MICAH SCHWARTZMAN: Welcome, and thank you for joining us for this overview of Sines against Kessler, the trial of white supremacists, that's currently taking place in Charlottesville. For those of you who I haven't met, I'm Micah Schwartzman. I direct the Karsh Center for Law and Democracy. The Karsh Center is a nonpartisan legal institute whose mission is to promote the understanding and appreciation of principles and practices, that are necessary for a well-functioning pluralistic democracy. Those include civil discourse, civic engagement and citizenship, ethics and integrity in public office, and, of course, respect for the rule of law. The Karsh Center is co-sponsoring this program with UVA's Jewish Studies Program.

We have with us today a distinguished and expert panel. John Jeffries, next to me, is the David and Mary Harrison Distinguished Professor of Law and Counselor to the President of the University of Virginia. He served as dean of the law school from 2001 to 2008 and, I think it's fair to say, that he has received every award that UVA can bestow on a member of our community. Given his expertise in civil rights litigation in federal courts, I have prevailed upon him to join our panel. And I'm grateful that he can be here with us today.

Leslie Kendrick is the White Burkett Miller Professor of Law and Public Affairs and Director of our Center for the First Amendment. She served as Vice Dean of the law school from 2017 to 2021. Professor Kendrick is an expert on freedom of speech, tort, and property law. And she's written extensively on the harms of free speech, including on the events that are at issue in the Charlottesville trial.

We're also fortunate to have with us today James Loeffler, who is the Jay Berkowitz endowed Professor in Jewish History and Professor of History at the University of Virginia. Professor Loeffler serves as Ida and Nathan Kolodiz Director of the Jewish Studies Program. He's been covering the trial daily and live-tweeting parts of it. I encourage you to follow him. And I want to thank him for taking some time away from the federal courthouse, today, to be with us.

Before I turn things over to our panelists, let me give a brief introduction, or overview, of the events that led to what we are calling, the Charlottesville trial. As you know, on August 2017, white supremacists from across the country converged on Charlottesville for a rally that they dubbed, unite the right. As a pretext, they used the Charlottesville City Council's decision to remove Confederate monuments of Robert E. Lee and Stonewall Jackson from two city parks. On August 11th, led by Richard Spencer and James Kessler, two graduates of the University of Virginia, hundreds of white supremacists carried torches and marched through their main grounds of UVA shouting, quote, "Jews will not replace us," unquote, and other neo-Nazi slogans. When they reach the rotunda they surrounded and assaulted a group of UVA students, who had formed a human circle around the Statue of Thomas Jefferson as a form of counter-protest. On August 12th, the white supremacists who marched on UVA turned their attention downtown. Many were dressed in paramilitary uniforms, armed with body armor and semi-automatic weapons. There was extensive violence and mayhem in the streets as white supremacists attacked members of Charlottesville's interfaith clergy and fought with counterprotesters. That afternoon, after police had broken up the Unite the Right rally, a white supremacist drove his car into a group of peaceful protesters, killing a young woman, Heather Heyer, and injuring many others. This trial is about the events of August 11th and 12th. Under President Trump, the Department of Justice failed to bring any civil or criminal charges against the organizers of the white supremacist rally, and the trial represents an effort to do that with nine plaintiffs, including Elizabeth Sines as a named plaintiff, who was a second year law student here at UVA, in August 2017. Those plaintiffs have sued the white nationalists and neo-Nazis who organized the violence in Charlottesville along with hate groups that some of them represent, including Vanguard America, Traditionalist Worker Party, Identity Evropa, National Socialist Movement, the League of the South, and two groups affiliated with the Ku Klux Klan. With that, very brief, overview I want to turn things over now to our panelists. I've asked Dean Jeffries to talk with us about why this is a federal case and the role of the KKK Act in this litigation. Professor Kendrick will address free speech issues, and I'm hoping that Professor Loeffler will give us an update on the trial and what's happened, so far. Dean Jeffries, thank you.

