

Exemplary Discourse on Affirmative Action

Transcript of discussion held in Chicago on June 4, 1998

Moderated by **DREW FAUST**
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JUDITH RODIN: I won't say welcome since—or at least in a formal way since we have been here and I think have been having very, very interesting working-group conversations. I have had the opportunity to visit just a bit with each of the working groups and am very enthusiastic about your conversations and where we're going.

In our plenary discussions, I think we stand at a transition point. Last December in Washington we discussed aspects of public behavior and institutional responsibility, and next December in Los Angeles we will be imagining the community of the 21st century and envisioning its component features. In between and, I hope, linking the discussions are really the next day and a half of meetings. A year or so ago we analyzed leadership and I think we found leadership—or I should say the failure of leadership as one major variable in what we believe to be the apparent breakdown of public discourse in society. And today and tomorrow we'll be examining challenges to effective leadership at every level of our society.

It's interesting that the leadership group has come to discourse leadership, if you will, as being a central missing feature in much of the leadership that's exercised today on the contemporary scene. And certainly it's the case that every leader, whether it's president or alderperson, association leader, community builder, professional or volunteer—every leader in some way should be standing at the center of a series of conversations, conversations that would engage different partners, members of one's constituency, leaders from other constituencies, the general public, followers, if you will, and we will attempt to examine some of those conversations over the next day and a half.

But I think we should begin by reflecting on the fact that leading a conversation doesn't necessarily come to mind when we think of the task of leadership. Most of us have been taught to think of leaders as those who propose or direct or manage, those who are out front, those who are followed in some ways, where discourse runs in only one direction, from the leader to the follower. And even when—and I've heard these conversations through the Commission—even when we imagine a more balanced relationship between leaders and followers, we tend often to take consensus for conversation. And I'd like to challenge or at least ask us to think about, as we engage in our conversation, whether it is always consensus that we think we are driving towards.

In his book on leadership, Garry Wills writes of a compact of shared goals that binds leaders and followers together. But sometimes I wonder whether that compact or the drive to consensus can become a trap or an excuse for failing to lead towards goals that aren't yet shared, to articulating what the new goals should be. I think we still find it difficult to routinely imagine leaders as conversational leaders—dialogues through which they actually exercise their leadership. And so we're kind of puzzled as a society when Bill Clinton or a Bill Bennett or a Jesse Jackson or a Sheldon Hackney want to open a conversation. It seems to many unusual and perplexing. They're criticized for adding yet another conversation to a public sphere that many seem to feel is already too full of talk. And all too often the culture of ideological stereotypes and sound bites and cliches doom their efforts to distortion and failure. Or it's

perhaps that they haven't done well enough and I think that's one of the things that we really will be considering over the next day and a half.

As many of you requested, we're going to spend some time not only in these considerations but actually engaging in the work tomorrow morning of crafting some possible solutions. I think that it isn't immediately obvious in a society awash in words, discourse leadership should be brought to the foreground as a central role for many of our leaders. And I think it will be challenging for us to think about that. But it would be wonderful to imagine a society or a moment in our society when ideas and policy proposals are taken as possibilities to be explored rather than trial balloons to be shot down, in which leaders are expected to learn as much from their conversations as they're expected to teach others, and in which followers feel empowered not only because their leaders listen, but also respond thoughtfully and learn from them. And I think that that is the enterprise upon which we are embarking to think about this as we talk about health care, race, democracy, education—the expectation that our leaders engage in this form of discourse leadership.

Remember that this is very challenging. As I said, this is a society in which people are criticized for too many words. George Will said of the national conversation of the National Endowment for the Humanities, 'We don't need more conversation; we already have too many words.' Well, imagine a world that's different, where we train our leaders, we mentor them, we teach them in ways that allow them to become discourse leaders, and we work to create a new cadre of leaders for the next century who see this kind of discourse leadership as central and not peripheral to their roles and where debate is part of the central function of leadership, and not with battles to be won but as a way of a different kind of civic engagement.

I think that we will have a good effort to think through these issues all day today and to craft at least an initial pass at some possible strategies and solutions as we work tomorrow. I think we have the capacity to effect a paradigm shift, but we first have to understand and represent it. We begin that task by a conversation on affirmative action. Certainly there's no better

example of a place where public discourse is broken and where leadership is not being effective than in the national dialogue and the public policy debate on affirmative action. We've asked Drew Faust to lead us in this conversation.

And, Drew, I will turn this over to you.

DREW FAUST: I'd like to say a few words about how this session came to be and our imaginings for it by way of introduction, but I imagine most of the next hour and a half as your conversation with me sitting here like a graduate seminar leader, which is how I lead much of my life in any case, trying to simply bring the discussion together and raise some of the issues that—that you have already addressed in communications to the commission.

The purpose of this session is to look at the national discussion about affirmative action as a kind of test case in the Commission's broader consideration of the state of public discourse in America. We're not here to have a substantive discussion or debate about affirmative action itself, but instead to consider how this conversation has taken place. It seemed to the steering committee of the Commission and program planners and staff that looking at the specifics of one subject of national conversation and debate might aid us in identifying strengths and weaknesses in the more general processes of public discourse. Commission members in fact began this effort themselves spontaneously this fall on an e-mail list just before our December meeting, where people weighed in with criticisms about what was being said in national conversations about affirmative action and about how those conversations were operating.

So what we hope to do today is to make this critical effort a little more focused and a little more systematic in an attempt to move us towards an identification and articulation of the principles of the robust public discourse that we seek.

Now we have a number of resources on which to build our session today: the printed materials distributed to all Commission members, especially Professor Wilson's essay in your bulk pack and also some of the materials in

that bulk pack that are from the Clinton directions and instructions on how to run a conversation. I think those materials might well be useful to us in our discussion. The staff and I have also profited in our thinking about this session from the questionnaires on affirmative action discourse that many of you sent in in late April and early May, so that our definitions of the crucial issues for discussion today derive largely from the categories that you all suggested in those responses—questions of leadership, definition of affirmative action, questions of the complexity of the discussion, questions of how facts are used and so forth.

Now we've endeavored to illustrate some of these crucial issues with video clips from various of the national conversations that have taken place over the past year. From Clinton's national conversation in Akron, which was the one that got everyone so exercised on the e-mail last fall and from conversations sponsored by the National Convention [sic.] so that we have—made these video clips.

I want to begin with one of these clips just to get our discussion started, and I'll turn or not turn to the others depending on how our conversation evolves. This introductory clip which, by the way, is much the longest of any of them; it's about six minutes, I believe. This clip is meant to address an aspect of these national conversations that several of you raised as crucial in your responses to the questionnaires. And if I may quote Jay—Where's Jay?—Rosen, he said in his response, "The biggest breakdown point in conversations about affirmative action is right at the beginning."

And so this first video clip is meant to make us think about how these conversations are framed—there's Jay—what the participants think they are engaged in, what their assumptions are at the outset, why individuals want to participate in such interaction, what they bring to the table with them and what the goals they understand they are seeking to be are. And so in a sense what this video clip is meant to do is set up a context for the discourse and encourage us to talk about what kinds of contexts need to be understood or assumed at the outset for such a conversation to work.

The excerpt includes two parts. The first is a clip from the conversation sponsored by the National Conference on Martin Luther King Day in 1998 in Hartford, Connecticut. And it presents, I think, how this particular conversation was framed by its sponsors for the audience and participants. And then a second on this tape—a second very brief clip includes remarks by President Clinton about the purposes he envisions for the national conversation in Akron from the President's race initiative in early December 1997.

So as you look at this first set of video clips, think about: Are there conclusions that we might want to come to or consider about how one sets the context, goals and framework for public conversation, and how not doing that well or doing that ineffectively has an effect on the outcome of those conversations? So let's go to the first clip.

[Excerpt from video clip]

(Graphic on screen)

I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.

Unidentified Man: Live, via satellite, from Hartford, Connecticut, Aetna Incorporated and The National Conference, in collaboration with Connecticut Commission on Human Rights and Opportunities and WFSB-TV-3, present A National Conversation on Race, Ethnicity and Culture: The Impact of Education and Diversity in the Workplace.

SANFORD CLOUD, Jr. (President and CEO, The National Conference): And welcome. Our conversation today will be a respectful, free exchange of ideas and perspective on issues related to education, diversity and the workplace. We seek to both inform one another and to better understand our various positions on these critical issues. We also seek to find ways in which to disagree without being disagreeable and to challenge one another on ideas and not on character.

