacy instruction. And then I  
11 worked with and guided the school improvement team at the  
12 Department and set together protocols as that team went out to  
13 failing school districts to do curriculum audits for them and  
14 then also to provide support in how to move forward in building  
15 a stronger and more effective curriculum.

16 Q. You also talked a couple of weeks ago about the fact that  
17 then Superintendent Huppenthal had included in his  
18 superintendency campaign a "stop La Raza platform." Do you  
19 recall that testimony?

20 A. I do. I recall the testimony.

21 Q. Were you aware during the investigation of the MAS  
22 program -- so this is in 2011 -- that whether Superintendent  
23 Huppenthal -- excuse me -- then Senator Huppenthal had made  
24 statements about stopping the La Raza program as part of his  
25 campaign?

1 A. So I believe in June I said I -- I couldn't remember when I  
2 was asked that question.

3 Q. Mmm-hmm.

4 A. The truth is, I didn't take it under consideration when I  
5 was involved with the review of the Mexican-American Studies  
6 Program, so it wasn't something I took under consideration at  
7 the time. So I think, honestly, that's why I am saying I  
8 don't -- it's possible. Honestly, I don't remember.

9 Q. Did Superintendent Huppenthal ever tell you that because he  
10 campaigned to stop La Raza, it was necessary to issue a finding  
11 against the program?

12 A. I didn't have that conversation with him, no.

13 Q. The fact that there was a tight timeline for the completion  
14 of the Cambium audit was discussed. Did you participate in any  
15 discussions with respect to whether the audit and investigation  
16 could be completed by the end of that school year so that any  
17 needed corrections could be made by the following school year;  
18 that is, after the summer and the fall of 2011?

19 A. I recall conversations where the superintendent wanted to  
20 make sure that TUSD had a direction to move forward in as the  
21 following school year began, so didn't want a decision to be  
22 kind of left out there hanging, understanding that plans would  
23 be made over the summer to make sure that things were in place  
24 as students began school again in August.

25 Q. You mentioned that -- on June 30th that shortcomings in

1 alignment to standards -- and that would be state standards --  
2 for education are distinct from an analysis of whether  
3 curriculum violates A.R.S. 15-112, but that those things are  
4 nevertheless connected. Can you please describe the  
5 connection.

6 A. To determine what students are being taught, again, you  
7 have to go back to the master plan, and that would be a full  
8 curriculum and scope and sequence that covers the duration of  
9 instruction, so whether that's a semester or a full 180 days.

10 So otherwise, I don't know how you figure out what teachers  
11 are teaching and what students are learning if you cannot  
12 review a full and complete plan and a curriculum map.

13 Q. Is the connection that the curriculum should be aligned to  
14 standards?

15 A. Yes. That's part of Arizona statute. So first we have  
16 state standards, K-12, across content, multiple content areas.  
17 Those standards, again, are developed and drafted by educators  
18 with public input, and then at the state level are taken to the  
19 State Board of Education over a series of public meetings and  
20 presented, and feedback is garnered from the public, along with  
21 the members of the State Board of Education, and changes are  
22 made to the drafts.

23 And at some point in this process, the particular standards  
24 are formally adopted by the State Board of Education. Once the  
25 standards are formally adopted, the next level of work falls to

1 a school district and a district governing board.

2 The district's curriculum -- across all grade levels and  
3 all programs or content areas, the curriculum must now align to  
4 state standards. The state standards themselves are really a  
5 list of skills that students need to be able to do or  
6 understand.

7 So districts take those standards by grade level or content  
8 area and then begin to develop the curriculum, which is what  
9 will we teach, how will we teach it, when will we teach it,  
10 what materials will we utilize, and how will we know that  
11 students are learning? And that "how we know they are  
12 learning" would be an assessment plan.

13 So all of that, again, mirrors the state work. This work  
14 would be drafted by educators, and depending on what the  
15 curriculum is, there can be outside input from experts or  
16 community members. Those drafts of curriculum go to the local  
17 boards, again, vetted in public meetings for input, changes are  
18 made, and at some point the electorate -- the elected local  
19 school boards adopt the curriculum.

20 So the standards are embedded in the curriculum, but  
21 there's far more detail and direction in a local school board's  
22 curriculum. That curriculum then goes to the educators.

23 Q. So I want to show you Plaintiffs' Exhibit 67, which is  
24 something that was discussed during your cross-examination, and  
25 that's an e-mail from you, on March 24th, 2011, to Mr. Hibbs



1 and Mr. Stollar. And if we look at the e-mail itself, we see  
2 that you are forwarding an e-mail that you have received  
3 without comment. Is that correct?

4 A. Correct.

5 Q. And then we see below that an e-mail from Dave Cappellucci  
6 on to you. Can you tell me who Mr. Cappellucci was?

7 A. He was -- he was with Cambium. So he was a director. He  
8 would have been the person that was in direct communication  
9 with the Department about the initial RFP.

10 Q. And you see he says: Kathy, here's what we prepared and  
11 have sent to Andrew. He asked you to send it to Mr. Stollar,  
12 it looks like. And it says: I hope we've earned credits with  
13 you all to request seeing the final form before it releases.  
14 Do you see that?

15 A. Yes.

16 Q. And do you believe that he is referring to the subject of  
17 that, the press release shell, as the document that he has  
18 prepared and sent to Andrew?

19 A. Yes.

20 Q. And do you know the Andrew to whom he might be referring  
21 there?

22 A. I am assuming it's Andrew LeFevre, who was the  
23 communications director at the time.

24 Q. And we see if we go below, that, in fact, Mr. Cappellucci  
25 is forwarding an e-mail from Shannon Overbeck. Do you know who

1 Shannon Overbeck was?

2 A. I know she was with Cambium, but I no longer remember her  
3 position.

4 Q. Okay. And she's sending an e-mail to Mr. LeFevre, the  
5 press officer, and she says: Attached is a shell of a press  
6 release that should be helpful to you when you distribute  
7 information regarding the recent developments surrounding the  
8 audit. And she also asks to see a copy of the final press  
9 release before it is distributed. Do you see that?

10 A. Yes.

11 Q. Do you know why Cambium was -- do you believe that Cambium  
12 was preparing a draft press release for ADE's consideration at  
13 this point?

14 A. Yes. That seems what was happening with these e-mails,  
15 yes.

16 Q. Do you recall why at this point Cambium might be preparing  
17 a draft press release for ADE to issue?

18 A. There had been some personnel changes that happened very  
19 quickly and very early on with the -- after the proposal had  
20 been -- my words -- after Cambium had been contracted. There  
21 were some personnel changes very quickly with some of the  
22 directors that would have been leading the audit.

23 Q. Was that occurring in this time frame of these e-mails,  
24 which is March 24th, 2011, to your recollection?

25 A. Yes, I believe so.

1 Q. Let's look at the last page of this exhibit now, which is  
2 the press release that was prepared -- the draft that's  
3 attached to these e-mails. And I want to focus your attention  
4 on the sentence: ADE has full confidence in the current audit  
5 team and their ability to remain impartial and unbiased.

6 Do you know, at this point in time, why it was important  
7 for ADE to state that it was confident in the audit team's  
8 ability to remain impartial and unbiased?

9 A. Can you repeat the question, please?

10 Q. Do you know why it was important for ADE to state their  
11 confidence that the -- in the current audit team and its  
12 ability to remain impartial and unbiased as they continued  
13 their review --

14 A. Yes.

15 Q. -- of the Mexican-American Studies Program?

16 A. There had been some negative press because there was, of  
17 course, high interest in the local area about review of the  
18 Mexican-American Studies Program, because as I had mentioned,  
19 there was -- there had been kind of some long-brewing  
20 controversy. So there was interest in the community.

21 And when there had to be some personnel changes immediately  
22 within the auditors' team, this became also local news, and it  
23 was negative.

24 And so the Department felt that it was important to clarify  
25 that the Cambium Learning Group was still capable, in our eyes,

1 at the beginning of the process, to be able to conduct the  
2 audit with the staff that they had engaged for the work and  
3 that we believed at the time that they would remain impartial  
4 and unbiased.

5 Q. Based on the knowledge that you have, do you see this as a  
6 statement of ADE's confidence that the auditor will remain  
7 impartial and unbiased, or do you see it as a statement of  
8 confidence in the auditors' ability to do the work, or both?

9 A. Both, because that's what we expected.

10 Q. As the auditors did their work, did you remain confident  
11 that they were impartial and unbiased?

12 A. Yes, because they -- in the conversations that I had with  
13 them, they appeared to be remaining objective.

14 Q. When you saw the Cambium report, did you continue to be  
15 confident that they were unbiased and impartial?

16 A. In conversations that I had with the audit team, they were  
17 not unaware of the controversy and conflict around the program.  
18 They were not unaware of that in the local area. So -- okay.  
19 Now I lost my train of thought. Sorry. What was the question?

20 Q. I just asked whether, after you reviewed the Cambium audit,  
21 you continued to remain confident that the auditors had been  
22 impartial and unbiased.

23 A. No.

24 Q. At the end, when you had reviewed the audit, were you  
25 confident that they had been capable of doing the work?

1 A. That's an interesting question.

2 Q. And let me withdraw it. It's actually a poor question, as  
3 well.

4 A. Okay.

5 Q. Did you remain confident that they had done the work that  
6 they had been contracted to do?

7 A. No. No.

8 Q. You mentioned on June 30th that during your monitoring of  
9 the audit, you were having consistent conversations reiterating  
10 expectations that the auditors were going to fulfill the  
11 contract completely. Why were those conversations necessary?

12 A. Again, this wasn't an easy project. And as I mentioned  
13 earlier, in fact, there was only one consulting company that  
14 even stepped up to the plate to consider the request for  
15 proposal, and that was Cambium.

16 So this was a challenging project. And so I felt that it  
17 was important, as I said, to reiterate that we needed a full  
18 and complete audit done. I recognized that the time was short,  
19 but we needed to make sure that there was a full and complete  
20 review done.

21 In my conversations with them, yes, there were challenges  
22 with getting personnel to TUSD. There were challenges with  
23 scheduling. There were multiple challenges once they got feet  
24 on the ground in Tucson, that came up in conversation. So I  
25 knew that it was a challenging project, but I wanted to make

1 sure that they understood that we did expect the work to be  
2 completed.

3 Q. You also said to Mr. Reiss that during the period of  
4 monitoring the auditors' work before the draft audit was issued  
5 that you had a growing concern about their ability to actually  
6 complete the full scope of work.

7 Do you recall when that -- what caused you to develop that  
8 growing concern?

9 A. Again, it would have come out of conversations that I had  
10 with Luanne in the challenges for scheduling, in needing to  
11 make some changes to some of the -- who would participate in  
12 the focus groups, again, because of timing and transportation.  
13 And, definitely, when I would check in about a review of the  
14 materials, it was, "yes, we're going to get to that," "yes,  
15 we'll get to that," "yes, we've got people scheduled to do  
16 that." But I wasn't confident that it had already been done.  
17 That wasn't part of the feedback while we were in the middle of  
18 the audit, know that's been done.

19 Q. I am going to put Exhibit 84 in front of you, which is an  
20 admitted exhibit. You see at the top that indicates that it's  
21 a May 10th e-mail from Mr. Hernandez, who is with Cambium, to  
22 you, copied to Ms. Nelson. Do you see that?

23 A. Yes.

24 Q. You've had the opportunity to speak about this e-mail  
25 several times, so I am just going to focus your attention on

1 this portion here, which is this May 9th e-mail from you  
2 apparently to Luanne. But if you need to see the entirety of  
3 the e-mail to answer my questions, let me know.

4 I am going to focus your attention on the highlighted  
5 language: We do have some serious concerns about the draft  
6 report and some inconsistencies that we will need to discuss.

7 Do you recall whether you ever had a conversation with  
8 Cambium about the concerns that you had, the serious concerns  
9 and the inconsistencies that you identify here?

10 A. Before or after this e-mail?

11 Q. After this e-mail.

12 A. Yes, there would have been a conversation.

13 Q. Do you recall that conversation?

14 A. I recall having that conversation.

15 Q. Do you recall anything about that conversation?

16 A. I recall part of the conversation including what we saw as  
17 a bit of a disconnect between their statements that there  
18 wasn't any curriculum to review, that there didn't seem to be,  
19 again, a scope and sequence, so it was difficult to figure out  
20 where things fit in. But they did identify material that was  
21 of concern, they identified material that didn't seem  
22 appropriate for the grade level it was indicated for. And yet  
23 none of that came into play with their -- with their final  
24 findings.

25 Q. Did you ask Cambium to change its findings because of the

1 serious concerns that you had and inconsistencies that you saw?

2 (Technical difficulties followed by a discussion off  
3 the record.)

4 THE COURT: We are at recess from 12:15 to 1:45.

5 (A recess was taken from 12:11 p.m. to 1:48 p.m.)

6 THE COURT: Let's be seated. We're on redirect,  
7 right?

8 MS. COOPER: Correct, Your Honor.

9 THE COURT: The reporter says there is a pending  
10 question.

11 MS. COOPER: Correct.

12 THE COURT: Do you want her to read it or do you want  
13 to start over?

14 MS. COOPER: I believe it would be best to have the  
15 pending question read.

16 THE COURT: Let me ask the reporter to read the  
17 question that's pending.

18 (Reporter read back the last question.)

19 MS. COOPER: I'd like to withdraw that question, Your  
20 Honor.

21 THE COURT: All right.

22 BY MS. COOPER:

23 Q. Did you ask Cambium to change its conclusions after you  
24 viewed the draft report?

25 A. I did not, no.



1 Q. I have just a few questions about Plaintiffs' Exhibit 86,  
2 which you discussed this morning and last week. Do you recall  
3 that?

4 A. Yes, I do.

5 Q. I want to direct your attention to this outline of comments  
6 and the date as well. This is May 12th, 2011, correct?

7 A. Correct.

8 Q. Did you understand at this point in time that it was the  
9 responsibility of the superintendent of public instruction to  
10 decide whether a violation of the statute had occurred with  
11 respect to the MAS program?

12 A. Yes, I understood that.

13 Q. At this point in time, were you and other members of the  
14 ADE team continuing to review materials from the MAS program?

15 A. Yes.

16 Q. Was the conclusion that was identified in this document a  
17 tentative conclusion?

18 A. Yes.

19 Q. Let's look at Plaintiffs' Exhibit 88, which is the May 24th  
20 document that was discussed this morning. Do you know whether  
21 this is a draft or a final document?

22 A. It's a draft.

23 Q. Did you author it?

24 A. I would have helped author it, yes.

25 Q. Do you know who else worked on it?

1 A. John Stollar.

2 Q. Do you know if anyone else worked on it?

3 A. That, I don't recall.

4 Q. Did you finalize this document?

5 A. Finalize as in finish the draft?

6 Q. Correct.

7 A. Honestly, I don't remember if I -- I don't remember.

8 Q. Do you know if anyone finalized this document?

9 A. Someone would have finalized this particular draft before  
10 it went to the superintendent, yes.

11 Q. Do you know if it was finalized and sent to the  
12 superintendent?

13 A. You know, I don't know at this -- I can't remember. I  
14 don't know.

15 Q. Do you recall this morning Plaintiffs' Exhibit 92, which  
16 was Mr. Huppenthal's statement issued in connection with the  
17 finding of violation was discussed?