[FOOTSTEPS]

JOHN JEFFRIES: I appreciate Micah allowing me to stand. If I sit, I probably will put myself to sleep. The central claim of the plaintiffs, all of whom were injured in the events of August 11 and 12, is that the defendants did not merely plan a demonstration, or a rally, but contemplated and committed physical assault. The complaint filed in the Western District is 112 pages long and it is unusual in the wealth of evidentiary detail recounted. Plaintiffs are advantaged in recounting that detail by the use of an invitation-only website called Discord, which is where the defendants communicated back and forth about what they wanted to accomplish. And some of those communications seem to suggest that they aimed not merely at speech, but at illegal conduct. The such claims support a straightforward claim of conspiracy under state law. Most of you, probably all from first year criminal law, think of conspiracy as a crime. Of course, it is, it's an agreement to commit a crime. But there is also civil conspiracy, which is agreement to commit a tort. And the torts alleged here that were part of the plan were assault and battery and also a violation of Virginia's hate statute. That claim of civil conspiracy under state law seems to me relatively straightforward. And, if I may venture a guess, it seems to me to have relatively good prospect of success. But the claim that has drawn the attention is not the state law claim but a federal claim.

Under 42 USC 1985 (3), that is, for those of you not used to the lingo, 1985 paren three, subsection three, which is a provision drawn from the Civil Rights Act often called the Ku Klux Klan act of 1871. 1985 (3) is an obscure provision. In its most abbreviated form, leaving out everything I can, it authorizes damages against persons who conspire for the purpose of depriving any person, or class of persons, of the equal protection of the law, or of the equal privileges and immunities under the law. A different provision of that same 1871 statute, vastly more important today, authorizes damages actions for those who act under color of law to deny federal rights. That provision is codified at 42 USC 1983, a citation that many of you will find familiar. I teach a whole course in Civil Rights litigation against state officers under 1983. 1985 (3) does not require that the defendants be acting under color of law. It reaches purely private conspiracy. Or to put the point a little differently, it reaches conspiracies involving only private parties.

Now at the time that provision was enacted, and for decades thereafter, there were grave doubts that Congress had the power constitutionally to legislate against purely private tortious activity. Those doubts need not concern us, now, as they've long since been laid to rest. But the modern Supreme Court has continued to be worried about the scope of 1985 (3). Specifically, the court has been concerned that the statute not become a font of tort law. That is, that this federal statute aimed at a breakdown in state authority during Reconstruction, not grow into a wholesale displacement of state tort law. As Justice Stewart said for the court in *Griffin v. Breckenridge,* that's the case that rediscovered this statute, the statute was not intended to apply to all tortious interferences with the rights of others, but only some narrower category of cases.

For that reason 1985 (3) has been construed more narrowly, much more narrowly, than the Virginia conspiracy law that it parallels. Specifically, 1985 (3) has two limiting features. First, the conspiracy must have been motivated by a class-based discriminatory animus. Racial prejudice qualifies. For reasons that I'll mention in a second, it may be that racial prejudice is the only class-based discriminatory animus that qualifies, that's not clear, but that does work. Second, the conspiracy must aim to deny to the plaintiffs what the District Court Judge Moon called, equal enjoyment of rights secured by the law. Now, follow me here. Generally speaking, rights secured by the law are secured by the law against government, not against other individuals.

As a broad generalization, you have a whole panoply of constitutional rights and they apply against the government, and not against each other. Think of the First Amendment. You can't be discriminated against by the government based on your political views, but you as individuals are free not to eat with Democrats or not to date Republicans. You're not subject to the same kinds of constraints. This leads to a conclusion that many non-lawyers, and indeed many lawyers, find surprising. That is, that conspiracy under 1985 (3), although it involves only private participants, generally, must aim to interfere with government provision of equal rights. The only alternative, and it here is the crucial alternative, are those few rights guaranteed against private parties.

Now, the only rights guaranteed against private parties under the Constitution are those protected by the 13th Amendment, against slavery and involuntary servitude. And under the authority of the 13th Amendment, Congress has legislated against purely private racial discrimination. So the Supreme Court has held that a conspiracy, motivated by racial animus, to deny aspects of racial equality, is covered by 1985 (3), even if not much else is. And there are serious unresolved questions. For example, whether animus against Jews would also be covered by the statute. Now, in my admittedly inexpert reading of the complaint, I'm probably the least informed person here, I would venture the opinion that the allegations state a cause of action under 1985 (3), as Judge Moon held against a motion to dismiss. But I would not want to be understood as suggesting that road to recovery is clear or easy. There's a lot of uncertainty about 1983, and a lot of room for, sometimes highly technical argument, about what it does and does not. Much clearer case can be made under state tort law.

