

[Transcript] Lex Fridman Podcast / #377 - Harvey Silverglate: Freedom of Speech

The following is a conversation with Harvey Silverglate, a legendary free speech advocate, co-founder of FIRE, the Foundation for Individual Rights and Expression, and the author of several books on the freedom of speech and criminal justice, including *The Shadow University*, *The Betrayal of Liberty on America's Campuses*. Harvey is running to be on the Harvard Board of Overseers this year with a writing campaign, so you have to spell his name correctly, Silverglate.

Promising to advocate for free speech and to push for reducing the size of Harvard's administration bureaucracy. Election is over this Tuesday, May 16th, at 5 p.m. Eastern. To vote, you have to be Harvard alumni, so if you happen to be one, please vote online. It's a good way to support freedom of speech on Harvard campus.

Instructions how to do so are in the description.

As a side note, please allow me to say that since there are several controversial conversations coming up, I try to make sure that this podcast is a platform for free discourse where ideas are not censored but explored, and if necessary, challenged in a thoughtful

and pathetic way. It's by having such difficult conversations, not by avoiding them, that we can begin to heal divides and to shed light on the dark parts of human history and human nature.

And now, a quick few second mention of each sponsor. Check them out in the description. It's the best way to support this podcast. We got Factor for Nutritious and Delicious Pre-Made Meals, Simply Safe for Home Security, and Athletic Greens for, well, delicious, delicious health. Choose wisely, my friends. Also, if you want to work with our amazing team, we're always hiring, go to lexfreedmen.com slash hiring. And now, onto the full ad reads. As always, no ads in the middle. I try to make this interesting, but if you must skip, please still check out the sponsors. I enjoy their stuff. Maybe you will too. This show is brought to you by Factor, a ready-to-eat meal kit service that delivers nutritious and delicious meals straight to your door.

They got keto. They got vegan. They got calorie smart. They got protein plus. And if you know me, you know which one I go with. I go with keto. For over a decade, I've been eating mostly carnivore keto, which when I don't have services like Factor, ends up me going to the grocery store, getting some ground beef, and just cooking that and eating that with a little bit of salt.

Now, there's nothing wrong with that, but there's downsides. One of the downsides is there's not diversity and flavor and richness and experience in the eating process, especially if I get to share that experience with somebody else. Second, it takes quite a bit of time. And so I think Factor solves these problems. They got such amazing meals. They're so delicious, and they fit into my diet, my keto diet, and they allow me to share those meals with other people and really enjoy them, the full variety of it. It tastes delicious, and it's fun, and it's so easy to do. It fits into my day. You just heat the thing. I don't know how many minutes, maybe like two minutes, and you just get to enjoy it. It's fresh. It's healthy. It's affordable. I love it. Get Factor and enjoy clean eating without the hassle. Go to factormeals.com slash Lex 40 and use code Lex 40 to get 40% off your first box. That's factormeals.com slash Lex 40 and use code Lex 40.

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I have set it up. I feel like it took like less than 30 minutes. It was super fast.

I have a ton of cameras. Everything is easy to use. It's one of the key components of my physical security systems. Of course, I take my cyber and physical security extremely seriously for many

reasons of many ways in which I protect my security, everything from physical to cyber, to mental, all that kind of stuff. But I think for most people and for myself, there should be this kind of low hanging fruit of make sure your home is protected with an easy to use, easy to monitor, easy to interact with, easy to set up security system. That's what Simply Safe is. Go to SimplySafe.com slash Lex to get a free indoor security camera plus 20% off your order with interactive monitoring. And I do recommend you get the interactive monitoring. This show is brought to you by Athletic Greens and it's AG1 Drink, which is an all in one daily drink to support better health and peak performance. I've been drinking it every single day, twice a day. It's the thing I break my fast with when I'm traveling, got the travel packs. I mean, it's just, it's a simple part of my day that makes me feel at home. That makes me feel happy. That makes me feel like I have a nutritional foundation to take on the day and do all the kinds of crazy stuff, physical and mental that I do. Sometimes things become such an integrated part of your life that you start to take them for granted. And you only realize how much they mean to you when they're gone. So the times when I run out of travel packs and I'm traveling or there's a curveball where I have to travel unexpectedly, all that kind of stuff. I realize, oh wow, there's these little parts of the day that bring me joy. And one of them is drinking an athletic greens drink. Maybe it could be part of your life in the same kind of way. They'll give you a free one year supply of vitamin D and five free travel packs with your first purchase. When you go to athleticgreens.com slash lex. This is the Lex Friedman podcast. To support it, please check out our sponsors in the description. And now, dear friends, here's Harvey Silverglate. You co-founded the Foundation for Individual Rights and Expression, also known as FIRE, a legendary organization that fights for the freedom of speech for all Americans in our courtrooms, on our campuses and in our culture. So let's start with a big question. What is freedom of speech? First of all, the organization when I co-founded it in 1999 was called the Foundation for Individual Rights in Education. It focused on free speech issues on college campuses in academia. And only earlier this year did we decide to expand our reach beyond the campuses, which is why the name of the acronym FIRE remains. It's now the Foundation for Individual Rights and Expression. The E used to be education. The E used to be education. It's now expression. And we basically do a lot of the cases the ACLU used to do. The ACLU now amores us. They're a progressive organization rather than a civil liberties organization. And we've taken the role of dealing with free speech in the society generally. And now this is a particularly an era prone to censorship. Everybody thinks they're right that people who disagree with them should not be able to voice their views. It's a very difficult period right now, both on campus and off campus. It's about as intolerant an era as I can remember. I'm going to be 81 May 10th. I was born on Mother's Day, 1942. And I can't remember it being this bad. I was born during the McCarthy era. So that says a lot. And it sort of reminds me of that. Well, let's start with that almost a philosophical question, a legal question, a human question. What is this freedom that you care so much about that you fought for so much freedom of speech? It is the most important right that Americans have. It's not a coincidence or an accident that it's named in the First Amendment to the Constitution. Without it, no democratic society can be democratic for long. And I'm an absolutist. That is, I believe that, for example, people say to me, but what about hate speech? Well,

hate speech is much more important than love speech. And the reason is I'm much more interested in knowing whom I should not turn my back on than I am interested in figuring out who loves me or who likes me. So hate speech is the most important, in my view. And yet it's banned in, for example, schools. It's unbelievable. Kids are not schooled into understanding the glory of the First Amendment when schools say to them they shouldn't say things that are going to make somebody feel bad. I mean, the purpose of speech is to express honest views that people have. And so I believe hate speech is as important as love speech. And my view is more important.

So it should be brought to the surface rather than operate in shadows?

Absolutely. Absolutely.

What is the connection between freedom of speech and freedom of thought?

Well, in a free society, thoughts start on the brain and then they come out the mouth.

So they're different ends of the same spectrum.

So to you, the censorship of speech eventually leads to a censorship of thought?

Of course. Censorship of the mode by which other people know what you're thinking.

So there's some aspect of our society that is, that thinking is done collectively and without being able to speak to each other. We cannot do this kind of collective thinking.

And out of speech, the theory is that ultimately out of speech comes truth. That isn't necessarily so. But I do think that when there's free speech, better decisions are made. Because people put their views on the table in a frank, accurate way. And then those views mixed together and clash.

And out of that, usually comes the better decision. Not always, but usually more often than not.

But if somebody is not allowed to sit at the table of decision making,

then the decision making process is poorer, less robust, less diverse, and ultimately less successful.

So can you elaborate on the idea of free speech absolutism? So hate speech can be quite painful to quite a large number of people. Does this worry you?

Yep. Living in a free society requires that you expose yourself to some discomfort. You call it pain. It's maybe emotional pain. It's not physical pain. But it's the price we pay for living in a free society.

Every so often we're insulted. We're emotionally hurt. Think of the alternative. All the alternatives are worse. Nobody ever promised us a rose garden. We're lucky to be in a country that has the First Amendment. It's also the most diverse country in the world because of immigration. I mean, my grandparents, my father's side came over from Russia. My mother's

side came over from Poland. I'm very happy that my grandparents came in from Russia. I would not want to be in Russia today. I'd probably be sharing a cell with a Wall Street Journal reporter.

So I'm thankful that they came in. And this is a great country. It's got troubles right now,

but our country doesn't. After we had a civil war, we had segregation. We had the decimation of the Indians. We're not perfect. But it's the best place in the world for somebody who values liberty. So you don't think that hate speech can empower large groups?

That eventually lead to physical action, to physical harm to others?

