



**SPEECH LIMITS IN PUBLIC LIFE:
AT THE INTERSECTION OF FREE SPEECH AND HATE**

SPONSORED BY The Institute for Humane Studies at George Mason University and the University of Delaware's Office of the President, Office of the Provost, Office of the Vice Provost for Diversity, the Class of '55 Ethics Endowment Fund, College of Arts & Sciences Dean's Office, and the Department of Communications.

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SESSION 1: Are more laws necessary for responding to hate speech?

Introduction by Jenny Lambe, Associate Professor of Communication and event organizer.

PANELISTS Nadine Strossen, John Marshall Harlan II Professor of Law at New York Law School.

John A. Powell, Director of the Haas Institute for a Fair and Inclusive Society and Professor of Law at University of California, Berkeley.

Transcript of Event

Date: March 15, 2019 **Place:** Embassy Suites, Newark, Delaware

MS. LAMBE: Good morning. Good morning.

AUDIENCE: Good morning.

MS. LAMBE: I need to interrupt great conversation but I want to get started because I want to be sure that we have the full amount of time to enjoy the speakers that have gathered today. So, if you guys could please sit that would be fantastic. I am so pleased to welcome you today to *Speech Limits in Public Life: at the intersection of free speech and hate*. As we talked about last night, for those who weren't here, um, really what today is about is trying to talk about and discuss ways that we can, um, balance the intersection of these two things so that, um, we've got, uh, we have ways that we can respond that hate speech without, uh, without, um, impinging on freedom of expression. So, really trying to find solutions, um, and, unfortunately last night again we were reminded the importance of this discussion as there we at least 49 people killed in mosques in New Zealand, um, and it very much appears to be a hate crime. Um, so, the urgency of this discussion is, ah, is made real to us again last night. Um, I would like very much to welcome Nadine Strossen and John Powell who will be giving our opening. Um, and I want to tell you just a little bit about them. Um one thing I wanted to say before that was, I wanted to welcome – there are over 20 high school students in the room today -- and I wanted to welcome you especially, um, because we are very happy to have you.

AUDIENCE: [Applause.]

MS. LAMBE: Nice to be a part of this discussion. So, thank you, thank you for coming. And thank you to your chaperones who brought you. All right.



So, Nadine Strossen is the John Marshall Harlan II Professor of Law at New York Law School. She had written, taught and advocated extensively in the areas of constitutional law and civil liberties including her frequent media interviews. From 1991 through 2008 she served as president of the American Civil Liberties Union; the first woman to head the nation's largest and oldest civil liberties organization. Professor Strossen is currently a member of the ACLU's National Advisory Council, as well as the Advisory Boards of the Electronic Privacy Information Center, the Foundation for Individual Rights in Education, and Heterodox Academy. And the last two of those are represented here today on our panels as well. Um, when she stepped down as ACLU President in 2008, and I think this speaks to her bipartisan support, um, three Supreme Court Justices attended including Ruth Bader Ginsburg, Antonin Scalia, and David Souter. Her book, *HATE: Why We Should Resist It With Free Speech, Not Censorship*, was published by Oxford University Press last year. And also, those books are for sale. There's a, another room here that we've got off to the left. All of the panelists and speakers who have, um, books, their books are for sale in that room and there's also, um, we had a student competition, um, Audio Essay, and there's listening stations to be able to hear that, um, during lunch or during breaks if you want to do that. All right. And then, John Powell, who we are very happy to welcome, is director of the Haas Institute for a Fair and Inclusive Society, and Professor of Law of African American Studies and Ethnic Studies at the University of California, Berkeley. He was previously the Executive Director, and I'm not sure if I'm going to pronounce this right, at the Kirwan Center here at Kirwan Institute for the Study of Race and Ethnicity at Ohio State University and the Institute for Race



and Poverty at the University of Minnesota. Prior to that John was the national legal director of the American Civil Liberties Union. He is a cofounder of the Poverty in Race Research Action Council, and serves on the boards of several national and international organizations. John led the development of an “opportunity-based” model that connects affordable housing to education, health, health care, and employment and he is well known for his work developing the frameworks of targeted universalism and othering and belonging to affect equity-based interventions. John has taught at numerous law schools including Harvard and Columbia University, and his latest book is *Racing to Justice: Transforming Our Concepts of Self and Other to Build an Inclusive Society*. Also, on sale in the other room today. So, I want to welcome them. Um, I did ask them to do a debate about, um, the tension between free speech and hate speech and whether there should be additional laws for that, and they responded to me that they would prefer to have a discussion. So –

AUDIENCE: [Laughter.]

MS. LAMBE: - they will be having a discussion about that. Thank you.

AUDIENCE: [Applause.]

MS. STROSSEN: Thank you, Jenny, for that -- are we turned on?

AUDIENCE: [Laughter.]

MS. STROSSEN: I know.

UNIDENTIFIED: Yes.

MS. STROSSEN: Somebody's [indiscernible.]

AUDIENCE: [Laughter.]



MS. STROSSEN: Thank you, Jenny, for that wonderful introduction and thank you [indiscernible.] Also, thanks to my long-time friend and colleague [indiscernible] of being able to do this and do this in a very crowded wonderful schedule. Part of the reason why we thought discussion is the more accurate term and [indiscernible] – I’m sorry, so –

UNIDENTIFIED: Can we have a hand mike for –

MS. LAMBE: Yeah, lets, let’s get you hand mikes [indiscernible.]

MS. STROSSEN: It doesn’t seem like we’re –

MS. LAMBE: I know. [Indiscernible.]

MR. POWELL: [Indiscernible.]

MS. LAMBE: Let’s do this. So instead of this -- we’re going to need this too. I need – this, that’s for the video.

MS. STROSSEN: I’ve got it.

UNIDENTIFIED: [Indiscernible.]

MS. STROSSEN: Oh, thank you so much. Okay.

MS. LAMBE: Okay, that’s for the video.

