

**JAMES
LOEFFLER:**

I'm James Loeffler. I'm the Ida and Nathan Kolodiz Director of Jewish Studies here at the University of Virginia, where I'm also a professor of Jewish history. Today's event is co-sponsored by the University of Virginia Jewish Studies Program of the College of graduate school of Arts and Sciences, as well as the Karsh Center for Law and Democracy of the University of Virginia Law School. The Karsh Center promotes civil discourse, civic engagement, ethics and integrity in public office, and respect for the rule of law.

So our conversation today is about the legacies of Charlottesville as we mark the fifth anniversary of the terrible events of August 11 and 12th, 2017. To join me in a conversation about those legacies, about the events, and about what we can learn from it and think about today, I am very pleased to introduce two other distinguished commentators and friends of the University of Virginia, as well as a faculty member. So let me start first by acknowledging that we have here Dahlia Lithwick.

Dahlia Lithwick is a senior legal correspondent at *Slate* and host of *Amicus*, *Slate's* award winning bi-weekly podcast about the law. She's the author of the forthcoming book *Lady Justice, Women, the Law, and the Battle to Save America*, which will be out in about less than a month, I gather. Or just about a month with Penguin Random House. We're also joined by Professor Micah Schwartzman, who is the director of the Karsh Center for Law and Democracy at the University of Virginia Law School, as well as the Hardy Cross Dillard Professor of Law.

Professor Schwartzman is a scholar of law and religion, jurisprudence, political philosophy, and constitutional law. And he has been a mainstay and a presence at the University of Virginia's law school since he joined the faculty in 2007. In fact, one might say even before, given his long association with the university.

So what we intend to do today is have a panel conversation about 2017, about the vital issues of law and politics that we all about, as well as some of the other aspects of it that are less familiar to the American public about where law has gone since that time, what has happened in efforts to combat extremism, racism, anti-Semitism, through law, and the big questions that are on the table for all of us as we mark this anniversary. Our goal here is not to commemorate the entire event. We represent three voices from three different perspectives with different connections to Charlottesville and University of Virginia. There are other important events going on today and in the days to come. And our hope is we can add perspectives to this that will allow us to think about the legacies as well as just the multidimensional nature of this event.

To do that, I will simply tell you that for this hour, we will take the bulk of it in a discussion, which I'll moderate about the themes I've just outlined. And then we'll turn in the last quarter of the hour to some of your questions. You are all invited to submit questions via the Zoom webinar Q&A feature.

And we hope to turn to them at the end of the hour. We are broadcasting this live. There is also a transcript enabled that you should be able to access, and we hope you enjoy this conversation. So let me turn right away to the events of August 11 and 12, 2017. And I'll ask first Dahlia Lithwick to tell us, when did you first realize what was happening, or what was about to happen, and what was your reaction to all of this?

DAHLIA

LITHWICK:

So first of all, I want to thank both of you and your respective departments and centers for hosting this important event. I think it's no exaggeration to say, at least from my perspective, that August 11 and 12 were formative in ways that I'm quite frankly, still grappling with. They really have shaped-- had been a resident of Charlottesville for 18 years when August 12th happened, which I know by Charlottesville standards is not a long time. But in my lifetime, felt really as though an earthquake happened that we have not reckoned with fully. And I know part of our work today is to try to frame some of that reckoning and that work that we still have to do.

So to answer your question, I think I would just start by saying one of the things that we all said in Charlottesville that summer was that if you were paying attention, it was hardly a singular event. We had a Proud Boys March with torches. We had a KKK rally. We had-- with hoods.

There was another Proud Boys event. By the time August 12 happened, it was becoming almost a familiar thing that folks were coming to town, largely outsiders, and felt very, very safe. And in fact, in some instances, were very, very safe making incredibly radical, at the time, I think, statements that were both racist and anti-Semitic.

And so I think one of the things I might start with, Jim, is just the extent to which-- how were we surprised? And how is it possible that with everything we knew-- I mean, I'm speaking as a journalist now, was well aware a week before that it was going to be violent. We knew that.

We had chats. We knew that the police response was seemingly inadequate. And I guess I would just maybe pull on that thread a little bit to say that the fact that post-Charlottesville, we were surprised by January 6 continues to shock me.

And so I think one of the things maybe I would say, just to frame where I am, is-- and I say this again with the knowledge that I covered the truckers in Ottawa, Canada who just came with Confederate flags and all sorts of racist paraphernalia, took over Parliament Hill for over a week, a completely inadequate policing response. And one of the things I want to think about here is, how is it possible that we keep being surprised by events that are almost annual? And so maybe I'll stop there but simply say the fact that we continue to have a Groundhog Day of white supremacist activity, of anti-semitic activity, that we continue to think is singular is part of the definition of the problem, in my view.

