U.S. COMMISSION ON CIVIL RIGHTS

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BRIEFING

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THURSDAY,
JULY 28, 2006

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The Commission was briefed in Room 540 of 624 Ninth Street, N.W., Washington, D.C. at 9:30 a.m., Gerald A. Reynolds, Chairperson, presiding.

PRESENT:

GERALD A. REYNOLDS	Chairperson
ABIGAIL THERNSTROM	Vice Chairman
JENNIFER C. BRACERAS	Commissioner (via telephone)
PETER N. KIRSANOW	Commissioner
ASHLEY L. TAYLOR, JR.	Commissioner
MICHAEL YAKI	Commissioner
KENNETH L. MARCUS	Staff Director

STAFF PRESENT:

DAVID BLACKWOOD
TERESA BROOKS
TYRO BEATTY
CHRISTOPHER BYRNES
DEBRA CARR, Associate Deputy Staff Director
RANITA CARTER
IVY DAVIS, Chief, Regional Programs Coordination Unit
DEREK HORNE
PATRICIA JACKSON, Chief, Budget and Finance
SOCK-FOON MacDOUGALL
TINALOUISE MARTIN, Director of Management
EMMA MONROIG, Solicitor/Parliamentarian
AUDREY WRIGHT

ORIGINAL

COMMISSIONER ASSISTANTS PRESENT:

CHRISTOPHER JENNINGS
LISA NEUDER
KIMBERLY SCHULD, via telephone
RICHARD SCHMELCHEL

A-G-E-N-D-A

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

9:39 a.m.

INTRODUCTORY REMARKS BY CHAIRMAN

CHAIRPERSON REYNOLDS: Okay, on behalf of the Commission on Civil Rights, I welcome everyone to this briefing on the benefits of diversity in elementary and secondary education. The Commission frequently arranges such public briefings and presentations from experts outside the Agency in order to inform itself and the nation of civil rights situations and issues. At this briefing, a panel of experts will advise the U.S. Commission on Civil Rights concerning the educational and noneducational benefits of student body diversity in elementary and secondary education and the strength of the academic literature supporting or opposing the issue.

The Commission expects that these issues will be particularly timely in light of the Supreme Court's decision to grant certiorari in two cases involving race-based student assignment in K through 12 schools. And those cases are Parents Involved v. Seattle School District and Meredith v. Jefferson County Board of Education.

This morning, we are pleased to welcome four experts on this issue: David Armor, Professor at

George Mason University, School of Public Policy; Arthur Coleman, a partner at Holland & Knight and a former Deputy Assistant Secretary of Education at the Office of Civil Rights, Department of Education. I'm sorry, please help me --

PROFESSOR KURLAENDER: Michal Kurlaender.

CHAIRPERSON REYNOLDS: Thank you. Assistant Professor of Education at the University of California at Davis; and lastly, Stephan Thernstrom, Winthrop Professor of history at Harvard University and a Senior Fellow at the Manhattan Institute. I welcome all of you --

COMMISSIONER YAKI: Point of order.

CHAIRPERSON REYNOLDS: Yes.

COMMISSIONER YAKI: Is there a relationship between Mr. Thernstrom and Vice Chairman Thernstrom --

(Laughter.)

COMMISSIONER YAKI: I don't mean relationship. I just want to know --

(Laughter.)

CHAIRPERSON REYNOLDS: Okay, I will introduce everyone and describe your activities and then I will call on you according to the order that you've been given for the record.

Dr. Armor is a Professor of Public Policy at the School of Public Policy at George Mason University in Fairfax, Virginia. In 2002 to 2005, Dr. Armor served as the Director of the Ph.D. Program in Public Policy. He received his B.A. in Mathematics and Sociology from U.C.-Berkeley and his Ph.D. in Sociology from Harvard University where he also served on the faculty as an Assistant and Associate Professor from 1965 to 1972. Previously, Dr. Armor was a Senior Social Scientist at the RAND Corporation from 1973 to 1982 and in 1985, he was elected to the Los Angeles Board of Education. >From 1986 to 1989, Dr. Armor was Principal Deputy and Acting Assistant Secretary for Defense for Force Management and personnel. He has done extensive research and writing in the field of education and school desegregation. He has testified as an expert witness in more than 35 school desegregation cases. Some of his publications include Forced Justice, School Desegregation and the Law, Race and Gender in the United States Military, and a whole slew of other publications.

Next, Arthur Coleman, who is a partner and co-leader at Holland & Knight's Education and Policy Team, his work includes education policy, litigation and risk reduction and advocacy before the United

States Department of Education and Congress on educational issues. Mr. Coleman served as Deputy Assistant Secretary of the United States Department of Education's Office of Civil Rights from 1997 until 2000. Following his service there, he was a Senior Policy Advisor -- actually, predating his service there, he was a Senior Policy Advisor to the Assistant Secretary for Civil Rights from 1993 to 1997. Throughout this Department of Education stint, Mr. Coleman was responsible for the development of federal civil rights and legal policy in education. Mr. Coleman received his J.D. from Duke University School of Law with honors in 1984 and a B.A. with high distinction from the University of Virginia in 1981. Mr. Coleman is a member of the Advisory Board of the Alliance for Excellent Education and the National Association of College and University Attorneys; and finally, the National School Board Association's Council of School Attorneys.

Michal Kurlaender is an Assistant Professor at the School of Education at the University of California, Davis. Dr. Kurlaender's research includes access to post-secondary schooling for unrepresented populations; K through 12 desegregation and integration; and quantitative methods in education

policy. She is currently researching questions concerning college retention and the utilization of alternative routes to college such as the GED. In addition, she works as a consultant to the Board of the San Francisco Unified School District, the Civil Rights Project at Harvard University, and the Warren Institute on Race, Ethnicity and Diversity at the University of California at Berkeley Law School.

And finally, we have Stephan Thernstrom who graduated with highest honors from Northwestern University in 1956 and was awarded a Ph.D. by Harvard in 1962. He has a been a professor at Harvard since 1973. Between 1978 and 1979, he was the Pitt Professor of American History and Institutions at Cambridge University and a Professorial Fellow at Trinity College. He has been awarded fellowships from the Guggenheim Foundation, the American Council of Learned Societies, the Social Science Research Council and the John Olin Foundation, and research grants from the National Endowment for the Humanities, the Mathematical Social Science Board and I can go on for a very long time. He has co-authored several books, one of which is called No Excuses, Closing the Racial Gap in Learning and Black and White, One National Indivisible. He is the editor of the Harvard

Encyclopedia of American Ethnic Groups and co-editor of 19th Century Cities Essays and the New Urban History and Beyond the Color Line, New Perspectives on Race and Ethnicity and also the author of Poverty and Progress, Social Mobility and the 19th Century. This books have been awarded the Bancroft Prize in American History, the Harvard University Press Faculty Prize and the Waldo G. Leeman Prize of the American Historical Association and the R.R. Hawkins Award of the Association of American Publishers. He was appointed to serve on the National Humanities Council by President Bush in 2002.

First up, we will hear Dr. Armor. Each panelist will speak for 10 minutes.

SPEAKERS' PRESENTATIONS

PROFESSOR ARMOR: I'm very pleased to address the Commission today on the important issue of student diversity and the issue of benefits of K-12 public schools. I'm going to focus on benefits of racial diversity and racial balance in particular, because those are the main issues before the Supreme Court. My overall conclusion is that the educational and social benefits of racial balance and diversity are quite limited and I will explain why in my paper.

I also want to say a few words on

alternatives to racial balance plans. I have been a long-time supporter of school desegregation. I have designed such plans, but I've also been a critic of mandatory racial balance plans because their limited benefits are not justified by their adverse consequences.

There are three types of benefits cited by those who support racial balance: academic achievement, long-term outcomes, and social outcomes and I'll address those in order.

The best achievement about academic achievement in desegregation comes from the 2003 National Assessment of Educational Progress, otherwise known as NAEP. This survey assessed over 160,000 students in all 50 states. The first figure shows the relationship between school percent black and eighth grade reading. The figure shows actual test scores and also adjusted test scores, removing the effect of socio-economic differences between black and white students.

The actual scores, the dashed line, show the black students in the most integrated schools, that's the left-hand access on the left-hand side, scored eight points higher than those in predominately black schools. This unadjusted segregation gap, if

you will, is relatively small compared to the black/white reading gap of 24 points on the left-hand access there in the most desegregated schools.

It's well known that students in predominately black schools have lower socio-economic status or SES for short. So we need to adjust for this in order to see if the difference is due to the schools or to the student's background. The solid lines are the SES-adjusted scores and they show that blacks in the most desegregated schools score only two points higher than those in predominately black schools.

In other words, the relationship between school segregation and reading achievement is very weak in the 2003 NAEP when we equalize family by economic differences. It is worth noting here that this gap, eight point segregation gap, is less than half of that found 40 years ago by the famous Coleman Report. The most plausible explanation for that is that educational programs have become more equal between segregated and desegregated schools in the past 40 years.

The situation is very different when we look at the Hispanic segregation in the next chart. Looking at the adjusted scores again, we find that

there is no relationship between Hispanic concentration and achievement, reading achievement. In fact, the relationship is slightly reversed. I'm not going to make very much out of that. Basically what I want to say from this is that in the 2003 NAEP there is no adverse consequence whatsoever of Hispanic concentration on reading achievement. The same is true for math scores.

Aside from this NAEP data, and that's the only charts. I do have some backup charts on math scores if we need to look at them. There's a substantial literature on the effects of school desegregation on black achievement. A comprehensive review of this research can be found in my book Forced Justice which was mentioned by the Chairman. In my opinion, the best study on the effects of desegregation on black achievement was a meta-analysis sponsored by the National Institute of Education in 1984. Basically, only studies that had a rigorous research designs were used. This study found no effect of desegregation on math scores and weak results for reading scores.

Turning to long-term outcome, some feel that these have shown greater benefits than short-term achievement tests. For example, some students show

that desegregation early in life is correlated with desegregated environments as adults, such as in college and work. I don't dispute this research, but question its interpretation. It may simply reflect what we call self-selection. Children from families who choose desegregated schools are more likely to prefer desegregated environments as adults.

A different kind of long-term outcome is college attendance. I reviewed several of these studies in the papers. Suffice it to say, there's no definitive research showing that minority students from desegregated schools are more likely to attend college than those from segregated schools. Since the strongest predictor of college is academic achievement, and given the weak relationship between desegregation and achievement, this result should not be surprising.

Turning now to social outcomes, studies of desegregation have looked at such outcomes as self-esteem, racial attitudes including prejudice and race relations. First, there is consensus that desegregation has not had any impact on self-esteem. Second, the situation is not that different for racial attitudes and race relations. Reviews by St. John, Stefan and Scofield as late as 1995 conclude that

results are highly variable from one study to another and no definitive conclusions can be made.

Finally, there are surveys of students from desegregated high schools who report positive experiences from desegregation. Some of these studies do not have comparison groups of students from segregated schools, so it's often hard to interpret the results of such surveys. One recent survey in Miami-Dade County, by my colleague here Dr. Kurlaender, did make comparisons between integrated and segregated high schools. However, like so much research in this field, the results were mixed and for most outcomes there were very small differences between integrated and segregated schools for blacks and Hispanics.