So if state tort law is easy, as it seems to me, why all the storm and drawing about bringing a 1985 (3) case. Well, you'd have to ask the plaintiff's lawyers, but my guess is that the purpose of bringing the 1985 (3) claim is because it gets you into federal court. If you bring a federal claim, you have federal jurisdiction. And once you get that federal claim in federal court, the federal court can hear an allied state claim, under what is called supplementary jurisdiction, in 28 USC 1367. So the plaintiffs don't have to choose between Federal claims and State claims. They can bring their Federal claims in federal court. And the State claims tag along with them. They can bring both. Why would the plaintiffs care so much about getting into federal court if it is, in fact, easier to prevail under state law in state court. Well, I would just mention that these are mostly out of state lawyers. They're probably more familiar with federal court, maybe more familiar with federal practices and procedures, that could be a reason. There are all kinds of security concerns and challenges associated with this trial. Federal courts have deeper bench, in that regard, greater resources to control the situation, that may be a reason. But I suspect, and I will ask our other panelists to tell us whether this is a sound intuition, I suspect the main reason is publicity.

There is very little prospect here, as far as I can see, of recovering a massive amount of money. These defendants are mostly judgment-proof. Indeed a couple of them already reside at the expense of the state making automobile licenses. You can't get blood from a turnip. There are a bunch of organizations involved and they're all charged as Micah recounted, things like the Traditionalist Worker Party, the League of the South, the Identity Evropa, some division of the Proud Boys. But like most extremist organizations, whether on the left or the right, these things come and go. Rarely do they stick around and acquire and possess significant assets.

So, financially, this litigation, seems to me, likely to be a dry hole. But as a public statement, as proof of the illegal intentions of the event organizers, as a way of laying to rest for good and all, any notion that these were, in President Trump's words, "good people," on the other side, this litigation may be crucially important. And, for that role of public vindication, federal court is the right forum. And a statute called the Ku Klux Klan Act is exactly the right remedy. Now, it will occur to you, if I may just say it in way of transition, that conspiracy requires agreement. And agreements consist of words. So when you prosecute a conspiracy, you're prosecuting some use of words that the law regards as criminal, which raises, here and in other places, sometimes interesting questions about delineating the difference between criminal conspiracy and protected, if contemptible, First Amendment speech. And, we luckily have, a genuine expert on that question.

[APPLAUSE]

LESLIE KENDRICK: Thank you for that kind and artful transition, John, I appreciate it. Can you all hear me? I just want to note that I just saw 150 students civil procedure in federal court brains light up when you started talking about supplemental jurisdiction. I think this is where you really see the importance of those rules and where the rubber hits the road, and we were lucky to have such an expert to explain that to us today.

So, as both Micah and John mentioned, I'd like to talk about the First Amendment and how it interacts with the conduct of the defendants and the claims of the plaintiffs, in this case. And, to do that, I'm going to start with some first Amendment basics. I want to make two foundational points about the First Amendment that will be familiar to some of you, but possibly new to others. And, I think, it's very important to lay them out. The first is that hate speech, as we think of that term colloquially, is not a First Amendment category. A lot of what people might talk about as hate speech out there in the world is protected by the First Amendment. There's not an unprotected category of hate speech. So a lot of the footage that you may have seen of August 11th and 12th involves slogans, Jews will not replace us, you will not replace us, these types of neo-Nazi slogans, actual Nazi slogans, like blood and soil, those, in and of themselves, are protected under the First Amendment, unless they are, somehow, part of a larger context that's going to fall within an unprotected category. And those tend to be quite narrow, incitement, threats, so forth and so on. So we have this collective action and collective expression that you might have seen footage of, and a huge number of heinous statements by individual defendants that you can read about in the complaint, that in and of themselves, don't give rise to liability, aren't prescribable, under law. They have to fall within some narrower or other type of category, in order to be regulated, under the First Amendment. On the other extreme of that, so you might think everything that these defendants did was unprotected, and that would be false. On the other extreme, people might think because someone was engaged in expressing a message, or their actions were motivated by a political viewpoint, that that protects it or immunizes it from law, in some way, and that too would be false.