JAMES

LOEFFLER:

That's a very powerful way to start. And it's a reminder that there's a-- like is always the case with historical events, there's always a prehistory, which isn't prehistory. It starts before the explosion. Let me turn to you, Micah Schwartzman. Micah, tell us what your first reactions were as you were learning about what was going on and thinking about this also as a faculty member with a long career and investment in life and learning in Charlottesville.

MICAH

SCHWARTZMAN:

So when I think back to August 11, I tried to recall the events as I experienced them. And my first understanding that something was happening came through social media, came through a Facebook post from Chad Wellmon, who's a professor in our German Studies Department in History, who was, I believe, at the time the principal of Monroe Hill-- Brown College at Monroe Hill. So he sits in the middle of main grounds and has these images that are coming through on Facebook of white supremacists marching in unison with torches. And then we got images from that evening from the lawn.

Those, as you'll recall, were quite dramatic. And I don't think we had a full understanding of the violence that ensued after we saw those images until later. Or at least I didn't. I had been to one of the KKK demonstrations earlier that summer in the city parks, what was then Lee Park. So as Dahlia said, we had some understanding of what was coming to Charlottesville, and yet failed quite dramatically to name it, to say what it was.

And I think my other very strong lingering memory from the next day, from August 12th, in the morning, again from, in my experience from social media was to watch photos of Nazis with-- and I say Nazis because here are people in full body armor with assault weapons and carrying swastikas, flags with swastikas on them. I mean, through the middle of Charlottesville, right down streets that from every day.

And then to see public responses which failed to accurately describe what is being seen with our own eyes it's to say these people are being called alt right, or Unite the Right or whatever. But we're not saying these are white supremacists and neo-Nazis. We've got public statements being made by officials who can't bring themselves to say, Nazis are marching in our streets.

And I think one of the most important things that happen on August 12 is, at last by the afternoon, we started to get some statements saying this is really what is happening in our streets. It was so hard for people to wrap their minds around what they were seeing. We couldn't even find the right words to describe what was happening. At least I think now, we're able to do that. Although, again, I think Dahlia is right. It's remarkable that we can't identify this in advance, and we're still surprised.

**JAMES
LOEFFLER:**

Thank you. Yeah. Excuse me. I mean, that seems to be a theme shared by both of you, that we just don't have-- our societal attention refuses to focus itself on this threat. And at the time, even-- it feels like a lifetime ago, but we were living in a time of total media, at a time when there was so much information flowing.

And yet there was some inability to process it soon enough beforehand in real time. And to think about what this is, and maybe that's what-- what I hear you saying is that's a precondition to any other response. Before we can talk about what political leaders should do, before we should talk about what law enforcement can do, before we talk about what citizens can do, it's the task of actually making people pay attention and see it.

So let me turn and talk about the law part of it because of course, we're here with both of you as distinguished legal commentators thinking about American law. And as you mentioned, Dahlia, this is now a pattern. It didn't start with Charlottesville, but it's intensified in a lot of ways. Specific kinds of white supremacist, white nationalist violence, specific kinds of dangerous extremist rhetoric, and other challenges.

So let me just put it to you sort of baldly, are you satisfied with the legal responses to white supremacy and the related threats that we've seen, we've experienced, we've observed for the past five years?

**DAHLIA
LITHWICK:**

I can start and simply say, look, we've been warned by the FBI long before Charlottesville that white supremacist, extremist, violent nationalist movements, militia, none of this is stuff that we were not warned about long before Donald Trump came into office. And with differing, certainly deprioritized by the Trump Justice Department. On that, there is no question.

But I think, and I know, Jim, you just wrote about this in *Newsweek*. But I think part of the problem is we have such a hard time unbraiding white nationalism, and Christian nationalism, and white supremacy from core ideas about patriotism and values that it doesn't ever, I think, feel quite salient. And so it's easier after 9/11 to say, oh, Al-Qaeda, that is for sure for sure an enemy we can respond.

As Micah says, we can name it. We can craft a definition of the problem. We can single-mindedly pursue it. And we have, as I say-- and I think this crosses different justice departments, had a very, very hard time using the machinery of the legal system and the machinery of the Justice Department to address it in a way that-- right?

I mean, you remember the outcry when we were first warned of rising white supremacy and the idea that this was an attack on America itself. And maybe I'll just end by saying I know we're going to talk about the Unite the Right trial in a moment, but the abject failure of the Justice Department to do anything in the wake of Charlottesville was the reason that a civil rights trial had to be brought. And so I think we've had both a front-end problem and then we had a back-end problem.

And in some sense, we both failed to define and understand the scope of the problem in advance and then fail to redress it in any meaningful way as a matter of what one would think the Justice Department would do. And so I think if the bold question is, is law adequate to it? I think theoretically it is. But we are very, very far away from having a legal system that in fact was adequate both in advance and after the fact.

**JAMES
LOEFFLER:**

Right. And one of the things you point out is this strange gap for scholars who study extremism, study anti-Semitism, as well as for lawyers and activists. There's an awful lot of data out there, and the government has spent a lot of time over the past couple of decades collecting this information about different groups, classifying them, identifying them, documenting.

