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Gonzalez v. Douglas Trial Transcript of Proceedings, Day 8

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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 19, 2017
)	
DIANE DOUGLAS,)	
Superintendent of Public)	
Instruction, in her)	
Official Capacity; et)	
al.,)	
)	
Defendants.)	

Before the Honorable A. Wallace Tashima

Transcript of Proceedings

Bench Trial Day 8

Proceedings reported and transcript prepared by:

A. Tracy Jamieson, RDR, CRR
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 P R O C E E D I N G S

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

3 THE COURT: Good morning. Let's all be seated. Okay.
4 Let's see.5 MR. ELLMAN: Your Honor, may we address scheduling
6 before we begin?

7 THE COURT: Yes, please do.

8 MR. ELLMAN: What we anticipate at this point is to
9 complete Dr. Pitti's testimony today and then to complete
10 Dr. Valenzuela's testimony today and then we have three
11 witnesses left.12 We propose to begin 9:00 o'clock tomorrow with
13 Dr. Haladyna, then Margaret Dugan, and then Elliott Hibbs. We
14 believe we can conclude all of that testimony by the end of
15 Thursday. So there could be rebuttal, of course, but we
16 believe we'll be making closing arguments Friday.

17 Is that acceptable to the Court?

18 THE COURT: Well, it's not a matter of whether it's
19 acceptable, it's whether it's realistic. You know, it's
20 always, I don't know, difficult to pin down precisely how long
21 examination and cross-examination is going to be, especially of
22 an expert. But plaintiffs agree with that?23 MR. REISS: Your Honor, I think that is an entirely
24 realistic schedule. I do believe that we should, if everyone
25 is appropriately efficient, get through the three defense

1 witnesses that they've listed for Thursday. I think that's a
2 realistic goal.

3 In terms of rebuttal case, I think our anticipation is that
4 we'll have one, possibly two, rebuttal witnesses that we should
5 be able to get through on Friday morning. So I do think, if
6 we're all focused and efficient, it's certainly realistic to
7 think about the closings on no later than Friday afternoon and
8 possibly before then.

9 THE COURT: All right. Well, let's proceed on that
10 assumption. We'll see where we are at the end of the day
11 today. But I appreciate that, I'll call it a forewarning.
12 Thank you.

13 Let's proceed then with the, I guess, cross-examination.
14 Good morning, Dr. Pitti.

15 THE WITNESS: Good morning.

16 WITNESS, STEPHEN PITTI, RESUMED

17 CROSS-EXAMINATION (CONTINUED)

18 BY MR. ELLMAN:

19 Q. Good morning, Dr. Pitti.

20 A. Good morning, Counselor.

21 Q. I want to clear up one point from yesterday. I asked you
22 about the transcripts of the legislative hearings, and I
23 believe you said that, although you didn't refer to them in
24 your report, you went to a website and viewed them there. Is
25 that right?

1 A. It was my memory that I did -- as I said, I did do the vast
2 majority of the reading of those documents since the submission
3 of my expert report. But you asked me if I had looked at them
4 in advance, and I thought those were on the Arizona legislative
5 website, which I did consult, and if they were there on the
6 website, then, in fact, I did look at them at an earlier date.
7 But, as I said, they didn't make it into the report itself, the
8 expert report itself. I didn't -- and I said in the deposition
9 I really didn't make use of them. But I was trying to be clear
10 that it's my memory that I did look at them at an earlier date.
11 Again, did not use them in the writing of the -- in the writing
12 of the expert report, but was, of course, asked about them in
13 the deposition itself.

14 Q. If the transcripts were not on the website, does that mean
15 that you did not review them before you completed your report?

16 A. It does likely mean that, unless they were on a different
17 website that I can't recall at the moment. I can't say with
18 certainty that I did look at them if they were not on the
19 website.

20 Q. Let me direct your attention to your declaration, page 8,
21 paragraph 24. Now, this says: After I produced my report in
22 this case, I examined the transcripts from the legislative
23 hearings on HB2281.

24 Is that accurate or not?

25 A. That is accurate. After I produced my report, I did

1 examine the transcripts of HB2281. I don't see any
2 inconsistency between that and what I've already said.

3 Q. Part of your theory is that Arizona politicians use code
4 words to reveal discriminatory animus in a covert way. Is that
5 right?

6 A. Counselor, historians don't usually offer up theories. I'm
7 not sure what theory you hear me offering.

8 Q. Given your code word methodology, wouldn't it be critically
9 important in the context of this case to review the transcripts
10 of the legislative hearing before you wrote up your report?

11 A. Counselor, I would leave that for the Court to decide. I
12 think I used methodology that's understandable to historians
13 that was quite exhaustive given the time frame in which I had
14 to produce the report that, as you see, runs to almost a
15 hundred pages, that has a very extensive bibliography,
16 including primary and secondary sources, and that focused on
17 the political, cultural, the cultural climate, the political
18 climate of Arizona historically all the way into the early 21st
19 century.

20 In doing that, I looked at a lot of different documents, a
21 lot of different evidence, and I did not focus, as you note, on
22 these particular transcripts in that stage of my research. But
23 I will say that, having looked at the transcripts, since the
24 submission of my report, they confirm my sense, my
25 understanding, of the conclusions and my understanding and my

1 conclusions that I've offered in the report itself.

2 Q. So you did your research, you reached your conclusions, and
3 then you checked to see if your conclusions were supportable.

4 A. Counselor, that strikes me as a mischaracterization of what
5 I am saying.

6 Q. Did you have enough time to complete your report? You've
7 testified twice that it was a short period of time.

8 A. It was a short period of time. I worked quite a number of
9 hours on this report and am proud of the work that I did. This
10 is a report that I think does capture the history that I set
11 out to examine, and that does offer, I think, convincing data
12 and evidence based on secondary and primary sources. So the
13 answer would be yes, I had sufficient time to produce the
14 report for the Court.

15 Q. So you are denying that the failure to review the
16 legislative hearing transcripts before you completed your
17 report was a deficiency in your research?

18 A. That's a bit of a mischaracterization, again, Counselor. I
19 am not calling what I did a deficiency. What I am saying is
20 this is a broad topic that I -- to which I brought an
21 established methodology, expertise, and many, many hours of
22 work, and I approached the topic and undertook the research
23 energetically, making careful decisions about what I would
24 examine.

25 There are worlds of materials that might be examined to

1 approach a topic such as this one, and a scholar always makes
2 decisions about what, in fact, to focus on for a project. I am
3 very comfortable with the decisions I made, and I think that
4 were you to ask other historians to undertake this work, they
5 would be comfortable with the results of my research and the
6 approach that I took.

7 Q. You reviewed materials supplied from whatever source of
8 materials that were used in the Mexican-American Studies
9 courses, correct?

10 A. Could you rephrase that, please, Counselor?

11 Q. All right. You reviewed materials that were used in
12 Mexican-American Studies classes in the course of writing your
13 report, correct?

14 A. This is explained in my report, that I saw the Cambium
15 report, and from the Cambium document I was able to understand
16 at least some of the teaching materials that were used in the
17 Mexican-American Studies Program in Tucson. And I described a
18 number of those texts in the report that the Court has.

19 Q. And that included texts for the Latino literature course,
20 correct?

21 A. I believe so. If that was covered in the Cambium report,
22 then, yes, indeed.

23 Q. It was. And I want to direct your attention to page 79 of
24 the Cambium report. This is Exhibit 93. This is describing
25 the Latino Literature 7 and 8 course.

1 It says here: This course will focus on themes of social
2 justice, resistance, and transformation through world
3 literature, although a greater emphasis will be placed upon
4 Latino and indigenous literature from Central, South and North
5 America.

6 Have I read that correctly?

7 A. I believe so, Counselor, although I was not able to read
8 the material that preceded it on the page.

9 Q. You were not able just now?

10 A. I said I was not able to read the material that preceded it
11 on the page, so I don't know if there's context surrounding
12 that sentence that might be important.

13 Q. Why don't you take a look at the whole section.

14 A. Thank you.

15 I've read the preceding material. Is there material that
16 follows this paragraph that I should also look at, Counselor?

17 Q. Do you feel you need additional context to agree with --

18 A. It would depend on the question you're about to ask.

19 Q. Please let me finish the question, sir.

20 If you believe you need additional context to determine
21 whether the Latino literature course focuses on themes of
22 social justice, et cetera, as that sentence says, I am happy to
23 provide you with the following language, which is here,
24 although I do not understand what additional context you feel
25 is necessary to answer that question.

1 MR. CHANG: Objection.

2 BY MR. ELLMAN:

3 Q. Can you explain?

4 MR. CHANG: Badgering.

5 THE COURT: The objection's overruled.

6 A. I am -- I am sorry. Could you restate the question.

7 BY MR. ELLMAN:

8 Q. Why do you feel you need additional context to acknowledge
9 that the course description states what I quoted to you from
10 page 79?

11 A. Counselor, I apologize if I was inappropriate in asking for
12 additional context in this case. I was expecting that you
13 might have been about to ask me questions about the course that
14 would not be easy for me to answer by just looking at the
15 single highlighted sentence that you provided me, and so I
16 wanted to be confident in my answer to the Court that I could
17 describe what I was seeing on the page in answer to whatever
18 question you might ask me. But I do apologize --

19 Q. Do you now have that level of confidence about the quoted
20 statement?

21 A. I believe I do. I may ask to see this page again if the
22 question goes in a direction that requires me to see more
23 context.

24 Q. That's fair, and I will do that for you --

25 A. Thank you.

1 Q. -- if you request.

2 You read or reviewed, at least, quite a few materials, it
3 looks like. And I am referring now to pages 73 to 85 of your
4 report. Do you remember going through materials from the
5 courses?

6 A. Yes.

7 Q. How did you decide which materials from the Cambium report
8 to review?

9 A. We're on pages 73 to 85?

10 Q. Yes.

11 A. Is that what you said?

12 Q. Yes. You identify a number of texts there, and I'm asking
13 you how you decided which texts to review.

14 A. Well, I think I -- it's a bit of a distant memory, to be
15 honest, at the moment, Counselor. I think I drew from the
16 Cambium reports -- report titles that I thought were important
17 titles in the field of Mexican-American Studies nationally and
18 internationally, and perhaps to some extent I focused on titles
19 that I gathered had received attention, particular special
20 attention from those who had commented on Mexican-American
21 Studies here in Tucson.

22 Q. Where did you get the materials? Who supplied them to you?

23 A. Those are either in my own personal collection or they're
24 in the Yale Library system or, as I note about at least one of
25 the titles, many, perhaps all of these titles, are held by

1 hundreds of universities around the country and around the
2 world. So I had the titles that I spoke about here very close
3 at hand, either in my own office or on my home campus.

4 Q. And that included Occupied America, correct?

5 A. Correct.

6 Q. And, in your view, that is appropriate material for a high
7 school class and is not questionable?

8 A. Are we speaking in particular about a particular paragraph
9 of my report, Counselor?

10 Q. That's on pages 73 and 74, your discussion of Occupied
11 America.

12 A. As you'll see on the paragraphs that you just referred me
13 to, I say that the work of Rodolfo Acuña has been important in
14 what I say helping educators around the world to integrate
15 Mexican-American narratives into standard U.S. history
16 narratives, and it's been crucial to the field of
17 Mexican-American Studies.

18 Just reviewing this here. He is an author who has been
19 widely celebrated in national and international prizes for his
20 scholarship and as a leader in the field, the first professor
21 to offer a Mexican-American history course at the college
22 level.

23 Occupied America has been around for 40 years. The book
24 has gone through a number of new editions. It's, I think,
25 currently in its eighth edition. The eighth edition is

1 significantly different from the first edition. It's been
2 revised and refined and updated over the course of time, it's
3 widely taught, undergraduate courses and graduate courses. And
4 I know it's widely used by high school teachers around the
5 country. Not just people, the small, relatively small number
6 of people, teaching Mexican-American Studies courses around the
7 country, but also by teachers who are looking for
8 Mexican-American material, as I say, to integrate into their
9 general U.S. history textbook.

10 I've suggested that teachers use it or look at it as a
11 possible resource for themselves in the past. I don't normally
12 work closely with high school teach -- high school students.
13 Excuse me. In fact, I episodically work with high school
14 teachers, but that's not really my day job.

15 So I don't come before the Court as an expert on high
16 school teaching, on high school classrooms, but I can say to
17 you, and I think I make this clear in what I have provided the
18 Court, that I see Occupied America as what I call more
19 comprehensive, more accessible, and containing fewer factual
20 errors than the two other leading textbooks about
21 Mexican-American history.

22 So if we take it as true that there is such a thing as
23 Mexican-American history and we want therefore to find
24 something to read about Mexican-American history, whether we're
25 educators, we're students, it seems to me that Occupied America

1 would be a choice, a suitable choice, especially given the
2 options in -- for teachers to consider.

3 Q. I take it from that answer that you consider Occupied
4 America then to be appropriate material for a high school
5 course.

6 A. As I tried to say in some detail, I would offer it up for
7 teachers to consider using in their high school courses.

8 Q. You wouldn't deem it questionable then?

9 A. I would -- as I said, I've called it in the report that I
10 offer to the Court, the most -- more comprehensive, more
11 accessible and containing fewer factual errors than competing
12 textbooks.

13 Q. So I take it from that answer you do not consider it
14 questionable material for high school students.

15 A. Counselor, as you know, I am a scholar, which means that I
16 bring to things that I do and things that I read lots of
17 questions, a high kind of spirit of doubt. So there are plenty
18 of things in Occupied America that I might disagree with as a
19 scholar, conclusions, small pieces of evidence that the general
20 argument of a section or two, or three or four, there's plenty
21 of room for that sort of disagreement. That's, in fact, what I
22 do and we do as scholars, we debate. We see these things as
23 matters of debate.

24 What I will say, try to say again, is that I think this is
25 a comprehensive book. It contains few factual errors. It is

1 an accessible book and it is a book that has been around for 40
2 years, because it's a book that's been accepted and seen to be
3 useful, to have credibility by academic readers in
4 universities, but also out in the larger public.

5 Q. You also discussed *500 Years of Chicano Women's History*, at
6 pages 75 and 76, and I am going to ask you if you also feel
7 that that is appropriate material for a high school course.

8 A. It's *Chicana Women's History, Counselor, 500 Years of*
9 *Chicana Women's History*, as you say, I talk about on pages 75
10 and 76. Also an important book in American history, in
11 *American Studies*, as I say in my report, because it fills
12 important historical gaps and provides information, detail,
13 narratives that are critical pieces of American history that
14 students and educators deserve to have the opportunity to
15 review.

16 As with all of the books that I discuss, as with virtually
17 all of the books that I own, there are pieces of this book that
18 I might disagree with, but it is a book that I have spoken to
19 high school educators about; that I have urged them to consult
20 if they are teaching material, as I hope they are, that touches
21 upon Mexican-American communities; that touches upon women's
22 rights; that touches upon the civil rights movement or
23 immigration; other topics and themes that are covered in this
24 book that are important critical pieces of American history
25 that do have an important place in high school classrooms,

1 indeed that are covered by standardized tests, like the AP
2 test, that students oftentimes aspire to do well on.

3 And so a book like this can be an important part, can be an
4 important text that educators might consider introducing their
5 students to.

6 Q. You said you hope that they're used in high school classes,
7 so doesn't that mean you think it's appropriate material for
8 high school classes?

9 A. I think you may have mischaracterized or misheard what I
10 said. I hope that they are talking about these themes in their
11 high school classes. Themes like civil rights, women's
12 history, immigration, and so forth, are key themes in the
13 American story, Counselor, as I see them, and these are key
14 themselves that are touched upon and explored in this book and
15 many of the others.

16 It doesn't mean that the author here, Elizabeth Martinez,
17 has the last word on that history, but she has something to
18 offer readers that can teach students and inform how educators
19 teach their classes in American history courses and in other
20 courses.

21 Q. Do you also believe that the book Critical Race Theory is
22 an appropriate text for a high school course? And that's a
23 book you discuss at page 83 of your report.

24 A. This is a book that I, as you say, talk about on page 83.
25 This is a book that has been very important in the academy. I

1 know less about how it has functioned in high school history
2 classes or how important it has been to educators than I do
3 some of the others.

4 But what I admire about this book, as I say here in the
5 paragraph, is that it's a very thoughtful book throughout
6 most -- at least most of what it has to offer. It's an edited
7 collection that brings together a set of authors with many
8 different conclusions and many different interpretations, and
9 it's a book I think that invites those who are interested in
10 the topics, the many topics discussed here, to think for
11 themselves and to do independent research of their own on these
12 topics.

13 In other words, I think it's more the sort of book, in a
14 high school setting, that might invite discussion and
15 disagreement than perhaps some other books that I have
16 discussed here. But there is no doubt that the authors of --
17 the editors of the book and the many authors brought together
18 in the book are leading people in their fields, who are well
19 respected scholars and writers; that the conclusions, while
20 controversial, perhaps conclusions that I may not agree with --
21 just as I may not agree with every conclusion that Elizabeth
22 Martinez or Rudolph Acuña come to -- the conclusions offered in
23 this book are credible conclusions insofar as they rely on a
24 well respected, clear methodology, and use sources to pursue
25 answers to the questions that they are interested in.

1 So I think it may have use in a high school classroom, it
2 certainly may. It would depend on the goals of the teacher,
3 what the class was and how the teacher saw their students and
4 the pedagogical program that they were offering.

5 So, to answer that question, Counselor, I would want to
6 know more about how a teacher imagined using that book and what
7 sort of value that book might have, but I think that it has
8 many potential values for a group of young learners.

9 Q. I'd like you to take a look at the list of course materials
10 on the screen in front of you now, and I am going to represent
11 to you that all of these materials are on the reading list for
12 Latino Literature 7/8.

13 My first question is did you mention any of these books in
14 your report or these materials?

15 A. I can't -- without going through my entire bibliography,
16 Counselor, I am not sure I can answer that with total
17 confidence, but I see at least one here that I did discuss,
18 number 10, A Different Mirror: A History of Multicultural
19 America by Ronald Takaki, which is a critically important
20 volume by one of the leading historians of the late 20th and
21 early 21st century, a person who has played a very important
22 leadership role in the academy and in really reshaping broad
23 understandings of American history. You'll see that discussed
24 in my report, Counselor.

25 Q. That's a history book, and this is a course materials list

1 for a Latino literature course. Do you have some notion of why
2 this would be in a Latino literature class?

3 A. Counselor, I think I'd be speculating.

4 Q. Okay. I don't want you to do that.

5 You have no memory of reviewing any of these other
6 materials, do you?

7 A. I don't have a memory of reviewing any of these other
8 materials. I do know several of them or at least in broad
9 strokes could comment on several of them, if needed.

10 Q. Okay. Are any of these works of Latino literature?

11 A. I don't see works of creative imaginative fiction on this
12 list, if your definition of "literature" is a narrow one like
13 I've just offered. If your understanding of an American
14 literature class is more consistent with the way American
15 literature classes are now quite commonly being taught at the
16 college level, then these strike me as the kinds of texts that
17 are often taught in American literature classes.

18 And that's precisely because American literature has become
19 an increasingly interdisciplinary field in which educators urge
20 students to find other -- find approaches to the understanding
21 of literary texts that might come from history, sociology,
22 anthropology, linguistics, feminist studies, ethnic studies,
23 and many, many, other fields.

24 I noted in the description of the course that this is a
25 college prep course, I think it said for juniors or seniors,

1 and that's why I was interested in seeing the context
2 surrounding the class. And this is the kind of literature --
3 this is the kind of material that is quite commonly taught, I
4 know, in American literature courses of various sorts at
5 universities around the country. Indeed, I would suspect that
6 you could find courses at places like the University of
7 Arizona, with a literature designation that would use many of
8 these courses.

9 I can tell you, Counselor, that I run a center, an academic
10 center on my campus, on the Yale campus, and that my colleagues
11 who are in the English department at Yale do use these kinds of
12 sources and in some cases these very sources in their courses
13 on American literature.

14 So your initial question for me was do I see literature on
15 this, and, again, if you're asking me if I see works of
16 creative fiction by Mexican-American authors, no, I do not, but
17 what I do see are works that are very commonly used, at least
18 on college campuses, to help students to understand the
19 contours of Mexican-American literature and other American
20 literatures to contextualize them and define methodologies for
21 understanding them.

22 Q. In your 20 years of teaching Mexican-American Studies, have
23 you ever used any of materials 1 through 9 on this list?

24 A. Yes. I've used -- again, I've taught many classes over my
25 career, but I've used at least number 6, Bell Hooks' Feminism

1 is for Everybody; number 7, Savage Inequalities: Children in
2 America's Schools; and number 10, A Different Mirror: A History
3 of Multicultural America.

4 Some of the other texts that are here I might have used, or
5 I've certainly used other works by these authors, but I can't
6 say with full confidence that I used these exact readings.

7 Q. Did you use Feminism is For Everybody in a literature
8 course?

9 A. No, in fact, I did not use that in a literature class. I
10 used that in a Mexican-American history class, and I may have
11 used it in an introductory ethnic studies course.

12 Q. Did you use Savage Inequalities: Children in America's
13 Schools in a literature class?

14 A. No, I did not. On the rare occasions in which I've taught
15 literature, it's actually not been about Mexican-American
16 literature, but my courses tend to incorporate some works of
17 fiction in them, because I teach history courses and
18 interdisciplinary courses, and so I offer up primary documents
19 to my students to consider as historically situated creative
20 works by the communities for people we are examining, and they
21 oftentimes do include writers.

22 Q. With the exception of Che Guevara, are any of these
23 authors -- can you treat any of these materials as indigenous
24 literature from Central or South America?

25 A. Counselor, I didn't prepare to answer that question based

1 on my report today, I didn't offer my expertise on that issue
2 to the Court. I would -- I believe -- well, I think I would
3 prefer to leave it there, that I don't offer expertise.

4 Q. So you don't know?

5 A. I have suspicions, but I don't want to offer those
6 suspicions with confidence. It would be very easy for the
7 Court to, of course, find out the personal histories of these
8 authors, where they've lived, where their families are from,
9 and so forth, but I don't want to speak definitively on a
10 question that's really not addressed in my report.

11 Q. I don't want you to speculate. I appreciate that.

12 Are you generally familiar with the great works of Latino
13 literature?

14 A. Which great works of Latino literature are you referring
15 to, Counselor?

16 Q. How about 100 Years of Solitude by Gabriel Garcia Márquez?

17 A. I think, Counselor, that that's another mischaracterization
18 of Latino literature, as I would understand it, and as often
19 understood, although there is some fuzziness around this.

20 Latino literature, as it's usually referred to, refers to
21 works of creative prose that are offered by residents of the
22 United States of Latin American or Hispanic descent.

23 Gabriel Garcia Márquez, as I'm sure you know, is a South
24 American author, who is more consistently identified as a Latin
25 American author, and that's certainly a topic and a book of

1 great interest to Latino writers, to Latino communities.
2 Indeed, it's, as you know, it's one of the best known and most
3 admired novels of the last 50 years, but it's not commonly
4 treated in most settings as a Latino or work of Latino fiction.

5 That does not mean that it could not be taught as Latino
6 literature. It would depend how it was approached, how it was
7 used by the teachers and what the purpose would be. It might,
8 for example, help a classroom to understand South American
9 political dynamics, the genre of magical realism, the
10 development of the novel over the last 50 years, on how family
11 stories have been told and narrated in fiction in recent
12 decades. And all of those topics, all of those issues, have
13 certainly influenced at least some Latino artists and writers.
14 So there could be a place for that, will just quibble,
15 Counselor, with your definition of that as Latino literature
16 without some qualification.

17 Q. So the fact that it's written in Spanish by a native
18 Columbian author and it's fiction doesn't qualify it as Latino
19 literature?

20 A. I think that's a mischaracterization of what I just tried
21 to say, Counselor. I said that it's not normally commonly
22 understood as Latino literature. Latinos and Latino studies,
23 Latino studies usually focuses primarily on residents of the
24 United States. Gabriel Garcia Márquez was primarily not a
25 resident of the United States, as you note, so he is not

1 usually incorporated into the canon of Latino literature,
2 although there, I'm sure, are people who have done that, and
3 I'm sure there are credible arguments for doing so.

4 Q. Wouldn't you agree this course is an exception because it
5 includes indigenous literature from Central and South America?
6 They're not Americans.

7 A. Again, Counselor, as I've tried to say a few times, it
8 would depend very heavily on what the aspirations of the course
9 were, what the approach to Latino literature, in fact, was,
10 what the -- what the goals of the class are.

11 One of the most important demographic developments in this
12 country over the last 40 years, say, could -- has to do with
13 the increasing number of indigenous migrants from Latin America
14 who have moved to the United States, especially since the
15 1970s, and so there may be real utility for some educators to
16 teach about Central American indigenous people in a Latino
17 literature class.

18 Again, if one of the goals of the class is to expose
19 students to the cultures, the thinking, the histories, the
20 creative expression of those communities, especially
21 communities that are -- that have some increasing grounding,
22 increasing place in the United States over the last 40 years.

23 Q. Would you agree that the following people are giants of
24 literature? We won't call it Latino literature. Mario Vargas
25 Llosa, Jorge Luis Borges, Julio Cortazar --

1

2 THE REPORTER: Mr. Ellman?

3 MR. ELLMAN: Want me to slow down?

4 BY MR. ELLMAN:

5 Q. The first, Mario Vargas Llosa, L-l-o-s-a. He's the Nobel
6 Prize winning author from Peru. The second is Jorge Luis
7 Borges, B-o-r-g-e-s, an Argentinian author. The next is Julio
8 Cortazar, an Argentinian novelist. The next is Carlos
9 Fuente -- Fuentes. Excuse me. F-u-e-n-t-e-s. A Mexican
10 novelist, winner of the Cervantes Prize. Juan Rulfo, another
11 Mexican novelist, R-u-l-f-o. Ernesto Sabato, the Argentinian
12 novelist, another winner of the Cervantes Prize. And Octavio
13 Paz, the Mexican author of The Labyrinth of Solitude.

14 Are you familiar with those authors, Doctor?

15 A. To a greater or lesser degree, Ramos Sorriento's work.

16 What was the author -- what was, I think, the penultimate
17 author who you read? You read me a very long list.

18 Q. Yeah. There were eight people on it.

19 A. Okay.

20 Q. Octavio Paz?

21 A. Of course, I know Octavio Paz, who's spent time in the
22 United States and is often taught in Latino literature courses,
23 though not always.

24 Q. He wasn't taught in this one, was he?

25 A. I am only looking at the ten titles that you're showing me.

1 I don't know if this is the complete list.

2 Q. Would you --

3 A. I can't answer that with confidence, Counselor.

4 Q. Would you accept my representation that that is not on the
5 Cambium reading list for Latino Literature 7/8?

6 A. Yes.

7 Q. Okay. Thank you.

8 A. But I did want to just note that I didn't say that it
9 needed to taught in the Latino literature class.

10 Q. Of course. I understand that. Isn't the omission of works
11 by these authors like leaving Mark Twain and John Steinbeck out
12 of an American literature course?