So the fact, for example, that on August 11th and 12th, torch-bearing white supremacists were expressing their viewpoint, if one of them throws a torch at someone, the fact that they are engaged in First Amendment activity when they do that, does not immunize them from the consequences of their action, under law. You can think of a lot of examples of this. Most political assassinations, for example, meant to express a political message, that does not make them First Amendment protected conduct. So you see, there's a realm here where, on the one hand, pure speech a lot of it's going to be protected, on the other hand, having a speech component to what you do is not going to immunize your actions. So those are two very important foundational points, that are kind of guardrails, for what's happening within this case.

So now to talk a bit about the actual claims. I'm going to focus here on the 1985 claim. Although, as John mentioned, there are also State claims here and there's more to say about those. But we have here a 1985 claim that's, essentially, a claim by a set of private plaintiffs against a set of private defendants, of a racially-motivated conspiracy, to deprive people of equal protection, where that conspiracy results in injury, that was caused by an overt act related to the conspiracy. So the court in the Western District breaks that down into five different elements. I'm not going to go through all of those with you. I do want to flag a couple of them and how they relate to the First Amendment.

So the first one is conspiracy. So, as John alluded to, there is a relationship between the First Amendment and conspiracy. Most conspiracies, as you can imagine, are made of words. Conspiracies, generally, I'm not talking here about 1985, but just the general law of conspiracy, typically what you have is an agreement, whether express or otherwise somehow formulated, and an overt act. And both the agreement, itself, can be evidenced through speech. And, sometimes, even the overt act, in furtherance of the conspiracy, it can be speech as well. So conspiracy is inherently a crime that is speech-based, in most instances. It's very hard to evidence agreement without relying on words, as evidence. Nevertheless, conspiracy is routinely prosecuted in courts across the nation without people giving it a second thought. Most conspiracy crimes don't even raise First Amendment concerns for the court, for the actors. Public defenders trying to defend someone on a drug conspiracy charges raising the First Amendment, in the vast majority of cases, would get laughed out of court. Because it's generally understood, in the vast majority of conspiracy cases, that conspiracy, to use the words of my colleague, Fred Schauer, is not covered by the First Amendment. It's something that's just outside of the scope of the First Amendment. And garden-variety conspiracy routinely raises no First Amendment problems, whatsoever.

There have, historically, been some border skirmishes between that very large area of conspiracy, where the First Amendment doesn't even arise, and the realm of speech that's protected under the First Amendment. And if you have some background in the First Amendment, you might remember the Red Scare cases from the 19 teens and 20s, where you start to see prosecutions of socialists under the Espionage Act. And here a lot of those were conspiracy charges, the claim that someone was conspiring to hinder the draft or to demoralize the war effort. And, in that context, the Supreme Court has had to say, well, conspiring to convince someone of ideas, that raises First Amendment issues. And what we want to distinguish between is, as the court has said, mere abstract teaching is not the same as preparing a group for violent action, and steeling it for such action. So, they've had to say, look, just conspiring to try to convey a particular ideology, that's not what we're talking about when we talk about conspiracy that's not covered by the First Amendment. When you're talking about trying to persuade people of ideas and working together as a group to do that, now the First Amendment is implicated. But when we're talking about conspiring to prepare a group for violent action, and steel it to such action, First Amendment has no role to play. And that has come up more in the realm of political ideology than racial animus, but the same principles apply.

Now let's talk here about the specific 1985 conspiracy involved here. So what we need, what the plaintiffs would have to show, if we were going to have a claim, because what Dean Jeffries is telling you about is, this is what they would need to establish their claim. And what I'm talking about is, can the First Amendment swoop in to change that in some sort of way, to push back against it. So, they would need to establish an agreement. And here, again, speech is going to be the primary evidence of that agreement. Also here, speech is off the table when it comes to overt acts, at least as I understand 1985. You can correct me, John. But what the Western District, as they've interpreted 1985, the element is, you have to have an overt act of violence or something that's actually a violation of people's equal protection, results from the conspiracy. So we're only really talking about the agreement when we're talking about speech. And, of course, there's lots of aspects of violence that happened that weekend. And they have to establish that those resulted from the agreement. But, there's no First Amendment issue when it comes to the injury. The injury that we're talking about is actual actions, in the colloquial sense. So all we're looking at here is, is there evidence of an agreement? And that question, in this context, is pretty much a garden-variety conspiracy question.