Before we begin the conversation, we have a short video presentation that provides an overview of newspaper headlines across the country and some of our public discourse on intergroup relations.

(Videotape):

MARTIN LUTHER KING Jr.: And he's allowed me to go up to the mountain and I've looked over and I've seen the Promised Land. I may not get there with you, but I want you to know tonight that we as a people will get to the Promised Land.

Unidentified Man: I'm for equality. But people have to take responsibility for their own lives. You can't blame on everything on racism.

Unidentified Woman: I don't see color. I just see the person.

Unidentified Woman: Color blindness is not the answer; it just means you can't deal with my race, so you want to blot it out and sound exactly like you.

Unidentified Man: It's amazing to me when people of color are not sensitive to each other. I mean, Latinos have been here for centuries.

Unidentified Man: I didn't own slaves. Why should I feel guilty?

Unidentified Woman: Don't give me that American values, Founding Fathers crap. Those men were wealthy, privileged, sexist, genocidal polluters, most of whom also owned slaves. They didn't give a damn about others not in their class, and they quickly compromised their so-called values of freedom and equality to benefit themselves.

Unidentified Man: My brother was an honor student, straight A's, and he didn't get into Harvard, but a black student that he knows with a B average did get in. You tell me, is that fair?

Unidentified Man: When I see a black student on campus, I just assume they're an athlete or here on scholarship.

Unidentified Woman: Black people seem so angry. I just don't know how to talk to them.

Unidentified Man: White people need to understand that they have a race and skin-color privilege that come along with it. We don't recognize that enough and I think it hurts our discussions with others.

Unidentified Woman: Affirmative action does not mean there's a preference. I wish people would stop saying that. And if they did, how come we're not the majority in any field except sports?

Unidentified Man: Diversity? Let me tell you something. I can't even live in this neighborhood because I can't even get into most of the apartment buildings. And don't get me started about office buildings and movie theaters. I'm white, but I'm included in very few basic areas of life in the city. It's ridiculous.

Unidentified Woman: I'm sorry. There's no such thing as reverse discrimination. How can it be reverse discrimination when one black person gets a job or promotion and everybody else in that job or at that level is white?

Unidentified Man: Homosexuality is an offense against God. It has no place at work.

Unidentified Man: You can't group all of the Hispanics together. Cubans are not Mexicans, are not Puerto Ricans, are not Dominicans, are not Venezuelans.

Unidentified Man: Native people are an afterthought in the dialogue of race in this country. It's as if everybody has decided we just don't matter. Well, we do matter.

Unidentified Man: Come on. You know that Jews still pull the strings in Hollywood. Of course Spielberg can make a movie about slavery. But let Spike Lee try to make a movie about the Holocaust. He would never get funding and people would have a million reasons why.

Unidentified Man: How can you say that America is a racist society when a black man like Colin Powell can become a general?

(End videotape)

[End of excerpt]

[Excerpt from video, Akron, Ohio, University of Akron; courtesy of C-SPAN]

BILL CLINTON: We are becoming a very richly, multiracial, multiethnic society at a time when, in the last few years, we've read of ethnic and racial hatred and murders or problems and wars from Bosnia to the Middle East and Northern Ireland to Africa, to Russia to India—you name it. And we're beating the odds so far with all of our problems. But I think it is very important that we understand that this is something that we have to keep dealing with, honestly and openly. There are many people today with whom I have great sympathy, who say, 'Well, the President shouldn't be talking about race out of context. Most of the problems that minorities have today are problems of economic and educational opportunity that they share with people who aren't in their ethnic group. And what we really need is an affirmative opportunity agenda to create more jobs for all the dispossessed, create more educational opportunities for everybody that doesn't have them.' I basically agree with that. I agree with that.

But you have only to look at the rest of the world and your own experience to know that in addition to that there is something unique about racial difference that affects the way people relate to each other in every society in the world. It can be wonderful. It can be truly wonderful. We ought not—I don't like it when people say, 'We ought to tolerate our differences.' I don't buy that. I think we ought to respect and celebrate our differences. Tolerance is the wrong word here. But we also ought to struggle constantly to identify what unites us that's more important than what's different about us.

And that's why we're having these town hall meetings.

[End of excerpt]

FAUST: Can that get us started in considering Jay's question, which is: What needs to be present at the outset of a conversation? How does it need to be framed? What do people need to bring to it in order to set the stage for a successful conversation or interaction on these questions of race and affirmative action?

Yes, David.

DAVID BROMWICH: Just a small point about the last thing that we saw on this tape, President Clinton saying that, you know, if a conversation is going to be in some way political—or to use the word we're using more and more about this, 'deliberative,' it's got to refrain from setting goals that are in no sense political or deliberative goals. The president was saying something lively and in a way admirable and certainly inspirational when he said we should celebrate our differences. But there's no way that the end of a political or deliberative discussion is going to be a celebration of differences, leaving aside the question of what that would mean.

So I think it's said rather vaguely, and as a kind of uplift, but that's a sort of vagueness and uplift that, it seems to me, has to be avoided on the outset.

FAUST: Jim.

JAMES FISHKIN: Two of the questions that need to be answered for a successful conversation are: Who is in the room? How did they get there? And then, how are they going to talk about it? So one of the debilitated forms of discourse, as I remember from one of those meetings with Clinton that the sort of sound bite that upset a number of us, even though most of us, I think, supported the general goal of having this kind of conversation, was when the president stood over Abigail Thernstrom and said to her, 'Do you'—something—words to the effect, 'Do you support the kind of affirmative action that brought us Colin Powell, yes or no?' and insisted on an answer. And he said, 'I answer hard questions. You answer hard questions.' So he was forcing—reducing the dialogue to sound-bite form, giving her forced choice.

And then he turned to the audience and he said, 'How many people'—and then they took a show of hands.

Now we never had an account of who was in that audience, how the people were selected or self-selected. So nobody would know what a show of hands would mean because you wouldn't know how representative they were or what views they came into the dialogue with. But nevertheless, it was the kind of sound bite that then got on the evening news and, of course, many of these town meetings occurred during the day just so that they could create a sound bite on the evening news.

And so you want to know who's in the room and how are they going to talk about it. And it's very difficult for 500 or 600 people to talk about something. If you have a context where you have some small-group discussions and some large occasions, and you have an effort to provide information and get the questions answered that people will have, and you have some guarantee that if the group, at least whether it's representative or not, at least is diverse enough so that different viewpoints get a hearing, then you begin to approach some of the conditions for a more successful deliberative discussion.

But, of course, having the president there who—as an emcee, you know—the president as Oprah Winfrey figure, looming over the discussions—it's very difficult for him to be the emcee and to be an appropriate public resource in the dialogue. And because if he gives a hint as to where he goes, he can tilt the discussion too easily. So I think there were a number of unwise factors in the way that discussion was situated. As for your introductory piece, it's a—it's a good intro into the discussion, but it has the difficulty that, of course, it's a string of sound bites and headlines. And what we want is more than a discourse of sound bites and headlines, because the sound bites and headlines reduce our public dialogue to messages worthy of fortune cookies or bumper stickers.

FAUST: It probably won't surprise you to know that we have that clip that you just described on video here, and we thought we'd use it to illustrate questions of leadership and also questions of polarizing answers, which again comes back to something Jay talked about. So at some point maybe—I don't

want to show another clip right now because we just looked at that one. But at some point when we move to those questions maybe it'll be useful for all of us to look. It's only a two-minute—about two-and-a-half-minute little clip.

Yes, Neil.

NEIL SMELSER: It's always counterproductive, I feel, to tell or to suggest to the audience how they ought to be feeling during the course of the event.

FAUST: Is that what you judged to happen here or you're just saying that as a general principle.

SMELSER: No. The little moralisms about how we should be affective experiences that should accompany the discussion. It's somewhat condescending and imparts a kind of unequal tilt to everything that goes on.

FAUST: Jay, since I've quoted you four times.

JAY ROSEN: Well, I think the clip that we saw from The National Conference shows that certain decisions about what a conversation like this would be were made beforehand and were already in place as soon as the event opened. The first is reflected in the design of the room, which is typical of the way that we do these kinds of things. I assume there were sort of a panel of experts or people who had well-known positions on the question in the front of the room and everybody else as an audience. And so architecturally the model of discourse is 'experts speak to masses,' if you will.

If they had designed the room differently—let's say that all the discussants were at a roundtable with rings of people around them, or let's say other smaller tables surrounding the one large table—that would be a different model of discourse. And if at different times during the event people switched places, that would indicate a different intention.