No, I don't. I think that we have developed a culture in which it's understood that if you don't like what you hear, you talk back. You write something. We don't punch each other. We insult each other. Is insulting great? Well, I don't know. It's okay. I used to, as a kid in

Brooklyn, where I was born, I was born and raised in Bensonhurst. We used to say sticks and stones can break by bones, but names can never harm me. And it's absolutely true. What was true when I was

five is true when I'm almost 81. So I've lived a long time. I've seen it all. And I'm talking from experience as well as theory. It's what happens when you reach your 80s.

I read that you had this line that you cannot be protected from being called an asshole.

Correct. Especially if you're an asshole.

Well, that's, but you don't have to be an asshole to be called an asshole.

That's correct. And I think the internet has taught me that.

Well, the internet has posed a particular challenge to free speech absolutists because of some of the stuff that's on there is God awful. But I have no different rule for freedom of speech on the internet than I have in newspapers or in lectures or in classrooms or conversations among people. What do you think about the tension between freedom of speech and freedom of reach

as is kind of sometimes termed. So the internet really challenges that aspect. It allows speech to become viral and spread very quickly to a very large number of people.

Yeah. Well, you know, we've had revolutions in the modalities of communication. After all, newspapers were the first challenge. Radio and television posed a new challenge.

The FCC tried, but ultimately gave up the attempt to control obscenity, for example.

And the Supreme Court has been pretty close. The one thing that liberal and conservative Supreme Courts, right now we're in a conservative era due to Trump nominations.

During much of my life, the Warren Court, it was William O. Douglas or Brennan, the Liberal Court. One thing they agree on is free speech. They don't agree on much else, but they do agree on free speech. And I think the reason is that they recognize that, well, my group is in the ascendance today, but it may not be tomorrow. And I want to have objective, clear rules so that when I'm in the minority, I'm able to voice my opinion.

And so it's one of the few things that both sides of the political spectrum agree on. The only people who don't are the people way over on the right that I call the fascists and the people way over on the left who are the communists. But with respect to most people in this, on the political spectrum, Republicans, Democrats, Socialists, Libertarians, they agree on the primacy of free speech because it protects them when protection is needed.

So to you, even on the internet, free speech absolutism should rule?

Yes. Nobody's going to die. Remember, death threats are not protected. Nobody's going to die. So people are going to be a little bit insulted. That's the price you pay for living in a free society. And it's a small price, in my view. Some people don't have as tough a hide as others, well, then develop it. I don't mean to sound cruel, but you're living in a free society, develop a tough hide. So that's the cost of living in a free society?

Yeah, there's a cost. The thing is that it can really hurt at scale to be cyber bullied, to be attacked for the ideas you express, or maybe ideas you didn't express, but that somebody decided to lie about you and use that to attack you.

Well, first of all, there are some exceptions to the First Amendment. Libertal and slander is an exception. Direct threats are an exception. If you say such and such, I will murder you. That is not lawful. If you say about somebody, oh, you know, you beat your wife. That is not lawful if, in fact, the person knows you don't beat your wife. There are some limits. Defamation is one, direct threats are another. So the First Amendment is not absolute, but it's more absolute than it is in any other society, and it's pretty near absolute.

For example, fraud. If you sell somebody a car and you say, oh, this is in great running shape,

and in fact, it's an old jalopy, and it's not going to make it more than 10 miles, that's fraud. That's not free speech. So free speech is not absolute. There are these limits, but they're very narrow specific categories of limits. But there's gray area here, because while legally you're not allowed to defame a person, in the court of public opinion, especially with the aid of anonymity on the internet, rumors can spread at scale, thousands, hundreds of thousands of people can make up things about you. You have to defend yourself. Using more speech. We're through freedom of speech. We're big boys and girls. You have to defend yourself. In some societies, if you say something, right now, if you say something nasty about Putin, you'll end up in the gulag. If you say something nasty about Biden, you end up in the New York Times. Where would you wrap a bead? Well, let's talk about the thing you've done for over 20 years, which is fight for the freedom of speech on college campuses. So why is freedom of speech important on college campuses?

Well, it's important everywhere in the society, but it's most important on college campuses. Why? Because that's where we educate our young citizens. And if you are educated under a notion that some dean can call you on the carpet, because you say something which is considered racist, or you can say something which is considered dangerous to social cohesion, then it's not a liberal arts college. The theory that I used in *The Shadow University*...

A book you've written, *The Shadow University*... 1998.

1998. You were ahead of a lot of these things, by the way.

I'm afraid that as a pessimist, I always saw the bad side of things.

Betrayal of liberty on America's campuses, The Shadow University,

that a book you co-authored with Alan Charles.

Yes, with one of my Princeton classmates, Alan Charles Coors, who's now an emeritus professor of Enlightenment history at the University of Pennsylvania. I only taught for one semester, and I can go into that later. The other reason is that I did not continue to teach in colleges. It was Harvard Law School. I taught, of course, in the mid-1980s.

But in any event, the college campuses are one of the most important for free speech.

This is where people get education. And if you don't really get a good education, if certain points of view are not allowed to be expressed, because education comes from the clash of ideas, and you then have to decide... This is how you become a thinking adult.

You have to decide which ideas make more sense to you, which ones you're going to follow.

The college experience is transformative. And if there is censorship on campuses, it's highly destructive of the educational enterprise, and ultimately to the entire society.

We have in the sciences, we have a scientific method. Scientific method is you try experiments, and you see which ones work, and then you develop theories based upon the results of experiments.

Well, this is not much different from every other aspect of life. You have to entertain different views on different subjects. You hear all the views, and you make a decision as to which one's accurate and which one's not. So the scientific method I apply to non-science, to history, to journalism, to all of these things. So that scientific method includes ideas, hateful ideas also. Correct. If you don't allow hateful ideas. I mean, when scientists do experiments, nobody says to them, oh, you know, don't do that experiment, because it would be very bad if that turns out to

be accurate, that outcome. That's not the way it works. Every point of view is thrown into the

marketplace, whether it's science or whether it's, you know, non-science. And that includes the kind of ideas and the kind of discourse that might actually lead to an increase in hate on campuses. The First Amendment prohibits speech, which is likely to produce imminent, violent. So for example, you know, the exception is yelling falsely, falsely yelling fire in a crowded movie theater. A lot of people misstate it. They say, well, the exception is yelling fire in a movie theater. Well, if there's really a fire, you're performing a real important function by yelling fire. But it's falsely yelling fire. You can start a riot, people would be crushed, try to get out. So that's one of the exceptions, the First Amendment, as the Supreme Court has defined it. There are very few exceptions. And defamation is an exception. I'm not a fan of that exception, frankly. But if you say something about somebody that has serious implications in their life, in their ability, or in a living, if you say you accuse somebody of being a pedophile, but it's not true, that person can sue you. My own view is I think that's an unfortunate exception. But I'm not on the Supreme Court. I think that I'm with a friend of mine was Nat Hentoff. Nat Hentoff, who wrote for decades for The Village Voice in New York, he was a friend of mine. He was a free speech absolutist. And he wrote a fabulous book called Free Speech For Me, But Not For Thee. And he was an absolutist, and I'm with Nat Hentoff.

Even on the defamation aspect. I mean, I agree with you in some sense, just practically speaking. It seems like the best way in the public sphere to defend against defamation is with more speech. Correct. And through authenticity, through authentic communication

of the truth as you see it. Yeah. You know, at times the Boston Globe has said something about me that hasn't been accurate. They have variably published my letter to the editor. I'm also not bashful about getting in-chart in touch with the reporter. At the end of every column, they give the reporters email address. And I know people say that I have more access to the media than most people. But all that means is I get the fame more than most people.

Can we also comment on from the individual consumer of speech? There's a kind of sense that freedom of speech means you should be forced to read all of it. Freedom of speech versus freedom of reach. We as consumers of speech, do we have the right to select what we read? We do. And nobody can force us to sit in the room and listen to a radio program that we don't want to listen to. Nobody can force us to read a book that we don't want to read.

The whole motion of freedom of speech means that people have autonomy on their choices.

In order to form a complete mind and complete human being, there's a kind of tension of that autonomy versus consuming as many varied perspectives as possible, which is underlying the ethic of free speech. So on college campuses, it seems like a good way to develop the mind is to get as many perspectives as possible, even if you don't really want to.

Well, that is the theory. Academic freedom is supposed to be the highest degree of free speech.

Yeah. You should be able to entertain all kinds of hateful, threatening ideas. And the way I put it is, there's something wrong when you can say something with complete abandon without any fear in Harvard Square, whereas on the other side of the fence, you can't say it in Harvard Yard.