18 A. Yes.

19 Q. Do you recall that it refers to a statement made by you as  
20 well?

21 A. Yes.

22 Q. I am going to put in front of you -- it's not marked, but  
23 this is Plaintiffs' Exhibit 542, and it has been admitted. We  
24 see that it is a statement dated June 15th, 2011, and it is  
25 entitled: Official Statement of an Associate Superintendent

1 Kathy Hrabluk. My first question is do you recall this  
2 document?

3 A. Yes, I do.

4 Q. Do you recall whether you drafted this document?

5 A. Yes, I would have drafted this document.

6 Q. Do you believe this is the statement that the earlier  
7 document, the other document that we just looked at, the one  
8 that was issued by Mr. Huppenthal, referred to?

9 A. Yes.

10 Q. Does this document represent your views as of the time that  
11 it was issued?

12 A. Yes, it does.

13 MS. COOPER: No further questions.

14 THE COURT: Any recross?

15 MR. REISS: Yes, I think about five minutes, Your  
16 Honor. I'll be brief.

17 RE CROSS-EXAMINATION

18 BY MR. REISS:

19 Q. Ms. Hrabluk, you were asked a number of questions about the  
20 time pressures with respect to the Cambium report, right?

21 A. Yes.

22 Q. The Cambium report was an important project, was it not?

23 A. Yes.

24 Q. And it was -- the Mexican-American Studies Program had  
25 actually been going on for a number of years, 10 or 12 years,

1 right?

2 A. Correct.

3 Q. And it was important that the Cambium report get it as  
4 right as possible, right?

5 A. Yes.

6 Q. Now, the timing pressures were completely self-imposed,  
7 were they not?

8 A. Yes, it's possible. I didn't put the timeline together, so  
9 that's the timeframe that was given to me.

10 Q. It was given you by Superintendent Huppenthal?

11 A. Yes.

12 Q. Yeah, he wanted that report to be done before the end of  
13 the school semester, right?

14 A. Correct.

15 Q. But there was absolutely no reason why Senator Huppenthal,  
16 given the importance of the project, couldn't have allowed more  
17 time for the review, right?

18 A. It's possible. You know, it was his decision, his  
19 thinking.

20 Q. Now, we had a number of questions about the curriculum. Is  
21 it fair to say that your focus in the curriculum reviews was on  
22 the high school courses?

23 A. During?

24 Q. During your review of both what Cambium did and any  
25 subsequent or additional review you did, your focus was

1 principally on materials for high school courses, is that  
2 right?

3 A. The review that I recall doing and participating in would  
4 have included all of the materials that the Mexican-American  
5 Studies Department presented, which, as I recall, would have  
6 included resources that were being used at the elementary and  
7 the middle school.

8 But those were fewer classes that were being offered. So  
9 the focus of the coursework out of the Mexican-American Studies  
10 Program would have been at the high school level.

11 Q. Do you remember any particularly troubling materials with  
12 respect to the art classes in the Mexican-American Studies  
13 courses?

14 A. At this -- you know, at this juncture in time, no, I  
15 don't -- I can't say that I remember.

16 Q. Okay. Now, I believe, Ms. Hrabluk, you said a principal  
17 concern of yours with at least some of the Mexican-American  
18 Studies courses was balance, right?

19 A. Yes.

20 MR. REISS: And, Your Honor, I think what I would like  
21 to do is mark this -- I didn't do it previously, my mistake --  
22 as Plaintiffs' Exhibit 231. And for the convenience of the  
23 Court and court reporter, we can provide hard copies of a much  
24 smaller segment, but I would like to mark this and move it into  
25 evidence.

1 THE COURT: What's the title of that?

2 MR. REISS: It is American Vision.

3 THE COURT: All right. Any objection?

4 MS. COOPER: No, Your Honor.

5 THE COURT: All right. Then Exhibit -- let me get  
6 that -- mark it down here.

7 MR. REISS: 231, Your Honor.

8 THE COURT: Exhibit 231. It's a textbook, right? The  
9 textbook --

10 MR. REISS: Exactly, Your Honor.

11 THE COURT: -- American Vision, okay, is admitted  
12 without objection.

13 MR. REISS: Thank you, Your Honor.

14 BY MR. REISS:

15 Q. And, Ms. Hrabluk, you may recall this is a textbook that  
16 Cambium auditors actually found in use in the Mexican-American  
17 Studies history class.

18 Now, you said that based on your experience, you believe  
19 that history textbooks that districts in Arizona adopt provide  
20 balance and context for the information contained in them,  
21 right?

22 A. Yes, that would be the expectation.

23 Q. And the American Vision textbook was a textbook that was  
24 adopted by the Tucson Unified School District, right?

25 A. I'm going to assume so, but I don't know, but I am going to

1 assume it was.

2 Q. And if it was, it would be your view that it would provide  
3 balance and context for the materials in the book, right?

4 A. Potentially. I'm assuming so. I haven't looked at it  
5 recently, but I'm going to assume so.

6 Q. Fair enough. When you evaluated the materials with respect  
7 to the Mexican-American Studies history classes, did you  
8 evaluate them against the use of this textbook in those very  
9 same classes?

10 A. The challenge was the lack of information on the  
11 integration of potentially the use of that textbook with the  
12 other resource materials that were submitted. So the  
13 preponderance of materials that were submitted appear to have a  
14 singular focus.

15 Now, if there had been a curriculum submitted that would  
16 have helped to explain how the textbook might have been used  
17 fairly frequently too often with the other material being  
18 inserted at key points of instruction, that would have been  
19 helpful in understanding how one textbook is using the -- or is  
20 integrating with the number of other resources that were  
21 submitted.

22 Q. Okay. So it's entirely -- this Tucson Unified School  
23 District approved history text could well have provided balance  
24 against the other materials that were potentially problematic,  
25 right?

1 A. Potentially, if we had seen the explanation, which we did  
2 not.

3 Q. And you don't recall specifically evaluating the  
4 potentially troublesome materials against this Tucson Unified  
5 School District approved textbook, do you?

6 A. Well, if we had a curriculum with units and lesson plans  
7 all connected, then, yes, we would have evaluated the reading  
8 material against the intended plan for use. But that wasn't  
9 submitted to us. So we took each of the books at face value,  
10 because we didn't know was the textbook the major instructional  
11 resource? were the other books used only at particular points?  
12 or was the textbook the least used? That wasn't explained to  
13 us.

14 MR. REISS: Just a couple of more, Your Honor.

15 BY MR. REISS:

16 Q. Just if I could briefly, Ms. Hrabluk, refer you to Exhibit  
17 90 again. This is Superintendent Horne's January 15th finding  
18 of violation.

19 MR. QUINN: Huppenthal.

20 MR. REISS: I'm sorry.

21 BY MR. REISS:

22 Q. Superintendent Huppenthal. I believe it's the 10th page of  
23 this exhibit. And you notice -- I know this was mentioned  
24 previously --

25 Just the second paragraph, Jorge.



1           It says: In order to determine whether or not the Tucson  
2 Unified School District's Mexican-American Studies Program  
3 violates any of the provisions of A.R.S. 15-112, the Arizona  
4 Department of Education, at my direction, conducted an in-depth  
5 investigation and review of the program and its curriculum,  
6 materials, and content and teaching practices. The  
7 investigation included a curriculum audit conducted by a  
8 contractor and various data submitted to and gathered by ADE.  
9 After careful examination of all of the available information,  
10 I find there is clear violation of 15-112 as detailed below.

11           As we discussed, I think, previously, Ms. Hrabluk, there is  
12 no mention in this finding of what the Cambium report actually  
13 found. Right?

14       A. That's correct.

15       Q. And Superintendent Huppenthal's statement indicates that  
16 his findings are based, at least in part, on the Cambium audit,  
17 right?

18       A. Correct.

19       Q. Do you think it's misleading to tell the public that his  
20 findings are based, in part, on an audit without telling the  
21 public that the audit disagreed with his conclusion?

22       A. So, do I personally feel?

23       Q. Were you comfortable with that as part of the team?

24       A. His decision was based on integrating all of the  
25 information from the Cambium report, our review. And so that

1 was the way he chose to communicate his decision, and it's not  
2 untrue because he integrated all the information.

3 Q. Do you think it was misleading to the public to say he  
4 relied on the Cambium report, without telling the public that  
5 the Cambium report had reached a contrary conclusion?

6 A. Not necessarily. And the Cambium report's conclusions were  
7 fairly public, anyways. But he took information from the  
8 report and integrated it into further information. So, you  
9 know, even if he had said: This is generally what the Cambium  
10 report concluded, I don't agree, because there is additional  
11 information in the Cambium report that causes me concern, and,  
12 based on a further review, these are my decisions, it wouldn't  
13 have altered the final communication.

14 Q. It would have been more candid if he explained that,  
15 though, right?

16 A. It would have been additional information, yes.

17 MR. REISS: I have no further questions, Your Honor.

18 THE COURT: Anything further?

19 MS. COOPER: No, Your Honor.

20 EXAMINATION

21 BY THE COURT:

22 Q. All right. Let me just ask you a couple of questions where  
23 I'm not quite certain where we stand.

24 One, you indicated that one of the shortcomings of the  
25 Cambium report was that those auditors never really conducted

1 any classroom visits, right, except for the one that was kind  
2 of an unusual class. Is that right?

3 A. They did do -- gosh, I can't remember the exact number.  
4 They did about 37 percent, so they did do three classes in the  
5 elementary schools, three classrooms in the middle school, and  
6 they did five English classes in high school, then history.

7 Q. All right. Now --

8 A. Inside of those classes there was other instruction going  
9 on in many of those classes.

10 Q. Did the ADE then still fault Cambium for either the type or  
11 the quantity of its classroom visits; in other words, that they  
12 maybe didn't audit the right things?

13 A. When we realized that many of the classrooms that they  
14 visited were not, in fact, teaching any of the Mexican-American  
15 Studies Program lessons, we realized that their decisions about  
16 what they'd observed were narrower than what we had hoped.

17 Q. You also stated that one of the problems with -- well,  
18 maybe not just the Cambium visit, but your own, is that there  
19 really was no curriculum, and you couldn't tell, or the  
20 investigators couldn't tell, exactly what the curriculum or  
21 curricular materials were.

22 A. That's correct.

23 Q. Is that right?

24 A. That's correct.

25 Q. And you said at one time something like if there is no

1 curriculum then that makes the classroom visit less useful,  
2 because the main purpose of a classroom visit is to check  
3 whether or not the teacher is teaching what she's supposed to  
4 according the curriculum.

5 A. That's correct.

6 Q. Is that right?

7 A. That's correct.

8 Q. So is it fair to say that one of the problems with the --  
9 as you found it, and maybe as Cambium found it -- and when I  
10 say, "you," I mean ADE -- was that a lack of, you know, a  
11 curriculum and established curriculum materials made it very  
12 difficult to assess, I guess, the educational purpose and value  
13 of the program? Is that a fair statement?

14 A. That's correct, sir.

15 Q. Now, all right. At what point, to your understanding, did  
16 the superintendent decide that the MAS program was in violation  
17 of 15-112? When did you first hear about it, that that was his  
18 conclusion?

19 A. To the best of my recollection, I am going to say sometime  
20 the month of May he came to that conclusion and then was public  
21 in June. That's to the best of my recollection.

22 Q. And did you help at all in drafting his final report, the  
23 finding of the violation? Did you help draft that report?

24 A. I would have provided input from -- about curriculum and  
25 the lack of it. So I would have provided that information as

1 he formulated his final decision.

2 Q. The three people, as I understand it, who were on this ADE  
3 investigative team, that's yourself, I guess --

4 A. John Stollar.

5 Q. The deputy superintendent.

6 A. Yes, sir, both deputies. Elliott Hibbs and --

7 Q. They were both deputies?

8 A. -- John Stollar.

9 Q. So that was the three-person committee that was in charge  
10 of ADE's own investigation, right?

11 A. Correct.

12 Q. All right. Now, did you have some kind of meeting where  
13 you decided we're going to recommend to the superintendent  
14 either, you know, yes, he should find the Tucson district in  
15 violation, or, no, he shouldn't?

16 A. We would have had discussions. And based on our review of  
17 materials, we did provide a recommendation that the  
18 superintendent should consider the Tucson Unified School  
19 District as being in violation because of our review of the  
20 materials and a lack of -- significant lack of explanation as  
21 to how these materials were being utilized.

22 Q. All right. Now, in summary, what did you accomplish in  
23 your review -- I mean the ADE review -- that Cambium did not  
24 do?

25 A. Cambium had -- part of their review included a lack of

1 curriculum, so we don't know -- you know, there's no curriculum  
2 to determine what it is they're supposed to be teaching. So we  
3 can't put the observation, classroom observations, in context.

4 They did identify material that was questionable or  
5 inappropriate for grade levels, and they did have some concerns  
6 as to how that material was being implemented.

7 What they didn't do was incorporate that information into  
8 their final finding. Their final finding was based on: This  
9 is what we observed. We can't say, because we don't know, how  
10 it is they used these questionable materials.

11 So we -- it also became clear to me, as the draft was  
12 submitted, that the auditors of Cambium had not done a complete  
13 review of all the materials that they had -- that had been  
14 submitted to them because they ran out of time. So we did a  
15 more thorough or complete review of the materials that had been  
16 submitted.

17 Q. All right. Well, all right. It seems to me the first part  
18 of your commentary that, you know, certain things weren't  
19 stated in the Cambium report, although there might have been  
20 something in the record to support a statement one way or the  
21 other, I mean, that's just simply a matter of redrafting the  
22 report, not making an investigation, isn't it?

23 In other words, you have to go back to the Tucson School  
24 District and look at other material there in order to come to a  
25 different conclusion that such and such shall be included in

1 the report?

2 A. Cambium, as I recall, when they submitted the report, they  
3 were done with the work. They weren't prepared to do any  
4 further work or to take on any additional work.

5 Q. By the way, did they get paid the contract price for their  
6 work?

7 A. Yes, I believe --

8 Q. Was something withheld because their work was deficient or  
9 not complete?

10 A. No, I believe they were paid.

11 Q. All right. Now, the second part, I think you said you  
12 looked at more materials. "You" meaning, again, the ADE  
13 investigative team. When you say, more materials, are you  
14 talking about curricular materials?

15 A. Cambium forwarded to us all of the material that had been  
16 submitted to them for the original audit, so we had all of that  
17 material. There was material that had been submitted to the  
18 Attorney General's Office that was sent to the Department of  
19 Education, also. So those were the materials that we reviewed.

20 Q. All right. Now, you stated -- I forgot in answer to which  
21 side, but, you know, a lot of the materials, such as this --  
22 whatever the exhibit was, this American Vision textbook, a lot  
23 of -- not only that, but a lot of the MAS materials, the books  
24 obviously have passages that could, I think, from an educator's  
25 point of view, be misused, almost like you could use

1 propaganda, you know --

2 A. That's correct.

3 Q. -- to inculcate an immature mind with certain, you know,  
4 beliefs. Right? It's possible.

5 A. That's possible.

6 Q. So I think you said a lot of this depends on, including  
7 like American Vision, how the material is taught in the  
8 classroom, and you had no -- almost no evidence of how it was  
9 taught in the classroom.