The question is, was there some sort of meeting of the minds about making plans not to express a viewpoint, but to engage in violence, of some kind. And that's something that the plaintiffs will have to show, they'll have to prove that element. But if they have evidence to prove that, with regard to particular defendants, the First Amendment should not stand in their way of doing that. And that's why, as John mentioned, you see Judge Moon in the motion to dismiss, saying, I don't see-- They raised a First Amendment issue in the motion to dismiss and, he says, I think if you assume all of the allegations of the plaintiff are true, they plausibly stated a claim here for a 1985 violation. The First Amendment, if it were going to swoop in, could swoop in at the legal stage as a matter of law to say, even if they can establish all of these facts, this will prevent liability. And he did not draw that conclusion. That's not to say that that's going to be true of every defendant, with regard to every plaintiff, again, they have to prove those elements. But the First Amendment would regard this as a garden-variety conspiracy claim, if those elements are properly instructed and concluded that they're met.

Just the last note I want to make about a potential aspect of the First Amendment, that could be involved here, the racially motivated aspect of 1985. It has to be a racially-motivated conspiracy advancing racial animus. There have been First Amendment challenges to these types of laws. Claims that laws that pick out racial, or other types of animus, are themselves, viewpoint discriminatory and, therefore, violate the First Amendment. I just want to say on that, the primary case is *Wisconsin v Mitchell* from 1983, in which there was a First Amendment challenge to hate crimes legislation that provided an additional penalty for a racially-motivated attack, above and beyond what the same type of conduct would result in another context. And there the court held there's no First Amendment problem in imposing higher penalties for hate crimes than other types of crimes. So, that would suggest that there's no First Amendment barrier to holding defendants responsible for a conspiracy to engage in racially-motivated violence. And, in fact Judge Moon didn't even-- It appears the defendants didn't raise that question at the motion to dismiss stage. In his analysis, the only question was, factually, did they engage in racial animus. And the evidence of that was quite overwhelming. There were some defendants that wanted to claim that 1985 should only hold them liable for v actions against the plaintiffs of color and that anything they did with respect to white plaintiffs should be dropped from the claims. Judge Moon rejected that and said 1985 was meant to prevent violence against people of color and their supporters, but that was as far as they tried to go to maneuver out of the racial animus aspect. But I want you all to know there has been First Amendment conversation about that, but, ultimately, that was rejected by the Supreme Court.

So, my conclusion would be, if the plaintiffs can make out the elements of their claim, the First Amendment will not stand in the way of liability. But a lot depends on how well these ideas are explained within the court. What types of evidence. How well the action in the courtroom conforms to these kind of structures. And how well the jury understands the relationship between the First Amendment and the activities. There's been, already, a lot of talk from the defendants. I was just engaged in speech. One of their lawyers said, you'll never hear me say that the First Amendment protects conspiracy, but there's a lot of talk that could pull in a lot of directions on that. And, I think, a lot will depend on how well these relationships are delineated in court and how well the presentation of evidence adheres to them. But I am not the expert on what's happening in the courtroom that would be Professor Loeffler.

JAMES LOEFFLER: Thank you. I don't know if I'm the expert, but I'm somebody who comes to the trial. I should explain, not as a member of the law faculty, obviously, but a member of the history faculty, studying this trial as part of the history of American Civil Rights history and also the question of how anti-Semitism intersects with various components of Civil Rights law, anti-discrimination law, and these questions. But I'm at this trial to try and understand, like all of us want to, what's going on, and what it means for the story. And I want to make three broad points about this. The first is, I'll talk for a few minutes about, why is this trial happening. And I think we can glean some insights into that, not only from the motions filed and the complaint, but also how the voir dire went. And what's going on with the process of creating a jury and making opening arguments and things like that. Second, how did the different parties see what they're doing there. And I think this will connect up to some things you've heard from Professor Jeffries also about, the goals, what are the goals. And thirdly, just to come back to where we're starting, how's it going. What can we really glean from it in terms of how this trial is playing out so far in terms of what people anticipated, and where it might head.

