

## TRANSCRIPT

# "BOOK LAUNCH—HATE: WHY WE SHOULD RESIST IT WITH FREE SPEECH, NOT CENSORSHIP"

*A conversation with Nadine Strossen and Richard Ashby Wilson*

*Moderated by Aryeh Neier*

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### **ANNOUNCER:**

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### **ARYEH NEIER:**

I'm Aryeh Neier-- I am-- president emeritus of the Open Society Foundations and-- I will be-- moderating-- this evening and-- perhaps occasionally-- interjecting-- my-- my own-- point of view. I'm-- I'm really delighted to-- to-- be able to-- to moderate on this occasion. I have-- great admiration for-- both of our-- speakers this evening. And-- I think that the-- the book that-- is being launched at this time is really quite extraordinary. It is Nadine Strossen's book-- *Why We Should-- on Hate: Why We Should Resist it with Free Speech, Not Censorship*.

It is-- an extraordinarily-- good book-- in the sense that-- it-- it covers the-- the topic-- very well, it deals with-- difficult concepts, and yet it is-- written so clearly and is such a lucid work-- that I think it will become-- the-- the standard-- in the-- in the field. The-- the subject of hate speech has been-- (COUGH) debated-- for-- a very long time.

And yet, publication of this book at this time-- seems to be-- particularly timely. It is not so long since the-- the events-- at Charlottesville. We have-- constant discussion of-- the-- the role of social media-- and whether they should-- act-- as censors-- of the-- information that

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is-- posted-- on-- social media, and what standards-- they should use and-- how they should go-- about the-- the process.

And we have episodes-- like the-- the Roseanne episode, and the Samantha Bee-- episode that-- keep-- cropping up. And so the issue is-- is very timely-- and it's especially valuable to have this book-- published at this time. The author-- Nadine Strossen-- is-- a professor of constitutional law, I believe the John Marshall Harlan -- professor of-- constitutional law-- at-- New York Law School. She is a former-- president of the American-- Civil Liberties Union.

In the ACLU the title of president is actually the equivalent of what would be chair of the board-- in most organizations. And she served as-- therefore chair of the board of the ACLU from-- 1991 to-- to 2008. And if you know what-- a fractious body the-- the ACLU board is-- - and I had my own experience with it-- that's-- a remarkable-- achievement-- in itself. I think the-- the prestige that-- Nadine earned-- in her-- position as-- president of the-- the American Civil Liberties Union-- was reflected in an event-- that I recall that took place about two-- ten years ago when she stepped down as-- as president of the ACLU.

There was a lunch in Washington and it was immensely interesting that-- three justices of the United States Supreme Court-- turned up at the-- the lunch-- to-- mark-- Nadine's-- retirement from the position of president of the ACLU.

Justice David Souter-- not-- a great surprise-- Justice Ruth Bader Ginsburg-- not a surprise, and just-- Justice Anthony (SIC) Scalia-- something of-- a surprise. But-- it reflected the-- the respect-- that Nadine Strossen-- has-- has earned through h-- her speaking, through her writing, through her teaching-- and through the-- the role she played-- over a 17-year period as-- president of the American Civil Liberties Union.

And then-- commenting-- on her book-- we have-- professor Richard Ashby Wilson-- who is the-- the Gladstein chair of human rights-- at-- the University of Connecticut and also professor of anthropology-- and law. I mentioned the Gladstein professorship because-- a few of you may know that-- the man for whom that is named, Gary Gladstein-- was-- a partner of-- George Soros-- and-- he was actually the-- the partner of George Soros, who was most engaged with George-- in-- the creation of the-- the Open Society-- Foundations.

And-- he endowed-- the chair that-- the professor-- Wilson-- holds. Professor Wilson has-- written-- a large number of books, most recently-- a book-- on-- incitement on trial-- prosecuting-- international speech crimes. And we had the-- occasion to hold an event such at this at the time that Professor Wilson's book-- was published. And we're delighted to-- to welcome him-- back again.

So-- we'll-- we'll begin-- by asking-- Nadine Strossen to-- to speak about her book, and then I will ask-- Professor Wilson to-- to make some comments. And-- I will give-- Nadine Strossen an opportunity to-- to respond and engage in colloquy-- with Professor Wilson. And that's the point where I may interject. And then we'll open it up to-- questions from the floor. Nadine?

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## NADINE STROSSEN:

Thank you so-- whoops, I have to turn this on. C-- am I heard in the back now? Great, thank you so much. So Aryeh, before I start-- and thank you so much for that wonderful introduction-- since you mentioned the fractious ACLU national board I have to put in a comment about that, which is related to the topic of hateful and-- problematic speech. When I was elected president I-- *The New York Times* did one of those-- person in the news profiles. And the pull quote they had for me was a rather corny line, but at the time-- Michael Dukakis had just been attacked for being a card-carrying member of the (LAUGHTER) ACLU when he was running for president.

And so I had this corny line that I wanted to emphasize the American in American Civil Liberties Union. And my husband, who had sat through many of these national board debates-- what Aryeh didn't tell you is that there are 85 members of that board, most of whom are lawyers, who know Robert's rules backward and forward. And my husband had sat through some of these really heated debates.

And he looked at that quote and he said, "I wish you would emphasize the 'civil' in American (LAUGHTER) Civil Liberties Union." So we hear a lot about civil discourse today. I wanted to start by-- by thanking-- Sandy Coliver for doing so much work and your colleagues who put this together. Aryeh has been so supportive of the book. He was kind of a, can I say, midwife to the book in the sense that-- he strongly endorsed Oxford University Press publishing it, and I'm sure that carried a lot of influence. Richard ha-- I'm so happy that we're having a reunion of the panel that we did on November 8 about Richard's book.

And I had the opportunity in preparing for tonight to review his book, which I-- I couldn't recommend more strongly. And I also reviewed our panel discussion, and I just wanna say at the outset that-- Richard is extremely supportive of the American First Amendment law, and distinguishes it-- from the international situation, and I've learned a lot from his book.

So Aryeh has been, himself, a leader on this issue, both as an activist and as-- as-- as a thinker, and has been so inspiring to me and so many others in both capacities. You probably all know that he was the legendary executive director that is the actual day-to-day leader, as opposed to the president of the ACLU during that famous, or depending on your perspective, infamous Skokie case when the ACLU came to the defense of a group of neo-Nazis to demonstrate in Skokie, Illinois, a town that had not only a large Jewish population, but many of them were Holocaust survivors.

And it took enormous courage and fortitude against a lot of pushback, even from ACLU members themselves. And you know, it was an easy case in the court of law, and I'll introduce the first American law-- legal concept here. Former student sitting in the first row, I could call on her to do it. (LAUGH) (THUMP)

But the-- it's what the Supreme Court has called the bedrock principle of free speech jurisprudence, namely viewpoint neutrality, that government must remain neutral as among

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viewpoints, or ideas, or messages. And no matter how loathsome (THROAT CLEARING) they might be, by-- from the perspective of no matter how large a percentage of the community disapproval of the viewpoint of the idea of the message is never enough to justify censoring it.

So the Skokie case was a slam-dunk winner in the courts of law, but it was a very tough case, as it is to this day in the court of public opinion. I told Aryeh when I was ACLU president (and it's still true) that any forum that I would speak at, I would inevitably have one or more members of the audience say to me, "I used (THUMP) to be a card-carrying member of the ACLU but I resigned (THUMP) over Skokie."