10 Now, how did you, the ADE team, or the superintendent, come  
11 to the conclusion that these materials were being misused in  
12 the MAS program? That's a conclusion of the report, isn't it?  
13 That's the basis of finding of violation of the statute?

14 A. That's correct.

15 Q. How did you come to the conclusion that the materials were  
16 misused when, you know, there was virtually no classroom visits  
17 and there's no curriculum?

18 A. When we asked for curricular materials to be submitted,  
19 what was submitted were textbooks and books, reading books,  
20 plus some lesson plans, but disconnected across grade levels.  
21 And so we took those materials, as they had been submitted, at  
22 face value.

23 Q. When you say, "face value," you mean whatever statement was  
24 made was taught as the truth? Is that what you mean by "face  
25 value"?



1 A. Yeah. However the lesson was written or however the  
2 material was written, that would be the way it would be used,  
3 because there was no further explanation as to how this  
4 material --

5 Q. I mean, would that apply, for instance, to the quotes that  
6 Mr. Reiss highlighted in the American Vision textbooks about,  
7 you know, the -- sort of the -- I have forgotten the exact  
8 word, but sort of, I'll say, the enslaving power of  
9 Anglo-American entrepreneurship, for instance? You took that  
10 as literal, you know, truth, that it was taught as the literal  
11 truth?

12 A. Well, you don't -- without an explanation of how it was  
13 used, how did teachers --

14 Q. That's what I say, there was no explanation at all?

15 A. Right. No.

16 Q. So you accepted that as being taught as literally true?

17 A. Well, we accepted those materials as the materials that  
18 were used in instruction, yes.

19 Q. All right. Now, did the superintendent consult with your  
20 committee again as to what the penalties should be for the  
21 statutory violation? In other words, the statute says, right,  
22 it can withhold the -- I don't know what -- I call it the ADE  
23 money, up to 10 percent, right?

24 A. Correct.

25 Q. Did he consult with your committee as to what the

1 appropriate penalty would be or was that all his own decision  
2 as far as you know?

3 A. That was his decision.

4 Q. He didn't ask you how much you think it should be?

5 A. No.

6 THE COURT: Okay. Thank you, very much. I don't have  
7 any more questions.

8 Either side have any more questions as a result of what I  
9 asked her?

10 MR. REISS: Your Honor, I just have one I forgot.

11 THE COURT: Go ahead.

12 FURTHER RECROSS-EXAMINATION

13 BY MR. REISS:

14 Q. Ms. Hrabluk, were you aware that the participation in any  
15 MAS class was totally voluntary, it was totally a matter of  
16 student choice? Right?

17 A. Yes.

18 MR. REISS: Thank you.

19 THE COURT: Anything further, Ms. Cooper?

20 FURTHER REDIRECT EXAMINATION

21 BY MS. COOPER:

22 Q. Ms. Hrabluk, do you recall whether the American Vision  
23 textbook was one of the texts that was sent to you as being  
24 used in MAS classes?

25 A. I don't recall at this point. I am sorry.

1 MS. COOPER: No further questions.

2 THE COURT: Ms. Hrabluk, you've been very patient, and  
3 I appreciate your time and your testimony.

4 I think she can be excused now. Right?

5 MR. REISS: Yes, Your Honor.

6 THE COURT: Thank you, very much, ma'am. You are  
7 excused.

8 MS. HRABLUK: Thank you.

9 THE COURT: She was a defense witness. I think we can  
10 get back to the plaintiffs' case now?

11 MS. COOPER: No, you're incorrect.

12 MR. REISS: I'm sorry. I am sorry.

13 MR. ELLMAN: We're going to take a witness out of  
14 order.

15 THE COURT: Another witness out of order?

16 MR. ELLMAN: Yeah.

17 MR. REISS: That's fine with us, Your Honor.

18 THE COURT: Is this a defense witness?

19 MR. ELLMAN: Yes, it is.

20 THE COURT: That's fine. By agreement of counsel,  
21 right?

22 MR. ELLMAN: Correct.

23 THE COURT: Okay. That's fine.

24 MR. ELLMAN: The defense would like to call Robert  
25 Franciosi.

1           Your Honor, before we begin, I just want to be clear  
2 that under this Court's rulings, Robert Franciosi can only  
3 testify as a fact witness and not as an expert.

4           THE COURT: Right. But, you know, a fact witness, I  
5 think, includes, for instance, in my view -- unless there's  
6 some other objection -- say, advice he gave to the  
7 superintendent in the form of his opinion. Right?

8           MR. ELLMAN: Understood, Your Honor. I agree.

9           THE COURT: All right. Otherwise, I do confirm your  
10 understanding, yes.

11          MR. ELLMAN: Thank you.

12          THE CLERK: If you'd please step into the witness  
13 stand and remain standing to be sworn. Please raise your right  
14 hand.

15                           **ROBERT FRANCIOSI, WITNESS, SWORN**

16   DIRECT EXAMINATION

17 BY MR. ELLMAN:

18 Q. Good afternoon, Dr. Franciosi.

19 A. Good afternoon.

20 Q. Could you tell the Court what you do for a living, please.

21 A. I am a researcher. I've done most of my work in the  
22 education field. Currently, I work with the Maricopa County  
23 community colleges.

24 Q. Can you tell us where you worked between 2003 and 2011?

25 A. I was the Deputy Associate Superintendent for Research and

1 Evaluation at the Arizona Department of Education.

2 Q. Who hired you?

3 A. Tom Horne.

4 Q. What were your job responsibilities in that position?

5 A. My job responsibilities were primarily to do the school  
6 evaluation system and to do any research requests that were  
7 directed my way.

8 Q. Did you personally interact with Superintendent Horne  
9 during the course of working there?

10 A. Yes.

11 Q. What was the nature of the interaction?

12 A. He would ask me to do research on various issues that he  
13 had concerns about, and I would tell him my findings.

14 Q. How often would you say you met with him personally.

15 A. I would say probably about once a month.

16 Q. In all the time that you worked at the Arizona Department  
17 of Education in the Horne administration, did you ever hear Tom  
18 Horne say anything that would lead you to believe he might be a  
19 racist?

20 A. No.

21 Q. Did you ever hear him say anything that indicated he was  
22 biased or prejudiced against Hispanic people generally or  
23 against Mexicans or Mexican-Americans specifically?

24 A. No.

25 Q. Were you aware of a controversy that arose in 2006 having

1 to do with the Raza/Mexican-American Studies Program in the  
2 Tucson Unified School District?

3 A. Yes.

4 Q. If I shorten those terms to "Raza studies" and "TUSD,"  
5 you'll understand what I am referring to?

6 A. Yes.

7 Q. Did you have any investigative or policymaking role  
8 regarding the Raza/MAS controversy?

9 A. My only role was to do -- I was requested to do a study on  
10 the academic impact of participation in the Raza program.

11 Q. So the only thing you did was conduct some research,  
12 correct?

13 A. Right.

14 Q. When did that occur?

15 A. Off the top of my head, I can't say. I couldn't tell you.  
16 I don't know immediately.

17 Q. I might be able to refresh your recollection. 29 is the  
18 report. At the risk of leading -- so I'll give a signal to  
19 opposing counsel -- does it seem right to you that that might  
20 have occurred in the June-to-September time frame of 2009?

21 A. Yes.

22 Q. What was the nature of the research you were conducting?

23 A. I was asked to do a study on the economic -- not the  
24 economic -- the impact of participation in the program, the  
25 academic impact, and so I looked at the improvement in test

1 scores of program participants, comparing them to similar  
2 students, in terms of taking retests on the AIMS test.

3 Q. So it was limited to AIMS results, wasn't it?

4 A. Right.

5 Q. And who asked you to conduct the research?

6 A. Specifically, I don't remember.

7 Q. Do you know why the research was requested?

8 A. I was aware of the controversy at the time. I assumed it  
9 was -- I wasn't -- I was not told specifically as to -- if it  
10 was addressing what they were going to do with the research or  
11 whether it was for internal use or external use.

12 Q. Did you feel free to conduct your research objectively and  
13 to the best of your ability?

14 A. Yes.

15 Q. Did you make the decision of what data to examine?

16 A. Yes.

17 Q. And did you decide on the methodology by which the study  
18 was going to be conducted?

19 A. Yes.

20 Q. Did anyone try to influence any of those decisions?

21 A. No.

22 Q. Did you get what you considered to be sufficient data for  
23 purposes of doing your research?

24 A. Yes.

25 Q. Did you, in fact, complete your research?

1 A. Yes.

2 Q. Do you remember when it was completed?

3 A. Not specifically, no.

4 Q. I am going to give the signal again to opposing counsel at  
5 the risk of leading. If I told you that the first draft was  
6 completed on or about September 15th of 2009, would that seem  
7 about right to you?

8 A. Yes.

9 Q. What conclusion did you reach in your research?

10 MR. MARTINEZ: Excuse me. Object, Your Honor. I  
11 believe the question now goes to the substance of the report,  
12 and I believe in your ruling you made very clear that the  
13 substance of the report could not be addressed or testified to;  
14 that in view of the fact that this witness had not been  
15 disclosed as an expert, he is limited to providing testimony as  
16 a fact witness. And now counsel seeks to elicit from him  
17 testimony that would be that as an expert, subject matter,  
18 expert witness.

19 THE COURT: Is that what I said, Mr. Ellman?

20 MR. MARTINEZ: I have the ruling.

21 MR. ELLMAN: That's not my understanding, Your Honor.  
22 I've got the ruling here, too. It might help if I explain that  
23 I am not attempting to establish the validity of  
24 Dr. Franciosi's study. I intend to use it to demonstrate he  
25 communicated his conclusion to Tom Horne. That's all.



1 THE COURT: All right. Then I will --

2 MR. MARTINEZ: I have a copy of the ruling if you'd  
3 like to see.

4 THE COURT: No, I was asking him a rhetorical  
5 question. All right. Then I will give myself an admonitory  
6 instruction that I should not consider this for the truth but  
7 only for the fact that it was communicated to Superintendent  
8 Horne and what effect it had on him. So, on that basis, the  
9 objection's overruled.

10 MR. ELLMAN: All right.

11 BY MR. ELLMAN:

12 Q. Did you draft the memo setting forth the results and  
13 findings of your research?

14 A. Yes, I did.

15 Q. Now I want to show you Exhibit 29. Dr. Franciosi, does  
16 this look like the report in its final form?

17 A. Yes. Yes, it is.

18 Q. Did you circulate a draft of your memo to anybody at the  
19 Arizona Department of Education?

20 A. I reported my results directly to Tom Horne. I may have  
21 CC'd my immediate supervisor at the time and the chief of staff  
22 Margaret Garcia Dugan. But I did not circulate in terms of  
23 handing it around.

24 Q. I'm sorry. Were you finished with your answer?

25 A. Yes.

1 Q. Who was your immediate supervisor?

2 A. John Stollar.

3 Q. And then did you say Margaret Garcia Dugan?

4 A. Yes.

5 Q. Okay. Do you remember getting any feedback on your memo?

6 A. I got -- the only feedback was they wanted the results in a  
7 more layperson friendly format.

8 Q. Do you remember who asked for that specifically?

9 A. I believe the superintendent did, Mr. Horne.

10 Q. Did any of the feedback you received either state or imply  
11 that you should alter the substance of your memo?

12 A. No.

13 Q. Did any of the feedback you received state or imply that  
14 you should change any of your conclusions?

15 A. No.

16 Q. And then after you got that feedback, what did you do in  
17 response to that?

18 A. I drafted a more layperson friendly version of the report  
19 and returned it to Mr. Horne.

20 Q. Did you have any further discussions with Tom Horne after  
21 you circulated the -- excuse me -- after you produced the final  
22 version of your memo?

23 A. No, I did not.

24 Q. Do you remember discussing with anybody at the Department  
25 of Education while Tom Horne was the superintendent?

1 A. No, I do not.

2 Q. Did you continue at the Department of Education under the  
3 Huppenthal administration?

4 A. Yes, I did.

5 Q. Maybe I should just ask you when did you leave the Arizona  
6 Department of Education?

7 A. I believe I left the end of May or the end of June 2011.

8 Q. Do you remember an investigation of TUSD's Raza  
9 Mexican-American Studies Program that was going on in 2011?

10 A. Yes.

11 Q. Did you have any role in that investigation?

12 A. Directly, no.

13 Q. Do you remember an audit being conducted at the Department  
14 of Education's request?

15 A. Yes.

16 Q. Was that the Cambium audit?

17 A. Yes.

18 Q. Do you remember seeing a draft of the Cambium audit that  
19 the Department received in May of 2011?

20 A. Not specifically, no.

21 Q. Do you remember receiving a copy of a draft?

22 A. I can't tell you if I have or not. I don't remember if I  
23 saw a draft.

24 Q. You can't tell me if you saw the draft?

25 A. Right.

1 Q. Okay. So you don't remember anyone asking you to look at  
2 that draft for any reason?

3 A. I can't tell you for sure if somebody did or somebody  
4 didn't.

5 Q. And you don't remember looking at it?

6 A. Not specifically, no.

7 Q. Do you remember discussing it with anyone in Superintendent  
8 Huppenthal's administration?

9 A. The Cambium draft?

10 Q. Yes.

11 A. No, not specifically, no, I do not.

12 Q. I am going to show you an e-mail to see if I can refresh  
13 your recollection. This is Defendants' Exhibit 538, and there  
14 are objections pending to this, and I want to use it solely to  
15 refresh.

16 Dr. Franciosi, do you see the e-mail in front of you on the  
17 screen?

18 A. Yes.

19 Q. It's a three-e-mail string, and I want to direct your  
20 attention to the Wednesday, May 11th e-mail. It says:  
21 Elliott, I reviewed the tables from Cambium Learning report.  
22 The analysis --

23 MR. MARTINEZ: Your Honor, I object to the format.

24 THE COURT: Speak up more loudly so the reporter can  
25 hear you. Get to the microphone.

1           MR. MARTINEZ: Your Honor, my objection goes to the  
2 manner in which recollection is being refreshed. I believe  
3 what it would call for is for the witness to read it and then  
4 be asked a question if it refreshed his recollection as opposed  
5 to being read in the manner which is occurring here, which I  
6 think is the equivalent of coaching the witness. So that I  
7 would request that the manner -- that the proper format or  
8 method be utilized for refreshing recollection, to see if, in  
9 fact, it even does.

10           THE COURT: All right. Well, I overrule the objection  
11 because I don't believe there is a single legal acceptable  
12 method to refresh recollection and only a single method.

13 BY MR. ELLMAN:

14 Q. Dr. Franciosi, looking at this e-mail, does this refresh  
15 your recollection as to whether you were asked to review the  
16 Cambium draft?

17 A. Yes, it does.

18 Q. And were you asked to review the Cambium draft?

19 A. Yes. Well, let me -- I was only asked to review the  
20 statistical part. Whatever findings they did regarding  
21 curriculum or anything like that, I didn't have any feedback  
22 on.