But somehow, that doesn't necessarily translate to the actions that we would want when there are imminent threats. And there's an ongoing array of things that do take place, but somehow, there's this strange gap between the information the government gathers and the kinds of aggressive tools for enforcement, or just the use of the tools. Let me ask Micah, what do you think about this?

MICAH

SCHWARTZMAN: So I think my first reaction to this kind of question is that our whole legal frame for thinking about what was going to happen on August 11, 12, 2017 was wrong. I mean, we thought-- I say, we. I think the community's general reaction, and I think this was true within the legal community, and certainly it was true within the courts, and that we know because there was a legal challenge defended on the other side by the ACLU. The city tried to move the events, so there was a free speech challenge.

But the basic frame was this is going to be a polite, civil demonstration. There's going to be free speech on both sides. And this will be like a 1950s Skokie, Nazis marching through some suburb of Chicago kind of event, and it'll happen, it'll fizzle, and everything will go back to normal. And that was, I think, the model. And that model was just completely wrong.

One reason it was wrong is because people showed up with guns, and guns change everything. It changes the nature of the protest action, it changes the nature of the police response, it changes, I think, the legal response that ought to have occurred. We were not legally equipped to deal with an armed protest. Our police were not prepared for that.

But I think as a matter of law, we just-- I think the city and state law enforcement did not have the tools because they simply weren't prepared to think about what was going to happen there. I mean, that it happens again on January 6 is just mind boggling, that with all the years in between that we had to learn from what happened here, that there wasn't development between Charlottesville and the assault on the Capitol building, I think, to come back to what Dahlia said, still the surprise is there. But anyway, my first thought about the law is even if there were some legal tools available, and I think we were missing some pieces of it, we-- there wasn't a concerted, prepared reaction. And I think partly it's because there was a failure to anticipate the nature of the event.

**JAMES
LOEFFLER:**

So yeah. You make this essential point that we still seem to operate with this distinction between speech and action. But once you have instruments of violence involved, it changes the equation in terms of the threat, the danger, and the character of that speech without getting into even doctrinal issues. It raises new security issues-- public security issues.

And it seems to me that that is recurrent theme that we see, especially because, as we learn from August 11 and 12, so many of these groups have become very, very effective at weaponizing the First Amendment, at strategizing about when and where they show their arms, and about how they think about violence, too. That's one thing that emerged, both a very crude celebration of violence, but also a very strategic approach to it.

How we want to kind of make "the other side", quote unquote, counterprotesters, people who are on the far left and want to turn them into the enemy and paint them as the agents of violence and chaos so that we can therefore justify our response. So let me ask you a little bit about this. And I'll pause here to remind everyone who's with us on this webinar that you do have the Q&A option, and we do expect to turn to some of those questions a little bit later in this hour if there are themes that we haven't hit on.

Let me ask you about the First Amendment. It strikes me that there are so many First Amendment stories inside 2017. Whether it's the question simply about the limits of free speech and free assembly. Whether it's about the role that we now know social media plays and incitement as well as weaponizing speech.

Whether it's something that Micah, I know you've commented on, which is the ways in which you can see even in this horribly racist, racist moment a lot of religion operating, too, and in ways in which there's a move that begins to be made about religious freedom, in some cases turned into a means to pursue Christian nationalism. So I'd like to ask both of you just to talk to us about where you think we are with the First Amendment these days, and what is the Charlottesville angle on that debate, on that conversation, on that story. Micah, maybe you want to lead us off on this?

MICAH

SCHWARTZMAN:

Well, I think the landscape on the First Amendment side has changed. I mean, I think if you walk into court and you have evidence that there's going to be violence at a protest, that evidence will be taken much more seriously today than it would have been taken in 2017. It wasn't taken seriously then. I think now we have examples where cities can supply that kind of evidence and regulate more carefully.

So I think some things have changed, not so much about the law, but about understanding the relevance and significance of the safety and security concerns that surround these kinds of events. I mean, August 11 and 12 raise lots of legal questions. They raise questions about the limits of speech, about the distinction between free speech and violent conspiracy.

We'll talk about the *Sines* case, but that trial did test some of those distinctions. And I think it showed that we can draw some of those lines. We can do it sensibly. There was overwhelming evidence that there was a conspiracy to commit violent acts there, and you don't have a free speech right to bring that kind of violence to a community.

And I think the courts can draw those kinds of lines, but we've had to learn how to address courts, and how to show them that this is, in fact, what's happening. And I think that speaks to a larger set of themes about what's necessary in order to hold people accountable to affect the rule of law. Maybe we can come back to those sorts of questions in a few moments, but I think they emerge out of this confrontation between violence and speech.