And Aryeh said to me, "If-- if every single one of those people actually had been members we woulda been a much (LAUGHTER) huger organization than we ever had been." So as if that courageous leadership of the organization was not enough-- shortly after the case, which took place in 1977 to '78, Aryeh wrote what I consider-- he was nice enough to say my book will become a standard. He wrote the classic book on this subject. The title is *Defending my Enemy: American Nazis, the Skokie Case, and the Risks of Freedom*. It came out in 1979. I have read it many times.

It, as all classics, really does stand the test of time. And as my students can attest, I-- I recommend it-- so enthusiastically to everybody. And I then-- dedicated my book to Aryeh, together with Norman Dorson, who was the president at the time for their wonderful leadership, and inspiration, and-- very generous serving as mentors for me.

I also quote Aryeh's book-- in-- in my book on both of the key interrelated points that are noted by the topi-- the-- by the title-- which is not only opposing censorship, but is urging resistance through more speech-- what lawyers sometimes call counter-speech. Any speech that in any way counters the message or the potential adverse impact of the message of hate speech.

And I would like to-- quote-- two passages from Aryeh's book that are quoted in mine, because each one of them-- is so important in terms of those intertwined messages in my book. But before I-- I do that, let me-- add one other preparatory comment, because I know given the work of OSF and a lotta the people who are in the audience-- you're very interested in going beyond the domestic situation, looking (THROAT CLEARING) at other countries, looking at the international situation.

And my book does very much intend to address the worldwide situation. I don't purport to be an expert on the situation in other countries, but I quote many other people who are. And even though those countries obviously don't have the first amendment or the equivalent of the first amendment-- they-- I believe that the free speech principles that have been adopted in this country are so persuasive and so effective in-- actually meaningfully countering the problems of hatred, and discrimination, and discriminatory violence that I think a persuasive case is made for other countries to move in the same direction.

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And much more importantly, there are so many human rights activists and other experts on the ground all over the world, and international agencies who make those-- those arguments. So with that internationalist context-- let me start with one statement from Aryeh's book that really surprised me. I had forgotten it.

And I will just say this. I'm the daughter of a Holocaust survivor. Aryeh, as you know, himself-- was fortunate enough to-- just barely make it out with his immediate family. And from the perspective of-- of knowing that my own father also barely survived and became a refugee to this country, I wholeheartedly endorse-- and second the particular passage I'm gonna read from Aryeh's book. He says, "I am unwilling to put anything, even love of free speech, ahead of detestation of the Nazis. I could not bring myself to advocate freedom of speech in Skokie if I did not believe that the chances are best for preventing a repetition of the Holocaust in a society where every incursion on freedom is resistant.

"Freedom has its risks. Suppression of freedom, I believe, is a sure prescription for disaster." And you know, so many people are laboring under this misconception that the reason that the Nazis were able to rise to power in Weimar, Germany is because they had too much free speech.

But as Aryeh's book certainly demonstrates, and I cite other evidence as well-- nothing could be further from the truth. There were very strong hate speech laws, they were enforced vigorously. The leading Jewish organization at the time-- said that most of the prosecutions were handled capably. (THROAT CLEARING)

And yet the Nazis-- used these opportunities-- and there were many convictions, including of Nazis, yet they used these trials the way the Nazis in Skokie used the controversy that was caused when Skokie tried to censor them, to garner attention that they otherwise would never have received, and sympathy that they otherwise never would have received.

And that's why we have hatemongering provocateurs to this day that love it when people try to silence them or censor them. We are just playing into their hands if we-- if we follow that-- that strategy. F-- here-- leading experts encountering hate in the United States make that point, including the Antidefamation League (THROAT CLEARING) and the Southern Poverty Law Center. Aryeh then goes on to point out that the major problem in Germany was not too much free speech, but too little protection against actual violence.

So the Nazis got away with murder, literally physical assaults-- against Jews, against their political opponents, against other minority groups, without sufficient law enforcement protection or retribution. And he draws the analogy that it woulda been the same as if in this country there were no effort to-- punish those who committed violent acts, including murder against Civil Rights demonstrators. And to this day-- we in the United States do have hate crime laws, every state but one and the national government.

Those also had been advocated very strongly by the Antidefamation League, supported by the ACLU, although over a fractious debate, to be sure. (LAUGH) But there the-- idea is that you take something that's already a crime such as an assault or vandalism, and if the

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victim is singled out for a discriminatory reason, society can treat it and the law can treat it as a more serious crime that does more harm both to the individual victim, and to society as a whole, hence (?) warning and enhanced punishment.

As long as I'm quoting good friends from OSF-- I d-- don't see her in the room now but I-- Sandy Coliver is also quoted in the book. I won't read it now but-- way back in the early '90s when we had the advent of hate speech codes on college campuses in this country-- which the ACLU immediately went to court and had them struck down, Sandy at the time was the executive director of Article 19-- an international free speech organization based in London.

And she convened a historic conference that brought together-- rep-- human rights activists and lawyers from about 15 different countries around the world. And we all compared notes on how in the United States case the hate speech codes on college campuses (which hadn't yet been definitively struck down), and in other countries how hate speech (THROAT CLEARING) laws actually operated.

And Sandy wrote a wonderful foreword or conclusion to the book summering (SIC)-- summarizing all of the input. And the bottom line was that for all of the good intentions of the hate speech codes and the hate speech laws encountering discrimination, promoting equality, promoting societal harmony, promoting diversity and inclusivity, I hope it goes without saying that these are goals that I have devoted (LAUGH) my life to furthering, as has the ACLU.

The conclusion was, though, based on actual experience the laws are at best ineffective in promoting those goals, and at worst-- counterproductive. And those conclusions were reached also-- by a similar study that was done by Human Rights Watch. Many of us know each other, I see Joanna-- among others, and Aryeh and I had the pleasure-- I had the honor of working with him through Human Rights Watch. The-- that was the conclusion of a Human Rights Watch report at the time, and even much more recently Human Rights Watch did a report about hate speech laws in India, and concluded (as has been the consistent pattern) that the law is used disproportionately to silence dissidents, critics of the government-- advocates of law reform, advocates of social justice.

And-- so now that I've-- g-- quoted Aryeh and paraphrased-- oh, there's one other quote from Aryeh that I-- I really have to give you-- because it's one of the three most important in the book-- in the sense that they are epigraphs to the entire book.

And again, as somebody who really emphasizes the power of free speech I want my exhortation to all of us to raise our voices, and that includes through organizing, and advocating, and petitioning, and counter-demonstrating. So the counter-speech message is the one I really want to leave you with-- as opposed to the anti-censorship message. I want the-- what we should do to be the even stronger message.

So my three epigraphs are from human rights heroes who make that point, that counter-speech is the most effective way for dealing with these problems. And those three are--

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Barack Obama, Martin Luther King Jr., And Aryeh Neier. And here's what ar-- you-- you can buy the book and read what Obama and King have to say.

But I will share with you-- what Aryeh had to say. "Hardly any of the voices that should have been raised in moral protest against Nazism were to be heard in Germany or the territories conquered by the Reich. Where political and religious leaders did speak out against the Nazis, notably in Denmark, most Jews were saved. Those Jews who died were victims of the silence of Europe's moral leadership as they were victims of the Nazis." Pretty powerful words.

So thanks to these wonderful quotes from Aryeh and paraphrased from Sand, you-- definitely have the overview of the book. I wanted to elaborate-- briefly on a few points. One, in terms of American law, it's usually misdescribed in one of two ways which are opposite, and yet what they do have in common is that they're equally wrong. So you have a lotta people who should know better, including lawyers making pronouncements such as, "Hate speech is not free speech." Wrong.