13 A. Absolutely not.

14 Q. All right.

15 A. Because those are --

16 Q. You've answered my question, Doctor.

17 A. -- works of Latin-American literature, as I said, and
18 they're not works of Latino literature. And that represents a
19 misunderstanding of what Latino literature is.

20 The question that you asked me was whether these are works
21 of fiction that are -- or these people are generally understood
22 as giants of the novel or in the literary field. I can't -- I
23 don't want to try to speak for all readers -- I mean, all
24 places, but as you noted, I think all of those people have been
25 widely celebrated and are widely read and understood as Latin

1 American authors.

2 Q. Well, they're all written in Spanish in the original
3 text --

4 A. Well --

5 Q. -- and they all come from Central and South America. Would
6 you agree with that?

7 A. I believe that's right. And, of course, Juan Rulfo
8 published a bit in the United States, and Octavio Paz published
9 a bit in the United States. But they're -- that does not mean
10 that they're necessarily considered canonical in Latino
11 literature. What I think -- well, I will leave it there, that
12 they're not necessarily considered canonical within the United
13 States as Latino literature.

14 Q. If you will look again at that list of 10 works in front of
15 you, do any of those appear in the Norton Anthology of Latino
16 Literature, which you reference at pages 84 and 85 of your
17 report?

18 A. Not as far as I remember, Counselor. I don't reproduce the
19 entire table of contents. I think I note that the Norton
20 Anthology of Latino Literature is around 2,000 pages, and that
21 I believe it -- I imagine it was in the classroom as a
22 reference text. Again, I don't know how it was used. I don't
23 know that any of these were present in the Norton Anthology,
24 but I can't say that they were not, either. I don't have
25 that long, long table of contents in front of me.

1 Q. Dr. Pitti, I'm not representing that the anthology was used
2 in the Latino literature course. I am simply asking the
3 question because you referred to it as an authority in your
4 report.

5 A. Correct.

6 Q. Okay. Let's take a look at paragraph 35 of your
7 declaration.

8 A. Yes, Counselor.

9 Q. You have that in front of you, right? You have a hard copy
10 of it?

11 A. I do.

12 Q. Okay. You state in paragraph 35: This strong correlation
13 between Mexicans and the total foreign-born population in
14 Arizona contributed to a tendency among policymakers, the
15 media, and members of the public to assume that the majority of
16 persons of Latino descent were non-citizens.

17 Do you remember writing that? Let me rephrase it. Did I
18 read that accurately?

19 A. Yeah. I'm just finding the sentence itself. Is it at the
20 top of this paragraph, Counselor, or in the middle? I found
21 it. I'm sorry. Yes, I see that. Line 10?

22 Q. Yes. What facts can you cite to support the notion that
23 most Arizonans believe that most Latinos are non-citizens?

24 A. Counselor, you've just misrepresented the sentence that we
25 all have in front of us. I say that there was a strong

1 correlation between Mexicans and the total foreign-born
2 population in Arizona. That's Assertion 1 in the sentence.
3 And you'll see that backed up in the report itself, which
4 refers to demographic information that I think helps to make
5 that case.

6 I think I say -- I think I show, using data, that Mexicans,
7 in the early 21st century Arizona, were 66 percent of the
8 foreign-born population in Arizona. And, in fact, I cite that
9 statistic on the previous line, line 9. So therefore, there is
10 a strong correlation between Mexicans and the total
11 foreign-born population.

12 The next part of the sentence refers to a tendency,
13 Counselor. It doesn't make the argument that every Arizonan
14 assumed the majority of persons of Latino descent were
15 non-citizens.

16 What I'm referring to here is the historical research that
17 I did, the dependence that I had on secondary scholarship,
18 established secondary scholarship, that shows that there is a
19 slippage in the political rhetoric in early 21st century
20 Arizona, in which the characteristics ascribed to foreign-born
21 people are oftentimes -- there's a slippage between those
22 characteristics and the characteristics ascribed to people of
23 Mexican decent, regardless of citizenship.

24 This strikes to the very core of much of my report
25 regarding how racial code words operate historically,

1 especially since the 1960s, and how the immigration -- concerns
2 about immigration and the so-called Mexicanization of Arizona
3 contributed to a sort of backlash politics in this state, as
4 seen in the various legislative proposals and bills that were
5 passed, the propositions, and articles in the popular press and
6 much more, that suggest, that show, that demonstrate -- as I
7 think I do convincingly across many pages of my report -- and
8 I'd be happy to get into those details looking at the report
9 with you -- that there was a strong tendency -- that there was
10 a tendency among policymakers, the media, and members of the
11 public to assume that the majority of persons of Latino descent
12 were non-citizens. I think that's demonstrated throughout my
13 report, Counselor.

14 Q. You refer to it specifically at page 13 of your report.
15 Will you take a look at that? It's also on the screen in front
16 of you. I don't want to deprive you of necessary context. And
17 let me know when you've found that page.

18 A. Yes. Thank you.

19 Q. All right. Do you see the sentence there highlighted on
20 the screen?

21 A. I do.

22 Q. Do you see it, the sentence that I've underlined? Okay.
23 And your authority for that is noted in footnote 14, is that
24 right?

25 A. No.

1 Q. No?

2 A. My authority for that is, in part, footnote 14, but it's
3 also the pages that surround this paragraph. It's --

4 Q. And I'm only talking about the strong tendency, Dr. Pitti.

5 A. I understand that, and so am I, Counselor. The
6 strong tendency -- my understanding of the strong tendency that
7 you're calling our attention to comes from my reading of many
8 documents, the -- many -- not all, but many of the secondary
9 sources that I cite.

10 At some point here in the early pages, I guess it's on page
11 8 and 9 and 10, I offer a kind of highlighted list of some of
12 the scholarship on just this topic historically, the many
13 historians -- it's more than a page, single-spaced, of scholars
14 who've weighed in on how Mexicans were racialized in Arizona
15 and in places like Arizona over the course of time.

16 So I want just to be clear to the Court that this statement
17 of mine that you've highlighted for us on the screen depends,
18 in part, on footnote 14, but it also depends on other sources
19 that I've cited throughout the document, and that I call your
20 attention to, especially on pages 8 through 10.

21 Q. Do these many sources you just referred to, do any of them
22 specifically say that there is a strong tendency among
23 policymakers and members of the media in Arizona to assume that
24 the majority of people of Latino descent in the state were
25 non-citizens?

1 A. Yeah. I'm glad you asked that, Counselor. They make a
2 strong case historically that this is precisely what has
3 happened to Mexicans and Mexican-Americans over time.

4 And as an historian, as a reader of history, as someone who
5 brings to the Court expertise in this field, a capacity to read
6 the documents as an historian would, an understanding of the
7 facts and the insights that authors have presented to us over
8 time, scholars have shown us that in the early 20th century in
9 Arizona and elsewhere, there was a strong tendency among policy
10 members and members of the media to equate people of Latino
11 descent with non-citizens.

12 And that's been a persistent pattern over the course of the
13 years and that it's an accelerating pattern, an accelerating
14 problem that people of -- Mexican-Americans and other people of
15 Latino descent faced despite whatever their citizenship status
16 might be -- might have been in the early 21st century. There's
17 a kind of lumping together, what scholars have often called
18 racialization, the kind of creation of an imagination of a
19 common set of racial characteristics by which people are
20 defined as similar, regardless of how different they might have
21 been.

22 I think you do see this in some of the discussions about
23 education in the state. You see this in the way that Russell
24 Pearce expressed fear about the Mexicanization of Arizona and
25 also the teaching of Mexican-American Studies as twin problems.

1 You'll see that referenced in my report.

2 So there's much evidence, historically and by contemporary
3 scholars and in contemporary documentary records, that there is
4 a strong -- there was, there has been, a strong tendency among
5 policymakers and members of the media to equate the majority of
6 people of Latino descent with non-citizens. That does not say
7 all, every last one, are non-citizens, but this has been a very
8 important factor and one that's been well-established by
9 scholars.

10 Q. In your report you refer to the tendency among many
11 policymakers and members of the media, but in your declaration
12 you add members of the public. Why is your declaration
13 including the public, but your report does not?

14 A. Counselor, I think that mischaracterizes my report. You've
15 drawn two sentences -- one sentence from one and one sentence
16 from the other. And it's true that those -- in the declaration
17 version of that sentence, I mention the public, and in the
18 single sentence that you drew from my long report, I don't
19 mention the public.

20 But, in fact, there is a lot of material in my very long
21 report about the public and about the ways in which this is a
22 tendency shared by at least some members of the Arizona public.
23 I would refer you -- we can talk in detail about those sections
24 in my report that describe how Latinos, Mexican-Americans, in
25 particular, were affected by the fears of Mexicanization in the

1 state during this period that goes beyond just the media and
2 just policymakers. Though I will say I think policymakers
3 played an important leadership role in helping to shape and
4 create the climate and to encourage a certain way of thinking
5 among certain members of the Arizona public.

6 Q. Are you aware of any surveys taken of the public in Arizona
7 that quantify this strong tendency?

8 A. Counselor, you might have to remind me if I talked about a
9 survey in my report.

10 Q. I don't believe so, Doctor. I am asking if you're aware of
11 one.

12 A. I can't recall at the moment whether I examined any
13 surveys. What I can tell you is that if you look at the
14 propositions, that I do discuss at length -- and I'd be
15 happy --

16 Q. I'm only asking you about surveys.

17 A. I understand, but I do proposition --

18 (Counsel and witness speaking simultaneously.)

19 Q. I think you've answered my question.

20 A. -- it's a survey insofar as it is a vote by the public on a
21 matter relating to immigration.

22 MR. ELLMAN: Your Honor, I've asked a number of
23 questions to which the answer has deteriorated into a lengthy
24 narrative that goes far beyond the scope of the question. I am
25 going to request an admonition to the witness to directly

1 answer the question. And, of course, I expect him to answer it
2 fulsomely and with context, but I think we're straying far
3 beyond the scope of the question in these responses.

4 THE COURT: Well, I agree with you to a certain
5 extent, but, you know, part of it is a result of what a police
6 detective would call a difference in the MO of a lawyer and a
7 professor.

8 (Laughter in the courtroom.)

9 THE COURT: But I will make this statement to
10 Dr. Pitti. You should first try to answer, directly and
11 frankly, the question that is asked. For instance, the
12 question was, you know, about surveys, and you really said
13 "no," but I think you were more anxious to defend your reasons
14 for not using a survey rather than to answer the question.

15 I think it would be -- we would proceed more quickly and
16 perhaps you would be subject to less questioning if, first, you
17 would answer the question directly, if you can, with a "yes" or
18 "no." And then if you need to explain your answer, you should
19 feel free to go ahead and fully explain whatever your answer
20 is, unless there is some objection. And if there is, I'll deal
21 with it. All right? Thank you.

22 THE WITNESS: Yes, Your Honor. Thank you.

23 BY MR. ELLMAN:

24 Q. Dr. Pitti, let me draw your attention now to paragraph 36
25 of your declaration. And this is on pages -- it looks like 13

1 and spills over on to 14. And I am going to ask you about a
2 passage that appears on page -- excuse me. I think it goes
3 from page 13 to page 15. And the passage I want to ask you
4 about is on page 15.

5 So why don't you take a look and let me know when you're
6 comfortable with the context of what you wrote.

7 A. Yes, Counselor. I'm ready.

8 Q. Okay. I want you to look at the sentence that begins on
9 line 5, and it says: These code words associated Mexicans and
10 Mexican-Americans as being unpatriotic and un-American, lazy,
11 politically radical, and then in parentheses, especially
12 associating them with left political ideologies such as
13 communism, end parentheses, criminals, dirty, illegal, and
14 welfare cheats.

15 Have I read that accurately?

16 A. Yes, Counselor.

17 Q. Okay. We know that you did not read legislative hearing
18 transcripts before you reached the conclusions in your report.
19 Correct?

20 A. I think that slightly contradicts what I said earlier,
21 Counselor, that I can't recall having read them, and I
22 certainly did not make heavy use of them. They're not in my
23 bibliography. But I take the general point that I did not use
24 them significantly in the writing of my report.

25 Q. I don't think you used them at all in the writing of your

1 report, did you? You don't refer to it at all, do you?

2 A. Counselor, isn't this what we discussed at the beginning of
3 the morning?

4 Q. I'm talking about your report. The legislative hearings
5 are not referenced anywhere in your report, are they?

6 A. That part is correct.

7 Q. Okay. Did you review videotapes of the floor debate on
8 HB2281?

9 A. Not that I recall, Counselor.

10 Q. So you have no way of knowing whether Tom Horne in his
11 testimony or John Huppenthal in his statements, or any Arizona
12 legislator, used any code words before you reached your
13 conclusions, correct?

14 A. No.

15 Q. That's incorrect?

16 A. Incorrect.

17 Q. How did you know if you never read the transcripts and
18 never viewed the floor debates, how do you know what words they
19 were using?

20 A. I am not claiming to have known what they used in the
21 actual formal hearings on HB22.

22 Q. That's actually -- that's what I am asking.

23 A. If that's the case, I apologize. I did not understand the
24 narrow nature of your question.

25 Q. Don't you think that would have been important for your

1 research, to know whether they were using code words during the
2 hearings or the floor debates?

3 A. It has -- it might have been helpful.

4 Q. You mentioned that characterizations by Arizona politicians
5 frequently attempt to portray Mexican-Americans as politically
6 radical and associate them with ideology such as communism,
7 correct?

8 A. You didn't read that back exactly, but I think you got most
9 of it.

10 Q. Will you agree with me that Che Guevara is a communist?

11 A. I would -- I believe that's true. He is certainly
12 understood to be -- was understood to be a communist.

13 Q. And you're aware that a speech of his was used in the
14 Latino Literature 7/8 course, correct?

15 A. You've shown me that today, Counselor.

16 Q. Would you also agree with me that Paulo Freire is a
17 Marxist?

18 A. It's my understanding that Paulo Freire, at least for part
19 of his life, was a Marxist.

20 Q. So there was a factual basis for believing that the
21 Mexican-American courses at least contained politically radical
22 material, correct?

23 A. Yes.

24 THE WITNESS: And may I qualify that, Your Honor?

25 THE COURT: Yes, certainly.

1 A. Yes. It is the case that Mexican-American Studies courses
2 seem, from my understanding, to have included the presentation
3 of some communist/Marxist authors for discussion as part of the
4 pedagogy, just as, I might add, American history courses,
5 undoubtedly, if they are college preparatory courses in this
6 country, also include a discussion of materials about other
7 people who were perceived in their own time and may be
8 perceived in our time as radicals.

9 Those radicals might include Thomas Paine, they might
10 include African-Americans under slavery, they might include
11 socialist immigrants in the early 20th century, communists in
12 the 1930s or the 1940s, students who might be referred to as
13 agitators in the 1960s, antiwar activists across decades.

14 It's quite common, Counselor, in a curriculum, too, if one
15 is trying to show a complex history to a classroom, and it
16 would be accurate to show a complex history to a classroom that
17 would include just these sorts of materials. It would depend
18 entirely on what the goals of the course were, whether that, in
19 my view, as a non-expert in high school teaching, was the best
20 choice of material or not.

21 Your focusing on Che Guevara and on Paulo Freire does make
22 my point. Again, that's an example of the kind of code words
23 in the use of the Mexican-American Studies Program to reiterate
24 a connection between radicalism and Mexican-American Studies,
25 and, by extension, Mexican-American educators and perhaps the

1 broader community at a time in which concerns about Latin
2 American radicals, about un-American immigrants coming into
3 Arizona, were very much, were very critical to public debate
4 surrounding these bills.

5 So I thank you for raising the issue because it does drive
6 to a central point of what I've shown, I think, and
7 demonstrated the importance of code words and the importance of
8 the depiction -- the focus in depicting Mexican-American
9 Studies on people like Che Guevara, people like Paulo Freire,
10 and pulling out the fact that they were Marxist or communists
11 to be critical in describing what that program was.

12 Q. Let's look now at paragraph 42 of your declaration, that
13 appears on page 18.

14 A. Yes.

15 Q. This says that Republican officeholders and political
16 candidates have frequently scared voters by mischaracterizing
17 terms such as "Raza" and "Aztlán," such that they have become
18 code words. Raza can be translated from Spanish as either
19 "people" or "race," and among Chicano activists is used to
20 convey pride in Mexican-American history and Mexican-American
21 communities.

22 Have I read that correctly?

23 A. Yes. Aztlán is how it's pronounced.

24 Q. I'm sorry.

25 A. Aztlán. Not Aztlán. It's two syllables, not three.

1 Q. Aztlán?

2 A. Exactly.

3 Q. Thank you.

4 A. Thank you.

5 Q. Are you saying in that paragraph that Raza is not a form of
6 Mexican racism?

7 A. I am not closing down any discussion of that sort,
8 Counselor.

9 Q. Do you consider Raza to be a form of Mexican racism?

10 A. Not -- it is, overwhelmingly, not a form of Mexican racism.
11 To answer that question fully, Counselor, I would have to tell
12 you a lot, provide you a lot of material, a lot of information
13 about where the term "Raza" came from, how it developed in the
14 1960s, and how it's currently commonly being used. And I'd be
15 happy to go into those details to actually provide the Court
16 the information it needs to understand why Raza is so
17 frequently mischaracterized as being associated with racism.

18 Q. I understand that you're writing a book on Cesar Chavez, is
19 that correct?

20 A. That is correct.

21 Q. Are you familiar with the article that was published in the
22 New Yorker on June 21 and June 28, 1969, which was a profile of
23 Cesar Chavez written by Peter Mathieson?

24 A. Yes. It's been some years since I read it, but Peter
25 Mathieson also wrote a book about Cesar Chavez.

1 Q. I am going to show you an excerpt from that article, and
2 these are quotes from Cesar Chavez to the author, Peter
3 Mathieson. Perhaps you'll remember this.

4 It says: "I hear more and more Mexicans talking about
5 La Raza to build up their pride, you know, Chavez told me.
6 Some people don't look at it as racism, but when you say
7 'La Raza,' you are saying an anti-gringo thing, and it won't
8 stop there. Today it's anti-gringo, tomorrow it will be
9 anti-negro and the day after it will be anti-Filipino,
10 anti-Puerto Rican, and then it will be anti-poor Mexican and
11 anti-darker-skinned Mexican.

12 We had a stupid guy who just wanted to play politics with
13 the union, and he began to whip up La Raza against the white
14 volunteers and even had some of the farm workers and the
15 pickets and the organizers hung up on La Raza. So I took him
16 on. These things have to be met head on.

17 On discrimination, I don't even give the members the
18 privilege of a vote, and I am not ashamed of it. No, the whole
19 business of discrimination can't exist here. So often these
20 days the leaders are afraid, and even though they feel strongly
21 against racism, they will not speak out against it.

22 Have I read that correctly?

23 A. I believe so, Counselor.

24 Q. So Cesar Chavez condemned La Raza as racist, correct?

25 A. In this particular moment in the 1960s in an interview with

1 Peter Mathieson, though I will say that Cesar Chavez also used
2 La Raza in his own organizing in later years and, indeed, very
3 significantly with Mexican-American activists, Mexican-American
4 communities, young people, old people who rallied around the
5 term "La Raza."

6 The other thing I would say, Counselor, is because I know
7 this book well and I know the Chavez archives well, I can tell
8 you that Chavez himself wasn't happy with this quote and wasn't
9 sure that he had actually said this to the interviewer, Peter
10 Mathieson, and I think you can find some documentary evidence
11 of that.

12 So I do think that what you're seeing here is a political
13 moment in which Cesar Chavez was interviewed. He's, of course,
14 running a union that's in the middle of a strike, right, from
15 1966 to 1970. It's a strike that is a multiracial strike, in
16 many senses, involving especially Mexican-Americans and
17 Filipinos, but also members of other communities in which a
18 sense that people needed to stick together in the union and to
19 stick together with boycott organizers outside the union was
20 really paramount.

21 Chavez was in this moment in which he made this comment
22 concerned about any language that might seem divisive, but he
23 himself again had used that -- the term "La Raza" especially in
24 the 1970s, but even in advance of this quote. So I think what
25 you're seeing has to be understood historically and

1 contextually, Counselor. It has to be appreciated as a moment
2 in which there were political arguments about this term and in
3 which Chavez may well have said exactly this to the authors.
4 Of course, he did contest having said that, but if he did, it
5 was for reasons of political -- perceived political need in
6 this moment in which the interview was done.

7 That was, of course, almost 50 years ago, Counselor, and
8 the politics surrounding that term have changed very
9 significantly over the last four or five decades, and I'd be
10 very happy to tell the Court about that.

11 Q. In your report and your declaration, you talk about Arizona
12 history that goes back as far as the beginning of the 20th
13 century, don't you?

14 A. I may even have started before that, Counselor.

15 Q. But all that in your view remains relevant?

16 A. Yes, for reasons of understanding anti-Mexican racism in
17 the state. And it's because of this, Counselor. There really
18 have been two primary moments, periods, in which politics
19 surrounding Mexican immigration and Mexican-American civil
20 rights have been at the forefront, I think, of Arizona
21 politics. One was roughly a hundred years ago, in the early
22 20th century, the 1910s and the 1920s. That led to the
23 segregation of Mexican kids and other kids in Arizona schools,
24 as I describe, but it was a time in which anti-Mexican racism
25 also took other forms, and that discrimination and segregation

1 in housing and jobs, a public discourse about the dangers of
2 Mexican radicalism in the aftermath of the Mexican revolution,
3 all contributed to educational segregation of Mexican kids.

4 The early 21st century sees the next important, critically
5 important moment, in which many of these issues again are very
6 much on the front pages of the papers. There were something
7 like 36 or 37 bills proposed in the Arizona legislature in the
8 year 2006, I believe, dealing with immigration, in which issues
9 related to immigration and fears of Mexicanization of the state
10 and what that meant for education in the state were again
11 front-burner issues to which politicians really needed to
12 respond, especially if they were seeking election or reelection
13 to office.

14 So I start in the early 20th century, Counselor, in part,
15 to remind the Court that this is not the first time that these
16 issues have played an important role in Arizona history and to
17 show that there are important connections between the politics
18 surrounding education and race on the one hand and immigration
19 and race on the other are deeply connected.

20 I think we see that in recent Arizona history in the
21 passage of 1070 and HB2281 in the same legislative season with
22 involvement by race in the policymakers, and we saw it a
23 hundred years ago as well. So that's how I would explain the
24 historical -- some of the reason for the historical dimension
25 in my report.

1 Q. Let's return to your declaration at paragraph 42, please.

2 And I want to refer you specifically to the writing that begins
3 at line 6 with the word "Aztlán." Do you see that? Okay.

4 (Reading:) The word "Aztlán," which is deeply rooted in
5 Mexican history, refers to the lands of the north, an area that
6 some have since identified as the contemporary Southwest of the
7 United States. During the 1960s and early 1970s,
8 Mexican-American youths referenced Aztlán to emphasize to other
9 Americans that the region had a long, indigenous history that
10 provided a sense of continuity to contemporary Mexican-American
11 communities.

12 Have I read that correctly?

13 A. Yes.

14 Q. Then you go on in paragraph 43 to refer to Horne, and I
15 presume you mean Tom Horne, the former superintendent?

16 A. Yes.

17 Q. And you say at the beginning of that paragraph that: Horne
18 used code words when he associated Raza studies or the MAS
19 program with Aztlán and MEChA.

20 And then, as an example of that, you cite his 2007 Open
21 Letter to the Citizens of Tucson, and then you're quoting
22 passages from his open letter in the paragraph. Correct?

23 A. Yes.

24 Q. Then, at paragraph 44, you say that: Horne's
25 characterization of MEChA is simply incorrect.

1 Is that because it's outdated?

2 A. What do you mean by "outdated"?

3 Q. Well, you say later that it's ahistorical. Let me show you
4 what I am talking about.

5 A. Terrific.

6 Q. This is the same paragraph on the next page. It says:
7 Despite these changes -- and I believe you're referring to
8 changes in MEChA -- politicians, including Horne, have
9 continued to use "Aztlán," "Raza," and "MEChA" as code words
10 that are intended to mobilize political support for individual
11 political candidacies and other political objectives, including
12 initiatives and legislation.

13 Then you write: Horne's ahistorical statements about MEChA
14 show how contemporary politicians have conflated 21st century
15 educational concerns with those of the founders of MEChA more
16 than 45 years ago.

17 When you say, "ahistorical," do you mean that it's an
18 outdated perception?

19 A. That's not quite how I would put it. What I would say is
20 that Horne here and elsewhere, I think, relied upon a document
21 written in 1969 at a conference involving about 1500 young
22 people in Denver, Colorado, that became the founding document
23 of an organization, again, started in 1969, to characterize the
24 current thinking nearly 50 years later of members of that
25 organization.

1 Now, Counselor, if you look at MEChA today, you see a
2 very -- an organization that has evolved very considerably and
3 that has an institutional history, a history of involvement, a
4 history of membership that shows a very different set of
5 priorities than would be suggested by the use of this brief
6 excerpt from a manifesto written in 1969.

7 I think it's important to know, Counselor, that in 1999,
8 MEChA came up with another document that was intended to revise
9 and perhaps replace this document from 1969 as a founding
10 document. It said, for example, that all people can be
11 Chicanos and Chicanas or potentially Chicanos and Chicanas. It
12 was a document in 1999 that had a much different tone.

13 Another piece of evidence I'd offer the Court is that in
14 2006, the Los Angeles Times author, Gustavo Arellano -- I'm
15 going to spell that, that's A-r-e-l-l-a-n-o -- wrote a piece
16 about MEChA today, in 2006, roughly 10 years ago, again, many
17 years after 1969.

18 And you'll see in that piece, if you look at it, or if the
19 Court looks at it, that the author, the journalist, notes that
20 very few young people today who are involved in one of the more
21 than 400 MEChA chapters nationwide, very few members have
22 actually read this founding document that Tom Horne referred to
23 here, and I think elsewhere, as characterizing the organization
24 and that the priorities, the world view, the understandings of
25 people involved in MEChA, had evolved significantly beyond what

1 the founders in 1969, nearly 50 years ago, imagined the
2 organization would be.

3 The other thing I'd say is, in addition to being
4 ahistorical, it also mischaracterizes that 1969 document
5 insofar as it pulls out a brief snippet in what is a very
6 complicated, rich, three-page, I think, document that I think
7 is somewhat contradictory insofar as I think it was written, in
8 part, by a committee. And so there are pieces of it that
9 contradict other pieces of it in terms of tone.

10 You know, it looks like a -- it looks like -- it's a very
11 interesting document. It's considered one of the most
12 important documents for the teaching of Mexican-American
13 history and Mexican-American studies because it was so
14 influential. So it's taught very widely. But it's a longer
15 document than this quote would suggest.

16 And one of the interesting pieces of the document, emphasizes
17 of the document that Horne misses, is that the writers of this
18 document were calling for deep engagement in U.S. electoral
19 politics, in getting Mexican-Americans to vote and to create a
20 new political party that would be different from the Democrats
21 and the Republicans.