So, the first thing, why is there a trial. It's very clear that this is a strange situation because there is really no doubt about what happened. There isn't this problem. In fact, the person who's responsible for the most extreme act of violence is serving multiple life sentences for murder, the driver of the car who rammed Heather Heyer and injured many other people. So, on top of that, as you've heard, these are a rogue;s gallery of defendants who are saying, yes we are, in many cases, just these pathetic miserable people with our views. But there's nothing to take from us. And as James Field Junior's lawyer said, there's nothing left to take from him, anyway, and he's in jail. So why do you really need to focus on him? Thirdly, with that, there's the question about what could be obtained. And here we get into a complicated territory that I won't spend a lot of time talking about, but it's an interesting question about the nature of different kinds of damages. Damages you can file for, physical injury, for recovery from physical injury, mental distress, things of that kind. That's torts. And there's an interesting question about how to emphasize how much the plaintiffs were really hurt by this, and the different ways in which they were. Already we've seen that the defense has tried to question how severe their injuries were, whether they've received financial assistance that would obviate the need for this kind of damages, and things of that nature.

But, basically, there is this peculiar problem that we all know what happened and, on top of that, some people really don't want to go back there. So, in the voir dire, it was very clear in the 200 plus potential jurors who were brought in, that many people felt either too traumatized by the events because, after all, most of them are local, if not Charlottesville residents, or they simply want to say, a pox on both their houses. There was terrible things that happened. Those people are terrible, but so are these people who also showed up, the Antifa presence, Black Lives Matter. Many jurors were queried about that. And some of them responded by saying, yeah I don't I don't really know what's right about. This the whole thing was terrible and I'm not particularly interested in going there. And, of course, they were pressed and the judge made clear, your job is just to decide the law, not to go there, but to decide whether the law was broken. During the voir dire, the defense counsels tried very hard to say, basically, this is going to be a both sides argument. And so we need to know what you think about the capacity of the other side to pursue violence, to be domestic terror, in its own right, and to challenge our clients. And that was a line that they had modest success, I would say, in pushing, but the judge, for the most part, steered them away from that kind of voir dire procedure.

And then the other thing that emerged, of course, is that this is a very complex case with multiple defendants and multiple plaintiffs. And that makes it much harder because, of course, the defense can say, well it was that guy, it wasn't me. Or I barely knew him. As you've heard, I wasn't there. I never directly communicated with so-and-so, so where's the conspiracy? That began already, and a central point of that is, the fact that there are six lawyers. I should say there are six defense counsels. Correct me the terminology. There are two pro se defendants. Richard Spencer and Christopher Cantwell are pro se. Already it's clear that the other defense counsels are not happy about that, because they view them as wild cards who don't know the law, don't legal procedure. And while they might be able to exaggerate the drama and draw the focus on them, nevertheless, they also represent the prospect of rogue defendants who can drag down the whole image of the defense. That can work either way. And I think, literally, the jury is still out about how that will play out. Whether that will, basically, create such a scene of chaos and an image that the defense is just a mess, that some of them will not be found liable and others will, or whether it will, effectively, taint all of them. That's become more and more acute. Yesterday was the first day where Richard Spencer showed emotion, by basically resting his head in his hands in a sign of despair when one of the other defense counsels was ineffectively pursuing a line of questioning, and basically tripping himself up over the law. So given that, the kind of miserable character of the defendants, the other thing we could say is, if there's really the possibility that there could be a mixed verdict. And so, therefore, it could not be decisive in showing this conspiracy included all of them. And some of them will be able to claim, aha, we were victims of this criminal-style inquiry, even though it's civil, and that could backfire.

So the answer is, for the plaintiff's counsel, it's very clear first and foremost, they represent victims. They represent people, including young people, who were injured and severely harmed, at least one of them came close to dying. So they want justice. That is their job and they want to pursue that. And they feel very clearly that that has to be done. The first two witnesses for the plaintiffs, the victims have testified. As of yesterday, they completed that. And they were quite effective and eloquent in describing what happened to them and responding to attempts by defense counsel to bait them, and to say, yes, but weren't you a member of this group, or did you know so-and-so or why were you really there. And they came across as what they are, which is recent graduates from this University. Two young people of color who worked very hard to get here and were model UVA students in their level of interest in civic engagement and learning and things like that. So that is one of the goals and is being fulfilled by letting these people tell their story, and their words have closure.