23 Q. Do you remember being -- do you remember, first of all, who  
24 asked you, now that you've seen --

25 A. Elliott Hibbs.

1 Q. Do you remember why Elliott Hibbs asked you to look at it?

2 MR. MARTINEZ: Excuse me. Objection. Foundation.

3 THE COURT: Overruled.

4 A. I don't remember. Other than the information in the  
5 e-mail, he wanted me to review the statistical analysis they  
6 did or that was done for them by the Tucson Unified statistical  
7 department.

8 BY MR. ELLMAN:

9 Q. Do you remember what your answer to that question was?

10 A. It was that I thought that they chose -- they made a  
11 curious choice with regards to the sample of students they  
12 looked at, and I just -- they didn't explain it to my  
13 satisfaction, so I just pointed that out to them.

14 Q. Do you remember whether you were asked to inform Mr. Hibbs  
15 of the source of the statistical information that was used in  
16 the audit report?

17 A. No, I do not. I knew it was done by Tucson Unified. I'm  
18 not sure if he knew that himself or that I informed him of  
19 that.

20 Q. By looking at the Cambium report, could you tell whether  
21 the Cambium auditors had done an independent statistical study?

22 A. I don't remember. I don't know if I was given that -- I  
23 don't remember whether they specifically said they did a study  
24 themselves or if they just said that we'll use the Tucson  
25 study.

1 MR. ELLMAN: All right. I have no further questions,  
2 Your Honor.

3 THE COURT: All right. Cross?

4 CROSS-EXAMINATION

5 BY MR. MARTINEZ:

6 Q. Good afternoon, Dr. Franciosi. Do you have water?

7 A. Yes, I do.

8 Q. You were just shown a copy -- or at least reference was  
9 made on Exhibit 29, and if I understand correctly, you're the  
10 author of the report that's dated October the 22nd, 2009?

11 A. Yes.

12 Q. Okay. In the opening sentence, you start out with: This  
13 report examines the impact of the Tucson Unified School  
14 District's ethnic -- and then you have in parentheses -- and  
15 then in a parenthetical and then in parentheses: Raza studies  
16 program. Why did you use that term?

17 A. Because that was the term that was commonly used to refer  
18 to the program.

19 Q. When you say, "commonly," that was a term commonly used,  
20 you mean commonly used in the Arizona Department of Education,  
21 correct?

22 A. No, I mean "commonly" as in terms of public news.

23 Q. Wasn't, in fact, the name of the program, sir, the Tucson  
24 Unified School District Mexican-American Studies Program?

25 A. I'm not sure if that was the official name of the program

1 or not at that time.

2 Q. You're unaware?

3 A. I am unaware of what --

4 Q. Did you know that the program was renamed the  
5 Mexican-American Studies Program at the request of your  
6 superintendent?

7 MR. ELLMAN: Objection. This is beyond the scope of  
8 the direct examination.

9 THE COURT: It's overruled. You may answer.

10 A. I was not aware of that.

11 BY MR. MARTINEZ:

12 Q. I'd like to turn for a moment to some work that you've  
13 done. My understanding is that you're -- we call you "doctor"  
14 because you have obtained a Ph.D. from the University of  
15 Arizona?

16 A. Yes.

17 Q. I believe you did that in 1994?

18 A. Yes.

19 Q. And your Ph.D. was essentially in economics, is that  
20 correct?

21 A. Yes.

22 Q. I believe you did a study -- your dissertation's on a study  
23 with respect to the issue of having to do with non-profits.

24 A. Yes.

25 MR. ELLMAN: I'm going to object to this line. These



1 are questions for an expert, and he's testified as a lay  
2 witness.

3 THE COURT: Well, I overrule the objection, but you  
4 could be opening the door, you know.

5 MR. MARTINEZ: Right.

6 BY MR. MARTINEZ:

7 Q. So my question goes -- none of your work, while you're a  
8 graduate student, has to do with education, is that correct, as  
9 an economist?

10 A. Not directly, no.

11 Q. And then from -- after you've obtained your Ph.D., you go  
12 to the Goldwater Institute?

13 A. I did some consulting work, as well.

14 Q. Okay. Is that at the same time, or you did consulting work  
15 and then go to Goldwater?

16 A. I did consulting work, and then I worked as a congressional  
17 staffer, and then I went to Goldwater.

18 Q. I'm sorry, did you say "congressional"?

19 A. Congressional staffer. I worked on a congressional staff.

20 Q. Okay. I'm sorry. And which congressman was that?

21 A. Congressman Shadegg.

22 Q. From here in Arizona?

23 A. Yes.

24 Q. That would have been --

25 A. That would have been 1996.

1 Q. And he was a Phoenix area member of Congress?

2 A. Yes.

3 Q. And Republican?

4 A. Yes.

5 Q. All right. Then, from there, you go to Goldwater?

6 A. Yes.

7 Q. And Goldwater is essentially a research institute based in  
8 Phoenix?

9 A. Yes.

10 Q. And is it fair to call it a think tank?

11 A. Yes.

12 Q. Okay. And would you agree with me that it's a conservative  
13 think tank?

14 A. I would not want to put a label on it. They have -- we've  
15 had frequent discussions how to label ourselves while we were  
16 there, so I would not want to say conservative.

17 Q. You wouldn't call it conservative? It's named after  
18 Senator Barry Goldwater, is it not?

19 A. Yes, it is.

20 Q. Senator Barry -- it is named after Senator Barry Goldwater?

21 A. Yes, it is.

22 Q. And, in fact, don't, on their web page, they espouse that  
23 they -- for example, that they promote and defend Libertarian  
24 values?

25 A. I am not familiar what's on their web page currently.

1 Q. Fair enough. How long were you at Goldwater?

2 A. I was there from 1996 through 2003.

3 Q. To 2003?

4 A. Right.

5 Q. And while you were there, would you agree with me that at  
6 least with the work that you did for Goldwater, for the  
7 institute, had nothing to do with education?

8 A. No. I frequently consulted with our education researchers  
9 on methods regarding their studies.

10 Q. On methods regarding --

11 A. Their studies. So if they did something statistical, they  
12 would come to me and make sure that they were doing it right.

13 Q. So is it fair to say you're a quantitative person?

14 A. Yes.

15 Q. And so if there was a question --

16 MS. COOPER: A what person?

17 MR. ELLMAN: I couldn't hear you.

18 MR. MARTINEZ: Quantitative.

19 THE WITNESS: Quantitative.

20 MR. ELLMAN: Thank you.

21 BY MR. MARTINEZ:

22 Q. As opposed to qualitative?

23 A. Yes.

24 Q. All right. And then in 2003 you joined the Arizona  
25 Department of Education?

1 A. Yes.

2 Q. And at that point in time, you are working for Tom Horne,  
3 the superintendent?

4 A. Yes.

5 Q. And you continue in that position for the remainder of  
6 Mr. Horne's term in office as superintendent?

7 A. Yes.

8 Q. And then you have a short overlap with Mr. Huppenthal,  
9 about a year?

10 A. Yes.

11 Q. Now, during that time shortly before you joined Mr. Horne,  
12 you write a book, correct?

13 A. Yes.

14 Q. And the book is The Rise and Fall of American Public  
15 Schools, correct?

16 A. Yes.

17 Q. And in that book, one of the things that you provide from  
18 an economist/analytical viewpoint is essentially that you  
19 believe that one of the things that's very important is local  
20 control, correct?

21 MR. ELLMAN: I'm going to object to relevance and  
22 beyond the scope.

23 THE COURT: Sustained.

24 MR. MARTINEZ: All right.

25 BY MR. MARTINEZ:

1 Q. With respect to the work that you tell us that you did, you  
2 also had, as an underlying value, the issue of choice, correct?

3 MR. ELLMAN: Same objection.

4 THE COURT: Same ruling. Sustained.

5 MR. MARTINEZ: All right.

6 BY MR. MARTINEZ:

7 Q. When you had your -- you say that you would meet with  
8 Mr. Horne during the time period that you worked with him, or  
9 that he was superintendent, maybe once a month or less?

10 A. Once a month.

11 Q. Once a month. Okay. And that was a meeting that lasted  
12 about how long?

13 A. It depends on the issue. It could be anywhere from 20  
14 minutes to an hour. It all depends.

15 Q. Okay. So from a maximum standpoint, you might be in a  
16 meeting with him for 12 hours in a year, and on the minimum  
17 side you might have been four hours, if that, three hours  
18 actually?

19 A. Three hours a year, that sounds low, but....

20 Q. And during that time period when you're meeting with him,  
21 is this a meeting just -- that's just between the two of you or  
22 someone else?

23 A. No, there would be other people there.

24 Q. There would be others there?

25 A. Yeah.

1 Q. All right. So with respect to being asked a question about  
2 whether or not you had ever observed Mr. Horne make comments  
3 that you thought were disparaging of Mexican-Americans, you're  
4 limiting that to your observations of him somewhere between  
5 three and 12 hours in a year. Correct?

6 A. Correct.

7 Q. I take it that from what you've told us, that when -- and  
8 let me back up for a moment. You certainly were familiar with  
9 Tucson because this is where you came to school, at least for  
10 your graduate school, correct?

11 A. Right.

12 Q. All right. So you knew that Mr. -- I take it you were  
13 aware that Mr. Horne, on occasion as superintendent, was coming  
14 down to Tucson?

15 A. Yes.

16 Q. And that while he was here in Tucson, he would make public  
17 statements or pronouncements of the Mexican-American Studies  
18 Program in the district, correct?

19 MR. ELLMAN: Objection. Relevance and beyond the  
20 scope.

21 THE COURT: Beyond the scope. Sustained.

22 MR. MARTINEZ: I'll move on, Judge.

23 BY MR. MARTINEZ:

24 Q. Were you aware of any of the statements that Mr. Horne  
25 made -- and I'm putting this in the context where you saw you

1 never heard him say anything disparaging about  
2 Mexican-Americans. Did you do anything to inform yourself  
3 about what it was Mr. Horne was saying here in Tucson, Arizona  
4 about Mexican-Americans or the Mexican-American Studies  
5 Program?

6 MR. ELLMAN: Objection. Beyond the scope and  
7 relevance.

8 THE COURT: Overruled. You can answer that.

9 A. Yes, I did.

10 BY MR. MARTINEZ:

11 Q. You did?

12 A. Yes.

13 Q. All right. So you would travel with him to learn what he  
14 was saying?

15 A. No. The only way I learned about what he was saying is  
16 what I read in the newspapers --

17 Q. All right. So --

18 A. -- or heard on TV.

19 Q. So if you happened to see it in the media, that's a source.  
20 Anything else, other than that?

21 A. No.

22 Q. And you're relying on Phoenix media?

23 A. Yes.

24 Q. All right. Did you have any role in the -- in that  
25 context; for example, Mr. Horne's open letter to the citizens

1 of Tucson?

2 A. No, I did not.

3 Q. All right. Did you read it?

4 A. Yes, I -- well, I can't say for sure that I read it.

5 Q. Excuse me?

6 A. No, I can't tell you if I read it or not.

7 Q. All right. And you yourself knew, sir, that you were  
8 working for a superintendent who asked you to do some work  
9 specific to the Mexican-American Studies Program, which was a  
10 program that was premised on or created here in Tucson,  
11 Arizona. Correct?

12 A. I don't -- what's your question? That I knew that the  
13 program started in Tucson?

14 Q. Let me rephrase it for you. I apologize. A little  
15 convoluted there. At the time that you're the  
16 superintendent... You're in the Arizona Department of  
17 Education.

18 A. Yes.

19 Q. ...you're aware, you've told us, of Mr. Horne's focus on  
20 the Mexican-American Studies Program here in Tucson, correct?

21 A. I read reports of what was going on in the newspaper, yes.

22 Q. All right. So you saw it in the news?

23 A. Yes.

24 Q. Not something he was discussing with you?

25 A. I'm sorry?



1 Q. Not something he was discussing with you up until 2009?

2 A. Yes.

3 Q. All right. So you have a seven-year period where your only  
4 information is that which you see in the press?

5 A. Right.

6 Q. All right. But you were aware, at least by the time that  
7 you write your report, that this was a program that was created  
8 by a local school district, Tucson Unified School District,  
9 correct?

10 A. I'm not sure that -- I can't answer that.

11 Q. Did you just believe that -- and I understand during your  
12 years at the Department of Education, you might be an -- are  
13 you saying that you were unaware this was a program that the  
14 governing board for this school district had specifically  
15 adopted?

16 MR. ELLMAN: Objection. Relevance. Beyond the scope.

17 THE COURT: I sustain the objection as asked and  
18 answered. He said he didn't know. He had no information on  
19 it.

20 MR. MARTINEZ: All right.

21 BY MR. MARTINEZ:

22 Q. And were you aware that, with respect to the classes that  
23 were offered in the Mexican-American Studies Program in the  
24 Tucson Unified School District, that the students enrolled in  
25 those classes by choice?

1 MR. ELLMAN: Objection. Relevance.

2 THE COURT: Sustained.

3 BY MR. MARTINEZ:

4 Q. One of your -- one of your -- the tenets that you offer as  
5 an economist is the belief that parent choice has a direct  
6 effect in improving student performance, does it not?

7 MR. ELLMAN: Objection. Relevance.

8 THE COURT: Also, way beyond the scope. Sustained.

9 BY MR. MARTINEZ:

10 Q. When you look, sir, you say that you were, at the request  
11 of Mr. Horne, asked to look at the Tucson Unified School  
12 District, or something specific to the program, to the  
13 Mexican-American Studies Program, you did that in the absence  
14 of meeting with the director of the program. Correct?

15 A. Correct.

16 Q. You did that in the absence of meeting with people in the  
17 program who could identify for you what data existed, correct?

18 A. Correct.

19 Q. You did that in the absence of having discerned from them  
20 how they had measured academic improvement or academic  
21 achievement that they attributed to the program, correct?

22 A. I was aware of the studies that they had already put  
23 forward regarding the program, and my methods were pretty much  
24 using the same measures as they did.

25 Q. Sir, if you had no contact with them and no communication

1 with them, how could you have known how they were conducting --  
2 you know, what steps they were going through with respect to  
3 their analysis?

4 A. They had a study that was widely circulated long before I  
5 did my study.

6 Q. Okay. Who had the study? Which study are you making  
7 reference to?

8 A. I believe it was the -- well, "study" is sort of a loose  
9 form. But I believe the administrator of the program or the  
10 founder of the program had put together some information and  
11 was circulating it, and I had seen that.

12 Q. Okay. When you say that the -- who are you talking about?  
13 Who are you making reference to, sir?

14 A. I don't know the gentleman's specific name.

15 Q. So you don't know the name?

16 A. Right.

17 Q. And am I correct in understanding that, with respect to how  
18 that study was put together, you had no communication from  
19 anyone within the Tucson Unified School District, correct?

20 A. Not beyond what they -- how they described their methods in  
21 the study themselves. I actually, I don't --

22 THE REPORTER: Not beyond...?

23 A. What they used in the documents that they were circulating.  
24 So not beyond what they were -- mentioned in the documents they  
25 were circulating. I may have contacted Tucson Unified to find

1 out if I could get the same data they did that was used, but I  
2 don't remember specifically.