22 And I mention that briefly, Counselor, to say that you
23 might gather from a quote like this one that MEChA was all
24 about rejecting American institutions, but, in fact, you can
25 find a lot of other voices in that very document that suggest a

1 different perspective.

2 And the afterlife of that document suggests that people
3 involved in MEChA did just that. They founded a new political
4 party in Texas. Many people involved in the organization went
5 on to graduate from school and be involved in their communities
6 and contributing to American institutions, going into the U.S.
7 military, and so forth.

8 So those are some of the reasons I would call this a
9 mischaracterization. It is ahistorical, and it's also a very
10 limited and distorting reading of the document itself.

11 Q. I want to refer you now to Impeachment Document 605.

12 THE COURT: Just a minute. I think before you start
13 down that road, 10:30, we'll take our morning recess. All
14 right?

15 MR. ELLMAN: Yes, Your Honor.

16 THE COURT: So we'll stand in recess at this time.

17 (A recess was taken from 10:25 a.m. to 10:49 a.m.)

18 THE COURT: All right. Let's be seated. Mr. Ellman,
19 go ahead.

20 MR. ELLMAN: Thank you, Your Honor.

21 BY MR. ELLMAN:

22 Q. Dr. Pitti, is it true that MEChA is no longer as radical as
23 it was at its founding?

24 A. The very simple answer would be "yes." I'd like to
25 elaborate briefly to say that that's in part because it's

1 become an enormous organization with over 400 chapters. We're
2 living in times different than the times in which it was
3 founded. It's a loosely affiliated national organization with
4 national and regional meetings, but I think individual chapters
5 retain significant authority over the local procedures and
6 local priorities of those chapters.

7 I suppose it also depends on how you define "radical." I
8 think that MEChA has increasingly emphasized -- if you look at
9 their priority list of what the goals of MEChA are on the
10 national website, you'll see that they're -- they now emphasize
11 acknowledging and valuing the internal diversity of the
12 Mexican-origin population, the Chicano population. That, in
13 itself, I think, is a -- it's a wonderful development. It
14 might be considered a radical development.

15 There also has been a very strong push now for several
16 decades to increase college going among -- college attendance
17 among people from ethnic Mexican communities, college
18 graduation, and then kind of productive activity following
19 graduation, which is to say working with the community in mind.

20 Those two might be seen as radical by some. It really
21 depends on your definition of "radical." And those, I think,
22 would be the priorities of MEChA today, as I understand them
23 and based on my understanding of the chapter at Yale and other
24 places, as well.

25 Q. I'm going to ask you to look at what has been marked as

1 Exhibit 605. You were handed a copy of that document during
2 the break, and I am going to draw your attention to page 5.
3 And I am putting it up on the screen, and I want to ask you
4 about the highlighted passage.

5 Now, I understand your concerns about context, so for
6 purposes of this question, I am going to ask you to take the
7 highlighted statements at face value. So we're just limited to
8 that context of your answer. Okay?

9 And it says: As Mechistas, we vow to work for the
10 liberation of Aztlán. Correct?

11 A. Right.

12 Q. Is that what it says? Okay. And then it says at the end:
13 Tierra y libertad. Do you know what that means?

14 A. I do.

15 Q. Can you tell the Court what it means.

16 A. It means land and freedom.

17 Q. And do you know what "carnalismo" means?

18 A. I do.

19 Q. What does it mean?

20 A. It essentially means brotherhood.

21 Q. Okay.

22 A. It's like saying "fraternité," among those in the French
23 Revolution would have said, you know, and others. So this is,
24 I would say, a version of that.

25 Q. Okay. Now I want to show you page 14 of the same document.

1 I want to represent to you, Dr. Pitti, that this is taken
2 from -- well, actually, there's indicia on it that says it's
3 from nationalmecha.org. This was downloaded less than a week
4 ago. And I am referring now to the paragraph that says
5 "National Pride." Do you see that?

6 A. Yes.

7 Q. Okay. And the highlighted portion states -- refers to: An
8 anti-imperialist analysis that includes Chicana/Chicano
9 self-determination.

10 Then further down there's additional highlighted language
11 that says: As Chicanas and Chicanos of Aztlán, we are a
12 nationalist movement of indigenous gente that lay claim to the
13 land that is ours by birthright. As a national movement, we
14 seek to free our people from the exploitation of an oppressive
15 society that occupies our land.

16 Have I read those passages correctly?

17 A. I believe so.

18 Q. Don't these statements, again, limited to their face value,
19 indicate nationalism, the goal of which would be to create a
20 sovereign nation?

21 A. Can you refer me to where it says "sovereign nation,"
22 Counselor?

23 Q. No. It says "lay claim to the land that is ours by
24 birthright."

25 A. And your interpretation of that is?

1 Q. That this is a claim to the land which is often referred to
2 as "Aztlán."

3 A. Okay.

4 Q. And at the end, it refers to an "oppressive society that
5 occupies our land." What do you understand that oppressive
6 society to be?

7 A. You're asking me to imagine what the writers of this
8 document imagine the oppressive society to be, or are you
9 imagining -- asking me to tell -- give you a definition of
10 "oppression"?

11 Q. Is it clear to you that this refers to mainstream American
12 society as oppressive or not?

13 A. It would be my guess, based on the moment that I've had to
14 look at this document, that that is likely what's being
15 referred to here. But to answer that question, I think I would
16 have to expound and spend more time than you might want,
17 Counselor.

18 Q. All right. Well, you said that you would have to
19 speculate, so I'll accept that you would have to speculate in
20 order --

21 A. I would be very interested to know where this is on the
22 national website, if it's in the history section, if it's
23 elsewhere. I'd be very interested to know who wrote this. I'd
24 be very interested to know if this -- what kind of use this
25 document has. So in order to answer questions about it, I

1 would like to know more.

2 I was on the national website this morning, and I didn't
3 see this document, though I don't dispute it being there. I
4 just didn't see it prominently.

5 Q. There's a tab called "documents," and this one is among
6 them.

7 A. Is this on the history section? There's a tab called
8 "history."

9 Q. The tab was called "documents."

10 A. I see.

11 Q. Okay. And this -- looking at the cover of it now on the
12 screen, does that refresh your recollection? Do you remember
13 seeing this before?

14 A. The entire document or this logo, this emblem?

15 Q. Well, let me ask you both questions. Have you seen this
16 logo before?

17 A. Yes.

18 Q. And that is the MEChA logo, correct?

19 A. I believe so, but I don't know the history of that logo.
20 So I don't know how new or old that is. I don't know when that
21 was developed.

22 Q. Okay.

23 A. But I have seen it before.

24 Q. Okay. And it's an eagle holding a lit stick of dynamite in
25 one claw, correct?

1 A. It looks like that.

2 Q. And then some sort of weapon in the other claw?

3 A. I don't know. It reminds me a little bit of the seal of --
4 that we have here in the courtroom with us.

5 Well, insofar as -- I think it is playing off of the
6 national seal in depicting an eagle with a weapon in one of its
7 talons. I think that that's one of the things that's happening
8 here, is there's an obvious engagement with American
9 iconography here that I think is -- again, I am in the
10 speculative mode here, because I couldn't tell you who drew
11 that. But I don't think it's an accident that this is an eagle
12 and that in one of -- that it's also holding something in its
13 talons, which is a common icon we see in, you know, U.S.
14 national iconography.

15 Q. The highlighted portion of the image in front of you, are
16 you saying that looks like an olive branch?

17 A. I am not.

18 Q. But something in the seal on the Court reminds -- this
19 reminded you of something on the seal?

20 A. I think you're not understanding, Counselor. If you look
21 at the other talon, as you already mentioned, there is what
22 looks like a stick of dynamite in what would I guess be the
23 eagle's left talon. And on the seal we have here in the
24 courtroom, there are arrows in the eagle's left talon.

25 So I was making a connection, number one, between the fact

1 that we have two eagles, and that the eagle in the MEChA logo
2 would resonate and remind us of an American icon; and, number
3 two, that there are -- there is some kind of weaponry in both
4 talons. It was really as simple as that.

5 Q. Okay. What I am showing you now is marked as Impeachment
6 Exhibit 606. And I am going to represent to you that this is
7 the front page on the web page of the University of Arizona
8 MEChA chapter. Do you have any reason to disagree that that's
9 the source of this document?

10 A. No. But can I just glance briefly at the top of the
11 page --

12 Q. Sure.

13 A. -- so I see what it looks like? Thank you.

14 Q. I want to focus on the highlighted language on this front
15 page. It says -- it refers to: A new people conscious of the
16 brutal gringo invasion of our territories. Then it refers to:
17 Reclaiming the land of their birth. Then it states: We are
18 free and sovereign to determine those tasks which are justly
19 called for by our house, our land, the sweat of our brows, and
20 our hearts. Aztlán belongs to those who plant the seeds, water
21 the fields, and gather the crops, and not to foreign Europeans.
22 We do not recognize capricious frontiers on the bronze
23 continent.

24 It continues in the next paragraph to refer to: Brothers
25 whose time has come and whose struggle against the foreigner

1 "gabacho" who exploits our riches and destroys our culture. It
2 states: We declare the independence of our Mestizo nation. We
3 are a bronze people with a bronze culture. And before all our
4 brothers in the bronze continent, we are a nation. We are a
5 union of free pueblos. We are Aztlán.

6 Have I read those portions correctly?

7 A. I believe so.

8 Q. You do see a reference in these passages to sovereignty,
9 correct, at the beginning of the middle paragraph? I mean, it
10 does use the word "sovereign." Will you at least agree with
11 that?

12 A. Yeah. It says: We are sovereign.

13 Q. Okay.

14 A. It doesn't say anything about "sovereign nation," which I
15 think was your question.

16 Q. So you wouldn't interpret "reclaiming the land of their
17 birth" or refusal to recognize frontiers, and you would not
18 treat "declaring the independence of a Mestizo nation" as an
19 expression of a quest for sovereignty?

20 A. I think it depends on your definition of "sovereignty,"
21 Counselor, and we are talking about a document written in 1969
22 and reproduced in part on a website. So if you were looking
23 for the definition of "sovereignty," I think a reading of the
24 entire document would be helpful to the Court.

25 Q. Does this page somewhere say that this is no longer --

1 these are no longer goals of MEChA?

2 A. Sorry. Could you move it up a little bit so I could see
3 the very top again, please? Thank you.

4 I am not deeply familiar with this web page, Counselor, but
5 I -- I sort of thought that the El Plan Espiritual de Aztlán
6 was located under the history tab on this web page online. Can
7 you tell me if that's true? It was the last time I looked. It
8 would suggest that this was understood as an historical
9 document by the MEChA chapter of the University of Arizona. Is
10 that in fact the case?

11 Q. I believe it was the front page, but I don't require you to
12 accept that for purposes of your answer. All right. But you
13 will accept that it's part of the website, is that fair?

14 A. Of course. And I would just say that this is a student
15 organization that, in part, is eager to understand its
16 organizational history, its connection with past members, past
17 students, and where it came from. But as I said already,
18 Counselor, that in 2006, the Los Angeles Times noted that very
19 few young members of MEChA today, high school students, college
20 students, in fact, know, have read these -- this founding
21 document, know much about the history.

22 So one way to see this would be to see this as an effort by
23 a small group of leadership in the organization to educate
24 fellow members of where the organization originated, in the
25 face of a group of people who don't know that history.

1 So I think that the organization thinks of it primarily as
2 history and that if you go to the national website and you look
3 at the goals of MEChA that are articulated there, which I think
4 is the best expression of MEChA's current philosophy, current
5 organizational drive, you'll see a much different emphasis, a
6 very strong emphasis, again, as I said, on community service,
7 on community involvement, on graduation from college, on doing
8 work that will benefit the community and so forth.

9 So that's where I would look to understand MEChA'S national
10 priorities and current thinking. That would be a better place
11 to look. There are other places that one might also look. One
12 might do interviews with current students and so forth, but
13 that would be one place to go.

14 Q. So one interpretation is that this is simply a reproduction
15 of original material from when MEChA was founded, and it no
16 longer reflects their current philosophy. Would you agree?

17 A. That's the interpretation that I offer you as someone who
18 knows a great deal about MEChA and has read about MEChA and is
19 pretty familiar with the institutional history. The question I
20 asked you really matters. Whether this page that you've shown
21 is on the history section or on the front page, that might make
22 a difference in understanding how it was being presented by the
23 University of Arizona chapter.

24 Q. Well, the fact that this information appears on the current
25 website on a page that does not disavow this philosophy could

1 certainly create an impression in reasonable minds that this
2 remains the philosophy and reflects the goals of MEChA, doesn't
3 it?

4 A. Let me restate that. I mean, I think that MEChA'S
5 insistence on knowing its history, the fact that it does
6 reproduce this document to remind current members where the
7 organization started, gives other critics of MEChA, and
8 seemingly of Mexican-Americans in the recent past, the
9 opportunity to seize upon a document like this one, to
10 characterize, to mischaracterize the organization, to ignore
11 other evidence about what the organization's priorities are,
12 what its members did while they were MEChA members and what
13 they have gone on to do after graduating from high school and
14 college and to thereby paint not just MEChA but those
15 associated with MEChA, you know, educators and others, with a
16 brush of radicalism that I think here has defined -- allows
17 people to define -- to use these kinds of quotes to define the
18 entire Mexican-American student community as rude and so forth.
19 So this is an example of just that sort of use of code words
20 that I speak to in my report, Counselor.

21 Q. I have paragraph 43 up on the screen. Will you at least
22 agree with me that Tom Horne is at least quoting these passages
23 correctly, that these statements do appear on current websites
24 of the MEChA national organization and the University of
25 Arizona chapter?

1 A. I can't tell you that every word is reproduced exactly. I
2 don't have both -- I don't have both web pages here in front of
3 me to be able to compare, but there might have been a
4 mistranscription or something like that. But I do recognize
5 the basic language as looking like the plan that is reproduced
6 elsewhere in many textbooks, American history textbooks, as
7 well as organizational websites.

8 Q. These passages we're looking at, these highlighted
9 passages, they refer to historical examples of injustice, don't
10 they, things like stealing land and exploiting and oppressing?

11 A. I believe so.

12 Q. And by referring to Mechistas as a "bronze people" with a
13 "bronze culture" and their oppressors as "Europeans" and
14 "gringos" casts the injustice in racial terms, doesn't it?

15 A. It cast in the past tense that injustice in racial terms.
16 This is a document written in 1969, Counselor.

17 Q. Do you think that this sort of language and references to
18 political independence being the only way to escape oppression,
19 exploitation, and racism is likely to cause some resentment for
20 people who take it as face value?

21 A. I don't understand the question.

22 Q. Do you think the language on this web page would cause a
23 reasonable person taking it at face value to be resentful?

24 A. I don't understand the hypothesis. The hypothesis -- are
25 you offering me a hypothesis in which a so-called reasonable

1 person is presented this paragraph and you're asking me if they
2 become resentful after reading this?

3 Q. Do you think it's reasonable for a person reading this, who
4 is not a Mechista, to be -- for that to cause resentment in
5 that person reading these statements?

6 A. I think I -- I'm sorry. I think I need to know who this
7 reasonable person is. Are we talking about a Mexican-American
8 student? Are we talking --

9 Sorry. I am going to slow down for the court reporter. I
10 said I would need to know who this reasonable person is.

11 Q. A reasonable person is a white person who's not a member of
12 MEChA. Do you think this is likely to cause resentment in such
13 a person?

14 A. I know reasonable white people who are members of MEChA.

15 Q. So you don't think this would tend to cause resentment?

16 A. That's speculation I am not comfortable with, Counselor.

17 Q. All right. You've looked at A.R.S. Section 15-111 and
18 15-112, haven't you?

19 A. I believe so.

20 Q. Does it contain code words?

21 A. Counselor, I would need to have that in front of me, or I
22 would need to be referred to the pages in my report to comment
23 with specificity, please. Thank you.

24 Counselor, may I ask, are you going to ask me to read the
25 entire bill or --

1 Q. Well, I asked you if it contained code words, and you said
2 you were unable to answer the question without looking at the
3 statute, didn't you? So I've given you a copy of the statute.

4 A. Thank you.

5 Q. I assume you've read the part that I've taken off of the
6 screen.

7 A. Yes.

8 Q. I wanted you to be able to see the whole thing.

9 A. I think I can venture the beginning of an answer,
10 Counselor, without wasting more of the Court's time while I am
11 reading.

12 Could you move the screen down a little bit? Because I'll
13 be referring to the top section.

14 First of all, as my report, I think, shows, in great
15 detail, to understand code words, you have to understand the
16 public discussion, the public debate surrounding the passage of
17 the bill. One doesn't look to the bill to find out what the
18 code words are. You need to have a sense of history, you need
19 to have a sense of the surrounding political discussion to
20 identify code words. I hope that's clear in what I
21 demonstrated to the Court already.

22 So with that in mind --

23 Q. I'll accept that as your answer, Dr. Pitti.

24 A. I am happy to then tell you what looked like the code words
25 to me in the document, to actually answer your question, which

1 is to say that in the context of -- in HB2281 itself, there are
2 references to words that were used as code words that developed
3 meaning, political meaning, in early 20th century Arizona, in
4 the years leading up to the passage of this bill, because of
5 concerns about the so-called Mexicanization of the state and
6 concerns about the perceived radicalism of Mexican-American
7 Studies as it was taught in Tucson Unified School District.

8 Q. Can you just show me what the code words are?

9 A. I am about to do that, Counselor, yes. So two of those
10 words that I would alert you to, they really are in the --
11 those four bullet points under 15-122 (sic).

12 Point number one, that no school district or charter school
13 in this state shall include in its program of instruction any
14 courses or classes that include any of the following:

15 Number one, promote the overthrow of the United States
16 Government.

17 Now, knowing what we know about the concerns around
18 Mexican-American Studies Program, indeed, the field of
19 Mexican-American Studies, knowing what we know about the
20 concerns of Mexicans in the 20th century in Arizona, early
21 21st century, as people who seemed to some to be potentially
22 seditious, bad citizens, people who were somehow not invested
23 in the U.S. Government and U.S. national principles, this idea,
24 this association of these communities and this program with
25 radicalism, with overthrow of the government I think is an

1 important driver of this.

2 So there's not one word here but this phrase, "overthrow of
3 the government," I think is code for referencing concerns about
4 Mexicans as revolutionary people, about Mexican-American
5 Studies as a revolutionary and un-American curriculum.

6 Q. Would you say that is true if you knew that there were
7 federal statutes that were over a hundred years old that have
8 the same language in them?

9 A. Counselor, my concern here is how this bill was passed.
10 That's what my report really focuses on, what the political
11 dynamics in the State of Arizona were that led that bill to
12 have enough popularity with the public and with legislators to
13 give that traction and to make that bill -- to give that bill,
14 again, currency as a wedge issue in the State of Arizona.

15 I'm not concerned about the federal statutes surrounding
16 Arizona. I am aware that there are national, liable and
17 sedition laws in the United States. The State of Arizona,
18 people in the State of Arizona saw fit to pass this bill, and
19 I'm trying to explain for the Court what that tells us about
20 the atmosphere in the State of Arizona itself.

21 Q. Wouldn't you have a far better idea of what their intent
22 was if you had read the legislative hearing transcripts before
23 you reached your conclusion?

24 MR. CHANG: Objection. Asked and answered.

25 THE COURT: Objection's overruled.

1 A. The way I've answered that before to you, Counselor, is
2 that it might have been helpful to do that, but, in fact, one
3 doesn't necessarily look at the legislative hearings to
4 understand what the political atmosphere surrounding the
5 passage of a piece of legislation was.

6 BY MR. ELLMAN:

7 Q. So you think there's more insight to be gained from an
8 historical survey that goes back 150 years than the hearing
9 transcripts when you're trying to determine whether there's an
10 insidious motive behind the words in the statute. Is that your
11 position?

12 A. No. You're mischaracterizing my position again, Counselor.
13 If you look at my report, I do go back over a hundred years in
14 my report. But the majority of the report, I think probably 70
15 pages, really does focus on the very recent past, as I
16 remember. So this is not a report that focuses overwhelmingly
17 on 150 years, but I will reiterate again for you, for the
18 Court, that the tools of a historian are useful in
19 understanding politics, the politics of a moment, and that
20 history does matter for understanding the passage of this bill
21 and for understanding politics and education in the time in
22 which we live today.

23 Q. Are the statements of the legislators voting on HB2281 less
24 relevant than the history you've just described?

25 A. Again, that's not what I said. I would say that those

1 statements might be of interest and one might be interested in
2 those statements, but I am not saying that one is more -- is
3 exclusively of interest.

4 What I am saying is that the methodology that I adopted in
5 writing this very lengthy report, in using primary sources to
6 understand the context in which 2281 and 1070 and other bills
7 were passed during this period of time, is sound and
8 recognized.

9 Q. All right. I want to turn to another topic for, hopefully,
10 just one question. How do you distinguish between material and
11 educational objectives that are appropriate for college
12 students and, you know, material and educational objectives
13 that are appropriate for high school students?

14 A. I have not offered myself up as an expert to the Court
15 on -- as someone who would answer that question with real
16 authority, Counselor. What I will say is that as an
17 historian --

18 Q. Do you feel you have sufficient background to answer the
19 question?

20 A. May I finish my answer?

21 Q. I think you just called into question whether you are
22 knowledgeable enough to answer it, so I'm asking you that.

23 A. Would you please ask me the question again to make sure I
24 answer appropriately?

25 Q. How do you distinguish between educational material that's

1 appropriate for college students and educational material
2 that's appropriate for high school students?

3 A. I would want both to be true. I would want both to be
4 factually correct. I would want both to represent current
5 scholarship in the field, current findings, and that's true
6 whether we're talking about a science course or an art history
7 course or a history course. I would want them to be up to
8 date.

9 But the work of actually distinguishing whether a piece of
10 scholarship is best used, is the best piece of scholarship to
11 use in a high school class, is not my work. I've advised high
12 school teachers and tried to help them to make that decision,
13 but I've not been on a curricular review board, and that's not
14 the work that I do.

15 Q. Okay. You referred to Russell Pearce earlier. Did you
16 know who Russell Pearce was before the plaintiffs enlisted you
17 as their expert?

18 A. Yes.

19 Q. Do you understand that Russell Pearce did not author any
20 portion of HB2281?

21 A. I don't recall.

22 Q. Do you know he did not serve on the Senate Education
23 Committee when the bill went through that committee?

24 A. I don't recall.

25 Q. Do you know that you refer to Russell Pearce seven times in

1 your declaration, but you only refer to John Huppenthal six
2 times?

3 A. I did not do that count.

4 Q. Do you have any reason to doubt that that's an accurate
5 statement on my part?

6 A. I haven't done the count. I trust that your count would be
7 correct, Counselor.

8 Q. And isn't that because you want to paint Tom Horne, John
9 Huppenthal, and Russell Pearce with the same brush?

10 A. I am not painting with brushes, Counselor. I'm a historian
11 doing scholarly work, doing work with an established
12 methodology using evidence, and it was my professional
13 interpretation, based on an examination of secondary and
14 primary sources, that it's impossible to understand early 21st
15 century politics surrounding education and immigration and
16 other topics without speaking significantly about Russell
17 Pearce and others.

18 So I took my cues from the evidence, Counselor. I am not
19 an artist painting with a brush. This is work that is standard
20 scholarly work that depends upon training and expertise.

21 Q. So you weren't using Russell Pearce as a code for racism,
22 were you?

23 A. Counselor, I don't understand what that would mean.

24 Q. All right. You weren't using SB1070 as code for racism
25 either, right? Is that what you're saying?

1 A. Again, how could I use a Senate bill as a code for racism?

2 I don't understand that question.

3 Q. So you're saying you're not using it as code for racism.

4 When you refer to SB1070, it's strictly because it's relevant

5 for purposes of your research, is that right?

6 A. SB1070 is referred to extensively because it's a very

7 important bill for understanding politics in early 21st century

8 Arizona. It's both an extension of the political history of

9 Arizona, and it represents something new about fears of the

10 Mexicanization of the state.

11 So I speak about SB1070 as an historian with a

12 professionally informed understanding of what that bill was and

13 what it means, has meant, for the State of Arizona.

14 Q. Why aren't there any references to Raul Hector Castro in

15 your report anywhere?

16 A. I don't recall.

17 Q. Do you know who that was?

18 A. I don't recall.

19 Q. I am going to tell you that Raul Hector Castro was the

20 first Mexican-American governor of Arizona who was elected in

21 1974. He's a native of Sonora, Mexico, and moved to Arizona as

22 a youth and was, as I say, elected governor in 1974 and left

23 only to become the ambassador to Argentina.

24 If you're attempting to establish that there was a history

25 of anti-Mexican sentiment in Arizona, don't you think it's

1 significant to let the reader of your report know that over
2 40 years ago the state elected its first Mexican-American
3 governor?

4 A. Counselor, that's a terrific question that, you know,
5 does -- and it is true that discussion of Castro's campaign and
6 his time in office might have fit into this report, but nothing
7 that you have said contradicts what I -- my findings of my
8 report.

9 Throughout this period that I talk about, from the 1960s
10 forward, I trace essentially two major developments from the
11 60s to the present.

12 Q. Are those the ones you referred to earlier in your
13 testimony?

14 A. Not necessarily. I'd like to restate them. One of them
15 is, of course, the concerns about Mexicanization and the use of
16 code words, which in the aftermath of the civil rights movement
17 reflects the fact that open hostility based on race, open
18 racial animus, what we might think of old style biological
19 racism, has -- deeply falls out of favor in this period. So I
20 trace that.

21 The other thing I trace is the rise of Mexican-American
22 political presence in the state. Castro's place in office is
23 an example of that. There are other examples, as you know,
24 throughout the '70s and '80s and all the way till today.

25 This doesn't contradict the fact that Arizona is understood

1 by scholars, scholars that I have tried to alert the Court to,
2 that Arizona has been a place in which Mexican-Americans and
3 Mexican immigrants have experienced significant hostility to
4 their presence over those same years. And I think the Court
5 needs to be able to keep both of those things in its proverbial
6 head at once. If they both are true, they're both factually
7 correct, that the fact that Castro was governor in the 1970s
8 does not provide evidence that Arizona in the 1980s and the
9 1990s and 2000s was entirely welcoming of Mexican-Americans.

10 Q. Given that answer, would you say it was significant that
11 Raul Hector Castro was elected as the county attorney of Pima
12 County, the county we're sitting in, in 1954?

13 A. I don't have -- I accept at face value that detail. I
14 don't recall his political history prior to his election.

15 What I would say is also in my report, is that there is a
16 long struggle for political representation among
17 Mexican-Americans in Arizona and elsewhere, a long struggle for
18 desegregation, for fighting racism, that many of those people
19 who took that lead were veterans of the armed services who
20 returned to the United States after a time abroad. The 1950s
21 was a very important point of that. I think we have to
22 understand the founding of MEChA as part of that long political
23 history and not inconsistent with that political history.