It should be the opposite. And what happens is universities, from the best to the worst, from the most famous to the least well-known, have been taken over by administrators.

Administrators do not really subsume academic values. They know nothing about the Constitution.

They know nothing about free speech. They know nothing about academic freedom.

They feel that their job is to keep order. And so they develop speech codes, kangaroo courts to

enforce the speech codes. And these are very dire developments. I wrote about them in the shadow university in 98 and tried to deal with them in 1999 when I started fire, co-started fire. And I would fire. The reason I'm running currently for the Harvard Board of Overseers is what I'd like to do is convince the Harvard Corporation, the so-called president and fellows of Harvard College, the chief governing board of the university with the real power, the board of Overseers is a secondary body but quite influential to fire 95% of the administrators. It would have a salutary effect on the academics of the university. It would have a salutary effect on free speech and academic freedom. It would cut tuitions by about 40%. And it would create a whole different atmosphere on the campus. And the same could be said of MIT or any other place. I think administrators are a very bad influence on American higher education. Can you sort of elaborate the intuition of why this thing that you call administrative bloat is such a bad thing for university? Well, first of all, just in terms of the the cost of maintaining, there are more administrators in American higher education than there are faculty members. The cost is enormous. Number two, they are inimical to the teaching enterprise and they feel that their job is to control things, to make sure there are no problems and nobody's feelings are hurt. Being called before a dean because you said something that insulted somebody is something that shouldn't happen in American higher education, yet it happens because you have these administrators who think it's their job to protect people from being insulted. You insult a black student, you insult a woman. There's a disciplinary hearing. Well, there shouldn't be. Black people are accustomed to being insulted. Jews are accustomed to being insulted. Women are accustomed to being insulted. And it's very good to know who doesn't like you. It's useful. It is very, it's essential information to know who doesn't like you. If everybody is forced to say, I love you and nobody can say, I hate you, you get a false view of what life is all about. Outside of the university. Outside of the university. I mean, you do graduate eventually. And that's ultimately the mission of the university is to prepare you to make you into a great human being, into a great leader that can take on the problems of the world. Correct. And you don't do it by treating you like a little flower. About what role does the university have to protect students? To women, African Americans, anybody, Jews, anybody who gets, can get, can be victim of hate speech. They, they, they protect you from physical assault. If somebody physically assaults you, then they, um, they get punished, but they shouldn't, they shouldn't protect you against insult because that is a violation of academic freedom, the freedom of the insulator to insult you. And also, as I said, it's very useful to know who doesn't like you. It's useful for the so-called victim. I think it's just said, I want to know who doesn't like me. It's as important to me as knowing who, who likes me. But do you also believe in this open, uh, space of discourse that the insulator will eventually lose? I think that's true. I think that the insulator eventually will wear out his or her welcome. Um, I do, but I, I like to know who the insult is. Because it gives you a deep understanding of human nature. Yeah. And, and, and usually by the way, by experience has been that the insult has generally not been as smart as the people they've insulted. Yeah. And that's probably one of the reasons they insult them because they're, they feel inferior. Yeah. I mean, I'm not trying to be a, a, a psychoanalyst here, but a lot of

the people who were the haters are pretty low down on the intellectual scale. Anyway, 95% of administration, you would fire, you're calling to fire 95% of the administration. People should know. I think people that don't really think about the structure, the way the universities work are not familiar, I think with the fact that administration, there's a huge bloat of administration. You know, when you think about what makes a great university, it's about the students, it's about the faculty, it's about the people that do research, if it's a research university, they don't think about the bureaucracy of meetings and committees and rules and paperwork and all that and all the people that are involved with pushing that kind of paper. And there's a huge cost to that, but it also slows down and suppresses the, the beautiful variety that makes the university great, which is the teaching, the student life, the protest, the, the, the clubs, all the fun that you can have in university, all the very kind of exploration, which you can't really do once you graduate. Correct. It's the place, the university is a place to really explore in every single way. So let me just talk about this important thing, because I'm very fortunate to have contacted you almost by accident in a very important moment in your life. You're running for the Harvard board of overseers. What is this board? How much power does it have? And what would you do if elected it?

Okay. First of all, I have a prediction. Yes.

That in about five years, they're going to probably change the name because overseers reminds people of the slavery era. Yes.

And we're in such a politically correct era now that the English language is being restricted, corrupted is the way I put it, because certain words are forbidden. We, we have some problems in this country. And I think part of the problem is the educational system has lost the sense of what academic freedom and free speech are all about. And, and, and I think it's essential that the educational system begin to take more seriously what free speech and negative freedom really are. That's why I'm running for the Harvard board of overseers.

So let me just link on the, the role of the administration in protecting free speech.

So what often happens, I think you've written about this, is there's going to be a few, maybe a small number of hypersensitive students and faculty that protest. So how does Harvard administration resist the influence of those hypersensitive protesters in protecting speech and protecting even hate speech? Harvard has done fairly well under the presidency of Lawrence Backhoe. I have had a couple of meetings with Backhoe. I like Backhoe. I have donated to Harvard a print of my late, my late wife took a picture of Bob Dylan and Alan Ginsberg when the Rolling Thunder Review got to Harvard Square. And it's a, it's sort of an iconic photograph. She called it the music lesson because it's got Dylan teaching Ginsberg how to play the guitar. And I donated one of those to Harvard. It's hanging in Backhoe's office.

He, the new president, Claudine Gay, is not known for respecting academic freedom and free speech.

People have said to me, well, give her a chance. Well, I'm willing to give her a chance, but she does have a record. And she's a bureaucrat. I don't think she believes in free speech and academic freedom. I think she's a progressive, not a liberal. I'm not happy with the, the appointment of Claudine Gay. And it has made more essential my attempt to get on the board of overseers. So let's talk about the board of overseers and your run for it, the specifics actually. You'll be nice because I think you're a writing candidate and the election is over on May 16th. Yes. And I think there are specifics. I'll probably

give them in the intro. I'll give links to people, but the specifics are complicated.

Let me just mention that you have to be Harvard alumni. So I've graduated from Harvard.

You have to, in order to run and in order to vote?

In order to vote. And the process, I imagine, is not trivial, but this is done online. And if you're an alumni, you should have received an email from a particular email address Harvard at mgElectionServicesCorp.com. And presumably there's a way to get some validation number from that email. And then you go online, you enter that validation number and you vote.

And you, to vote for Harvey, you have to enter his name correctly, Harvey Silverglate, and spell it correctly. Obviously, I'm imagining this because I'm MIT, not Harvard.

So I'm imagining the process is not trivial. You have to click on things. You have to follow instructions that are not trivial. And I'll also provide an email. If the process is painful, it doesn't work for you that you can email. Email Harvard and complain, IT help at Harvard.edu and so on. I'll provide all the links. But is there something else you can say about the voting process, what you're running on? This is my second run. The first time I got enough signatures to get on the ballot, then the Harvard Alumni Association sent out a letter to all living Harvard alums, recommending that they vote for the officially nominated candidates that excluded two petition candidates of whom I was one.

And I wrote to the Alumni Association and I said, you have now sent out the curriculum VTIs and the policy positions of all the officially nominated candidates.

There are two petition candidates on the ballot. I would like to be able to send out my positions to the voters. They wrote me back saying our policy is to only send out the policy positions and the platforms of officially nominated candidates. Can you believe that?

Well, this is a liberal arts college, right? We're from the clash of ideas, truth emerges.

Well, really, this is what I call Harvard's not-so-subtle means of candidate suppression, not voter suppression, candidate suppression. And everybody can vote, but not everybody can run.

It will become a liberal arts college where the clash of ideas will produce the truth.

We're about the clash of ideas on the board of overseers. The board of overseers is important.

It doesn't have the same power and authority as the Harvard corporation, the so-called president and fellows of Harvard College, but it's very influential and very important.

And it would be a great perch for me to try to exert influence for the university to get back to where it was before it was taken over by the administrators.

Well, I'm pretty sure that most of Harvard alumni, most of the students currently going to Harvard, most of the faculty at Harvard probably stand behind the ideas and the ideals that you stand behind. The people that love Harvard and what it stands for.

So, yeah, the alumni were educated in the era when these concepts were taken more seriously and before the administrators took over. So, I do think if I get my message out,

I'm going to win a seat. And if I win a seat, I will have a great perch for trying to convince the real power that being, which is the Harvard corporation, to do the things that I'm suggesting.

You know, get rid of nine percent of the administrators, get rid of the speech codes, reduce tuition by 40 percent, all of these salutary benefits. Can you imagine if Harvard became the most affordable college in the United States?