But you also have people making statements, "Hate speech is protected." And that's also wrong. The American law-- and this is why I think it's an excellent model for other countries as well-- and-- and more importantly, why other people in those countries-- I'm not pretending to be a carpetbagger-- why they also endorse our approach-- it's much more nuanced.

So-- and Aryeh, I know that you've used this distinction when you teach. We do not allow s-- hate speech or speech with just about any other message to be punished only because of its hateful or hated content. But if you look at the context, then speech with a hateful or hated message, along with speech with-- any other message, if in a particular context, it causes-- directly causes specific, imminent, serious harm then it can and should be punished.

And the Supreme Court has created a number of subcategories of speech that does satisfy that, what's sometimes called an emergency test, such as a true threat, such as intentional incitement of imminent violence. So I think that's a very sensible distinction. But going beyond that, and allowing speech to be punished either just because of disapproval of its viewpoint, or because it has a more indirect speculative connection to potential harm-- as is what that is done under hate speech laws in other countries-- has proven based on long experience now in many countries, and especially in the United States before we adopted that speech protective approach-- which not coincidentally was adopted in the cauldron of the Civil Rights Movement.

And all the Civil Rights leaders were strongly supportive of free speech, as have been every crusader for social justice throughout our history, in part because their messages were seen as hateful and dangerous and-- subject to suppression under anything less than the strict emergency principle.

My book quotes many people from other countries who-- who make the observation that-- a looser standard has not promoted the goals of equality and societal harmony, and so forth,

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and has allowed the suppression of any speech that's unpopular with those who wield power. For lack of time now I will just cite one. Professor Timothy Garton Ash a couple years from Oxford wrote a wonderful book about free speech. And he has a chapter on hate speech in which after summarizing the experience of countries around the world, including his own, says there's a very powerful case to be made that on balance-- these laws do more harm than good.

And among other things, if you look in the situation in Europe now, even countries that have extremely strict hate speech laws that are extremely strictly enforced (Germany being a good example)-- the-- the-- outbreak of discrimination, and intolerance, and-- and violence-- is really disheartening.

Again, going back to the Jewish history-- the rampant anti-Semitism that has become-- such a blatant problem, according to experts such as the Antidefamation League-- is really disheartening. You probably saw that Angela Merkel really-- recently felt motivated to appoint the first ever commissioner on anti-Semitism-- (THUMP) in Germany because the problems have become so severe.

Let me just-- because Richard has been so excellent in demanding analytical rigor I-- I realize that-- to some extent I don't have as much as I would like, and I'm gonna ask him if he can prob-- help me design-- a study or an approach, and here's the reason why.

A couple of weeks ago I was in Brussels to debate this topic with a woman named Věra Jourová, who is the E.U. commissioner, who has been the spearhead for especially online suppression of hate speech. And she agreed with me that despite the fact that there are very strict anti-hate speech laws in Germany and France and other countries in Europe, and despite the fact that those laws are being very strictly enforced, that there is an-- dismaying increase of all kinds of hateful and intolerant attitudes, and actions, and-- and vice in Europe. But her (THROAT CLEARING) conclusion was (you won't be surprised) therefore we need stricter (THUMP) laws. And so you know, (COUGH) how do you-- how do-- how does one disprove-- that? It seems to be a very complicated analysis. And I will acknowledge that what I do rely on is just the exhortations from-- so many others in Europe who say, "No, we definitely-- should move more in the direction of-- of counter-speech." (MAKES NOISE)

(OFF-MIC CONVERSATION)

## **NADINE STROSSEN:**

So I just wanna say that the fact that these laws are consistently enforced in ways that are not friendly to dissenting or minority perspectives is not (THROAT CLEARING) an accident. It is inherent in the laws and unavoidable. We are dealing with-- an emotion, hatred-- and it is an inevitably subjective concept: no two people can agree. And so what ends up happening is that those who enforce the laws are necessarily given essentially

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unfettered discretion to pick and choose the ideas that they think should be suppressed, or that powerful forces in the community believe should be suppressed. In this country I have to tell you, there have been calls for treating Black Lives Matter as not only engaging in hate speech, but as actually being a hate group. What we see in the countries that have enforced these laws-- and I give many, many examples in my book-- is the worst of both worlds.

On the one hand, they have not advanced equality and-- and dignity, and societal harmony as had been hoped. On the other hand, they are suppressing very important speech about very important policy issues, including immigration, including by government officials and government candidates. In terms of counter-speech-- I will end there because it's such an important part of my book.

We have seen such a robust flourishing of counter-speech in this country, including a couple examples that Aryeh mentioned in his introduction, to such an extent that now there is even serious debate about whether we might have too much counter-speech-- which might be-- have too suppressive-- an impact.

Suzanne Nossel, who's the executive director of PEN, the literary and anticensorship organization, had an edit-- wonderful op-ed in *The Washington Post* just a few days ago in which she talked about maybe counter-speech is becoming so effective that it's having this too much of a crushing impact on certain ideas. So-- I-- I will end by saying-- I-- I wanted to say more about Richard's wonderful ideas, but I guess I'll get to do that after we hear the ideas from Richard himself.

## **ARYEH NEIER:**

Okay, Richard?

## **RICHARD ASHBY WILSON:**

Many thanks to Open Society Foundations for hosing this event tonight, and the organizers, Aryeh Neier and Sandy Coliver at the back there, and to Nadine Strossen for writing such a timely (COUGH) and important book that advances the conversation on hate speech-- to such a large degree. The book is written in a particular context: hate is trending. And Nadine has written a robust defense of free speech at a difficult time. Much easier to write it ten years ago.

The time now is when native populism is on the march-- it's characterized by xenophobia, racism, the targeting of minority groups. And it's really-- this-- this populism is at its highest point since the 1930s. We could start with Brexit and the election of Donald Trump in 2016, and both of these events triggered an increase in white supremacist groups and hate crimes in the U.K. and the U.S.A. There are far-right anti-immigrant parties in power in Hungary, Poland, Italy, and now just a couple of days ago, Slovenia, and the consolidation of power by authoritarian leaders in Russia, Turkey, the Philippines, and some other places.

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And the authoritarian leaders don't seem to be pariahs in the way that they were (COUGH) maybe ten years ago. Extreme nationalist and chauvinist views that were once marginal are now part of the political mainstream. So is this a time to tighten up on restrictions on hateful speech? Nadine says no.

Now my role for-- as I was told by the organizers was to challenge and provide an opposing view. But I'll have to admit, I agree with a lot of what she says in the book. I am-- a member of the American Civil (LAUGHTER) Liberties Union. I don't carry my card though-- so. But I-- I learned so much from this book, and I agree with her that it's not a good idea to ban speech just because it's offensive and loathsome.

Campus hate speech codes-- and she does-- this I think is one of her best discussions in the book-- are unconstitutional whenever they're litigated, and we ought not to be shouting down and assaulting conservative speakers who present loathsome, reprehensible views. She makes a strong positive argument for free speech as the lifeblood of democratic deliberation, and I agree with that entirely.

And she reminds us that laws restraining speech are usually repressive and undemocratic. And we could pause here to consider that southern states banned abolitionist speech for many decades in the 1800s as inciting of violence. But I do wanna question two central claims of the book, which I'm just not as persuaded on, as Nadine is. First of all, that hate speech is not harmful in its effects. I would argue hate speech can be and often is harmful, even constitutionally protected hate speech.

And then secondly, the claim that all hate speech laws are over-broad, vague, and counter-productive. That's her language. Not always. My intention here is not to mount an argument for European-style hate speech laws in the U.S.A. My argument is instead for using existing laws in a much more robust and active manner to counter incitement, true threat, and intimidation in the United States and elsewhere, and to explore those areas that the book does not, and I wish Nadine had.

