

Politics: Meet Me in the Middle Episode 37 - It Is What It Is: A Debate About The Elections, Checks And Balance, and China with Don Schmitz

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Speaker 1: From CurtCo Media.

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Speaker 7: (singing)

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Bill Curtis: This is Politics: Meet Me In The Middle. I'm Bill Curtis. Our job here is to provide a neutral zone where we can express alternative viewpoints without fear of being called out or canceled. We support the view of our past guest, Berkeley Law Professor, Erwin Chemerinsky, when he said, " There is no such thing as a false opinion. The remedy for speech that we don't like is more speech."

Our last show was focused on the most difficult job here in the middle, listening. Appreciating that alternative viewpoint may even hold some water, even if, at first, the point causes a gag reflex. After that passes, we consistently find ourselves surprised and even learn something in the process.

Let's introduce our panel. Firstly, our co- host, a Pulitzer prize- winning historian, bestselling author, worldwide lecturer, and the widely quoted socially distance and zoomed in authority of everything historical and constitutional, Professor Ed Larson. How are you, Ed?

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Ed Larson: Doing just fine. Nice to see you again.

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Bill Curtis: Also zooming in, co- host Jane Albrecht. She's an international trade attorney, who's represented U. S. interests to high- level government officials all over the world. And she's been involved with several U. S. presidential campaigns. In full disclosure, she's also the President of the Malibu Democratic Club. Hi, Jane. Nice to remotely see you, too.

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Jane Albrecht: Nice to see you all, too. And you, too, Don.

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Bill Curtis: And our special guest joining us today, Don Schmidt. He refers to himself as a constitutional conservative. He brings a somewhat contrasting perspective to the political issues that face us these days. He is

President of Schmidts and Associates, a land use consulting firm, specializing in land development entitlements, strategic planning, project management, and government affairs and advocacy. Long committed to public service, Mr. Schmitz is the founder and President of the Coalition for Fire Safe Communities and the Fifth Amendment Rights Alliance. Don is also a fellow wine lover. He owns the Malibu Solstice Vineyard. The grapes have a view of Malibu and the Pacific ocean, by the way. Don produces award-winning private reserve Cabernet.

So at the time we recorded this, our Postmaster General Louis DeJoy, just said, "As we head into the election season, I want to assure this committee and the American public that the postal service is fully capable and committed to delivering the nation's election mail securely and on time." So, Don, how do you feel about our President injecting doubt into our most valued institution?

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Don Schmidt: Well, the post office, very often much maligned federal agency, which is reflected in our constitution, actually. However, the reason that the founders considered having a federal postal service to be critical to our free Republic, was that so no one entity could control the free communication between citizens. And it's interesting to me that we find ourselves here in 2020 encountering this issue whereupon the postal service and its ability to deliver the mail is once again, given the age of the internet and social media platforms and Zoom meetings, is such a critical thing that we are dealing with. And the reason why it's critical goes to the fundamental issue of is it appropriate, is it safe for us to have, on a mass scale, voting by mail? As opposed to absentee ballots, which has been much more focused and limited historically.

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Bill Curtis: Something tells me you have an opinion on the subject.

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Don Schmidt: It seems to me that what we have, that we're grappling with here at America right now, is on the left and the right a tremendous amount of distrust. And this is what is so very dangerous. Not just distrust of each other, but distrust in regards to the integrity of the system. We hear this to varying degrees in every electoral cycle, right? Accusations of fraud and there'll be more registered voters in a particular district than actually live there. We all have anecdotal experiences. I'm still receiving ballots at my house in Malibu for family members that moved out five, six years

ago.

And so the concern is, is that as opposed to an absentee ballot, where a citizen would write the government with their signature and say, " Send me an absentee ballot." What they're talking about doing on a mass scale is just sending ballots to everybody that's on the voter rolls.

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Bill Curtis: Ed, can you talk to us a little about the absentee ballots? What's the history of that and was that met with a lot of objections from one side or the other when we first tried an absentee ballot through the mail?

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Ed Larson: No, a lot of states use mail- in voting for everything, and they have proved just as successful as voting in- person. During wars, we've had to use that process. So mail- in voting has a long and successful history. Think of states like Utah, that just use them regularly.