Secondly, in the way the moderator introduced The National Conference's intentions, the assumption was made that to have a conversation about ethnicity and diversity is to negotiate and hear from various already pre-set positions. And the assumption is that people have positions and what we're

going to do is inform each other about our positions and disagree without being disagreeable. As opposed to the notion that conversation might create new positions in which people might stand—and that idea was further reinforced by the video clip within the video clip in which is intended to be context, right? So it gives us a good clue to what these particular people think is the relevant context. And in this case, the relevant context is headlines that have shown the political community divided on questions of race and diversity, and voices of people with very definite views representative of the chorus of disagreement that surrounds this issue.

So that's another key to the thinking of the organizers that the conversation proceeds as a contest of the committed. And maybe we can get the committed to listen to each other and maybe disagree without being disagreeable, but that's the natural setting for such a debate. Now an alternative to that would have been to have in the video clip, if you're going to do that kind of thing, the voices of people who say, 'You know, the more I think about this, the harder it is to make up my mind,' or, 'The thing that I'm always struggling with when I think about affirmative action is'—or, 'I used to think this way, but now I think that way,' or, 'Before I started talking to people about this, here was my view. But now I've learned that'—all of which would—might be equally representative of people's experience, but would be representative of deliberation itself as against the model of a contest of the committed or a discussion of opinion.

So the prevailing model of political discussion, which is debate among fixed positions, was built into the event from the beginning, including the very setting of the event, which expresses a kind of elite-to-masses flow of communication.

FAUST: Jean.

JEAN BETHKE ELSHTAIN: A couple of comments about the president's comments. It seemed to me that the way in which he introduced the question, in fact, eliminated from the outset a central category, the category of toleration. And tolerance, he said, 'I don't—you know, I don't like that word. It's the wrong word. I don't like that word. We should be about celebrating

differences.' And I thought, 'Well, that's a very sort of quick way to derogate hundreds of years of political history and sort of hard-won achievement of toleration,' in that, in fact, what it means to tolerate, by contrast to perhaps some other possibility, should be—precisely impart what the conversation or dialogue is going to be about, rather than at the outset for the president to say, 'Well, that's not really what we're talking about. That's not what we want that—and to belittle that concept.

And I was thinking as I listened to that little bit from President Clinton about Corney Murray's sort of famous comment that a good bit of democratic life is about reaching disagreement and that, in fact, you need arenas within which certain differences can be made manifest and certain conflicts may surface in a way that doesn't lead to sort of, you know, either indifference or sort of deadly debates but, in fact, makes clear what the differences really are. So if you fudge it right from the outset, you know, by eliminating lots of the sort of categories that are essential to the discussion, it seems to me that, in fact, what you're inviting is—and the Oprah Winfrey comment was apt—is a kind of encounter-group or sort of quasi-therapeutic enterprise rather than a real political debate.

FAUST: Mm-hmm. And I think that goes back to Jim's comment about what is Clinton's role?

ELSHTAIN: Yeah.

FAUST: Is he expressing his views or is he being the moderator here?

ELSHTAIN: Yeah. Yeah.

FAUST: And in a sense he's doing both. Derek.

DEREK BOK: I think it's very important in a subject like this to try to think out in advance, what are the proper sequence of questions to take up? And where should you begin? I think, even before you can figure out who's in the room, you have to decide what question we're trying to resolve. And I think in Clinton's remarks he made a fundamental error because he referred to what I think is the initial question that you must come to grips with—but he

simply assumed the answer in a sentence and went on to questions that cannot be resolved without getting the first question right. And the first question right is: Is there a problem of race in this country? And there's a huge division between whites and blacks. We don't see much of it on the campus because there's a tremendous consensus that there is, of course, a race problem and we must work at it.

But if you look at the views of Americans as a whole, the majority of whites do not—I mean, believe that the problem of blacks are largely of their own making, and that the societal problems have perhaps not entirely but to a substantial extent been removed. And blacks disagree enormously with that judgment. So there's an issue that, number one, logically you have to dispose of first. And secondly it's a better issue to start with because it's something where you can get facts and it doesn't get you into these ultimate questions of value about whether you should solve the problem by ignoring merit and all these other things.

But, so it was interesting how Clinton handled that. What he did is simply say, 'But we know through history and by looking around the world that race does make a big difference,' and immediately sort of just assumed away what the bulk of Americans do not assume away and indeed differ profoundly about.

FAUST: Mm-hmm. Paul.

PAUL VERKUIL: Just to add to Derek's thought is that, I'm not sure the president's example was a very good one. To my knowledge, Colin Powell was admitted to CUNY as every other student would have been. I don't think it had to do with affirmative action at all. And after all, he succeeded in the military not because of affirmative action, but because he was very good. And in an ironic way, the president is sort of saying—using Colin Powell for the wrong example. As near as I can tell, Colin Powell is just damn good at everything he does. And that's the lesson of that case. And when you showed the clip, it then made me think that we don't even know what affirmative action is. And until we get it broken down and understand it, we can't even begin to say who the examples are, for or against, in a way.

It flashed over one lone Berkeley stu—black student enters Berkeley Law School. You know, that reminded me of James Meredith entering Mississippi. Something's wrong with that, that one black student should end up being representative, if you will, of his race at a law school. We all know about—at least at university admissions how it—that's much more of an art than a science. We can debate affirmative action or not affirmative action or what it means or diversity. We do that all the time on a campus. But I think the use of the word 'affirmative action' was just misplaced to begin with. So we don't even have a common language yet.

FAUST: I'd like to fix on this point at some juncture, because we have a clip of three different participants in these conversations talking about definitions of affirmative action. And in many of your responses you talked about the problem of defining affirmative action. But let's see if there are more comments on this first set of clips and then we'll move to your issue. Larry.

LAWRENCE LESSIG: I wonder whether we aren't underspecifying the problem a little bit. I've sort of come to think a lot about contexts and the attention span of different contexts. And we're looking at a clip about a context where the attention span is about 15 seconds. And it might just well be the case, the kind of conversation you can have in a context where the attention span is 15 seconds is very different from the kind of conversation you can have when you're in a context where people listen to each other for half an hour or for an hour or they have to work with each other every day for their whole work experience or for living in a community.

And when we think about the problem about how we have a conversation about affirmative action, a lot of that has got to be about asking the question: 'Well, where are we having that conversation?' Because we can criticize this conversation the President has, but I, quite frankly, don't know enough about the 15-second-attention-span context to know whether this wasn't successful in some sense or as successful as that context could be. Because I'm quite convinced that context is quite an unsuccessful context for meaningful reflective conversation.

But if we're thinking about affirmative action in a richer—the conversation about affirmative action in a richer sense, modeling or criticizing that discourse doesn't seem to me to really help us think about contexts within which we really will be talking about this, because most of us, at least, will not be candidates for president and most of us will have to have this conversation in a space where, you know, fortunately, we can expect people to engage for maybe five minutes. And I think it's a radical difference to talk about this seriously for five minutes than it is to talk about it for the 15 seconds that the president can get the national attention at 6:00 on the national news.

FAUST: Edna.

EDNA ULLMANN-MARGALIT: The clip made us laugh initially because it had a clip within a clip. And there is another problem that I think is there, which is who the audience is. There is an audience there on television, an audience which is built in to the discussion there in the whole. Those 500 people, we don't know how they were selected. And there is us who watch this, right? And I think that there is something to be clarified about who the audience is and who's an intermediary audience and who's the real audience.

And it occurs to me that when the moderator says, `We are here to have a respectful conversation, you know, disagreeing without being disagreeable, they are also thinking about the audience at home and their time span. And the audience at home may be interested in blood. I mean, they want to see a real fight; otherwise it's not interesting. So there is a built-in tension to this. You want to have a civic conversation and an agreeable conversation and a conversation that is respectful, and yet there's always lurking behind this idea of an audience which is there for the blood and the fight and otherwise it's not interesting. And this duality, I think, is something that we have to think about in addition to the—I agree with Larry, to the time span that is devoted from the outset to the whole enterprise.

FAUST: I think that's a really interesting point, because at one juncture in this particular conversation that we didn't show, the moderator says, `We want to model for our audiences at home and here how to have a civil

conversation.' But, of course, what we all remember from all of these conversations is Thernstrom vs. Clinton, which would be an example of the blood that you're talking about. So I think your point is very well taken.

Other thoughts on framing and starting a conversation or what needs to be brought to it. Joyce.