MS. STROSSEN: Friends in the back, is this audible now? Wonderful. And we also wanted to see everybody so that’s why we moved back. Ah, the reason why John and I decided that this should be a discussion rather than a debate is I’m not actually sure what if anything we disagree about, ah, on this topic. But, let me start by outlining the ACLU position, ah, which John and I were both there at the time that it was last examined and formulated, and then, um, after I outline it maybe I’d love to hear John’s, John’s comments about it. So, in the, as is famously known, the ACLU throughout its history but most controversially in 1977 in a case called the Skokie Case came to the defense



of free speech rights for neo-Nazis. We had always defended all fundamental freedoms for all people including people whose ideas are antithetical to our own civil libertarian values. And, the ACLU has existed for all – we'll be celebrating our 100th birthday next year. So, this went back a long time. Ah, in 1977 to '78 that longstanding position was put to a very severe test when the people who were exercising their freedom and calling upon the ACLU to defend it were neo-Nazi's who were demonstrating deliberately in a town that had not only a large Jewish population but many Holocaust survivors. And that was such a controversial position, not in the courts of law where it was an easy case. Oh no, we would say it was hard and our lawyers did a brilliant job but quite frankly, you know, that involved what the Supreme Court has called the bedrock principle of free speech; that government has to remain neutral with respect to the content of the message of the speech. But it was severely controversial in the court of public opinion including within the ACLU itself. So today people say, oh, it's so controversial. Ah, there are debates within the ACLU about whether we should have defended free speech for the white supremacists in Charlottesville. Back in 1977 we lost 15 percent of our members. So, this is a very controversial position even among diehard, card carrying civil libertarians. Roll the clock forward, um, about ten years later, ah, there is for the first time serious scholarship that all by law professors, all by minority law professors including a very good friend of John's, Charles Lawrence who was gracious enough to come to an ACLU conference to talk about this, ah, making new arguments about – because the concern traditionally and in Skokie case – had been about potential violence, ah, but Chuck and Mari Matsuda and Richard Delgado, um, marshalled evidence that



was very disturbing about the psychological and emotional adverse impact a speech suppressive impact that was really undermining equality of opportunity for minorities students who had traditionally been excluded from colleges and universities and they said look, it's not enough to just let down the formal barriers to entry if people are going to be subject to, to hate speech. So, they advocated a hate speech codes. And I'm very proud that the ACLU, without hesitation, said let's reexamine our, our traditional position. So, just – and, and John, you were there during that debate, ah, and I know you've carried forward with a very important scholarship about the actual harm from hateful speech.

MR. POWELL: So, ah, first of all, it's great to be here with Nadine. As you can tell we're friends and have known each other a long time. Um, and, ah, and both of us I think have really, ah, deep affection and also, um, recognize the importance of these issues but also the ACLU. Um, let me start by just saying why not a debate and then say a little bit about, um, sort of, um, some of my thinking about some of these issues. So, I'm six of nine but that doesn't mean I'm a Borg for those of you who follow Star Trek. Ah, it means there are nine children in my family and I'm number six. Um, and I have a great family. It's a very loving family. Um, my father is still alive. He's 98. Quickly up on 99 and getting stronger all the time. Um, my mom passed some years ago. And, um, several years ago I was in Detroit where my father lives and, um, and we were wrestling with something. Actually, I think it was an issue of, it may have been gay marriage, um, and my father from his crisp perspective was adamantly opposed and, ah, and so we stayed up all night discussing it. And what occurred to me in that process is that it wasn't a

debate, it was an inquiry and we really were searching not just for “the truth” with whatever that might be, but really to understand each other. And, I, and it occurred to me that in many ways in the United States debates are actually like sporting events.

MS. STROSSEN: Yes.

MR. POWELL: It’s like, and you score, you, you, you, you know you score a point and the other team is yes, that was good. That was [indiscernible.] Or you really zinged him. Um, and so you walk away. Some, someone having won, won and someone having lost. But often times as I say, ah, not much light really being shed on things. Um, and we just all felt like in many important issues it may not be as much fun to have a serious inquiry, ah, but often times it’s much better. And this is especially true I think in these times in our country where the country is so deeply divided. By some accounts more divided than even, than even during the civil war. Um, so that’s just a background. Um, after that conversation with my dad and um, ah, like Nadine but not as, ah, as often, I’m on the circuit as well so I get these calls and they say do you want to come debate so and so. I say no. I’m not doing any debates. So, for a couple of years I, I, I took myself largely off the circuit doing debates because I felt like it was, the format was problematic. Um, so I think these issues are really complicated and, and as, um, Nadine said, she cited all friends of mine and I think what they brought to the attention and I think it’s still coming out, and I think the sort of thinking about, ah, free speech or what’s called hate speech, ah, is, will continue. And I think, and it should. Um, I think it, if you think about the formulation of, ah, the importance of speech, first of all, it’s a complicated set of concepts. And it’s not one concept. It’s actually

many concepts. And these concepts themselves are sometimes in conflict with each other. And what we do often times is sort of approach things almost, ah, you know, as a slogan. Ah, or in terms of a term, like the famous marketplace of ideas. I teach at Berkeley and when, when my students say market things -- words like markets, capitalism, socialism -- I actually don't let them use those terms without really digging into what they mean because they actually just become props for almost an emotional response. Ah, and they, and it's not a single definition. It, it, it's just one of those things that means several different things, ah, which has importance as we discuss things. I think this is equally true when we talk about free speech. Ah, even the idea of speech, ah, we don't, we, we probably don't even have complete agreement, and I'm not saying we should, in terms of what constitutes speech. So, we just saw one of the most controversial cases, Citizens United. Is money speech or not speech, or is, is money spent? And, and on this issue both the courts and the ACLU has shifted over time and they're not done. Ah, so these are not simple questions. Um, and so, referring to the First Amendment doesn't resolve those questions for us, it just sort of ponies it up if you will. Um, so that's one thing. I think that we're dealing with complex concepts and we're also making certain assumptions as we deal with those concepts. The last thing I'll say on this right now is that I think the new literature which is, in my mind, the most important and, and interesting in some ways, is the stuff -- and Nadine touches on some of this I think in her book and, and other, other places, is the mind science in terms of how we understand injury. Ah, for much of the, um, 20th century we understood psychological and emotional injuries over, over here and physical injuries over here, and a lot of people

citing Mills would actually talk about, ah, why being offended or being annoyed or being bothered, ah, by speech or what's called, some call it speech acts, was fundamentally different than physical, physical touching. And so, you had that old adage, um, my freedom stops at the tip of your nose. That I can, um, that I'm free to, to do anything but I'm not free to physically interfere with you. Ah, and they were building up on, on Mills concept of other regarding and self-regarding acts. I won't go into any detail on that now, but the point is, is that, that line has actually been blurred in some serious ways. And so now, ah, and this is just science; it's not, it doesn't tell us how to resolve the debate or discussion, but it tell us we have to think about it differently. But we now know that the line between what we call psychological factors including psychological injuries and physical it's actually since we go on that literally when you have a serious psychological trauma or whatever it restructures, physically restructures the brain and has serious implications, ah, in terms of the body. Now that's; and, and why I say that, ah, people say so then should we regulate speech? I say, no. It doesn't tell you what to do. It just tells you there's new data and we have to actually think about the new data. Think about DNA. You know, there, there are people literally getting out of prison today because the best evidence we have including eye witness or whatever was that this person did the crime and then years later we're digging up DNA that said, no, wrong. Ah, and how could we get this wrong? Three people saw it, three people swore that this happened. Ah, and so, what's happened is that our understanding of science has changed the way we think about evidence. And I'm suggesting that the, the, the science in terms of the mind and the body requires to sort of reexamine in a deeper way, ah, what kind of

injuries we want to allow and what kind of injuries we don't want to allow. And I'll just end by just saying and there are injuries all over the place so part of the assertion appropriately so is that to overly regulate speech, um – and some of you may know the book, ah, Don't Think of the Elephant; anybody, anybody know that book? Ah, George Lakoff, ah, who is a linguist, so I know they have at least one linguist I think in, in the audience. Um, he talks about we think in metaphors. Um, but he also makes the notion that we should not say regulation because he says regulations means safety. That we do things to create safety. When we call it regulations, we've already biased how we're thinking about it. So, so we regulate the environment. Should we regulate corporations? We're doing something to -- sometimes inappropriately, sometime appropriately – but we're doing something to create a safe environment. We're not just creating rules. But anyway, the point is that, um, how we then create society, how we then have people in society, how we then have robust discussion, how we then have people challenged is all these questions need to actually be addressed in the context of what we're learning in terms of, um, neuroscience today.