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Bill Curtis: When you say during wars we had to use that process, you mean for the military or in general?

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Ed Larson: Well, we've used them for the military during wars, but many states rely on mail- in voting and it seems to work fine. You have the same problem with live voting.

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Bill Curtis: Is this a situation where some states are getting it right and some just can't seem to get it in a row?

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Ed Larson: We have plenty of stories about dead people voting in Illinois at voting booths. It's just the way it is. It depends on the checking process. And you have states with a history of voter fraud and it's bipartisan.

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Bill Curtis: But the reason why this is an issue is really more of our President's bluster and tweet than it is what DeJoy is trying to do to make the post office a reasonable institution.

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Don Schmidt: The problem isn't necessarily voting by mail or mail in ballots, the problem is, is do the American people trust the process and the system that we have? There's a lot of precedent for it, it can be shown to work, but what

we're talking about doing is a very global approach, entire states, and if there is questions as it pertains to the integrity of voter rolls, then that's going to cause a lot of angst for the voters.

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Bill Curtis: How do you think it's going to turn out in the event that it's a close election?

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Don Schmidt: One of the things that's been the beauty of our Republic for so long is that, at the end of the day, when the people speak, that's it, we have a peaceful transition of power. We got a little rocky with Bush and Gore, but there weren't tanks around the White House. And after it all went through the process, there was a smooth transition of power. We are at a almost unseen level of vitriol going on in our country right now between different political opposing sides, and a tremendous amount of distrust on both sides. And I think it's absolutely imperative that the institutions here that we're entrusting to do this can assure the American people that, at the end of the day, the tallied votes are correct.

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Bill Curtis: When was another time where the winner of the election was not called on election day?

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Ed Larson: Oh, all the early ones because the communications took so long. So none of the early ones. I mean, even George Washington didn't know he'd won for months. But of course we weren't sure about Bush versus Gore because of the problems counting votes in several states. But in the end it was Florida and that speaks to the point Don's raising. Under the American Federal System, the federal government doesn't control the election. The election for President is entirely, entirely controlled by the states. So if there's a problem this year, it won't be a national problem, it will be a state by state problems. Most states are going to handle this election beautifully. My prediction is 45 states or more there won't be a one iota of problem because states are really good, some states are really good with mail-in votes, other states are really good with absentee ballots, and other states are really good with drop-in ballots. And I don't think we're going to have any problem here in California. The question is, will there be states that there's a problem?

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Bill Curtis: So how can it be that there's no federal oversight in any fashion? How can it be up to each state? And there's still five of them it sounds like that are basically crashing and burning in the process.

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Jane Albrecht: Because it is the province of the states. What surprises me and concerns me is that there have been bills in recent years to provide funding to the states, to update their machinery, increase security, and it's been held up largely by the Republicans, and I don't say that partisan way, but that is in fact what's happened.

So one thing the federal government can do is provide funds, but as that explained, it's the province of the states and if we remember, all powers of a federal government are delegated to them by the states and that which is not delegated is kept to the states.

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Don Schmidt: Frankly, I'd be a lot more worried if the federal government was running our elections. I trust the states to do this a lot better. It doesn't mean every state's perfect. And there's probably reasons that state operates the way it does. So overall, we're a federal Republic and I trust the states with this issue and I don't want the federal government giving us a one-answer-fits-all sort of imposition on us.

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Bill Curtis: Ed, take us to Constitutional 101 for a minute and explain how in many of the states, if there were no election, the states could actually appoint their own electors. Isn't that how that works?

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Ed Larson: Yes. The constitution does not require the states to choose their electors in any particular manner. A President is not elected by popular vote, the President is elected under the constitution by electors and electors are chosen by each state. And originally, if you go back to the founding period, some states chose their electors by a popular vote. In those cases, mostly get it as Maine and Nebraska still do by congressional district rather than winner-take-all, up until the civil war the states would pick their electors by a vote of the legislature. Remember that's how all the states picked their senators up until 1920.

So there are lots of ways to do it, it's just the most popular way is the states choose to have the people vote and winner take all in that state and therefore all of

California's huge number of electoral votes go to whoever wins 50.1% of the vote. And it's when you get that close of vote that you get questions about the validity of electoral process. Because frankly, the electoral system in America isn't that perfect.