JOYCE APPLEBY: Well, this is really going back to your initial question where you said that we were not to debate affirmative action but to discuss how the conversation about affirmative action had taken place. And one of the aspects which we touched upon, but I don't think we've looked at it sufficiently, is that this conversation has exacerbated the tension between elite and ordinary white citizens in America. And I think affirmative action—you probably could trace a trajectory from the Kerner reports' identity of white racism to affirmative action and see that it has been a part of a long conversation which has relied a great deal upon social scientific evidence.

But the whole notion of white racism and the need for affirmative action requires a lot of study and knowledge and thought, and that is so that you have an elite support for affirmative action. And I think one of our early reports to the Penn National Commission was about the way in which much of this legislation had been adopted without a thorough conversation. It'd just been adopted. There was not a—you know, a wave of enthusiasm for it. And one of the difficulties here is that the reaction to an educated concept of white racism and the need for affirmative action are often rather primitive prejudices expressed, as we saw here.

So one of the things that seems to me important in a conversation would be to at least listen to these other expressions of anger at what seems like reverse discrimination and privilege, and I don't know how you do that unless you genuinely want to open people up to looking at a very complicated issue in a fresh way. Because I don't think you're going to bring around the bulk of the citizenry on things like bilingual education or immigration—the immigration support, the various measures that we've seen have overwhelmingly majority votes in California, for instance, affirmative action being the one we're talking about. I don't know see how you can change that

sentiment without getting at why these people don't accept the arguments in favor of affirmative action, at what is standing in the way of their looking at this body of evidence that there really is a problem of race in this society, as Derek said. The African-Americans feel it but most whites don't. And so somehow we're going to have to tolerate and encourage expression that perhaps, you know, seem very primitive.

FAUST: Are you arguing here for a better conversation or for the limits of conversation and saying that...

APPLEBY: I'm just arguing for an awareness that there are lots of sentiments that need to be expressed in this discussion, and that there is, I think, quite a divide between educated white opinion and opinion of ordinary citizens who feel that there's a great deal of reverse discrimination, that listen to these stories and have not taken the time or are not interested in looking at the situation from the standpoint of an African-American's chances...

FAUST: Mm-hmm. Mm-hmm.

APPLEBY: ...in college and getting in college and the like.

FAUST: And those people aren't up on the stage as Jay...

APPLEBY: But if they are, they're parodied.

FAUST: Yes, Michael.

MICHAEL SCHUDSON: Hi. I'm coming back to Larry's comment because I think one of the—how would we know if this had been a successful conversation? I mean, what would have made it a—how could we have measured that? I'm just thinking of the different contexts in which we, in fact, talk about affirmative action. This is one and maybe it's useful. It's at least useful in that it provides us a clip for our conversation here.

I talk about affirmative action in a faculty committee meeting. That's quite different. I talk about affirmative action in a freshman course over several weeks. In fact, that's also quite different. And, in fact, that conversation has

been aided by Clinton's conversation in a number of respects, including Chris Edley's role in it, because somewhere in his book he lists eight different types or levels of affirmative action. That was, like, the most useful thing for clarifying what we were talking about in the freshman class that I had seen anywhere. So I'm grateful to the Clinton initiative on this. It helped me.

But that does seem to be very important. One of the things about the national conversation on race that I've been troubled by, I guess, from the beginning is knowing exactly what we should expect out of it. I was just reading a short piece about Common Ground—and bringing together pro-life and pro-choice people in communities where they seem very clear in saying that changing anyone's mind is not the object. You know, that—now that—that's interesting to me, because I think it served, underneath, a lot of the comments here are we'd like people to know the facts, we'd like them to see—to change their opinion, to come to some kind of consensus. Common Ground sees it differently. I think they want people just not to be bombing each other, which seems a reasonable expectation. But they really expect everyone to leave the meetings without having changed their opinion at all. It's another outcome.

FAUST: Marty.

MARTIN E. P. SELIGMAN: I think it's useful to ask yourself: What are the best conversations you've ever had? And I think one element in our memory of our important conversations are we thought things we never thought before. And so in that context, Michael, I want to distinguish between a performance and a conversation. And I think success of a conversation occurs when the speakers say things they've never said before and think things they've never thought before and the audience does as well. And I think we're seeing a national performance on race, not a national conversation on race.

FAUST: Jim, did you want to say something to...

FISHKIN: Just directly to what Michael was saying about criteria for success; I don't think the criteria for success should be whether people change their

minds, but I would just say: Imagine—compare it to an imaginary conversation in which some of the constraints were loose and in which every argument that was offered by somebody in the room, argument, position, view expressed, concern expressed, was answered by somebody else in the room who felt that, in order for the conversation to be more complete, that perspective should be expressed. Or, 'This is my problem with that'—and then those things were also answered by others so that the full range of perspectives in the room were not only expressed but answered. Now that's an almost impossible criteria and it begins to move towards a Habermasian ideal speech situation. But imagine that far off and then say, 'To what degree can we approach some completeness in at least the most salient points being responded to by other people,' not— other people with different perspectives or other people with great uncertainties, that they're grappling that they want to express.

And so you can evaluate the deliberation in terms of the completeness or incompleteness with which perspectives are responded to, and then if all those issues are in the—that's why I began with the issue of who's in the room. Because if it's a very one-sided or packed group, then you won't even get the alternative perspectives. But if it's somewhat representative of the diversity of views and the arguments are answered by other arguments, then at least you have some real deliberation, not in a sound bite but in somebody really being able to express their concerns from their social perspectives. And so a modestly complete deliberative discussion—it's very difficult if you've got a president and 500 people in the room to get anything like that. But there are ways in which such a thing could be managed so you'd have a more complete airing of the views. And that would be the criterion for a successful deliberation.

Now there's another question about action or what comes of it, but it seems to me you'd get some considerable mutual understanding and you would get some movement, and you would get people thinking things they hadn't thought before because they never talked to people with those very different perspectives. And they never looked at the problem from the perspective of somebody with that point of view. That's the kind of thing we've been trying

to do in some of our experiments and we've found very striking effects because these people never talked to people like those people and they never really listened. And if they talked to them, they never really listened to them. And if you can create a social context where the listening as well as the talking occurs in groups of manageable size and are sufficiently diverse or representative, you would get, on many issues, movement of opinion. And when you don't get movement opinion at least you'll get some mutual understanding, which is itself a useful product.

FAUST: Cass, did you want to say something?

CASS SUNSTEIN: Yeah. I think a lot of these comments are trying to isolate what the purpose of a deliberation or a conversation might be. And this is a first crack at trying to untangle them. One idea might be that the purpose would be to promote better policy outcomes. Another would be to promote broader and more participation in democratic politics. A third would be to provide just an outlet for hostility and rage. I think President Clinton—actually, that's an important one for him. A fourth would be to give people a sense of the ground they share. A fifth one would be to produce a better understanding of the diversity of views that our fellow citizens actually hold. A sixth one would be produce a better understanding of the issues. And a seventh would be to attract viewers or voters, either their attention or their affection. This is what Edna is suggesting; I mean, the media often wants us to attract attention so that people will watch.

I think one reason it's hard to evaluate the question you started, which is really the question of starting points, is that we would have to fix on what the point of the relevant deliberation is. And I think once we did that we'd have a sense of whether a performance was better than a conversation. It might be for one or another of these purposes.

FAUST: That seems to me a very cosmic question for the Commission, since we focus so much on robust public discourse. And this encourages it and then you're asking why, with what end, in some fundamental sense. Amy.

AMY GUTMANN: You asked the question before whether there are limits of a conversation that we should address, and I want to address the limits of a conversation, in the context, as Larry rightly points out—in the context of a president, a second-term president having announced a conversation on race, which was ambiguous between two possibilities, one a conversation on race, period, and the second a conversation on race that is going to inform me, in some way, about what to do about race. Only the second, I would say, has any direct bearing on a deliberation. A deliberation, after all, is not a conversation. It's not the same as a conversation. A deliberation affects issues in a decision.

So what are the limitations of a conversation, if it's only a conversation in the context of a President who is leading this conversation in the context of a second term in which he is suggesting to some people, at least, that he's committed to doing something about the issue of race in this country? And so let me just say four possibilities of purposes of this conversation that we saw on the screen.