MS. STROSSEN: And I'm not going to at all dissent from what John has said, but I'm going to amplify on it because just as it's really important to keep investigating the potential harm of hateful speech and any other speech, and I, I do emphasize potential because I think there is a difference between the kind of harm that expression can cause and that the proverbial sticks and stones can cause they will immediately simply by force of being thrown the sticks and stones will directly harm you whereas speech harm does involve some intermediating thought processes. And, I am, want to go beyond what



the potential and in many cases actual harm is to, so what do we do about that? And, I know that that's a, a big, big focus of John's work as well as my work. But, let me take you back to the ACLU debate in the last generation and then I'll bring it up to date in, in the current generation. Ah, we had a very distinguished thoughtful committee of the ACLU's National Board of Directors examine this evidence. They were very persuaded of the potential harmful impacts including undermining equality and dignity, inclusivity, diversity, societal harmony, individual mental well-being. These are definitely at least potential harms. I would also add a speech suppressive harm because if you are subject to disparaging hateful speech or believe you will it has a chilling effect on your speech. I personally have experienced it, not, ah, I'm sure to the extent that many other people have. So, we took those very seriously but then the question was so what do you do about it? And, after serious examination the committee concluded that despite the good intentions of censoring some of this expression that it would be ineffective at best and counterproductive at worst. And, the committee did not stop there as it should not have. It went on to list about a dozen constructive non-censorial approaches that should be taken by universities in particular, we were focusing on the campus issue, that would prevent and remediate potential harms from hate speech. And I'm very happy that some of these recommendations of 19, 1991 so decades ago. Some of the recommendations have been implemented but too many of them have not yet. So I was, ah, very distressed when the Black Lives Matter, ah, movement started on campuses and students issuing requests or demands that so many of them for the very same demands or requests that the ACLU had advocated all those decades ago.



And we have not made enough progress in terms of really diversifying our campuses at every level and in, in improving the curriculum and improving people's ability to teach, ah, various groups of, of, of students, um, who had traditionally been excluded from, or marginalized at universities. Where we have made progress, and I'm really happy about this, is in, ah, what lawyers often call counter speech when somebody issues disparaging hateful expression then it has to be swiftly and strongly responded to, the message denounced. I think maybe the speaker not necessarily denounce. We can talk about what's effective there. And, you know, I was really struck when I went back and reread Chuck's piece and Laurie's (phonetic spelling) and Richard Delgado's, that, ah, several decades ago, they said that in addition to the harmful impact of the hate speech itself from the hate monger even worse was the fact that there was no response from the community. Number one, that media didn't give attention to these issues. If there was any coverage at all it was in very isolated -- nobody treated it as part of an overall societal problem -- that there wasn't any, um, denunciation of the message or distancing the university from it by the president of the university, by student body leaders. And there weren't any messages of support or not enough messages of support for the disparaged people from other members of the community. Here I think we have made enormous strides. I mean you look at Charlottesville and Donald Trump was so strongly denounced because he did not severely and imperially condemn the hate mongers there, right? Um, and so, but, everybody else had very, very strong messages condemning the white supremacists in Charlottesville including many Republican leaders who usually are completely in Trump's camp. And it was very unusual for them to be

critical of him. Military leaders from every single branch of the military did likewise. And Trump had two counsels of CEO's of businesses who were very supportive of his economic policies, his financial policies but they spoke up and said even more important than those policies is countering hatred and division. And ultimately both of those counsels were completely disbanded because they were so, ah, furious and disappointed about Trump's failure to exercise his counter speech. And at the grassroots level communities all over the country, um, spontaneously condemned the hatred and, and came together – and I'm speaking for my own little in Connecticut where I'm fortunate to have a weekend house which is a mostly white town. But that's kind of interesting too because that didn't matter. This is seen as a universal problem. It doesn't matter, you don't have to be part and you should, of the targeted group to feel as concerned. And we have an ongoing interfaith including secular people, um, committed to hate does not live here. I, I want to say just move it up forward and then I'd love to hear John talk about his amazing work. Um, so, it, it had been about 20 years since I have looked at the research seriously about how effective is it to censor hate speech. We had now in the intervening 20 years many countries all over the world with track records of enforcing these laws. And I do have to say on an extremely sad note, New Zealand is an example of a country that not only has very strict anti-hate speech laws including against islamophobia and other religious hate speech, but those laws are very strictly enforced. And what I found as I looked at the record of European countries, Canada, Australia, New Zealand, South Africa, Latin America – there's data from all of these countries – and over and over and over again I'm hearing and I quote them in my book human rights

activists in those countries are saying we ought to move more in the direction of counter speech , non-censorial measures because unfortunately we still have so much rampant not only hate speech but hateful conduct, discriminatory conduct and hateful violent crime. So, strictly from the perspective of what is a more effective counter measure, ah, there is increasing support for, ah, for non-censorial approaches. And, John, I have to say when I started writing my book I really thought it was going to be predominantly an anti-censorship book and in the writing process and in the process of observing what was going on in this country and around the world it really became very much more of an anti-hate book, and I think it's not a coincidence that the only verb in the title of my book is resist. I was thinking of, so how do we resist hate and what's the most effective way to do it. You're such a gentle person, you might prefer a, a more gentle verb than resist.