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Jane Albrecht: The battles after the election are likely to be in states where it's close. It may or may not involve vote by mail ballots.

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Bill Curtis: Don, do you think there's any reason for us to delay the election?

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Don Schmidt: Absolutely not.

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Bill Curtis: How do you feel about the idea that that was brought up?

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Don Schmidt: Everybody needs to calm down. There's no doubt that we've got a lot on our minds, but we're supposed to be adults, we're supposed to be taking the God given right to vote and choose our leadership seriously. I don't see any reason why we cannot move forward with the election. We've done them during horrible wars. Let's keep things moving forward.

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Ed Larson: We've also done them during pandemics far worse than this pandemic.

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Don Schmidt: Far worse.

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Ed Larson: And the simple issue is the constitution says the President's term ends on January 20th. There's no way around it, it's right in the constitution.

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Don Schmidt: Right.

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Ed Larson: Donald Trump's first term will end January 20th so they've got to choose a President before then or there is no President or Vice President, which means Nancy Pelosi's

President.

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Bill Curtis: We're going to take a quick break. We'll be right back.

00:13:16

Speaker 7: (singing)

00:13:25

Speaker 8: On medicine, we're still practicing. Join Dr. Steven Taback and Bill Curtis for real conversations with the medical professionals who have their finger on the pulse of healthcare in the modern world. Available on all your favorite podcasting platforms. Produced by CurtCo Media.

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Speaker 7: (singing)

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Bill Curtis: We're back with Jane Albrecht, Ed Larson and our special guest, Don Schmidt. Does anybody feel that the country in its current configuration is best off if one party or the other is controlling all of the Houses?

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Don Schmidt: I would say that Americans typically have been very fond of divided government and it's atypical to where you have one party that has the White House, the Senate, and the House of Representatives, and when that happens it typically doesn't last for more than two years before we switch it around. I think Americans typically like there to be checks and balances politically within our system and so I think that's probably a good thing for us.

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Bill Curtis: Ed, give us a history lesson. When was the longest term where one party controlled the whole shebang?

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Ed Larson: To answer that question, you've got to consider what the whole shebang is. And I think the Supreme Court is an equal check and balance. In 1800 after the election came in. And it was clear that the Jeffersonian Party was going to control the House, Senate, and presidency, which they ended up doing for the longest period ever in American history, 24 years, they controlled all branches. What the Federalists, the outgoing Federalists who controlled the Senate and the presidency did is they got all the judges, their Federalist judges, to step down and put young people in,

people like John Marshall, and they voted him through. And as one of the great Federalist leaders, Senator Governor Morris of New York said, "Well you can't blame us, we're throwing out anchors to stop the drift toward Jeffersonian Rule." And so I think that you have to include that.

Even when Johnson and the Democrats controlled Congress in the 60s you had basically, for a while of that period, you had a Republican Supreme Court. So even if the Democrats took over everything this time, you'd have a Republican Supreme Court and that's going to offer is a check and balance because we got three branches.

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Jane Albrecht: I was going to say my answer to that is it depends upon how long a time they're in power. We've had periods where both houses of legislature and the presidency are controlled by the Republicans. We've had periods where they've been controlled by the Democrats. But not for that long, not in recent history, at least in my recollection.

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Bill Curtis: So when that was the case, how healthy was that for us?

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Jane Albrecht: Sometimes it's okay. Sometimes it's not okay.

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Don Schmidt: I think both parties like it. They want to hold all the reigns of power so they can get something done. One of the things that is a changing dynamic, however, is the increasing drift towards doing away with things such as the filibuster, when they did away with the requirements for the higher-levels of majorities, for the appointing of federal judges and things of that nature. When a party gets in power and they do things like that, they should heed the cautionary notes from folks on the other side of the aisle, "Be careful because we will be in power again someday and we're going to do the same thing." But increasingly, folks seem tone deaf in Washington DC about that.