One purpose is to convince others that I, the President, am right. I will pretend, really fooling no one, that—OK, so he could just want to convince others that he's right. The conversation is just an avenue for doing that. A second is to inform myself about what others think on this subject. Now, as you can see as I go to the floor—and I'll simplify—we're getting closer to what a deliberation might be. The first is far removed from a deliberation or a productive conversation. The second is close to a productive conversation from the first-person perspective, which is to inform myself about what others think. The third is to engage others in helping me decide what to do. That's yet closer to a deliberation, but again it's very first-person oriented. And the fourth is to engage others in a mutual decision-making process in which the others are going to have some direct influence on what gets done, so—at the end of which time others would help me decide in some direct way.

Now it's very unclear, not only from this clip but from the president's announcement of the conversation on race, which of these four he had in mind and it shifted over time, I think, from something close to the fourth to

something much closer to the first as we saw who was excluded from the conversation and how the conversation was conducted. I think the fourth would have been much more appropriate, much more productive even if it had not fully succeeded. What we see, this clip, suggests something much closer to the first, and when we know some more about the context, as Larry suggested, it veered towards the first, which is not only not a deliberation but not a productive conversation.

FAUST: Mm-hmm. It strikes me that the question Amy has raised here—one of the questions she's raised is a question about leadership and the relationship of leadership...

GUTMANN: Yes.

FAUST: ...to this conversation.

GUTMANN: Yes.

FAUST: And Cass frames conversations not so much around Clinton but around purposes more generally. I think this might be a good moment just to show the two minutes of Abigail vs. Bill as a way of kind of focusing on this question of what is leadership in the most narrow sense and what should it be in the very broad sense. And he's going here we go.

[Excerpt from video clip, courtesy of C-SPAN]

CLINTON: My closing remarks are this is the beginning, not the end. My closing remarks are that—that there ought to be a strategy to deal with the economic underclass. There ought to be a—there ought to be a middle-class strategy, too, that embraces people across different races. We have left open the question of affirmative action. Just curiously, how many of you believe we should continue some sort of affirmative action policy with regard to admissions to colleges and universities?

(Light applause)

CLINTON: OK. How many of you don't believe we should?

(Some people in stage raise their hand)

CLINTON: What about out here?

(Light applause)

CLINTON: Change of what? That's right. Racial preferences are. It's a loaded word.

ABIGAIL THERNSTROM: Americans believe in affirmative action. They don't...

CLINTON: A—Abigail...

THERNSTROM: ...believe in preferences.

CLINTON: ...do you favor the United States Army abolishing the affirmative action program that produced Colin Powell? Yes or no? Yes or no?

THERNSTROM: I do—I...

CLINTON: I get asked all these hard questions all the time. I want to do it.

THERNSTROM: I do not—I do not think that it is racial preferences that made Colin Powell. The overwhelming majority of Americans want American ci—citizens...

CLINTON: He thinks he was helped by it.

THERNSTROM: ...to be treated as individuals. And we've heard the voices here of...

CLINTON: Should we abolish the Army's affirmative action program? Yes or no?

THERNSTROM: We should—the Army does one thing very, very right: It prepares kids. It go—it takes kids for the Army and it prepares them to

compete equally. That what you're talking about when you're talking about American education.

CLINTON: Now...

THERNSTROM: Let us have real equality of education. These preferences disguise the problem. The pro—real problem is the racial skills gap and we ignore it when we...

CLINTON: Well, then, the real problem may be the criteria for a—why we admit people to college, too, how we do it.

(End of video clip)

Unidentified Man: Turned to the audience—he turned to the audience again for another show of hands.

RODIN: I don't think the President can lead either a conversation or a deliberation on television and expect it to be meaningful. He's playing to an audience that's much broader even than the overly large 500 people who were there. And if he wanted he had many, many conversations in the White House over dinner with people about affirmative action. He did not need to hear a diversity of points of view. He never started, I don't think, Amy, with number four; I think it was always number one. Because if it were really number four—to go back to the context issue—he would have chosen quite a different venue, a venue that he has used elsewhere at an earlier time on the same issue.

So I think there's an interaction of who the leader is and the vehicle that he or she chooses. We're so interested in the media and the impact of the media. To ignore its impact is to be disingenuous and I think this was a disingenuous exercise from the beginning.

FAUST: David.

BROMWICH: Yeah. Let me just as a reminder of something fairly recent in the context—political context behind this call for a national conversation that

the call for that conversation was issued by the president just after he had signed the bill repealing welfare with enormous effects. And possibly, we don't know yet, catastrophic effects still to come mainly on young, black people. I hadn't seen this clip before. In the clip one sees him—the president—very nervous and excited and I think this element of the context adds another to Amy Gutmann's list of possibilities—one of the possibilities was distraction. And one should not decide to hold something called a conversation from the political motive of national distraction.

One other note. I think the un-chivalric and improper treatment of Abigail Thernstrom that we saw there didn't come from any at heart unkindness or cruelty in the president. It comes from a presumption. And I wonder if I didn't detect a little of the same presumption in Joyce Appleby's remarks, but I'm not sure. It is the presumption that on this issue—the issue to be specified and in this case affirmative action—qualified opinion, educated, enlightened, opinion not blind and superstitious, is on one side. Therefore, if someone is not on that side, their opinions, which have to be listened to, because they're part of our diversity and so on—but the opinions on the other side come from ignorance, prejudice and other such self-blinding obstructions to true judgment.

I feel that way, by the way, about many issues. I don't feel that way about affirmative action. I do not feel that qualified opinion is on only one side. I do not feel that Abigail Thernstrom, to take one example, represents the voice of unqualified opinion on this issue. But there are issues I feel that way about, too. If you feel that way about an issue, you may call for many sorts of discussion, but not a conversation.

RICHARD DAYNARD: A number of us here are law professors and Bill Clinton was one, too. And I think there is an element here. We have conversations about the use of the so-called Socratic method and, you know, it often has a disingenuous element to it, conscious or unconscious on the part of the professor where you're questioning the student and the context—the assertion is that, you know, it's really open. It's the student and the text and, you know, the student is just a—you know, pull out things and it's—

you know, in a sense the only test is reason. But the professor knows, you know, what he or she wants pulled out and in a certain version of this. And, you know, keeps going until it happens. And at a certain point you can get, you know, I think frequently you'll see in law school classrooms you'll get a level of annoyance where a very insistent student will take a position and while trying to protest that you have the—you know, democratic virtues at heart and only concerned with reason, you're really getting annoyed. And I think we see that happening here.

FAUST: Joyce.

APPLEBY: Well, I'd like to present us with a practical task. It's rare in public life that you get to do something over again, but it may, in fact, happen with affirmative action in California because there's now a campaign to put a proposition on the ballot that would reinstate the possibility of using race as a criterion in admissions to college and employment. And if they get the 750,000 signatures that I think they probably will get it will be on a ballot soon. So I would like to ask you how you think the debates and campaigns for and against this proposition will be different this time around and how you think they should be different?

MARTIN MARTY: One has something planned and then the one just before you tosses in a fat question but—so I have to show I'm relevant to it. The when of when a conversation occurs: It's either so early in the definition of a problem that you haven't reached the repertory of options or it's so late that you've exhausted all of them and you have to start over. I think it's interesting that you never say, 'I won that conversation.' You won that argument but you never won that conversation. Or, 'I sure performed well.' You don't even do that. The reference that Marty Seligman was saying before about how it's a good conversation if you leave it having thought of things you hadn't thought of before. And getting back to the Common Ground theme, I think you can set an agenda for a conversation, which is what this commission is doing.

Jean and I are on one of the teen-age pregnancy themes, where Common Ground people are there who eternally are going to disagree on pro-life, pro-

choice so the question is: Then what? Louis Thomas says, 'You don't ever learn through trial and triumph, you learn through trial and error, but not from the error but from the question asked after the error.' Even so, what then? What do you two sets of people—they're highly polarized—doing to face the issue of unmarried teen-age pregnancies and birth.

So I think we have three things going. Argument, which is always guided by the answer. I have an answer; I've got to defeat you; I've got to embarrass you; I've got to annihilate you; I've got to convince you, convert you or get you out of here. Performance which we see plenty of there. But conversation you genuinely don't know. And almost every theorist of conversation stresses there's a game element to it, an unrehearsed element to it, a surprise element and agree. I never thought of that before. So I would think on your second round out there, it'd be very important position for people to say, 'We really don't have the faintest idea how to get out of this thing. Our whole state is embarrassed by the way things are going at Berkeley, but we don't like the way we used to be. And are there—you know, are there other alternatives?' and see what would come.