MR. POWELL: So, so I think, um, the work that the committee did, and I know some of the people involved, I think was really quite appropriate. I think, um, what I want to suggest is, um, joining the conversation at a slightly different point. Um, because what I'm focusing on in, in many ways is not the potential injury, it's the actual injury. And I, I want to suggest that where there's an actual injury, and I, and I had a chance to, um, read your book and I loved it, ah, and you talk about resiliency, um, but some injuries and this is not something that the committee really engaged in because the committee as smart as they were and really smart people, they're not neuroscientists. Um, and so, so I'll give you a concrete example. Um, there are certain, there are certain traumas that are immediate and they're more long lasting than sticks and stones. Um, telomeres which is, um, the, the stems on your cells, ah, it

actually allows your cells to absorb nutrients so they continue to grow and reproduce, and, ah, there's a lot of work and this is some of it by David Williams at Harvard showing that blacks in general and black women in particular the telomeres on their, ah, on their brains are shortened because of the constant, um, tension and stress or racism in the United States. Now this is a physical and what he, what it means is a shorter life expectancy. Ah, so it's not a potential. I mean we can measure it. So, I'm talking about as we have science that says – and we know this in some sense, right – so, virtually every state has laws in terms of anti-bullying. Ah, and, um, you know, and sort of a, a, um, sex revenge putting stuff up on, on the web.

MS. STROSSEN: Like revenge porn.

MR. POWELL: Yeah, exactly. Or think about the me-too movement, or think about defamation, or think about – so there are, there are places where there, there is no effective response to by just, by speech. Ah, and there's a real injury. And, and so in that sense I don't focus on hate speech, I focus on injurious speech. Ah, and I'm saying well if we as a thought experiment, and I'm not saying we're there yet, but I think we're getting there; I think the science is only going to get better and better. Um, I don't wear watches but I'm wearing an Apple watch, ah, and I'll just say a, a brief story about this and, and, and it'll make sense to you. I have a sister. I am six of nine and I'm old, so it means I have a lot of old brothers and sisters. I mean really old.

AUDIENCE: [Laughter.]

MR. POWELL: I mean in their 80s, right. Ah, and my sister is having a lot of health problems. Um, and ah, and I was, was reading about the new Apple watch coming out and this is not an advertisement for Apple.

AUDIENCE: [Laughter.]

MR. POWELL: I have no, I have no stock in Apple.

AUDIENCE: [Laughter.]

MR. POWELL: Ah, um, but I did read that they were putting a, um, um, a medical um, ah, um, what they

MS. LAMBE: Cardiogram.

MR. POWELL: Cardio, yeah, electrocardiogram on the watch so that you could actually take the electrical impulse of your heart. And next year they're planning on doing the same thing in terms of the brain. Now, here's the, just the crude science. You almost never just have a heart attack. Your body actually sends signals way before you have a heart attack, but they don't get to the conscience. You are, you are, so if you're in the doctor's office and they had you hooked up they would know a heart attack is on the way long before you would. Ah, and so this watch at least in some instances will actually monitor the body, you can monitor the body and say I feel fine and the watch says you're not fine. And you say no, no I feel fine. And it says no you're not fine. You're, you're on your way to a heart attack. And there's actually been a story where a guy was wearing his watch at night and they have a little thing on it, they have sensors on it so they, ah, they wake you up, and the sensor woke him up saying basically you're having a heart attack. And he said he thought he was fine. He put his watch on his wife because he said the watch must be malfunctioning. Ah, it was not malfunctioning. He went to the hospital. He indeed was having a heart attack. My point is, is that the physical response was happening way before the mental, ah, recognition of it. Ah, and that's why I'm wearing this watch. I, I, and the watch is sort of – anyway. It

also have (sic) a thing which is if you fall and you don't get up in 30 seconds the watch will actually say I see that you have felled; are you okay? And if you don't respond within a certain period of time it sends a message to the emergency service to come get you or whoever else. Anyway, my point is this. The science is getting to a point where we actually can measure injuries at a much deeper level. Some of those injuries are mercurial, they'll you know, I'm, I'm stressed today, and my body tightens up but then I relax. Some of them are not. Some of them are ongoing. And I'm suggesting that some of the things that we associate with hate speech, ah, and I'm not suggesting that we regulate speech, but I do go back to Mills' concept of self-regarding and other regarding acts. His idea was that self-regarding acts no one should have, you have a complete right to do whatever only regards yourself. But what impacts others, ah, so if I do something to impact you and hurt you then that's not a self-regarding act. That's another regarding act. It doesn't say I can't do it. It says you don't have, I don't have a right to do it. Ah, then we have to say society has to decide whether or not I have that right. An example, most of us drive gasoline cars. Most of us believe, not everyone but most people believe now that gasoline cars contribute to climate change. That we're hurting the environment. But we don't say gasoline cars are illegal. We say there's a cost of regulating or stopping gasoline cars. There's a cost to driving gasoline cars. We're going to make a social decision as to how we will, will distribute that. And I think that as we get better at understanding how things, somethings are related to speech actually cause injury -- not potential, actual injury -- we need to have a conversation. And we might say we're going

to allow this because the, the injury of trying to stop it is even greater. Ah, but that has to be a, a collective discussion. It shouldn't be simply a right.

MS. STROSSEN: I, I thank John so much and I did try to dip into the neuroscience research because I want as much information as possible. And I was convinced that there is a serious debate even among neuroscientists that absolutely must be continued, and we should be aware of it. But as John says, that's only part of the equation. And just as I think too often in the past civil libertarians would say free speech end of discussion, ah, I've seen people, ah, who have a different perspective and notice I'm avoiding the, the locution other side because I think that is reductive and over simplified and insulting. With people who have a different emphasis, shall we say, have too often said there is harm and that's the end of the debate therefore there should be censorship or regulation. And, that is an important part of the question but as John indicates we also have to ask what can we do about it. What can we do to prevent that actual or potential harm? What can we do to remediate it? And, are certain interventions going to have negative consequences. As a civil libertarian I should say I'm always very nervous about empowering government. There's been inherent distrust there. There is a pattern over time where government has used seemingly benevolent power, ah, including power to protect people from harmful or injurious speech as a pretext for suppressing ideas that are critical of the government. So, one pattern throughout history and around the world that I again saw as I did the research for my book and human rights activists including an international organizations are complaining about is that these laws being inherently vague, ah, and therefore vesting enormous discretionary power in the officials who enforce



them lend themselves to be enforced disproportionately against not only dissidents and critics of the government but sadly and most ironically against members of the very minority groups who are most disparaged by hate speech and therefore, ah, supposedly have the most to gain from these laws. In this country I, I met some of the high school students and a special welcome to, ah, the youngest members of our audience. And let me just say it's the 50th anniversary this year of a great ACLU landmark case, *Tinker v. Des Moines School District*, which as you know, ah, the court for the very first time held that freedom of speech does not stop at the schoolhouse gate. Um, so I was talking to some of these students about, um, a discourse about, um, hateful speech and I was very pleasantly surprised to hear from them that there is, they do feel comfortable exchanging ideas and that that can do on sensitive subjects that too often because of the fear not only of hate speech laws but, ah, of censorious comments by your peers might well be self-suppressed because you're afraid of being called an [indiscernible.] Anyway, they, they told me that among other things they had studied the Black Lives Matter movement and as John well knows, ah, Black Lives Matter speakers have been attacked in this country as supposedly engaging in hate speech. Government officials have sought to have Black Lives Matter condemned as a hate group. They've lobbied the Southern Poverty Law Center to have it, ah, labeled as such and, ah, Black Lives Matter activists even have been accused of instigating assassinations of police officers in Dallas. And I think that would be, ah, what we could predict including from the past when Martin Luther King and other civil rights demonstrators were constantly silenced as a result of laws against speech that was deemed to be harmful in various ways. One