First of all, the claim that n-- that hate speech is not harmful, and may even be good for you in making you more resilient, on page 50-- 152. And Nadine cites a few studies nor-- notably by Laura Leets, which show that when exposed to hate speech many people shrug it off. It doesn't bother them that much, they take a passive response. It may bother them but they turn to their friends and to their family, and they move on.

Well, for each study showing a lack of impact there are about 50 showing direct and indirect harmful effects. In social science there is an overwhelming consensus that hate speech, even that which is presently permissible under law-- for instance, dehumanizing language that calls people apes, or monkeys, or snakes, is harmful. There's a consensus on the harmful effects that's similar to the scientific opinion on climate change.

There are both direct and indirect harms. Let's look at the direct harms first. There's a very interesting study done by Russian and Edwards on the effect of pr-- Donald Trump's election

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on hate crimes in the U.S. Came out in January of this year. And they provide compelling statistical evidence that Trump's election prompted an increase in hate crimes.

They analyze hate crimes at the level of the county, and the quarter, and they conclude that Trump's election (controlling for other factors) may have resulted in approximately 500 additional hate crimes in the fourth quarter of 2016. It's not causal, but it's a strong correlation. (COUGH) This isn't the kind of evidence that will get you convicted in a court of law.

But it is evidence, nonetheless, of harmful effects. Müller and Schwarz do a study of social media in Germany, and they show that attacks on immigrants in Germany in 2016 correlate closely with anti-immigrant posts on the Alternative for Deutschland, the far-right AfD, Facebook page in 2016. They analyze 700,000 posts, they've got a lot of data, they look at the municipal level. And where there are more anti-immigrant posts, there's more anti-immigrant violence. Again, they're not saying one causes the other, but the two do awfully look like they go hand-in-hand, that hate speech is part and parcel of hate crimes.

We can't just disaggregate it and say, "One's over here and one's over here," they go together. Now there are indirect effects. Those are the more kind of direct effects; there are lots of indirect effects. Groups who are persistent targets of hate speech and stigmatization have worse health, occupational, and educational outcomes. These arguments are not just made by pinhead social scientists like me, but have made their way into law.

In Harper vs. Poway, the ninth circuit cites seven social science studies upholding the right of the Poway school district to insist that a student not wear an anti-gay t-shirt to school on the grounds that LGBT youth in a bullying and hostile school environment have much worse educational outcomes. And you admit this in your book-- that schools and workplaces have-- a greater-- you know, jurisdiction to control speech.

But I think we-- what we have to recognize here is that hate speech is harmful, even the kind which is presently constitutionally protected. Now, this does not in itself justify banning. But I think we have to recognize the costs for vulnerable groups and not dismiss out of hand the emotional suffering it can cause.

These harms are often denied by the advocates of free speech, but I think we have a more informed and flexible commitment to free speech if we openly recognize potential harms, even of speech which we do not advocate the suppression of. Second point: all hate speech laws are overbroad and vague. This is mostly true as a claim, but there are some exceptions and I wish Nadine had gone a little bit more deeply into them. In particular there's the 2003-- Supreme Court case of Virginia versus Black. So a little bit of background, (SNIFF) in RAV versus the City of St. Paul, 1992, two young guys are convicted of violating the St. Paul statute, they burn a cross in the house-- in the yard of an African-American family and they run afoul of the statute which sa-- which says, "You may not burn crosses or graffiti swastikas-- on the basis of prejudice based on p-- race, color, creed, and gender."

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The Supreme Court strikes it down. They say it's content discrimination, it's viewpoint discrimination. And so Virginia writes a statute which says, "You cannot burn crosses with intent to intimidate," and they leave out the race, color, or creed-- they leave that part out. And the Supreme Court says, "Fine, we have no problem with this."

And they uphold the Virginia statute. It's narrower than the St. Paul statute, it banned cross-burning with intent to intimidate, and it didn't mention race, color, or creed. And the Supreme Court says, "Fine. Intimidation--" this is to quote from Virginia versus Black-- "Intimidation is constitutionally prescribable (PH)." There is essentially a hate speech leg-- piece of-- legislation which is not overbroad, not vague, and counter-- not counter-productive.

So in conclusion, in the U.S. and elsewhere we're faced with an onslaught of chauvinism, racism, and anti-immigrant sentiment, and we've seen this before in the United States with George Wallace in the 1960s and the rise of the Klan in the 1920s, which had four to five million members, about 15% of the eligible population.

Racism has been part of American history. It has ebbed and flowed, and right now it is flowing. But there are two new things which really are-- quite unprecedented. First of all, there's social media. And secondly, the policies like mass deportation of immigrants-- white supremacist views are not being promoted by just marginal groups, but by the president of the United States.

Nadine's response is counter-speech, and she builds this out and makes an eloquent argument for it. Yes, I agree, but I don't think it's enough. And I think there are three other things more we can do. First of all, stronger enforcement by district attorneys and attorneys general of our existing laws on incitement, true threat, workplace harassment, and intimidation.

Sending a message that hate speech that incites or threatens is impermissible. Where have our state attorneys general and district attorneys been for the last two years, I wonder? And I would like to see much more robust response from them. More-- second point, more state and municipal laws-- I'm not gonna rely on DOJ here-- but more state and municipal laws like the Virginia statute in black (?), banning cross-burning and the use of other symbols employed with intent to intimidate. (THROAT CLEARING)

And then the third piece is not separating out hate speech from hate crimes, but putting the two together, and overhauling our present system for reporting, and documenting, and prosecuting hate crimes. Right now the system is that-- every state is required by law to report hate crimes to the F.B.I. 88% of law enforcement agencies in America report zero hate crimes.

Mississippi, zero. (LAUGH) I'm from Louisiana, I refuse to believe that. (LAUGHTER) Mississippi doesn't even report crimes. They're failing on their uniform crime reporting requirement. Now, 14 states-- positively 14 states have passed legislation requiring their law enforcement agencies to collect data on hate crimes. More states could do this. If Idaho can

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do it, others can too. And Idaho did it for a reason: They had a problem with white supremacist organizations. And they passed this legislation and they started training police officers on how to identify hate crimes and how to document them, and collect them, and report them to the F.B.I.

The definition of hate crimes requires hate speech to understand it. Two of the three possible indicators of a hate crime are hate speech related. So what is a hate crime? Nadine defined it, but I'll just run through it again. What are the three indicators? One is that hate speech was used during the commission of the crime.

Secondly, symbols like swastikas or other symbols were-- worn by the-- persons committing the hate crime. And thirdly, the police decide that it's a has-- that it's a hate crime. But I was worried when Nadine said, "Terms like hate crimes and hate speech are just used to demonize speech and behavior we don't like." I think this is an overstatement of an otherwise good argument, and I worry that may blunt efforts to overhaul our rickety system for reporting and prosecuting hate crimes.

So there is sensible middle ground here between the censorious left and a free speech absolutist position. And I think that sensible middle ground could be used to mobilize (COUGH) using our existing laws and institutions to create an active program against hate speech associated with hate crimes.

## **NADINE STROSSEN:**

Thank you very much. Well--  
(OFF-MIC CONVERSATION)

## **NADINE STROSSEN:**

So I-- I actually don't disagree with Richard's point but I-- points, but I disagree with his characterization of my argument. So I will take responsibility for clearly not having been clear enough. With-- maybe there are some subtle differences. So in terms of the potential harm of hate speech I completely agree with that, and I was very happy to see that some reviewers of my book have singled out and said, "Well, finally we get somebody who is opposing censorship of hate speech who's not-- dismissing the harm-- who's acknowledging that there is at least potential harm."