When all studies are considered, in my opinion the results are usually the same. Regardless of what outcome you choose, some studies show positive results, usually small effects. Some show no effect, and some show negative effects. I can say with some confidence that the research literature taken as a whole fails to reveal strong and consistent benefits of integrated versus segregated schools on academic achievement, college attendance, self-esteem, racial attitudes, and race relations.

Now the fact that school desegregation failed to produce consistent educational and social benefits does not mean that it has no value. Many parents and students do find personal benefits in attending integrated schools. While most parents for integration, however, there's a strong opposition to mandatory assignments. And most of the parents also oppose using race for school assignments. On the other hand, things like geographic assignments are not controversial and most parents support school choice policies including magnet schools.

If the Supreme Court determines that schools cannot use race to assign students, and I'm not saying they will. I don't know what they will do. I do not think that desegregation has to end. There are numerous ways to have integrated schools without explicit racial assignment. For example, predominantly minority schools who attract white students can be placed -- I mean magnet schools can be placed in minority schools to attract white parents. This was done very successfully in Savannah, Georgia some years ago.

States can push for open enrollment policies like that in Minnesota where cities from predominantly black schools or minority schools in

central cities can transfer to suburban schools that are more desegregated.

While voluntary options will not create racial balance in all schools, in my opinion they offer a better tradeoff between the limited benefits and the practical issue -- I mean the limited benefits of desegregation and the practical issue of community support. At the very least, such policies offer the possibility of integrated schools for students and parents who want that experience, but they do not compel parents to attend schools that they would not freely choose.

Thank you very much.

CHAIRPERSON REYNOLDS: Thank you. I just want to point out that you are probably the first panelist that we've ever had who left some time on the clock and I appreciate it.

PROFESSOR ARMOR: I just want to set an example for my colleagues.

(Laughter.)

CHAIRPERSON REYNOLDS: Mr. Coleman?

MR. COLEMAN: I'm a lawyer and they have a tough time getting under the wire.

Thank you for the invitation to be here. I'm frankly not sure what a nice lawyer like me is

doing in the midst of social scientist experts, so I do want to start by saying I'm not a social scientist, but as I'll explain social science is a key facet of the work I do, as you all know, in the context of education policy and legal counseling.

So what I want to do today in that context is with some attention to the social science research, offer a lens for examining the question of diversity in elementary and secondary education with an initial focus, just to be clear, when I'm talking diversity, I'm talking racial and ethnic diversity in the context of broader diversity interests that are obviously important to K through 12 educators. And I also think in this context, it's important very much to distinguish, I think, as Professor Armor just alluded to, as he wrapped up, between ends and means. There are some foundations that inform the kind of goals and the kind of aspirations that school districts have set for themselves. It is quite another conversation to say what are the appropriate limits or parameters with respect to the use of race and I want to focus on the former, rather than the latter as we talk through these this morning.

There are, in my view, three fundamentally key issues when you think about the question of the

educational benefits of diversity in elementary and secondary education. And let me say the point you didn't mention, Mr. Chairman, is I'm also a recovering litigator. I tried cases in South Carolina for 10 years before moving to Washington. And so wearing my litigator's hat, wearing my OCR Enforcement hat and now wearing my policy and counseling hat for educational institutions around the country, I've had this common world view, regardless of the particular perspective of the day which is you look at three fundamental things: the mission of schools, what are they trying to do? What's the relevant research and evidence that would support or inform the policy judgments that are being made? And then importantly, coupled with that, what does the experience of the educator and the judgment mean to that decision and it's that combination that I think we need to make sure we pay particular attention to.

On mission, I don't think there's much doubt and some of this goes all the way back to 1954 in Brown versus Board of Education, but to take what is very eloquent language and distill it down to its core. I think where we are in 2006 is K through 12 educators are trying to do fundamentally two things. It looks different in different places, but it's

fundamentally to prepare students with opportunities to achieve to high standards, based on no substantial part, no small part on the standards and reform movement like No Child Left Behind; and to prepare students to be productive citizens in a diverse, democratic society. And those two strands, I think, inform just about every judgment K through 12 educators make on a number of issues, including these.

With respect to the first, preparing for the future, preparing for -- as the Brown Court termed it, professional training or professional lives, next slide, let me suggest that we can't look at the mission of public schools in a vacuum. You've got to look at where public schools are taking students, because that's where they want them to achieve. And so in the higher education context, what do we know in the words of the Supreme Court, "substantial and real educational benefits of diversity" -- I'm not going to go through them all and there's more detail in my submitted testimony, but let me just highlight the first three because I think they tie in to some of the social science research with respective to K through 12 education: promoting cross-racial understanding, breaking down stereotypes, and enabling students to better understand persons of different races.

Next slide. K through 12 also takes us directly to business and private enterprise where businesses have come together and said, not mincing words, the future for American business and the economy are tied to diversity. Based on a number of benefits, they have documented both with research and with experience.

Next slide. We have heard from military leaders and you see in federal policy what has been termed the critical national security interest in a cohesive and diverse military with a substantial number of officers educated and trained in educational settings -- this is directly from a brief filed by 29 retired military officials in the Bruder litigation.

And then finally, in the public sector, next slide, we have had a national mandate for decades to ensure that the Federal Government and this is just one example of the public sector, is recruiting and retaining a diverse work force.

Next slide. And so when you go back to the mission of elementary and secondary education, tied to sort of the first prong of the way Brown articulated the goal of educators, to prepare students for what comes next, you see that it's hard to ignore the relevance of what these sectors that are directly

connected to elementary and secondary education mean. So that's mission.

Next slide. Let me talk for a minute about relevant research in evidence. I do believe that there is social science research that demonstrates the benefits of diversity in a number of ways and we can get into discussions about how strong and how consistent and where. I think to use Justice O'Connor's terms, a lot of that actually depends on context because context matters, both on the quality of the research and the kind of study being done. But improved learning, improved preparation for employment and then enhanced civic values, sometimes doesn't get the kind of emphasize that I think it might and I've got a reference to Brown here.

I have a number of research studies that we collected in connection with some work we did for the National School Board Association. I'd be happy to provide to the Commission. And once again, I would just note the similarity between some of these interests and higher education.

Next slide. I think it's also relevant just to see where we are in terms of what policy makers say, getting to ultimately the point about what district officials based on their expertise and their

judgment on the ground said. And my sense is actually we have fairly broad-based agreement about the value of diversity generally. I've got a number of citations in my prepared statement that cite to. I think perhaps among the most significant is the No Child Left Behind Act of 2001 which demanded strong, bipartisan consensus in Congress. And representing findings by the Congress that it's in the best interest of the United States to promote voluntary interaction among students of different racial and ethic backgrounds.

I would also note that the U.S. Department of Education, Office of Civil Rights in implementing this law and these specific findings has found, in essence, that reducing and eliminating and preventing minority group isolation can be a compelling interest, justifying race-conscious measures and in 2004 notice that they issued in the Federal Register.

I want to stop there for a second to make the point, I avoid almost at every turn, categorical pronouncements. I don't think this is a one size fits all. I think these are tied to individual local district judgments and I think it's important not to overstate on any side of the equation. And so the way the Department set out is not to say this is a

mandatory finding for all schools and all districts, but to say you may have some tools if you do it the right way to meet those particular interests.

Next slide. Once again, with an eye towards what are educators saying, the indication of the kind of education foundations and support we've had for pursuing diversity-related goals in elementary and secondary education.

Next slide. The issue is bigger than just research because it gets to experience and judgment and what the law recognizes and as a matter of policy what I think makes abundant sense is there is some degree of difference due to local educators when they are making core mission-driven policy decisions based on the very research they should be looking at as they are making judgments, based on both their expertise and their primary authority under the Constitution. I think it is important at the same time to recognize this is not carte blanche deference. There are real standards that educators need to comply with and those standards should, in fact, guide those judgments. That gets very quickly into the question of means that I talked about as opposed to just the ends. But it's important to recognize there is this rubric within the law, at least, that should guide those judgments.

Let me conclude, see if I can keep up with my colleague on timing, with the final slide. Just to say I don't think there's any debate about the role of public education in preparing students for an increasingly diverse work force and to be good citizens in what is an increasingly diverse society. And then it strikes me that with that foundation, it's hardly radical to suggest that the education of our children should include benefits associated with diversity, when educators are reaching those judgments in school districts around the country.

And going back to Bruder where I spent a good bit of the last two years of my time focusing on a higher education context, I'm always struck by Justice O'Connor's last line which is the expectation that in 22 years we won't need race-conscious admissions practices to achieve the compelling interest of diversity. If that's to be a reality, what does it mean for what we do, what we allow, what discretion we give school boards to achieve the goals that are very much related to this interest.

Thank you.

CHAIRPERSON REYNOLDS: Dr. Kurlaender?

PROFESSOR KURLAENDER: Thank you and good morning. Over the last half century, many researchers

from a variety of disciplines have studies and written about the impact of race in American schools. Many of these studies have been specifically on the benefits and costs of school desegregation brought out about by the Brown decision, the 1964 Civil Rights Act, and other legal and policy changes that increase enforcement of Brown.

These studies have primarily concentrated on the impact of desegregated schooling on the experiences of African-American students, focusing mostly on short term achievement gains of blacks attending desegregated schools. More recent studies have also focused on the role of school racial composition on mediating achievement gaps between African-Americans and whites. But there has also been an increased focus on the noncognitive benefits of racially and ethnically diverse schools on all students, including whites, a group frequently considered as having weak benefits associated with desegregated schooling and many costs.

There's an important context for the research development in this area. Recent years have brought renewed attention to diversity in schools as several reports suggest that America's public schools are desegregating. Yet the discussion of segregation

trends is complicated by changing demographics, a more diverse school age population, and as many districts are witnessing an end to their federal oversight of court-ordered school desegregation.

All of this I believe has led to considerable advancement in social science around developing more complex ways to measure segregation in a multi-racial environment and to thinking about a wider set of outcomes that may be enhanced in the racially or ethnically diverse school setting. Moreover, it has perhaps more importantly also led to greater innovation in how we can tease out the direct or causal impact of school racial composition or diversity, an effort which has been I think a very multi-disciplinary one, with new work emerging not only among educational researchers, but in economics, sociology, political science, and even experimental psychology.

Overall, there are four, we all sort of have categorized fairly similarly. There are four broad categories with outcomes that have been associated with school racial ethnic diversity. Enhanced learning, I guess this is one of those -- there aren't many of these, but if you could just click a few more times. Enhanced learning, long term

educational and occupational gains, increased social interaction, and improved attitudes and citizenship.

I'm going to go into greater detail about each in a minute, but before I do it is important to note that research on the impact of school racial composition on students' outcomes has historically been plagued with several methodological problems and design limitations, most of which are not unique to this particular field, but which are common to much social science research, particularly on schooling.

The primary one is a result of the profound selection issues associated with school assignment. Parents' choices about where to live and where to send their children to school impacts any study of school effects, and school diversity research is no different.

In fact, families value different aspects of schooling, including diversity and thus researchers must consider selection into types of educational settings as a critical component to understanding whether there are any direct or unique effects of school racial composition above and beyond other school effects. The scholarship on school racial composition has also been contested for other reasons. Most of the earlier work was cross-sectional rather

than longitudinal. There's often a lack of a clear control group. There's different definitions of what diversity, desegregation, or racial balance look like, how long a student needs to be in a desegregated school to have reaped its benefits. And of course, there are many other differences some of which are observable and others that are not between individuals and between schools that may confound the diversity effect.