JAMES LOEFFLER: Sure. Yeah. I mean, that's such a great point because you're hitting a theme we've already heard mentioned so far in the hour, which is that law isn't just what's on the books, or what someone discovers as a law that bans this, or allows this. It's also how we use it, how we talk to courts, how the public thinks about it, how politicians use it, and how political movements. And I see Dahlia vigorously nodding. So let me ask her whether she's of a similar mind about that.

DAHLIA LITHWICK: I mean, I think there's two initial problems. One is so much of our First Amendment doctrine is moribund, like sealed in amber. It's 100 years old. We have these wacky old-timey cases about what incitement means, and we have face-to-face requirements.

We have-- I mean, these are things that are completely exploded by the existence of social media, by the internet. And yet we still hibe back to these very old fashioned, completely-- I think at the time they were sort of wacky cases. Now the idea that we are lashed to them, it makes no sense. And I would just point out that the Supreme Court has had ample opportunity to examine some of this and has not done a really great job of thinking in a deep, new way about how the way we talk to each other has fundamentally changed and these cases are completely inapt for the era that we live in.

But I think there's a second layer, and Micah flicked at it, but I would say it more expressly, which is if you watched the Charlottesville trial, and I we're going to talk about it, or listened, I guess, is what I want to say. I think Jim is the only person of the three of us who sat in the room. One of the things that was so fascinating I thought was the testimony of Peter Simi from Chapman who testified really-- and I cannot urge people enough to go back and read his testimony.

The ways in which the kinds of speech that were being used were quite literally reverse engineered by these white supremacists and Nazi groups to evade accountability under the First Amendment, and that they do that by-- he talks about front stage and backstage, and the use of irony and deliberate shock. I mean, there's a whole check the box. But I think that it's urgently important that we think about his testimony because this is exactly the issue the January 6 Committee is now probing, which is these questions of stochastic terror, incitement to violence. What does it mean when you put Ruby Freeman's, the poll worker, information out there and leave it to thugs to go and trash her house?

And so I think that we have to be mindful not just the limits of the construct of how we think about the First Amendment. That's its own problem. But that we actually are looking at people who are very deliberately crafting messages that seem to elide any responsibility and yet have the effect of really-- I mean, in the most-- and again, there are so many smart people, Juliette Kayyem is a person who thinks about this through-- as Micah said, this isn't a law problem. This is a terrorism problem. And she looks at it through the lens of terrorism.

But I think that we have to do a better job of connecting up speech that is designed to incite lawless, racist violence and not be so wedded to First Amendment notions that were really archaic, even as they were being penned at the time. But those first Amendment notions are in no way helpful right now and as a consequence, we keep saying, why are we surprised? Why are we surprised? We're surprised because these patterns play out time after time because quite deliberately the speech is being crafted to do that.

**JAMES
LOEFFLER:**

Absolutely. And it strikes me, we can also mention one of our colleagues here at the University of Virginia, Danielle Citron, who's done some really important work on privacy and regulation, because it seems that we often get caught in this very simple binary debate about do we like more speech, or do we want to stop bad hate speech? But there are very specific legal questions and policy questions that play out. Everyone who is watching us on Facebook knows about this. And what we learned in the trial, which I want to turn to now, is just how, not only as you said, Dahlia, how cunning and strategic the organizers of this violent rally were, but also how much they relied on this technology to be able to mobilize to communicate.

One of the big questions for scholars who study this, as I do with an historian, is how much of this is new and how much of this was always there, but now it's able to network and find like-minded militants and extremists and then get legitimated into the mainstream? So historians will argue about what's new and what's different. But the clear thing is technology gives a new way of amplifying all of this.

So let's talk about the trial. Just to refresh those who are with us-- the memory of those who are with us right now, the trial was a civil trial, and this was a lawsuit filed by victims of the violence on those two days in 2017. And the trial took place after many years of preparation, in the fall of last year. And the trial was a civil suit for torts for damages.

So it's an interesting question what the trial was and how the trial was understood by American society. Dahlia, maybe I'll jump back and start with you here, and ask you to talk about it. What was the trial about and what do you think, as we approach a year since then coming up this fall, what do you think about its legacies?

**DAHLIA
LITHWICK:**

I mean, the trial was very deliberately styled, A, a response to a failure of the Jeff Sessions Justice Department to step in and do what should have been done in the view of Robbie Kaplan and Karen Dunn, who brought this litigation. They're feeling was they stepped into that vacuum, that this should have been a federal civil rights trial and that it was not. And so it was deliberately styled to be bad.

And I think it was very much conceived at the time as one of those trials of the century. I think it was meant to be a seminal moment in reckoning with all of the issues we're talking about today. What is the line between speech and incitement? What does it mean to have a causal chain between a series of entirely foreseeable actions, and, in this case, lethal and violent outcomes?

All of that was meant to be challenged. And just the nature of conspiracy. How do you think about the participants in a conspiracy? That's what it was intended to be.

I think all three of us who covered the trial in different ways in different fora could probably concede that in many ways it was swamped. Kyle Rittenhouse was happening at the same time. The Ahmaud Arbery trial was happening at the same time. Both of those were televised.