Well, the affordability is another aspect, but I think before that, just the freedom of expression, freedom of speech, freedom of thought at America's greatest universities, I think, is something that everybody would agree on. It would have a tremendous effect on the whole

country.

And is there something to say about the details of how difficult it is for alumni to vote?

Well, you could vote online or you can vote by paper ballot. You could request a paper ballot.

And all I could say is that the hard part is getting the message out.

My name doesn't appear on the ballot because I couldn't get enough signatures.

Well, Harvey, Harvey Silverglate.

S-I-L-V-E-R-G-L-A-T. You know, when my grandparents arrived from Russia, the name in Russian was something like Zilba Glitt. And the immigration officer had several choices. He could have said silver gate. Gate is a real, silver and gate are real English words. He could have said silver glade, G-L-A-D-E. Those are really English words. That's how my name is often the spell, either silver gate or silver glade. Silver glade is a nonsense syllable.

And why the immigration officer chose to transliterate Zilba Glitt as silver glade,

I never understand. And it is the cause of endless mistakes in my name.

Well, the fundamental absurdity of life is also the source of its beauty.

Anyway, we shall spell it out and we shall get

yell loud and wide that everybody who's ever graduated from Harvard should vote for you if they believe in the ideals of the great American universities, which I think most people do.

Let me also ask about diversity, inclusion and equity programs. You've been,

you've had a few harsh words to say about those. You know, the idea of diversity,

I think is a beautiful idea. You've said that Harvard's idea of diversity is for everyone

to look different and think alike. Correct. Can you elaborate? And be comfortable.

And be comfortable. Yeah. First of all, it is impossible if liberal arts

education is taken seriously. It's impossible for students to feel comfortable. Why?

Because one of the roles of college is to challenge all the beliefs that they grew up with, which mostly are the beliefs inculcated by parents and by elementary school teachers.

And the idea is to be able to challenge those thoughts, those ideas. And if you don't have free speech and academic freedom, those views get reified, they do not get challenged.

So it is, it violates the fundamental role of higher educational institutions

to have any restrictions at all. That's number one. Number two, as I think I said earlier,

if people, students are not allowed to be frank with one another,

they don't really learn about one another. And I've given a lot of lectures in which I have

said, and I think students now understand it, I'm much more interested in hearing from the

people who hate me than the people who love me. I'm much more interested in knowing who disagrees

with me than people who will agree with me. That's how I learn. And that's how they learn.

The clash of ideas, which is the theory behind the First Amendment,

that truth will somehow emerge, or if not truth, at least a better truth, a truer truth,

a more useful truth if ideas are allowed to clash.

Especially in the structure of a university where at least I would say there's some set of rules, some set of civility, I think I would rather read Mein Kampf to understand people that hate.

There is also quality to disagreement that we should strive for. And I think a university

is a place where when a disagreement and even hate is allowed, it's done in a high effort way.

You know, somebody asked me once about what books I would

want to have as required reading in literature courses. And I listed Mein Kampf.

And they were horrified. And I said, well, it's one of the most important books of the 20th century. Six million Jews died, an enormous number of other people died, because one guy wrote a book called Mein Kampf and took it seriously. It's one of the most important books I've ever written. How can an educated person not have at least breezed through Mein Kampf? And it's not a great read, though. It's not a great read. He was not a great writer. But you do get a sense for the sociopath that was Adolf Hitler. Yes, because he really acted on the words that he wrote. Yeah. And it was there. And if people took that work seriously, correct, they would have understood. It's one of the most important books of the 20th century. And it's politically incorrect to read it. It's crazy. But can you speak to the efforts to increase diversity in universities, which I think is embodied in this DEI effort of diversity, inclusion, and equity programs? Where do they go right? Where do they go wrong? Okay, let me tell you, first of all, this may surprise a lot of people. I am opposed to affirmative action. And I think that what it does is it labels people by their race, by their religion, and by their national origin, precisely what we don't want people to do is be pigeonholed in those categories. The reason that affirmative action has become the way that universities decide on who gets admitted is because historically, people in what's called marginalized groups, blacks, gays, Hispanics, have been discriminated against in the admissions process. Now, what I have suggested is that instead of affirmative action, and by the way, here's a prediction, the Supreme Court is going to abolish affirmative action, is it a case pending, is it a Harvard case? There are two cases joined together, one of a public university and one of a private university. The private university is Harvard. I predict that the Supreme Court will vote six to three to abolish affirmative action. It is on its face, it is a violation of equal protection of the law. Some groups are favored because of race or ethnicity. It is a classic violation of equal protection clause. When affirmative action was approved, the deciding vote was just the Sandra Day O'Connor. She wrote a very famous opinion in which she said, I hesitate to vote to keep up, dear, to affirm the notion of affirmative action because it's such an obvious violation of equal protection. But we have an urgent problem in the society. We are not educating our members of racial and ethnic minorities. We have to try to get them into our colleges. I think it should be approved for 25 years. In 25 years, it should have performed its role. It hasn't. The 25 years is coming up. I think it's three or four years left. The Supreme Court is going to abolish it. You can take my word for that because it's such an obvious violation of equal protection. Why do the affirmative action come into play? Because the secondary and elementary schools are so bad. Public secondary and elementary schools are so bad. Why are they so bad? Partly because of the control that the teachers union has. Randy Weingarten runs the public school system in the United States. What I have suggested is that the effort should be, this is an emergency, it's a national emergency, to improve the quality of elementary and secondary education. One way to do it is to hire teachers who are fabulous teachers rather than necessarily members of the union. I have come to oppose public workers unions. I am a very strong supporter of unions in the private sector. Why do I think there's such a difference between unions in the public sector and the private sector? In the private sector, management is arguing, bargaining with its own money and with the money of shareholders. In the public sector, there's only one side. There is the teachers union and then there's a

school committee that is dealing with the taxpayers money, not their own. It's a very skewed power balance. As supportive as I am of private sector unions, I am in opposition of public sector unions. They're very destructive. I think without teachers union, teachers who are really skilled will be able to get jobs. They would not have to worry about the seniority of teachers who long since have given up really creative teaching. We have to improve the public educational system. My late wife and I had a classmate of, we have a son who is now 44 who went to the public schools in Cambridge. He has a friend, first name Eugene, who was black kid from Roxbury, whose mother understood that the schools in Roxbury were terrible. The schools in Cambridge were pretty good. He lived in our house Monday to Friday and he went to school with Isaac in the Cambridge public schools. Elsa and I would show up the school committee meetings

when there was bargaining between the teachers union and the school committee.

The teachers union objected to our being there. We argued with taxpayers. We have a kid in the school and his best friend lives with us and goes to school with them. We have a real interest.

The school committee walked out of the bargaining session. The city council then reconsidered its vote and they voted that citizens, taxpayers, parents of kids in the school could not show up to these negotiation sessions. I thought that was absolutely outrageous, but I understood why because these contracts are crazy. No sane municipality should enter into some of these contracts. I have become an opponent of the National Teachers Association, the Cambridge Teaching Association. I don't think there should be unions for public employees because there's no real bargaining going on. I think that the public school system will never be improved as long as the teachers unionized. That to you is at the core of the problem that results in the kind of inequality of opportunity that affirmative action is designed to solve.

If the educational system in the elementary and high school levels is improved, we wouldn't need affirmative action. These kids would get good educations. From all backgrounds, poor kids in the United States will get good education if public unions are abolished.

But to you more... And, incidentally, the postal service would probably work better too.

That's a whole other conversation. But to you at the core of the problem of the inequality in universities, that diversity, inclusion, and equity programs that are trying to solve

is the public education system of secondary education. Yes, correct. Elementary and secondary.

Elementary and secondary education. Well then, is there use? What is the benefit? What is the drawback of DIE, diversity, inclusion, and equity programs at universities like Harvard?

It's an affirmative action, basically. What it does is it allows the system of elementary and secondary education to be bad because they could say, oh, you got our kids into Harvard.

Yes, but you haven't educated them. And it covers up the wound. And I think it will never improve as long as we're able to cover up the wound. And as I said, affirmative action is going to be abolished by the Supreme Court. It's a clear violation of equal protection.

What's Sanctuary Day O'Connor understood but ignored intentionally. But as an experiment, and I believe it's going to be abolished, that's going to have, that's going to force

the elementary and high schools to get serious. Do you see the same issues that you discussed now at Harvard at MIT? We're here in Boston, so I have to talk about the great universities here in Boston. You've written about MIT. I'm a university I love. I'm a research scientist there.