I raise these issues here and we can get into specific design issues in the Q & A, but more because I think the field more recently researchers have found more novel ways to get around these problems and are finding ways to disentangle the school racial composition effect from other possible explanations.

So first looking just at enhanced learning. The early studies of school desegregation recorded various changes in achievement outcomes for African-American students who moved from segregated to desegregated settings with white students. These studies primarily focused on short-term gains and test scores, paying little attention to differences in implementation of racial balance or to the types of desegregation experiences taking place in different

school settings. The 1980s and 1990s brought several important reviews of the social science evidence on this question. The most heavily cited one is Cook's 1984 synthesis which included that desegregation had positive, albeit modest effects, on black students average reading achievement.

The magnitude and persistence of these effects, however, have been widely debated in educational research. Comparing studies of school desegregation is a difficult task because the desegregation plans implemented operate very differently from locale to locale and often have different definitions of racial balance.

However, several general findings emerged from these reviews. First, that voluntary metropolitan plans involving voluntary urban to suburban transfers have a greater impact on African-American achievement than do mandatory school assignment. Two, that the age of which students enter desegregated schools is important, with a general consensus in the literature on the achievement benefits at lower grades. And three, despite disagreement about the size or magnitude of achievement effect, most reviews have concluded that there are clearly no negative academic outcomes

associated with desegregated schooling for blacks or for whites.

Finally, more recent studies by several economists have contributed to the otherwise dated literature on the academic benefits of school desegregation. Analyzing test score data from Texas, Hamacheck and his colleagues found that there is an effect of school racial composition on black students' scholastic achievement, specifically higher achieving blacks as measured by test scores benefit from a more diverse school racial composition. However, this effect did not extend to lower performing blacks whose test scores were not influenced by the school racial composition above and beyond other school quality characteristics.

Next, looking - at education and occupational gains, other studies have looked at life chances rather than test score improvement. Specifically, they focused on college attendance, completion, occupational attainment, or wages. Overall, these studies suggest that desegregated schooling is associated with higher educational and occupational aspirations and to a modest degree attainment for African-American students. The theory being that segregated schools that are predominately

non-white often transmit lower expectations for students and/or offer a narrow range of occupational, educational options.

Generally, schools with substantial white enrollment can offer minority students a higher set of educational and career options due to the more developed social networks that represent white, middle class norms. As a result, minority students in desegregated settings are exposed to a higher set of educational expectations and career options which are rarely present in the segregated minority school; this coupled with the fact that minority segregated schools often suffer from a severe lack of resources, such as quality teachers, counselors, and other educational advantages that lead to the inferior opportunity structure.

More recent studies have found that black students who attend racially isolated schools obtain lower paying and more racially isolated jobs than whites. The evidence on actual wages is less definitive with only one study indicating very clear, negative relationship between black enrollment and blacks' wages, suggesting that higher black wages are associated with attending schools with higher white enrollment.

In another one, which does not find a statistically significant relationship between white school enrollment and black earnings controlling for various school quality measures. Nevertheless, because so often school racial composition is confounded with so many school quality measures such as teacher qualifications or career college counseling resources, it is difficult to control for school quality without regard to school racial composition.

Next slide, please. Looking at increased social interaction. One of the important pieces of evidence about the impact of racial segregation is its tendency to become self-perpetuating. Perpetuation theory suggests that only when students are exposed to sustained desegregated experiences will they lead more integrated lives as adults. In studies that apply perpetuation theory or contact hypothesis, using time-series data, the relationship between the extent of desegregation experienced earlier in life, for example, in a school or neighborhood, is compared with that experienced later in life in post-secondary study or in occupations.

From a review of these studies, researchers have concluded that desegregated experiences for African-American students lead to

increased interactions with members of other racial groups in later years.

For minorities, these findings suggest that the goal of desegregation may be to break the cycle of racial isolation and provide access to white social networks. But it is important to recognize the potential impact of inter-racial contacts for white students as well. If the ability to work with and understand people of backgrounds different than your own is an educational and democratic goal, then the benefits from the interactions whites experience in diverse schools is also an important and measurable educational outcome.

Another way this has been examined is by looking at the existence of inter-racial friendships that cross different schooling environments, classroom racial composition has been found to have an impact on the stability of inter-racial friendships between whites and blacks with the effects stronger actually for white students.

Finally, looking at improved attitudes and citizenship. If you believe that the goal of the Brown decision or voluntary desegregation efforts is more than simply to improve test scores, but also as Jenks wrote several decades ago, to rethink historical

relationships between groups and society, then there are other important attitudinal and behavioral outcomes that can occur as a result of attending a diverse school.

Specifically, more recent studies on attitudes of students towards their peers of other racial groups found that students from all racial ethnic groups who attend more diverse schools have higher comfort levels with members of racial groups different than their own, an increased sense of civic engagement, and a greater desire to live and work in multi-racial settings, all relative to their more segregated peers. This finding corroborates with more earlier findings that white students in integrated settings exhibit more racial tolerance, and less fear of their black peers over time than their counterparts in segregated environments.

It also corroborates with more recent experimental and quasi-experimental findings from the work on diversity and higher education. I'll stop there since I have a red light.

CHAIRPERSON REYNOLDS: Thank you. Dr. Thernstrom.

PROFESSOR THERNSTROM: Thank you for having me. I wrote a little paper for this which is

too long for me to read, but I do want to say -- is this mic on?

I do want to say that since dashing that off, I realized I should have framed it better to this session. You call this session a briefing on the benefits of diversity and I would suggest two modifications. Surely, it should be a session on the costs and benefits, that's one change, of compelling or engineering diversity. The issue really is to what extent should the power of law be used to enforce more racially-balanced schools, more racially-balanced neighborhoods and in other contexts. We're not talking about the general issue of whether a particular diverse school is diverse without any mandatory pupil assignments, whether that's better than some single-race school. We're talking about the issue to what extent public authority should be used to compel students to go to particular schools.

And I would say at the outset, just very quickly, I see two very serious harms that must be considered whenever such policies are being considered. First of all, it is morally repugnant and I believe contrary to the 14th amendment to be telling a student you're white, you go to that school; you're black, you go to that school; you're Asian, you go to

that school. That is the use of race in determining something important about a student's life, I believe, and there is much legal support and this should only be applied in cases where there is a clear constitutional violation and then race-based assignments follow as a court-ordered remedy whatever the legal thing.

The second problem with such policies, with all such policies is that they need to consider the question of whether compelling students to attend certain schools on the basis of their race will lead a great many parents to take their children out of the system altogether and having lived much of my adult life in the Boston area, I certainly recall clearly the effect of Judge Gerrity's mandatory bussing plan which was introduced when a majority of the students of the Boston Public Schools were white and today that figure is down to 12 percent and they are still bussing white children around to make sure that this previous resource is evenly allocated.

So the paper really focuses on the Seattle case, but I think the Seattle case does have a number of broad implications and I address four questions. First, there's a general commentary on what is this thing called diversity? How do we measure it? And to

what extent does it make sense for schools like the Seattle system to say well, a school's racial composition can vary by 15 percent either way from the overall racial composition of students in the system. Where did that 15 percent come from?

Until this litigation began, the band was 10 percent either way. The school superintendent apparently told the school committee that 20 percent would be fine. They weren't willing to go that far. They decided 15 was the right amount. Very clearly this is an entirely arbitrary decision saying a certain number of students in our system are going to be assigned to a school they don't want to go to because of their race. And there certainly is no social science evidence that is part of the record indicating oh yes, 15 percent is the right number.

Even worse, the stunning thing to me about this Seattle case is that students are classified as a members of one of two races. They are whites or they are people of color. And there's no finer recognition of differences within the students of color category. So that a school that has its minimize share of 25 percent white and all of the rest of the students are Asian, that's a racially-balanced school. It's 25 percent white and 75 percent African-

American, that's also racially balanced.

Now this seems to me two such schools are very likely to be extremely different, certainly in their socio-economic circumstances and in test scores. And it does seem to me astonishing that Seattle seems to think we're in Mississippi in the 1950s where there are two and only two races and surely if they were in an age of multi-culturalism, a recognition this is a multi-racial society, not a bi-racial society, if they were going to be evening the racial balance, surely they should recognize there are Latinos, there are Asians, there are American Indians and Alaskan Natives in Seattle and should be, in fact, paying some attention to that.

A second issue, I raise is the whole concept of racial isolation which is not generally understood, but this is a very curious measure. It is a measure of how isolated a particular group is from whites. And if you look at the same index in the context of neighborhood segregation and look at America's metropolitan areas, you find that the paradise for African-Americans is Orange County with Salt Lake City, Odgen, Utah, in close second. African-Americans are least isolated in those two places.

Now can that be? Why is that? Well, that means they have very few black neighbors and they all live at least two miles away. So it is a curious index which has a very heavy bias against places that have a large minority population. And applied to schools, again, has the same weird bias that I deduce is quite unfortunate.

And it's also worth noting that the index of isolation is calculated in a way that runs precisely opposite to the meaning in the context of debates over preferences in higher education. Those who say we need the racial double standards with reference to admissions of University of Michigan Law School, say we need critical mass of minorities so that they will not feel isolated. We need more minorities, but the more minorities are present at the University of Michigan Law School, the higher the racial isolation index will be. They all don't have to associate with whites because there are so few of them. The larger the number, the lower the isolation will be. So that's a problematic thing.

Third, there is an interesting discussion in the record of this case over that whole question of what quotas are. Does Seattle use a racial quota? Just very briefly, I'd say the Trial Court Judge makes

to me quite a silly argument. This isn't a quota, because there is a broad band within from which schools can deviate in their racial balance and a quota has to be a fixed number. It's precise. She consulted a dictionary. Well, she should have consulted American history because if, in fact, this is what we mean by a quota, then we've never had quotas in higher education and the Jewish quotas of the '20s through the '50s never happened. They weren't quotas. The Yale admissions authorities were not required to admit five percent and only five percent Jewish students. They were given a band between zero percent and five percent. At Harvard, it was from zero percent to 10 percent. So there were no Jewish quotas.

Furthermore, the way this quota works is the practice in any over-subscribed school, there is a precise quota for the number of whites and nonwhite students who may be admitted. Once it reaches its whites ceiling, all whites would be turned away and minorities would already be admitted. So at the practical level, school by school, it is a precise number.

Finally, I will go into some detail about the whole question, the Judge assumes to protect

herself against the argument that this is racial balancing for its own sake, she declares oh no, this is racial balancing to cure residential segregation in Seattle. And as if this wasn't always the objective in racial balancing plans, and so I thought how segregated is Seattle anyway? And we have a huge body of evidence through the 2000 Census, analyzed among other things by the Census Bureau itself and just to -- I see my time is up -- you find on the most commonly used measure, the index of dissimilarity, Seattle ranks near the very bottom, 37th out of 43 large metropolitan areas, African-Americans in terms of the index of isolation; 39 for Hispanics. It is the second least segregated city in the United States and likewise for Asians.

So if one were to say this race-conscious pupil assignment is acceptable so long as the city is segregated at all, we will be saying that it can be done in any American city and I would suggest it will still be the case a century from now because there is no city in the United States, no city in the world that is socially diversion any way in which the population is randomly distributed by income group, by education level, by ethnicity, by religion, by region of origin, etcetera. There is social differentiation.

People live in different places. And I think it would be very unfortunate if the Court were to endorse, provide this kind of permanent sanction to race conscious assignment of pupils.