3 Q. Fair enough. Now, with respect to what you did speak to  
4 Mr. Horne about in terms of reporting post having done your  
5 work, as I understood correctly, you limited yourself to the  
6 question of AIMS and passing AIMS, correct?

7 A. Yes.

8 Q. All right. So if you're telling us that you were looking  
9 at what the Tucson Unified -- the Mexican-American Studies  
10 Program was looking at with respect to measuring the  
11 performance, the impact of the program, does this program have  
12 a positive impact on the students who participated in the  
13 class, then you knew that they were looking at multiple  
14 dimensions, didn't you, multiple points of measurement?

15 A. The only measurements they were looking at was performance  
16 on AIMS and graduation rate.

17 Q. Sir, are you telling me that you never saw the reportings  
18 with respect to discipline rates?

19 A. Those weren't circulated when I did my study.

20 Q. So you're telling me you never looked at their numbers with  
21 respect to attendance rates; that discipline rates were going  
22 down and that attendance rates were going up?

23 A. Those weren't circulated when I did my study.

24 Q. So you didn't look at the numbers they were reporting or  
25 monitoring with respect to matriculation, the students moving

1 from their -- from successfully completing their junior year  
2 and passing -- and successfully passing into their senior year  
3 and then matriculating -- graduating from high school. You  
4 didn't look at that, either, did you?

5 MR. ELLMAN: I'm going to object that counsel is  
6 testifying at this point.

7 THE COURT: Overruled.

8 A. I considered using graduation rates, but my thinking was  
9 that they wouldn't provide a very good evidence if the classes  
10 weren't vigorous. So if the students were graduating because  
11 they were taking classes that were easy, I didn't --

12 BY MR. MARTINEZ:

13 Q. Who was taking classes that were --

14 THE COURT: Let him finish his answer.

15 MR. MARTINEZ: I'm sorry.

16 A. So if these classes were less rigorous than, say, a regular  
17 curriculum, then matriculation rates would not tell you  
18 anything. It would just be picking up easy credits.

19 BY MR. MARTINEZ:

20 Q. Sir, why would you assume that these classes, whether it's  
21 in the junior year or the senior year, for American history or  
22 government senior year, or for English 3 or English 4, are less  
23 rigorous than a class that was that was taught in English only  
24 or didn't deal with Mexican-American topics? Why would you  
25 assume that?

1 A. I did not assume that. I said I had no way of measuring  
2 comparing the rigor of these classes compared to say if they  
3 were taking an AP class. So since I had no way of determining  
4 the rigor of the classes, there would be no way to validly  
5 measure whether matriculation, increased matriculation rates  
6 were measuring a real effect of the program, a real desired  
7 effect of the program.

8 Q. Wasn't the truth of the matter, sir, that, because it was a  
9 program dealing specifically with Mexican-Americans, that you  
10 assumed that this was probably some easy class and that a group  
11 of educators in Tucson got together to make an easy class so  
12 that they could pass Mexican-American students along?

13 A. No.

14 Q. That's what you assumed, isn't it?

15 A. No, it's not.

16 Q. You assumed that, because there's Mexican-American teachers  
17 in the classroom and Mexican-American students in that  
18 classroom, that there couldn't be a rigorous program in that  
19 classroom because neither one is capable of presenting that  
20 curriculum or successfully passing that curriculum, didn't you?

21 A. I had no information on who was teaching the class, and I  
22 did not assume anything about who was teaching the classes or  
23 what the curriculum was.

24 Q. Sir, but the suspicion came into your mind, and the  
25 suspicion comes into your mind --

1           THE COURT: Just a minute, Mr. Martinez. You're  
2 mischaracterizing the witness's statement. He didn't say he  
3 had a suspicion. He said he had no knowledge about, for  
4 instance, who the teacher was. He didn't say: I suspect it  
5 was being taught by Hispanics, or something like that. So, you  
6 know, in your question, don't mischaracterize his previous  
7 answer.

8           MR. MARTINEZ: Thank you, Your Honor.

9           THE COURT: That's badgering the witness.

10 BY MR. MARTINEZ:

11 Q. But what you did know, whether or not you knew anything  
12 about the rigor of the classes or the growth of the students in  
13 those classes in terms of their academic growth is that --

14 A. My study was specifically towards their academic growth.

15 Q. Let me finish my question, sir.

16           What you did know is that in fact graduation rates for  
17 Mexican-American students who took these classes was greater  
18 than those who did not. Correct?

19 A. I did not know that. I did not know if their graduation  
20 rates were greater.

21 Q. You didn't know that that's what was being reported by the  
22 Mexican-American Studies Department at the time?

23 A. I knew that's what they were reporting, but I did not know  
24 that for a fact.

25 Q. So just because they're reporting it again, that's not a

1 reliable source of information for you?

2 A. I tried to replicate what they were reporting, and I  
3 couldn't --

4 Q. Sir, you just told us --

5 THE COURT: Just a minute. Let him finish his answer.

6 A. Like I said, I may have tried to replicate their study and  
7 I couldn't do it. I remember their data being kind of -- where  
8 their sources were not open, so that's part of the reason why I  
9 did the study I did, because the data was available to me.

10 BY MR. MARTINEZ:

11 Q. I'm having a little bit of trouble with what -- some of  
12 your responses. I understood you initially --

13 MR. ELLMAN: Can we eliminate the commentary, please?

14 MR. MARTINEZ: Excuse me?

15 THE COURT: He doesn't like your commentary about all  
16 the troubles you're having.

17 MR. ELLMAN: My objection is that that's not a  
18 question, that's commentary, and I believe it's inappropriate,  
19 so I object to it.

20 MR. MARTINEZ: I wasn't done.

21 BY MR. MARTINEZ:

22 Q. Didn't you initially tell us that you never looked at  
23 graduation rates?

24 A. They weren't included in my final study.

25 Q. But you knew that, in fact, that was one of the matrix upon



1 that -- that the Mexican-American Studies Department was in  
2 fact providing quantitative analysis on, reports on, correct?

3 A. Yes.

4 Q. Now, as you looked at the numbers that the Mexican-American  
5 Studies Department was reporting, you understood that the  
6 matrix that they were considering was specifically -- was those  
7 items that are specific to the achievement gap, correct?

8 A. I don't recall. I don't recall that, no.

9 Q. You understand what the achievement gap is?

10 A. You're referring to -- well, you tell me what you mean by  
11 "achievement gap."

12 Q. Well, certainly, in your books, you address specifically  
13 the issue of the achievement gap, don't you?

14 A. Again, please tell me what you mean by an achievement gap.

15 Q. Okay. One of the measures in your book that you make  
16 reference to with respect to achievement gap, for example, is  
17 the difference in standardized testing for Mexican-Americans or  
18 African-Americans as compared to whites?

19 A. Yes.

20 Q. That's one measure.

21 A. Yes.

22 Q. And there's a number of other measures. Would you agree  
23 with me on that?

24 A. Yes.

25 Q. And those measures include such things as discipline rates,

1 attendance rates, matriculation from one grade to the next,  
2 actually successfully completing high school and graduating.  
3 Correct?

4 A. You're too vague. I would say refer to standardized  
5 achievement scores and graduation rates. The other measures I  
6 would not include without further research.

7 Q. At least from an economist's perspective?

8 A. I can't speak factually to whether there are gaps in those  
9 or not. That's what I am saying.

10 MR. MARTINEZ: If I could have one moment, Your Honor.

11 THE COURT: Yes.

12 MR. MARTINEZ: Those were the questions I had, Your  
13 Honor. Thank you.

14 THE COURT: All right. Thank you. Redirect?

15 MR. ELLMAN: Yes, please, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. ELLMAN:

18 Q. Dr. Franciosi, did you ever see a published analysis that  
19 substantiated claims of student achievement by the  
20 Mexican-American Studies Program at TUSD?

21 A. I may have seen the most recent one they did.

22 Q. Before 2010 --

23 A. No.

24 Q. -- did you see one? All right.

25 Were you aware of any peer-reviewed study that had been

1 conducted on that subject at that time?

2 A. No.

3 Q. Is discipline data collected in a way that is sufficiently  
4 reliable to use as a statistical basis for a report?

5 MR. MARTINEZ: Objection, Your Honor. First of all,  
6 it's beyond the scope of the cross-examination that's  
7 permitted, but also the question goes beyond the parameters,  
8 the limitation that you provided with respect to the ruling on  
9 the motion in limine.

10 THE COURT: As I recall, you asked him several  
11 questions about whether he did or did not use discipline rates,  
12 so the objection is overruled.

13 BY MR. ELLMAN:

14 Q. Dr. Franciosi, I'll reask the question. Is discipline data  
15 collected in a way that makes it sufficiently reliable to use  
16 as data in a study of the type that you did?

17 MR. MARTINEZ: Foundation.

18 THE COURT: Overruled.

19 A. Specifically to -- I mean, theoretically, a researcher  
20 would go out and collect their own discipline data. My  
21 understanding is that discipline data in Arizona was highly  
22 problematic at the time I was doing this study. But in terms  
23 of what I used -- what the study looked at, it was what the --  
24 it was specifically in response to what the program was  
25 circulating beforehand in terms of their evidence, and,

1 furthermore, it was what the school evaluation itself was based  
2 on. At the time most people were only interested in academic  
3 performance, not sort of other measures of performance, such as  
4 attendance or discipline.

5 BY MR. ELLMAN:

6 Q. In the 2006 to 2009 time frame, did Arizona schools and  
7 districts accurately track matriculation to college data?

8 A. Some may have, but it wasn't done statewide.

9 Q. Did your political views influence your research on this  
10 study?

11 A. No.

12 Q. If you had concluded in your research that the  
13 Mexican-American Studies Program actually improved AIMS scores,  
14 would you have stated that in your memo?

15 A. Yes.

16 Q. Did you believe that you could conduct your research  
17 without meeting people who were familiar with the  
18 Mexican-American Studies Program as it was taught in Tucson?

19 A. Yes.

20 Q. And why is that?

21 A. Because I was looking at information that was collected by  
22 the state, the test scores, and it was sort of the general  
23 accepted level of academic performance.

24 Q. Were you finished with your answer?

25 A. Yes.

1 Q. You did see some sort of study from TUSD before you wrote  
2 your report, is that right?

3 A. I do not believe so, no.

4 Q. Okay. Did you avoid studying graduation rates because you  
5 thought they might reveal that the Mexican-American Studies  
6 Program was actually helping students academically?

7 A. No.

8 Q. Are you familiar with the methodology that was used in the  
9 Tucson Unified School District study that you were aware of  
10 before you did your research?

11 A. I'm sorry. Say that again.

12 Q. Okay. Were you aware of the methodology employed in the  
13 TUSD research that was conducted before you wrote your report?

14 A. My understanding -- what I saw -- when you say, "TUSD," I  
15 assume you -- what I saw before was produced by the person  
16 running the -- not the statistics department at TUSD.

17 Q. All right.

18 A. So I hate to pick nits there for you. Part of the problem  
19 was it was just graphs and charts, and it really didn't say a  
20 lot about methodology.

21 Q. Did it use both juniors and seniors in its analysis?

22 A. I am not aware. I don't remember what it used.

23 MR. ELLMAN: I have nothing further.

24 THE COURT: Mr. Martinez.

25 MR. MARTINEZ: Nothing further, Your Honor.

1 THE COURT: Dr. Franciosi, you may step down. You are  
2 excused. Thank you very much, sir. It's 10 after 3:00. I  
3 think we should take our afternoon recess.

4 Who is going to call the next witness? Is it a plaintiffs'  
5 witness now?

6 MR. REISS: Yes, Your Honor.

7 THE COURT: Then you can get your next witness during  
8 the recess. We will stand at recess.

9 (A recess was taken from 3:07 p.m. to 3:30 p.m.)

10 THE COURT: Okay. We will all be seated, and I'll ask  
11 the plaintiffs to call their next witness.

12 MS. BARRINGTON: Your Honor, the plaintiffs call  
13 Stacey Morley.

14 THE CLERK: If you would please step into the witness  
15 stand and remain standing to be sworn. Please raise your right  
16 hand.

17 **STACEY MORLEY, WITNESS, SWORN**

18 MS. BARRINGTON: Your Honor, I request permission to  
19 treat this witness as an adverse witness, please.

20 THE COURT: All right. We'll see where that goes.  
21 But permission granted.

22 DIRECT EXAMINATION

23 BY MS. BARRINGTON:

24 Q. Good afternoon, Ms. Morley.

25 A. Good afternoon.

1 Q. Nice to see you again. Ms. Morley, you're not an educator,  
2 right?

3 A. No, I am not.

4 Q. And you don't have any professional teaching experience?

5 A. Well, I have everything but my student teaching, and I also  
6 taught preschool, but it's not been my career.

7 Q. And you went to law school?

8 A. Yes.

9 Q. But you're not a licensed attorney?

10 A. No.

11 Q. From 2008 to 2011, you were a research analyst for the  
12 Arizona Senate Education Committee, right?

13 A. Correct.

14 Q. And as the committee analyst, you tracked all the bills  
15 that were assigned to the Senate Education Committee?

16 A. Correct.

17 Q. You conducted research on those bills?

18 A. Yes.

19 Q. And you summarized those bills and presented the bills to  
20 the Senate members?

21 A. Correct.

22 Q. And Mr. Huppenthal was a senator at this time, correct?

23 A. Yes, he was.

24 Q. And he was chair of the Senate Education Committee during  
25 this time?

1 A. Yes.

2 Q. And you worked directly with Mr. Huppenthal?

3 A. Yes. I staffed all the committee members, but as he was  
4 the chairman, he set the agenda, so I worked more closely with  
5 him.

6 Q. You were responsible for letting him know what bills were  
7 available to be put on the committee agenda, right?

8 A. Correct.

9 Q. And you informed him about any issues surrounding those  
10 bills?

11 A. Yes.

12 Q. It's fair to say that you had extensive knowledge of the  
13 bills that made its way through the Senate Education Committee,  
14 right?

15 A. Yes.

16 Q. And it's fair to say that you were familiar with the  
17 legislative processes and procedures?

18 A. Yes.

19 Q. You're familiar with how a bill gets drafted and how it  
20 makes its way through the legislature?

21 A. Yes.

22 Q. From 2011 to 2015, you worked for the Arizona Department of  
23 Education, correct?

24 A. Yes.

25 Q. Mr. Huppenthal was superintendent during that time?



1 A. Yes, he was.

2 Q. He asked you to join the ADE following his election?

3 A. Correct.

4 Q. And you joined the ADE as the Director of Policy  
5 Development and Government Affairs?

6 A. Correct.

7 Q. And your role was to advise the superintendent on policy  
8 and legislative matters?

9 A. One of them, yes.

10 Q. You also advised the superintendent on legal matters?

11 A. Along with the Attorney General, but obviously I was --  
12 not being a licensed attorney, I didn't provide legal advice,  
13 but I oversaw certain compliance and legal type things that the  
14 Department, like for our dispute resolution, for example, for  
15 special education.