I think if you treat the second round as if it were early, parties are just pooped from the first round. There's nothing new to say, the old way of posing it, and all you're doing is going to count votes or see who embarrasses whom the way the president was trying to do to Abigail.

SMELSER: Just to extend that one step further, if we think of the great conversations we've ever had, they are that we don't know where they're going and we don't have an outcome in mind. There are many, many possible outcomes in a conversation. It has that kind of free exploratory quality that defies a lot of the structuring that's gone into practically everything we've seen.

FAUST: Jay.

ROSEN: Well, to address Joyce's question, ideally in your second round, as Marty suggested, you would have at the heart of the campaigns that are suddenly going to surround this question, a kind of learning model of public

discourse that people aren't required to give up their positions, aren't required to pretend to have none or to find common ground, because after all there's going to be a debate and a struggle. But that they would conduct themselves in such a way so that at the end of the process they would know something that they didn't know at the beginning of the process, either about themselves and why they believe what they believe or about their opponents or about what's possible. And that there would be a certain mission firsthand that this is as Marty said, this is a kind of a mess inside of a problem. We're groping and, therefore, a learning model is the right one as against the winning model of discussion.

Now in what we saw from Clinton, he starts off saying, 'In my final remarks are that this is a beginning, not an end.' What's so terrifying about the clip is that he approaches Abigail Thernstrom with this terrible sense of finality. I mean, in fact, he contradicts himself in his behavior because he—what he, in effect, says—and this is what David was saying—this is the end. The only logical end you can come to is that affirmative action benefited Mr. Powell. So if we were going to imagine even under the doubtful assumption that the president could function as a conversation leader and as chief executive as well, which is highly debatable, but if we were to ask from him something better than what we saw in what I think most of us would say is regrettable there—it would be something like at the beginning of this conversation I sort of held this view about these things and I was struggling with these things and I just didn't know anything about these things. And at the end, what I think I've learned is something like this. So now my best guess is this, what's your best guess? It would be something like that. It would be a learning model so that at the end of a productive deliberation, people can tell you what they have learned, which isn't the same thing as saying that now we all agree and we've got a consensus and so forth.

Clinton did not take a learning model of dialogue toward his own performance there. He had already learned, as David was suggesting, and was sort of imposing that on Thernstrom. And it would be revolutionary if in California people took a learning model towards the debate that they are going to have.

FAUST: Joyce, did you want to respond to him?

APPLEBY: Well, I agree. It would be wonderful to have a learning model. But just practically I would ask and I really am asking for—how would you introduce this into a situation in which you've already got a polarized public. I don't think it's impossible but I think it would take some forethought to think how you would introduce a learning model when you know when you've predicted already the campaigns that are going to be mobilized, the non-negotiable positions. And that's a very, you know, that's a very precise question for us to think about. You know, how would people of goodwill, who cared about deliberation, rather than performance and wanted to see people open up their minds and think things they never thought before, how would they introduce this in a campaign of this significance?

FAUST: Tom.

THOMAS BENDER: Well, I think one thing is that California has proven for some time that a referendum law is not a great way to establish deliberation. But within that, it seems to me that one of the problems is that everything is a kind of bipolar model in absolute. It's a choice between A or B. Either pro-affirmative action or not. It seems to me this isn't quite the learning model that Jay would like to see. But to have a singular goal that might be the thing that one is really trying to achieve, but with the notion of multiple strategies, some of them yet to be developed.

One—I think there's actually a good deal of consensus on—not consensus but a lot—the opinion that we would like to have a more equitable distribution—racial distribution in our major institutions. Like I don't think very many people are going to stand up against that. But what we've got ourselves stuck into is one very controversial method of doing it. And I think that the creative thing now would be—is a conversation. We agree with that much. How many strategies can we figure out? Not all of them are good for every instance. And you have to particularize instances and you need an environment in which you can particularize those, which is—I don't—maybe Jim can say something about what is happening in Texas, but it does seem like they've sort of broken the knot a little bit to think about some other

things, instead of Abby Thernstrom's notion, 'Well, why don't we have a better school system and then it wouldn't be'—well, instead of saying that, instead let's cobble a better school—more investment in the schools, more investment in a variety of other things and we may come out with results, in which they would be different beneficiaries, so you're not dividing the society quite so starkly.

FAUST: Jean.

ELSHTAIN: Well, this may repeat a bit of what Tom has just said. But Joyce, I wouldn't have high hopes for the California situation because it seems to me that, in fact, what you're going to have now is a counter-referendum to cancel a previous referendum and the positions are fixed and the animosities go deep and that perhaps, which is already too late by the sound of things, it would have been better for those who wanted to reopen the issue to say, 'Well, rather than offering a counter-referendum to the previous referendum, let's see if there's some way we can initiate, you know, various sorts of debates, discussions and so on around the state; look at what's actually happened after the referendum has gone through. Is this an outcome that we want? Let's project this down a few years, ask ourselves if this is a desirable outcome. And if it isn't, are there ways that we can think—can we think this through and think of alternatives to the previous regime, let's say, of affirmative action that would nevertheless work to lead to greater sort of racial equity.' But it strikes me that, you know, just garnering the 750,000 votes in order to get a counter-referendum that you've already given up on that possibility.

FAUST: Paul.

VERKUIL: Just to record, in a way, my reaction to this thing, which maybe is shared by others is that, you know, I think the president was very much of goodwill in starting this whole process. He may have had ulterior motives, maybe he was trying to save himself from other problems but nonetheless if you know Clinton's background, he's been deeply concerned about race most of his life and political life and that's a genuine thing.

And I share those views and so I was very sympathetic. But the artifact for me was that the altercation he had that was just seen turned me against the process a little bit because it was—he wasn't playing fair and I think he misused affirmative action with Colin Powell to gain a point.

And then there's a clip we didn't see and I don't know if any of us—but I'd just like to report on it, which is he got together with athletes and he had Jim Brown, the famous football player—great football hero and John Thompson, the basketball coach, and Isiah Thomas and others talking about—the problem, so-called, was there weren't—there are very few black coaches in professional sports or even in college sports. And how do we solve this problem? And so the problem is assumed. They're not, you know, perverse. I'm starting to say to myself, wait a second. And I'd like to ask Isiah Thomas does he believe in affirmative action for basketball players? I mean, you know, it would have been at least a way to get the conversation going and yet it all—how do we know how many coaches ought to be of one race or the other. We don't have it. We don't really even apply it anymore. We sort of went way beyond affirmative action in this particular realm of American society. Certainly we don't—I don't think any one of us would like to see a basketball team composed of—you know, balanced out by race just in order to—we're interested in other things.

And so that—not that that answers anything, but it struck me there, again, that the honest questions weren't posed up, and that while as maybe an effort to make some headway it failed, it flopped. And particularly there because no one has the nerve—I guess, you know, to ask Jim Brown whether or not affirmative action in athletics is even something we want to talk about, even if you believe it in other things, and what's the difference? You know, the harder questions.

FAUST: Cass.

SUNSTEIN: I mean, we're replicating one thing that's very notable in the last six months was of the race initiative, the only thing that may be—as many as 10 percent of Americans—probably more like seven—know about is the confrontation between Thernstrom and Clinton. And it's really an incidence

of sound bite politics and I think the president said right after this dialogue, with great frustration, 'You watch. This is going to be on the 6:00 news and this is going to be the only thing people will remember.'

Unidentified Panelist: And he did it.

FAUST: It goes back to Edna's remarks.

SUNSTEIN: I think this is a confirmation, really, of Larry's point, actually about...

RODIN: If he cared about that, he wouldn't have had it televised.

APPLEBY: That's right.

RODIN: Because he—everyone...

SUNSTEIN: I didn't mean to say he didn't...

RODIN: ...knows—it's Edna's point, too, that is what the press would have been looking for.

SUNSTEIN: I don't mean to say, you know, that he's been victimized or anything. But it shows the way in which any particular incident like that tends to dwarf in people's mind everything else. And about the relationship between discussion and attention. Because my hunch is—I actually don't know, but my hunch is there were other things going on in these eight or nine discussions that there were more things going on than this and maybe they were better and—but the fact that we don't know about them to the extent that we don't, that's itself quite interesting.