The other thing, though is, of course, as you've already heard about, publicity, setting norms, setting deterrents. And it's very clear that the plaintiffs view this as a larger goal that's really crucial. That there has to be a way to say that there are not two sides here, that there is truth that we can set the record that law was broken. And that we can set the record, not only in terms of making the bad guys own their bad guy-ness, but that we can actually, effectively, have a referendum on the possibility of legal combat against hate groups. And the idea that we can have an assertive initiative, that law can really be effective here. And that not everyone from 2017 August 11, 12th, onwards, will be able to squirm out of this. Certainly, what's happened, since then, overshadows this. And it's clear that plaintiffs' counsel includes very prominent lawyers. Roberta Kaplan did the Windsor case. And she is very, very acutely aware of the political context of this. And sees this, not as a win for her side, but as necessary to respond to extremism as it's become mainstreamed into American politics. So they see that as very key.

So who is succeeding and how is the trial going? The publicity is a double-edged sword. And I think it's clear, from some of the ways the media people are covering it, that, naturally, attention goes to the extremes, and it goes to Christopher Cantwell and Richard Spencer. Cantwell, himself, as you may have seen from following coverage of this, is in federal prison on a different charge. And so he does not have access to the media, this is a condition of his imprisonment. And so this is, for him, a chance to get back out there. And, as you may have heard, beginning with his opening statement to promote his website. He sees a future after this where he returns. And so he will grandstand and he has done that. And Spencer, also in his way, has conducted a very strange attempt at like a philosophy seminar. Citing Leo Strauss and talking about that he can discern noble lies operating behind the testimony. And effectively trying to, basically, say he's the one reasonable man. And so he, too, has seen this as a platform in which to pursue his larger goals, and so on and so forth. So that's a risk.

On the other side, however, if this is about proving the existence of words that show conspiracy, the plaintiffs have an incredible amount of evidence. Five terabytes of data, as you've heard. Incredible levels of detail, as well as video. And they're able to show an awful lot. The testimony that was submitted, video testimony, yesterday and concluded today from Samantha Froelich, the ex-girlfriend of one of the organizers, a former member of the Alt-Right was extremely powerful, because she basically said, when they say they're just joking, they're not just joking. That's a tactic. And they were able to get all of this into the record and to address this. I think, for the plaintiffs, that is a very important goal, to be able to get it out there and to frame a conversation.

So how will it play out? I think, as I've said, it will not be hard for them to show, it's a civil case, it's a lower bar. Much of what they want to show, it will still hinge on showing that the dots are connected with a conspiracy. A huge focal point for the opening statements and, thusfar, has been the car attack. And that really becomes the centerpiece of it. And, so the question will be, if they can really connect all the people to it. A final comment about this. I think that, as I mentioned at the outset, there was a palpable reluctance to get involved among many jurors. The jurors who were selected, some of them indicated that they were reluctant to do this. Hardship, a lot of financial hardship people. A lot of people with nursing and other kinds of healthcare, which were excused. Not all these people wanted to be there. One sense is that there's a dynamic in the courtroom between this chaotic rambling defense over here, and these very well-connected, very well-organized lawyers, maybe too well-connected, too well-organized, from out of state. There has been dog whistling about this, that they're lawyers from New York. And so one senses that the jurors look to the judge, which is the case in many cases, to frame it. if they see the combat and they see the complicated legal stuff going on, they look to the judge. The judge is a storied member of the Virginia Judicial Establishment. A graduate. I don't know what year he graduated law school, but he was-- in college, my part of this University in 59.

JOHN JEFFRIES: '63.

JAMES LOEFFLER: '63 from law school.

So that will be a question, and it's already becoming more of a question, as the plaintiffs are insisting that he reel in the defense and the cross-examinations, and the excessive use of video, and, I think, a lot of that drama of what happens next will depend on how much he disciplines the proceedings. Otherwise, as a reporter joked this morning, we won't be done before January, because it's supposed to go till November 19th, but it's moving very slowly.

MICAH SCHWARTZMAN: Thank you so much, to this panel.

[APPLAUSE]