16 Q. Okay. And you reported to Elliott Hibbs?

17 A. Yes.

18 Q. And he was the deputy superintendent of operations for the  
19 Department of Education?

20 A. Yes.

21 Q. So it's fair to say that you worked with Mr. Huppenthal  
22 both while he was a senator and then later when he was a  
23 superintendent?

24 A. Yes.

25 Q. And you're familiar with HB2281, which was later codified

1 as A.R.S. 15-112?

2 A. Yes, I am.

3 Q. And you were in the Senate when this bill was making its  
4 way through the legislature?

5 A. Yes.

6 Q. In your experience, the legislative staff would draft the  
7 legislation, right?

8 A. Not always. It depends. Legislative counsel is the staff  
9 attorneys to the legislature, and if a member wants a bill,  
10 they could just call up legislative counsel and ask something  
11 to be drafted, say, I want a bill that does this. Right? So  
12 they could do that.

13 Sometimes staff will draft legislation, and occasionally  
14 lobbyists or state agencies will draft their own legislation  
15 and ask a member to sponsor it.

16 Q. So, in your experience, the superintendent of public  
17 instruction doesn't actually usually draft the bill, right?  
18 It's a bit unusual?

19 MS. COOPER: Objection. Foundation.

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

21 A. When I was at the Department, we drafted all of our own  
22 legislation. Under the prior administration, they did not  
23 draft their own legislation typically.

24 BY MS. BARRINGTON:

25 Q. So you're aware that HB2281 was drafted by then

1 Superintendent Horne?

2 A. I was not aware of that.

3 Q. Were you aware of Mr. Horne's efforts to pass legislation  
4 to eliminate the Mexican-American Studies Program at TUSD?

5 A. I was aware that he was attempting to pass a statute that  
6 would oversee certain types of prohibited courses.

7 Q. But you understand that those -- that legislation was aimed  
8 at the Mexican-American Studies Program at Tucson USD?

9 A. I wouldn't say that it was aimed; I would say that it arose  
10 because of it.

11 Q. During this time, you didn't know much about the MAS  
12 program at all, did you?

13 A. No, I did not.

14 Q. All you knew was that the bill related to an incident that  
15 Horne experienced at TUSD?

16 A. Yes.

17 Q. And would that have been the incident back in 2006 when  
18 Dugan made -- when his deputy, Margaret Dugan, made a speech at  
19 Tucson High, and some students staged a silent protest?

20 A. From what I heard.

21 Q. And so it was your understanding that HB2281 was introduced  
22 because of the Dugan incident?

23 A. I think that not directly because of the incident, but  
24 because of what -- everything -- I believe it was because that  
25 incident gave rise to concern about those courses, and that led

1 to the -- Superintendent Horne wanting to strengthen statute  
2 about prohibited courses.

3 Q. So it was your understanding that HB2281 was introduced  
4 because of the Dugan incident by Mr. Horne?

5 MS. COOPER: Objection. Misstates prior testimony.

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

7 A. I don't think that it was -- that was the direct -- it was  
8 causal. It was more correlative. I guess, is that that  
9 incident made the Department aware of certain things going on  
10 at the district that they were concerned about, and that's what  
11 arose the -- to drafting the statute. And all of this was  
12 heard anecdotally from other people.

13 BY MS. BARRINGTON:

14 Q. Did you -- you conducted some background research on  
15 HB2281, right?

16 A. Yes, to write -- in order just to write the bill summary  
17 for a committee.

18 Q. And in your research you focused only on the MAS program at  
19 TUSD, correct?

20 A. At the time, that was the only one I was aware of, yes.

21 Q. So you didn't do any research on the Pan Asian American  
22 Studies or the African-American Studies at TUSD, correct?

23 A. At that time I was not aware of them, no.

24 Q. Do you know who Art Harding is?

25 A. Yes, I do.

1 Q. And was he the chief lobbyist for the ADE during this time?

2 A. Yes, he was.

3 Q. And you worked with him on HB2281?

4 A. Correct. Since the legislation was being -- although  
5 Senator Huppenthal did not sponsor the bill, and the bill  
6 originated in the House, so -- but it was the department's  
7 bill. So the information about the bill came from the state  
8 agency.

9 Q. And you're aware that Mr. Huppenthal proposed amendments to  
10 2281, right?

11 A. Yes, I do.

12 Q. And one of those amendments granted authority to the  
13 superintendent of public instruction to enforce the statute,  
14 right?

15 A. Yes. That Amendment was to come into alignment with other  
16 similar statutes with enforcement lines with the state board  
17 and the state superintendent.

18 Q. So this Amendment was -- there were other bills that also  
19 provided both the superintendent and the state board with  
20 enforcement authority?

21 A. Correct. So when a school district overextends their  
22 budget, the superintendent is allowed to grant them specific  
23 time to repay that funding. And then also the state board has  
24 the same authority to go further. And then after that, it  
25 actually has to go to the legislature to get a longer period of

1 time. But there is equal enforcement authority in different  
2 parts of statute with the state board and the superintendent.

3 Q. Huppenthal also proposed an amendment to delay the  
4 effective date of HB2281 to January 1, 2011, correct?

5 A. Correct.

6 Q. And you helped him prepare this amendment?

7 A. I drafted that amendment for him.

8 Q. Mr. Huppenthal proposed this amendment because he didn't  
9 think that Horne would treat TUSD fairly, correct?

10 A. I would more say that he was concerned that the -- he had  
11 concerns about the program, as well, and he didn't want it to  
12 be used as -- he didn't want the district to be a casualty of  
13 the upcoming election. He wanted it to be -- if there was --  
14 if the courses were going to be looked into, that he wanted  
15 them looked into from an objective point of view.

16 Q. But he proposed this amendment because he didn't think that  
17 Horne would treat TUSD fairly, correct?

18 A. He had concerns about the Department investigating it in  
19 the fall.

20 Q. Okay. And that concern was that he didn't think Mr. Horne  
21 would treat TUSD fairly.

22 A. He never said about it being treated fairly. He was just  
23 concerned that it would just become more of a political  
24 football than an actual concern about the educational value of  
25 those courses.

1 Q. Okay. Do you recall a deposition that I took of you back  
2 in maybe 2015?

3 A. Yes.

4 MS. BARRINGTON: Could we play Impeachment Clip 11,  
5 please.

6 (Video playing.)

7 BY MS. BARRINGTON:

8 Q. So at your deposition you testified that Mr. Huppenthal was  
9 concerned that Mr. Horne wouldn't treat TUSD fairly, correct?

10 A. I guess that was the wording I chose at the time, but  
11 that's -- I guess it just -- it's more about the victim of a  
12 political campaign than it becomes about the election and not  
13 about the issues in the program.

14 Q. So you stand by your testimony from your deposition,  
15 correct?

16 A. Yes.

17 Q. Okay. Mr. Huppenthal didn't have a very good opinion of  
18 Mr. Horne, did he?

19 A. I wouldn't say that. I wouldn't -- I just -- I believe  
20 that he was just a little bit more concerned about -- about  
21 certain things the way that the Department was running that he  
22 wanted to change once -- if he was elected.

23 Q. Mr. Huppenthal thought that Mr. Horne was very much a  
24 politician and not so much a public servant, right?

25 A. I don't know that I've ever heard him say that.

1 MS. BARRINGTON: Can we play Clip 17, please.

2 (Video playing.)

3 BY MS. BARRINGTON:

4 Q. And that's your testimony from your deposition?

5 A. That is, but it's probably more my opinion.

6 Q. You still stand by your deposition testimony?

7 A. Yes.

8 Q. Okay. Thank you.

9 A. In certain circumstances, for sure.

10 Q. Mr. Huppenthal didn't tell Mr. Horne that he was going to  
11 offer this amendment to delay the effective date, correct?

12 A. No, he did not.

13 Q. He did that deliberately, didn't he?

14 A. Yes, he did.

15 Q. And he did that because he was concerned that the amendment  
16 wouldn't pass if Mr. Horne was able to influence members of the  
17 Senate to oppose the amendment?

18 A. Correct.

19 Q. And so the ADE only learned about Mr. Huppenthal's  
20 amendment to delay the effective date during the floor debate.  
21 Is that right?

22 A. Correct.

23 Q. And you recall Mr. Harding calling you on the telephone to  
24 ask you why Mr. Huppenthal was offering the amendment, and your  
25 responsible simply was: Why do you think?



1 A. Yes.

2 Q. And so Mr. Harding was upset that Huppenthal had offered  
3 the amendment?

4 A. He was upset that he didn't know that he was going to offer  
5 the amendment.

6 Q. After Huppenthal was elected superintendent, you learned  
7 that Horne was going to issue a finding that the MAS program at  
8 TUSD violated A.R.S. 15-112, correct?

9 A. I don't know that we knew for sure he was going to, but we  
10 thought that he might.

11 Q. And so you attended a meeting with Mr. Huppenthal,  
12 Mr. Horne and others to discuss Mr. Horne's finding, correct?

13 A. The possibility that he might issue one, yes.

14 Q. And that meeting occurred prior to Huppenthal taking office  
15 as superintendent, correct?

16 A. Correct.

17 Q. And the only program that was discussed at this meeting was  
18 the MAS program at TUSD, correct?

19 A. Correct.

20 Q. No other programs were discussed?

21 A. No.

22 Q. At this meeting, Mr. Huppenthal asked Mr. Horne not to make  
23 a finding that the MAS program violated A.R.S. 15-112, correct?

24 A. Yes.

25 Q. So it's fair to say that Mr. Huppenthal didn't want Horne

1 to take any action before he left office?

2 A. Well, the law wouldn't have been in effect if he had issued  
3 a finding. The inauguration was on, I believe, January 3rd,  
4 and school was not in session, and the law didn't become  
5 effective until the beginning of -- January 1st.

6 Q. So Mr. Horne didn't listen to Mr. Huppenthal, correct? He  
7 issued a finding?

8 A. Yes, he -- yes, he issued his own finding.

9 MS. BARRINGTON: Can we pull up DX25, please.

10 And, Your Honor, this has been admitted into evidence.

11 If you'd go to the second page, please.

12 BY MS. BARRINGTON:

13 Q. And this is Mr. Horne's finding, correct?

14 A. Correct.

15 Q. If you turn to the last page, you see that Mr. Horne finds  
16 that the MAS program at TUSD violated A.R.S. 15-112, correct?

17 A. Correct.

18 Q. And the date of this document is December 30, 2010?

19 A. I think he -- that date is December 30th, yes.

20 Q. And this was before the effective date of the statute,  
21 correct?

22 A. Correct. So he -- on -- I believe when he first sent it to  
23 Superintendent Pedicone, which was the superintendent of TUSD,  
24 it was January 1st, and that he was going to issue it on  
25 the 3rd.

1 Q. Right. But this is dated December 30th, and that's before  
2 the effective date?

3 A. Exactly.

4 Q. And you're aware that Mr. Horne at this time had been  
5 elected Attorney General for the State of Arizona, correct?

6 A. Yes.

7 Q. And you're aware that he campaigned on enforcing  
8 A.R.S. 15-112 against the MAS program?

9 A. I wasn't aware that that was part of his campaign, but I'm  
10 sure that it -- I wouldn't be surprised.

11 Q. After Huppenthal took office, he issued a press release  
12 supporting Mr. Horne's finding?

13 A. Yes.

14 MS. BARRINGTON: Can we pull up PX60, please.

15 And this has also been admitted into evidence, Your Honor.

16 We can go to the second page.

17 BY MS. BARRINGTON:

18 Q. And so this is Mr. Huppenthal's press release dated January  
19 4, 2011. And if you look at 80066131, he writes: Given the  
20 evidence that I have reviewed as of today, I support former  
21 Superintendent Tom Horne's decision that a violation of one or  
22 more provisions of A.R.S. Section 15-112, the statute created  
23 by passage of HB2281, has occurred by the Tucson Unified School  
24 District, TUSD. Do you see that?

25 A. Yes.

1 Q. So even though Mr. Huppenthal didn't think Mr. Horne would  
2 treat TUSD fairly, and even though Mr. Huppenthal had asked  
3 Mr. Horne not to issue a finding, he nevertheless issued a  
4 press release supporting his finding, correct?

5 MS. COOPER: Objection. Misstates prior testimony.  
6 Argumentative in that counsel is testifying.

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

8 A. I believe that probably the way that it's worded is he  
9 supported -- he is supporting that there is a violation, but it  
10 goes on, I think, further in the press release to talk about  
11 that, as of that day, there are certain things on the website  
12 that indicate a violation, but he also talked about that it  
13 hadn't gone to effect at that point.

14 BY MS. BARRINGTON:

15 Q. But he did issue a press release supporting his finding,  
16 correct?

17 A. Yes.

18 Q. And you later advised Mr. Huppenthal that he had to set  
19 aside Mr. Horne's finding and conduct his own investigation,  
20 correct?

21 A. I advised him of that, but that was also his own -- he also  
22 wanted to have a more deliberate investigation.

23 Q. Okay. And I think you mentioned this a little earlier, but  
24 this is because Mr. Horne's finding cited evidence that  
25 predated the effective date of the statute?

1 A. Correct.

2 Q. And that was -- and, in fact, school wasn't even in session  
3 when Mr. Horne made his finding on December 30.

4 A. Yes.

5 Q. Okay. Mr. Huppenthal put together a team at the ADE to  
6 look into the MAS program, right?

7 A. Yes.

8 Q. And that team consisted of you, Elliott Hibbs, Kathy  
9 Hrabluk, and John Stollar, correct?

10 A. Yes.

11 Q. And there came a time when the ADE decided to hire an  
12 independent auditor to evaluate the MAS program, correct?

13 A. Yes.

14 Q. And that auditor was Cambium?

15 A. Yes.

16 Q. At this time, the ADE hadn't done a separate investigation  
17 of the MAS program, right?

18 A. No. The staff capacity at the Department, we don't have a  
19 whole department that does things like that, so...

20 Q. So you hired an independent auditor?

21 A. Correct.

22 Q. And you, yourself, were not involved in the day-to-day  
23 management of the Cambium audit, correct?

24 A. No.

25 Q. But the audit was discussed at weekly meetings, correct?

1 A. Correct.

2 Q. And no concerns were ever raised at these weekly meetings  
3 about what Cambium was doing, correct?

4 A. There were concerns about the ability of Cambium to conduct  
5 an audit, that they weren't being given full access to the  
6 courses and the classrooms at TUSD. That was discussed, but it  
7 wasn't about the availability of Cambium itself.

8 MS. BARRINGTON: Can we play Clip 15, please.

9 (Video playing.)

10 BY MS. BARRINGTON:

11 Q. So do you recall there -- this is your testimony from your  
12 deposition?

13 A. Yes. I know that -- I don't believe that -- I guess from  
14 what -- the question was asked was Cambium able to -- did they  
15 have the capacity to do the audit. But I do remember some  
16 discussion about -- about access to classrooms.