RODIN: I'm sorry. I just want to remind us—I agree with you, but we're trying to say how can we then transform the national discussion and deliberation on these issues. And the reason I'm so persistent in this particular one is not to condemn Clinton but perhaps to suggest that you don't start out—one doesn't begin whether President or anyone else, given how critical we've been of the way the press utilized various components of these conversations, particularly hot-button issues without being much more

mindful of who's in the room, how it's being characterized, how all the variables that we said. And I just think that we ought to put a finer point on the fact that the situational variables account for a lot of variance here and if we're going to transform the nature of the debate and the way the dialogue is perceived and communicated, we will have to be more mindful of that than we have been.

FAUST: I'd like to take Cass' criticism to heart here because I think—I felt a little nervous about engaging in sound bite presentation in how we put this together. It's not how I teach history. But it can be very useful. But...

SUNSTEIN: It's just—I didn't mean it as a criticism of you or...

FAUST: No, no, no, no.

SUNSTEIN: ...anybody. I meant—an interesting observation about this ...

FAUST: Absolutely.

SUNSTEIN: ...of salience. It's really a psychologist's point.

FAUST: But if you all are willing, just by way of balancing that, we have a clip that shows three people talking about what affirmative action is, and I think it fits in with this notion of which a lot of you have been talking about making it more complex—complicating what we're talking about, not just reducing it to A vs. B and—and maybe we could look at that.

What is our timing like? How long do we go?

RODIN: About 20 minutes.

FAUST: We have 20 minutes more. Good. We can do that.

All right. The first two people in these conversations are identified; the third is someone we'll meet this afternoon, Ward Connerly, but he doesn't get a little name across. So we'll go with that.

FAUST: This is Dorothy Gilam of The Washington Post.

[Excerpts from videotape]

DOROTHY GILAM: ...that I brought this article, my—my article, so that I could show you. But he described the dangers in changing the word, and he pointed out that the public favors affirmative action, 70 percent to 24 percent. They oppose racial preferences, 48 percent to 46 percent.

JUAN FIGUEROA (President, Puerto Rican Legal Defense & Education Fund): It's never been about quotas, legally. It has always been about promoting and effectuating access to opportunities, whether they be in employment, in housing, in health care. So it isn't about quota. Unfortunately, over the course of the last 10 years, groups that are more on the right have been able to take this language and, through the mass media, equating affirmative action with quotas. But it is not about quotas. It is about equal access to opportunity.

Now Ward had mentioned—this isn't about checking boxes. Well, but—this isn't about checking boxes. This is about accepting and coming to terms with the fact that, although we have less domestic help per capita in the African-American community, we certainly don't have enough lawyers, doctors, health-care workers, nurses, teachers and people in the halls of a place like Aetna. That's what the issue is.

WARD CONNERLY: This conversation thus far has not been well served by the fact that we have not reached closure on terminology. I do not oppose affirmative action. Affirmative action in too many instances, however, has been a system of de facto quotas and blatant preferences. Different standards applied to someone on the basis of race is, in fact, a preference. That's all I want to eliminate. And we need to understand that. In order for this debate to proceed in good faith and to reach closure, the American people have to understand what Abby and I are saying about the crucial difference between affirmative action, which all of us want to continue, and preferential treatment—applying different standards to people on the basis of the box they check. Once we reach closure on that, then we can proceed.

[End of excerpts]

FAUST: Goes back to Paul's point, in some ways, about definitions and other points raised. Yes.

DAYNARD: I think this is very interesting as applied to the issue Joyce raised. Somebody pointed out it may be that in California we haven't, the people who wanted to reconsider affirmative action in light of how repealing it has played out in Berkeley and elsewhere, moved too quickly, if that's what's happened. But I think that concrete context provides, you know, a very interesting opportunity to think about what could have happened. You know, could there have been a conversation there that said, as has been suggested, the old way was rejected; the new way doesn't—which was not—a 'not' sign put in front of the old way—also has not had the wonderful, liberating, 'It's all better now because we got rid of the problem' reaction that the majority of the people in California obviously thought it was going to have.

What can we do? In other words, would there have been, as a practical way, in the context of California politics, for people who wanted to remedy where we are now, to have instituted the kinds of conversations, obviously at a smaller level, at a quieter level, maybe with some newspapers or television stations, to have them, sort of community by community or media market by media market, have these conversations to try to build up something that would be seen as a middle way or a new way?

FAUST: Derek.

BOK: I just have to enter one point that may be a little controversial. I think, in answer to Joyce's question, if we're gonna have a discussion—a public discussion of this issue, let's say, as it applies to universities, I think in a democratic society one thing that we ought to have is try to be as clear about the underlying facts that we're discussing as we can be. And I think in an audience where the overwhelming proportion of people come from universities, we ought to recognize our own failure in making that happen. And I would argue that the most basic facts, starting with what the purpose of

affirmative action is, the degree of preference that is actually given, the effects of affirmative action on grades and retention, the consequences of affirmative action once people graduate and go out into society, are simply not known.

The effects of diversity on the education of students has not been studied. These matters have been studiously avoided by universities that have not—you know, continue to talk about what affirmative action and diversity mean to the education of students without advancing one single fact to back it up, and now we say we should have more conversation without even discussing whether it might be a helpful antecedent to that discussion to let the public know a little bit more about what the facts are, which means to do what we do so well for every other institution beside our own, and that is to discover what is really going on. What has affirmative action meant? What has it accomplished? What are its costs?

And I would certainly feel that we should make that a much higher priority, and that that would make the greatest contribution universities could make to have any intelligent debate about the subject.

FAUST: I'm just gonna come right down this table. There are all—series of hands. Kathleen.

KATHLEEN HALL JAMIESON: I agree with Derek, but I think there's something else. To the extent that we let affirmative action be defined as if it is about race, we neglect to reveal the fact that there is an enormous amount of preference giving and differential standards in the admission process. And by, for example, not defining legates as affirmative action candidates, faculty children as affirmative action candidates, the children of wealthy donors as affirmative action candidates, in a context in which we are talking about preferences, we create the illusion that somehow everyone else is on an equal playing field and there's only this one category in which underrepresentation or historical inequality are driving a system in which you might look at some other criteria; not necessarily different criteria, but you expand your criteria base in order to admit. And I think there's a real failure of the university system to disclose the actual nature of this process, which would complexify the debate.

FAUST: David.

BROMWICH: Yeah. Just a small correction of Derek Bok's statement. Abigail Thernstrom and others have been quite particularizing about one fact that they believe supports their skeptical view of affirmative action or preferential treatment, and that is dropout rates among black students who benefited from affirmative action. Now you may contest their findings, but those are public knowledge, and they are some of what have persuaded people. And if people on the side of affirmative action have counteracting figures to cite, it is they who must get into the argument.

FAUST: Derek, do you want to comment on that.

BOK: That's a perfect example of the problem. I mean, that's a completely irresponsible argument about dropouts, because one thing we do know something about is why students drop out. And, you know, academic inadequacy accounts for something between 15 percent, 20 percent of dropouts. A great majority of dropouts come about from other causes, and since there are many reasons why minorities might drop out from the other causes at a greater rate as they would from...

BROMWICH: You're already on interpreta...

BOK: ...academic causes, it doesn't prove anything to look at...

BROMWICH: You are on int...

BOK: But I think the point of it is not to criticize the Thernstroms, but to say these are matters that universities ought to clarify for the public debate, so that one begins to do away with, you know, I think a rather massive misconception which arises from simply looking at gross dropout rates to try to prove something about affirmative action.

BROMWICH: You are in the realm of interpretation of facts, and that, too, is important, but then the universities have got to get to work interpreting the facts about which they don't pretend to disagree.

FAUST: Complicating what facts are, I guess. They're not often—next, Michael, and then Judy.

SCHUDSON: Back to the referendum process in California. One reason that the next one will be different, if there is a next one, is that in the conversation's already changed in California, and in response to the end of affirmative action, there are a number of new proposals on the table, some of which, to me, at least, seem to offer real possibilities. I mean, one is the 4-percent solution, which is you just take the top 4 percent of kids in every high school in the state and they have admission to the University of California.

Now I don't know how that will—if that were adopted how that would turn out, but you can clearly see that that would change the incentive structure in a variety of ways at the local high school. Could begin to improve secondary education; I don't know. But it—one way to solve or deal with a public-policy issue is to have good, reasoned, deliberative discourse; another is to keep getting things wrong but in different directions. And that may produce some useful outcomes, too.

FAUST: Judy.

RODIN: I want to go back to Derek's point, if I may, in a couple of ways. About a year ago, Derek wrote a piece for one of our school papers, and I volunteered, actually, not an inconsequential amount of money for faculty who would study the value of diversity in education. And people were shocked. No one has responded. And I found it a very interesting demonstration of what you are describing.