I think both of those trials told a very clean story about race and racism in America that was much, much easier to explain. I think this was quite a complicated story to try to tell. Credit to Deborah Lipstadt who tried to link up what was happening, in terms of both violent anti-Semitism and violent anti-black racism is complicated. And above everything else, it wasn't televised.

Judge Moon had-- you could call in telephonically. Maybe the only other thing I will say, and Micah can challenge this, is that this trial, in a weird, way gave voice to the worst of the white supremacist and Nazi ideology. In other words, Chris Cantwell was given free range to talk.

Things that you didn't see in either the Rittenhouse or the Arbery trial, we saw in Charlottesville. And that also became very fraught because if you thought about it, as I did, as a messaging problem, this trial, in a profound way, amplified some of the worst ideas that it was trying to quash. And that is no fault of the attorneys. That's the nature of this litigation.

But the fact that the judge had to persistently allow that which was anathema to him and to everybody in the room in order to be fair, I think raised really, really fraught problems about the nature of-- these guys were fundraising in the breaks, and may have fundraised their way out of some of their troubles. And so I'll leave it to Micah, but I do think the trial did exactly what it was intended to do. And huge credit to the attorneys who brought it, but I think in many, many ways, it showed that there are also limits to what a civil trial can do.

JAMES LOEFFLER: Right. Right. And that it also involved, in some cases, some of these white supremacists continuing to try and target victims, or local activists and journalists involved in this, and kind of take advantage of this platform to refocus attention on it. Micah, what's your perspective on it?

MICAH SCHWARTZMAN: So I think about the trial as an exemplar of rule of law. That is, and I think Dahlia is right. It was framed as these private plaintiffs stepping into a legal vacuum where the Department of Justice failed to take these matters seriously. They weren't treated as part of a domestic terrorism investigation, or as part of a concerted civil rights action to uncover a conspiracy, which did exist. There just was no federal-- I mean, there was no federal presence to get to the bottom of what happened in Charlottesville.

And so I give great credit to Robbie Kaplan and Karen Dunn, and the legal team that supported them, and Integrity First for America. Amy Spitalnik led this non-profit to support the litigation. All of that work had to come together. And I think it reflects positively. And if I'm encouraged by anything out of this, it's that we did get accountability under rule of law.

And I take from that some lesson. And the main one is that rule of law is an idea, but it's also a practice, and it requires the support of institutions. And it requires just an enormous amount of work, and of resources, and energy, and funding. But it also requires emotional investment on the part of the plaintiffs who were, I think, courageous and brave to come forward, knowing that they were going to have to relive all of these events, that they were going to be targeted for harassment, and threats, and worse.

We think of rule of law, I think, sometimes as a kind of thin principle or virtue of a Democratic society. And I think this trial shows us it's anything but. It requires just enormous amounts of persistence, patience, perseverance, the emotional investment that comes with a trial like this, to say to the people who perpetrated this violence you will be held accountable.

And so I think if there's one legacy that I would want to highlight coming out is in that sense, in terms of generating legal accountability, the trial was, in fact, successful. It showed, as proof of concept, that these statutes, both at the federal and state level, can be litigated in a court of law, and that if you conspire to commit racial violence like these plaintiffs did in Charlottesville, you will be challenged in a court of law and held accountable for those things. And this trial has spawned other cases coming out of January 6. We've got litigation in the DC federal district courts right now based on this model. And so I think that is an enormous contribution that this trial made.

There were problems of the kind that Dahlia mentioned. I mean, in a way, the fact that it wasn't on television perhaps diminished its public recognition or significance. And that might have been a-- that might have been double edged in the sense that the public wasn't inundated day in and day out for weeks with white supremacist propaganda. Maybe that's a silver lining of all this. But for me, the big takeaway is that here was an example of the rule of law functioning successfully and showing others that it could be done, but also showing how much work it takes. It's an enormous amount.

**JAMES
LOEFFLER:**

But that's actually a hopeful model you're suggesting because it's not just the judges, right? We focus so much on the judges, rightly, obviously, but it's also how people approach the system and what they're willing to do to build capacity for communities to work with lawyers and lawyers to work with the funders they actually need to do this kind of action, and the people to tell the story through the media, so an ecosystem.

I wonder about this. And as I've indicated, we're going to turn in just a few minutes to take some of the questions that are coming in. I would also encourage people to put the questions in. First, I'll simply remind people this was a civil trial. And as you heard, Micah mentioned the overall claim, you could say, is conspiracy to commit racially-motivated violence.

So it was about civil rights. It was about a conspiracy, but done through a civil legal framework. And of course, that's part of the problem, was that it creates-- as Dahlia said a few minutes ago, it creates a platform for the defendants, but it also creates a two-sides narrative where it's two parties. They're locked in combat. It's a contractual dispute, if you will, because it-- not strictly speaking, but it's torts.