24 Q. As you sit here today, do you claim to know that Tom
25 Horne's actions related to HB2281 were motivated by racial

1 animus?

2 A. No, because the nature of my report is to show that they --
3 that Tom Horne's actions engaged with racial animus in the
4 state --

5 Q. So your answer is no?

6 A. -- because that's not the way racial code words need to
7 work.

8 Q. So I assume then that you do not claim to know that John
9 Huppenthal's actions related to HB2281 were motivated by racial
10 animus either, do you?

11 A. I have a greater sense that in Huppenthal's case there's --

12 Q. I asked if you claim to know what his motivations are. Do
13 you?

14 A. Based on his blog posts, I think we can know more about his
15 motivations.

16 Q. But you don't know, do you?

17 A. Again, as I explained in the deposition, it's difficult
18 without a diary or a private document of that sort to know
19 always what's inside another person's heart, but certainly we
20 can draw conclusions about policymakers based upon their public
21 speaking and their public communications, and especially in the
22 case of Huppenthal, I think, whose blog posts are very
23 revealing about his thinking of Mexican-American Studies and
24 about Mexican immigrants and about Russell Pearce and others.
25 I think we have -- we can have a stronger sense that racial

1 animus was a significant contributing factor to his interest in
2 HB2281.

3 Q. Was John Huppenthal using code words in those blog posts?

4 A. Yes, actually. For example, "Mexican-American Studies."

5 Q. You have answered my question, and thank you for that.

6 I want to show you your deposition testimony, page 182.

7 You state: I don't pretend that the use of code words is
8 voluntary. I don't pretend that the use of code words
9 necessarily means that a person who uses those code words is
10 necessarily thinking anything that would be connected with
11 racial animus.

12 Do you stand on that testimony or not?

13 A. That's based on scholarship. The scholars that work on
14 code words have made that very clear, and that's also cited in
15 my report.

16 Q. So you stand on the statement that you made in your
17 deposition?

18 A. That those -- could you show me that again, please? Thank
19 you.

20 That a person who uses code words is not necessarily
21 thinking anything that would be connected with racial animus.

22 Q. And, therefore, you cannot know what John Huppenthal was
23 thinking at the time he made -- he took the actions he took,
24 right? And you can't know whether he was motivated by racial
25 animus based on the use of code words, can you?

1 A. Historians know what they know based on a methodology
2 that's established. So from the standpoint of an historian and
3 a scholar, I think I can make a very convincing case, I think I
4 can draw very convincing conclusions about what a candidate for
5 office might -- would have been thinking during his candidacy
6 based on his public pronouncements and based on the larger
7 political atmosphere in which he was working.

8 MR. ELLMAN: I have no further questions, Your Honor.

9 THE COURT: All right. Thank you. Redirect, please.

10 REDIRECT EXAMINATION

11 BY MR. CHANG:

12 Q. Good morning, Dr. Pitti. Thank you for coming from New
13 Haven, Connecticut, to testify in this case and for staying
14 over to continue testifying this morning.

15 As an historian, are you interested in documents that might
16 be described as an organization's founding documents?

17 A. Yes, oftentimes, I am.

18 Q. As an historian, would you assume that an organization's
19 founding documents still control the policies of an
20 organization later in time after its founding?

21 A. No. Would I assume that they still controlled, no.

22 Q. Let's switch for a moment to our nation's founding
23 documents. Do these include documents such as the Declaration
24 of Independence, the Articles of Confederation, and the
25 U.S. Constitution?

1 A. Yes.

2 Q. You stated yesterday in cross-examination that you are
3 trained in U.S. history. I take it then that you are familiar
4 with the original U.S. Constitution, is that correct?

5 A. Yes.

6 Q. In what year did it come to be in effect?

7 A. 1789.

8 Q. Do you teach your students that the 1789 U.S. Constitution
9 is the governing document of the United States now?

10 A. With amendments and a Bill of Rights and significant
11 revisions and elaborations.

12 Q. So would you have any concerns if the 1789 U.S.
13 Constitution were the governing document of the United States
14 now?

15 A. Yes.

16 Q. Well, why?

17 A. Because it's -- we would be living in a very different
18 country. We would be a very different community if we were
19 living without the Bill of Rights, if we were living without
20 the significant and critical amendments that have been made to
21 the U.S. Constitution in the years since its ratification. In
22 other words, the Constitution that we live with today is not
23 the same Constitution that was passed in 1789, though, of
24 course we are aware of the Constitution in its original form as
25 it was passed in the 18th century.

1 Q. So if you were teaching students to know what provisions of
2 the U.S. Constitution governed the United States now, what
3 might you have them look at? I think you mentioned things like
4 the Bill of Rights and amendments. Are those things that you
5 would have them look at?

6 A. Absolutely. So I would want them to look at the entire
7 body of documents that we think of as governing our political
8 system, including those documents, like the Bill of Rights,
9 like the amendments that have been added to the Constitution.

10 Q. Do you think that you need to be a Ph.D.-trained historian
11 to know to do this?

12 A. No, not at all.

13 Q. Would you expect a trained lawyer to know to do this?

14 A. I would expect a lawyer --

15 Q. I understand that you didn't go to law school.

16 A. I would expect a lawyer to know to do this.

17 Q. Returning now to El Plan Espiritual de Aztlán, which I
18 believe was Impeachment Exhibit 605, the website, so based on
19 your knowledge about groups such as MEChA, where would you look
20 to find governing policies for the organization today?

21 A. The governing documents for the organization today? I
22 would look at the national website. I would also have to
23 acknowledge that there is significant local variation. So
24 different chapters may be governed somewhat differently from
25 one another, so you might want to look at local websites as

1 well and find other kind of public information. So I think
2 that the places to look for the governing documents would
3 primarily be on the national website.

4 Q. So if someone described El Plan Espiritual de Aztlán as
5 what currently MEChA stands for or advocates for, would that be
6 correct?

7 A. No.

8 Q. Would you describe this as a mischaracterization?

9 A. Yes. I think it's -- yes.

10 Q. Would you characterize a politician who describes a nearly
11 50-year-old document that is no longer controlling MEChA who
12 then associates MEChA with the MAS program in order to persuade
13 legislators to enact legislation targeting the MAS program as
14 engaging in the use of code words?

15 A. Yes.

16 Q. Based on the materials you examined, did Tom Horne use
17 MEChA as a code word in this way?

18 A. Yes, I believe he did.

19 Q. So earlier counsel represented the document El Plan
20 Espiritual de Aztlán as being on the home page of the
21 University of Arizona MEChA page. So these are screenshots
22 taken yesterday evening of Clubs Arizona. So what happens is
23 that this is the page where if you click the -- do you have any
24 reason to doubt that if you place a cursor over "history" that
25 this is the pop-up menu that comes up? "Constitution,"

1 "Historical Figures," "Papers"?

2 A. I have no reason to doubt.

3 Q. Do you have any reason to doubt --

4 MR. CHANG: Jorge, could you go to the next page.

5 BY MR. CHANG:

6 Q. Do you have any reason to doubt that when you click on that
7 page, on the "history" link "papers," that this is the page
8 that comes up?

9 A. No reason to doubt.

10 Q. And then do you have any reason to doubt that if you click
11 then on the PDF file, El Plan de Aztlán -- if you could go to
12 the next page -- that this is the page that comes up?

13 A. I have no reason to doubt that.

14 Q. Okay. Does legislation need to include code words in order
15 for politicians and members of the public to use code words to
16 promote the enactment of such legislation?

17 A. No.

18 Q. Do you believe that the election of Barack Obama as
19 president means that antiblack racism is over?

20 A. No.

21 Q. So I'd like to turn now to my final set of questions, and
22 this will only take a couple of minutes.

23 In drafting that expert report that you submitted in this
24 case, did you employ research methods that are accepted and
25 well established in the field of history?

1 A. Yes, I did.

2 Q. Do historians study discrimination?

3 A. Yes, very extensively.

4 Q. Why?

5 A. Because discrimination has been an important feature of
6 world history, and understanding discrimination I think helps
7 people -- helps scholars to understand issues of equity and
8 inequity, issues of opportunity, questions of who leads and how
9 and similar kind of questions. They are fundamental questions
10 for understanding the history of human society.

11 Q. Is it an accepted methodology in the field of history to
12 examine public discourse to discern the use of code words?

13 A. Yes.

14 Q. Dr. Pitti, does anything you've heard in this courtroom,
15 yesterday afternoon and this morning, lead you to change any
16 conclusions or opinions you reached in your expert report?

17 A. No.

18 Q. Turning now to your direct testimony in this case that you
19 submitted by declaration, does anything you've heard in this
20 courtroom yesterday and today lead you to change any
21 conclusions or opinions you expressed in your declaration?

22 A. No.

23 Q. I'd like to direct your attention to your declaration at
24 page 9, part E, Summary of Opinions.

25 MR. CHANG: Jorge, can you put that up. And bring up

1 paragraph 25.

2 BY MR. CHANG:

3 Q. I am not going to read this because the document in some
4 way speaks for itself, but I would ask you to read each
5 sentence.

6 A. Aloud or to myself?

7 Q. To yourself. I'm sorry. And then let me know when you're
8 finished.

9 A. I finished reading.

10 Q. Does anything you've heard in this courtroom lead you to
11 change the summary of opinions that you've offered as an
12 expert?

13 A. No.

14 Q. So you stand by it?

15 A. Yes.

16 MR. CHANG: Thank you, Dr. Pitti.

17 Your Honor, I have no further questions on redirect.

18 THE COURT: All right. Thank you.

19 Mr. Ellman?

20 RE-CROSS-EXAMINATION

21 BY MR. ELLMAN:

22 Q. Dr. Pitti, I take you back to the very early part of your
23 cross-examination, referencing paragraph 18 in your
24 declaration. You said that your report addressed, among other
25 questions: Have Mexican-Americans been subject to racial

1 discrimination and racial animus? Do you remember that?

2 A. Yes.

3 Q. When you set out to research the very challenging question
4 of whether Mexican-Americans have been subject to racial
5 discrimination, racial animus, did you intend to conduct your
6 research objectively or were you more interested in collecting
7 the observations of other academics who hold your point of
8 view?

9 A. I was concerned to conduct my research objectively.

10 MR. ELLMAN: Thank you. Nothing further.

11 MR. CHANG: No further questions on cross.

12 THE COURT: All right. This witness may be excused,
13 right?

14 MR. ELLMAN: Yes, Your Honor.

15 THE COURT: Dr. Pitti, thank you very much, sir. You
16 may step down and you are excused.

17 It's quarter to 12:00. I think, instead of trying to call
18 our next witness now, who might be a lengthy witness, let's
19 take our noon recess at this time. We will resume at 1:30,
20 we'll say.

21 MS. COOPER: 1:30, Your Honor.

22 THE COURT: Yes.

23 (A recess was taken from 11:41 a.m. to 1:38 p.m.)

24 THE COURT: All right. Let's all be seated. Let's
25 see. We're still on plaintiffs' case, right?

1 MR. REISS: Yes, Your Honor.

2 THE COURT: Call your next witness, please.

3 MR. REISS: Your Honor, just a ministerial point.
4 There are a couple of exhibits that haven't formally been moved
5 into evidence. We can move them in now, we can move them in
6 some other time. There aren't that many, and there are no
7 objections.

8 THE COURT: Now is as good as any time.

9 MR. REISS: Okay, Your Honor. So the plaintiffs would
10 move into evidence Plaintiffs' Exhibit 28, Plaintiffs' Exhibit
11 31, Plaintiffs' Exhibit 34. I believe Plaintiffs' 86 is
12 already admitted, but just to make sure. And Plaintiffs'
13 Exhibit 99. I have conferred with Ms. Cooper, and she has no
14 objection; and I believe Ms. Cooper has one, and we have no
15 objection.

16 THE COURT: Okay.

17 MS. COOPER: Defendants would move into evidence at
18 this point Defendants' Exhibit 544, and I believe that you have
19 no objection.

20 THE COURT: All right. And likewise, you don't object
21 to the one, two, three -- the five exhibits being offered by
22 plaintiffs now?

23 MS. COOPER: Correct, Your Honor.

24 THE COURT: All right. Then, without objection, the
25 following exhibits are admitted: 28, 31, 34, 86, 99, and 544.

1 Okay?

2 MR. REISS: Thank you, Your Honor.

3 THE COURT: Let's call our next witness.

4 MS. BARRINGTON: Your Honor, plaintiffs call
5 Dr. Angela Valenzuela to the stand.

6 THE COURT: All right. Is she in the courtroom?

7 MS. BARRINGTON: Yes, she is.

8 THE COURT: Ma'am, would you step forward here and be
9 sworn.

10 THE CLERK: Please raise your right hand.

11 **ANGELA VALENZUELA, WITNESS, SWORN**

12 MS. BARRINGTON: Your Honor, Dr. Valenzuela's direct
13 testimony has been submitted by declaration to the Court. May
14 I hand her a copy?

15 THE COURT: Certainly.

16 MS. BARRINGTON: And would you mind if I also handed
17 her a pen?

18 THE COURT: Oh, no. That's fine.

19 MS. BARRINGTON: Thank you.

20 THE COURT: All right. Now, for the record, she has
21 her declaration?

22 MS. BARRINGTON: Correct.

23 THE COURT: What about the report?

24 MS. BARRINGTON: And all the exhibits, which include
25 her report, Your Honor.

1 THE COURT: Okay. Fine.

2 MS. BARRINGTON: And we'd like to mark this as -- I
3 believe Exhibit EC is where we're at.

4 THE COURT: EC is fine.

5 MS. BARRINGTON: Thank you.

6 THE COURT: All right, then. Let's proceed with the
7 cross-examination.

8 CROSS-EXAMINATION

9 BY MS. COOPER:

10 Q. Good afternoon, Dr. Valenzuela. I am Leslie Cooper, and we
11 met when I took your deposition last year, correct?

12 A. Correct.

13 Q. You're a professor, correct?

14 A. Correct.

15 Q. And you teach mostly graduate students who are learning
16 educational policy, correct?

17 A. Correct.

18 Q. And you don't teach students, for the most part, who are
19 going to become teachers, correct?

20 A. I'm sorry?

21 Q. You do not, for the most part, teach students who are
22 themselves going to become teachers, correct?

23 A. Currently I am not, but I also do teach people who are
24 going to be teachers.

25 Q. Do you teach elementary, middle, or high school?

1 A. No.

2 Q. And are you certificated as a teacher?

3 A. I once was.

4 Q. Are you now?

5 A. No.

6 Q. You state that you are an expert in ethnic studies
7 programs?

8 A. Yes.

9 Q. And, in fact, your declaration states, at paragraph 8, that
10 you are a national leader in MAS research. I take it that
11 means Mexican-American Studies research?

12 A. Correct.

13 Q. Teaching and curriculum development.

14 A. Correct.

15 Q. And you have an extensive knowledge of MAS education.

16 A. Correct.

17 Q. By the way, with respect to the fact that you've been
18 permitted to have a pen, of course, I don't mind, but at the
19 end I'm going to ask you if you've made any notes. And I'm
20 going to ask that those be admitted into evidence, and I want
21 to let you know that now. All right?

22 A. Yes.

23 Q. Now, have you done any work with respect to the opinions
24 that you offer in your report since you were deposed?

25 A. Yes.

1 Q. And what have you done with respect to the opinions that
2 are in your report? What work have you done?

3 A. I prepared for the case. I also taught a course in
4 multicultural education at UC Boulder a couple of weeks ago.

5 Q. And how did that course that you taught at Boulder affect
6 your opinions in this matter?

7 A. It just refreshed my memory of the case.

8 Q. And how did that occur?

9 A. I had students read different documents related to the
10 case, and they were able to write papers from it.

11 Q. Tell me, what was the title of the course that you offered?

12 A. Multicultural education.

13 Q. And what was the purpose of having -- or let me ask first,
14 who were the students? And by that, I mean describe the
15 audience of students. Not personally identify them. For
16 example, high school, college, graduate, and then generally the
17 field of study.

18 A. There were 33 students. I believe there were four of them
19 that were doctoral students, and then the rest of them were
20 master's students, all of them in the College of Education at
21 UC Boulder.

22 Q. And what was the purpose of having them review documents
23 from this case?

24 A. The purpose was for them to write papers on ethnic studies,
25 to address the case from their perspective.

1 Q. Is there anything about the work that you did in this class
2 that has affected the opinions that you are planning to
3 offer -- that you offer in your report?

4 A. No.

5 Q. Now, you offer opinions in paragraph 20 of your declaration
6 on -- stating that your report addressed four questions. Can I
7 direct your attention, please, to paragraph 21 of your
8 declaration?

9 A. Page 21?

10 Q. No. Paragraph 21.

11 A. Oh, paragraph 21. I'm not finding it. I see line numbers
12 here. Is there something else here?

13 Q. There should be paragraph numbers to the right of the line
14 numbers.

15 A. Oh, "I also conducted one," beginning with that?

16 Q. I'm looking at your declaration.

17 A. What page number?

18 Q. Page 7.

19 A. Okay.

20 Q. Paragraph 21.

21 A. Okay. Yes. I found it.

22 Q. We're on the same page and the same paragraph now?

23 A. Yes.

24 Q. And that states that your report addressed the following
25 questions, right?

1 A. Correct.

2 Q. And the first two relate generally to ethnic studies,
3 correct? They are -- let me -- I'll let you answer that
4 question.

5 A. Yes.

6 Q. You asked how does ethnic studies curriculum respond to the
7 culture, history, language, literature, and needs of
8 Mexican-American students in the first -- in subsection A. And
9 then you ask: Do ethnic studies and multicultural curricula
10 improve student achievement, ethnic affirmation, and cultural
11 pride, and do they increase racial resentment?

12 A. Correct.

13 Q. Now, you're speaking generally there about all ethnic
14 studies, right?

15 A. I am speaking really to the research that I reviewed for
16 the case that included Christine Sleeter's work and Francesca
17 Lopez.

18 THE COURT: Dr. Valenzuela, pull the microphone just a
19 little bit higher, it will be closer to your mouth. That's
20 good, thank you.

21 I'm sorry. Would you repeat your answer again.

22 THE WITNESS: Yes.

23 A. So I reviewed the research literature on ethnic studies to
24 help answer that question.

25 BY MS. COOPER:

1 Q. But that is a question that speaks to ethnic studies
2 generally, correct?

3 A. Correct.

4 Q. And not to the Mexican-American Studies Program at TUSD
5 specifically.

6 A. Correct.

7 Q. Right?

8 A. Mmm-hmm.

9 Q. Let me ask you, backing up for a moment, your focus on
10 ethnic studies has been primarily in the area of
11 Mexican-American Studies, correct?

12 A. Correct.

13 Q. Perhaps Latino studies?

14 A. Correct.

15 Q. But not ethnic studies related to other ethnicities, right?

16 A. Well, my work is inclusive of research on other
17 ethnicities, yes.

18 Q. Other ethnicities?

19 A. Yes.

20 Q. What work have you done with respect to other ethnicities?

21 A. Over the length of my career?

22 Q. In the past 10 years.

23 A. Oh, in the past 10 years. Are you talking about my
24 research or my writing or --

25 Q. I don't know what the body -- the totality of the body of

1 work that you're referring to, Dr. Valenzuela. I am asking
2 what work you have done with respect to ethnic studies related
3 to ethnicities other than Mexican-American or Latino.

4 A. Well, I consider my teaching my work, and in my teaching we
5 address the Asian-American experience, we look at
6 African-American experience, we look at Native American and
7 indigenous studies and, of course, Mexican-American and Latino.

8 Q. Other than your teaching experience now -- let's focus on
9 your research -- has your research focused on groups,
10 ethnicities, other than Mexican-American?

11 A. Primarily Mexican-American.

12 Q. Now, let's turn to paragraph 21 of your declaration. Let's
13 look at questions C and D.

14 Was the MAS program at Tucson Unified School District
15 taught with a pedagogically sound method is your first question
16 that pertains to the MAS program. Correct?

17 A. Correct.

18 Q. And your second question is was the MAS curriculum at TUSD
19 aligned with national level standards for MAS as taught in post
20 secondary institutions. Correct?

21 A. Correct.

22 Q. Those are the points that you say that your expert report
23 addresses, right?

24 A. Correct.

25 Q. I want to ask you to focus on subsection C and tell me what

1 your understanding is of how the answer to that question
2 relates to the issues in this matter.

3 A. Well, the -- one of the main issues is whether the MAS
4 program in TUSD taught oppression or whether it encouraged
5 resentment against whites basically. So that's what I was
6 looking at. And so I was interested in looking at the
7 curriculum and speaking with teachers and triangulating
8 information from various sources in order to render a judgment.

9 Q. Now, how does the question of whether the program was
10 taught using a, quote, "pedagogically sound method," closed
11 quote, relate to the question of whether the program taught
12 oppression or encouraged resentment?

13 A. Could you restate that, please?

14 MS. COOPER: I'll have the reporter read it back.

15 (Reporter read back the previous question.)

16 A. It relates because that was one of the concerns in the
17 case, in A.R.S. -- what is it -- 15-112.

18 BY MS. COOPER:

19 Q. But, again, how does the -- what is a pedagogically sound
20 method, Dr. Valenzuela?

21 A. That's a very big question. When we're talking about
22 pedagogically sound, and so I think if we're talking about good
23 pedagogy, we're talking about whether there is a curriculum
24 with a scope and sequence, if it is aligned to state standards,
25 whether it's grade level appropriate, whether it's age

1 appropriate, whether it aligns to district standards, whether
2 it has an arts component, whether it has a technology
3 component, and also did it have certified, qualified teachers
4 to teach in these programs. And I could go on.

5 Q. Would you agree with me that you could have a curriculum
6 that met best practices with respect to all of the factors that
7 you just listed there that nonetheless promoted resentment?

8 A. I don't think that you could determine beforehand, a
9 priori, whether -- whether it did. I think to assume that it
10 promotes resentment would assume that the students are a
11 monolith when, in fact, every classroom is -- even if it is of
12 the same ethnic group -- is comprised of individuals that have
13 diverse backgrounds and experiences. So I think that's an
14 untenable kind of supposition.

15 Q. I am not quite sure that you answered my question, so I'll
16 ask the court reporter to read it back, please. I want to see
17 if I asked a good question.

18 (Reporter read back the previous question.)

19 BY MS. COOPER:

20 Q. I am not asking for an a priori determination; I'm asking
21 whether you examined a curriculum, saw that it met best
22 practices with respect to the factors you listed, curriculums,
23 scope and sequence, aligned to state standards, et cetera, that
24 program could nonetheless promote resentment.

25 A. That is the case that I argue in *Subtractive Schooling*, in

1 my own work, where you have a curriculum that, even at its
2 best, is not responsive to children's languages, cultures,
3 identities. It's really more about in these narrow -- it's
4 really this narrow approach to teaching that excludes,
5 unfortunately, all of these aspects of children's being that
6 the research literature, beyond my own, suggests is important
7 to a quality instructional environment and experience for
8 youth. So, yes, I mean, you could have totally all of these
9 things in place and eviscerate children's cultures.

10 Q. And promote resentment.

11 A. Yeah, of course.

12 Q. Was the MAS curriculum at TUSD aligned with national level
13 standards? I want to focus your attention now on subsection D,
14 and I want to ask you what your understanding is of how the
15 answer to that question relates to the issues in this case?

16 A. What you have in the State of Arizona were state standards,
17 and they moved into a common core. So when I observed the
18 curriculum, I did observe that there was an alignment.

19 Q. All right. You're talking subsection D about post
20 secondary institutions, right?

21 A. You were asking me about national level standards first?

22 Q. I was asking you about subsection D, and I do apologize if
23 my question wasn't clear. I want to understand how the answer
24 to the question that you have listed in subsection D -- do you
25 see that?

1 A. Yes.

2 Q. -- relates to the issues in this matter. How does the
3 answer to that question relate to the issues in this matter?
4 And that question is 21D on page 7 of your declaration.

5 A. We really can't say that there are standards at the college
6 level, but we could talk about -- about conventional kinds of
7 treatments, of specific kinds of content, be it historical,
8 literary, et cetera.

9 So inasmuch as it aligns to the way that ethnic studies is
10 taught at the college level, then, yes, we could speak of
11 alignment specifically in the case of Mexican-American Studies
12 at TUSD, and I would even say impressively so.

13 Q. So, first of all, we have to understand that there are, in
14 fact, no national level standards for MAS in post secondary
15 institutions. Did I understand you correctly?

16 A. Yes. You mean college?

17 Q. Yes.

18 A. Four-year or two-year institutions?

19 Q. Correct.

20 A. Yes, correct.

21 Q. Is it then -- I want to understand -- with that
22 understanding, I want to understand from you how the answer to
23 the question of whether a K-12 curriculum -- because the MAS
24 curriculum was K-12, right? -- whether it aligned with
25 national level standards, whatever they might be, for college

1 institutions is relevant to the issues in this case.

2 A. First of all, you have to understand that multicultural
3 education does not exist outside of the university and
4 intellectual and knowledge production within the university.
5 So multicultural education has a long, long history, and the
6 history of multicultural education itself shows that it is
7 intimately -- it is an artifact of ethnic studies at the
8 university level.

9 Q. I still don't understand how knowing whether a K-12
10 curriculum aligns to college standards relates to the issues in
11 this case? That's the question that I am trying to ask and
12 that I would like you to answer.

13 A. Sure. Yeah. So I am a scholar in ethnic studies, and I
14 have been so for a long time, many, many years now, and so I am
15 very familiar with ethnic studies curriculum and texts and
16 journals and authors, scholars, writings, research. I am very,
17 very well addressed in these things. So it was with that lens
18 that I looked at the MAS curriculum and was able to ascertain
19 that they covered a heck of a lot of curriculum, and I was
20 impressed.

21 A lot of information that I teach, that I teach in my
22 ethnic studies classes, and that my colleagues teach in their
23 ethnic studies classes, that people present on in scholarly
24 conferences, they were able to get that done, accomplished in a
25 year's worth of curriculum in at least one unit that I

1 reviewed.

2 Q. So one reason you're saying that it's relevant is that you
3 believe that at least one unit covered college level material.

4 A. It was a series of units, so I think it was real important
5 to distinguish your -- is that you have lesson plans, and the
6 lesson plans, even if they were given to me by counsel -- so I
7 have the ones that were part of my expert witness report, but
8 others were given to me two days ago by counsel. And so that
9 further helped me feel confident about my expert witness
10 report, which was that there was a curricular map. We call
11 them "CRMs" at AISD, Austin Independent School District.
12 Curriculum maps. So I am very familiar with this.

13 I am also on the committee, by the way -- I need to say
14 this -- in ethnic studies curriculum development right now in
15 the Austin Independent School District, so I am very, very
16 familiar with the curricular map, and I'm also very familiar
17 with what we might call units or lesson plans, and those are
18 different.