David, I think you're right, and I think that it is the interpretation of fact that we ought to consider. The data with which I am familiar, and there are some now on dropout rate, show that if you uncorrelate financial need and the kinds of financial difficulties that people get into—because it is correlated with disadvantage and then it's sometimes correlated with race—it really does change the interpretation of the dropout rate data considerably.

Derek, what you didn't mention was the other issue on university campuses that we're not tackling and other conversations that we're not having, conversations about the fact that whether we use preference or affirmative action or any kind of term we want—that our students are segregating themselves once they get on college campuses, and there isn't a real and honest and open conversation about that. There's an inability to talk about it on the campus, let alone to the broader society, and I think that we're not challenging ourselves and exercising the kind of leadership that we need to do to demonstrate to these students things that they will need to confront as future leaders as they move out to the broader society, our white students and our students of color.

And I think that we are failing to exercise—I am, at least, and my colleagues, at the moment, on the kind of leadership that we ought to, forcing those conversations. We have tried to have them, but we haven't forced them in ways. And I would welcome advice on how to make those conversations happen in ways that are useful and productive.

FAUST: Michael.

MICHAEL PIORE: I don't know—that is, I don't know about the universities, but at least in employment, in equal opportunity, it seems to me that—that is, the way I see the history as having evolved, we got into this problem because we had no idea how jobs were actually allocated. And there were a series of efforts made in the face of—that is, it was a process of just discovering how haphazard in relationship to anything that we really thought a meritocratic society was about, the actual process of job allocation worked. And we found out that testing had nothing to do with job qualifications, that the whole process of recruiting was completely biased and haphazard in terms of merit and so on. So that if you really had to go—that is, if you really wanted to straighten out how we got into affirmative action in employment, what you would have to do is understand how jobs are actually allocated in this society, which after 20 years of almost 30 years of affirmative action still don't understand.

So I guess as I think about all this, I wonder whether you could ever—whether it's possible to unravel this debate about affirmative action in employment without going to a series of issues about what goes on in a capitalist society, how our economic opportunity is actually handed out in a capitalist society. And I guess I really wonder whether that isn't a fundamental problem. We just can't face up to that particular debate. And the kind of ironies and inequalities and inconsistencies of affirmative action have risen out of trying to deal with race as a separate issue without really understanding how opportunities are—and without truly wanting to understand, I think, how opportunities are handed out in our society.

So in some ways, I guess, listening to this discussion—it makes me wonder whether affirmative action is really a good example of what discourse could do for you in dealing with social problems, because maybe it—that is, the best discourse, the most open, the most constructive kind of democratic discussion, couldn't really deal with this problem. Maybe it's asking just too much of democratic discourse to be able to unravel affirmative action.

FAUST: Amy.

GUTMANN: A lot depends—indeed, maybe everything depends—on what you expect of the discourse. And those clips were a good example, I think, of a prologue to questions that might find some common ground, but would undoubtedly leave deep disagreement about the pros and cons of affirmative action. But the finding of some common ground, asking Ward Connerly, 'Well, what do you mean by affirmative action? You're in favor of it. And why is that different than preference?' would be a productive question to have answered, and then see what the gap remains.

Now I think the gap remaining is going to be fairly wide in any society as deeply divided as this one has been by its history on racial and economic lines. Now another way of narrowing that gap and perhaps—and this is the hope of deliberation—achieving a little bit more mutual understanding and respect among the people who remain divided would be to get more of the facts out. And I have to say—'cause Derek won't say it—Derek and Bill Bowen have a book coming out called "The Shape of the River," which has

massive amounts of facts and some interpretation of them that took two former university presidents to do, and I daresay nobody other than two former university presidents could have gotten the data they got to do it.

ELSHTAIN: From the current university presidents.

GUTMANN: A mere faculty member could never have gotten that data. I serve on an admissions—an ad hoc admissions committee, and we were told every meeting how confidential this data is. So getting your hands on the facts is no mean feat, but it will actually produce more illumination.

I would just add, though, as to what Derek said, that the facts alone are—they're necessary, but not sufficient even to achieving this more mutual understanding I was talking about. People are deeply divided on values here, and there are two ways to go. One is to say, 'Well, we shouldn't talk about race because we're deeply divided,' and leave all of it standing, and the other is to say, 'We have to talk about it to understand these deep divisions if we're gonna move ahead in a productive way that's fair to the people who really care about this.' And that's the way it's different than just a typical academic conversation.

There are real stakes here. There are real stakes. Who gets into the University of California at Berkeley is a big deal to a lot of people. And my daughter is just graduating high school this year, and I can tell you that even if parents weren't concerned—and they're overly concerned about where their children get into school—the children themselves are concerned. They see a society in which there's only so much to be divided up, and they perceive, and maybe rightly or wrongly—I think Derek and Bill can tell us something about that—that it makes a difference whether they go to UC-Berkeley or a community college. We don't have a lot of facts of the matter, but the perception is that it makes a big difference whether you go to UC-Berkeley and something quite a bit more prestigious than a community college.

So while the facts are getting out, I would go back to what Joyce said. There are political decisions being made, and we can't just talk about the facts. We also have to talk about the political values at stake in a political conversation,

which is bound to be a political deliberation in California because there's gonna be another referendum and a political decision is going to be made. So we have to talk about it in a politically oriented way which, unfortunately, is necessarily somewhat simplifying, but maybe we can do it in a way that's somewhat less simplistic, with some more pursuit of what that conversation just opened up.

RODIN: Drew, you probably ought to have the concluding comments.

FAUST: I would just like to say one word about the facts before I try to bring this together for a moment, which is that we did have a clip on facts which, of course, I'm not gonna show you. But I think if you look at enough of these conversations and see how the facts are used, Derek, there would be a big gap between the useful information that you present in that book and how it gets marshaled in these discussions. Because for the most part, people just issue facts from their mouths that have nothing to do with anything under discussion. They're a weapon to silence everyone else in the room. Someone will say, 'It's a fact that,' and then you'll get the rates of marriage between blacks and whites in America when the conversation has been about who gets into college. And you think, 'Wait a minute. Where did this transition come from?'

So I think that one of the questions we, as observants of conversation, might interject into this whole discussion is, how do people use facts and how can we make rules or principles about how facts should be used? It's not just that we don't have them, but I think they're being used in ways that are not entirely productive.

We need to move on to our next event, so let me just try to raise some of the more general conclusions that I think come out of this. I think in framing these kinds of conversations, we as a Commission have come to the sense that it's important to allow for a learning model of public discourse, if I might borrow people's phrases shamelessly here. I think there's been a little bit of—not disagreement but a different emphasis about whether people have to come to these discussions ready to change their positions or if they just have to come ready to learn, even if they're not gonna move—to have more

information at the end or to be willing to really move where they're coming from.

But nevertheless, I think this learning model of public discourse and complicating the discussion so that it's not simply a polarization of assigning people to one side or another, but perhaps creating other positions along a spectrum that will allow for more easy movement for those who are willing to undertake movement about what they believe.

I think we've also talked about—in this notion of performance vs. conversation, I think that same point is in evidence, that we need to not think about it as simply displaying already existing commitments, but instead being willing to amend or to move from them. I think we've also talked about leadership and context: Who is involved? Where does this conversation take place? How public is it? And how much does having it be very public and having it be on television mean that people are going to be less willing to move? And that the goals of the conversation are very tied up with the context in which it takes place—the audience, the arrangement of participants, and who the participants are.

I think that Amy and Cass also raised a number of really interesting issues about purposes and about what might be accomplished. And I think as we consider public discourse and public conversations, especially on the issue of race, I think we need to think constantly about what are our goals and what are the possibilities that might come out of these kinds of conversations.

So I see those as some of the general principles that have been articulated here. Judy, maybe you'd like to add some more?

RODIN: Well, I—that's a wonderful analysis and, I think, distillation of many of the important points. I think we will have an opportunity to rehearse these conclusions this afternoon with Ward and Bill, and I—not the issues we've discussed, but the way that we think the conversation ought to unfold. I have not spoken to Ward, but Steve has. I've spoken several times to Bill, and I think both of them are concerned that this not be a point-counterpoint kind of conversation. They have been engaged in those many time with one

another as opponents, and if we model a learning model and have the kind of conversation that we would hope for, I think they will benefit and we certainly will benefit as well.

And so I look forward to continuing perhaps some in vivo practice of some of the principles that we've articulated well this morning.