Do you see the same kind of issues there? Yes, I do. Do you remember, can you explain the case of Dorian Abbott Lecture that was canceled at MIT? Yeah, well, this is not the only

incident. There have been incidents all around the country of academics, professors who have used it, don't comport with the, as the great Lillian Helman, another friend of my late wife, said they, she said she refused to cut her garments in order to fit the fashions of the day. Dorian Abbott didn't cut his suit to fit the fashions of the day in his intellectual suit. And so he was, this has happened at Princeton, this has happened at Harvard, this has happened at MIT.

The great universities in the country have decided that the clash of ideas is not such a good idea because some people's feelings will be hurt. Well, this is, there was quite a revolt against it. Fire sounded the alarm. And then in the end, the universities were, I believe Abbott was invited to come back. I think he turned him down. He's, he shouldn't have turned him down, but he did.

And when, when the light is cast upon these situations, the universities back down because they're so embarrassed. And the newspapers, because newspapers depend on the First Amendment in order to exist, newspapers tend to give pretty good publicity to these cases of censorship. So they grill the universities. Yes.

So they really emphasize, they catalyze the embarrassment. Yes.

So is that one of the ways, is that the best way to fight all of this?

Yes. Sunshine is the best disinfectant.

You've written about MIT's connection to Jeffrey Epstein. Yes.

He was well connected at MIT and at Harvard. What do you, what lessons do you draw about human nature,

about universities, about all of this from, from this saga?

Let me say this. I believe that universities, if somebody was, for example, donate to a university and donates on the requirement that the building be named after them.

If the university is taking the donations and the person is funding a building unit and wants to build a named after them, the building should be named after him, however, or them. Harvard is facing this now with the Sackler building, because Sackler, the Sacklers had become now a persona nongrata because of their role in producing the opioids that caused the huge scandalous opioid addiction. There are people who want to have removed the name, the Sackler from the Sackler Art Museum at Harvard. Larry Bacow, the president of Harvard, to his credit, has refused to do that. If it reminds people that the money was earned through selling opioids, that's good. That's good that people understand that that's where the Sacklers got their money. They should be reminded. In my undergraduate alma mater, Princeton, there's a movement to remove the name Woodrow Wilson, because Woodrow Wilson was president of

Princeton before he became governor of New Jersey, before he became president of the United States.

How he got to be governor of New Jersey was he was so insufferable that the trustees of Princeton got on the nomination to run for governor of New Jersey. We got to get this guy out of here, and not because he was anti-black and anti-Semitic, because the trustees were as well, but because he just was insufferable. He drove the faculty crazy, and they got him out. Princeton was thinking of changing the name. I wrote a letter to President

Icegrover, Princeton, saying, this is part of the university's history. You want to rewrite history falsely? Woodrow Wilson was the president of this institution. He was one of your

predecessors.

He never answered me either. I think these people, they know they have no answer.

The reason I didn't get a response from President Icegrover is the same as the reason I didn't get a response from the headmaster of Milton Academy. They understand that what they're doing is violative of the fundamental precepts of academic institutions. They're ashamed that they feel they have no choice because they feel that they would be criticized for racism, homophobia, criticized by how many people? Well, they feel that they would be criticized by students and parents and donors. I disagree with that. I actually think there are more people out there that agree with me than agree with them. Yeah, by a large margin. By a large margin in what I call the real world, which is the world outside the campus, but academics are afraid they'd be criticized.

They're incredibly thin. When I say academics, I mean academic administrators. They're very thin skin, politically correct, holier than now. As I said, I would fire 95% of them and I would be more careful in who I elected to lead these institutions. I said Pauline Gay is probably going to be a disastrous Harvard. It takes guts. It takes courage to be in the administration when the task of protecting the freedom of speech is there and also which in part requires you to admit and to uphold the mistakes you've done in the past. Correct. Not to hide them.

Correct. Jeffrey Epstein for Harvard and for MIT is a very recent mistake.

Well, there's a debate whether it's a mistake. They took money from him.

Yes. Okay. Is it a mistake to take money from bad people? Do you have to do a morals test of a potential donor? I don't think so. It's complicated because if there are no conditions attached to it, I think it's emotionally complicated. I don't think that it is rationally complicated. It's emotionally complicated. It's particularly complicated if they want naming rights.

Yes. The Jeffrey Epstein biological laboratory, that would be a problem for most universities.

I don't think that naming rights have to be given to somebody that you don't think is worthy of having a name. I think the university has the right to say, no, we'll take your money, but we will not name the building after you. I think they have a right to do that. There's some degree in which you whitewash the name though. Not with naming rights, but if you take the money, it allows the

person in public discourse to say that they're collaborating, they're working together with Harvard and with MIT. I have a problem with universities making morals tests of donors, because not every donor is as bad as Epstein, but some of the donors made their money in industry by being rapacious, by paying low wages, by exploiting people. You can make the case that accepting money from the Department of Defense from DARPA, from the United States organizations

that contributed to waging war and killing hundreds of thousands of civilians over the past few decades, folks like the tenured professor Noam Chomsky will make the case that that is far more evil than accepting money from Jeffrey Epstein. Still, Jeffrey Epstein is a known pedophile. Yes. So that's why I say I would not give him naming rights. I think the university has the autonomy to not give naming rights, but I think that giving morals tests to donors is a Pandora's box. What do you think about the aftermath of the Jeffrey Epstein saga? It feels like I'm not familiar with Harvard's response, but MIT's response seemed to fire a few scapegoats and it didn't seem like a genuine response to the evils that human beings are capable of sort of rising to the surface, the description in a fully transparent way of all the interactions that happened with Jeffrey Epstein and what that means.

Yeah. What that means about the role of money in universities, what that means about just human beings and power? Money is essential to run a university. One of the reasons it's essential is because the university artificially requires huge amounts of money and that's partly because of the administrative army that they support and they wouldn't be less dependent on the Jeffrey Epstein's of the world if they didn't have, so it's sort of all part of the same circle.

But there's a tension here. You're saying we shouldn't be putting a morals test on money, but actually if you expand the amount of money needed to run the university, you're going to make less and less, more and more unethical decisions. Correct. And I am flexible enough to say that I don't think I would name a building after somebody who is truly evil. I think the university has the right to limit the naming rights for a donor. If I was an absolutist, I would not even say that. I'm not an absolutist. I have my limits and that's one of them.

The Jeffrey Epstein biological laboratory, it's a little bit much.

It feels like there should be a requirement on, there should be moral requirements on who to accept money from, but the question is that the concern you have is about who gets to decide and what's the alternative? Correct. I think there is no alternative. I think that turning down donation because you don't approve of the conduct of the donor is a Pandora's box.

But I'm just sickened by the fact that an evil human being was allowed to walk in the halls of a university I love. So what do we do with that? Well, you're telling me that none of the students are evil? Are you telling me none of the faculty members are evil? Are you telling me none of the administrators are evil?

But that doesn't, sure, sure. So scapegoating, saying that Jeffrey Epstein is evil can help us forget, can aid us in forgetting that there is other evil in the world and some of it might be roaming still the halls of MIT and Harvard.

Hey, listen, I won't tell you the name, but I represented somebody in the MIT administration a few years ago who is charged with sexual improprieties against students.

And as a lawyer, I represented that person. People said, how could you represent some of the people I represented bad people? See, how can you represent them? I said, well, if I was a cardiologist and this person had a heart attack on the street and I didn't to live a CPR, I would be have my license taken away. I'm a lawyer. The only difference between my obligation and the doctor's obligation is the Constitution gives people the right to assistance of counsel. They don't have these conversations. There's nothing about the assistance of cardiologists. I have a very high duty to represent unpopular people.

Well, I think I apply the same test to college donors. The university should not have a moral test. Who's money to take? I do draw along and about naming rights of buildings.

And as I say, that's an inconsistency with my absolutism. But I just emotionally, I just can't deal with having, you know, as I said, the Jeffrey Epstein Biological Laboratory.

Well, for me, emotionally, there's nothing that sickens me more in the university than the abuse of power. Right. And there's a little awful lot of people who abuse power at the university. And especially when it comes to abuse power over students. Correct. So sexual harassment. So in the realm of sexual abuse of power and all kinds of other. Well, it is a crime to use one's power position in order to take sexual advantage of a student. It's a crime.

Yeah. This is not a close question.

Yeah, but there's a legal crime. And there's a deeply ethical crime. And there's an emotional

response that I have. You are a good lawyer and perhaps a good man to want to defend some folks who are evil in this world. I don't think I have that emotional fortitude.