19 You have a lot more information in units or lesson plans
20 than you have in a curricular map, as detailed as they might
21 be, because the actual lesson plans, which is what I got from
22 counsel, in addition to what I reviewed, are robust, and they
23 show extensive treatment of coverage, of different kinds of
24 content that is very, very important to ethnic studies.

25 Q. I think what I asked you is whether the curriculum unit,

1 that you felt that because some curriculum -- leaving that
2 definition vague for the moment -- that you reviewed met
3 college standards that made your answer to this question in 21D
4 relevant. Am I correct about that?

5 A. Yes. What I understand to be standards, in my professional
6 judgment, yes.

7 Q. Okay. Now, you said you received some lesson plans a few
8 days ago from counsel, correct?

9 A. Yes.

10 Q. What can you tell me about those?

11 A. They don't appear to be a hundred percent in an order that
12 I would have liked. But even despite that, it would be wrong
13 to suggest that the curriculum itself within TUSD was in any
14 shape or form in disarray. It would be a wrong inference to
15 draw.

16 What I see in there is that there are contents that are
17 scaffolded. It goes from simple to complex kinds of content.
18 There's instructions for teachers on how to teach this content,
19 but more along the lines of conventional instructional
20 practices, like reading comprehension, like writing, expository
21 writing, like, you know, how do you make a persuasive argument
22 or a reflection, comparison/contrast, Venn diagrams and real
23 kinds of innovative approaches that I am happy to learn about
24 that I am going to bring to Austin as well because I think it's
25 excellent. It's excellent stuff.

1 THE COURT: Can I just ask a question for
2 clarification? When you refer to the lesson plans you got from
3 counsel, are they lessons -- what were you told? They were
4 lesson plans that were used by the Tucson MAS years ago or
5 current lesson plans in some courses now being offered or what?

6 MS. COOPER: Thank you, Your Honor.

7 THE COURT: What kind of lesson plans are they or from
8 what course and what time? Do you know?

9 THE WITNESS: They don't have a date on them, but
10 maybe --

11 MS. BARRINGTON: Your Honor, may I can help clarify?
12 These were defendants' exhibits that we provided to
13 Dr. Valenzuela, and these were materials that we understand
14 were provided to the state in a course of their MAS
15 investigation and in the course of the ALJ proceedings.

16 THE COURT: So you're representing they're lesson
17 plans that were used in the MAS program?

18 MS. BARRINGTON: Yes, that's our understanding. These
19 were lesson plans that were produced by the State of Arizona in
20 connection with this case.

21 THE COURT: All right. I'll just let counsel take it
22 from there.

23 BY MS. COOPER:

24 Q. Yeah. What was the --

25 MS. COOPER: Thank you, Your Honor.

1 BY MS. COOPER:

2 Q. What was the volume of information that you received,
3 approximately? 10 pages? a hundred pages? a thousand pages?

4 A. About a thousand, I guess. I don't know.

5 Q. About a thousand?

6 A. 800 maybe. I don't know. Thick.

7 Q. Did you look at it?

8 A. I saw every page, yes.

9 Q. So how much time did you spend reviewing it?

10 A. Two days.

11 Q. You spent two days.

12 Did any of that change your opinions?

13 A. Yes.

14 Q. And I thought that I asked you not very long ago whether
15 you had done any work related to your opinion, and you said no.

16 A. I thought you meant like before coming to Arizona.

17 Q. No, I just meant before.

18 MS. BARRINGTON: Objection. Misstates the witness's
19 testimony.

20 THE COURT: Objection's overruled.

21 BY MS. COOPER:

22 Q. So, in fact, you did do work after issuing your report,
23 correct?

24 A. Yeah. Yeah, I did.

25 Q. So you looked at these 800 pages of documents.

1 A. Yes.

2 Q. Anything else? And I mean up until the moment you walked
3 into this courtroom, other than the fact that I don't mean to
4 intrude on your preparations with the attorneys for your
5 deposition today.

6 A. I did a little bit of reading last week. I did that. I
7 went through my expert witness report. I listened again to the
8 interviews with the teachers that I interviewed for the case.
9 But most of the work has been done here in the last two days.
10 I have been pretty busy.

11 Q. Okay.

12 A. Yeah.

13 Q. We'll explore that more in a little bit.

14 You're not offering an opinion here yourself based on work
15 that you've done that TUSD's MAS program promoted student
16 achievement, right?

17 A. Well, Subtractive Schooling is very important, my own work,
18 and so since Subtractive Schooling and different aspects of it
19 that informed the TUSD MAS curriculum, you know, to the degree
20 that they connect, yes, then, yes, I am offering an opinion.

21 Q. What is your opinion with respect to whether or not TUSD's
22 MAS program promoted student achievement?

23 A. Well -- and I also read other scholarship like Thomas Dee
24 and Emily Penner, like Nolan Cabrera and Francesca Lopez. I
25 mean, there was a number of things that I did to prepare. I

1 think I missed one. The Cambium report.

2 So I reviewed all of those things, and, of course, I even
3 read my own book again. I hadn't read my book in a while, and
4 so I had to read my own book again. And I really felt like I
5 had to, it was a responsible thing to do, because I am very
6 aware that my own work had has been influential in the
7 development, in the theorizing of the actual MAS TUSD program.

8 MS. COOPER: May I have the reporter read back my
9 question, please.

10 (Reporter read back the last question.)

11 A. My opinion is that it did.

12 BY MS. COOPER:

13 Q. And now, what is the basis for that opinion? And by that,
14 I mean what work have you yourself done to reach that
15 conclusion?

16 A. It would be Subtractive Schooling primarily. Subtractive
17 Schooling is a case study that was conducted in a high school,
18 in Houston, Texas, and it showed that the absence of both
19 authentic caring and a sociopolitical perspective in the
20 schooling of kids, it creates problems and divisions among
21 youth. And in interviewing the teachers, there was a direct
22 connection when they spoke about how -- which is what I found
23 as well -- that students come into the classroom, and they have
24 identities that are imposed upon them that are outside of their
25 control, that comes with the happenstance by birth of being

1 Mexican or being brown or not being English-speaking or being
2 an immigrant. I mean, all of these things are directly
3 connected to what we saw or what we see in the record for the
4 district.

5 Q. So Subtractive Schooling is book you wrote, right?

6 A. Yes.

7 Q. In the '90s?

8 A. 1999.

9 Q. 1999. And it represented work that you did at a high
10 school in Houston, right?

11 A. That's correct.

12 Q. And you spent -- you or people working with you spent
13 substantial time in the high school, right?

14 A. Yes, me.

15 Q. Okay. Have you done any work like that with respect to
16 Tucson Unified School District and its MAS Program?

17 A. I didn't.

18 Q. Have you spent any time at all in classrooms in Tucson
19 Unified School District?

20 A. No.

21 Q. Well, how does your work that you completed in the 90s,
22 with respect to Subtractive Schooling in Houston, Texas, relate
23 to an opinion that TUSD's MAS Program promoted student
24 achievement?

25 A. Because the conclusion of Subtractive Schooling is that the

1 children, when they're not being taught in a way that's
2 culturally relevant, that that leaves them bereft of resources
3 for achievement. And so the instances where it didn't go in
4 that direction was when teachers themselves were additive; that
5 is, they had -- they had approaches in schooling contexts that
6 were asset-based, you know, kinds of pedagogies. So the
7 language is important, the culture is important, they're not
8 viewed as deficient.

9 But in those instances where you have teachers that have
10 high expectations -- not just high expectations, but are also
11 informed with pedagogies for teaching language minority youth
12 is when you see the outcomes that we now see in TUSD, the
13 positive educational achievement outcomes.

14 Q. Would it be correct to say that Subtractive Schooling is
15 really a theory that says -- that complains why, in your view,
16 Mexican-American youth don't succeed as well as you would
17 expect them to?

18 A. It -- yes, that would be accurate. It's also --

19 Q. It's not a way that we look at -- it's not a method of
20 measuring student achievement, is it?

21 A. Only in the sense that achievement itself is culturally
22 nuanced. And so when you think of achievement in a very narrow
23 way, in terms of test scores or grades, then you're really not
24 capturing the folk model of education that exists in the
25 Mexican-American community and other communities, as well. And

1 that's a folk model that really differentiates between
2 achievement or education and between education and schooling.

3 So schooling, the way that I've theorized it -- and believe
4 me, many, many important people before me, as well, including
5 Ivan Illich, distinguish between schooling and education. And
6 so Ivan Illich and myself and others argue that if we're
7 talking about schooling, it's really these narrow, you know,
8 rather pedestrian ways of understanding schooling that impacts
9 pedagogy because schooling is really about subjects and not
10 people. It's about -- it's really objectifying kids, and
11 they're more of a test score than they are, you know, whole
12 human beings connected to cultures, to languages, to robust
13 identities and affiliations.

14 So I think we all use the same word, but actually, my work
15 draws a distinction. And so what I found very interesting and
16 compelling in the literature that I reviewed was just how
17 important it was to focus in TUSD on -- you know, really
18 addressing, in an asset-based way, the funds of knowledge that
19 children bring into the classroom. And the connections to the
20 parents and to the communities are so essential. And that
21 could get lost if all you're focused on is improving children's
22 test scores or their grades.

23 Q. So you're familiar with Dr. Cabrera's work, right?

24 A. Yes, uh-huh.

25 Q. And he, in fact, employed I think what you called a narrow,

1 pedestrian focus on grades and test scores?

2 A. Uh-huh.

3 Q. Okay. So do you still rely on his work, even though it's a
4 narrow, pedestrian focus?

5 A. Yeah. I think we're talking about values. Okay? And
6 so -- I mean, I think we obviously live in a world where those
7 kinds of things are important. But when we're talking about
8 what a community values, to achieve goes beyond that. It's
9 much more expansive than that. Right?

10 We want not just good test takers. We also want human
11 beings that are respectful and that observe others' dignity and
12 that are educated in a Mexican sense of what it means to be
13 educated, which is encapsulated in the word "educación." So
14 you can have a degree and be erudite and really be poorly
15 educated from a Mexican perspective. And that's the folk model
16 of education that I am talking about.

17 And you would hear people always use the term in our
18 families. It's pretty ubiquitous, and it's been an interesting
19 finding that -- I mean, it was a case study. There was this --
20 you know, there was this discourse, this way of talking on the
21 ground that was particular. And it was so disconnected from
22 the traditional, you know, utilitarian, scientific ways of
23 measuring -- you know, measuring, you know, so-called
24 intelligence. And it was much more human, and it didn't
25 objectify.

1 And so they -- and so a lot of the teachers who were
2 erudite, right, who had knowledge, they were construed as
3 "maleducados" because they didn't treat the students well in
4 the classroom.

5 (Reporter requested repetition of Spanish word.)

6 THE WITNESS: "Maleducados." Poorly educated.

7 A. So that is a big difference. That's a very big difference
8 in the cultural understanding or world view that
9 Mexican-American children and families bring into schooling
10 context.

11 BY MS. COOPER:

12 Q. What's the highest grade that public school goes to for
13 most Mexican children? Isn't it sixth grade?

14 A. For Mexico?

15 Q. Yeah.

16 A. Are you talking about Mexico?

17 Q. Yeah.

18 A. Well, it's paid for through the ninth grade, so....

19 Q. The ninth grade. Paid for through the ninth grade.

20 A. Well, I haven't seen any statistics, but, you know....

21 Q. Pardon me?

22 A. I haven't seen any statistics, but I know that through the
23 eighth grade, and then in the ninth grade they go to
24 preparatoria. And so that's not -- so the families have to
25 come up with resources to cover the high school level of

1 preparation in Mexico.

2 Q. Okay. So would you say that high school level of education
3 is important for success in the United States?

4 A. Yes. And in Mexico.

5 Q. And in Mexico?

6 A. Yeah. Both.

7 Q. But here it's free.

8 A. Huh?

9 Q. It's free here.

10 A. Yes.

11 Q. And not in Mexico.

12 A. Not beyond the ninth grade, no.

13 Q. So let's talk first about whether or not you did any work
14 yourself to determine whether or not the TUSD MAS Program
15 promotes student achievement in the narrow, pedestrian way that
16 Dr. Cabrera did.

17 A. Yes, it does.

18 Q. No. I'm asking you what work you did.

19 A. Oh, what work I did. I did a number of things. I, of
20 course, reviewed Tom Horne's expert disclosure. I --

21 Q. I don't mean to interrupt you, but I think you may not have
22 understood my question. So I am going to ask again, but if I
23 was wrong, please go on with your answer. Okay?

24 My question was: What work did you do to determine whether
25 TUSD's MAS Program promoted student achievement in the same

1 fashion that Dr. Cabrera did, which is to say to focus on
2 grades and test scores?

3 A. Well, I read the Cambium report. I read, of course,
4 Cabrera's report. And then I -- and I triangulated with ethnic
5 studies research generally in the field. I updated myself in
6 the area of K-12 multicultural education or ethnic studies.

7 Q. So you read other people's work, right?

8 A. I read a lot.

9 Q. Right. But you didn't, in fact, examine any student data,
10 correct?

11 A. Beyond the Cambium report, no. But also, I did interview
12 the teachers.

13 Q. I am talking about student data.

14 A. Yeah, no, I didn't.

15 Q. Okay. And with respect to this funds of knowledge theory,
16 did you do any work to determine whether TUSD promotes -- the
17 MAS Program promoted student achievement in that regard?

18 A. Well, I found evidence in the notebooks that they used
19 funds of knowledge and --

20 Q. Evidence in the?

21 A. In the notebooks of lesson plans provided by counsel, that
22 they use asset-based pedagogies and funds of knowledge, yes.

23 Q. Okay. Now, are you offering an opinion here to this Court
24 that the ethnic studies program at TUSD arose as a result of
25 Subtractive Schooling in TUSD?

1 A. No, only that it was influenced by it.

2 Q. Okay. Are you offering an opinion here that the defendants
3 in this matter are somehow responsible for any Subtractive
4 Schooling that Mexican-American students in TUSD may have
5 experienced?

6 A. The defendants?

7 Q. The defendants in this matter.

8 A. You mean like the State of Arizona?

9 Q. Right, right. The superintendent of public instruct --

10 A. If they're responsible for Subtractive Schooling?

11 Q. Yeah, of the Mexican-American students in TUSD.

12 A. That's the status quo. That's the default, yes.

13 Q. That's the default?

14 A. Yeah. Not unique to Arizona, but, yeah.

15 Q. All right. But not based on any particular examination
16 you've done.

17 A. Well, I mean, I've looked at state standards. I've looked
18 at common core. And, you know, I mean, that's another
19 conversation. I mean, there are multicultural education
20 standards. But what we find in Texas in particular and in
21 other states is that even if there are standards, what we find
22 is that in a test-based culture, that teachers will actually
23 not teach those kinds of standards if they don't appear on the
24 test, while they will teach standards that are very directly
25 correlated to the test.

1 Q. I want to direct you to page 10 of your declaration,
2 paragraph 34, and let me know when you've gotten there, please.

3 A. Okay.

4 Q. Page 10, start with that.

5 A. Okay. We're good.

6 Q. And paragraph 34.

7 A. Yeah.

8 Q. And I'm going to read the second sentence. It says:
9 Mexican-American students want to feel and be respected by
10 their teachers, and when teachers cannot relate to their
11 backgrounds or cultures, they feel that those teachers do not
12 care about them.

13 Did I read that correctly?

14 A. Yes.

15 Q. Is that unique to Mexican-American students?

16 A. I'm learning from others in the field that are using my
17 framework that it is not.

18 Q. So students of all different ethnic backgrounds might want
19 to be respected by their teachers?

20 A. Yes.

21 Q. I just want to ask a couple more of questions about
22 Subtractive Schooling before we move on. Those are opinions
23 that you developed in the 90s, correct? That's work -- the
24 work that you did with respect to Subtractive Schooling was
25 done in the 90s, right?

1 A. Yeah. And I would say it began at Stanford University when
2 I was doing research in the Silicon Valley in education,
3 different educational schooling contexts. And so my
4 dissertation actually looked at generational differences in
5 achievement, comparing immigrants to U.S.-born youth that took
6 me to the acculturation literature that later then did inform
7 my work in Subtractive Schooling, yes.

8 Q. But those opinions were -- you developed those opinions
9 before you were retained in this matter, right?

10 A. Yes.

11 Q. And the report that you've given here today doesn't use the
12 same methodology that you used there, right?

13 A. Right.

14 Q. Now, you mentioned a few minutes ago a study by Thomas Dee
15 and Emily Penner, right?

16 A. Correct.

17 Q. And that's a study that was done in San Francisco?

18 A. Yes.

19 Q. And it looked at courses that focused on the experiences
20 and identities of racial and ethnic minorities. It used
21 cultural references in teaching and aimed to enhance social and
22 political awareness. Would that be a correct understanding of
23 that study?

24 A. Can you ask it again, please, the question?

25 MS. COOPER: I'll have the court reporter read it

1 back.

2 (Reporter read back the last question.)

3 A. No. It would be a correct inference about the actual
4 program, not the study.

5 BY MS. COOPER:

6 Q. Okay. So the study examined the courses that had the
7 qualities that we just described, right?

8 A. Yes.

9 Q. For example, there was a lesson where teachers would ask
10 students to look at the role of advertising in reinforcing
11 cultural stereotypes, and the idea that some values and people
12 are normal, while others are not. Right?

13 A. I don't remember that piece.

14 Q. Well, did you evaluate the curriculum of the classes that
15 were studied by Dee and Penner to see if it was similar to the
16 curriculum and materials used in the TUSD MAS Program?

17 A. No. I only talked to one of the faculty members from Cal
18 State San Francisco, Allyson Tintiangco-Cubales, who told me
19 that they drew inspiration from the Arizona TUSD MAS Program.

20 Q. Who drew inspiration from the Arizona program?

21 A. It would have been Allyson and the group of teachers that
22 she was working with. She is a professor in TUSD, and so the
23 way that they started out was -- based on what
24 Dr. Tintiangco-Cubales shared -- is that they -- they would
25 meet regularly to talk about ethnic studies content and

1 curriculum and pedagogies, and then that ultimately became a
2 regular meeting of the TUSD faculty involved in the ethnic
3 studies program. And then at some point they were pretty much
4 automated, so the faculty would meet bi-monthly on their own.
5 And today I think she's still definitely involved. She's like
6 a leading national scholar in ethnic studies.

7 Q. So would it be correct if I were to say that you did not
8 evaluate the curriculum of the TUSD MAS Program to see how it
9 compared to the curriculum taught in the San Francisco schools
10 that were the subject of the --

11 A. That would --

12 Q. -- Dee and Penner study?

13 A. That would be correct, yes.

14 Q. It's very important that we speak one at a time for
15 Ms. Jamieson. All right? For the court reporter.

16 Are you aware that the Dee and Penner study made a
17 significant attempt to compare two substantially similar
18 groups, one that was required to take the ethnic studies class
19 and -- classes and one that was not?

20 A. Yes.

21 Q. Did you conduct any similar work in TUSD with respect to
22 its MAS program?

23 A. No, I didn't.

24 Q. Are you aware of any such work?

25 A. The closest would be Nolan Cabrera's work and then also

1 Francesca Lopez.

2 Q. Dr. Cabrera looked at people, students who chose to take
3 the classes, right?

4 A. Yes.

5 Q. And you would agree with me that a group of high school
6 students who choose to do something are different than a group
7 of high school students who are required to do something.

8 A. Well, some chose it in San Francisco, and some were
9 required. They were substantially similar ethnically.

10 Q. That wasn't my question. My question is, is a group of
11 high school students that chooses to take a class different
12 than a group of high school students required to take a class?

13 A. I don't really know.

14 Q. You can't offer an opinion about that?

15 A. I think it is an empirical question. It would vary across
16 context.

17 Q. Then you mentioned a study by Francesca Lopez.

18 A. Mmm-hmm.

19 Q. Is that a study here in Tucson Unified School District?

20 A. Yes, it was.

21 Q. Relating to students in the culturally relevant courses
22 that are presently offered by TUSD?

23 A. Yes, but a number of the teachers were former teachers in
24 the earlier TUSD MAS program.

25 Q. And that looked at third through fifth graders?

1 A. Yes, uh-huh.

2 Q. And the question that it asked is whether these elementary
3 school students felt better about their ability to read if
4 their teachers used culturally relevant pedagogy?

5 A. Yes, that was one of the questions.

6 Q. But it didn't examine whether students actually became
7 better readers, did it?

8 A. They looked at test scores. She found test scores and
9 found increases in test scores.

10 Q. Was that part of the work that she reported, those
11 increases?

12 A. Yes.

13 Q. Now, I want to talk about your work evaluating curriculum,
14 because you say in paragraph 21 of your declaration that you
15 have considered the curriculum and pedagogy of the MAS program
16 against your own experience in developing curriculum and
17 pedagogy.

18 A. Okay.

19 Q. So let's ask first, what work have you done to develop
20 pedagogy?

21 A. Mostly curriculum. Pedagogy is -- it's not so much the
22 focus, it's mostly curriculum, and that's in the context of our
23 Saturday school, Academia Cuauhtli.

24 (Reporter requests spelling of name.)

25 THE WITNESS: Yes. Academia Cuauhtli. Cuauhtl, but

1 Cuauhtli. C-u-a-u-h-t-l-i.

2 MS. COOPER: It's kind of fun to spell, almost like
3 "Mississippi."

4 BY MS. COOPER:

5 Q. I want to stay focused, though, on pedagogy for the moment.
6 Have you ever developed pedagogy?

7 A. Pardon me?

8 Q. Have you ever developed pedagogy?

9 A. No.

10 Q. Have you ever evaluated pedagogy?

11 A. Only in the sense that -- in the context of our Saturday
12 academy, we're a team that -- we do basically formative
13 evaluation of pedagogy. We observe the teaching, and we
14 provide immediate feedback on what went well, what went wrong,
15 what could have been done better. So in that sense, yes.

16 Q. Other than this Saturday school experience, have you
17 evaluated pedagogy?

18 A. No, uh-uh.

19 Q. Now, let's talk about your experience developing
20 curriculum. I want to set to the side for the moment the
21 Saturday school experience, because I am going to ask you some
22 questions about that. But other than that experience, have you
23 developed curriculum?

24 A. Yes.

25 Q. For K-12?

1 A. Yes.

2 Q. And what other experience developing curriculum for K-12
3 students do you have?

4 A. Right now I am on the district-wide curriculum committee,
5 and we're developing ethnic studies, social studies, and it
6 will get taught in six schools, either the ninth or tenth grade
7 level in our district by this fall. And by all -- and in all
8 schools, hopefully, by the fall of the following year.

9 And so just like San Francisco, we meet regularly. We
10 discuss with teachers that are already implementing ethnic
11 studies curriculum, different units that should get taught in
12 this course. And the course is year-long course, with the
13 first part of the course being A, ethnic studies, and with the
14 idea that you can't do part B without doing part A. And the
15 reason is a couple of reasons. One is that you need a full
16 year to have what may be called service learning projects.
17 They're also called problem-based or project-based kind of
18 projects. But you need to scaffold for the students so that
19 they can feel confident by the spring semester that they
20 really, you know, have good analytical understandings, so that
21 then they can carry forward what we hope will be in-depth
22 research projects in the spring semester when they do take the
23 B part of the year-long course.

24 We are a multiethnic group. We're Asian-American,
25 African-American. Not all AISD teachers, but also faculty from

1 the university. Native American and indigenous content, as
2 well as, of course, Mexican-American content.

3 And so we're very intentional about developing
4 research-based content that is used in the college classroom,
5 with the idea -- and again inspired by TUSD Mexican-American
6 Studies Program and also by San Francisco -- with the idea of
7 promoting achievement for our minority youth in our schools and
8 also for building a pathway into higher education with these
9 courses being part of that, of that pathway.

10 I mean, we're in the middle of it, and it involves a lot of
11 people, a lot of different people. It involves the district,
12 and, of course, we have the research to support this direction.

13 Q. This is the Austin Independent School District?

14 A. Right. Right. So I'm involved in curriculum development.

15 Q. What is your specific role with respect to curriculum
16 development on this committee?

17 A. A lot of my role has been to -- it's been evaluative in
18 terms of providing content. And so since we're dealing with
19 all of the groups, then teachers are already providing readings
20 and exercises, very focal kinds of readings that help people
21 understand the Asian-American experience. Again, these are big
22 categories, but we can address some very general kinds of
23 issues.

24 So what I see that -- one of my main contributions is to
25 provide them with important concepts and also how to teach

1 those concepts. Right? And so it's important, for example, to
2 know what a minority is and to know what race is and how you
3 have to really unpack that to distinguish between levels of
4 analysis. Is it at the individual level that we're talking
5 about, for example, overt or covert kinds of racism, or is it
6 systemic, at the institutional or at the historical level.

7 So those are the kinds of insights that I am able to
8 provide. I mean, there are other issues, intersectionalities
9 and how it matters to not only be a minority but to have a
10 different sexual orientation or to be undocumented. And then
11 conceptually it's important to understand how race very often
12 is an organizing principle in society. So among all of these
13 master statuses, that is a key, a significant one, that really
14 guides this research, as it did in the Tucson Unified School
15 District.

16 Q. Is this going to be a Mexican-American Studies class?

17 A. No, it will be an ethnic studies class.

18 Q. So multicultural?

19 A. Yes.

20 Q. Is it going to help teachers to provide appropriately based
21 education for a class of students that might include students
22 from as many as five different countries from around the world?

23 A. They're all domestic minorities. So we're really not
24 looking at different countries; we're looking at domestic, U.S.
25 domestic minorities and the minority experience.

1 So colonization, for example, is a very important idea.
2 How is it that groups get incorporated politically,
3 economically, socially, culturally in a U.S. political context
4 and how that plays out in key institutions like families or
5 like in schools.

6 Q. So this isn't going to help the teacher who might have kids
7 from a Somali background an Iraqi background, a Syrian
8 background, an East Asian background in the same class, right?

9 A. Well, it will help everyone, first of all. It will be
10 beneficial to all students. I think it's important to
11 understand our youth these days. I am acquiring a real
12 appreciation for the Millennials and the Millennial generation.

13 Q. You may be the only one, Dr. Valenzuela.

14 A. That what?

15 Q. That appreciates Millennials.

16 A. They are awesome. And I have learned so much from them.
17 They are so -- because of the media, the social media, they
18 are -- what I am increasingly seeing are students who are
19 oftentimes resistant, but they want to know, they actually want
20 to know the curriculum because they have to also work in
21 complex work environments or in schooling environments.

22 An experience, for example, that I had two weeks ago in
23 teaching a two-week program, it was mostly not minority
24 students that took it. Some of them had to take it, others
25 didn't have to take it, but it was a very interesting

1 experience where it was predominantly, not exclusively, but
2 mostly Anglos, one African-American, no Asians, and the rest
3 Anglos.

4 And so, I mean, you can tell by the body language. Any
5 ethnic studies teacher can pretty much tell from the body
6 language whether students are, if not skeptical, you know,
7 possibly resistant. That's very common in these kinds of
8 classes.