other example since I mentioned the famous Skokie case, when the ACLU came to the defense of the freedom of speech of neo-Nazi's in Skokie and there were allegations in that case by some briefs that, um, there would be harm to, there would be emotional and psychic harm that the speech was subversive, that the speech was dangerous, that it might trigger violence. The whole panoply of rationales. We pointed out in our brief that those were the very same arguments that had been made about ten years earlier in another town in Illinois with very different demographics, namely Cicero, Illinois which was virulently a very deeply segregated predominantly white and virulently opposed to the civil rights movement and raised those arguments in an attempt to keep the Martin Luther King movement out of those streets. So, for all of those reasons I rejected, ah, continued to reject censorship. And by the way, I put that in the past tense and, and I want to share with you a question that I heard last week when I spoke at Skidmore College. The president of the college told me that he's writing a book and he gave me permission to quote the title of the book because I think the title is so amazing. It is, What Would It Take to Change Your Mind? What Would It Take to Change Your Mind? And the way that question is phrased it's, we, you, you have to assume if you're an openminded person that something could change your mind and I have to say quite, um, ah, candidly that if I were convinced that a particular kind of regulation would be necessary, ah, in order to foster equality and dignity and diversity and all of these wonderful goals I would, that would change my mind. Ah, so far, I haven't seen that evidence though.

MR. POWELL: So, let me just add one other thing. I, I, your about to join this conversation. Um, 15 years ago about 20 percent of the world was living



under authoritarian, um, governments. China being the largest. Um, today it's close to 60 percent.

AUDIENCE: [Mumbling.]

MR. POWELL: So, one thing I'm going to ask, you don't have to answer this today, Nadine, but I think we have to be very careful of disparaging government. Yes, we have to have checks and balances and yes government overreach and yes government does a lot of things, but I think in a sense we've gone too far. And our skepticism of government has actually been weaponized, ah, and that, in some ways I would say the single biggest threat in the world today from my perspective is not suppression of speech, it's not equality per se, it's authoritarianism (sic). And I think we unwittingly sort of step into that by being, um, and I, I tell my students and you need to be critical without being skeptical. You can, you, you need to actually challenge government but not as you said not as like the other.

MS. STROSSEN: Um-hum.

MR. POWELL: You know, because, you know, I mean, they have, we have friends in government and –

MS. STROSSEN: Um-hum.

MR. POWELL: -- and you create one of the structures, the institutions and really the thing that the founders were really concerned about was the concentration of power --

MS. STROSSEN: Um-hum.

MR. POWELL: -- ah, in various forms and, um, ah, in the, um, Citizens United case, ah, Justice Stevens actually goes to great length to talk about the concentration of power in corporations and not addressed in the, the

constitutions because corporations at the time weren't separate from government. They were an expression of government. But, the point is, is that yes, we can have ,um, ah, abuse, and we do have abuse and we have to be careful in terms of giving government or anyone, ah, but as we saw with a lot of the, ah, um, invasions of privacy government went to Google and Apple, ah, to get all the information they needed –

MS. STROSSEN: Um-hum.

MR. POWELL: -- to actually trample people's civil liberties. Ah, and I'm not saying that that's, that we should break up, break them up. And, and I think the context has changed and I think the, the ah, world movement in terms of really ill, illegal governments, illiberal governments, ah, taking extreme and, ah, and just to be careful in terms of even as we're critical making government accountable in creating checks and balance not to actually buy into the notion that government necessarily is bad and can't do anything ah, which I think erodes our public schools, erodes the public institutions. Ah, it ultimately erodes democracy itself. Ah, so, that's the only codicil I would –

MS. STROSSEN: I, I –

MR. POWELL: -- I would add.

MS. STROSSEN: -- that's very helpful and I'll, I'll, I'll bear it mind because I, I completely agree with John and I'm – one of the phrases that is often used about our constitution is a delicate balance. And I, I find myself lately for a long time now actually, whenever I say something that's critical of media I immediately backup and say but that is not the same as saying the media is the enemy of the people. Ah, so from now on, John, with attribution to you I'm going to say a healthy -- I like the word skepticism still, still so we can agree to



disagree about that – a healthy skepticism is positive but we should definitely recognize as the ACLU has always distinguished itself from our Libertarian friends by lobbying for, for example, civil rights laws. And when we get to corporate power this is a very important, ah, topic, ah, with so much power over free speech, or lack of free speech, privacy, lack of privacy, residing in the hands of private sector entities who are subject to virtually no regulatory constraint in this area. To me its like the lesser of two evils. Whom do I, of whom am I more skeptical? And I will quote a colleague at the Electronic Frontier Foundation who put it very well when she said, you know, do I distrust more big brother the government or the bros of Silicon Valley to exercise these powers? I, I hope that we can turn to what we think is effective and what can work. John, we heard an example last night from Christian Picciolini and I have followed with great interest and being very moved. The efforts of countless generous compassionate empathetic people who both online and in the rest of the world reach out to even confirmed leaders of hate monger organizations and have been able to do what they call redeem them. They use somewhat religious language. Many of them are deeply spiritual people. And it's been very eye opening to me because I think as a lawyer I was more used to thinking of counter speech and a wholesale basis – you engage in debates and, you know, reputations, and the more I got into this the more I thought no, that is not a constructive way to, certainly to win over an individual who is already leaning in that direction, ah, and, and perhaps for the society as a whole we have to have a much more forgiving approach. It, it becomes harder in a society where, ah, with all of the polarization if you are not sufficiently condemnatory of somebody who is saying something wrong then

you run a danger of being accused of being, as one of my friends says, some kind of an ist or an o. So, I was really so heartened by all of your wonderful work, John, of talking about getting beyond hate, not only in the way that we usually refer to it in terms of who you are, but also in terms of what you believe, what you think. And, and, and I agree with you, we're too quick to condemn as hateful speech, as hateful people, people whose ideas we disagree with. I'm going to give one other example because Southern Poverty Law Center has also been in the news today and yesterday. I'm very supportive of its fabulous work in countering racist violence, ah, including the Klu Klux Klan, ah, but I recently came to the defense of an organization called the Alliance Defense Fund, which is almost always against the ACLU on critically important cases. It even wrote a whole book called The ACLU Against America, ah because they saw us in crusading for LGBT rights and reproductive freedom and, ah, it rights in the criminal justice system and separation of church and state as being somehow unpatriotic. We happen to agree on many free speech issues but most recently we were in the Supreme Court directly representing the parties on opposite sides of the famous Cake case from Colorado. The ACLU directly represented the same sex couple who were denied a cake to celebrate their marriage and ADF directly represented the devote Christian baker who, um, refused to provide that. Ah, and, and so I strongly disagree with ADF's views, but I do not think it was fair to, or helpful or constructive, to lump it together with the KKK and violent white supremacists as, as a hate group.