Now there may be a disagreement if you think that the harm is inevitable. Put that aside; I wanna come back to it. But my case rests on what Richard also acknowledges, which is that even if there were certifiably, inevitably harm from hate speech, that would still not be enough to justify censorship as an effective policy for dealing with it, and that is very much where the emphasis of my argument is.

But I wanna come back to why I say it's only potential harm as opposed to inevitable harm. And I think that is the whole reason why expressive conduct (which includes not only

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speaking but also, you know, burning flags, and burning crosses, and wearing armbands, why is that treated any differently from non-expressive conduct?

Why should it be privileged as being presumptively more strongly protected? And n-- I came to two conclusions about that based on reading a lot of other people, including Supreme Court justices. Not only is there special value-- at least potential value-- to expressive (THUMP) conduct for individual liberty, for equality, for-- democracy, but also the potential harm is indirect.

And that's why our months always said to us, "Sticks and stones may break your bones but words will never hurt you." When did they say that to us? They said it when words had hurt us, right? So it was not a factual statement, it was an exhortation. Don't let the words hurt you, right? Because in order for words to have any impact they have to go through the intermediating process of the human mind. And yes-- I do absolutely recognize and I acknowledge in my book the pathbreaking law professors who a generation ago-- were the first ones that brought to widespread attention not only the adverse potential psychological impact-- but also with physiological manifestations, and also adverse free speech impacts, right?

There are free speech concerns on both sides here. If you're subject to horrible, hateful speech you may well be silenced. My own experience corroborates that as I've been on the receiving end of some of it. But-- experts say that there are techniques that we can learn-- including through cognitive behavioral psychology (THUMP) and other strategies to not let those words have that power.

And I quote not only-- psychological experts, but also political activists including Barack Obama and other minority leaders who are exhorting students, "You have to learn to rise above this and not let it-- it's hard, but but-- there are strategies you can use," as was used throughout the Civil Rights Movement.

Now, in Richard's own book I found actually supportive of this position because focusing on the potential of hateful speech to trigger violent conduct, Richard cites-- many experts and studies who say that listening to hateful speech is not necessarily going to instill hateful attitudes, and even hateful attitudes are not necessarily gonna translate into hateful actions.

And I was especially-- surprised to see that there's been some-- and I'm sure all of this is subject to debate, but at least some social scientists who say, "You know what? That famous case of Rwanda," which I cite favorably in my book-- "maybe it wasn't the media that was playing such a significant role in getting people to participate in-- (THUMP) the most horrible violent brutality." So-- I do think that we should not just assume that human beings are-- predictable automatons who are gonna have necessarily adverse reactions. And part of the job of-- counter-speech is to do whatever we can to re-- at least reduce the potential negative impact (COUGH) of hate speech.

But I d-- I-- I-- I'm sorry if I came across as-- as trivializing it, because I really don't. In terms of-- being inevitably broader over-- or vague, there I think we're also on the same

page, Richard. Because I do-- I agree-- you know, there were two dissents in the Virginia versus Black case, but I actually disagreed with them. I thought the Virginia statute-- did satisfy a w-- it-- it satisfied the truth -- or intimidation standard.

And I have gotten some pushback from some people who are even more free speech absolutists who say, you know, I was too yielding in saying that those exceptions are appropriate. But I do believe (DOOR) that they are appropriate. Same thing on the hate crimes. I mention that the ACLU national board did have a very fractious debate over it, and I think there are plausible arguments. Some free speech absolutists-- and I debated Nat Hentoff about this many times-- think that the whole concept of enhanced penalty for what I prefer to think of as a discriminatory crime, because I see it as analogous to an anti-discrimination law-- more analogous than to hate speech.

But they th-- the argument was that, "Well, when you add a penalty for the hateful or discriminatory motive that is, in effect, creating a thought crime, because that's the explanation for the extra punishment." And again, because of analogies to anti-discrimination law I reject that.

So I am on the same page with you there. And finally in terms of-- enforcement, I-- I re-- I have read a little bit about the underenforcement of hate crimes laws, and I would be all in favor have having them-- not only vigorously enforced, but making sure that we don't see the same pattern there that we see with respect to other crimes that are vigorously enforced, namely disproportionately against members of minorities.

Because-- I think it's no coincidence that the first hate crime case to reach the Supreme Court-- was against an African-American. And it could so easily-- and hate crimes charges have been raised even by police officers-- when they're charging somebody-- an African-American man typically that they're arresting, with resisting arrest, and then trying to elevate it to a hate crime. So I know that this is gonna be Richard's next book, and I'm very much looking forward to that.

## **ARYEH NEIER:**

If I may interject-- here-- Nadine, your last point was the w-- (MIC NOISE) was one-- that I was going to-- make. When I-- when I talked to the Hungarian-- Civil Liberties Union they tell me that-- most or virtually all of the prosecutions for hate crimes in Hungary are prosecutions of Roma-- for hate crimes against-- ethnic-- Hungarians. And so-- one has to be careful-- in this area because it is, after all, going to be the law enforcement authorities-- in a particular ca-- place who are going to make the decision-- as to-- to when to enforce-- particular laws.

The fact that there haven't been-- hate crimes-- reported to the F.B.I. from Mississippi may be a good thing, because if the Mississippi police-- were making arrests for hate crimes-- there's a good chance that-- they would be African-Americans who would be-- arrested for-- hate crimes-- in Mississippi.

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The-- the other point I wanted to make-- is that-- any time that one is-- dealing with speech-- one has to be extremely careful. And a reason for that is that you cannot possibly-- specify exactly what speech-- is prohibited. There are an infinite number of-- variations on the way that you can express something. If you are-- promoting hate against a particular group you don't have to-- mention the name-- of that group.

If you called them cows-- the audience will very quickly understand who you mean-- by cows. And-- then-- there is a discretionary-- role-- for the law enforcement authorities in deciding when to-- pursue-- a matter. And-- the-- you can't ever keep up with the-- the infinite number of variations-- on-- speech.

And I think that's one of the reasons w-- that one ought to be especially cautious-- in trying to legislate-- with respect to speech. Certainly one can legislate-- with respect to-- violence-- one can-- legislate with respect to intimidation. Those-- are crimes regardless of-- who the-- the target is or whether the-- the target-- is a target-- because of-- race, or religion, or-- gender, or sexual preference, or whatever.

But once you limit something-- to-- to speech-- you-- allow that immense area of discretion-- for law enforcement authorities, and-- I'm not willing-- to entrust-- law enforcement authorities with exercising that discretion to-- to protect minorities. I agree that-- hate speech-- has harmful effects-- that-- if-- people are insulted-- because of their-- race or because of their sexual preference, that has a harmful effect.

But I'm not sure that I want the-- the local police to be making the decisions about-- when to-- to intervene-- and to make an arrest, and to bring-- a prosecution. And on those grounds-- alone I'd like to give as much-- space as possible for things that only involve speech, that do not involve-- something that goes beyond speech-- such as violence or the threat of violence.

(OFF-MIC CONVERSATION)

## **RICHARD ASHBY WILSON:**

Yeah. So if I understand-- so thank you for-- and I apologize if I mischaracterized you, but-- I tried to create (BACKGROUND VOICE)-- a bit of blue water between us, but it turns out we-- we did agree after all. (LAUGHTER) I fa-- I failed. But thank you for clarifying and-- and I-- I accept-- you know, the-- those points you made. Now, with response to Aryeh's question it sounds to me-- and again, tell me if I'm mischaracterizing. But it sounds like what you're saying is, is that let's avoid building out a fully worked-out system of hate crimes-- in our justice system because of the longstanding and inherent racism in our justice system. And that to me is--

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## ARYEH NEIER:

Not-- not-- not quite. (LAUGH) That is, if there is violence or if there is-- intimidation, by all means-- prosecute. It's the verbal aspect of it-- that-- I'm most worried about.