9 And so we -- what I taught was my regular course that I
10 teach at UT, but condensed into two weeks. It was from
11 9:00 a.m. until 1:00 p.m. And so I started out in and with the
12 class covering key ideas of the kind that I just mentioned,
13 race as an organizing principle, what is the difference between
14 an ethnic group and a minority group, racialization. That's
15 very important, because students can connect to the idea of
16 certain groups that are not formerly in their own experience.
17 They come to the U.S., they don't experience being a minority,
18 through the process of racialization become U.S. minorities.
19 And so we look at the Muslim community and they get racialized,
20 right. And so that's a very important concept so that you can
21 come from anywhere and undergo this process of racialization.

22 A student of mine, who was resistant, an Anglo student, a
23 male, white male -- and I'll say it very softly -- again, I'm
24 not going to infer too much about his internal state, but I can
25 say he had his back to me in class, and we had tables, and I'd

1 have to kind of go around to say "hi, there" to him.

2 And so I really emphasized in the class another important
3 concept is epistemology, which is ways of knowing. Right? And
4 you can know in ways when you're open minded, and, you know,
5 you're weighing evidence, you're deliberative and you're
6 curious, there's a curiosity, or you can know in another way
7 that's close minded and that's arrogant or maybe even lazy, and
8 there's texts that speak to this.

9 And at the end of the class we had a reflection that was
10 really a wonderful moment. We were able to talk about the
11 class, and it was just a general question to all of them to --
12 for them to tell me what was the impact of this class on you?
13 And maybe it wasn't something new that you learned, but maybe
14 it was something that got reinforced, a new understanding. It
15 could be anything. It was open ended.

16 And what he said was -- and, mind you, this -- a young
17 student, maybe 22 years old, never said a word in class, and he
18 stood up. You know, he was happy. I could tell he was happy.
19 And he said, he says: "I am not going to have the same posture
20 as I have had as a white person."

21 MS. COOPER: Your Honor, I'd like to request that the
22 Court admonish Dr. Valenzuela in the same manner it did
23 Dr. Pitti to stick a little closer to answering my question
24 rather than straying so far from those questions.

25 THE COURT: Well, if you think her answer is complete,

1 at some earlier point, you can say "you've answered the
2 question."

3 MS. COOPER: All right. Thank you, Your Honor.

4 BY MS. COOPER:

5 Q. Do you understand that we are proceeding here by question
6 and answer and the answers should be to the question?

7 A. I have been answering you, but it was hard for me to answer
8 you without giving some context, because I think if I had just
9 gone directly to posture and how important that is, you
10 wouldn't have gotten it.

11 Q. Well, I just want to say that if I do interrupt you, please
12 take that from me in my role as a lawyer and not as anything
13 personal. All right?

14 A. Yes, of course.

15 Q. Let's talk about the Saturday school.

16 Well, first, you don't develop curriculum, or at least at
17 the time of your deposition you didn't develop curriculum as
18 part of your regular work, right?

19 A. You know, I develop content for curriculum, and I work very
20 closely with curriculum writers. So in the broadest sense,
21 yes, I do, but in the narrow sense of developing lesson plans,
22 objectives, aligning to state standards, state education
23 standards, the answer would be no. But in the broadest sense,
24 I would say yes.

25 Q. Do you evaluate curriculum as part of your regular work?

1 A. With the Saturday school?

2 Q. No, other than with the Saturday school.

3 A. No.

4 Q. So the only curriculum you've evaluated other than the
5 Saturday school is the MAS curriculum, right?

6 A. Well, I've also evaluated -- I mean, again, this is like --
7 it can be a very technical term, but I've had students develop
8 curriculum, and I've reviewed the curriculum, and they have to
9 defend in the context of their doctoral dissertation
10 curriculum. In my expert witness report, I did mention the
11 recent curriculum on sex trafficking that was developed by one
12 of my students. That was her thesis, and I was one of her main
13 advisors on that thesis, yes.

14 Q. So the Saturday school program is optional, right?

15 A. Yes.

16 Q. It's a sixth day of school for fourth and fifth graders
17 whose parents make that decision for them?

18 A. A sixth what?

19 Q. A sixth day of school, right?

20 A. Oh, a Saturday school, yes.

21 Q. Mmm-hmm.

22 A. Well, it's not a full day. It's from 9:00 a.m. to
23 1:00 p.m., till noon or 1:00, depending on if we go on a field
24 trip.

25 Q. There's probably a distinction without a difference to a

1 fifth grader, right?

2 A. Pardon me?

3 MS. COOPER: Nothing. I withdraw.

4 BY MS. COOPER:

5 Q. It's not part of the regular public school program, right?

6 A. Well, it is, and in one sense, in the sense that everything
7 that we develop in terms of curriculum, we have different
8 content, like immigration, civil rights, local history,
9 indigenous heritage, we make available districtwide and up to
10 45 percent of it more or less is available right now for all
11 teachers districtwide in grades 3, 4, 5, 6, 7, and 11.

12 Q. And when we talked at your deposition, you agreed that this
13 Saturday school was something more like a program that a
14 Chinese or a Jewish or a Greek parent might choose to send
15 their child to to ensure their child's familiarity with
16 language and cultural traditions rather than the regular public
17 school day. Is that still your testimony?

18 A. Yeah. I mean, I would just add we also have these
19 districtwide impacts as a result of our effort.

20 Q. And the work that's done by the students in these classes
21 is not required to be done for them to be promoted to the next
22 grade. Right?

23 A. Right.

24 Q. Now, when we spoke last summer, there were about 25 fourth
25 and fifth graders at three schools in the program, right?

1 A. Mmm-hmm.

2 Q. Has the program grown?

3 A. Yes. We're going to be incorporating two more schools. We
4 actually already incorporated a fourth, and we're incorporating
5 a fifth school now.

6 Q. So how many students are in your program? Well, we're in
7 the summertime. How many finished last school year?

8 A. I think we had 23.

9 Q. 23?

10 A. Mmm-hmm.

11 Q. Approximately how many students are in the Austin
12 Independent School District?

13 A. In the Austin Independent School District, I don't know.

14 Q. Tens of thousands?

15 A. Yeah.

16 Q. Does it cover the entire -- is it -- like TUSD is a
17 major --

18 A. Yes.

19 Q. -- district in the Tucson area, is Austin the major school
20 district in the Austin area?

21 A. Austin, and then we have -- yeah, of course, surrounding
22 Central Texas, districts that are also very large, but amongst
23 all of them, AISD would be the largest, yes.

24 Q. So tens of thousands of students.

25 A. Yes.

1 Q. Now, you help identify content to be taught in conjunction
2 with teachers for that program, right?

3 A. Correct.

4 Q. You don't write the curriculum?

5 A. Well, only, like I said, in the broadest sense of being
6 part of the process of curriculum development, and also I did
7 focus most recently on the indigenous heritage aspect of that
8 curriculum. And so I generated content that then was
9 translated, as I've indicated already, according to district
10 standards, age appropriateness, activities, all of those kinds
11 of things that would make it consumable for teachers
12 districtwide.

13 Q. You don't teach in that program.

14 A. No. No, I mostly observe.

15 Q. And you're not the person who determines -- makes the
16 content grade level appropriate, right?

17 A. No.

18 Q. And you don't determine the scope and sequence?

19 A. I'm in those conversations, but no.

20 Q. Do you write pacing guides?

21 A. No.

22 Q. Does this program include assessments of the students?

23 A. No.

24 Q. How does the fact that this is an optional program for
25 students -- that is, in fact, a sixth day of school -- affect

1 the curriculum design?

2 A. There's more freedom. There's freedom to teach about
3 indigenous heritage, for example. And it also is a space where
4 teachers are prepared in the curriculum so that when they go to
5 their own classrooms, they're able to implement it in the ways
6 that they've learned to teach it. We pair novice and expert
7 teachers together so that we're always preparing teachers in
8 the curriculum, so in those senses.

9 Q. I'm going to see if we can agree on some definitions and
10 principles that are related to curriculum and curriculum
11 evaluation before we go on.

12 Would you agree that state standards are a list of what
13 students need to know or -- and/or be able to do at each grade
14 level in specific content areas?

15 A. Yes.

16 Q. And would you agree that curriculum covers an entire year,
17 an entire school year?

18 A. That's very general, but, yes. Generally, yes.

19 Q. There's more to it.

20 A. Okay.

21 Q. We're just going to take it -- this question has subparts.
22 Okay? And it answers the questions: What is it that the
23 students are going to learn? How is it going to be taught to
24 them? And how is one going to know that the students have
25 learned this material that -- have learned the material that

1 they need to know?

2 A. That's three questions right there.

3 Q. Well, curriculum has three parts, right? What the students
4 are going to learn is that part of curriculum?

5 A. Yes.

6 Q. How it's going to be taught to them?

7 A. Mmm-hmm.

8 Q. And how we're going to determine whether they've learned
9 the material, right?

10 A. Right.

11 Q. And so that's written, taught, assessed curriculum, and
12 there should be a tight connection among them. Can we agree on
13 that?

14 A. Yes.

15 Q. And do you understand that in Arizona the adoption of
16 curriculum is a local school district governing board
17 responsibility that needs to take place in an open meeting?

18 A. I didn't know about the open meeting part, but I know it is
19 a district responsibility, right.

20 Q. And that's in contrast to some states which establish a
21 statewide curriculum, right?

22 A. Right.

23 Q. And can we agree that all elements of a curriculum should
24 be planned before a teacher begins the school year?

25 A. Yes.

1 Q. Now, let's see if we can agree on a definition of "scope."

2 So a scope of work is looking at the depth of the course,
3 the depth of studies, whether to delve deeply into a subject
4 area or to skim the surface. Can you agree that that's a good
5 definition of scope?

6 A. It could be inclusive of a definition of "scope." It would
7 also be the parameters of the course.

8 Q. Okay. We can add that. And the sequence is looking at
9 across the entire course of study, whether that's a semester or
10 a full year, but when will different skills or performance
11 measures be taught. Right?

12 A. Yes.

13 Q. So a scope and sequence, which is usually how we hear the
14 term used, is a map of how a teacher will teach from the first
15 day of school to the last day of school. Right?

16 A. Yes.

17 Q. And we understand then, can we agree, that once we've got
18 our curriculum and our scope and sequence, that the next step
19 is to identify instructional practices, as well as the
20 materials and the resources, including textbooks or
21 supplemental materials, that will be used to accomplish the
22 goal of -- set out in the scope and sequence in the curriculum?

23 A. It can mean that. It can also be simultaneous.

24 Q. But it's a necessary part, regardless of whether you do it
25 simultaneous or sequentially?

1 A. Yes.

2 Q. And by the way, can we agree that curriculum, at least in
3 Arizona, needs to be aligned to state-established standards?

4 A. Yes.

5 Q. Okay. Now, can we agree that it's important to have a plan
6 for assessment in strong curriculum?

7 A. Yes.

8 Q. And can we agree that would include pretesting to determine
9 what the students know when they come into the class?

10 A. Well, I mean, there's the IEPs, right, so that would be
11 important.

12 Q. I'm sorry, I didn't hear.

13 A. IEPs.

14 Q. Individual education plans?

15 A. Yeah. Yeah. So best practices within assessment include
16 knowing where your children are in terms of their literacy,
17 their reading, their writing, their comprehension. And so, I
18 mean, I know the special education literature, in particular,
19 but I think just generally speaking, IEPs are -- would be a
20 best practice.

21 Q. So an individual education plan is something that's
22 developed for a student with a disability, right?

23 A. It doesn't have to be for -- ideally, it's for everyone.
24 So, yes, it would be a best practice for a student with a
25 disability.

1 Q. Is it your testimony here today that it's a best practice
2 for a student with a disability, an individual education plan?

3 A. Yeah. Yeah, I mean --

4 Q. Just a best practice?

5 A. I think particularly when you're talking about children
6 with -- I mean, "disability" is such a big category. And if
7 you don't really understand whether there are sort of
8 overlapping kind of disabilities, what that disability is, the
9 depth, the level, the profundity, then you can get into -- the
10 child can get into a lot of trouble without an in-depth
11 understanding.

12 So absolutely, yes, IEPs are very, very important. And to
13 that I would extend it -- ideally, in a perfect world, that
14 would be known for every single child in our classroom. But we
15 don't live in a perfect world, and we don't have sufficient
16 time and resources. So, yeah, absolutely, IEPs would be
17 optimal in every educational context.

18 Q. Okay. Well, let's just set aside the term "individual
19 education plan" as it's used in the context of the Individuals
20 with Disabilities Education Act, which I believe is one part of
21 what you're referring to, because although that is an important
22 issue, we're just talking generally about curriculum.

23 And let's leave aside the laudable goal of individual
24 education plans, as you describe them, for every student, and
25 ask: Is pretesting an important part of assessment if you want

1 to build a strong curriculum?

2 A. Yes.

3 Q. And is progress monitoring assessment important in a strong
4 curriculum?

5 A. Yes.

6 Q. And is end of unit or end of year assessment -- are end of
7 unit or end of year assessments important in strong curriculum?

8 A. Yes.

9 Q. Because we can agree that we use the assessments to
10 determine if the written curriculum and the taught curriculum
11 achieve their goal of teaching the students the material that
12 we've identified as important. Right?

13 A. Right.

14 Q. Okay. Can we agree that a curriculum unit would be a small
15 piece or a section of a complete curriculum plan or a
16 curricular map?

17 A. That a curriculum unit would be a --

18 Q. A small piece of a complete curriculum plan, or we might
19 call it a series of lessons around a particular topic.

20 A. So my interpretation of your question is that curriculum
21 maps are comprised of lesson plans.

22 Q. So there's -- you don't have a definition of "curriculum
23 unit"?

24 A. Well, that would also be a lesson plan, a curriculum unit.

25 Q. The vocabulary here is very important, so I want to make

1 sure I understand. Do you think that the words "curriculum
2 unit" and "lesson plan" are interchangeable?

3 A. There could be other conventions. There could be certain
4 district conventions, because districts call these things
5 different names. So a curriculum unit, like in AISD, it could
6 be an exemplar lesson. Okay. And I saw exemplar lessons in
7 the TUSD curriculum. And so it would kind of be a robust
8 lesson plan, but that would provide a multiplicity of
9 information or materials or ideas for instruction that a
10 teacher could avail themselves of, yes.

11 So that would be different, in my estimation, an exemplar
12 lesson plan from a lesson plan. That would be much more
13 discrete regarding what a teacher might implement in a
14 particular day or a particular week, and it would be reduced;
15 relative to what we might think of as an exemplar lesson, that
16 would be pretty robust, but not necessarily delineated by day
17 or by week.

18 Q. Can you please define "lesson plan" as you're using the
19 term here today.

20 A. Yeah. So a lesson plan is how you would teach a very
21 discrete unit, a discrete idea. So, for example, if you wanted
22 to teach about -- I mean, as the curriculum here did, the Zoot
23 Suit Riots, if you wanted to teach about that, then that would
24 be a lesson plan that you would develop that would be specific
25 to the Zoot Suit Riots that would look at the history, the

1 context, the background, that would have guiding questions,
2 that might address specific themes, that would have maybe
3 activities that would be associated with that.

4 And that curriculum plan would -- as these plans had, these
5 lesson plans, they would haven anticipatory kinds of -- they
6 would have -- they would list out what the students should know
7 by now coming into this, into this unit.

8 So it would reference, maybe obliquely, but, you know, a
9 teacher would know. It would reference what had been taught
10 before, but -- and so it would be the basis on which to
11 structure in additional content, additional learning,
12 additional ideas. And a good teacher goes back in every lesson
13 to, you know, pick up on what had been taught before, just to
14 make sure the students are on track and they're not getting
15 lost.

16 So that would be -- you know, that would be a very -- for
17 me, a very discrete lesson plan. But a lot of districts, they
18 go the whole exemplar route, exemplar units, because they
19 really want students -- teachers to impart their craft on the
20 basis of their own prior knowledge in order to implement a
21 curriculum that gives you all kinds of ideas for, you know, how
22 to structure it out for this level of -- this grade level at
23 this age with this kind -- these kinds of materials, videos,
24 et cetera. So there is more to it than just a lesson plan.
25 There's exemplar units.

1 And then the map, the CRM -- we call it the CRM in AISD --
2 the curriculum roadmaps is where you would see the scope and
3 sequence of all the units, lesson plans, of all the lesson
4 plans.

5 Q. I think at the beginning you talked about a lesson plan
6 being a way to teach a discrete idea. And I would like to ask
7 you to bear with me today and use the idea -- excuse me -- use
8 the language curriculum unit to convey that concept of teaching
9 a discrete idea, and with the idea that a series of curriculum
10 units put together in a coherent way comprises a curriculum and
11 that a lesson plan is what the teacher uses to teach that day's
12 lesson.

13 A. Or that week's, possibly sometimes.

14 Q. Let's use "lesson plan" for the day's lesson and let's use
15 "curriculum unit" for that discrete idea. That's going to
16 be -- assure the curriculum itself covers the whole year, and
17 then you're going to have curriculum units that may be a week,
18 two weeks, three weeks, depending on the subject matter. Can
19 we agree on all those terms?

20 A. Let me just make sure we're speaking the same language
21 here, because this is important, yes. So we're talking
22 about -- we want to talk with the same language, right, so --

23 Q. We want curriculum unit -- I think we have a common
24 understanding of "curriculum," although we -- sometimes you use
25 the CRM. We want to make sure that we understand curriculum

1 unit is the way to teach a discrete idea.

2 A. Mmm-hmm.

3 Q. And the lesson plan is the day's lessons.

4 A. Mmm-hmm.

5 Q. All right?

6 A. Yes.

7 Q. Okay. Can we agree that a review of student work is
8 critical in evaluating curriculum?

9 A. Yes.

10 Q. That's because the end result in education is understanding
11 what the student is learning, and that student work tells you
12 what the student is learning. Right?

13 A. Yes.

14 Q. It tells you more than what you could see in a classroom
15 observation, right?

16 A. Hmmm. It tells you a lot. I think I would also learn a
17 lot from classroom observations, because students always --
18 they have a lot happening in their lives, and what appears on
19 paper really doesn't reflect always what they actually learned.
20 Right?

21 Q. Well, I didn't say it told you everything. I just said it
22 was an important piece.

23 A. Yeah. It's an important piece, yes.

24 Q. All right. So we can agree on that?

25 A. Yeah.

1 Q. All right. Can we agree that the purpose of a classroom
2 observation is to see how the written curriculum is being
3 instructed?

4 A. Yes.

5 Q. And I am going to ask, do you have any experience
6 conducting classroom observations for the purpose of evaluating
7 curriculum?

8 A. No.

9 Q. And the last point I'd like to get your agreement on, can
10 we agree that we would expect a curriculum director for a
11 specific program to have sound knowledge about the curriculum
12 across multiple -- the classrooms and the grades --

13 A. Yeah.

14 Q. -- that were served by that program?

15 A. Yes. Again, going back to Academia Cuauhtli, I do -- we do
16 conduct a formative assessment. We do conduct -- so I don't
17 think you were asking me about Academia Cuauhtli, right? You
18 had already taken me away from that?

19 Q. Well, I am just asking you what a curriculum director
20 should do.

21 A. Yeah.

22 Q. All right? And what I want to know is, do you think a
23 curriculum director should know what's going on in the
24 classrooms and the schools that are covered by his or her
25 program?

1 A. Yes.

2 Q. Okay. Now, in your report you indicated that ethnic
3 studies programs are still relatively uncommon in secondary
4 schools. Do you recall that?

5 A. Yes.

6 Q. And that, in fact, it's found primarily at the college
7 level?

8 A. Yes.

9 Q. And that is true today, in 2017, right?

10 A. Yes.

11 Q. That was even more true in 2010, 2011, right?

12 A. Yes. But there's a history of multicultural education in
13 our public school system, so it's not like it hasn't existed.

14 Q. I didn't ask you whether it didn't exist. I asked you
15 whether your statement that ethnic studies programs are still
16 relatively uncommon in secondary schools was true, is true now,
17 and was true in 2010?

18 A. Yes.

19 Q. Okay. What are the differences between high school and
20 college students that a teacher should consider in designing
21 and evaluating ethnic studies curricula?

22 A. Well, I think the main thing is that it be research-based.
23 I think that's the most important thing, that it come out of
24 the research that is generated by scholars.

25 Q. Is that a difference, between ethnic studies curricula for

1 high school and college students, or shouldn't they both be
2 exposed to the benefit of research-based curricula?

3 A. Well, it works differently at the college level. We don't
4 gain a lot of access at the college level to other people's
5 curriculum. Sometimes we do when we get to observe a
6 colleague's teaching. But most of what we learn at the college
7 level is from our research or readings, the conferences that we
8 attend. So it's a different dynamic at the college level.

9 We're mainly the knowledge producers, and so we provide the
10 content that should optimally be used at the K-12 level.

11 Q. Well, so is it fair to say then that you can't tell me what
12 the differences are between curricula for high school students
13 and college students?

14 A. With an n-of-one?

15 Q. I don't understand what you mean by "with an n-of-one" in
16 response to that question.

17 A. Well, an n-of-one would be Mexican-American Studies at
18 TUSD. How can you draw a comparison when you're talking about
19 one program in comparison to college level curriculum? That
20 doesn't make -- I don't understand that.

21 Q. I'm just speaking generally, the difference between ethnic
22 studies curricula for high school students and ethnic studies
23 curricula for college students?

24 A. I think it should be similar.

25 Q. They should -- oh, they should be similar?

1 A. Yes. Because what was foundational in the TUSD
2 Mexican-American Studies Program is also in the San Francisco
3 Unified Ethnic Studies Program, was that these would be college
4 preparatory kinds of courses. It was very intentional. So
5 there should be a pretty close mapping of -- I mean, not
6 complete overlap -- but there should be a pretty close mapping
7 of the high school and the college level curriculum.

8 Q. Is it your expert opinion that there are no differences
9 between high school students and college students that would
10 counsel that the curricula for those two different age groups
11 should also be different?

12 A. I think it -- I think that they should be similar.

13 Q. 14-year-old freshman and 22-year-old seniors, they all get
14 the same stuff?

15 A. I think that they're very -- much more savvy. I mean,
16 we're teaching fourth grade children, they're very worldly.
17 I've come to really know, appreciate fourth graders, and
18 they're already watching YouTube, they know about Martin Luther
19 King, they know about civil rights, they know about racism,
20 they know about SB4. They know a lot.

21 (Reporter requests the witness to slow down and repeat answer.)

22 THE WITNESS: Yes, I can slow down.

23 A. So I said that I've come to really know the fourth grade
24 students at Academy Cuauhtli, and I've come to appreciate that
25 grade level, and we, through that experience, realize how

1 much -- how worldly they are. That's what I said. Third
2 graders, no. Fourth graders, yes. Fourth graders are very
3 worldly, and they watch YouTube. They know about Martin Luther
4 King. We don't even have to teach it to them. They know about
5 Martin Luther King, they know about civil rights, they know
6 about racism, they know about SB4. Which I need to explain is
7 a law that just passed in Texas that is a show-me-your-papers
8 law that is tantamount to an attack on the undocumented
9 community in the State of Texas.

10 BY MS. COOPER:

11 Q. Dr. Valenzuela, do you think there's a difference between
12 the cognitive abilities of high school students and the
13 cognitive abilities of college students that would suggest that
14 the curricula and learning objectives for the two groups of
15 students be different?

16 A. There are differences, yes. Yes, I would suggest that.
17 And so as a teacher, you have to adjust through scaffolding.
18 You have to provide kind of simpler context. And the language
19 is different. The terms are different. They're not going to
20 be exposed to so many of the terms, the vocabulary that you get
21 at the college level.

22 Q. Now, you tried to collect ethnic studies, examples of
23 ethnic studies curricula, to use in connection with your
24 opinions, right?

25 A. Yes.

1 Q. What was the purpose of seeking such curricula?

2 A. At the time I was reading Christie Sleeter, and she did a
3 review of ethnic studies literature and content, and she is one
4 of the leading scholars in ethnic studies in the country and I
5 rely on her work a lot.

6 And what she was able to distinguish -- and I read her work
7 very closely -- was between soft and hard approaches. So she
8 distinguished between heroes and holidays at one end of the
9 continuum and then at the other end critical perspectives in
10 ethnic studies that she called "hard approaches."

11 And so for me it was an exercise. I was wanting to see if
12 there was any way that I could apply that framework to the
13 college classroom through the investigation of syllabi, and I
14 found out that at the college level they're all hard
15 approaches, if you will. They're critical approaches.

16 Q. You issued a worldwide call on social media for ethnic
17 studies curricular for K-12, correct?

18 A. It was K-12, and it was just ethnic studies in general.

19 Q. How many responses did you get?

20 A. It was so many.

21 Q. It was so many?

22 A. It was a lot. I don't think it's in my expert report, but
23 I think it was around -- what was it? I'm not going to guess.
24 It was a lot.

25 Q. Let me see if I can help you remember what you told me in

1 your deposition that you received in response to that request.

2 Pardon me, we don't have fancy technology at the state to
3 bring stuff up. All right.

4 I asked: How many curriculum guides or lessons did you
5 receive for the pre-K-12 segment? And you said: Only one, the
6 one I mentioned earlier. That's at page 130, lines 12 through
7 14. Do you recall that?

8 A. Yeah.

9 Q. And do you stand by that testimony?

10 A. Yes.

11 Q. You received one?

12 A. Yes.

13 Q. But you didn't use it, did you?

14 A. No.

15 Q. Is issuing a worldwide call over social media a valid and
16 reliable method of collecting information with respect to
17 evaluating curriculum?

18 A. Yes, but particularly coming from me, as an expert.

19 Q. I see. So because you asked for the material, that made it
20 a valid and reliable method?

21 A. In the sense that because I asked for it, people responded.

22 Q. One person responded, right?

23 A. No. No. No. I mostly got curricula from the college
24 level. So I got a lot of syllabi from faculty across the
25 country.

1 Q. I want to focus on K-12.

2 A. Yeah, just one.

3 Q. Just one.

4 A. Yeah.

5 Q. Okay. Because we've established, in fact, that ethnic
6 studies multicultural curricula are, in fact, far more
7 prevalent the post secondary level, right?

8 A. Yes.

9 Q. I want to talk a little bit about the information you have
10 regarding TUSD's MAS program.

11 THE COURT: Since you're transitioning a little bit,
12 it would be a good time to take our afternoon recess.

13 MS. COOPER: That sounds like an excellent plan, Your
14 Honor.

15 THE COURT: We'll be in recess at this time.

16 MS. COOPER: 15 minutes, Your Honor?

17 THE COURT: Yes.

18 (A recess was taken from 3:12 p.m. to 3:42 p.m.)

19 THE COURT: All right. Let's all be seated and
20 continue with the cross.

21 MS. COOPER: Yes, Your Honor.

22 BY MS. COOPER:

23 Q. Ready?

24 A. Yes.

25 Q. I want to talk about the information that you have about

1 TUSD's MAS program. Now, you're familiar with summer
2 institutes that TUSD offers, right?

3 A. Yes.

4 Q. And those offer professional development assistance to
5 teachers and others, correct?

6 A. Correct.

7 Q. And you attended one that covered the MAS program, right?

8 A. I attended two that were sponsored by the MAS program.

9 Q. Two that were sponsored by the MAS program. And how many
10 did you attend then that covered the culturally relevant
11 curriculum?