MR. POWELL: So, I, I think, um, I, I completely agree and, and, um, we're having a conference I know you probably won't come but you're invited from



April 8th to 10th on othering and belonging. I'll say that again because it's sort of a wonky phrase. Othering and belonging. And one of the things we talk about is building bridges and, um, so at the conference we're going to have, um, ah, Desmond Mead (phonetic spelling) and Neil, I don't, I forget Neil's last name, but they're two of the organizers in Florida who actually worked on Florida restoration. And both of them are returning citizens; spent time in prison. Um, Desmond is urban African American, um, and Neil is, ah, white rural. Ah, Desmond has very liberal politics. Neil is a Trump supporter. Ah, and they've, ah, and they've built a bridge. And so, we talk about bridging. If we, ah, how important it is to bridge with those who have some different views than you. And, ah, one example for me and people are very confused by it is that I have become good friends with Arthur Brooks who's head of the American Enterprise Institute, ah, which is like one of the larger conservative organizations. And I feel like we disagree a lot in terms of how to do something, but our end goals are actually quite close. We both care about things and we disagree as to how do you get there. But more importantly, but in some ways he's a very decent person, a very loving person. Um, ah, he's an empiricist. Um, so like, like you, like us he's saying this is what I believe but if you show me evidence that this really doesn't work, I'm willing to consider it. So, he's a kind of ideologue. He has ideas. Ah, and um, he sometimes say, ah, our friendship, ah, has made him a better person but a worse conservative.

AUDIENCE: [Laughter.]

MR. POWELL: Ah, so, because he says when he thinks of something now, he always thinks how would John respond to this.

AUDIENCE: [Laughter.]

MR. POWELL: Ah, because it, it's, its easier to hate in some ways in the abstract than the person realty in front of you. Ah, and so I agree with you that we have to find, unfortunately we live in a very segregated world, so we don't have the "the other" in front of us anymore. Um, so, I see our time is up so I'm going to stop.

MS. STROSSEN: [Indiscernible.]

MS. LAMBE: [Indiscernible.] Are the students for, with the microphones are they –

UNIDENTIFIED: Over here.

MS. LAMBE: Okay. Great. So, um, if people are interested in asking questions just want to raise your hand. There's two students who will be coming around with microphones.

Q: Hello. Thank you for coming out. That was a great discussion. Um, let me just say, I, first of all I, I'm encouraged to hear, um, civil libertarians talking about the psychological side. Right? And the psychological evidence. I wonder how – you talked a little bit about the, the detrimental impacts of certain speech on certain populations. Um, I wonder how you react to the say Jonathan Haidt, Greg Lukianoff thesis, um, that, that kind of argues the other, I guess, psychological side and that is that, um, the, you know, increase in anxiety among the youngest in the generation might have something to do with sort of a, a, a focus on safety to the, to the, to the point that there isn't, um – students or young people aren't learning resilience. They're not learning the ability to, to engage constructively in counter speech and instead, um, living in, in bubbles and, and, and as a result there is, there's

heightened fear, ah, and, and anxiety. I wonder if you, you've thought about that, that perspective as well?

MS. STROSSEN: Well, I certainly have. I'm an admirer of their work. I blurb'd the book. I quote it. And, and the, more importantly, ah, the psychologists that, ah, they cite, and I agree with John, that you know there seems to be debate among those who study these things from a scientific perspective; A, what exactly is the impact, but B, what intervention is going to be constructive. So, I, I think the fact that that is out there on the table. And even, um, the social psychologist Lisa Feldman Barrett who was highly critical of their, especially John because he's the social psychologists, right, ah, the thesis when it was first put out in Atlantic Magazine. Ah, she, even she drew a distinction between single individual episodes of hateful speech versus a sustained ongoing pervasive climate. And, so, you, you know, I, I, the jury is out both on the degree and nature of the harm but also even more constructively what is the most effective way to prevent the harm. Whenever I make that point which I do – do you mind telling me your name?

MR. BATCHIS: Wayne Batchis, I'm a professor here at –

MS. STROSSEN: Wayne, Wayne –

MR. BATCHIS: -- at the –

MS. STROSSEN: --very nice to meet you. Whenever I make that point, I always say I'm not blaming the victim because I think it sounds a little bit, that rhetoric to me, raises that potential specter that you know if you're allowing it to hurt you, if you're not resilient enough it's your fault. Ah, but what I do find encouraging is the notion that, you know, we, we might even be able to develop cognitive behavior and other techniques that might prevent that



physiological impact. I would at least be open to, to hoping that could be shown.

MR. POWELL: There's, there's even a concept of positive trauma but it's, it's, so you can Google it. So not all trauma is necessarily bad so I –

Q: Um, this is just a question about Professor Strossen's, I'm sorry, Strossen suggestion. I like the idea of, of counter speech as the appropriate response, but in the context of the University I'm a little concerned when you suggest that it's appropriate for say university presidents to, um, either condemn or, or rebut or even make much of a contestation when their, when they say their faculty make controversial statements.

MS. STROSSEN: Hum.

Q: When you get into that practice you have the, what you recently had at Temple, right, where a faculty member makes a statement –

MS. STROSSEN: Um-hum.

Q: -- and then it's deemed anti-Semitic to criticize Israel and then, you know, you're going expect the president to be constantly issuing denunciations of any statement –

MS. STROSSEN: Hum.

Q: -- that offends any group of – so, I'm a fan of the counter speech but to me it doesn't seem like it should be coming from the administration.

MS. STROSSEN: It's a very difficult question and I kind of self-centered myself as I was making that point because I recognize many layers of complexities starting with, um, something I alluded to when I was talking about high school students, that if we have so much counter speech and we

anticipate so, so much counter speech it's really going to exercise too much of a censorious chilling impact even on discussion of, especially on discussion of sensitive and important issues such as race and religion and gender. Ah, my colleague Suzanne Nossel who is the executive director of PEN, USA which does wonderful work in, in this area, had an excellent Op-ed on point last year in the Washington Post whose headline was kind of startling given that I'm so strongly advocating counter speech, but I agreed with her point. It was when does counter speech go to far. And, to me it's a delicate judgment that you have to make in any particular situation but number one, if it is done, and, and I on balance do think it should be done, but it has to be done very carefully so that the university president is making it clear that the, there is no punishment at all, that academic freedom is protected, free speech is protected. But I've also become increasingly concerned about, ah, what is the most – so that's, I, I was advocating that kind of statement to offer support to the people who were disparaged. But now I've become more encouraged about potentially persuading and reaching out to those who make the disparaging comment and I think that denouncing their message is probably not the most effective way to persuade them to rethink it.