17 Q. Ultimately, Cambium concluded that the MAS program at TUSD  
18 did not violate A.R.S. 15-112, correct?

19 A. Yes.

20 Q. And after the Cambium audit, the ADE conducted a separate  
21 investigation of the MAS program, correct?

22 A. Yes.

23 Q. And that investigation started after the ADE received the  
24 Cambium draft, right?

25 A. Yes.

1 Q. And you reviewed curricular materials in connection with  
2 this investigation, didn't you?

3 A. Yes, I did.

4 Q. But you don't have a background in teaching, right?

5 A. No.

6 Q. And you are not familiar with any of these materials or  
7 textbooks?

8 A. No.

9 Q. And you don't know how these materials and textbooks were  
10 taught?

11 A. On some of them we were -- some of the materials -- I mean,  
12 obviously the textbooks, the syllabus, and PowerPoint  
13 presentations and certain materials that were actual classroom  
14 materials were used in the classroom.

15 Q. But you're not a career educator, so you're not familiar  
16 with how lessons are being taught in a classroom, correct?

17 A. Correct. But that's not -- that was not a requirement of  
18 finding whether it's a violation of the law or not.

19 Q. But you're evaluating these curricular materials to  
20 determine whether or not there would be a violation of

21 A.R.S. 15-112 --

22 A. Yes.

23 Q. -- correct? And you didn't actually know if these were  
24 materials were being used in the MAS classes, correct?

25 A. No. The only materials -- at least there were materials

1 that I had that I didn't know, but there were -- I only used  
2 materials, in writing the finding, that I knew were used in the  
3 classroom.

4 Q. How did you know that these were being used --

5 A. They were dated or I was told -- the things that I was  
6 given, I was told that they were used in the classroom.

7 Q. But you've never observed these materials being used in the  
8 classroom, correct?

9 A. No.

10 Q. And that's because you never visited an MAS classroom?

11 A. No, I did not.

12 Q. Yet you ultimately decided some of these materials violated  
13 A.R.S. 15-112?

14 A. It was at my recommendation, yes.

15 Q. And Mr. Huppenthal, at your recommendation, ultimately  
16 found that the MAS program at TUSD violated A.R.S. 15-112,  
17 correct?

18 A. Yes.

19 MS. BARRINGTON: Can we go to PX90, please.

20 Your Honor, this has also been admitted into evidence.

21 BY MS. BARRINGTON:

22 Q. This is an e-mail from you dated June 15, 2011, attaching  
23 Mr. Huppenthal's finding?

24 A. Correct.

25 Q. Can you turn to ADE065690.



1 A. Mmm-hmm.

2 Q. Huppenthal writes: In order to determine whether or not  
3 the Tucson Unified School District's TUSD Mexican-American  
4 Studies Program violates any of the provisions of A.R.S.  
5 15-112, the Arizona Department of Education, at my direction,  
6 conducted an in depth investigation and review of the program  
7 and its curriculum, materials, content, and teaching practices.

8 This investigation included a curriculum audit conducted by  
9 a contractor and various data submitted to and gathered by ADE.  
10 After careful examination of all the available information, I  
11 find there is a clear violation of A.R.S. 15-112 as detailed  
12 below. Do you see that?

13 A. Yes.

14 Q. So Mr. Huppenthal's finding is based on the ADE's review of  
15 the curricular materials, correct?

16 A. Yes.

17 Q. And he found these materials violated A.R.S. 15-112,  
18 correct?

19 A. Yes.

20 Q. On the next page, Mr. Huppenthal also finds a violation of  
21 A.R.S. 15-341, correct?

22 A. Yes.

23 Q. He writes that: A.R.S. 15-341 delineates the powers and  
24 duties of school district governing boards. A.R.S. 15-341  
25 lists the general powers and duties of such board.

1 Subsection 2 requires governing boards to exclude from schools  
2 all books, publications, papers, or audiovisual materials of a  
3 sectarian, partisan, or denominational character.

4 Much of the curriculum and material reviewed was of a  
5 partisan nature. In fact, the intent of some materials is  
6 partisanship and political organization.

7 Do you see that?

8 A. Yes.

9 Q. By the way, when 2281 was being considered in the  
10 legislature, you thought that there was also a statute in place  
11 that could have addressed some of the issues down at TUSD,  
12 correct?

13 A. Correct. I think -- I believe that these -- this already  
14 outlines a prohibition. This is just my staffing opinion. It  
15 just didn't have any consequences or enforcement authority, but  
16 I -- as a staff person, I have always liked to not continue to  
17 add additional statutes to Title 15 rather than just continuing  
18 to, you know, build upon what's already there, change if there  
19 needs to be a change.

20 Q. Your staffing opinion at the time that HB2281 was being  
21 considered was that A.R.S. 15-341, which is cited in  
22 Mr. Huppenthal's finding, could have been amended to add a  
23 penalty, so to say, to enforce against TUSD?

24 A. To enforce against any school district or charter school  
25 that was -- well, it would have to be in a different section if

1 it was charter school, but any school district that violated  
2 it, yes.

3 Q. So in your opinion, HB2281 was not necessary, correct?

4 A. Not in that form. That's just -- and it's just a  
5 formatting, like, technical -- it could have been done in a  
6 different way.

7 Q. Well, the better approach from your perspective was to  
8 simply just expand this existing statute 15341 rather than to  
9 enact an entirely new statute, correct?

10 A. Correct. And add an enforcement provision.

11 Q. But you're aware that the ADE had the authority to enforce  
12 15-341 against TUSD?

13 MS. COOPER: Objection. Misstates the law.

14 THE COURT: Overruled.

15 A. It is not. They do not have the authority -- there is only  
16 specific authority in certain areas of statute where they are  
17 allowed to withhold. There is no enforcement authority in 341.

18 BY MS. BARRINGTON:

19 Q. Are you aware of Rule 7-2-801 of the Arizona Administrative  
20 Code, which sets out the procedures for determining  
21 non-compliance by school districts with laws and rules  
22 concerning school districts?

23 A. Yes, it's an over-general rule, but it's still -- it's not  
24 used very much. And it doesn't -- it's a regulatory -- it's  
25 not -- it doesn't have the ability of statute where there are

1 parts of statute where there is the ability to withhold money  
2 or have more strict compliance.

3 Q. Well, this rule grants an enforcement of power to the state  
4 Board of Education or the Department of Education to, for  
5 instance, enforce rules like -- statutes like A.R.S. 15-341.  
6 Correct?

7 A. Correct, but it doesn't give them the ability to withhold  
8 funding.

9 Q. Right. It doesn't give the superintendent the ability to  
10 terminate an entire program, correct?

11 A. The superintendent does not have the ability to terminate a  
12 program.

13 Q. But he has the ability to withhold funding such that the  
14 TUSD would be forced to eliminate an entire program?

15 MS. COOPER: Objection. Counsel is arguing with the  
16 witness.

17 THE COURT: Overruled. You may answer.

18 A. No. The superintendent could find them in non-compliance,  
19 and the district can come up with a solution. It does not mean  
20 that a program has to be eliminated. It could be changed.

21 BY MS. BARRINGTON:

22 Q. Right. But in your opinion, A.R.S. 15-112 is not a  
23 necessary statute.

24 A. I would have done it a different way.

25 MS. BARRINGTON: No further questions, Your Honor.

1 THE COURT: Okay. Cross-examination.

2 CROSS-EXAMINATION

3 BY MS. COOPER:

4 Q. Good afternoon, Ms. Morley.

5 A. Good afternoon.

6 Q. Immediately preceding your work as a research analyst, what  
7 did you do?

8 A. I was the budget policy advisor for Governor Napolitano and  
9 overseeing education, both higher and -- higher education and  
10 K-12.

11 Q. Before that, please?

12 A. I was the fair housing director for the City of Cleveland.

13 Q. How long have you known Mr. Huppenthal?

14 A. I was a legislative intern in 1997, and he was the Senate  
15 education chair at that time as well.

16 MS. COOPER: I'd like to interrupt myself for a  
17 moment, Your Honor, and inform you that this witness was called  
18 both by the plaintiffs and the defendants. I wanted you to  
19 have that information before I go on.

20 BY MS. COOPER:

21 Q. Did you ever see him -- so you've known him since 1997?

22 A. Correct.

23 Q. Did you ever see him display discriminatory intent against  
24 any group?

25 A. No.

1 Q. Did you ever see him display discriminatory animus against  
2 Mexican-Americans?

3 A. No.

4 Q. Did you become aware of his blogging activities?

5 A. Yes.

6 Q. Do you believe that those blogging activities and the  
7 statements that he made there indicate a discriminatory animus  
8 against Mexican-Americans?

9 A. No.

10 Q. Are you generally familiar with legislative process?

11 A. Yes.

12 Q. Are you generally familiar with the path that HB2281 took  
13 through the legislature?

14 A. Yes.

15 Q. Was there anything unusual about its path through the  
16 legislature?

17 A. Well, they had tried to pass it the year before, and it  
18 didn't -- wasn't even heard in the Senate Education Committee.  
19 They had to run it as a strike everything amendment, which  
20 means they had to use another bill that was available and  
21 strike the language onto it, and it was heard in the Judiciary  
22 Committee, and it did not make it out of the legislature that  
23 year.

24 Q. Was there anything unusual about a bill not making it  
25 through the legislature by the means that you've just

1 described?

2 A. Not unusual, but it's more likely when you do something  
3 like that that it's not going to make it. It's a last ditch  
4 effort really to try and get something out.

5 Q. But it's still an acceptable procedure within your  
6 knowledge of the Arizona State Legislature?

7 A. Correct. It's a very common practice.

8 Q. And the path again that HB2281 took through the legislature  
9 that year, in 2010, was that an ordinary path?

10 A. That was -- that was very ordinary.

11 Q. Was there anything unusual about the delayed effective date  
12 amendment, the path that that took?

13 A. No. Legislation is -- often either has a retroactive  
14 effective date or can have a delayed effective date, depending  
15 on the law. It's -- legislation automatically becomes  
16 effective 90 days after the legislative session adjourns. So  
17 if it needs to be later or earlier, then you actually have to  
18 put it in the statute.

19 Q. Did you and Mr. Huppenthal have any conversations about the  
20 purpose of the delayed effective date amendment from his point  
21 of view?

22 A. Yes.

23 Q. What did he tell you?

24 A. He was concerned that TUSD didn't need that kind of stress  
25 because of an election, and he was concerned about he wanted

1 things to be done for what's best for kids and not about  
2 politics.

3 Q. That is the substance of his conversations with you about  
4 the delayed effective date amendment?

5 A. Correct.

6 Q. You mentioned -- you were asked to discuss a meeting that  
7 occurred in December.

8 A. Yes.

9 Q. Do you recall that testimony?

10 A. Yes.

11 Q. Do you recall who was at that meeting?

12 A. There was Superintendent Huppenthal, then Senator  
13 Huppenthal, Merle, his assistant, myself. I am not sure if  
14 Ryan Ducharme was there, he also helped with the  
15 superintendent's campaign and then also came to work for the  
16 Department. There was also a couple of teachers, some parents,  
17 and I believe maybe a TUSD board member was also there.

18 Q. Do you know whether the teachers and parents were from  
19 TUSD?

20 A. Yes, they were.

21 Q. Do you know whether they were supporters or opponents of  
22 the MAS program?

23 A. They all had concerns about it, but they all also did not  
24 want a finding issued before the beginning -- before  
25 Superintendent Huppenthal was taking office.



1 Q. Did Mr. Huppenthal tell you why he asked Mr. Horne not to  
2 issue a finding?

3 A. Because he wanted -- again, the attention and the politics  
4 surrounding this, he had serious concerns about the program,  
5 but he did not want it to be a political issue. He wanted to  
6 make sure that the program was examined and the value was  
7 reviewed for kids.

8 Q. Did Mr. Huppenthal tell you that he -- do you know whether  
9 Mr. Huppenthal made that request of Mr. Horne because he wanted  
10 to issue the finding himself?

11 A. No.

12 Q. Do you know whether he made that request of Mr. Horne  
13 because he wanted to ensure that a fair and objective and  
14 unbiased investigation was conducted?

15 A. Yes.

16 Q. You mentioned being part of the team that evaluated the MAS  
17 program. Can you tell me what your role was, please.

18 A. My role was really more of a -- kind of more of an  
19 administrative eye to it, to make sure to look at -- I was just  
20 looking at the -- like keeping it to -- although the audit and  
21 some of the ADE staff looked at the program as a whole and its  
22 value, really what the issue was, it was did it violate this  
23 statute, and so trying to keep that limited focus on it.

24 Q. Between the time that the RFP for the Cambium audit was  
25 issued and the time the draft audit itself came out, what work

1 did you do in connection with the investigation?

2 A. I really didn't do much, especially as the legislative  
3 session begins in that January. So that whole spring I was  
4 mostly dealing with the legislature. It was towards the end  
5 when the audit came back and there were -- they weren't able to  
6 make exact determinations about what was going on in some of  
7 the classrooms because some of their observations were not --  
8 they were not cooperated with, that we needed -- we took the  
9 information that they gathered and other staff at ADE had  
10 gathered, and we tried to do our own investigation.

11 Q. Could you please briefly describe the executive team  
12 meetings that were conducted during Mr. Huppenthal's tenure as  
13 superintendent?

14 A. Every week we had a meeting that included the entire  
15 executive team, which included the deputy and the associate  
16 superintendent, so we talked about all the issues that we're  
17 facing in each division and whatever was going on right then,  
18 and just advise, you know, the superintendent. He liked to  
19 hear all sides, and then he would make a decision based on the  
20 information that we provided for him.

21 Q. Was the MAS -- the investigation of the MAS program  
22 discussed during some of these executive team meetings that  
23 occurred in February, March, and April of 2011?

24 A. Yes.

25 Q. And do you recall whether there was any discussion at these

1 executive team meetings regarding the progress of the  
2 investigation into the MAS program at TUSD?

3 A. Yes.

4 Q. And what were the nature of the concerns that were raised  
5 regarding the progress of the investigation?

6 A. There were concerns that were raised about access being  
7 given to the auditors and ADE staff to classrooms and the  
8 forthcoming of materials and actual curriculum and syllabus and  
9 how the classes were being taught.

10 Q. Can you please describe for me in a little bit more detail  
11 the concerns that you heard with respect to materials that you  
12 just mentioned?

13 A. That all those materials would be in the classroom, people  
14 wouldn't confirm or deny whether or not they were being used or  
15 demonstrate how they were being used. There was no --  
16 traditionally, in an academic setting, you have a structure in  
17 how everything's going to be taught, when it's going to be  
18 taught to help the teachers move through the coursework, and  
19 none of that was made available to Kathy and the auditors.

20 Q. Is it correct to say that one of the concerns that you  
21 heard raised during these meetings was a lack of availability  
22 of materials for the auditors to review?

23 A. Yes.

24 Q. I want to ask you just a couple of questions about the  
25 Cambium audit. You're aware that the Cambium audit, draft

1 audit, was issued in early May and a final in mid-May, correct?

2 A. Yes.

3 Q. Were you ever told by anyone at ADE that the Cambium audit  
4 should not be released to the public?

5 A. No.

6 Q. Would you understand the final Cambium audit to be a public  
7 record under Arizona's public records law that would have to be  
8 released to the public?

9 A. Absolutely.

10 Q. Did you purposefully delay releasing the Cambium audit to  
11 the public?

12 A. No.

13 Q. Did anyone at ADE, to your knowledge, purposefully delay  
14 releasing the Cambium audit to the public?

15 A. Not that I am aware of.

16 Q. Let's talk about A.R.S. 15-341. All right?

17 A. Sure.

18 Q. As a result of your work in the legislature and for  
19 Governor Napolitano, are you somewhat more familiar with  
20 Title 15, which addresses Arizona education than other people?