## RICHARD ASHBY WILSON:

So use existing laws of harassment, and intimidation, and threat and leave out the hate crimes/hate speech element of it because you don't think it helps? You think it will be used in a pernicious manner as-- in with the Hung-- you know, the Hungarians and the Roma. I guess my question would be, you know, isn't this a little defeatist? How do things ever change?

And are there any examples where countries have built a system of hate crimes reporting and prosecution that seems to work pretty well? And I think there is. So if one looks at England and Wales-- Scotland has a different system and Ireland has a different system, but England and Wales put in place a proper system of hate crimes reporting about 20 years ago or so, and they-- they report 80,000 hate crimes a year in England and Wales, which is a country with one sixth (?) the population of the United States. I don't happen to think it's because the population of England and Wales is especially racist and intolerant.

I think they're just reporting it. And that's a lot, that's a big number. If proportionately the United States was reporting at around the same r-- at the same rate we're looking at 400,000 to 500,000 hate crimes a year. Right now the F.B.I. is reporting 7,000 a year. It's probably one tenth or one-- 5% of what it really is. And to me, my concern is that we don't know what's happening.

There's no system for collecting data on this. You don't have to prosecute a hate crime to report a hate crime. In Britain the police commissioners know what's happening in real time, and they know that if there is a community for purposes of argument like Birmingham, or Manchester, or Stoke, which has a large proportion of immigrants, and there's a tax on those immigrants they'll see waves of hate crimes against particular communities, and be able to respond in a much more effective way than the F.B.I. in the United States with its, you know, 12% of law enforcement agencies reporting, which is mostly California, New York, and actually Texas has a pretty good reporting system.

And again, if Texas can do it, (LAUGHTER) then it suggests to me that some other states can do it. And I would throw back to Aryeh that Texas actually has a pretty decent hate crimes system for collecting and reporting data. So I would like to use those few rays of light to build out this system so the-- at least we know what's happening in real time.

That police are trained, they are made aware, and you challenge those potentially racist attitudes or anti-immigrant attitudes they have about hate crimes. There's a proper system of training and reporting, and we saw this in Connecticut with re-- with regard to traffic stops. I was on the-- commission for-- Civil Rights-- of the state of Connecticut and-- we kept

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insisting that police officers report race in traffic stops (DOOR)-- because there was accusations of racial profiling.

The cops said, "We can't do it, we can't do it. It's too expensive, it's too onerous." And we got a system from Rhode Island and put it in, and it cost \$75,000, and it improved drastically-- simply our knowledge. Because you can't address a problem unless you know what's going on. It's a basic data problem.

So-- I guess I would like to try, you may bel-- you may well be right in the long term that this hands over too much power to law enforcement. But I would hope that in the process of - of-- of creating such a system that, in fact, we're able to have some real discussions about-- racism and-- and-- and-- and anti-- religious bias or anti-immigrant bias in law enforcement in the U.S.--

## **NADINE STROSSEN:**

May-- may I just say one other word? Because you know, in the whole context of work that OSF has been doing, and ACLU, and Human Rights Watch, and so many other great organizations that we support, you know, we've been complaining about overcriminalization. And by all means, if somebody (COUGH) commits an act of violence they should be appropriately punished.

But I think we also have to be concerned about restorative justice, and rehabilitation (to use a quaint word), and I-- I do not give ho-- up hope on the hatemongers. I have read many inspiring accounts of people who even were leaders of white supremacist and other hateful organizations, who have been weaned away from those beliefs. And it was not because they were treated as criminals and incarcerated. That might well have a counterproductive effect in terms of increasing their-- support for-- for racist hate gangs. So I think we sh-- in terms of what is the most effective way to dissuade somebody from harboring those attitudes or acting on them, I wouldn't put overreliance on the criminal justice system any more than I would for other antisocial conduct.

## **ARYEH NEIER:**

Okay. I think we can-- open it up to the-- the audience. There is a microphone-- over here. If you go to the-- (THROAT CLEARING) microphone, if you want to ask a question, please limit what you have to say-- to-- a question. Please also identify yourself. And-- you should know that-- this event is being recorded, and so in the process of identifying yourself you're giving your permission-- (MIC NOISE) (LAUGHTER) to-- have the-- the recording used and broadcast. Go ahead.

## NEIL FELDMAN:

Okay. I-- my name is Neil Feldman, I have a background international conflict. No longer work in the field, thankfully. (LAUGH) The question is about the-- you know, the slippery slope, the term-- in terms of-- of-- of hate speech and the continuum from speech to incitement of actual violence. And that's-- and-- and-- and I suspect most people in this room would agree that inciting violence-- should be criminal. And-- but how do we do that-- it's really hard. You know, "Jews belong in the g-- in-- in the gas ovens," (THROAT CLEARING) to, "Push the Jews into the gas ovens," I mean, how-- how can this be done-- it should be done-- thank you--

## NADINE STROSSEN:

You-- s-- I thought one of the great things about Richard's book is that he actually lays out 11 factors that judges should take into account in assessing whether speech is likely to have an inciting impact. Both in the United States and internationally judges are doing it by the seat of their robes, right?

Common sense. And the cases that have gone to the Supreme Court, all I can say is the-- with one exception the Supreme Court has rejected the conclusion that speech satisfies that appropriately tough standard. The one exception actually is-- Wisconsin versus Mitchell, which I think of as the first hate crime speech, in effect. Because-- well actually, the-- the court didn't rule on this.

But it was a situation where an African-American had just watched *Mississippi Burning* with some friends of his and he says-- "You all feel hepped (PH) up to move on some white people?" And a white kid is walking across the street, and Mitchell says to his friends, "There's a white boy. Go get him." Now, that happened to raise the issue, it was charged under a hate crime statute. To me, that would satisfy intentional incitement of imminent violence. But-- other than that, (THUMP) the court has-- been very, very strict. And-- and I think Richard's factors are really excellent. They're based (NOISE) on social science insight as to what speech is likely to have that imminent impact, right?

## CHRISTINA CERNA:

My name is Christina Cerna (PH). I agree with all the panelists that-- nothing you say or nothing you write should ever result-- unless it incites to violence, should ever result in a deprivation of liberty or be considered a crime. But I think there's something new on the scene, which is intentional lying. (LAUGH) and I'm wondering if-- we couldn't come up with some kind of civil (LAUGHTER) penalty for saying things like, "Obama was born in Kenya," when everyone knows it's not true. And if those of you on the panel think that this kind of civil issue is a problem.

(OFF-MIC CONVERSATION)

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## NADINE STROSSEN:

Well, Aryeh and I both laughed when you said it's new. It's-- (LAUGHTER) it's certainly-- it's been around forever and ever. And interestingly enough-- and it's a very serious problem. And you know, the whole fake news problem-- and you won't be surprised that my response to that is, "We need education and more speech." (DOOR) And you know, very robust media literacy training from the earliest possible ages. The Supreme Court actually (COUGH) had a very interesting case that you might enjoy reading, in which (DOOR) they struck down a statute that imposed civil penalties for-- certain kinds of lies, and had a long litany of valuable lies-- socially constructive lies that-- and-- and then-- and so when you get-- I mean, just think of, like, little white lies that I'm sure you don't tell, but other people (LAUGHTER) tell-- just to be civil, among other things.