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Ed Larson: I agree with Don that people in America really don't like all power to be in the hands of one party. The norm for midterm elections is whoever was elected President loses seats in the midterm. You saw that with Donald Trump, losing the House of Representatives. People wanted a check. You saw that with Obama. You saw that with Bill Clinton. You tend to very rarely have a party control the White House more than two terms. It's usually two terms flipped to

the other or or if you have an exceptionally popular President like Ronald Reagan or Andrew Jackson, one more term for their Vice President, but not two. In both of those cases, Jackson got his Vice President elected once, but that was it. He was out after one term, same way with Reagan getting George Herbert Walker Bush one term and out. So it's very rare to go more than two terms before you flip to the other party.

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Bill Curtis: We do have a Supreme Court that is another check and balance. I haven't seen a lot of check and balance. I haven't seen the ability to have the Congress keep the President to the President's appropriate level of presidential power.

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Ed Larson: I think what bothers me about Trump is not just about Trump, I think it was true with Obama and George W. Bush, is they both used executive powers way beyond what I think the constitution intended. I think this has been a trend that has tied to the presidency, not to a political party. And I think Donald Trump has simply built on what Obama who then built on what George W. Bush did.

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Jane Albrecht: But Trump has taken the Executive Order to a whole new level. One thing that's a little different right now is that the current Senate has been uncharacteristically not protective of its own power. And that's not something that's Democrat or Republican, both sides would agree with that, generally.

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Bill Curtis: So Don, what are conservatives most concerned could be the ramifications of a democratic sweep in November?

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Don Schmidt: I think that there's a perception, especially amongst conservatives, that with what's been going on in our streets, and some of the folks that seem to have taken over the traditional liberals within the Democrat Party, the lurch hard to the left, I think that concerns them very much. You have folks who are talking about things, which candidly were just a third rail of politics in the United States before, openly espousing socialism, openly espousing things of doing away with electoral college, doing away with the Senate, putting all kinds of draconian things that my traditional liberal Democrat friends would never in a million years have supported. And I think it frightens the hell out of a lot

of people.

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Bill Curtis: How do you feel about how Trump has been handling the presidency as a Republican and do you have an opinion about some of the unique angles that he's taken?

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Don Schmidt: Well when it comes to Trump as the man, as the individual, versus Trump as the President and his policies, in my mind, I see those as two very different things. The fact of the matter is, is that the American people elected a tough New York gutter fighter and the guy that was perceived as being completely outside of the political structure, left wing or right wing Republican or Democrat. I think that they did that with a forethought. I think that the American people had become disenchanted with the Democrats and Republicans and they felt like there really wasn't that much of a change between the two parties and they wanted something different.

Personally, I do not appreciate Mr. Trump's style, the way he says things about individuals, it's not my cup of tea to put it mildly, but I do have to tell you at the same time that I think that the policies that he has implemented in regards to reducing taxes and regulations, to protecting our border, to having a rational immigration policies, to rebuilding our military, to demanding more of our allies such as NATO, to meet their obligations for our common defense, things of that nature, for following through which neither Republicans or Democrats ever had as presidents had the moral courage to do to move our embassy from Tel Aviv to Jerusalem, love him or hate him as an individual, but the man tends to do what he says he's going to do and he doesn't seem to care much about the political consequences. So in regards to running the country on those important action items, I have to be supportive of that.

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Bill Curtis: So it sounds, Don, that you are reasonably middle of the road in how you feel about Trump the person, as opposed to the Republican platform. Let's talk about Trump the person for just a minute. I can't help but bring up the recent condemnation of Goodyear, for example, because I'm not familiar with a past history where presidents have said, "Let's boycott a company for saying that they don't want my hats worn by their employees." Does that kind of thing bother you at all?

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Don Schmidt: It's not my style. It's like my Democrat friends,

like to say, " It's not presidential." But we've witnessed a number of things over the Trump presidency, both domestically and overseas where he's done and said things, which personally I found cringe-worthy, but surprise, surprise it worked. He's a very tough, unafraid to step on toes, jump up and down on toes to get his way, to make things happen. And I suppose if you agree with him and if you think that he's got America's best interests at heart and he's accomplishing stuff, you swallow hard and you say, " Okay, he's getting it done where others have failed."