QUESTIONS BY COMMISSIONERS AND STAFF DIRECTOR

CHAIRPERSON REYNOLDS: Thank you, Dr. Thernstrom. And I'd like to thank the rest of the panelists. I'm sure that you're going to get some great questions.

Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Thanks, Mr. Chairman. I'd like to thank all the panelists for your presentations. And again, thank the Staff for putting together a great panel.

In the Bruder and Gratz cases, and in Louisville and Seattle, notwithstanding the Gorham social science studies, there was very little litigation concerning whether there were indeed benefits to diversity. There were kind of the preemptory or broad assertions made that there were benefits to racial and ethnic diversity.

And I know Professor Kurlaender had cited four discrete benefits that were still somewhat broad, but nonetheless in Bruder there were pronouncements made as to benefits of diversity in terms of promoting

cross cultural understanding, preparing students for a global marketplace, so on and so forth. But again, those are very broad kind of amorphous categories.

I'd like to ask some more specific questions and for the interest of time if the response -- and anyone can respond -- if the responses can just simply be a yes or a no and if it's a yes, that is, I'm going to ask if there are studies supporting certain things, if you could just briefly cite the study or if it would take too much time, maybe you could it afterwards, gather the study names.

But the question really is in terms of benefits to diversity, whether or not any studies contain empirical data that would show that racial and ethnic diversity alone, only those two factors -- I know in Bruder diversity purportedly consists of other factors, but racial and ethnic diversity alone, do they -- are there any studies that improve student performance as evinced by a number of factors. I'm very mundane. I looked at curricula at the K through 12 level and also looked at report cards to see how students were judged.

Are there any empirical studies that show that racial and ethnic diversity controlling for, adjusting for SES, improve arithmetic scores, either

GPA or standardized tests? Is anybody aware?

I saw yours, but arithmetic -- when I say arithmetic, I'm talking about fourth grade level. I'm not talking about geometry, algebra or anything like that.

PROFESSOR ARMOR: The relationships of fourth grade and the NAEP are very much like eighth grade. The relationships are very weak.

COMMISSIONER KIRSANOW: Okay.

PROFESSOR ARMOR: The problem with NAEP in adjusting for SES at the fourth grade level is that a lot of children don't report their parents' education, so the SES adjustment is not quite as effective. Even saying that, the relationship is still quite modest for fourth grade math scores.

COMMISSIONER KIRSANOW: What about for spelling? Any kind of studies that would show improvements in spelling?

PROFESSOR ARMOR: Don't have that one.

PROFESSOR KURLAENDER: The Hamacheck article, I think, makes a very -- 2002 Hamacheck and --

COMMISSIONER KIRSANOW: And that billed with high achieving blacks, would that also go for SES?

PROFESSOR KURLAENDER: Yes, race for schema can control for many things and it looks like growth over time it can control for essentially everything by looking at improvement, and so I can't remember off the top of my head the differences between reading and mathematics, but the key thing is that the effects were much stronger, in fact, they were not significant for lower achieving blacks, but pretty -- not modest at all for high achieving blacks. They were of the magnitude of .25 standard deviation effectively.

COMMISSIONER KIRSANOW: What about for biology?

PROFESSOR ARMOR: There are science tests and the results would be about the same. I mean, if you think of science at the eighth grade. I'm not sure biology.

COMMISSIONER KIRSANOW: Let me -- I don't mean to be facetious about this, but I'd like to get a little bit more specific because there were just broad assertions made about improvements. And when you talk about sciences or math, are there any that discretely assess calculus, trigonometry, geometry, or algebra?

PROFESSOR ARMOR: Not to my knowledge.

COMMISSIONER KIRSANOW: What about phonics?

PROFESSOR ARMOR: Not to my knowledge.

COMMISSIONER KIRSANOW: What about penmanship or writing?

PROFESSOR ARMOR: Well, there is a NAEP writing test. I haven't analyzed it, but there is a writing test. I think it is an essay writing test, not penmanship.

COMMISSIONER YAKI: All I can say, Mr. Kirsanow, if they had a penmanship test, I wouldn't be at this table.

(Laughter.)

COMMISSIONER KIRSANOW: What other categories, physics?

PROFESSOR ARMOR: No.

COMMISSIONER KIRSANOW: Anatomy?

PROFESSOR ARMOR: No.

COMMISSIONER KIRSANOW: Geology?

PROFESSOR ARMOR: No.

COMMISSIONER KIRSANOW: Economics?

PROFESSOR ARMOR: No.

COMMISSIONER KIRSANOW: Geography?

PROFESSOR ARMOR: There is a social science test which I haven't personally analyzed, but

there --

PROFESSOR THERNSTROM: There is a NAEP geography test.

PROFESSOR ARMOR: There is a NAEP geography test. I know there is a social science test which covers things like economics and --

COMMISSIONER KIRSANOW: Do you know the name of it?

PROFESSOR ARMOR: The NAEP is called social science.

COMMISSIONER KIRSANOW: It's NAEP? Okay.

PROFESSOR ARMOR: It's NAEP.

COMMISSIONER KIRSANOW: Speech or rhetoric?

PROFESSOR ARMOR: No.

COMMISSIONER KIRSANOW: Archeology or anthropology?

PROFESSOR ARMOR: No.

COMMISSIONER KIRSANOW: Religion?

CHAIRPERSON REYNOLDS: Mr. Kirsanow --

COMMISSIONER KIRSANOW: This will only take a few seconds.

PROFESSOR ARMOR: No.

COMMISSIONER KIRSANOW: Just want to inform the record. Health and sex education?

PROFESSOR ARMOR: No.

COMMISSIONER KIRSANOW: Gym or physical education?

PROFESSOR ARMOR: No.

COMMISSIONER KIRSANOW: Home economics?

PROFESSOR ARMOR: No.

COMMISSIONER KIRSANOW: Shop?

PROFESSOR ARMOR: No.

COMMISSIONER KIRSANOW: Any assessments related to student tardiness? In other words, in a racial and ethnic diverse environment, does school attendance improve?

PROFESSOR ARMOR: I will say that there is a lot of case studies in individual school districts, now not nationally, that have things like discipline, suspension, and includes chronic absenteeism. I will not say that I've studied it, but I will say that data does exist.

PROFESSOR KURLAENDER: Yes, the Scofield 1995 review looks at discipline and tardiness, suspensions.

COMMISSIONER KIRSANOW: What about effort? The amount of time students spend on homework or any other measure that sometimes is categorized in our report card?

PROFESSOR ARMOR: That is in the NAEP.

COMMISSIONER KIRSANOW: That's in NAEP? Okay. And I think that may be it. Thank you very much.

VICE CHAIRPERSON THERNSTROM: I have some questions. First to David Armor. You do use the term segregation and desegregation. Are you entirely comfortable with that term when you're talking about a city like Seattle, for instance? Nobody has ever segregated by students by law. My point is obvious.

PROFESSOR ARMOR: Yes. I use the term segregation simply as shorthand because it's shorter than racially isolated. I don't mean when I use the term especially when I'm speaking on the act of segregating the school.

VICE CHAIRPERSON THERNSTROM: Don't you think it carries a lot of baggage, those terms?

PROFESSOR ARMOR: I think it does and I think that's why a lot of writers use racial isolation. In my actual written paper, I used racial isolation more than I did segregation. I think it's just easier to say it. There's an adjective, de facto, that we could put in front of it that says that --

VICE CHAIRPERSON THERNSTROM: That's not

going to make me happy.

PROFESSOR ARMOR: That's not going to make you happy?

VICE CHAIRPERSON THERNSTROM: I'd be happier. It's just that it's the same problem it seems to me. It's not segregated schools in my view.

PROFESSOR ARMOR: As a researcher, I would say at the beginning I would say I would define racially isolated, predominantly one race or one race, segregated would all be interchangeable in my way of thinking. I don't disagree that they carry baggage and that they convey other things. And I think the one in a certain context, I'd be very careful in how I use the term.

VICE CHAIRPERSON THERNSTROM: Mr. Coleman, you've been involved in Bruder and you based a lot of your remarks on your experience and dealing with that higher education issue and your expertise there. Don't you see any difference when you look at the questions that are going to arise in Seattle and in Louisville between the K through 12 question and selective admissions in institutions of higher education like the University of Michigan, both the college and the law school?

(Audio noise)

Does anybody know what's going on here? This is unprecedented for us.

MR. COLEMAN: I don't think there's any doubt there are key distinctions between --

COURT REPORTER: Someone may be getting an incoming message on a cell phone or a Blackberry that makes that go off.

VICE CHAIRPERSON THERNSTROM: Can everybody turn their cell phones off and Blackberries off or whatever. Their strawberries, their blueberries.

(Laughter.)

MR. COLEMAN: I don't think there's any doubt there are key distinctions between higher education and the K through 12 context. As I tell people, the robust exchange of ideas doesn't have a whole lot to do with third grade education, if you will. It obviously does in a higher education context.

That being said, I think there's not a bright line at the same time between the last day of high school and the first day of college in terms of what fundamentally, at least in certain contexts, schools are trying to obtain in terms of the educational benefits and I think there are some,

particularly tied to some of the citizenship values and the democratic values that were cited by the Court in Bruder that have particular resonance in the K through 12 setting. I found it striking, but not surprising that when Justice O'Connor talked about those particular values in a higher education context, the exclusive citations she used were K through 12 cases, including, I think, Brown versus Board of Education.

So I think there is clearly some overlap and your fundamental point is exactly right. There are some very fundamental differences that include, in fact, one that in the higher education, Michigan context, for an elite institution, you're making some choices where certain students are clearly not going to get an opportunity. Some others will. And the K through 12 case, it was the two cases, broadly speaking, I have not participated in them and don't know them intimately, but as I understand it, we're dealing with making decisions about sort of broadly how we want a school system to function and I think that distinguishes things there.

VICE CHAIRPERSON THERNSTROM: And you made quite a bit of the O'Connor -- in 25 years, we expect that the racial gap will close. Number one, it struck

me at least at the time, that that 25 years was like the 15 years -- I'm sorry, the 15 percent band in the Seattle case. This is an entirely arbitrary figure. I don't know why the Supreme Court, in general, is kind of fond of 25 years. But I have no idea where that expectation came from and she also asserted erroneously that there was good reason looking at the closing of the racial gap in recent years to think that the -- that we had a trend here and that trend would end up with no problem in two and a half decades.

I just -- it is very troubling to me that when Courts come up with arbitrary numbers and make social science assertions that have no basis in quantitative reality, and I wrote a note to myself that you had talked about that, but I can't remember what use you made of that, that prompted my note, except that I have afterwards in my scribbles here, there does seem to me a problem in reconciling your picture with that, Dr. Armor, but in any case, you want to talk to that, to your use of that 25 year --

PROFESSOR ARMOR: Yes. And let me say just to be clear at the outset, there are a lot of lawyers and others who argued mightily about what that really means. I was actually using it more as a

rhetorical device. I'm not convinced it's got any sort of legal or mandatory precedent and maybe it does to lawyers. Less than a generation can fight that one out.

I think the aspiration that's behind that is what the law, in fact, demands. We need to be moving toward race-neutral practices to achieve our goals.

VICE CHAIRPERSON THERNSTROM: But there's no evidence we're moving in that direction in any significant degree at all, so something is wrong about -- in schools in which we're moving kids around and schools in which we're not moving kids around. So I just don't see the argument that if we move kids around, we're going to get where we want to go here.