But-- seriously, in terms of robust political discourse the Supreme Court even has upheld, I think correctly, the right to recklessly-- or at least negligently lie about-- and so maybe that's an exception for you-- and actually cause damage to somebody's reputation. (NOISE) In other words, a defamatory lie, if it's about a public official, or a public figure, or a matter of public concern.

Because it says, "The greater harm is caused by people self-censoring if they're not completely sure that it's true." Then they're gonna mince their words, and we would rather have in the rough and tumble of political debate-- in our democracy (THUMP) we'd rather have some lies than have people be so careful that they're-- they're trimming back on their-- (NOISE) the vibrancy of their comments.

## ALISON KO:

Hello. My name is Alison Ko. I'd like to thank everyone in the panel for all of your perspectives. It's been really interesting for me to hear. I'm asking my question from the perspective of a native New Yorker who two years ago graduated from a university in Louisiana. I was wondering if anyone on the panel's familiar with the organization, Turning Point U.S.A., which positions itself as a nonpartisan organization that exists to promote ideas about limited government, fiscal responsibility, and free markets, but in reality is supported by many right-wing politicians, has been very controversial on campuses. And I was wondering if you were familiar with this organization, and how it fits into these conversations.

## NADINE STROSSEN:

I know very little. I just know that it has been the subject of heated protests-- when it has brought speakers to campus. And s-- I've heard exactly the same description that you've given of it. Assuming that that's an accurate description, that it's supporting conservative ideas, you won't be surprised that I would say, and more importantly the Supreme Court

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(COUGH) would say, that the fact that you may disagree with conservative ideas or viewpoints-- or speakers is not a justification for-- suppressing the speech.

I think if you want v-- full disclosure about who the backers are of the organization and what its agenda is that you should feel-- you know, they should be disclosing information-- and presumably that's available from their website. Again, if they're fabricating-- anything I don't think that there should be recourse through a lawsuit or through criminal penalty, but-- you should criticize them for that.

## **RICHARD ASHBY WILSON:**

Can I just comment on the lying piece? I-- I love the intentional lying, because what-- then it begs the question, "What's unintentional lying?" (LAUGH) I think it's the only kind probably that I do. (BACKGROUND VOICE) But-- (LAUGHTER) so I only know of one case where intentional lying-- led to-- a criminal penalty, and that's right around Karadzic. So he's convicted of a number of counts, including genocide. But one of the counts that's not really talked about was disseminating propaganda as part of a joint criminal enterprise.

And that relates to an incident during the war when-- he was contacted by NATO and they said, "We want a humanitarian relief operation in this village to get these Muslims and Croats out of the village into Serb-held territory." And he said, "You can't do that, and if you try to do that I have Serb divisions nearby, and we will attack you." (COUGH) He did not have any Serb divisions nearby, but as a result NATO didn't act, the humanitarian relief or-- organizations didn't act, and people were killed and died of starvation and other crimes.

And so he's actually-- that's part of the decision, that's-- I would recommend you read it, but I think it's 1,400 pages long. (LAUGHTER) But if you type in "disseminating propaganda," you'll find the right paragraph. And it is a very interesting discussion. But there the line was part of a wider criminal enterprise, and so if you lie in furtherance of it then you share the intentionality to commit the criminal enterprise, and then it becomes a question of liability. But otherwise I think if we criminalize lying then-- you know, or even create civil penalties then-- that's a Pandora's box I think that we-- we just can't open.

## **FEA PORTER:**

Hi-- good evening. My name is Fea Porter and I'd like to thank you all for your scholarship and your-- your work, your books. Thank you very much for speaking with us. My question is-- the two paths enunciated by you, Professor Wilson, and Dean Strossen, it seemed to me each to have an issue. Professor Strossen, your strength of argument on counter-speech and your focus in the book on that being-- the primary way that we can get through this seems to have-- an Achilles's heel of the-- the bubbles that we increasingly tend to live in, where counter-speech never reaches us.

And for-- Professor Wilson, I think your-- your term was building out-- robust-- laws that-- effectively-- criminalize the-- the hurting of individuals based on-- hate speech, hate crimes. And I just wanted to suggest that perhaps equally hurtful are immutable characteristics that are hurled at people about their age, fat-shaming, mental illness-- disabilities, et cetera. And so once you open that proverbial Pandora's box it doesn't-- the build-out-- become a sort of suburban sprawl. And if anyone wants to share their own personal Skokie, (LAUGH) as you put it in your book, I would love to hear it.

## NADINE STROSSEN:

So thank you-- for the question, Fea. And it's an excellent question, and I am asked that question in just about every presentation. So people are understandably very concerned about this phenomenon of echo chambers. I-- I was very heartened in doing the research for the book, and subsequently because people now recommend to me examples of counter-speech where people deliberately have broken through bubbles by-- and in fact Twitter did a study of counter-speech on its-- platform by-- I-- apparently there are people who go onto Twitter specifically looking for hate speech precisely-- you know, wherever it appears-- precisely to engage with the hateful speakers on their own sites, in order to try to d-- persuade them to change their views.

And there have been successes. It's a very-- and some of which have been well-documented and reported in the media. I think I have it in my book-- there-- one example was a woman-- Shirley-- her last name was-- was-- was-- was Phelps, right, because-- she was part of the Fred Phelps family that is part of this really virulently anti-gay, anti-Catholic hate group-- called the Westboro Baptist Church.

And she was raised in the church (COUGH) and k-- absolutely believed in it. She was in her 20s and goes onto Twitter to recruit people to her hateful church. And-- other people who were antiracists and, you know, anti-haters started interacting (COUGH) with her. And through a very long, patient, protracted process, which she describes in a *New Yorker* article, she left the church and was disowned by her family, and recruited another sister away.

And-- and there are other examples people are starting to-- to write about this, both the people who interact with the haters to recruit them away, and former haters themselves. Let me mention just w-- and-- and there are-- if you-- actually-- search "TED talks," and "TEDx talks," there are quite a few examples of these inf-- including-- Ms. Phelps herself. Simon Tam, whom some of you may (NOISE) know because of the very important (COUGH) Supreme Court case in which the court-- struck down a federal hate speech law that didn't allow the trade marking of what the government decided was a disparaging term-- Simon himself, an Asian-American rock musician-- had a different, quote, (COUGH) "slant," and he did use the word as a double-entree, as meaning perspective. But he called his bands, "The Slants" because he wanted to change the "slant" or perspective that people have on that word, and see it as an empowering, you know, statement of his pride in his ethnic heritage.

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And you know, (LAUGH) sort of going to Aryeh's point, the government has the nerve to tell him, "No, we think it's an ethnic slur, and therefore you're not gonna be allowed to use the term." But what I hadn't known until recently is that he's a full time crusader for-- human rights and equality.

And he'd done a lot of TED t-- a number of TED talks, including where he talks about-- engage-- he actually goes to prisons and-- you know, where guys come up to him with white supremacist Aryan tattoos, and he has developed relationships with them. And it's a long, slow process but it-- it can be done.

## **RICHARD ASHBY WILSON:**

Good question. The-- the definition of-- hate crimes by the F.B.I. for many years was race-- discrimination on the basis of-- race, color, religion, or national origin. And then with the-- Matthew Shepard James Byrd Act of-- 2009 that was extended to sexual orientation, gender identity, disability, or gender. That's a lot. And your question is, is that too much? I don't think we're handling anything right now-- in terms of documenting and reporting. So the answer probably is yes. (RUSTLING) But-- I think that's a good list. Let's start with that list (LAUGH) and see where we go.