The quintessential example I would give you would be the negotiations with NATO. President Obama crashed and burned. President Bush got nowhere with them. President Clinton never got them to open up their checkbook. Trump went over there and absolutely flipped people out and said, " You know, I'm not sure that we need to be part of NATO anymore," and somewhat rudely got up in people's faces at the collective dinners and guess what? Our NATO allied partners are spending more towards their 2% commitment.

Look, I didn't win the presidency. None of us here did. He certainly has a completely different type of style. It's not my style, but he certainly has an effective way of bare knuckle negotiations that does seem to get things done.

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Bill Curtis: So is some of this stuff actually working, even though it seems somewhat repulsive in the form of how it's coming out and how it's being stated and whenever yesterday's tweet was?

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Jane Albrecht: Through the great extent, not at all. And I don't say that as a Democrat, I say that as a former international trade attorney who spent my life representing U. S. industry. Very few trade attorneys represented only U. S. industry and defending U. S. interests abroad. And I don't know anyone who knows international trade and runs businesses, big businesses, and looks at this and thinks that Trump has been good for business other than the tax cuts and the regulations, not good for business, not good for international trade, certainly not good for our economy. And the criticism of Goodyear most recently, to me, was absolutely outrageous. Goodyear didn't say you can't wear MAGA hats, they said no political statements when you come to work and that's not unusual.

And what are we doing with a President who is aggressively going after U. S. businesses that keep U. S. employees employed? I think the way he managed the pandemic has been miserable and we're all living with the results of it. The impact didn't have to be this bad, not at all. If he

intervened earlier than the economic impact would not have been as bad. And so I don't know how anyone can look at the record of this President and say he's been great for U. S. industry and business. Yeah, they got a tax break, but there's a lot more going on in terms of what makes a profitable business than a tax break.

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Ed Larson: Trump came to office saying that he was going to do certain things and has actually shown up in his odd methods, have in some cases allowed him to fulfill his promises to his base. We may not be happy with those promises, but he certainly has had an effect.

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Jane Albrecht: Actually not so much when you really look at the facts. Where's the wall? And where are all the jobs that he was going to keep in the U.S.? He hasn't kept his promises. The one thing he kept the promise on is to pass tax cuts, which he did, mostly for the very wealthy, but I don't see our country better off than it was four years ago. Not at all. Not even close.

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Bill Curtis: You see a change in how we're handling China?

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Jane Albrecht: You know, I actually was open-minded and interested to see how he was going to handle China. We did have issues, we had to take them to task. And I was curious and interested and would have respected him a lot if he had really known what he was doing with China. And I am serious about that. I talked to people who knew China trade relations before he got in about the violation with intellectual property rights and other things.

When he first came in and he made the first call, or they arranged that the Taiwanese president was one of the first leaders to call him, I thought, "Oh, that could be interesting." You know, this is like saying, "Okay, you're not playing with us in the South China sea, we don't have to play with you. We don't have to play by your rules either." Well, President Xi Jinping put the word out that there will be no diplomatic contact from the high-level to lowest-level of ministry of foreign affairs until Trump retracts that and within two weeks he had retracted it. But that was just the beginning.

With this pandemic, I don't know that many people know, but we had CDC groups that really coordinated well with China and one of the reasons we were able to stop the SARS epidemic from going worldwide and the MERS epidemic from

going real wide, and Ebola, is countries trusted us to send in our medical experts. China doesn't trust us to do that right now. Do we still have to hold China to task? Yes. Has this President really advanced that cause? No. Could we possibly take advantage of some of what he's done and have someone else bring home the bacon? Possibly. But mostly they've blown things up without a plan for putting them back together.

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Bill Curtis: This country hired Trump as the demolition man. And you have to admit this president really has succeeded in completely dismantling the government as we knew it four years ago.

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Jane Albrecht: I don't know that they've dismantled it. They've done a lot of damage. We are now entering a phase where we're no longer going to be the economic 800 pound gorilla, China's just too big and they work too hard. So at a time when China is becoming the economic 800 pound gorilla, we need that international trading system, a system based on the rule of law so that our companies and investors can go in and invest in another company without fear of losing that. Our challenge was to bring China in and get them to live by those rules so that when we are no longer the 800 pound gorilla, and it will continue to be that way sheerly because of demographics, numbers, our interests are protected.