MR. COLEMAN: I guess going back to sort of that phrase and its meaning, my sense is there is actually broad base data that while we have not done nearly enough, the achievement gaps are closing and that really, I think, goes to -- I'm speculating here, but what's behind Justice O'Connor's mind. And I think actually with some positive movement out of No Child Left Behind, we've got the foundations -- maybe not in 25 years -- but it's still an aspirational point we need to stay focused on.

I'll speak for myself. I'm not going to try to frame it more broadly. As one who works day in and day out with educators trying to really get this as right as we can get it, the push is to move toward as much as we can race-neutral alternatives for some of the very reasons we all know. The notion that we are somehow able to do that with a flip of a switch, given the realities of where we are, I think presents real challenge and that's probably where some of the tension surfaces.

VICE CHAIRPERSON THERNSTROM: I have other questions, but I wonder if Stephan Thernstrom wanted to talk?

PROFESSOR THERNSTROM: Just to get into the record, Abbie and I did a piece or a constitutional commentary law review on Bruder and Gratz which includes a table. I went through not only the NAEP data in more recent years, but the Graduate Records Exam, the LSAT, the Medical College Admissions Test, the Business School Test and the Times Series and oh, the SATs. And the evidence is quite consistent across the board. There has been no narrowing of the racial gap in the last 15 years and in certainly small ways it has widened. So the notion that we are heading in a direction so the 25 years

hence and of course, it is worth noting that Justice Powell in the late 1970s said that the need for racial sensitive policies will be ended in another 25 years have now passed.

This is a common number that people pick. We need to keep doing this, but it won't be for long. Just long enough so that people won't remember the last failed prediction. And the suggestion then is that something is very much wrong with our elementary and secondary education and for graduate school and college education and I'm not at all convinced that the secret to and I don't think there is evidence, the secret to it is we've got to get that racial mix, compel just the right mix, things will go well.

VICE CHAIRPERSON THERNSTROM: Do you want to talk at all, I just want to know if he wants to answer or comment on one of the other --

CHAIRPERSON REYNOLDS: Dr. Armor?

PROFESSOR ARMOR: I just wanted to add a comment on this issue of the gap. There's still a great debate in education, including those who support the NCLG like I do, exactly how you're going to close the gap. But I think what there isn't much debate on is that racial balance is not a significant factor in that whole exercise. I think the research is very

clear. I wanted to say that the Hamacheck paper is one of the sole exceptions here. It's a very complex econometric model and if that answer is correct in that paper, there should be no achievement gap 10 years ago. So there's some problems with that Hamacheck text, either the data or the model. But all the other research shows that achievement effects are minimal from racial balance. So whatever is going to close the gap, racially balancing the schools or perpetuating that is not the big answer. We need to get the gap closed, ultimately to get racial throughput policies which I don't agree with that perspective, but certainly racial balance is not the way to go about that.

If we know anything we know that racial balance does not have a very significant or important effect on achievement and so we need to have policies that focus on that and not extraneous policies.

CHAIRPERSON REYNOLDS: Okay, let's check in with the Commissioners that haven't asked questions.

Commissioner Taylor?

COMMISSIONER TAYLOR: I have in my notes -- thank you all, first of all, for coming. I wanted to follow up on that one -- I have in my notes, racial

and ethnic diversity versus school quality, which in my mind is the achievement gap and the notion to put people of various races beside each other in the classroom.

And we're here talking about the latter, I think, and why is that important? What is it about that in terms of the achievement gap, if anything? I'm glad you addressed that point, Dr. Kurlaender.

Dr. Kurlaender, in your view, is there a connection or are we just talking about two different things?

PROFESSOR KURLAENDER: No, I mean I think there is a connection. And some of these broad categories, I gave the theory. But the idea is it's not that a racially isolated all black school can't afford those advantages that I described that are more -- that you see more frequently in affluent and particularly white schools. It's the majority of them don't and that's because they're urban, poor schools with a lot of poor kids and where it's hard to attract qualified teachers and other resources. So it's not that there aren't examples of great all-black schools including HBCUs at the higher ed. level. It's never an argument about the fact that all black schools or all minority schools couldn't have all those same

advantages. It's that on average, the racially isolated schools are also schools with concentrations of poverty. So I think that's where the --

COMMISSIONER TAYLOR: I think that next on my list. We seem to be having, at least in my view, we seem to be having a discussion and our society seems to have passed us by, because we seem to be having a bi-racial discussion and we have a multi-racial society. So it seems to me that we're -- and I hope the Supreme Court addresses that issue in the case because I don't think we're using the right tools or the right language in this present-day society.

And the second point on the poverty question is that we have upper middle class, middle class and we just picked this up outside, the economic stagnation of the black middle class and I encourage everyone to get this. It's something that we did a while back and it did receive as much publicity as I hoped it would. I think it's an important point because the black underclass is growing because there stagnation of the black underclass and what I heard is that that is the important element, that is the important variable.

Here, it's not so much race, but what most folks have called the capital culture and where you

find people in the class. And I guess I'm wondering why is there such a fixation on race if we all recognize that if we were lining up these variables and placing them on a chart, we would not put race at the top. We would put all of these other factors. But we seem to be so focused on race. I just don't understand why the language of this entire discussion seems to be focused on race when we all seem to agree that that's not a primary determining factor.

I'm really just trying to help, hope I can understand this.

PROFESSOR KURLAENDER: I'll add one additional thing which is I think we focused a lot so far and I understand the practical application with test scores, but yes, and achievement and it is possible that there are racially neutral given the evidence as modest and we can -- nonexistent, to modest to positive and the range on the panel. But it is modest on achievement.

I think we focus on race because I personally believe that the research shows that there are noncognitive social benefits to being in school and to having experiences in your life with people who are different from yourself. So that is my personal and I think other social sciences preoccupation with

race as a construct.

On the achievement, yes, I think -- and we can have a conversation about the race neutral measures. I did a study that was recently out with a couple colleagues, a policy journal that looks at socio-economic status, specifically income. And sure, if the distributions, income distributions, overlapped perfectly by race then it would be a good proxy. But it turns out they don't across looking at actual units where kids would be distributed, such as school districts. It isn't a perfect proxy. In fact, in many cases it doesn't value anything. You can have perfectly integrated by SES, by income, or free and reduced lunch eligibility, schools that perfectly racially isolated using simulations with school distributions.

MR. COLEMAN: Commissioner Taylor, that's a very good question to put on the table. The short answer is we're talking about race because that what we're asked to come here to talk about. But I think the reality is despite the headlines and despite the fact that obviously that's the legal issue that you have two cases to be heard this coming term by the U.S. Supreme Court, the reality is when you go behind closed doors and frankly sometimes not behind closed

doors, the school boards and college leaders who are struggling with issues of improving educational outcomes for all kids and ensuring equal opportunity for all kids, there is an unbelievable array of factors that come to the fore. It's not just about race.

I think race based on precisely the foundations that were just articulated does tend to surface. But socioeconomic status, background, unique experiences, a whole array of factors come to the table. In my view, unfortunately tend not to command the headlines because they're not quite as sexy as race to talk about.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: There are studies and there's a whole series of studies being done now because of the handicap study of looking at economic composition, race composition, and ability composition at the school and classroom level. This is a very complex literature. There's no consensus yet, but to the extent that there's things pointing in a direction there's some indication that economic and ability balance, that is the uniform, is the operational factor, not race.

I'm not saying that as a definitive or as

a conclusion. I'm not addressing it here in my paper, but I do think there are a lot of researchers who think that racial composition per se is not the causal variable. It's either some combination of economic or the composition of ability levels or cognitive skill levels in the school or classroom.

So I'm just underscoring that I think you raised a good point because I think at some point we're going to end up concluding, and I'm not endorsing economic balance here because there are mandatory, there's community support problems with that approach as well. But to the extent that we want to isolate what's the causal factor, I think race is going to drop out ultimately in this research.

PROFESSOR THERNSTROM: If I could just say one comment on the literature, that makes the general point that we really have to be very careful about fastening on particular social science studies and saying okay, then we've got to totally revise how we organize our schools. The Hamacheck paper, and David has some important technical criticisms of that, also found a strong race and teacher effect and indeed specifically recommends that black students be assigned to black teachers which seems to me to raise some legal questions. And this is not an isolated

finding.

Some years ago there was a careful study, the Hennesy-Starr experiment, there's a huge literature on that. The main piece of evidence suggesting smaller classes has educational benefits as from Hennesy-Starr. Well, the researcher looked there closely at race of teacher effects and this is an experimental situation, so you get pretty powerful findings, and found that black students, these are in the elementary grades, learned quite significantly more, something like five or six percentile points from having black teachers. And white students learned about the same in addition from having white teachers.

Which, if you take seriously, is an argument for segregated classes. Black teachers are not benefiting white students. White teachers are not benefiting black students. Therefore, we ought to put them in different classrooms and match the teacher race. And then Dee(ph) has just published an analysis focusing on the same issue using the 1988 National Longitudinal Youth Survey data, a huge national sample, and found the same thing.

Now I am not prepared to say let's resegregate our schools and assign teachers to classes

on the basis of race. But there is some social science evidence for that. So you know, we have to be very cautious about what policies we start latching onto. After all, the Kenneth Clark doll studies were absurd. I mean, at least presented to the Court in a way that was totally misleading and scientifically worthless.

CHAIRPERSON REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: I guess in response to that last comment, I suppose that there are also a lot of studies that show that school districts have done a pretty poor job of recruiting minority students that could serve as role models, but let's not get into that right now.

VICE CHAIRPERSON THERNSTROM: Minority students or minority teachers?

COMMISSIONER YAKI: Minority teachers.

VICE CHAIRPERSON THERNSTROM: You just said students.

COMMISSIONER YAKI: I said for minority students.

VICE CHAIRPERSON THERNSTROM: Oh, for minority students.

COMMISSIONER YAKI: I have one quick observation and one is I think that there have been

lots of other studies mentioned in this. I'm sure there are other studies that I've actually looked at that Gary Orenfield has done as well, and I'm going to ask that the record be open more than 30 days for the purpose of ensuring that we get an accurate, not an accurate, but a full compilation of what is out there for us to review as we go forward and I would like to ask that Commissioners be given copies of the studies. So far what we have been finding are briefing reports. Comments come in and we get a digest version of them. When the briefing report comes out and I think on a topic as important as this, I want to see what actually comes in through the door over the next 30 to 60 days.

Question for Dr. Thernstrom and for Professor Armor. And forgive me if this question seems a little long, but based on comments that both of you have made in terms of the role of race of lack of role of race and the issues that you've discussed, at what point would you say that the state has no interest in attempting to engage in racial balancing or school desegregation. Let's say, for example, let's take Seattle. Seattle never had a de jure policy. It was always -- the word, de facto. But let's take the situation back in 1971 when the schools

were 95 percent one race, 5 percent the other or 95 percent one way, 5 percent the other.

PROFESSOR THERNSTROM: Seattle schools?

COMMISSIONER YAKI: Or any community. It could be any community today somewhere, by virtue of whatever, it's 95 percent -- the school district may be 50-50 minority/whites, but the schools end up being 95 percent one, 5 percent the other and the other school is 95 percent one and 5 percent the other.

So is that a cause for concern?

PROFESSOR THERNSTROM: I'm not sure it is a great cause for concern, but what I would say is I would want to think about race neutral ways of redrawing the school boundaries, for example. Dave Armor is an expert on this and can spot a --

COMMISSIONER YAKI: If it doesn't matter and you don't care, then why?