MR. POWELL: I think, I think that's right. Though I think it's, it is complicated, right, because on one hand we're saying, ah, we want a robust space for speech, and then if there is robust counter speech, we're saying that counter speech may be injurious. But we can't have it both ways. We can't say that speech is not injurious but counter speech is injurious. Ah, you know, so, recognizing that, yes, and you also, really what you didn't say but implicit in what you said is power. That there is a power differential including the power

to act. But that's oftentimes the case throughout speech. And so, I think it is complicated and, and, and part of that is just, you know, being a good administrator or whatever, you don't necessarily want the government coming in and saying, you know university presidents can't say that. Ah, but it does speak to I think to the layers and complexity of speech and, and power which we haven't really talked much about power of than the government.

MS. STROSSEN: You know, one really good example of how this was done brilliantly I think is the University of Florida president who interestingly enough is a minister, ah, as well as having a PhD in some scientific field. And I hadn't realized that your father was a minister too, John. And he actually, when Richard Spencer was going to come to his campus, he really diffused the anxiety as well as the potential disruption but reaching out in a way that was affirming the positive values even more than condemning the negative ones. He dared to use the L word, love, and it didn't come across as corny. It was really embraced wholeheartedly by the student body.

Q: Hi. Could I ask you to talk a little bit about power in relation to free speech and preventing speech?

MR. POWELL: Um, you know, the, the, the question of power also has; this is sort of the flip side of power if you will, is we have an, it's really, Nadine actually touched on it, but I want to go more, a little more deeply in terms of participation. How do you effectively participate? In some ways one of the things that speech is about is participation. And when I went to law school or, which, which was long before any students were born but, ah, there was the notion of, um, political speech, commercial speech and they deserve different forms of protection. And part of it was both the purpose of speech and also

part of it was power. Ah, and, ah, and in a sense, we've sort of bleached power out of the discussion. And I think we have to bring it back, ah, because, um; and in, and we, we sort of skirted around it. And when you think about when women started coming into the workplace and when they first started coming into the workplace oftentimes there were, ah, pornographic pictures all around the workplace. And the first response was not to take down the pictures; the first response was counter speech. But the women didn't have the power to effectively counter speech. I mean, and literally people said stuff like well if you don't like our posters put up your own posters. You know? We put up nude women you could put up nude men. Ah, so, power sometimes means there is no effective counter speech, ah, because power differential is at play in a serious way and oftentimes, we don't discuss that. And it's interesting that, um, ah, the Supreme Court agreed basically in terms of, ah, the idea of, of um, of hostile work environment came from conservatives, Republicans on the Supreme Court, recognizing that women in that situation didn't have the power, ah, and, and they sort of kicked it upstairs to management saying you have to actually control the workforce environment so that it's not a hostile environment. That's interesting and the next iteration of that when it came to blacks and people of color coming to the workplace the Court didn't immediately actually see the analogy and had to go through the whole process all over again and, ah, so you had to go through the whole process all over again. But it eventually came out the same way. But again, sort of recognize that power matters. And so, the ability to actually engage in counter speech actually it's always affected by a huge power differential. Now, when we were talking about students talking to students or someone who is

coming on the campus, um, you know, and then they're gone, the, the power is not as significant if you have an administrator who says you have free speech but you know what, your raise, your promotion, ah, there are so many variables they don't know and, and maybe, maybe even not even intentionally, maybe unconsciously that sticks in the back of my mind and I just don't think you should be a full professor after that speech. So, the power stuff is real. Ah, and it's complicated.

MS. STROSSEN: Yeah, and I was again, I had forgotten until I went back and reread those early articles by Chuck Lawrence and, and the others that they took a very contextual approach to deciding whether any particular word, even the most odious racist epithet they said shouldn't necessarily be considered hate speech that you would have to consider every fact and circumstance including the power relationship or lack of power relationship between the speakers. One thing that's potentially wonderful about the internet and social media, and we could all think of examples where it has had that potential benefit, is that it has increased the power of people who are not wealthy, who are not celebrities, um, who are not particularly experienced. And I'm very thrilled at the extent to which young people with their superior knowledge and experience with social media have really had a big impact in raising their voices. Today, right, there's a worldwide movement among students to, ah, raise their voices through social media on environmental issues. We saw it on gun issues recently. Um, on the other hand the downside of that is the power of the mob online to punish people for having wrong-headed thoughts or saying something wrong. So, you know, every,

these are all media and we people, we individuals, we human beings can use the X along with every other tool for good or ill.

Q: Um, on the related topic, actually, I am, I'm, I'm fascinated by their conversation at the individual level, right, about individual rights and, and impinging on individual level freedom. What, what complicates things for me as a media scholar is when the, they're sort of pedaling in this kind of hateful discourse. So, when, when you have tech platforms and tech companies who are benefiting financially from serving as a mechanism for the dissemination of hate, when you have cable outlets that actively capitalize and profit on this kind of stuff, or you have talk radio hosts – I'm just trying to figure out how do you, how do you fit that in the framework of this conversation when there is a, a financial and, and sort of status reward?

MS. STROSSEN: Yeh, well, studies do seem to show that it's the more hateful provocative extremist statements that get the eyeballs and that's where the money is. And, ah, I, I, I think it's so positive that we are seeing all of these dangers and that they're being talked about very concertededly in the last two years. Ah, there are many creative conversations and explorations of what would be an appropriate intervention. Ah, Elizabeth Warren and some of the other presidential candidates are advocating and, and, but I've heard this from Republican conservatives as well ah, advocating at least looking into some kind of antitrust or anticompetitive remedy so you wouldn't be directly suppressing their messages but at least you would be creating an opportunity for more diverse options. And that brings me to the power that all of us power, ah, we really do have potential power – I don't think it's been sufficiently harnessed yet – as consumers, right, because ultimately these are

businesses. They're concerned about the bottom line. If we can convince them that their products are disserving us or we no longer want to be their products, um, then we have to raise our, our economic power as well as our free speech critical power.

Q: Hi, um, earlier you had said that the, ah, ACLU had tried, um, implementing and giving suggestions to make universities, ah, safer. And I was wondering, um, what were some of those suggestions?