12 A. Two.

13 Q. Two. So you attended a total of four?

14 A. I'm sorry?

15 Q. Have you attended a total of four summer institutes?

16 A. I attended -- I believe it was two summer institutes, and
17 then it was a colloquy kind of institute that I also attended.

18 Q. All right. Did one of the summer institutes address MAS
19 classes?

20 A. Yes.

21 Q. And the other addressed culturally relevant classes, right?

22 A. I think it is -- okay.

23 Q. Was it after the year 2011?

24 A. So it was the CRC, yeah. I attended that as well. So I
25 believe it was two before the program was abolished, then a

1 colloquy, and then one more recently that was of the CRC.

2 Q. So the colloquy was at the University of Arizona in 2010,
3 and that addressed MAS classes?

4 A. Yeah, I did.

5 Q. And you've watched a MAS teacher teach a simulated class to
6 conference participants in Washington, D.C., right?

7 A. That was Curtis Acosta's class, yes.

8 Q. Right, and that was a Latino literature class?

9 A. Mexican-American literature class.

10 Q. Did you rely in those experiences in forming your opinions?

11 A. Yes.

12 Q. Now, you've also reviewed curriculum in forming your
13 opinion, right?

14 A. Yes.

15 Q. In fact, you reviewed two sets of -- you've identified two
16 sets of curricular materials that you identified, right?

17 A. Yes.

18 Q. What criteria did you use in choosing the curricula that
19 you reviewed for the purpose of offering your opinions in this
20 matter?

21 A. What criteria?

22 Q. Yes.

23 A. Like what evaluative criteria?

24 Q. How did you choose which criteria -- which curricula to
25 review to form your opinions?

1 A. Well, I only -- I didn't choose the curriculum. It was
2 given to me.

3 Q. So you did not choose the criteria -- you did not choose
4 the curriculum.

5 A. No. I just requested it, and I was able to review what was
6 sent directly to me, and I was able to review the materials
7 supplied to me by the defendants' exhibit.

8 Q. I want to talk right now about what you reviewed in
9 connection with your report, and let's say up to the time of
10 your deposition. We'll have a different opportunity to talk
11 about the materials that you received a couple of days ago.
12 Okay?

13 A. Okay.

14 Q. So can we agree that we're talking about the information
15 that's reflected in your declaration?

16 A. Yes.

17 Q. And that's two sets of materials.

18 A. Yes.

19 Q. Sent to you. By whom?

20 A. By Sean Arce.

21 Q. And do you know what criteria Mr. Arce used to identify the
22 curricula that you should use to form your opinions in this
23 case?

24 A. It was just a request, and he sent me what he had, and he
25 indicated that -- given the time that had passed and since he

1 had moved around and at that point was in California -- he's
2 still there -- that he didn't have everything at his disposal.

3 Q. So he just sent you what he had?

4 A. Yes.

5 Q. All right. So far as you know, Mr. Arce didn't apply any
6 criteria when he determined which curricular materials to send
7 you, right?

8 A. Right.

9 Q. And your opinion covers the entirety of TUSD's MAS
10 curriculum, kindergarten through 12th grade, right?

11 A. That's my expert judgment, yes.

12 Q. So in high school those classes were offered to juniors and
13 seniors, right?

14 A. It was offered in high school to juniors and seniors, yes.

15 Q. And there were literature classes, American history, and
16 American government classes and social justice classes, right?

17 A. Yes.

18 Q. And then the elementary and middle school classes?

19 A. Yes.

20 Q. And so let's see. I want you to take a look -- let's
21 see -- first of all, at the first set of curriculum you
22 identified, which is called the 2011-'12 Curriculum and Pacing
23 Guide, American History, Mexican-American Perspectives 1, 2,
24 and that's by Sean Arce, and it's marked "draft." And I
25 believe that is Exhibit C to your declaration.

1 Could you confirm that for me?

2 A. Yes.

3 Q. That's a high school curriculum teaching American history,
4 right?

5 A. Right.

6 Q. And you understand that American history is a class that is
7 required by the State of Arizona for graduation from high
8 school, don't you?

9 A. Yes.

10 Q. And do you know why a state might require that its high
11 school students have a good grounding in American history?

12 A. Because history is important.

13 Q. All history is important?

14 A. So we don't repeat the sins of the past.

15 Q. So now this curriculum that you reviewed in connection with
16 your report and declaration is dated 2011-2012, right? You'll
17 see that if you look at the first page, the header.

18 A. Yes.

19 Q. It's marked "draft," correct?

20 A. Yes.

21 Q. And you don't know if it was ever taught, do you?

22 A. I do know it was taught.

23 Q. When was it taught?

24 A. It was taught prior to 2011-2012. This was a curriculum
25 framework that reflected what was being taught.

1 Q. What's your basis for stating that this was a curriculum
2 framework that reflected what was being taught?

3 A. From my interview of Sean Arce.

4 Q. Is that the sole information upon which you rely as support
5 for that assertion?

6 A. It was also that -- I see across the materials that I have
7 before me, I see that there is a correlation between this
8 curriculum map and those lesson plans.

9 Q. All right. Well, I want to -- again, remember we're
10 talking about what you had available to you at the time of your
11 deposition and then your declaration. I want to ask you again,
12 at the time of your deposition and your declaration, did the
13 curricular material that you have available to you consist of
14 the two items that are identified in your declaration?

15 A. Yes.

16 Q. So how did you at that time conclude on the basis of review
17 of other MAS curriculum that this curriculum, the 2011-2012,
18 was reflective of what was being taught?

19 A. So I was able to see that the curriculum had a, well, a
20 cogent professional structure, and so it was a good correlation
21 between that curriculum lesson plan and the actual curricular
22 map that we have before us. So it was a pretty easy inference
23 to draw.

24 Q. I'm completely confused by that answer. We have a
25 2011-2012 draft curriculum for a single high school class,

1 right?

2 A. Right.

3 Q. And you told me that it was reflective of what had been
4 taught before, right?

5 A. Yes.

6 Q. And I want you to tell me how you made that determination
7 when you didn't have any other materials from MAS classes.

8 A. No, I did have materials from MAS classes.

9 Q. So you had materials at the time of your declaration from
10 MAS classes that you didn't tell defendants about?

11 A. No.

12 Q. So you're familiar with the fact that when you were
13 subpoenaed, you were requested to turn over all of the
14 materials that you relied on.

15 A. Yeah, I did that.

16 Q. So we're entitled to rely on your compliance with that
17 subpoena, right?

18 A. Yes.

19 Q. And can I represent to you that there were no curricular
20 materials to speak of in the materials that you turned over to
21 us?

22 A. I don't really recall those details. I thought I had
23 turned in everything.

24 Q. All right. But you told me that Sean Arce sent you two
25 things, right?

1 A. Yes.

2 Q. So, once again, I want to know what you did to make the
3 determination that this 2011-2012 draft pacing guide reflected
4 what was being taught in the MAS program. What did you look
5 at?

6 A. Well, I mean, there are standard ways of looking at these
7 things. And so I was interested in, for example, whether the
8 curriculum was aligned to state standards, if they were
9 teaching reading and writing and things like that. I was
10 interested in whether they were teaching higher order concepts
11 that would be college preparatory. And I was able to observe
12 that not only in the curriculum materials that were sent to me
13 prior to my deposition, but I was able to see this through and
14 draw an inference through Sean Arce -- sorry -- through Curtis
15 Acosta's simulation classroom I observed, where it was very
16 clear to me that there was a scope and sequence, there was
17 lesson plans and units.

18 I also saw Precious Knowledge, which was I think pretty
19 informative about the pedagogy itself. So it was really just
20 the entirety of what I had at my disposal that led me to the
21 judgment that I made on the curriculum.

22 Q. In terms of curricular materials that you had at your
23 disposal, the entirety at that point when you wrote your
24 declaration consisted of what Mr. Arce had chosen to send you,
25 right?

1 A. Also from the interviews. I had already interviewed them
2 and talked to them about the materials. So it was also based
3 on the discussions that I had with them.

4 Q. So you asked Mr. Arce if his curricular materials reflected
5 what had been taught before, and you accepted his answer at
6 face value?

7 A. Well, he was able from the top of his head to talk about
8 his class in teaching about Mexican-American -- I believe it
9 was history -- and so I was very impressed not only with the
10 breadth of what was taught, but that was something that he
11 practically in an encyclopedic manner was able to recount to me
12 in terms of the sequence of events that, in fact, were quite
13 substantive, very rich, and sequential and logical.

14 Q. So are you telling me that because you believe that
15 Mr. Arce had an encyclopedic knowledge of Mexican-American
16 history and could recount that to you in a logical sequential
17 fashion that, therefore, he must have taught that to his
18 students? Is that the basis for your opinion, Dr. Valenzuela?

19 A. Well, I interviewed him, and he told me -- he shared with
20 me that that was what he had done, what he had taught.

21 Q. Okay.

22 A. There was no hesitancy in his -- and he -- and he explained
23 that they met regularly, they met regularly to talk about
24 curriculum, and it was very clear to me from the quality of the
25 curriculum that that was the case.

1 Q. And did you check with anyone else to confirm whether, in
2 fact, this curriculum that's represented by this 2011-2012
3 pacing guide was, in fact, reflective of what was being taught
4 in the MAS program?

5 A. Just, yeah, just from other sources, like Precious
6 Knowledge, the simulation classroom that I observed. I mean,
7 primarily through those sources.

8 Q. What subject -- now, it was Mr. Acosta that taught the
9 simulation classroom, right?

10 A. Right.

11 Q. And Mr. Acosta teaches literature, right?

12 A. That's right.

13 Q. So how did Mr. Acosta's teaching a simulated literature
14 class help you understand what Mr. Arce did in American
15 history?

16 A. Because it really reflected what he shared. It reflected
17 the underlying pedagogy that also informs the curriculum that
18 was taught by Sean Arce and also José and Norma, the other
19 teachers.

20 When I interviewed them, all of them, they spoke about the
21 pedagogy and how, for example, authentic caring was very, very
22 essential. So values are very important. They spoke about
23 indigenous epistemologies, they spoke about how they use
24 multiple sources of evidence in order to -- as part of their
25 pedagogy in order to arrive at -- have their students arrive at

1 sound judgments of curricular content and how that was
2 something that was not regularly available in their regular
3 classrooms within the Tucson Unified School District.

4 What they characterized about TUSD was that for the most
5 part teachers were given a book, and it was sort of more than a
6 banking approach to education, where teachers didn't stray too
7 far from those texts. And so what they wanted to do, and they
8 were very intentional about it -- and I believe them because
9 the achievement was very high among the students and they went
10 to college according to -- at higher rates than other students
11 because of the curriculum -- that they had to have had a sound
12 curriculum that reflected higher order thinking and that
13 required them to engage in multiple kinds of texts for that
14 achievement outcome to have occurred in the first place. You
15 could not have that kind of outcome with a curriculum in
16 disarray.

17 Q. All right. I want to see if I can understand this. You're
18 referring to conversations that you had in focus groups, right?

19 A. Yes.

20 Q. You don't have any particular expertise in conducting focus
21 groups, right?

22 A. Yes, I do.

23 Q. How many have you conducted?

24 A. I haven't conducted very many, but I know and understand
25 the methodology and, of course, our doctoral students, I advise

1 them regularly on conducting focus groups. And so I've read
2 scholarship research methods in that area.

3 Q. Would it be fair to say that everyone that you included in
4 your focus group was a supporter of the MAS program?

5 A. Yes.

6 Q. And is it usual to conduct a focus group that consists
7 solely of supporters of a program?

8 A. It would be an approach, yes. I mean, it would be an
9 approach that would often be triangulated with other kinds of
10 evidence, such as what I did in my review of the evidence.

11 Q. So essentially what happened is that you composed a focus
12 group of MAS teachers, right?

13 A. Yes.

14 Q. And you asked them what they taught in MAS classes and
15 whether it violated the statute or promoted resentment or
16 taught students to be victimized, and they told you no, that
17 they were good teachers who didn't promote resentment or teach
18 students to be victimized, and you believed them. Right?

19 A. Well, they said much more than that, but yes, I believed
20 them.

21 Q. You didn't check to see what -- you didn't talk to anybody
22 else, did you?

23 A. No, I didn't talk to anyone else, but it was consistent
24 with theoretical frameworks that I am very familiar with and
25 also research evidence to suggest that there is some coherence

1 to what they did and to what the research literature theorizes
2 as optimal.

3 Q. Do you know if Mr. Arce ever completed this draft
4 curriculum?

5 A. It looks complete to me.

6 Q. Even though it says "draft"?

7 A. Yes.

8 Q. Do you recall when TUSD terminated the MAS program?

9 A. 2011, I believe, or 2012. January 1st, 2012.

10 Q. Right. And so this curriculum is, in fact, for the school
11 year in which the program was terminated, right?

12 A. Yes.

13 Q. So let's talk about the second set of curriculum that you
14 discussed in your declaration, and I am going to ask you to say
15 the name slowly and spell it for the court reporter so that we
16 don't murder it.

17 A. Okay. Exhibit D?

18 Q. Yeah.

19 A. Nahuiollin.

20 Q. Yes. Can you spell that, please, for the court reporter.

21 A. N-a-h-u-i-o-l-l-i-n.

22 Q. That says that it -- it's called bringing harmony and
23 balance through an understanding of Tezcatlitoca.

24 A. Mmm-hmm.

25 Q. That's T-e-z-c-a-t-l-i-t-o-c-a. It's for K-12, and it was

1 prepared by Norma Ballesteros, right?

2 A. Yes.

3 Q. Now, is it usual in your experience to develop curriculum
4 that is adequate to teach students who are age five and
5 students who are 18?

6 A. In my experience, what you could have in a curriculum at
7 the elementary level, it would be -- it could be different at
8 the high school level, but at the high school level it could be
9 inclusive, fully inclusive of what is taught at the elementary
10 level.

11 Q. Well, how does a kindergarten teacher use this curriculum
12 as compared to a high school teacher, if you know?

13 A. Yes. What Norma was very conversant on, and she was also
14 the instructional leader in her school, and she did that for
15 one year and then there was a funding situation and she ended
16 up thereafter being a teacher in the school. But when she was
17 first as an instructional leader in the school, they
18 implemented this language arts curriculum according to this
19 asset-based pedagogical approach, and so they didn't teach like
20 they did at the high school level.

21 What she was more interested in, in terms of an asset-based
22 perspective, was helping the children to see beyond -- first of
23 all, to understand, but also to see beyond the pejorative
24 negative identities that had been imposed upon them. And an
25 important part of that curriculum was to have students draw

1 themselves. And I think reminiscent of the Clark studies under
2 the *Brown v. Board of Education*, what she observed was that the
3 children, when they drew themselves, that they drew themselves
4 with, a number of them, with blue eyes and blond hair --

5 Q. I was just asking how the teacher who teaches kindergarten
6 uses this curriculum as compared to the teacher who teaches the
7 high school senior. I am not sure that your answer relates to
8 my question.

9 A. Well, that's how you would teach it differently. It's
10 about love. It's about relationship. It's about respect.
11 It's about getting along. Most importantly, what she
12 emphasized in her interview, it's about self-love. Because
13 these children -- and the research shows that at the age of
14 eight -- there's other research that shows it's even earlier --
15 the children acquire a sense of who they are based on these
16 external ideas that stigmatize them. So they're ashamed of who
17 they are sometimes, they are ashamed of their language and
18 their cultures, and so a lot of what has to be done at the
19 elementary level and really at all levels -- it would be done
20 differently at the high school level than drawing pictures of
21 themselves but -- necessarily -- but at the elementary level,
22 it's helping children to, you know, really see themselves as
23 perfect and beautiful, regardless and even because of their
24 skin color, and because of their culture and their language.

25 Q. How do those lessons help children's cognitive abilities

1 improve?

2 A. Because it -- what happens is that there's stereotyped
3 threat, and that's something Thomas Dee and Penner were very
4 focused on, and this is the social-psychological literature
5 with which I am also familiar. And it's really an old
6 literature, again, going back to *Brown vs. Board of Education*,
7 going back to *Pygmalion in the Classrooms*, Rosenthal and
8 Jacobson, going back to Ray Rist's studies, that shows that
9 children are very vulnerable to the stereotypes that exist.
10 Such that even asking children in the context, for example, of
11 a high-stakes situation about their race, where they're having
12 to take a standardized test, that impacts the outcome.

13 So stereotype threat or bias that exists really does -- it
14 contributes to the achievement gap, because they're seeing
15 themselves through the lens of others that don't think
16 positively about them.

17 Q. I'm going to ask a really simple question right now. One
18 of your focus group members was Norma González, correct?

19 A. Yeah, uh-huh.

20 Q. And is Norma Ballesteros the same person, just a
21 different -- the last name has changed or --

22 A. I think so.

23 Q. You believe -- so you believed that the person who
24 participated in your focus group is the person who drafted this
25 curriculum?

1 A. I can't confirm that, but I think so, yes.

2 Q. You think so. Okay. You're not sure.

3 So if we look at page 4, do we see that although the cover
4 says it's K-12, in fact, it's K-5? At the top there, the
5 paragraph says: The lessons are designed to be implemented in
6 a K-5 setting?

7 A. Yes.

8 Q. Okay. So did you evaluate it as a K-5 curriculum despite
9 its cover?

10 A. Yes.

11 Q. So would you understand this is a curriculum unit, as we
12 defined the word earlier today?

13 A. Yes, I would.

14 Q. It's a series of lessons on a discrete topic, right?

15 A. Yes.

16 Q. In fact, if we look, I believe, at -- I lost my page
17 reference. I think there are seven lessons. Does that sound
18 right? Will you accept my representation?

19 A. Strands? Are you talking about the strands?

20 Q. No. I am talking about there are seven lessons that are
21 covered, included.

22 A. Yes.

23 Q. So this would cover a couple of weeks, three weeks,
24 something like that?

25 A. Yeah. I mean, we don't know for sure, but, yes.

1 Q. So you drew your conclusions about the TUSD MAS curriculum
2 on the basis of a draft pacing guide for an American history
3 class. Right?

4 A. Mmm-hmm.

5 Q. And a curriculum unit with seven lessons for K-5, right?

6 A. Not exclusively, but, yes. It included that, yes.

7 Q. Well, that's what you identified in your declaration,
8 right?

9 A. Yes.

10 Q. And you haven't identified any other curricula materials
11 that you used, right?

12 A. No.

13 Q. And, in fact, that's all Mr. Arce chose to send you, right?

14 A. Yes.

15 Q. And you didn't ask for any others?

16 A. Yes, I did.

17 Q. But you didn't receive them?

18 A. Yes.

19 Q. Correct? You did not receive any -- your response -- your
20 request for additional curriculum materials did not produce any
21 additional materials, correct?

22 A. Mmm-hmm.

23 Q. How did you determine that these two sets of curricular
24 materials constituted a valid and reliable sample that would
25 allow you to draw a conclusion about the entirety of TUSD's MAS

1 curriculum from kindergarten through 12th grade?

2 A. Because I triangulated, I was able to use other sources of
3 information, and I mentioned already the interviews, the
4 simulation classroom, Curtis Acosta's simulation classroom,
5 Precious Knowledge, and just different things that I heard
6 about the curriculum over the years.

7 And also there was, in the actual depositions, descriptions
8 of the curriculum, like, for example, when -- well, I mean,
9 it's escaping my mind right now. But there's other content
10 within the corpus of evidence that I was given that suggests a
11 real integrity in the curriculum. I'm trying -- I'm thinking
12 about the Cambium report, but I'm trying to remember that they
13 did observe classrooms, and they felt that the curricula
14 actually should be implemented everywhere, districtwide.

15 Q. So we have interviews with MAS teachers?

16 A. Mmm-hmm.

17 Q. A simulated class by a MAS teacher, right? I'm asking you
18 what you relied on. Precious Knowledge, a video promoting the
19 MAS program, right?

20 A. Uh-huh.

21 Q. What you heard over the years?

22 A. Yes.

23 Q. And the Cambium report?

24 A. Yes.

25 Q. And that's what you relied on to form your opinions?

1 A. Well, there were other articles. I read other articles in
2 the process. I mean, Sean Arce and Curtis Acosta, they
3 actually had published pieces about the curriculum. I also
4 relied on Julio Cammarota's work, and he has -- I think we
5 discussed it a little bit in my deposition, where he talked
6 about the social justice education program and how students had
7 actual research projects.

8 So I knew about that aspect, too, and that was at the high
9 school level. And I knew for a long time about Julio
10 Cammarota's work and the action research that they were doing
11 at the schools, and so that was also very important to my
12 understanding of the curriculum.

13 Q. Social justice, that's an elective class, right?

14 A. The Social Justice Education Project? It was a project
15 where they prepared teachers to implement, like, action
16 research projects in the high school curriculum.

17 Q. So, again, how did you determine that the curriculum units
18 that you relied on were a valid and reliable sample of what was
19 being taught?

20 A. Well, there's basic kinds of criteria, and you have to look
21 at, like, for example, Wiggins and McTighe's work, and do you
22 have backward design? Do you have -- is it moving from -- you
23 know, from sort of simple constructs to complex ones, where you
24 have higher order thinking. Are students not simply, like, you
25 know, decoding language, but, you know, they're actually

1 analyzing and synthesizing and at the end, perhaps even doing
2 something creative with the curriculum? I mean, there are ways
3 to assess a curriculum that relies on these kinds of criteria
4 that I did rely on that I saw in what had been shared with me.

5 Q. I want to go back to those words that we defined earlier
6 today, and I want to ask you if you saw well-defined curricula
7 for TUSD's MAS classes -- and by that, I mean the year-long set
8 of materials -- aligned to state standards.

9 A. I was able to --

10 Q. I only want to ask you what you saw.

11 A. I was able to see that, yes.

12 Q. And when did you see, other than this example that is
13 attached to your report, examples of curricula that covered the
14 entire year?

15 A. I was able to see that there were -- and the teachers also
16 spoke to me about lesson plans, and there's even language --

17 Q. I'm not talking about lesson plans. I'm talking about
18 curriculum.

19 A. I know you're not. But I think that curriculum roadmaps or
20 curriculum maps, by the way, can be a luxury. You need --

21 Q. A luxury?

22 A. They can be.

23 Q. Really?

24 A. Because our schools are not well-funded.

25 Q. Well, you don't have to tell us that here in Arizona,

1 Dr. Valenzuela, I'm afraid. You consider -- your opinion is
2 that curricula that cover an entire year are a luxury?

3 A. A roadmap can be. But what you can have in lieu of that,
4 and it's just as valid, would be -- as they had in TUSD, would
5 be a series of units and lesson plans within those units that
6 spanned the entire year in the context of a group that meets
7 regularly to discuss curriculum so that you have an implicit
8 roadmap.

9 And I've been involved, as I've shared already, in the
10 development of curriculum, and you don't have necessarily a
11 roadmap. And it's always -- it's always a work in progress.
12 Right now our curriculum roadmaps are a work in progress, so --

13 Q. Well, without a roadmap, how do you know where you're
14 going?

15 A. Because you have an implicit roadmap. You have a
16 structure. You have a relationship. And I mean --

17 Q. And did you see that implicit structure and relationship in
18 the two sets of materials that you reviewed?

19 A. Yes, I did.

20 Q. Okay. K-5 and an 11 th grade class?

21 A. Yes.

22 Q. You saw that.

23 A. Yeah.

24 Q. Okay. And I want to ask you whether you saw pacing guides,
25 scope and sequence, other well-defined curricula in your

1 review.

2 A. Yes.

3 Q. Now, you looked at the Cambium report, right?

4 A. Yes.

5 Q. Okay. This is a page from the Cambium report which I
6 believe -- I'll leave this here. I am only asking you about
7 the top part, but if you want to see the bottom, let me know.

8 This is Exhibit 93. It's been admitted. You recall
9 reading this document, don't you?

10 A. Yes.

11 Q. This is page 64 of the actual report. Do you see
12 Recommendation Number 1?

13 A. Yes.

14 Q. Create board policies and procedures for effective
15 curriculum management within the Mexican-American Studies
16 Department. Do you see that?

17 A. Yes.

18 Q. And do you see that the topic sentence of the next
19 paragraph recommends that the governing board create policies
20 and procedures for effective curriculum management and even
21 recommends they seek a third party for assistance. Did I read
22 that correctly?

23 A. Uh-huh.

24 Q. And do we see, if we go down to the next paragraph that's
25 highlighted: The curriculum audit team found many board

1 policies did not meet audit criteria and are considered
2 inadequate to provide a basis for sound local control of
3 curriculum. There are minimal TUSD governing board policies in
4 place regarding curriculum.

5 Do you see that?

6 A. Yes.

7 Q. And then let's go to page 43, another discussion of the
8 topic. The auditors did not find a well-defined solitary
9 document that provided the integrated, comprehensive guidance
10 needed to direct, monitor, and assess effective curriculum
11 implementation. The degree to how well the curriculum is
12 organized and established remains to be determined, as there
13 are many unsystematic procedures in place. There was no
14 observable evidence provided to the auditors to indicate a
15 well-defined curriculum detailing clear long- and short-term
16 goals within each course, along with pacing guides and use of
17 formative and summative assessments.

18 Do you see that?

19 A. Yes.

20 Q. Okay. Now, you're telling me that you relied on the
21 Cambium report in forming your opinions, correct?

22 A. It was one of many sources, yes.

23 Q. Did you rely on the Cambium report's findings with respect
24 to the lack -- to the unsystematic procedures and the lack of a
25 well-defined curriculum in forming your opinion?

1 A. Yes.

2 Q. You did?

3 A. Yes.

4 Q. So you agree with the Cambium report that, in fact, TUSD --
5 TUSD's MAS program lacked a well-defined curriculum.

6 A. I disagree with the perspective. I think that I agree with
7 the statement, but disagree with the perspective. I think that
8 a deeper consideration of the curriculum would have revealed a
9 lot of structure, with goals, with objectives, alignment to
10 state standards, anticipatory kinds of knowledge, activities.
11 It's very impressive, the curriculum that I've seen, everything
12 that I've seen.

13 Q. So if the Cambium auditors had just looked harder, they
14 would have found what you found?

15 A. No, I don't think so. I think they had a perspective.

16 Q. Really? And what's their perspective?

17 A. They didn't allow for an implicit curriculum.

18 Q. I see. So there's no -- can we agree then that the MAS
19 program did not have an explicit curriculum?

20 A. I would say that in the materials that I reviewed, I only
21 see an implicit curriculum map.

22 Q. Okay. Is that an understood term in educational pedagogy,
23 "implicit curriculum"?

24 A. I'm not sure.

25 Q. Did you use it in your declaration?

1 A. I don't think I did use it. I'm not sure.

2 Q. How about your report? Did that address implicit
3 curriculum?

4 A. No. It addressed curriculum.

5 Q. Mmm-hmm. It addressed explicit curriculum, right?

6 A. Yes.

7 Q. Because how would the Cambium auditors evaluate implicit
8 curriculum?

9 A. You would have to look at the internal consistency of the
10 documents. I think you would have to have a real understanding
11 of curriculum and pedagogy in order to draw an inference about
12 an implicit roadmap. It's very professional, what I see. It's
13 very professional. It's very well-designed. It's
14 well-conceived.