PROFESSOR THERNSTROM: Well, I'm not saying that ideally we have this posited very high level of difference, though in fact you would not have found anything remotely like that in Seattle. The evidence on Seattle's residential patterns doesn't conform to that at all. There's no ghetto in Seattle and other groups are concentrated in ways, I would say, dictated by their preferences.

So yes, I would say if there are ways of redrawing boundaries or encouraging magnet schools, that's fine. I believe in not a system in which people are assigned to this school and then to that secondary school and then to that high school on the basis of geography alone. I favor -- look at Minneapolis school choice. I would like choice open state-wide and if that sorts of people in a more racially balanced way, that's fine.

But if it results in Stuyvesant High School which is 50 percent Asian-American or the University of California at Berkeley which is 50 percent Asian-American, I don't consider that a problem. Now there's a huge over-concentration of Asian Americans. What can we do to reduce it? I don't believe in that.

COMMISSIONER YAKI: But if the school district decides to do nothing, you probably wouldn't have too much of a problem with that?

PROFESSOR THERNSTROM: Yes.

COMMISSIONER YAKI: Okay.

PROFESSOR ARMOR: Let me say first, answering that question in my opinion it depends on what you think the problems of that situation are. I would say and this is where I was in late 60s, mid-

60s, if I believe that that predominantly isolated minority school or school system was the reason for low achievement and other problems, in fact at one point in my life I did support the kind of programs -- I'm assuming nondiscriminatory policies, if there is discrimination.

COMMISSIONER YAKI: Assume it just happened.

PROFESSOR ARMOR: It just happened, it's de facto. I would have been, I was at one time a lot more concerned and worried about that if it was a causal -- if it was a reason for the gap or for low achievement.

I don't believe that that is the reason for the low achievement so it doesn't mean I'm not concerned, but I'm less concerned.

What I am concerned about is that if there are people in that system that want an integrated school, that would like that opportunity, I think that there would be and that's why I've always supported voluntary options.

Making it mandatory is a real problem for me because I'm not sure how as an educator or frankly as just a citizen, you have justified mandatory assignments of face when the school system whose job

is to educate students is not going to -- that's not going to help the problem.

I would definitely --

COMMISSIONER YAKI: You pretty much dismiss out of hand the idea it's just not a good thing to have even a de facto segregated school system, if you can't, say for example, I mean hypothetical is a hypothetical, that all of the things being equal, if it were equal, you wouldn't mind?

PROFESSOR ARMOR: No, I would mind.

COMMISSIONER YAKI: Why?

PROFESSOR ARMOR: I would mind because there are parents -- if there were parents, and I assume there would be parents who would like a chance to go to an integrated school. There are minority parents that want that. There are white parents that want integrated school for their children.

I think the desire for that and without debating the scientific evidence, there certainly are individuals who prefer those things.

COMMISSIONER YAKI: The whole issue about when you talk about forcing them to do this, busing them, that indicates that there is parental resistance.

PROFESSOR ARMOR: There is.

COMMISSIONER YAKI: So in the instance, but for example, if the number of parents who actually wanted to have an integrated experience for their children was in the 5 percent range and so the school is then changed from 95/5 to 90/10. If that's all that resulted from voluntary reassignment, you would have no problem with that?

PROFESSOR ARMOR: No, I wouldn't.

COMMISSIONER YAKI: So at that point if it's 90/10, 10/90 --

PROFESSOR ARMOR: The numbers are --

COMMISSIONER YAKI: So the idea of Brown that inherently the idea of a school environment that is inherently segregated, you believe essentially doesn't hold water any more?

PROFESSOR ARMOR: That was not Brown. Brown did not make any decision about a school system that happens to be predominantly one race. It made no such decision. The decision was about the state creating that and compelling that --

COMMISSIONER YAKI: No, Brown did say that a situation where a state creates is one example. It did not by any means limit it and certainly the cases that followed didn't seem to do that at all.

PROFESSOR ARMOR: That's been a debate in

the Supreme Court for 40 years. The majority of the Court has always held that de facto segregation was not a matter of law. It was not a matter of Court-ordered remedies to create balance. So I think that's how the Court has been and I personally agree with the moral course of that, that we're concerned here, the government has to be concerned with their actions and whether things are required or forced.

The fact that congregate together, and tend to live in neighborhoods or attend schools of one race is something that I think we have to respect. It doesn't mean that we shouldn't --

COMMISSIONER YAKI: So segregated neighborhoods is a good thing?

PROFESSOR ARMOR: To me, it's morally neutral, if a neighborhood is 80 percent black or 90 percent white or Hispanic. That's not, to me, an actionable issue for the state, except that the state ought to respond to the desires of individuals, if they're there, which I think they are, to have experiences of integration and to open those pathways. But to compel it, no, I think that requires a whole different level of law and of evidence.

COMMISSIONER YAKI: I have a question for Mr. Coleman and Professor Kurlaender.

One is what do you think of what they just said, number one. And number two, just as a comment, it seems to me that there's a tension between the role of individual achievement versus the good of what we perceive to be American society in this entire debate, that it comes down to well, I would do better or my kid would do better versus society would be better if.

If you would sort of react to what these two gentlemen just said and reflect a little bit about the latter.

PROFESSOR KURLAENDER: I think, you know, I think that the piece about the -- I think Professor Armor cites this too, whether it's just attitudinal or actual behavior, although there's qualitative research on the behavioral change, outcomes of kids who are educated in desegregated settings, the idea that you would want to keep residential neighborhoods segregated. I mean if there's any way that education could break that cycle to have you have white parents and African-American parents and Latino and other parents see the benefit, social benefits, if we put achievement aside for a minute, that their students would get by learning other cultures, by knowing how to interact with other people, then it's quite possible that their children, when they look for

neighborhoods in the future, will look for the same thing.

I mean I do think at some point it's a cyclical thing. If you've never had that experience, we know at least from correlational studies that students who are in more diverse settings, at least report a stronger desire to live and work in more multi-racial settings.

Again, it's not causal, but I don't necessarily think everything has to be experimental to be persuasive from a social science perspective.

The piece on individual differences, I mean I think from the Affirmative Action in this tie-breaker sense of it, Tom Kane, I think it's his anecdote. I hope I'm crediting him correctly, the idea about the parking space, handicapped parking space, right? So the white parent who wants their kid to get into a specialized magnet program where you would have to test just believes that if their child was denied access to that better school because it went to a minority student, right, and they would have been next in line to get that spot, well, the truth is we all think that when we see the open parking spaces that there's only two spaces and they're handicapped and we would get it if we had the handicap sticker.

But the bottom line is there have been 20, 30, 100 cars before us who would have already gotten those two spaces.

And so for every one of those white parents who think their kid would have gotten in, I think there are a whole bunch of others and so while this is not -- I think it's people see this as a me versus -- I would, my kid would get in and the tie breaker or whatever, but it's not -- there are sort of larger social goods that I think are, like you said in conflict with thinking about it from an individual perspective.

CHAIRPERSON REYNOLDS: Commissioner Yaki raises an important point. This notion of the greater good versus the individual, it seems to me that on the one side we have a right to associate under the Constitution and that means that the low-income individuals can decide to locate in a particular geographical area and stay to themselves or a black nationalist doing the same thing and the Constitution respects that and should respect that.

The notion of -- and I'm assuming that there's an absence of discrimination. If there's an absence of discrimination and Americans exercising choice, exercising their freedom, I think that's a

good thing. What we have here is an attempt to restrict or constrict freedom and I don't think that what's being placed on the table to justify this contraction of freedom is persuasive.

We talk about the benefits in terms of educational outcomes. I think that there's a consensus that at best they're modest. A contraction of freedom on the one hand and then I put up the -- and then I weigh that against the benefits on the other side of the ledger, I choose freedom. Time and time again I choose freedom.

And the zeitgeist guys, I mean race seems to be so important, at least the notion of diversity seems to be so important, just think of the intellectual fire power that has gone into defending the use of racial classifications. I think that black students would be much better off if that energy and that intellectual talent were pointed in another direction. For example, let's see what methodologies actually raise test scores. Let's find out what's highly correlated with improved test scores. That would be a good thing. That would raise incomes over time. That would also usher in a new era of equality where you have citizens who are dealing with each other as not equals really politically, yeah, everyone

can vote, but freedom has different facets. And you have a lot more freedom if you have some cash in your pocket.

So I just find this whole debate interesting because who do we care about here? Is it the kids attending those inner city schools and we care about how we feel about ourselves and the kids, well, they are secondary? There's a lot that we need to be doing in the 21st century and fighting over whether we should allow schools to use racial classifications in the admissions process shouldn't be one of them. That is not going to improve the lives of students in any appreciable manner in my view.

And at the end of the day, freedom is important. The means are important and while these goals may be worthy to some, the means that are being used to try to reach these goals result in a reduction in choice and freedom. And that's a bad thing.

PROFESSOR THERNSTROM: Mr. chair, if I could endorse those remarks strongly. I just wanted to point out that in my paper I introduced evidence that deals with this very important issue. Commissioner Yaki referred rather sneeringly to ethnic purity of neighborhoods; Jimmy Carter's phrase by the way.

COMMISSIONER YAKI: I sneered at it then, too.

PROFESSOR THERNSTROM: Pardon?

COMMISSIONER YAKI: I sneered at it then, too.

PROFESSOR THERNSTROM: Good. In fact, there is a great underlying debate here about the composition of American society. Are we really an ethnically, racially, plural society and if so, is that good? And I would say that if you look at any American city, you find distinctive clusters of people. You find not Asian communities. You find Filipino, you find a whole range of immigrant-based neighborhoods. You find predominantly black neighborhoods. In my own city in a metropolitan area, Brookline, Massachusetts, Newton and Sharon are very disproportionately Jewish, and therefore their public schools are heavily Jewish.

Now is that a bad thing? And who cares if anyone of us thinks it's a bad thing. Do we really want public policies that would mandate that there not be any ethnically, religiously, identifiable neighborhoods? Or in my view, identifiable public schools. And many have already alluded to the fact we have many of them publicly supported, historically

black colleges and universities. We also have, which receive tax benefits in American society, African-American churches and there is a great issue here. Is it a bad thing that 80 percent of African-Americans attend identifiably black churches? One has heard the phrase Sunday morning is the most segregated hour in America.

So there is a vision there that each -- all of us should be in unitarian churches that are little League of Nations with 2.4 Jewish, and 1.8 percent Armenian or are we a society in which people choose to associate with others. They cluster in certain kinds of neighborhoods. There is overwhelming evidence, I've never seen a bit of empirical evidence to the contrary that African-Americans today on the average want to live in what they consider racially mixed neighborhoods that is more or less half and half. And I cite in my paper just one example, 4 percent of African-Americans in the 2003 Gallup poll said they want to live in a neighborhood predominantly made up of people of other races. But in fact, the integrationist's vision would have every African-American living in a census tract that is 12.4 percent black, no more.

So that underlies this debate over what we

should do about schools.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: I want to go back to the Seattle case again in the light, in the context of Bruder and the benefits again -- Bruder sets forth certain benefits. And this goes to empirical data again.

Professor Armor, in your paper, when I read it you indicated that students K through 12 who come from a racially diverse school are not more likely to attend college then students that come from "isolated" schools. And I'd like to build on that a little bit.