MS. STROSSEN: The, the, the question, ah, was specifically about full inclusion of individuals and groups who had traditionally been excluded and marginalized. And it's a long list. Off the top of my head, ah, number one, which we can't really take for granted anymore, ah, unfortunately if we ever could, and that is absolutely protecting the physical safety of students and that's become more, a more pressing dominant concern in the recent past as we've seen so much evidence about sexual assaults and sexual violence on campus which too often has not been treated seriously. So that's, ah, one very important one. Ah, and providing, um, support psychological and, and, and emotional and educational support for students and communities who are actually victimized by hateful speech. By the way, also, ah, prosecuting or disciplining as potential hate crimes or bias crimes, some assaults and vandalism on campus where unfortunately we have too many incidents where the victims of these crimes are intentionally singled out for discriminatory reasons. Ah, so that has to be at least investigated as a potential hate crime. Um, affirmative action we are strong, strong supporters of affirmative action which seems to be embattled at every level for hiring and for admissions in every sector of the university for enriching the educational offerings in terms of

what we used to call multicultural education. I don't know if there's a, a better term for that. But to make sure that, you know, there's a, access to information and ideas about all cultures and, and peoples to make sure that all of us are, at, educators and administrators and staff people as well as students are educated in ways that we can effectively communicate and address these difficult issues. So, those are the most important ones that come to my mind. Any, anything else, John?

MR. POWELL: Well, just the, um, ah, I think universities and institutions have values. And this is actually one of the issues when I was at the ACLU. Ah, we talked about being neutral and I, and I, I am positive that we were not neutral, we were non-partisan. And it shouldn't be confused with neutral. That in terms of helping to give life to the constitution the constitution is a value-laden document. And so, um, so two things; one is that if you had a university or whatever it's like for the university to express these are our values. If you say inclusion and belonging are our values. Say that. And then figure out how to operationalize it. Ah, but oftentimes university in terms of trying to be so fair in terms of speech it's like we can't, we got to be neutral. It's like, no you don't have to be neutral. What, what do you stand for as a university? Say that. Be clear about that. And then, not just be clear about it in terms of words but also in terms of activity. Um, there's, there's a concept, um, the, it's come up a lot in affirmative action cases, maybe we mentioned affirmative action of critical mass. And if you read Claude Stills (phonetic spelling) work – he wrote a book called Whistling Vivaldi – um, and the idea is that if a marginalized group has low, low numbers they're under what he called identity threats. Um, and so, if you're the only one woman in a, in a meeting of 50 guys you, psychologically,

and again this is pretty strong science, you're, you, you're, you're distracted. Ah, you're noticed. Ah, you're performing. It's like what do women think? And you know, and one woman, you know. Ah, ah, I literally had a student in a class just recently say to me oh because we were talking about some, some stuff around disability and she started crying. She said I'm the only, ah, um, disabled student in the class, ah, and I feel like I'm being targeted. It turns out that there are probably 15 or 20 percent of the class was disabled but always invisible. But her point was well taken, right, its that. So, part of the thing in terms of critical mass and affirmative action is how do you have not just one black, one woman, one person with a disability, ah, which already creates a threat. And then that person is even more, ah, vulnerable, ah, in, in some, some ways. So, to create an environment, ah, um, Nadine writes about resiliency in her, in her book and I think it's a really important concept. One of the things we know about resiliency is that resiliency is, happens better if you're in a community, if you're in a network. It's hard to be resilient when you're by yourself or when everybody in your network is also under threat.

MS. STROSSEN: And you know, John talked about this earlier about how we have to find opportunities to interact with, ah, people that we otherwise, no pun intended, you might be tempted to think of as other, and, and I read again the research for my book the famous contact theory which was created in, way back in the 40s but has been reaffirmed over and over and over again and it's one of those social science validations of common sense that the most effective way by far to get over negative stereotypes is to actually interact with somebody in that group. And so that to me is such an essential call for affirmative action and especially when we lead such segregated isolated lives

in other ways because of deeply entrenched patterns of housing and schooling and so forth. Let us at least use those opportunities that are open, ah, at the university level and, and employment to, ah, effectuate the contact theory. I want to tell one story about this because I think, you, you know, the online media are no different in terms of their potential for good or ill than past media. But the difference is that as people are spending more and more time online, they're having less and less time with physical contact with full-fledged human beings. And this is a story I was given permission to tell. I had a breakfast meeting with former Supreme Court Justice Anthony Kennedy and a fairly small group of people that were speaking at a conference about him. And at the end of the conversation a man in, who was one of the group, ah, and when the conversation with Kennedy had been going on for more than an hour this gentleman said, I am a Muslim American. I never felt I had to identify myself that way until very recently. He said, Justice Kennedy, I came here prepared to hate you and to denounce you. And what he was referring to was Kennedy cast the tie breaking vote in the case that upheld Trump's so-called Muslim travel ban. He said I still completely disagree with that opinion and decision but now that I've heard you and met you and, and listened to you I, I can't hate you anymore and I can't denounce the idea as, you know, being negatively motivated by hatred a, as I had assumed.

MR. POWELL: Our, our time is up. Let me take 30 seconds –

AUDIENCE: [Laughter.]

MR. POWELL: -- because we –

AUDIENCE: [Laughter.]



MR. POWELL: Um, so, I, I was talking to someone about the affirmative action stuff and, and as you know there's a, a case at Harvard now that's probably working its way to the Supreme Court. And, I would love students, and I thank the ACLU to, to actually bring this suit. And this will be the suit. So, here's the thing. Ah, Harvard, Stamford, Berkeley, we could, the entering class at Berkeley the average GPA is 4.3. Ah, we could fill our entire, ah, student body with students with perfect SAT scores, and with perfect grades. I think that would be a mistake, um, for a whole lot of reasons. I mean, we know that diversity really does matter. Ah, but beyond that, what we're really saying is we've created this false scarcity and the student that, that doesn't have a 4.3, that only has a 3.9, ah, who didn't get a perfect score, got one, one question wrong on SAT scores is more than capable of doing the work. So, why isn't someone suing to challenge states especially for creating this false scarcity. We say education is extremely important, these students are well-qualified, and we say we have ten slots, ah, and we have a hundred students who are capable. So, we have to have some way of sorting to get rid of 90 of you who are more than capable because we only have ten slots. And it's like, why do we only have ten slots? Why do we only have ten slots when we have more than a hundred students who are capable of doing the work. Why isn't someone challenging the state for that. You see that, we are really missing the ball. Instead we sort of fight over each other who's in that ten and who's out of that ten?

MS. STROSSEN: And the high school students here have standing.

AUDIENCE: [Laughter.]

MR. POWELL: Yeh.



AUDIENCE: [Laughter.]

AUDIENCE: [Applause.]

MS. LAMBE: Thank you so much.

AUDIENCE: [Applause.]

MS. LAMBE: We have about, ah, I guess, let's take about a five-minute break, um, and convene back for another panel. Thank you.

MS. STROSSEN: [Indiscernible.]

MS. LAMBE: [Indiscernible.]

MR. POWELL: [Indiscernible.]

MS. STROSSEN: [Indiscernible.]

UNIDENTIFIED: [Indiscernible.]

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