## **MALE VOICE:**

When Soviet Union collapse and communist spark and censorship disappear, for ten years under Yeltsin we have such freedom of speech, so don't be surprised what goin' on right now in Russia. Because even the majority of people reject Soviet system, what come with so-called freedom has become much worse in every possible way. From street crime, to hate speech, and hate action. I wonder how you will go to confront Hitler in the front of ten, hundred, thousand people with your smart and humanistic liberal ideas.

I wonder how 1,000 or millions of good teachers and priest and rabbi would confront avalanche of pornography and sexual deviation of all kind, but have never happened in history this unlimited, this (UNINTEL) censorship, social media. And you can bring so many example as you wish. You know that fake news spread lasts, what I would say--

(OVERTALK)

## **MALE VOICE:**

Fake news spread much faster.

(OFF-MIC CONVERSATION)

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**MALE VOICE:**

Aryeh (UNINTEL), Nadine, and Richard, thank you very much for speakin'. I'm an undergraduate here in CUNY, City University of New York, studying computational social science. So I'm really interested in the mechanisms of how different social processes happen, especially social movements. And the sort of (CLEARS THROAT) idea I think was--

(OFF-MIC CONVERSATION)

**MALE VOICE:**

--implicit in-- what a lot of y'all were sayin', was that-- basically if we have these hate laws in place-- or hate speech laws in place, then depending on the culture, for example, if the political culture in the country becomes very right-wing, then those laws will be targeted and abused to apply to only a specific set of people. But will that actually happen? Are there, like, large studies across countries of very specifically written stringent laws being misapplied based on the-- whatever the political culture happens to be? Or is that just a sort of slippery slope assumption? (CLEARS THROAT)

**MALE VOICE:**

My name is Scrupalpra Bacher (PH). Broadly speakin', I'm a journalist – I actually worked at the United Nations for many years. And-- prefacing before my main question is-- I'm a registered Independent also. Are we missing leaders like Martin Luther King Jr. who basically in the *I Have a Dream* speech he said, "I will not allow my children judged by the color of their skin but by the content of their charac--" in Johnson and Kennedy's time? Are we missing those leaders?

Second and last thing, has Donald Trump (without getting deeper into that)-- has he fanned the white supremac-- you know, subtly or whatever? Because it really bothers me, especially as a registered Independent, concern for my country now-- America, I've been here a long time. So I would appreciate your question.

(OFF-MIC CONVERSATION)

**NADINE STROSSEN:**

Wow, these are-- tough questions. I hope that-- Aryeh and Richard can-- can chime in but I'll-- I'll take a crack at it. So-- the first question with respect to-- the former Soviet Union, I'm actually now going to quote Sandy-- I don't know if she's here. I paraphrased her before. (THROAT CLEARING) But-- one of the points she made in the report that I mentioned was that in Eastern Europe and the former Soviet Union the anti-hate speech laws were vehicles for the persecution of critics who were often also victims of state-tolerated or sponsored anti-Semitism.

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So that certainly was the effect of censoring hate speech. And then in the immediate aftermath of the fall of the Berlin Wall and of-- s-- Soviet style communism, I remember outbreaks of ethnic violence, right, and anti-- religious violence.

So certainly the hate speech laws had not done anything to sufficiently tamp down the actual hateful attitudes, let alone-- hateful conduct. And-- I didn't write down notes for second question and (THROAT CLEARING) your question. The second question-- w-- so my memory-- is have there been actual documented studies that show that when somebody comes to power-- that people who are in opposition will be the ones that are censored? That, again, it's anecdotal-- reports of what happens. But I think even more-- and I cite many, many examples in my book, both historically and around the world today. But I think the important point is just the logic that goes back to when you talk-- when you get beyond the specific-- exceptions to free speech that are fairly tightly drawn-- not perfect but-- but much more tightly than a so-called bad tendency in direct possibility of causing harm (THUMP) or dislike of the viewpoint, because of the inevitable discretion.

We would predict that those who have the power to exercise the discretion are not gonna do it in a way that is harmful to their own political interests, or helpful those of their political opponents. That's just logical. But I would welcome-- more empirical-- systematic empirical documentation.

I looked for every-- report that has been made on point, and I never saw an exception to the pattern, including in the enforcement of hate speech codes on college campuses in the United States. And the third question-- do we have-- political leaders today who have the eloquence of-- Dr. King? I-- I-- I hate to say this-- because I don't want to sound partisan. But-- the person that I quote more often than anybody else, even Aryeh-- is Barack Obama. On he-- and you know, those of you who follow the ACLU know that we were as neutral on him as we are on Trump. For each one we issue criticize or praise on-- criticism or praise on an issue by issue basis. And Obama-- certainly earned his fair share of criticism. But I think on racial issues and issues of human dignity and equality, he was superb and he was eloquent in ways that I didn't appreciate as much until I wrote the book.

Because then I read-- the commencement addresses he gave on this point, including his last commencement address at Howard University. His speech at the United Nations, at the time when it was thought (as it turned out incorrectly) that the attack on our-- embassy in-- in Benghazi was based on a hate film. And even when he thought that was the reason he still so forcefully defended the American approach to freedom of speech, while also so strongly supporting the dignity and humanity of everybody. (THUMP) So-- I think we-- we don't have to go quite as far back as King to find such eloquent leaders.

## **RICHARD ASHBY WILSON:**

I-- I'd like to respond to the question from the undergrad student-- which is a very good question, what happens when you introduce hate speech laws? Has there been-- a careful study of this? I think the answer is no. But it is interesting to reflect on Britain, which had--

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you know, a broad free speech protections-- actually long before the United States-- in the early 20th century. Much less speech repressive (COUGH) than the United States.

But it brings in a lot of-- hate speech legislation starting about ten years ago or so, and specifically the 2006 relis-- Religious and Racial Hatred Act. And the intention was to protect-- its Muslim population from Islamophobia.

But echoing Nadine's point-- (NOISE) hate speech laws are often used for other purposes, and the first person convicted was a Jehovah's Witness-- at Oxford Circus yelling that homosexuality was an abomination against God. And-- now, that's reprehensible, loathsome behavior, but honestly, yelling something idiotic in Oxford Circus should not incur a criminal penalty.

And so it was really a clear example of overreach, and overreach in a direction that the law was not intended to go in. So I think that supports what-- what Nadine has been saying about the unintended consequences of-- of new hate speech laws. But the question is, did that then lower hate speech in the British context? And I think the answer is no. And in fact, things got worse. Now-- one can't-- link that to the actual law, but the-- the act and the-- enforcement of the act didn't diminish either the-- hate speech prevalence or the consequences of hate speech for British politics.

## **NADINE STROSSEN:**

I'm so sorry, I misunderstood the question. There is actually one study that was done by two Australian professors, which I cite in my book, where they do look at whether the hate speech laws in that country led to a reduction in the incidence of hate speech. And their conclusion is no.

And they use a lot of interesting evidence, including statements and letters to the editor. And they had very wide-ranging database. And-- they h-- concluded that it-- it didn't even reduce (THUMP) hate speech, let alone hateful attituded.

## **ARYEH NEIER:**

Okay. I think we've reached the point where we-- (COUGH) we need to bring this to a close. (APPLAUSE) Thank you very much to Nadine, thank you very much to-- to Richard. The book is *Hate: Why we Should Resist it with Free Speech, Not Censorship*. I saw there were copies of the book outside on sale. I recommend it highly.

\* \* \*END OF TRANSCRIPT\* \* \*