Well, then you shouldn't be a criminal defense lawyer or a cardiologist.

I think you're right. I'm still deeply sickened by Jeffrey Epstein and the faculty, the administration that still might be in these great American universities that are abusing their power in small ways and big ways. But that's human nature. You get a little bit of power and you're a bad man or a bad woman and you take advantage of it. We see that in the smallest of ways and in the biggest of ways in institutions and regimes all across the world.

Boy, Harvey, it's a complicated situation. Well, it's a complicated world and it's complicated to be a human being and this is nothing new. And we should talk about it without restriction. All right. Just to linger on liberal arts in 2014 and probably still today, you wrote that liberals are killing the liberal arts. Yes. So can you explain?

Yes. The problem with I'm a political liberal. The problem with the political left is that it has divided between what's called progressives and liberals. Liberals are people of the left who believe in the First Amendment, an absolute First Amendment and in due process of law.

The problem with what progressives now in the pursuit of equality, what they view as equality, they're willing to bend those rules. And this movement actually started in Brandeis.

The critical, it's the critical race theory. It started, Herbert Barcusi was a professor at Brandeis and he came up with this theory. The theory was this. This is right out of Orwell.

In order to create true equality in a society where you have some downtrodden and some who are the Uber mention, in order to create real equality, you have to reduce the rights of the upper classes and artificially increase the rights of the lower classes. And that will produce out of unequal treatment, true equality will be attained. This is nonsense.

The idea of discrimination producing true equality is nonsense. My view is, as I've said earlier in our discussion, that the way to increase the opportunities for the lower classes is to give them real educations. And until we do that, it's not going to happen. And in order to do that, we have to overcome the problem of the teachers unions at the elementary and secondary school levels. Until we're willing to do that honestly and improve those schools, we're going to have a problem of a large number of uneducated people who need a boost because we haven't given them proper educations. What do you think about some of the more controversial faculty in the world?

So an example, somebody I've spoken with many times on Mike and offline is Jordan Peterson.

I'm not sure if you're familiar with his work, but he is an outspoken critic of or proponent of free speech on campus and he's been attacked quite a bit. He's a controversial figure. What's the role of the university to protect the Jordan Peterson's of the world?

I think the university has an absolute role, obligation to protect the academic freedom of even the most controversial faculty members. And you can imagine

out on your university campus, you have more people who are outliers than you do in the general population. That's the hope at least. Hopefully, yeah. And those outliers have to be protected.

They can't be pressured. They can't be fired. They can't be disabled from spewing their views, whether they're considered racist, whether they're considered to be, you know,

promote an idea of human society that's considered obnoxious. It doesn't matter. If you can't if you can't have freedom of thought on the college campuses, where can you? You know,

them were lost as a society were lost. And as an educational institution, educational institutions no longer will educate, they will indoctrinate. That we have to avoid at all costs.

And we should also remember that the outlier might also be the only bearer of truth. So in Nazi Germany, speaking against the fascism, fascist regime, in communist Soviet Union, speaking against communism, they might hold the key to solving the ailments of that society. Absolutely. And some of the most important discoveries in science, for example, were mocked at the beginning. I mean, think of poor Charlie Darwin.

Charlie, I see he is on nickname levels with you. Well, because we're talking about these big topics of sexism, racism, and hate, you should not forget about the smaller topics, which might even have the much bigger impact, which is what you're speaking to, which is outlier ideas in science. So basically, welcoming controversial ideas in science.

And by controversial, I mean, just stuff that most of the community doesn't agree on, it doesn't actually harm anyone at all. But even then, there's always pressure.

One of the things I'm really concerned about is how little power young faculty have. That there's a kind of hierarchy, seniority, that universities have, empowered by the administration, where the young faculty that come in, they're kind of pre-tenure.

Yeah. There's a process in chasing tenure where you're kind of supposed to behave.

And there's an incentive to kind of fit in and to not be an outcast. And that's a really huge problem because oftentimes, the youth is when the craziest, the biggest ideas, the revolutionary ideas come. And if you're forced to behave and fit in and not speak out, then even in the realm of science, the innovation is stifled. Well, now you trigger my, having to tell you this story.

You're triggered. This is good. In the mid-1980s, I decided to take a four-month sabbatical from my law practice. Yes. Professor James Vorenberg, who was at the time,

Dean of the Harvard Law School, heard about it. Heard about it from his wife, Elizabeth Betty Vorenberg, whom I was very friendly with because we were both on the ACLU, the ACLU of Massachusetts

Board at the time. And so Betty told Jim that Harvey was taking a sabbatical. Jim called Harvey and asked Harvey if he would like to teach a course at the Harvard Law School because there was nobody who had teaching criminal law from the perspective of somebody who actually was in court

litigated. It was all theoretical. I said, sure, I'll do it. So I taught a semester at Harvard Law School. The student evaluations were fabulous. Why? Because it was really interesting. They were

hearing a lawyer who was talking about real cases. I actually brought in a few of my clients, some of the classes. And so Jim called me and said, Harvey, the students love this course.

I'd like to offer you a tenure-track position at the law school. You'd have to give up your law practice. I turned him down. He said, did you just say no? I said, yes. I said, no. He said, how come? He says, nobody in my administration has ever turned down a tenure-track offer at Harvard Law School. Because I could see that I'm not a good fit, that the administrators overrun the place, that faculty members, especially untenured who are afraid to say things, that might not help them in a tenure quest. It's not a good fit for me.

You saw this in the 1980s already.

Yes, 1985. And I went back to my law practice. I did not want to get into this meat grinder that I saw. Actually, I started to see it before the turn of the century because I co-authored *The Shadow University* in 1998 and then co-founded *Fire* in 1999. I'm an early student of

this phenomenon. What are some other aspects of the book *The Shadow University* that we may have

not covered? Well, let me tell you a story. I believe I tell it *The Shadow University* because it was part of... I'm loving these stories, Harry. The stories are fabulous. Let me tell you a story of... I did a tour of the country visiting campuses. I visited a college called Hamline University. I believe it was in Indiana or Illinois, somewhere in the Midwest.

And I attended a freshman orientation. Now, listen to this. This was a freshman orientation. The administrators, the deans and the deanettes and the deputy assistant deans and deanettes, and the third deputy assistant deans and deanettes, lined the students up according to their skin hues.

Oh, boy. The blonde blue-eyed white folks were at one end. The darkest African-Americans whose bloodlines had not yet mixed with any of the whites on the other end. And the exercise was you had to tell how your race affected your success in life up until that point. I thought it was the most demeaning thing that I could imagine. Demeaning. I thought to myself, they could do the same about sexual orientation. They could do the same about religion. They could do the same about national origin. It would be demeaning no matter what. And the students actually verbalized how their race had either been a plus or a minus. They did. They did. And I thought it was so demeaning, it just confirmed all of my distaste for this kind of approach.

Let me ask you from the interviewer seat. So I get to do this podcast and I often have to think about giving a large platform and having a conversation with very controversial figures. And the level of controversy has been slowly increasing. What's the role of this medium to you? This medium of speech between two people and me speaking with a controversial figure, me or some other interviewer. What's the role of giving platform to controversial figures? Say members of the KKK or dictators, people who are seen as evil.

Well, we want to face the world with reality. And the reality is that there are some unpleasantness in the world. Running from genocide, right through to ordinary discrimination, to offensiveness. It's the real world as we know it exists. Are we afraid to say it?

Do we want to make people think that we live in a world where those words are not used, where those animosities don't exist? The answer is no. But you can whitewash, you can normalize the use of those words and you can whitewash the acceptability of certain leaders. So for example, interviewing Hitler in 1938, 1935, 1936, 1937, 1938, those are all different dynamics there. But you can normalize this person and in so doing create enormous harm. Well, see, I don't see it as normalizing. I see it as exposing. If more people had taken my account seriously, Franklin Roosevelt would have acted much sooner. He only got us into the war, as Congress gets into the war, when the Japanese made the mistake of attacking Pearl Harbor. But there were some people in the State Department, there were some people in the administration who were trying, trying to get Roosevelt to see what Hitler was really like. And he was blind to it. And this was one of the greatest presidents the United States ever had. He was blind to it until the Japanese attacked Pearl Harbor. So I think that words, unpleasant ideas as expressed by Rhodes, are essential for communicating fact and truth and reality. And that's why I think that we should not whitewash language. We should not whitewash the fact that Jeffrey Epstein was pretty close to MIT. And Harvard. And Harvard. And reality, reality actually means something. Yeah, but from the role of the interviewer, that's something I have to think a lot about. Whether interviewing Hitler, you said exposing.