And I wonder about that. As we look towards the future and not just the message that we've presented about, more can be done, resources are available, we need to pay attention. But how do we overcome this problem in terms of this idea of two sides?

And this is a question I'd maybe throw out there and see whether one of you has a thought about how we deal with the problem of narrative that seems to be underlying so much of this. Telling the story, getting people to pay attention, getting them to view this not simply as two sides duking it out in court, which is, of course, really what white supremacists and those who are enabling them want.

It's to say, well, it's really just-- we've got one extreme here, another extreme here. Maybe we like this extreme more because it doesn't threaten us, or we think that they're calling attention to these other forces in society. Any thoughts about that?

MICAH Dahlia, you should--

SCHWARTZMAN:

DAHLIA I was going to say, Micah's the philosopher. You go first, Micah.

LITHWICK:

MICAH No, no. The thoughts are not philosophical. They're your piece recently on Alex Jones, they're going all the way
SCHWARTZMAN: back to Trump, fine people on both sides. I mean, how do you hold people accountable under rule of law when a significant part of our public audience thinks that there are fine people on both sides?

That in any litigation like this, there's a story to tell on either side that should have some sympathy attached to it is, I think, a real problem and we're seeing it now with the recent FBI investigation at Mar a Lago. I mean, how do you apply a rule of law if there's deep distrust of institutions of law enforcement, of basic institutions like a jury trial. And I think one way-- one answer to this problem is to use the legal process in a transparent way and to put all the evidence on the record, and to show that it can be done successfully.

And that I think is what happened in *Sines against Kessler*. When you lay out all the evidence and you ask a jury of peers who are unbiased to weigh that evidence under the law, if that process works in the way that it should in a case like this one, we ought to have accountability. And that's what we got. And so that, there's some reason for hope. I'm not saying there aren't countervailing reasons. But I think that at the end of the day, what happened in Charlottesville, the legal process that worked out here in the Civil trial was ultimately a success story.

JAMES Right

LOEFFLER:

DAHLIA Maybe I would just add one coda to that, which is it goes back to Micah's observation that all of every legal
LITHWICK: judicial process is he says, she says, right? I mean, there's always two countervailing narratives. That's not a new proposition. I mean, that is the nature of what we think works about the judicial system.

And I think that one of the real triumphs of *Sines versus Kessler* was the extent to which there was not a lot of disputed facts in this trial. There was dispute around law. We could have a conversation about whether the conspiracy elements were met. But it seemed to me, as Micah says, that if you wanted to produce essentially a case file saying these are the facts undisputed on both sides. And again, my heart goes out not just to the plaintiffs who had to relive this, and we need to be really clear what it means to put them through that trauma again, and put the journalists-- the citizen journalists who have been intimately involved in this through the trauma again.

But I have to say, I think there's something to be said in this moment of he says she says, there's two sides to everything, we'll never get to the bottom of it, complete epistemic closure, that when you watch a jury say, OK, undisputed facts. Question of law. Was there clearly a conspiracy to commit violence? Heck yeah. And ch-ching, now you'll pay for it. I think that that's a massive tunnel through the kind of bubbles in which we live.

**JAMES
LOEFFLER:**

Sure. Sure. And I'm reminded here, one of the issues that came up, and this will take us as we start to move toward some of the terrific questions that have come in, is about the idea that there really were two sides that Antifa, that far left counter-protesters were also violent or intending on violence was basically proven to be false by the trial.

Giving the defendants the chance to cross-examine, and witnesses, and search through all the footage from the events and try and prove that there was a conspiracy on the other side, that there was some kind of organized movement that was equally sinister, equally powerful, that seems to me to be something that was clearly disproven. There was nothing there for them to show.

They could show that some people identified with progressive causes. They could show that there were people who identified with Antifa, but they couldn't show this organized conspiracy. They couldn't show that there was somehow an equal threat or that there was an incitement coming from that side. And I think that's important to remember, too, because the platform there exposed some of the lies, frankly, that come out of white supremacy.

I see we have a number of questions about religion and about Christian nationalism, and the religious piece of this puzzle. There are a lot of ways to think about this. One is to go back to where we began our conversation by saying why is it challenging-- why is it so hard for Americans to register the threat?

And it may be because some of them were just confused by, on the one hand, you have marchers screaming about Jews and there's so much anti-Semitic imagery. On the other hand, the physical targets seem to be, in so many cases, racial minorities. The first site to go to, as we've seen in other incidents of violence, is to target racial minorities, and it's clearly connected to a strong history of racism in this country and a desire to revive racial supremacy.

So I'd love to hear both of you say something about religion. And of course, there's a lot of other stories that have emerged about religion, and law, and white supremacy in the years since. Micah, let me start with you. How do you think about religion inside 2017 and in the years since?