Do you know of any studies that show whether or not students that come from racially diverse schools, racially or ethnically diverse schools, graduate from college at a higher level?

PROFESSOR ARMOR: The same studies would suggest that the differences are not very great.

COMMISSIONER KIRSANOW: Okay, are there any studies that anyone is aware of that show that students that come from racially or ethnically diverse schools are more likely to participate in ROTC?

PROFESSOR ARMOR: No, I haven't looked at

it.

COMMISSIONER KIRSANOW: Any studies that show that students that come from racially or ethnically diverse schools are more likely to attend military academies and become officers?

PROFESSOR ARMOR: No.

COMMISSIONER KIRSANOW: Any studies that show that students that come from racially diverse schools K through 12 are more likely to engage in more spirited class room discussions?

COMMISSIONER YAKI: Is the answer no because he doesn't know or no because there are no studies?

COMMISSIONER KIRSANOW: There are no studies.

PROFESSOR ARMOR: There is a study that my colleague here, Professor Kurlaender looked at and believe on that one there was a small difference but it wasn't very big.

COMMISSIONER KIRSANOW: What was the name of that study?

PROFESSOR KURLAENDER: There are a couple. I will cite them. It's that one and I think the one you cited -- the international. Yes, I will add that.

COMMISSIONER KIRSANOW: Any studies that

show that K through 12 racially diverse students, students who come from racially diverse classrooms are better able to function in the global economy?

COMMISSIONER YAKI: Is this from the G-8 or something like that?

COMMISSIONER KIRSANOW: No, this is from Bruder.

PROFESSOR KURLAENDER: What do you mean function in terms of --

COMMISSIONER KIRSANOW: I don't know. You would have to ask Sandra Day O'Connor that but I suspect it means that students that come from racially diverse economies, they head up at these multi-international corporations and can deal with culturally diverse customers and so on and so forth. Are there any studies that show that?

PROFESSOR KURLAENDER: So the older work, which we might --

COMMISSIONER KIRSANOW: I'm sorry, who?

PROFESSOR KURLAENDER: The older work, Crane and Mayer review suggests higher occupational. There's clear evidence on aspirations than on actual attainment. But newer work by I think it's Boozer and colleagues, also an economist, showed higher occupational status and college, probability of going

to college, and wages. But the wages evidence is a little bit clear. That's the closet that I can get to that.

COMMISSIONER KIRSANOW: One question that is somewhat related. We're talking about racially -- Professor Thernstrom alluded to this. We've been imprecise it seems to me in terms of our definitions, or at least the report in Bruder was imprecise. The evidence adduced in Bruder and in Gratz was that there were a number of -- Professor Lempert, I think Professor Liu, were asked what is a racially diverse classroom. What is a critical mass? Professor Lempert said I think between 10 and 12. Someone else said between 10 and 12. Another said 18 percent. And they're really just talking about black students.

But there was a range and strangely enough at Michigan the range always stopped at 12 percent, going to your position of quotas. But they all knew the mass in terms of critical mass, critical mass meaning that point at which minority students were more likely to participate in classroom discussions without being isolated or feeling as if they were proxies or mascots for their race. Does anyone have a definition of critical mass?

MR. COLEMAN: Yes, and I would be glad to

give you a portion of this hot off the presses where it actually drills down in the record in the Michigan case to try to get a better handle on what critical was. In fact, I was just checking to make sure my not so good memory is correct. I think what the law school ultimately said as a matter of policy that it was somewhere between 11 and 17 percent of under represented minorities.

COMMISSIONER KIRSANOW: But it stopped at 12 for the last 8 years prior to litigation beginning. But generally speaking, that's in Michigan.

MR. COLEMAN: And that, can I just say is as I understand the critical mass theory, once again I'm not one of the social scientists. By necessity, has to be institution specific. You couldn't cut and paste what worked in a Michigan specific context because there was, in fact, and this is an important piece around the whole question about it. There was institution specific research to get to the question of what is critical mass on my campus for a public flagship institution that looks like me. That's not going to apply to the community college down the road that may be facing comparable diversity challenges. So that's an important takeaway, I think.

COMMISSIONER KIRSANOW: It also goes to

the mission aspect of it. You know, the Supreme Court deferred to Michigan's judgment because under the first amendment, reportedly institutions have broad autonomy in defining their missions. But that was under New Hampshire v. Swayze case. There isn't comparable in the K through 12. The K through 12 to a large extent doesn't have the ability to define admissions because to a certain extent admissions are defined by state school boards, local school boards, No Child Left Behind, so it's very narrowly circumscribed. Is there a means by which you translate this autonomy to the K through 12 situation?

MR. COLEMAN: I do. And I think it is important to recognize, as you suggest, there are distinctions. There's not -- in fact, we're not fundamentally dealing with sort of the academic freedom interest, to decide who to admit. In the K through 12 setting everyone by virtue of compulsory attendance laws is going to be admitted, quote unquote.

It's a question of simply what the structure of the program in terms of who goes to what school looks like. But in the K through 12 setting, for decades, Courts have actually said two things. One, we are not the educational experts. We are not

sitting in the position to second guess your judgments and Mr. Chairman, this actually goes to one of the three points I wanted to make when I raised my hand.

We have been framing this conversation a lot here -- you asked the question would it be a cause of concern. There was another question, is it a bad thing?

My add on on the question is for whom? With whom do we vest the fundamental authority and some level of discretion? I was struck, Mr. Chairman, by your posited, and if I got it right, the sort of choice/freedom either/or in one versus the other. My perspective working hand-in-glove with educators who are trying to get it as right as they can, these are not simple pun-intended black and white issues. This is about balancing lots of competing, sometimes constitutionally-grounded principles in very difficult arrays. And one of my new bumper stickers, "not to let the perfect be the end of good" and that's not to apologize for anything, but to recognize there is fundamental human judgment here and I think when we step in to say let's wipe out all use of race in this context forevermore, we need to be very careful because when we're talking democratic values, we're talking about elected school boards in this context

that are supposedly representative of the communities they serve, making frequently very difficult judgments and I think that is an important context and level not to lose. It is very easy when we get into the substance, just sort of that piece. But that's an important piece of it.

CHAIRPERSON REYNOLDS: Just one last question, again, social studies, Seattle talks about one of the reasons they're doing this is to avoid the harms associated with racially-isolated schools. What empirical studies would show what those harms are, if you know?

PROFESSOR KURLAENDER: I am happy to include that. There are quite a few studies that look at -- I mean just at concentrations of poverty in urban -- larger minority schools. It's sort of what the majority of highly racially isolated schools look like in terms of the host of characteristics.

PROFESSOR THERNSTROM: So we can balance people by poverty composition and then solve the problem?

PROFESSOR KURLAENDER: Well, to the extent that you think that they're good proxies for race. Again, if -- focusing on the achievement, I would agree with what was said earlier, right, that if there

are sufficient proxies that get you those achievement gains, that they should be used.

I'm arguing that there may be some other social benefits to having diverse schools which then proxies would have been --

COMMISSIONER KIRSANOW: Speaking of proxies, are there any studies that show that race is a proxy for viewpoint?

PROFESSOR ARMOR: Before we move on, may I answer -- on achievement which is important, isn't the only outcome of schools, but certainly in the earlier grades, the racial isolation in schools, I don't think there's any substantial evidence that says the achievement, because of that fact, is lower than it would be in any other racial composition, once you control for the appropriate background of the individuals. So I do not think there is any achievement harm occurring because of racial isolation and I think the evidence is overwhelming on that point.

Holding aside the social issues, because I think that's a little bit murkier picture, but the achievement, I think is a concern.

COMMISSIONER KIRSANOW: He's talking about that one aspect.

PROFESSOR KURLAENDER: I actually thought you were talking about sort of what is the picture of racially-isolated schools in multiple ways, right? So that's what the --

COMMISSIONER KIRSANOW: Right, the harms and Seattle talks a little bit about various harms that in terms of very similar to how it characterizes the harms. But are there any studies that would show correlations between race and viewpoint that raises a proxy for viewpoint?

PROFESSOR KURLAENDER: I actually want to cite a really important study that I'm not sure made it into the Michigan case that was done in higher ed. around -- that Duncan and his colleagues did where they used an experiment randomly assigning a roommate in three different, I'm not sure which, it was kept confidential, but at a university where they assigned, randomly assigned a roommate to a student of a different racial-ethnic group and saw really powerful effects of changes in attitudes and tolerance when you were placed, when you had randomly been assigned a roommate of a racial group different than your own. Very powerful for whites.

COMMISSIONER KIRSANOW: Okay, that's useful, but the real question was is are there any

studies that shows that students from a particular race are more likely to have certain viewpoints on certain things. In other words, is race a proxy for viewpoint and especially in an academic setting? Do black, for example, think the speed of light is different than what Asians do? I'm being somewhat facetious, obviously, but is race a proxy for viewpoint?

MR. COLEMAN: I'm going to say no, and to the extent there's in your question, at least I'm taking the implication that somehow that same foundation was Justice O'Connor's opinion. I think to the contrary. It was, in fact, race isn't a proxy for viewpoint. In fact, lots of people of any one race think very differently and part of the value of diversity is you're bringing people together to figure out, guess what, all blacks, all Asians, all whites, aren't monolithic and that's a good thing.

COMMISSIONER KIRSANOW: But here's the obverse of it though because O'Connor says no, race isn't a proxy for viewpoint --

CHAIRPERSON REYNOLDS: Commissioner Kirsanow, one moment.

Commissioner Braceras, do you have a question?

VICE CHAIRPERSON THERNSTROM: We lost her. Did we lose you, Jennifer? Okay, two of us here.

CHAIRPERSON REYNOLDS: Okay, you two are in the queue. Vice Chair Thernstrom.

VICE CHAIRPERSON THERNSTROM: Couple of things. Just a couple of remarks and then a question. The Tom Kane analogy to handicap space that should be reserved for minorities, seems to me to be the most unfortunate analogy in the world that people keep using it. What, we've got minority students are handicapped and therefore need the space? I mean frankly it's offensive to me.

But anyway, if there is a problem here of too few whites in schools, there is no solution. That is 26 out of the 27 largest urban school districts have on average, Salt Lake City is the exception, have on average 17 percent white school population. If you need more whites, in order for kids to learn, there is no solution except perhaps to fly them in from Utah or Vermont or wherever. And so the --

COMMISSIONER YAKI: Part of their two-year mission.

VICE CHAIRPERSON THERNSTROM: And so the answer, if seems to me to the question that was posed on how are we going to close the racial gap is very

simple, teach the kids. It's really not so hard to teach kids.

The notion that the reason kids are not learning in inner city schools because of a lack of resources seems to me just factually incorrect. We're sitting in a city that spends I believe $17,000 or $18,000 per pupil. It is a disaster in terms of student achievement. There isn't a single -- even the Council of Great City Schools said that 60 percent of its client school districts have per pupil spending above the state average, per pupil spending in most large, urban districts is very high. It is not money that is the problem.

And let us not put school boards here on any -- elected school boards on any pedestal. There are very low turnout elections and they are elected basically by the teachers unions and the teachers unions have a political agenda.

My question, there has been some discussion here of racial interaction within schools as a consequence of racial balancing. Maybe there's some evidence on the level of racial interaction and the benefits, my very strong sense is that kids are sorting themselves out within schools. We certainly know by high school what -- that there are very few

students in the AP and other high demanding classes which is very few black students in them which is, of course, a travesty, but that speaks to the whole quality of K through 12 education and back to the solution, why don't we try teaching the kids?