I think it's hard to know what Hitler's like in a room, but it's also hard to know. I've never met Jeffrey Epstein. It's hard to know what Jeffrey Epstein is like in a room. But I imagine to some degree, they're charismatic figures. So exposing them in the interview setting is not an easy task. Well, interviewing is not an easy job. Yeah. It's not a good idea to have an interview would be an idiot. I know exactly what you're saying. And I know why you're looking at me directly as you say it. I appreciate that, Harvey. All right. Let me ask about your friend, your colleague, Alan Dershowitz. And I'll also ask about your review of his most recent book. But before then, it'd be interesting to ask what you think of him as a human being as a lawyer. He's quite an interesting case. He's represented some of the most controversial figures in history, including Jeffrey Epstein, including Jeffrey Epstein, Mike Tyson, Julian Assange, Jim Baker, and Jeffrey Epstein, and even Donald Trump. So he's an interesting figure. What do you think about that? What do you think? What do you think about him as a human being as a lawyer, what he represents in terms of values and ideals? Well, he's a criminal defense lawyer. And the job of a criminal defense lawyer is to represent accused criminals. He is a lifelong Democrat. He didn't represent Trump because he agrees with him politically. Voted for Hillary, I believe you're all. He voted for Hillary. Yes. That's what he says. And I absolutely believe it. He's a liberal Democrat. But he's a criminal defense lawyer as well as a professor. And I've represented some very nasty people in my career. I wouldn't go out for coffee with them, but they have constitutional rights to representation. And you take that very seriously. Yes. You notice something that people don't understand about Dershowitz. He was asked by Trump to represent him in the second impeachment as well. He turned him down. Why do you think he turned down? So people should know he represented Trump in the first impeachment trial. He represented only in the first. And he was successful when Trump was impeached the second time he asked Allen to represent him. Allen has had a lifelong policy of only representing somebody once, never twice. Why? Because he never wanted to be House counsel to the mafia. And so he early on had this position. He only represents somebody once. The mafia wants a lawyer who's an in-house counsel who represents them in all their cases. So that's the reason. And now, I never publicly explained that I know it's the fact because I've known from the day that we met at Harvard Law School, 1964. He was a first year professor. I was a first year student. We both had Brooklyn accents and we hit it off. We've been close friends ever since. So there's some kind of unethical line that's crossed when you continuously represent a client? Yeah. He thought it was not so much an ethical one. You have a right to represent mafia people, but he didn't want to be House counsel. He didn't want to be, you know, have them ask him for advice in advance of what they were doing. He was willing to represent somebody who wants no matter how awful. I mean, Klaus von Bülow was accused of killing his wife. These are pretty nasty people, but he didn't want to be House counsel to any of them. So you wrote a review of Alan Dershowitz's new book on Donald Trump. The title of that book is Get Trump, The Threat to Civil Liberties Due Process and Our Constitutional Rule of Law. Can you summarize this book and your review of it? Yes. By the way, I co-authored it with my research assistant who's sitting right here. Emily. Yes. And I thought that the book was another example of the fact that everybody's entitled to a defense and that Alan's being involved with Trump was purely professional.

It was not political. It was not philosophical. And I thought that the fact that he was being criticized, he was being shunned because of his connection to Trump, I found very interesting that this is a guy who represented such, I call them distasteful figures as Klaus von Bülow as Mike Tyson, as O.J. Simpson, as Sheldon Siegel.

And when he was considered to be a skillful lawyer, he made his reputation.

And then he represents Donald Trump who, to my knowledge, never killed anybody.

And he's suddenly shunned. I thought the hypocrisy of it, the political preening,

was very distasteful to me. And it was not only because he was my friend,

if he wasn't my friend, I think I'd have the same view. The holier-than-now nonsense,

the hypocrisy of it, you know, they wouldn't talk to him of his being now.

Alan and I are different. I'm not so sensitive. I'm, someone doesn't want to talk to me,

no problem, no problem at all. But Alan is considering how controversial his life has been.

He's somewhat sensitive. He's somewhat sensitive. And I'm telling Alan,

don't let it get to you. I can relate. I can definitely relate.

Taking on some controversial conversations, still wear my heart on my sleeve, it hurts.

All of it hurts. But maybe the pain makes you a better student of human nature.

Maybe that's the case for him. Nevertheless, the book makes a complicated and I think an

interesting point. He opens the book with, not that Donald Trump has announced his candidacy

for a reelection as president, the unremitting efforts by his political opponents to quote,

get him, to stop him from running at any cost will only increase. These efforts may pose the most

significant threat to civil liberty since McCarthyism. So is he right? He's absolutely right.

Because these attempted, for example, the prosecution, the one prosecution that has

been brought now with Alvin Bragg in the Manhattan. I have looked at that and I don't

believe that Trump is committed to crime. And yet Bragg was pressured to bring that people in his

office were threatening to quit if he didn't indict. Holy improper, holy unethical. And he's

going to lose the case. Has Trump committed crimes? Yes. Most of the attacks crimes.

He has cheated on taxes his whole career as far as I could tell. He could easily be indicted

for state and federal taxes, but they're not as sexy. And I think that he's become a target

by ambitious politicians, ambitious prosecutors. He has gotten some sympathy,

which he doesn't deserve. And a lot of it is, you'll pardon the phrase, political correctness.

The better people are not supposed to be Trumpers. I had an interesting experience about Trump. I

had two interesting experiences. The more recent one was I was in the house of

Lawrence Summers, the former president of Harvard, who was driven out by political correctness,

by the way. He insulted women biologists. I was in his house with the still president of Harvard

when the Trump Hillary Clinton contest took place. And I was with Elsa.

We were invited to Summers house in Brookline. And it looked like Hillary was going to win.

And the Harvard faculty members, they were all celebrating. They were all figuring out what

their cabinet positions were going to be, blah, blah, blah, blah. And then about 1130 at night,

all of a sudden it was announced that in terms of electoral votes, Trump had just

eked out a victory. That Hillary beat him in the popular vote, but he had won the electoral

college. And there was immediate depression. And that was...

Meaning like quiet over the room.

The room was absolutely stone silent. And they were all, you know, disappointed.

Well, that was a memorable moment. And it told me that they were a little bit too overconfident.

They were savoring being part of a presidential administration.

Ambition had been thwarted. I'm not a great fan of preening ambition. I think it blinds people to realities.

And they're resulting arrogance from such ambition.

And the arrogance, yes. It's one of the reasons I didn't accept Jim Warnberg's offer to be part of the academic community. I mean, I represent professors. I have friends who are professors. I represent students. I have friends who are students. And I have a great regard for universities and higher education. But I was not about to become part of the culture. I thought that it was not good for me and not good for the institution either.

A culture that can breed arrogance, self-importance.

And in a sense, the election of Donald Trump was a big FU to such...

Correct. Which is why I think he managed to pull it off.

To jump topics a little bit. What do you think about something you've written about?

What do you think about the mass surveillance programs by the NSA and also probably by other organizations, CIA, FBI and others? And broadly, what do you think about the importance of privacy for the American citizen?

Okay. I believe that the FBI should be abolished. Because I believe that its culture was so corrupted by its first director, John Edgar Hoover, J. Edgar Hoover, that it is impossible to reform the FBI to make its agents honest, to force them to obey the Constitution, the first, fourth and fifth amendments especially. And it's a culture that cannot be changed. Hoover established the culture and no FBI director since has been able to change it. If you go online, I did on YouTube a video for the ACLU of Massachusetts. It was when I was on the board. It was probably when I was president of the board. I was president of the board for two years. I was on the board for 20 years and I did a video about advising people to never, ever, ever talk to an FBI agent when they come back on your door. Can you briefly explain the intuition? Yes. Why not to talk to an FBI agent? They have a system. When they come in and interview you, two agents show up, never one. One asks the question, the other one takes notes. The no taking agent takes notes and it goes back to the office and types up a report called a Form 302, which is the official record of what was asked and answered. So, when I have a client interviewed by the FBI, I show up and I always agree, almost always agree to the interview, but I bring a tape recorder and I say, all right, I'm going to tape this and they say, well, by regulation, we're not allowed to do the interview of his tape. The record is the 302. The agent is taking notes. I say, well, I have a policy too. My policy is to never allow a client to be interviewed unless it's recorded. So, it's unfortunate, but we're going to have to end this meeting and the agents get up and leave. I've never seen a Form 302 that I consider to be accurate. The agents write down what they wish you had said rather than what you said. It is a wholly corrupt organization that has not gotten any better since Hoover died. And fundamentally, the corruption is in the culture that is resisting the constitution of the United States, the 1st, and 4th, and 5th.