21 A. Yes.

22 Q. Would you recall that 15-341 is in the section of the  
23 statute that addresses school district governing board powers?

24 A. Yes. It's their powers and duties.

25 Q. Do you understand school district governing boards to be

1 separate and distinct legal entities from the Department of  
2 Education or the State Board of Education?

3 A. Yeah, they're constitutionally local government units.

4 Q. Pardon me?

5 A. They're constitutionally authorized government units.

6 Q. School districts, that is.

7 A. Yeah.

8 Q. Do you understand that the authority that's given to school  
9 districts with respect to sectarian instruction is not  
10 authority given to the Department of Education or the State  
11 Board of Education?

12 A. Yes.

13 Q. You mentioned that you worked on the finding of violation,  
14 right?

15 A. Yes.

16 Q. Was that a decision that you reached by yourself?

17 A. No.

18 Q. Who else participated in the decision as to whether or not  
19 to issue a finding of violation against Tucson Unified School  
20 District?

21 A. The superintendent and the entire executive team.

22 Q. Would that include Mr. Hibbs?

23 A. Yes.

24 Q. Mr. Stollar?

25 A. Yes.

1 Q. Ms. Hrabluk?

2 A. Yes.

3 Q. To the best of your knowledge, was the decision to issue a  
4 finding of violation based on the work that was done by the  
5 three individuals that I just named?

6 A. Yes.

7 MS. COOPER: No further questions, Your Honor.

8 THE COURT: Ms. Barrington, anything further?

9 MS. BARRINGTON: Yes, just very briefly, Your Honor.

10 THE COURT: Go ahead.

11 REDIRECT EXAMINATION

12 BY MS. BARRINGTON:

13 Q. Ms. Morley, you recall testifying just now that  
14 Mr. Huppenthal didn't want Mr. Horne to make a finding before  
15 Mr. Huppenthal took office because Mr. Huppenthal wanted to  
16 ensure a fair and objective, unbiased investigation -- that an  
17 unfair -- that a fair objective unbiased investigation was  
18 conducted. Correct?

19 A. Yes.

20 Q. So he was concerned that Mr. Horne had not conducted a fair  
21 and unbiased investigation at this time, correct?

22 A. Yes.

23 Q. Are you aware that Mr. Huppenthal campaigned for  
24 superintendent on the platform of stopping La Raza?

25 A. I wasn't aware of that until the deposition. You asked me

1 the same question.

2 MS. BARRINGTON: And so if we can pull up PX90 again,  
3 please. I think that's the press release.

4 MS. COOPER: Objection. This testimony exceeds the --

5 THE COURT: I can't hear you. Objection because of  
6 what ground?

7 MS. COOPER: It exceeds the scope.

8 THE COURT: Overruled.

9 MS. BARRINGTON: If you can pull up -- it's PX60.

10 Yes.

11 BY MS. BARRINGTON:

12 Q. So Mr. Horne had -- so you testified that Mr. Huppenthal  
13 was concerned that Mr. Horne had not conducted a fair and  
14 unbiased investigation, correct?

15 A. Yes.

16 Q. And so do you recall what day Mr. Huppenthal took office?

17 A. Yes, I do.

18 Q. Would that be January 3rd, 2011?

19 A. Yes.

20 Q. Okay. So on his first full day in office, July 4, 2011,  
21 are you aware that Mr. Huppenthal issued a -- his press release  
22 supporting Mr. Horne's finding at 1:13 a.m. in the morning?

23 A. Yes.

24 Q. So he did this immediately upon taking his oath as  
25 superintendent, correct?

1 A. There is a lot of context in that, in the fact that since  
2 Mr. Horne released the finding that day, that same day, as  
3 well, there was -- it's not something that the superintendent  
4 could have totally ignored. It would have had to be addressed  
5 in some way.

6 Q. But it was addressed at 1:13 a.m. on January 4, 2011?

7 A. It was a long day.

8 Q. And he did this despite the fact that he was concerned  
9 about Mr. Horne having not conducted a biased -- a fair and  
10 unbiased investigation, correct?

11 A. I think that that's why the press -- the press release goes  
12 on to talk about concerns about the bill not being in effect,  
13 and there's more -- there's more reasoning than just -- he just  
14 made a statement: I support Superintendent Horne's finding.  
15 There's more than that.

16 Q. Do you recall counsel asking you questions about the  
17 Cambium report?

18 A. Yeah.

19 Q. And I recall you testified that the Cambium report -- you  
20 didn't -- the Cambium report was released to the public. Is  
21 that correct?

22 A. The final report was released when we -- when it was -- I  
23 am not sure -- I was a part of actually releasing the report,  
24 but there wasn't any discussion of not releasing it.

25 MS. BARRINGTON: Can we pull up PX90, please.



1 BY MS. BARRINGTON:

2 Q. And again, this is your finding -- I'm sorry -- your e-mail  
3 attaching Mr. Huppenthal's finding, correct?

4 A. Correct.

5 Q. And if we go to the next page, please. Just call this out,  
6 please.

7 And you're -- here, you're attaching the finding, and  
8 you're attaching several supporting materials in support of his  
9 finding, correct?

10 A. Yes.

11 Q. And you say: Those additional documents include TUSD's  
12 governing board policies regarding course materials selection  
13 and adoption, board approved texts and materials lists, and the  
14 texts and materials used in the Mexican-American Studies  
15 Department courses. Do you see that?

16 A. Yes.

17 Q. And nowhere here are you attaching the Cambium report,  
18 correct?

19 A. Because the Cambium report was already released.

20 Q. Before -- on June 15th, 2011?

21 A. I believe so.

22 Q. Can you tell -- can you say that with any certainty?

23 A. No. I mean, that -- the documents attached to this were  
24 the ones that specifically used to notate a violation. So the  
25 Cambium report was not used as an example of the selected text

1 that was a violation.

2 Q. But the Cambium report is referenced in this document, is  
3 it not?

4 A. Yes, but it's not used to actually support a finding of  
5 violation.

6 Q. Okay. And the Cambium report is not included in the  
7 materials that you sent out to the public, correct?

8 A. No, it's not.

9 MS. BARRINGTON: Okay. No further questions, Your  
10 Honor.

11 THE COURT: Ms. Cooper, anything further?

12 MS. COOPER: Just a few.

13 RE CROSS-EXAMINATION

14 BY MS. COOPER:

15 Q. To your knowledge, Ms. Morley, did everyone involved in the  
16 examination of TUSD MAS program agree that there was a  
17 violation of A.R.S. 15-112?

18 A. Yes.

19 Q. With respect to the press release that was issued on  
20 January 4th, do you know if then Superintendent Huppenthal  
21 directed that that press release be issued in the middle of the  
22 night?

23 A. No, I don't think so.

24 Q. Do you believe that Mr. Huppenthal did not make such a  
25 direction?

1 A. I don't know. I wasn't -- you know, I didn't actually  
2 draft that, or I didn't see it until after it was issued, so I  
3 don't know.

4 Q. Do you have any knowledge at all as to why that press  
5 release was issued at the time that it was issued?

6 A. No.

7 Q. With respect to the exhibit that we were just looking at,  
8 did you purposefully omit sending the Cambium report to the  
9 public at any time for any reason?

10 A. No. I just don't believe that it was -- I didn't believe  
11 that it was relevant. And that wasn't to the -- that e-mail,  
12 additionally, was not to the public. It was in my role as  
13 lobbyist to send that to southern Arizona legislators and  
14 members of the education committee since they had expressed  
15 concern during the process.

16 Q. Had any of them asked you for the Cambium report that was  
17 referenced in the finding, would you have given it to them?

18 A. Absolutely.

19 Q. Would you have released it to any member of the public that  
20 asked for it?

21 A. Absolutely.

22 MS. COOPER: No further questions.

23 THE COURT: Anything further from plaintiffs?

24 MS. BARRINGTON: No. No, Your Honor. Thank you.

25 THE COURT: All right. Ms. Morley, you may step down.

1 You are excused. Thank you very much.

2 MS. MORLEY: Thank you, Your Honor.

3 THE COURT: The next witness for the plaintiffs.

4 MR. QUINN: Your Honor, the next witness for the  
5 plaintiffs is actually Mr. Horne. And, by agreement, he is  
6 going to show up tomorrow morning.

7 THE COURT: All right. Nobody else?

8 MR. QUINN: We don't have anybody else yet.

9 THE COURT: Well, I guess we're going to adjourn, but  
10 we have a little time then.

11 The defendants don't have any other fill-in witness, right,  
12 today?

13 MS. COOPER: Not for 30 minutes, Your Honor, no, we do  
14 not. We were concerned we would not get through the three that  
15 we had.

16 THE COURT: Let me ask the plaintiffs, first of all,  
17 you are going to call Mr. Horne tomorrow. How many more  
18 witnesses do you think you are going to have? I am not trying  
19 to tell you -- restrict you now, I just want to get an idea  
20 where we're going.

21 MR. REISS: We appreciate that. Your Honor, I'll tell  
22 you who we've got. And I think we conferred pretty extensively  
23 with the State, and we believe that Mr. Horne will take the day  
24 tomorrow and probably well into some portion of Wednesday.

25 After Mr. Horne, the plaintiffs will call Dr. Valenzuela,

1 who is one of our experts, and depending on the examination of  
2 Dr. Valenzuela -- obviously her direct testimony has already  
3 been submitted by affidavit.

4       Depending on the cross and any redirect, we may also begin  
5 with the next expert, who is Dr. Pitti. We assume, Your Honor,  
6 that Dr. Pitti will finish up on Thursday at some point. And  
7 after that, I think it is -- that's the conclusion of the  
8 plaintiffs' witnesses at that point.

9               THE COURT: You mean you expect to rest then, after  
10 Dr. Pitti testifies. Is that right?

11              MR. REISS: Yes. Yes, Your Honor.

12              MR. FOUR: Okay.

13              MR. REISS: We would reserve any possible rebuttal  
14 witness, but, yes.

15              THE COURT: Yes, yes. All right. So then let me ask  
16 the defendants, how many witnesses do you think you are going  
17 to have?

18              MS. COOPER: Three, Your Honor.

19              THE COURT: And how long do you think they'll take?

20              MS. COOPER: Well, I am not clear, of course, on when  
21 we'll start on Thursday, but it's possible that they could be  
22 done in a day and a half. It is hard to predict, not  
23 knowing --

24              THE COURT: Right.

25              MS. COOPER: -- how long Mr. Horne's testimony will

1 take. But we don't think that the three witnesses will consume  
2 two full days of testimony.

3 THE COURT: All right. I don't know who they are, but  
4 do plaintiffs agree?

5 MR. REISS: I would agree, Your Honor. I don't  
6 envision any overwhelmingly long crosses on any of the  
7 witnesses.

8 THE COURT: And then, as of now, I suppose you're not  
9 prepared to say whether you'll have any rebuttal case, are you?

10 MR. REISS: Your Honor, I think we're not prepared to  
11 say conclusively. I suspect if we have rebuttal, it's going to  
12 be limited to one witness, maybe two, but they're not going to  
13 be long witnesses.

14 THE COURT: All right. Well, let me ask the next  
15 question then. I don't suppose that anybody wants closing  
16 argument, is that right?

17 (Laughter amongst parties.)

18 MR. QUINN: Objection. Leading.

19 MR. REISS: Your Honor, the answer may shock you, but,  
20 no, we would very much like a closing argument.

21 THE COURT: The same with the State?

22 MS. COOPER: That's correct, Your Honor.

23 THE COURT: All right. How much time are you talking  
24 about?

25 MR. REISS: Your Honor, I would think --

1 THE COURT: 40, 45 minutes?

2 MR. REISS: I would think an hour, Your Honor, maybe a  
3 little more. We -- I think the Court appreciates we've been as  
4 efficient as we can be, but I do think an hour or so would be  
5 more likely.

6 THE COURT: You agree with that? "You" meaning the  
7 State.

8 MS. COOPER: Yes, I understand that. I don't think it  
9 will be more than an hour, Your Honor.

10 THE COURT: All right. Well....

11 MS. COOPER: I hope that it will be less.

12 THE COURT: All right. Well, then, it seems to me  
13 it's going to be a very close call, at best, whether we're  
14 going to be finished by Friday, if we include closing argument  
15 and rebuttal. I don't know. Let's see. I think we should  
16 wrap it up. Are you ready to come back Monday?

17 MR. REISS: Your Honor, we -- I think the Court  
18 originally scheduled 12 trial days, and we had anticipated  
19 that, so, yes. The answer to that is yes.

20 THE COURT: Now, obviously, you know, for a closing  
21 argument, everybody doesn't have to come.

22 MR. REISS: Right.

23 THE COURT: Well, I suppose you might use an exhibit  
24 or two, but I don't know if you need all the expert help you've  
25 had.

1 MR. REISS: Your Honor, I could always use all the  
2 help I can get.

3 THE COURT: But you're -- "you," meaning the  
4 plaintiffs, you're ready to come back Monday, if necessary, at  
5 least for closing argument, right? The State is ready, too?

6 MS. COOPER: Of course, Your Honor.

7 THE COURT: Then we might get through on Monday,  
8 right?

9 MR. REISS: I think so, Your Honor.

10 THE COURT: It sounds like a fair -- all right. I  
11 just wanted to get an assessment. If we could have used this  
12 half hour, we might have had a better shot at Friday, but I  
13 just don't think it sounds realistic to me now. Friday, I  
14 mean.

15 MR. REISS: I think we actually did think, as  
16 Ms. Cooper said, that we'd have a bit of a stretch to get  
17 through the three witnesses today. So in some sense, we're a  
18 little bit ahead of the game.

19 THE COURT: All right. That's fine. Either side want  
20 to raise anything else?

21 MR. REISS: No, Your Honor.

22 MS. COOPER: No, thank you, Your Honor.

23 THE COURT: Now, one of the things I want to remind  
24 you of now, just for your own protection, before you rest, at  
25 some point in the next couple of days make sure that the clerk



1 has marked as admitted all of the exhibits you think should  
2 have been admitted in your case. All right. So the record  
3 doesn't have any gaps.

4 MR. REISS: Yes, Your Honor.

5 THE COURT: I'm saying that's your responsibility.

6 MR. REISS: Yes, Your Honor.

7 THE COURT: The reason I say that, like many trials,  
8 you know, we've been treating, say, agreed-upon exhibits or  
9 exhibits to which no objection has been made as virtually  
10 admitted, so not really making a formal offer. But make sure  
11 the record is, I'm saying, correct as far as your own exhibits  
12 are concerned. Okay.

13 Then, with that, we'll stand at recess until -- Mr. Horne  
14 will be ready at 9:00 o'clock?

15 MR. QUINN: Yes.

16 THE COURT: 9:00 a.m. tomorrow.

17 MR. QUINN: Thank you, Your Honor.

18 MS. COOPER: Thank you.

19 (Proceedings adjourned at 4:29 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 18th day of July, 2017.

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