**MICAH
SCHWARTZMAN:**

There's been a lot of talk and a lot of writing recently about Christian nationalism, especially after January 6. And this idea of Christian nationalism as a kind of extreme movement within American conservatism, the idea that our country was founded as a Christian nation, and that that view has to be defended against various kinds of internal and external threats. The threats of wokeness, of multiculturalism.

This is tied up with the defense of confederate monuments, and we saw some convergence around that in Charlottesville. But Christian nationalism is primarily, in American politics, a phenomenon of white nationalism. So we're talking about white Christian nationalism when we hear most of these kinds of discussions. And that is a very-- I think it's a complex internal ideology.

It has religious components. It has, I think, a fairly pronounced racial component. And in some ways, Jim, I want to turn this back to you because you have this really excellent piece in *Newsweek* today, which discusses the links between these two ideas. So I hope you'll give yourself at least a couple of minutes to talk about the theme of that piece because it's so important to understand the connections between racism and anti-Semitism.

Dahlia said earlier that one reason why this trial didn't get more national attention is because that's a harder story to tell. It's harder to communicate to the public. We think what is anti-Semitism having to do? This was about Confederate monuments. It was about racism. These are white supremacists.

That's all about race. The anti-Semitism piece is just bizarre, and strange, and I think it's still not well understood. But as an aspect of Christian nationalism, I think one thing Charlottesville did was show us how deep it runs, but it also showed us a trajectory in which these ideas have moved from the extreme to the fringe, and now adjacent to a coalition of politics within the Republican Party within American conservatism. It's not entirely fringe at this point, it's right there. I think we still have a hard time understanding that.

**JAMES
LOEFFLER:**

Sure. Sure. Yeah. I mean, I'll just say my piece is out there. People can go read it.

But I think you're absolutely right. And one of the things that has struck me is it is not simply a question, as it often is framed as who's the biggest-- who faces the most vulnerability? And I think part of the ways in which the left gets stuck is trying to understand systemic racism alongside anti-Semitism, and the things seem to be completely unrelated. And in one sense, they are. They're are different kinds of bias, they're different aspects of American society.

But they come together at moments. So Charlottesville was that. It was about Confederate statues and yet it was about neo-nazism. And I think what we've come to see is anti-Semitism plays a particular role in galvanizing different groups who may not agree on everything, but can agree on the hidden hand of the Jew behind it.

And it also plays a role in explaining power, which is the biggest problem for white supremacists is to understand why, if they are superior, they seem to be quote unquote "losing power," or losing visibility, losing command. So I think there's a lot there. And as we've said, it's hard to unpack that because the things are not always the same. But they converge in this moment. I think that's what Charlottesville told us.

And one other aspect, of course, we three know because we've observed this from our different vantage points, is the claim to be opposing anti-Semitism can work for some, and strangely enough for some who would be otherwise enabling white supremacy by simply saying, well, we actually support Israel. Or we actually like religious freedom for all groups, maybe just not these types of Jews. Or maybe just not the secularists, or the globalists.

And there's diversity inside that in that world. And that's precisely what seems to be a focal point for so many debates these days about well, you can't be anti-Semitic if you are supporting this one, or if you have a Jew involved, which is-- it complicates us and it distracts us. Dahlia, do you want to take this one too?

**DAHLIA
LITHWICK:**

No. I mean, I think I will just say very quickly that one of the things that I think we have a lot of work to do on is figuring out how this assault that simultaneously targeted the Black community in Charlottesville indisputably, and came with chants of blood and soil, and Jews will not replace us, how to think about that. And I've been very, very struck.

I think I said this to Jim when we were talking about this panel that in some presentations, when I've talked about the events of August 11 and 12, if I've used, as Micah did, the word Nazis, I've been called out for not calling them white supremacists. If I say the White supremacists, I'm called out for not calling them Nazis.

And it's taken me a long time to think through my response to that, which is going to sound flip, but I think it is quite simply if they are capacious enough to hate us both equally, we must be capacious enough to figure out a way to think about living on this scene with all of its incredibly [? freighted, ?] complicated history around whiteness, and power, and privilege, and policing. All of that stuff is the stuff that makes this a hard conversation. But I think, as you say, Jim, in your piece today, to not have the conversation is to fall prey to the kinds of things that I think further press down both communities.

**JAMES
LOEFFLER:**

So it's-- right. It's easier if we have a simpler model. But that's not what America is today. That's just our reality.

We have just a few minutes left. There have been a number of questions that have come in and I want to try and focus them through saying a lot of folks attending this are understandably alarmed, but they're impatient. And a lot of people, and a lot of people out there in American society, say this still feels like too slow a process.

The three of us will sit here and talk about what law can do and the hard work it takes to do it, the building awareness, having the hard conversations. But is there something else we should be thinking about? Is there a better way we should be trying to talk about moving more quickly, or is that not-- there is no easy way out there.