Correct. It's not financial corruption. It is corruption of the mission.

And I think it should be abolished. And if we need a federal investigative agency, it should be a new name, a new culture, wholly new members, a new director, and it's impossible to reform the FBI.

Can you elaborate on what exactly is broken about the FBI? Is it the famous saying from Stalin's KGB head, Barry, show me the man and I'll show you the crime?

Right.

Is it that kind of process? It's that kind of process. They decide who's guilty, and then they go about contacting a case against a person who they want to get.

So the goal is not to find the truth or...

To solve the case and close it in intensive reputations.

But to show that an innocent man is guilty is also solving the case from their perspective.

So to falsely convict or falsely imprison an innocent man is also solving the case.

Well, it closes the case if they falsely imprison an innocent man.

They're interested in closing cases.

So that's the FBI, but broadly speaking about the surveillance aspect of this, what are your views on the right that an American citizen has to privacy?

Well, wiretapping and electronic surveillance are very, very intrusive.

And I think that the circumstances that these tools are used should be narrowed.

For example, they're used in a lot of drug cases.

Since I don't think drugs should be illegal in any event, I certainly think that it's a terrible violation of privacy to use wiretapping in a drug case.

I could see it in cases of murder, possibly in cases of serious extortion,

but on other kinds of crimes where they wiretapped, especially drug cases,

I believe drugs should all be legalized anyway.

I think the price we pay as a society is not worth it.

There's, on the Wikipedia page, for nothing to hide, you're cited.

In fact, your book that you gave me today, Three Felonies a Day, is cited.

So nothing to hide argument.

That's an argument that if you're a well-behaved citizen,

you have nothing to hide and therefore your privacy can be violated.

Well, the problem is that under the federal criminal code, particularly the federal criminal code, it is very easy to be charged with a crime.

Now, why?

Under the Constitution, the federal government does not have plenary criminal jurisdiction.

That's up to the state.

How is it that the feds indict in so many areas of American life?

It's because the Supreme Court has allowed the following absolutely insane situation to prevail.

Anything can be made a federal crime if, in the course of the commission of the crime, the means of interstate communication or travel are used.

That means that if you commit a crime, which ordinarily would be a state crime, and you use the telephone or you send a letter, it suddenly becomes federal.

That means that the limitation that the founding fathers who wrote the Constitution intended to keep the feds out of daily life and to give that jurisdiction to the state has been completely thwarted.

Because I can't think of a case where somebody doesn't use a telephone in the course of planning, discussing something that's arguably criminal.

And so this limited authority, the federal government, to bring charges in criminal cases is illusory.

The feds can indict a ham sandwich.

So basically, everybody's guilty.

And if the feds want to bring you in, they can find a way.

And that allows them to terrorize people who are dissidents.

Yeah. What is broken?

What works about the American criminal justice system from your perspective?

The jury system.

The jury system.

Yes.

You like the jury system.

Every day citizens representing.

12 ordinary people have to agree unanimously in order to convict.

What do you think about the highest court in the land, the Supreme Court?

What works and what is broken about the Supreme Court as an institution?

What are its strengths and weaknesses?

Well, the Supreme Court is unfortunately fairly political.

And the current Supreme Court is overruling precedents, which it's really improper.

Impresidents should not be overruled so easily.

It's about to overrule the affirmative action.

Now, I'm opposed to affirmative action.

I think I made that clear earlier in our discussion.

But still, it's a precedent and it should be given some respect.

But in order to, in order to, in order to propagate a more conservative agenda,

the court is treating precedent as if it doesn't have any, any role.

And that's a huge mistake.

Some of the congressmen on the Democratic side are looking to enlarge the court in order to basically do what Franklin Roosevelt was not able to do.

And that is a change the court's philosophy.

But I think that's very short-sighted because this is a long, this is a long game.

This is a republic we have here.

And anyone who tries to, for example, enlarge the court from nine to 12 in order to get more liberals on the court, then some other administration will try to enlarge it from 12 to 15 to get more liberals on the court.

You have a constant fiddling with a very important institution.

So the law should have more lasting power than the bickering, the political bickering of the day.

Correct.

Let me ask you, you've lived one heck of a life and fought a lot of battles and you continue to do so with the Harvard Board of Overseers.

So first of all, thank you for that.

But we're all human, we're all mortal.

Do you ponder your death?

Do you ponder your mortality?

Are you afraid of it?

Well, let me just say this, my father died at 48.

He died because he smoked, he died at 48 because he smoked four packs of camels a day.

He got a massive heart attack at 43.

He continued to smoke despite death that he died at 48.

So I did not expect to live this long because I thought it was genetic.

It turns out it was cigarettes.

So here I am, I'm going to be 81 on May 10th.

I was born on May 10th, 1942, it was just Mother's Day coming to Denley.

And I realized I'm not going to live forever.

I also take pride in the fact that I have demonstrated that a lawyer does not have to go with a law firm in order to manage to make it.

You can make your own, write your own ticket.

I've done that.

I agree that I've had an elite education, I went to Princeton and Harvard Law School.

But I don't think you have to necessarily go to elite institutions in order to really make it.

You need to work hard.

But you shouldn't put yourself in a place where you're not going to feel comfortable and what's the word, empowered.

Like I refuse to take Jvorenberg's invitation to tell you a tragic position at Harvard Law School.

I'll tell you one other story that illustrates this.

I was originally pre-med.

My freshman sophomore years at Princeton, I was in the pre-med program.

Why?

Because my parents wanted me to marry the daughter of our family physician.

And the idea was, I was going to go to medical school.

I was going to go into medical practice with him in Hackensack, New Jersey.

We had moved from Brooklyn at the time.

Long story why we had to move from Brooklyn, had to do with my father's.

Having a problem with the furrier's union and having his life threatened.

And we moved to Maywood, New Jersey because he got a job in a fur shop in Bisseeic, New Jersey.

And a family physician, they had three daughters, the oldest of whom was my age.

She went to Hackensack High School.

I went to Bogota High School, both in North burden County.

And the idea was that she and I were going to marry.

I was going to become, I was going to go to medical school.

I was going to take, become a partner of her father in his medical practice in Hackensack.

When he retired, I was going to inherit the practice.

This, this scenario was concocted by Carolyn's mother and my mother.

In my sophomore year of, for instance, I won a fellowship to spend that summer between my sophomore and junior year in Paris.

I was fluent by then.

I had taken the accelerated French course, my freshman and sophomore year.

And I went to Paris.

It was my first time out of the country.

And I spent the entire summer working, supporting myself there, participating in the airfare.

And I earned money from the room board.

[Transcript] Lex Fridman Podcast / #377 - Harvey Silverglate: Freedom of Speech

And I thought about my life and I decided, number one, I didn't want to be a physician.
I wanted to be a lawyer.
Number two, I didn't want to marry Carolyn.
And I came back.
I changed from pre-med to pre-law.
I broke up with Carolyn, who is by that time,
a school at Douglas, right down the road from Princeton.
She had followed me or I had followed her and my life suddenly took a wholly different term.
So that summer in Paris, Paris had an outsize effect of my life.
Every year, the Bravo Theater shows Casablanca, where Bogart has this great line.
He says, we'll always have Paris.
And I think to myself, I always used to say to Elsa, we used to see
we used to see Casablanca every Valentine's Day because it was such an important movie to me
because Paris was transformative in my life.
And we went to Paris every year during my vacation.
We went to Paris.
That was where she took some great pictures of Isaac.
He's this high and this high and they were hanging up in the house.
And so I always, even after Elsa's death, I think Casablanca twice now.
She died in 2020.
And I've always, I always think we'll always have Paris.
We'll always have Paris.
Well, Harvey, like I said, I hope you're very successful in your
run for the Harvard Board of Overseers.
I think what you stand for in the realm of freedom of speech is,
I think the thing that makes these universities great institutions in American culture.
And I'll do everything I can to help you succeed.
And I just, I'm really grateful for all the work you've done.
And I'm grateful that you would talk with me today.
This is amazing.
Thank you.
Thanks for listening to this conversation with Harvey Silverglate.
To support this podcast, please check out our sponsors in the description.
And now let me leave you with some words from Harry S. Truman.
Once the government is committed to the principle of silencing the voice of the opposition,
it is only one way to go and that is down the path of increasingly repressive measures.
Until it becomes the source of terror to all its citizens and creates a country
where everyone lives in fear.
Thank you for listening and hope to see you next time.