15 Q. I'm not asking you whether it's professional and
16 well-designed. I'm asking you how the Cambium auditors would
17 determine what the implicit curriculum looked like.

18 A. Well, I think that they would have -- they would have only
19 had one understanding of what a curriculum map would look like,
20 and so, in their estimation, TUSD fell short.

21 Q. And that's the standard understanding --

22 A. Yes.

23 Q. -- of curriculum?

24 A. I think so.

25 Q. That's the understanding of curriculum that you employ on

1 the committee for the Austin Independent School District,
2 right?

3 A. Right.

4 Q. And that's the understanding of curriculum that you employ
5 with respect to the Saturday School?

6 A. Yes.

7 Q. All right. Now, you got several hundred pages of new
8 materials two days ago with respect to your opinions?

9 A. Correct.

10 Q. So how did you evaluate that -- tell me -- first of all,
11 those were lesson plans?

12 A. I saw units and lesson plans.

13 Q. Units and lesson -- did you find a well-defined curriculum
14 there?

15 A. Yes.

16 Q. You did?

17 A. Yes.

18 Q. For what classes?

19 A. Still implicit.

20 Q. Oh, implicit. I'm -- let's just talk about explicit.

21 A. Oh, explicit?

22 Q. Yeah.

23 A. No.

24 Q. No? Now, were you aware that, in fact, there were at least
25 200 curriculum units on a shared drive that were available to

1 Mexican-American Studies teachers?

2 A. No.

3 Q. Were you aware that the MAS teachers -- the MAS Program had
4 a collection of curriculum that was kept in a variety of other
5 media, like CDs and DVDs?

6 MS. BARRINGTON: Objection. Foundation.

7 MS. COOPER: I'm asking what she knows.

8 THE COURT: It's overruled.

9 THE WITNESS: Repeat the question, please.

10 MS. COOPER: Can you please read it back.

11 (Reporter read back the last question.)

12 A. No, I wasn't.

13 BY MS. COOPER:

14 Q. All right. And were you aware they also had curriculum on
15 paper?

16 A. I was aware of paper curriculum.

17 Q. Knowing that there are so many more curricular materials
18 that you didn't see before you wrote your declaration, do you
19 want to change your opinion at all?

20 A. No.

21 Q. You're confident that all of those materials will just
22 confirm the correctness of your conclusions?

23 A. I am confident about that.

24 Q. What did you do to establish that the draft pacing guide
25 met Arizona state standards?

1 A. It referred specifically to state standards.

2 Q. So if it says it meets state standards, then it does?

3 A. Yes. Common core. Common core, mmm-hmm.

4 Q. And common core -- and when did Arizona adopt social
5 studies common core standards?

6 A. I believe it was in 2012.

7 Q. When were social studies common core standards created?

8 A. I don't remember. I think it might have been earlier. I
9 know they hadn't been implemented in 2011, so maybe it was
10 being -- it was being described or developed at that point.

11 Q. Would you agree with me that the following statement, which
12 is taken from the Common Core website, corestandards.org, from
13 the page about the standards, the statement is: The common
14 core is a set of high quality academic standards in mathematics
15 and English language arts literacy?

16 A. I would agree with that.

17 Q. Do you see any mention of social studies?

18 A. I haven't read the -- I haven't seen that website, so I'm
19 not really sure if elsewhere it suggests that.

20 Q. Have you seen the social studies common core standards?

21 A. No.

22 Q. Is that because they don't exist?

23 A. Possibly.

24 Q. Okay. So we can't say whether, in fact, this draft pacing
25 guide was aligned to common core standards. Right?

1 A. I believe that I saw common core on the pacing guide.

2 Q. So, again, because it says "common core," it was aligned to
3 common core, even though there are no common core standards for
4 social studies?

5 A. I don't have enough information to make a determination.

6 Q. Do you want to withdraw your opinion that this curriculum
7 was aligned to common core standards?

8 A. It says here common core standards and Arizona standards,
9 and so I can only go by what's in front of me.

10 Q. So you didn't -- you just accepted the information in this
11 draft curriculum guide at face value, and you didn't examine it
12 for validity or veracity?

13 A. At the time that we did, at the time we did look at this, a
14 student and I, and I didn't see -- I didn't see any
15 inconsistencies.

16 Q. You didn't see any inconsistencies between the statement
17 that it met common core social studies standards and the fact
18 that there are none?

19 A. Yeah, I didn't. At the time I didn't.

20 Q. Now, what is the basis for your conclusion that this draft
21 guide boasts substantial writing requirements?

22 A. Well, it's -- I might have to look at this and refresh my
23 memory, but --

24 Q. Can we agree you didn't identify any in your report or your
25 declaration?

1 A. I didn't identify what?

2 Q. The writing requirements.

3 A. We can agree, uh-huh.

4 Q. And can we agree that you were not able at your deposition
5 to describe what the learning objectives were for this class?

6 A. Well, I mean, I remember that for this class the students
7 had to be able to weigh different evidence, and I did speak to
8 that in my expert witness, that that was an important feature
9 of the program in distinguishing fact from opinion, for
10 example, considering rival kinds of interpretations of a
11 finding, rival or alternative. So there was that kind of depth
12 that I saw.

13 Q. Those are the learning objectives that you identified?

14 A. That was what I remember focusing on in my expert witness
15 report. The research skills, the real analytical ones that had
16 to do with analyzing and developing an argument and
17 synthesizing it and, you know, really, like, trying to -- like
18 we do at the college level, look at multiple sources of
19 information instead of arriving at a specific judgment so that
20 your statements can be credible.

21 Q. You didn't do anything to determine that a teacher could,
22 in fact, teach to and meet the specific learning objectives in
23 this pacing guide, did you?

24 A. Other than have a conversation with Sean Arce about that.

25 Q. And you didn't do anything to determine whether a teacher

1 could cover this material in one year, right?

2 A. No, I don't know if -- if they did.

3 Q. You didn't do anything to determine whether a teacher could
4 use all the materials listed in this guide.

5 A. No. I think the way to do that would be to observe a
6 classroom and to also talk to teachers and to interview them,
7 and I did interview them. And so it was my understanding from
8 the interviews that the material was covered in a year.

9 Q. Mr. Arce told you that his curriculum guide was good, is
10 that it?

11 A. Yes, he did.

12 Q. Does this draft pacing guide even indicate whether students
13 could attain all of the learning objectives?

14 A. It doesn't indicate that, no.

15 Q. Okay. In fact, you can't determine how this draft pacing
16 guide appropriately scales from easier to more difficult tasks,
17 can you?

18 A. Well, there's some -- you know, there's some language. I
19 mean, it talks about certain vocabularies and skills, and they
20 grow in complexity, to evaluate the pros and cons of an
21 argument, and there's different, you know, kinds of content
22 that's provided, all kinds of texts that are used. It's pretty
23 high level. It's very high level content. It's like what we
24 teach at the college level.

25 Q. Are you any kind of expert in determining what's

1 appropriate for high school students, given their cognitive
2 abilities?

3 A. Expert? Let me -- the high school students -- what you
4 have here is a place-based curriculum, and so it is appropriate
5 to have a curriculum that is place-based, meaning that it
6 reflects their own experiences. So a lot of what Sean Arce
7 did, for example, in his teaching of history was he was able to
8 connect historical events to current situations, current
9 context and events that the students were experiencing, be it
10 in the area of immigration and policies and core cases. And I
11 think that explains why these students -- it resonated with
12 them, because it was authentic, it was an authentic curriculum
13 in that way, and it explained why they were able to go to
14 college as a result.

15 Q. Are you aware of any studies that evaluate whether MAS
16 students matriculate to college at a higher rate than other
17 students?

18 A. There is not research in this area, but what we did see is
19 that these students, relative to other students in the
20 district, they outperformed them.

21 Q. I am just talking about matriculation to college,
22 Dr. Valenzuela.

23 A. There is no research.

24 Q. Okay. So Mr. Arce is telling you they did, so you believe
25 it?

1 A. It was also researched that they did go on to college at a
2 higher rate. It wasn't just Sean Arce.

3 Q. I thought you just told me there was no such research. Is
4 there or isn't there?

5 A. Yeah, there is.

6 Q. Who did it?

7 A. There is, yes.

8 Q. Who did the research regarding the college matriculation
9 rates of MAS students?

10 A. It was in the Cambium report.

11 Q. Well, we'll look for it there.

12 Now, there's no assessment plan in this draft pacing guide,
13 right, of the kind that we discussed earlier with
14 preassessments, monitoring assessments, and post -- end of year
15 assessments?

16 A. There is -- I don't really see it here, but in the other
17 materials there were pre and post and --

18 Q. Which other materials?

19 A. Well, like the materials that I got from counsel. The last
20 couple of days I saw that.

21 Q. Oh, okay.

22 A. Pre and post.

23 Q. The materials you just got confirmed the opinions that you
24 reached a year ago that you had no information about?

25 A. Well, no. They also spoke to it a year ago, that they did

1 have assessment materials, and it was also formative --

2 Q. Who told you it --

3 A. It was Sean Arce.

4 Q. Okay. Again?

5 A. Yeah.

6 Q. All righty.

7 A. When he was the director of the program, so it was logical
8 that he would do that.

9 Q. Right. So you couldn't determine whether the assessments
10 related to the learning objectives, though, because there were
11 none, right?

12 A. He told me that they did relate to the learning objectives.

13 And there's also -- they also had a very formative approach
14 to assessment.

15 Q. I'm just asking about whether or not you could relate the
16 assessments to the learning objectives. I believe your
17 understanding to be -- I believe that your answer was no, you
18 didn't do that?

19 A. No. They regularly assessed, and it was formative, and
20 formative is based on a relationship, so it's not necessarily
21 these, you know, standardized tests or sort of preimposed, but
22 it would be evaluation of their writing. Right? Students
23 would write term papers. The students were evaluated on the
24 products that they generated in the context of their classes.

25 Q. You said you used Bloom's Taxonomy to evaluate this class,

1 right?

2 A. Right.

3 Q. Can we agree that it was created by Dr. Benjamin Bloom to
4 promote higher forms of thinking and education, such as
5 analyzing and evaluating concepts, processes, procedures, and
6 principles, rather than just remembering facts, which is rote
7 learning. Right?

8 A. Right.

9 Q. And if this is a pictorial illustration of the kind that's
10 commonly found with respect to Bloom's Taxonomy....

11 A. What is?

12 Q. I'm waiting for this to be -- sorry.

13 Is this what you understand Bloom's Taxonomy to represent
14 in an infographic?

15 A. There's different representations of it, but this would be
16 a standard one, yes.

17 Q. I understand there may be many, but this one seemed like it
18 would work well here.

19 Now, your report doesn't address how you applied this
20 taxonomy to the draft pacing guide, right?

21 A. Right.

22 Q. And neither does your declaration?

23 A. Right.

24 Q. It just merely asserts, and, in fact, you didn't actually
25 do an evaluation of Bloom's Taxonomy against the draft pacing

1 guide that you can describe for me today, correct?

2 A. Well, I did it, but I didn't -- mostly it was just by
3 reading, it was inferential. It was by reading what they did,
4 and that wasn't my expert report. That there was a lot of
5 complexity to the assignments, and so that was my report on
6 Bloom's Taxonomy, what's in my expert witness report.

7 Q. Now, the Nahuiollin --

8 A. Nahuiollin.

9 Q. Nahui....

10 A. Nahuiollin.

11 Q. Nahuiollin. That's not a curriculum, right?

12 A. It's a unit.

13 Q. It doesn't cover the whole year?

14 A. Right. It's a unit.

15 Q. Do we know what curriculum whole-year course of study it
16 fits into?

17 A. Language arts.

18 Q. Language arts for K-5? Do we know what comes before or
19 what goes after?

20 A. Well, I presume they had writing, because there's quite a
21 bit of discussion about writing and listening and speaking.
22 And then there's -- what it suggests also is that it's part of
23 a philosophical approach that preceded it. I mean, there had
24 to have been some preparation for this because you can't by
25 edict assign or suggest that a classroom is going to be

1 harmonious, right? You can't by edict make it harmonious.

2 It's a process that a class becomes harmonious.

3 Q. All right. But you don't know what came before or what
4 went after or how it fit into -- I believe you said it was
5 English language arts curriculum?

6 A. Mmm-hmm.

7 Q. This is from page 2, and it talks about in that first
8 highlighted snippet: In a spirit of holistic teaching that is
9 rooted in spirituality and indigenous knowledge and wisdom,
10 this unit is centered on self-reflection.

11 Whose indigenous knowledge is reflected here?

12 A. It would be the indigenous knowledge of the community that
13 that is there. I mean, we're here next to reservations.

14 Q. Is it white indigenous knowledge?

15 A. No.

16 Q. No?

17 A. No. I don't think we know very much about white indigenous
18 knowledge.

19 Q. Oh. I thought the whole problem was that we knew too much.
20 Okay.

21 So the -- this reflects the indigenous knowledge of Native
22 American peoples living in the Tucson area?

23 A. Yes. It's very place-based. It's a place-based
24 curriculum.

25 Q. What language is reflected, that I am unable to pronounce

1 appropriately, here?

2 A. It's both Nahuatl and Mayan.

3 Q. Mayan and?

4 A. Nahuatl.

5 Q. What is the geographic location of Nahuatl?

6 A. Well, it's spoken here.

7 Q. Where is "here"?

8 A. In the United States.

9 Q. Okay. Where? By whom?

10 A. By the Mexica. The Aztecs.

11 Q. The Aztecs?

12 A. The Mexica.

13 Q. What is their geographical place of origin?

14 A. Well, that's a good question.

15 Q. Is it the Southwestern United --

16 (Counsel and the witness speaking simultaneously.)

17 A. Some say it was the Four Corners area of Utah. They went
18 to Tenochtitlan, to Mexico City, and now it's a group that is
19 across the continent and in Canada.

20 (Reporter requests spelling of name.)

21 THE WITNESS: T-e-n-o-c-h-t-i-t-l-a-n.

22 BY MS. COOPER:

23 Q. We see here that an underlying goal guiding this unit is to
24 begin to transform the negative impact of colonization and the
25 tragic effects it has had on indigenous people of this

1 continent for the past 500 years. Therefore, the concepts
2 embedded in this unit will be reintroduced as genetic memory
3 will be activated.

4 Why is it important for a K-5 lesson plan to transform the
5 negative impact of colonization and the tragic effect it has
6 had on indigenous people of this continent for the past 500
7 years in a public school in Arizona?

8 A. It's important to this community because it is a community
9 that existed here before there was an Arizona, before there was
10 a United States, before there was a Mexico. And so race is a
11 modern construct, just like nation state is, and so it's not as
12 liberating as frameworks that help people to feel that their
13 ancestors are native not only to Mexico but to the entire
14 continent and that their genes never left the continent.

15 Q. And how is it that you concluded that this curriculum unit
16 wouldn't teach students to think that they were oppressed or
17 victimized or promote resentment in them?

18 A. So when I interviewed the teachers, and Norma, in
19 particular, was very clear that what --

20 Q. Wait. Wait. Wait. You just told me that you weren't sure
21 whether the Norma in this curriculum unit is the Norma in the
22 focus group. Have you changed your mind?

23 A. No, because it would apply to both.

24 Q. Oh.

25 A. What I'm about to say.

1 Q. Okay.

2 A. Yeah. With Norma explicitly, the one that I interviewed,
3 what she said was that it was important in the curriculum in
4 the elementary level to address identities that had been
5 imposed on these students because of who they are. In an ideal
6 world, a more perfect world, they would be individuals, but
7 they are not. They are stigmatized and they are members of
8 stigmatized groups in society where, you know, through the
9 social media, through really the culture of schooling and the
10 culture of xenophobia and racism that is quite normalized,
11 unfortunately, in many places, it then creates a situation
12 where children feel and buy into it in many instances that they
13 are the problem and that they cannot acquire a standing in
14 society.

15 A lot of the research literature on race matching in public
16 education, a lot of really good research right now is showing
17 that just having a teacher of the same race significantly
18 correlates to higher academic achievement and expectations.
19 It's an absolute finding.

20 You've got Meier, Meier's Research, public management,
21 Texas A & M. It's an absolute finding. So what you see here
22 then is, you know, this principle enacted out, which is not
23 always spoken, it's tested, but the idea that "I can't be you
24 if I can't see you." So what you have is real modeling, not
25 only of the curricula, but just the possibility that children

1 can become -- can grow up to become professionals.

2 Then another aspect to this -- and this came out in the
3 interviews -- was that --

4 Q. I was just asking you about that statement and whether or
5 not you could conclude on the basis of that statement that it
6 didn't promote victimization or resentment among those
7 students?

8 A. No, it didn't.

9 Q. This race matching, what does the school district do when
10 it receives a lot of children from Somalia or Syria or -- how
11 does it help those kids? Where are the Somali or Syrian
12 teachers for them?

13 A. This district -- I don't know about the district and what
14 they do.

15 Q. You just said that students need to be taught. They'll do
16 better if they're taught by someone of their own race, right?

17 A. Yeah, but what you have to understand is that race is a
18 process as well. I mean, it is a status characteristic, right,
19 and you're sort of born into a race and certain ideas about
20 being a member of that race get imputed on you.

21 But it's also a process. So, for example, Muslims are now,
22 according to this construct of racialization, now they
23 remembers of a race, whereas before 9/11 they were not. So
24 this is a dynamic unfolding. So you're not probably going to
25 have many Somalis arguing for inclusion if they themselves

1 don't see themselves as members of a racial group.

2 But I will tell you that working in the community with
3 Academia Cuauhtli, now we do have people from the Muslim
4 community coming to us asking us for advice because they know
5 that they need to provide a curriculum that is anti -- that
6 addresses Islamophobia. And they see our curriculum as mapping
7 on to what they feel is necessary currently in the current
8 context with their children.

9 Q. You said you used Wiggins and McTighe to evaluate the
10 curriculum as well, right?

11 A. Yes.

12 Q. And they're the authors of a book called Understanding by
13 Design, right?

14 A. Right.

15 Q. Would you agree that that is a book that presents a robust
16 approach to planning?

17 A. Yes.

18 Q. And does it focus on the design of curricular units?

19 A. Yes.

20 Q. It doesn't focus on curriculum, right?

21 A. It's very theoretical. It's a theoretical treatment. So
22 it talks, for example, about backward design and how that's
23 preferable. So you have, for example, an idea that this is a
24 unit that we want to teach, and then you work backwards from
25 that to identify what kinds of standards it's going to satisfy.

1 So that would be a backward design.

2 Q. This is an excerpt from the introduction to the 2005
3 edition of the book, which is, I believe, the edition that you
4 used. And we see here: This book is primarily focused on the
5 design of curricular units, as opposed to individual lessons or
6 broader programs.

7 Do you see that?

8 A. Yes.

9 Q. So they employ that philosophy that you just discussed with
10 respect to curricular units, not curricula.

11 A. Yes.

12 Q. Right?

13 A. Right.

14 Q. But you used this book to evaluate curriculum.

15 A. Well, it has important concepts that are very important to
16 the evaluation of curriculum.

17 Q. But it's not its primary purpose.

18 A. No.

19 Q. In fact, Bloom's Taxonomy's primary purpose is not to be
20 used to evaluate curriculum, right?

21 A. Right.

22 Q. So you used two tools to evaluate the curriculum. You
23 evaluated two sets of materials, right?

24 A. Yes.

25 Q. And neither of the tools that you used to evaluate the

1 curriculum are actually intended for the purpose of evaluating
2 curriculum. Correct?

3 A. Well, they are used to evaluate curriculum.

4 Q. But that's not their purpose.

5 A. No. But they can be repurposed or purposed for that goal,
6 yes.

7 Q. But the authors of Understanding By Design are telling you
8 that the purpose of book is planning curriculum units. Right?

9 A. Right. And it's important to -- I mean, Wiggins and
10 McTighe is used all the time, including by people in the Austin
11 Independent School District, for determining whether we have a
12 sound curricular framework. So it's relevant for the
13 development of frameworks, a sound curricular framework.

14 Q. I want to put in front of you Exhibit 570, which is a
15 curriculum unit. This isn't dated, but I believe we
16 established earlier that it was from 2010, entitled: The
17 Struggle for Ethnic Studies in Tucson: Protection under the
18 1st and 14th Amendments.

19 Did you review this?

20 A. Very briefly, yes, I did.

21 Q. And that's the materials that you reviewed just in the past
22 couple of days, right?

23 A. Yes.

24 Q. Do you see that the introduction identifies HB2281 -- which
25 you understand to be the law that we're here to discuss today,

1 right?

2 A. Right.

3 Q. -- as a manifestation of xenophobia.

4 A. Right.

5 Q. Would you agree with that statement?

6 A. Yes.

7 Q. So you think that HB2281 is a manifestation of xenophobia?

8 A. I believe that it is, yes.

9 Q. Do you think it's appropriate to teach high school students
10 that HB2281 is a manifestation of xenophobia?

11 A. I think it could be.

12 Q. Or do you think it might be better to teach students what a
13 manifestation of xenophobia is and how you determine whether
14 one exists and leave them to make their own decisions for
15 themselves?

16 A. Yes.

17 Q. That would be the better approach, right?

18 A. Yes.

19 Q. To teach the students how to come to their own conclusions.

20 A. Yes.

21 Q. Rather than to tell them what to think.

22 A. Yes.

23 Q. So would you agree with me that if this lesson includes an
24 action plan that requires students to take action against
25 HB2281, that it would be telling them what to think, rather

1 than how to think?

2 A. It could be, but without observing the actual pedagogy of
3 this lesson plan, it would be hard to make that determination
4 and be confident about it.

5 Q. But it would be wrong to tell students what to think,
6 rather than teach them how to think?

7 A. Yes, it would be.

8 Q. And requiring students to formulate an action plan with a
9 specific goal is, in fact, teaching them what to think,
10 correct?

11 A. I would have to observe the classroom to see how the
12 curriculum was implemented.

13 Q. Well, you didn't observe any MAS classes, right?

14 A. No. The state didn't, either.

15 Q. Pardon?

16 A. The state didn't, either.

17 Q. Right. But you -- but you're just telling me you need to
18 observe classes to see how curriculum is implemented, but your
19 report is telling me that the curriculum was pedagogically
20 sound and didn't promote resentment or victimization, right?

21 A. Well, I would say particularly for a judgment that would be
22 consequential about an issue area about which the state has
23 some role.

24 Q. I want to show you something from Exhibit 567, which has
25 not been admitted, and ask you whether this is among the

1 materials that you reviewed. And this is an excerpt of what I
2 believe to be final exams that were given in MAS classes. Do
3 you recognize that essay prompt?

4 A. Let me read it.

5 Q. And it's just repeated twice on the same page, so I'm not
6 purposefully obscuring information.

7 A. Yes.

8 Q. So it says -- this is a second semester final for Chicano
9 literature, right?

10 A. Yes.

11 Q. So that's the exam that asks what students have learned
12 throughout the entirety of the second semester, correct?

13 A. Yes.

14 Q. And we see: All year long we have read stories where the
15 Mexican-Americans were discriminated against, taken advantage
16 of, oppressed, et cetera. Do you see that?

17 A. Yes.

18 Q. Do you know why that's being taught in a literature class?

19 A. Because literature actually opens you up to, you know, all
20 kinds of experiences, whether it's fictional or whether it's
21 nonfictional --

22 Q. This is just one experience, right?

23 A. Pardon me?

24 Q. We're just talking about one experience, correct,
25 Mexican-Americans being oppressed?

1 MS. BARRINGTON: I'd just ask that you let the witness
2 finish her answer, please.

3 THE COURT: Why don't we start over and just ask your
4 question.

5 MS. COOPER: Will do.

6 BY MS. COOPER:

7 Q. This essay prompt addresses one experience, right?

8 A. Well, within the field of discrimination, there are so many
9 different experiences, so I think it is a very broad question.
10 And it's so suffused in the experience -- in the
11 Mexican-American experience, that this would be a legitimate
12 question.

13 Q. For a literature exam?

14 A. Yes.

15 THE COURT: Ms. Cooper, as you can see, it's just
16 about 5:00 o'clock. I think we ought to -- well --

17 MS. COOPER: That's true, because you have --

18 THE COURT: I'm sure we'll have some redirect.

19 MS. COOPER: Is that correct? All right. I only have
20 five minutes, though, if you would like me to finish, Your
21 Honor. It's up to you.

22 THE COURT: No. I think we should I think we should
23 recess for the day. Okay?

24 MS. COOPER: Understood.

25 THE COURT: Now, let me see. Dr. Valenzuela, you can

1 step down now. And you can return tomorrow at 9:00 o'clock?

2 THE WITNESS: Yes.

3 THE COURT: All right. Thank you.

4 I want to talk to the lawyers for a while.

5 Now, this is the plaintiffs' witness. Is that right?

6 MR. REISS: Yes, Your Honor.

7 THE COURT: All right. So tomorrow defendants will be
8 ready with their -- whatever it is, two or three witnesses you
9 have, right?

10 MS. COOPER: Correct, Your Honor.

11 THE COURT: Okay. We'll have to see how far we get,
12 right?

13 MS. COOPER: Okay.

14 THE COURT: Okay. Anything else we should cover
15 today?

16 MR. REISS: No. I think we're good, Your Honor.

17 THE COURT: All right. Both sides, you still think
18 we'll make a -- we'll finish by Friday? Are you confident or
19 just hopeful?

20 MS. COOPER: Is this my expert opinion, Your Honor?

21 THE COURT: Yes.

22 MR. REISS: I think we've been pretty efficient, so
23 I'm mildly optimistic. I can't necessarily speak for the
24 state.

25 THE COURT: That's fine.

1 MS. COOPER: I would agree with Mr. Reiss.

2 THE COURT: All right. Then we will stand in recess
3 for the day.

4 MR. QUINN: Your Honor, before we go --

5 THE COURT: Yes.

6 MR. QUINN: -- I've been called back to New York, so
7 I'm going to miss the next two days of fun. But I just wanted
8 to say it was a pleasure to be in your courtroom.

9 THE COURT: Well, you're probably lucky to get away
10 early.

11 (Laughter in the courtroom.)

12 THE COURT: Okay. We'll stand at recess.

13 (Proceedings were adjourned at 4:55 p.m.)

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I, A. TRACY JAMIESON, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true and accurate transcript of the proceedings contained herein, held in the above-entitled cause on the date specified therein, and that said transcript was prepared by me.

Signed in Tucson, Arizona, on the 20th day of July, 2017.

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