We don't do this simply by empowering everybody to report hate online. There has to be a slower process, and we have to invest in institutions and building up capacity. So I wonder if either one of you or both would want to respond to that. What do we do if we're impatient and we want more results now, and we want to prevent the next catastrophe, and we want the change, but we also don't want to be accelerating just for the sake of accelerating? Dahlia, can ask you to go first on that?

**DAHLIA
LITHWICK:**

I mean, I think you've identified the two prongs of it, and they're incredibly unsatisfying. One is we are in a moment of unprecedented mistrust of institutions. People don't believe the press. They don't believe government. They hate the police. They don't trust-- apparently both sides now hate the police, which is, I guess, awesome. No, they don't trust the courts. Journalists are all liars.

And I think one piece of this, and it really goes to the heart of what Micah said, which was the purpose of this trial, in some sense, was proof of concept. If you let it roll out over years and years, and you do meticulous legal work, you can get there. We have slow food movements, and slow other movements, and law is a slow movement. It's just never going to be fast enough.

The other piece of it is, and I think-- I can't remember which of you said, we have to really start naming things. And we're so reluctant to name things because you feel like you're going to pull back a bloody stump. But I think part of the work here is this version's iterations of this conversation, which is giving language to say X happened, and this is what X was, and to really help people bolster institutions, but also bolster a schema for what white supremacists, Christian nationals, whatever it is, what that is, so that they feel confident going out and saying, next time it happens, oh that's what this was. We know this. We're not surprised anymore.

**JAMES
LOEFFLER:**

Right. Right. No, absolutely. I mean, the naming is so-- it's hard. Because for all of you listening, I could tell you, I mean, academics who do this for a living also struggle and debate exactly what's the best way to understand this, just as there have been debates among historians about fascism.

What's the-- is it useful to talk about fascism and the rise of global authoritarianism today? Is it useful to use that label or does it distract us? So they're hard. But it also strikes me that maybe you're saying to us, Dahlia, it does take time. And white supremacists, what we learned in this trial was they took their time.

We think of it sometimes as a happenstance event, experimenting, jumping on the bandwagon. But as scholars of white nationalism and white supremacy have shown, this is a slow building movement that has found ways to organize itself. And that doesn't mean that there's one master plan that links it together, but it does mean that it has worked assiduously over decades to try and figure out how to grow in American society.

Micah, as we end on a-- come down to our last minute or so, would you just-- what is your thoughts about this thinking to the future? That we have to just be slow and steady? Are there are other ways we can think about this to feel empowered to move swiftly?

MICAH Well, I just have a thought about your last point about naming. And sometimes it's hard, but sometimes there
SCHWARTZMAN:are easy cases. And when people show up in full body armor with swastika flags, it's an easy case. And in those cases, we ought to be able to say it.

And then I think we ought to be able to react more quickly than we have, or we ought to at least be able to learn from what we've seen and also realize that extremist groups are adapting and learning from these events as well. And that part, the laying out future strategies, and building up legal capacity, and doing-- that all, that takes work.

That's slow. That's just a part of a, I think, now a generational project of norm building, of institution building. And these aren't the flashiest ways of approaching these topics, but that's just the work that has to be done. And I think the Charlottesville trial is the beginning of that, not the end of it.

The end of that trial-- and by the way, it hasn't completely ended. There's still post-trial litigation with respect to collecting the damages that were awarded. That's going to go on for years. And then we will have all of these cases that follow on from January 6 that are on this model.

All of that work is going to take time. And so what I would say about going slow, going fast, it's going to take time, and patience, and persistence. And if this is a concern for you, and I think it should be a concern for everyone, then find ways within your communities, whether they're local or national, to encourage those legal institutions to take these problems seriously and to invest in them. That's what's going to be required to respond adequately.

JAMES Thank you. I mean, I think that's a stirring way to end. I'll just also plug two things, which are concrete
LOEFFLER: measures. One is to take the time to read books. Excuse me.

So our panelist, Dahlia Lithwick's, book, *Lady Justice*, comes out soon. And I say it because, of course, it's grappling, as you'll see if you inspect the book, with social change and progress, and the role of lawyers and the role of real people in courts together. So that's important in our soundbite culture. And to engage with institutions.

In that respect, I want to thank you on behalf of the Jewish Studies Program and the Karsh Center for Law and Democracy here at the University of Virginia. Sometimes what happens in universities is also slow and steady to do the research into the teaching. And that's one of it's, I would say, one of our strengths, is that we don't always operate on the same timetable as media and politics.

So we hope you'll come back to other events, online and in person, that we will be doing over the course of this year and on into the future. You can find out more about all of this if you just go through the UVA website and Google, dare I say it. In the meantime, I want to thank all of you. And I hope that the remainder of today and tomorrow, there'll be more events, more opportunities to reflect on this.

I hope it is a meaningful and inspirational moment as we think about legacies and futures that we are anticipating will come, and that we hope there are good ones. Thank you very much and I hope that all you have a good rest of Thursday. So thank you once again, Micah and Dahlia, and we'll see all of you again somewhere soon.