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Don Schmidt: Jane, there's a lot of very important and good things that you said there, but there's a couple of observations that I really need to make. First of all, me personally, and most of the people in the Republican Party, for a very long period of time, were free traders. And one of the things that's very different about President Trump is a completely different brand where upon he said, "Look, we've been selling out our country and the American workers by shipping these jobs overseas." Now as a guy with strong libertarian tendencies, and it sounds like you've been representing American companies and their interests overseas, and good on you, and there's no doubt that there's been a tremendous amount of prosperity globally, which has been generated by us shipping our manufacturing over to places like China and Mexico, before that India, and that's the free market system and I'm a free market guy, but you know what? You and I didn't run for the election. And to be the President and the guy that's in the oval office right now said, "New sheriff in town, I'm not doing this anymore." He wasn't necessarily concerned about what's going to be best

for the bottom line for American multinational corporations, he wanted those jobs back here. He started weighing in on the China issue.

Now it's entirely your prerogative to take him to task in regards to the efficacy or lack thereof for his negotiations with China. I might disagree with you on that a little bit, but I think there's something that we can agree upon, which was whether or not it was President Obama, President Bush, Clinton, Democrats, Republicans, none of us, none of us took it seriously. And although most of the Democrats in Washington DC would eat a bug before they would say something complimentary of President Trump, the reality is, is behind the scenes I think all of us realize that we did not take it seriously enough.

And here's why, we thought that if we had a free market society in China when they decided to embrace capitalism, that it would naturally involve that they would become a country that respected the individual civil rights of their citizens, that they would join the community of nations, that they would abide by international law, and I think both Republicans and Democrats, the power structure in Washington DC, the sophisticated people that you referred to before that have negotiated all these trade deals and everything else, it didn't work out that way.

But whether or not you agree with how good of a job he did, you got to give credit where credit's due. He's the first President and the first politician in our country of any sort of standing, which has stood up and said, "No, we have a big problem with China." Took it seriously and is starting to negotiate aggressively on that front.

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Jane Albrecht: Don, I would agree with you on that, that he basically said, "We've got a problem with China, we're going to have to do some stuff and maybe some tough stuff that might be a little bit hard to absorb at home." I think Trump had opportunities. I really do. I think if he had really stuck by some of what he said he was going to do, he had the opportunity to be a President, believe it or not, that would have been very much loved by the people. He said he was going to protect their healthcare. He said he was going to do all this, but he actually hasn't.

And so, yeah, first of all, yes, I support that. And one of the things we have to do in our trade agreements, and it's not as painful as it would sound, is we need some labor protections. And by that, I'm not talking about, "Oh my God, everybody's going to be paid a hundred dollars an hour," but we have provisions in our trade agreements that say, "We won't trade in goods made with slave labor. We won't trade in goods made with prison labor. We won't trade

in goods paid with children's labor." We should have a provision saying we won't trade in goods where the laborers are getting paid less than a living wage.

The other complex thing with China is it's a multi-dimensional chess game. You've got the trade interests, you've got the financial world and you've got the geopolitical with the South China Sea.

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Don Schmidt: There's been a lot that's been going on. Believe you me, not everybody is happy about us upsetting the status quo and that the President did that as it pertains to China.

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Bill Curtis: We certainly have covered a lot of issues today. The one major issue that I've got is I would love to see Don, you come back and have a whole lot more conversations with us because this was a wonderful, sometimes knock down, drag out fight, and I really appreciate you joining us.

00:34:13

Don Schmidt: Well, I really appreciate what you're doing here, guys. It's been a pleasure.

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Bill Curtis: Don Schmitz, Jane Albrecht, and Ed Larson. Thank you very much. This is Politics: Meet Me In The Middle. Come back next week and join us again.

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Speaker 6: If you like, what you hear, please tell your friends and please leave a comment. And yes, we'd of course appreciate it if you gave us a five-star rating. You can also subscribe to the show on Apple podcasts, Stitcher, Spotify, or wherever you listen to your favorite podcast.

This episode was produced and edited by Mike Thomas, and it was audio mastered by Michael Kennedy. The theme music for Politics: Meet Me In The Middle was composed and performed by Celeste and Eric Glick. Thanks for listening.

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Speaker 7: (singing)