I don't know the academic literature on this. I do know, as a member of a State Board of Education, who visits schools very often and somebody who has written a book on -- co-authored a book on the racial gap and who in the course of that research visited a great many schools, that within schools, whatever the numbers are, within schools kids are sorting themselves out by race, ethnicity and social class. And so counting heads school-wide doesn't tell you anything about a so-called integration that is real social racial contact within the schools.

If anybody's got any evidence to the contrary, I'd be delighted to hear it.

CHAIRPERSON REYNOLDS: Mr. Taylor?

COMMISSIONER TAYLOR: Mr. Chair, I promise one question and no comment. This is a question for Dr. Kurlaender and Mr. Coleman and I pose this question to you all because I sense that you all see value in changing attitudes and the general social value of the interaction of different folks.

So to you I pose this question since we're trying to inform policy makers by what we do here. If we can set aside the achievement question for a moment and focus on those benefits, are those benefits worthy of the government mandating folks go to certain schools or are those benefits worthy of governmental voluntary encouragement? To me, that seems to be the fundamental public policy question which is often hidden behind the achievement gap issue.

So to you all, just on the pure public policy question, are your goals, I think you all believe in, which I don't necessarily disagree with, I may go about them in a different way, personally, but are they worthy of the government mandating that people go to certain schools based on race?

PROFESSOR KURLAENDER: I'll let the lawyer answer.

(Laughter.)

MR. COLEMAN: It's a very good question and I think I'm going to give you the classic lawyer's answer first and then I'll answer it substantively. The answer that I would give as a lawyer is it depends.

I am adverse for a host of reasons, policy-related, research-related, legally, to drawing

lines in the sand on these issues. For every one example you can give me, I can find the counter example, and so I think we've got to be sensitive to some range, not whole cloth, but some range of discretion to allow educators to do their job.

COMMISSIONER TAYLOR: That would mean that there may be some cases absent evidence of discrimination --

MR. COLEMAN: Right.

COMMISSIONER TAYLOR: Where people have selected to cluster in something less than a racially mixed neighborhood that in your view public policy would warrant for purposes of achieving the social benefits only, the government mandating that they mix in terms of K through 12 education.

MR. COLEMAN: I call them educational benefits, but it's sort of the asset of the educational benefits you're talking about. And so I would say absolutely yes.

COMMISSIONER TAYLOR: Okay.

MR. COLEMAN: That is not to - -I'm not sitting here to endorse some rigid -- there are certainly policies and practices I would say no to and behind closed doors, sometimes I do. But the bottom line is the notion that we somehow draw a line in the

and to say categorically under no circumstances, when we still haven't lived the promise of Brown. We're not yet living fully the promise of No Child Left Behind.

We've got work to do and I think there's enough substantial evidence around at least for some of the educational benefits here that justify some school board discretion. We have a different view of school boards.

CHAIRPERSON REYNOLDS: Is that discretion already there? We have a strict scrutiny standard test.

MR. COLEMAN: Yes. And I'm not running away from that, by the way.

CHAIRPERSON REYNOLDS: Okay. I just find it odd that you would champion, again, this contraction of freedom, this reduction of freedom, the notion that you would force me to send my child to -- force my child to attend a school that I have a violent -- I have a violent disagreement with the pedagogical approach or whatever the issue may be, but you would force me to do it because you believe that your particularized world view is more important than mine and that yours should take precedent over mine and that you should use the apparatus of the state to

impose your views on me.

MR. COLEMAN: No, in fact, I'm actually trying to be here not imposing on anything. One of the things I love about Chief Justice Roberts is his notion of being humble. I think it's when we come in as sort of from a federal or national perspective and say rule it out, I'm saying let's allow for some local context and decision making --

CHAIRPERSON REYNOLDS: So you're saying a portion -- we have this huge educational bureaucracy. We have school districts across the nation. You're saying some of those school districts would be able to impose their world view on me?

MR. COLEMAN: Back to it depends. For me, personally, as a lawyer and as just someone interested in the policy in this area, it would very much depend on what that imposition looks like. There are lots of -- to use your term imposition, that I wouldn't count.

CHAIRPERSON REYNOLDS: Are there any philosophy majors in here? Is it Plato's Republic where we have the state deciding who does what, who lives where? It was a bad idea then and I think it's a bad idea now.

Freedom should reign and the absence of discrimination, your view is no more important than

mine and the marketplace of ideas should be allowed to play itself out. Your approach, results in a place like Boston where you have to spend a lot of time trying to find white students in a public school setting, those with the means to protect themselves from folks who share your views will do so. They will pull their kids out of public schools. They will home school.

People don't like the state to impose on them, especially when it comes to philosophical issues about the good. I don't think that that's the state's business. Again, I think that we are in -- we're playing with fire when we start reducing freedom and using the state to impose a particular point of view on folks who are not discriminating, but who just may have a different point of view, one that we can all agree with or disagree with, but they should be free to arrange their lives in a way that suits them, as opposed to the state.

So Commissioner Yaki?

COMMISSIONER YAKI: Well, drawing back on my philosophy classes at Cal of which I actually had none, which means, of course, I'm speaking only from my own personal experience and hubristic view of the world, but I would just way in response, Mr. Chairman,

I commend you for your very broad view of individual freedom. I think that the reality of a constitution that we live in and the environment in which we exist right now, unfortunately or fortunately, constrains that individual freedom under certain compelling circumstances. Sometimes it does it in ways that I disagree way, whether by actions by the U.S. Congress on women's choice or actions by the Executive Branch on personal freedoms and liberties and in terms of eavesdropping, but we don't need to get into that.

What we can say though is that there are circumstances and should be circumstances when it cannot be the case that simple individual whim under the guise of freedom or what have you or whatever animus is there can and should always overrule what is that of the greater good. You don't have --

CHAIRPERSON REYNOLDS: Who decides if it's a greater good? The majority?

COMMISSIONER YAKI: But let's go back to 1924 and or was it 727, I can't remember which case it was, in terms of the ability -- you don't have an absolute right to cry fire in a crowded movie theater.

CHAIRPERSON REYNOLDS: I agree that there are limits on freedom. Absolute anything is a bad thing. Let me clarify my statement. The notion that

you're going to contract my freedom or any American's freedom under these circumstances, you have to make a case --

COMMISSIONER YAKI: But then you're defining what -- you are deciding, the arbiter of trying to decide what it is is more important than what the greater good is in the individual instance. I would argue that someone -- and I think you would agree that someone's ability to discriminate based on race, religion, national origin does not override my individual right not to be discriminated against. Those are two countervailing individual --

CHAIRPERSON REYNOLDS: One is protected by the Constitution.

COMMISSIONER YAKI: One is protected by the Constitution --

CHAIRPERSON REYNOLDS: And the other one is prohibited under --

COMMISSIONER YAKI: Then we have to get back to what this ultimately is and that is a constitutional analysis of class protection for people in this country, whether they're African-American, whether they're Asian-American, whether they're Latino, in the instance that we're talking about here, the question becomes one of does the good of

protecting that class from the invidious effects of discrimination de jure, de facto, passive-aggressive, whatever you want to call it, versus the individual right to simply allow that to exist or to say that it should not apply to me, is where the Supreme Court comes down on, in strict scrutiny and narrowly and why Bruder, I believe, represents a sensible way, not the best way, not what I would prefer, but certainly a sensible way of looking at the fact that there is a benefit to this country of diversity, there's a greater good of diversity. There is a national interest in diversity and I think that's where we disagree.

COMMISSIONER YAKI: If we're talking about the use of racial classifications to achieve diversity, I think that there is a national consensus. In most places where the people have had an opportunity to weigh in on the propriety of using racial preferences, it's pretty clear. Americans don't support the use of racial classifications. Again, this is about the -- this discussion about ends and means. Even if we assume that the goal is worthy, the means that are being used are suspect, at least in my view.

Well, I guess we better wrap up now

because we have --

VICE CHAIRPERSON THERNSTROM: Can I just make -- one sentence in response to Commissioner Yaki?

Michael, what is diversity? I mean the example was given earlier of a school that is 25 -- in Seattle, 25 percent white, 75 percent Asian; 25 percent white, 75 percent black. They're both equally diverse. I mean we're working here with an undefined concept and those two schools are radically different in terms of both social class and academic achievement and I don't see how you can just throw around this word "diversity."

COMMISSIONER YAKI: I'll try to make this as brief as I can, Commissioner Thernstrom.

Diversity is a value. Diversity is a real world construct in terms of when I look around a room and if I see people who are not all -- one majority or another. Diversity is also a situation, in a situation in the descriptions that you provide, one where I don't think that we're ever going to get it perfect. But again, as the saying goes, don't let perfect becoming the end of the good, is not a way to say let's set up straw men on one side or the other, knock them down and say therefore neither one can work.

All I can tell you is that from my own personal experience, from living aborad and being identified as solely as American, to coming back to a country where I went to a school that was about 99 percent white, going to Berkeley when it was just beginning to diversity. There may be 12 percent Asian-Americans at the time there now, what you have right now. When I was a member of the Board of Supervisors and going into the corporate board rooms of giant corporations located in San Francisco and not seeing a single woman, minority in those offices, in the executive suites, that I will be like Justice Potter Stewart and say I know diversity when I see it.

VICE CHAIRPERSON THERNSTROM: Okay, but in the University of Michigan case the Asians didn't count, of course, for diversity purposes.

CHAIRPERSON REYNOLDS: Doesn't this rest on the false notion that there's a random distribution of interests and abilities and nature does not particularly care for random distribution of interest and ability. That's just not how the world shakes out.

There will always be clusters and the only way to undo these clusters and I'm assuming that these clusters have formed out of choice as opposed to

distribution, the only way to undo this then is to have the state come in and make decisions, to undo personal decisions basically.

COMMISSIONER YAKI: That's essentially what 1954 was all about.

CHAIRPERSON REYNOLDS: No, it wasn't. That involved discrimination.

COMMISSIONER YAKI: It involved collected decisions by individuals to oppose a system of segregation --

CHAIRPERSON REYNOLDS: There are state statutes on the books requiring discrimination. Folks did not have an opportunity to express their choice. It was imposed on them by people who had a particularized world view and used the state to impose it on blacks.

COMMISSIONER YAKI: Right.

COMMISSIONER KIRSANOW: I had a question. Going back to critical mass for a second, Michigan, it was between 10 and 17 percent is the range that they found to be critical mass, critical mass being that point at which minority students are not likely to feel isolated, more likely to participate in class.

Do you know whether Michigan or any other school that has a Affirmative Action policy ever did

any studies to determine that it took 10 to 17 percent of black students to start speaking in class or Hispanic students speaking in class? Is there any such study?

MR. COLEMAN: I would have to check the record. There are studies that I think that in a Michigan-specific way documented at what point or range more appropriately you would like to -- it was -- I'm sorry, I'm drawing a blank on his name. I'll put it in my supplemental testimony.

COMMISSIONER KIRSANOW: I appreciate it. Thank you.

CHAIRPERSON REYNOLDS: Okay, I would like to thank the panelists. I wish I had a lot more time. After the business meeting I would suggest we retire to a local tavern and continue this conversation, although I'm afraid --

(Off the record comments.)

Anyway, thank you very much. This has been quite informative.

(Whereupon, at 11:51 a.m., the briefing was concluded.)