

Rick Hasen Transcript

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Mila Atmos: [00:00:25] Welcome to Future Hindsight, a podcast that takes big ideas about civic life and democracy and turns them into action items for you and me. I'm Mila Atmos. Before we get to the episode, we have a favor to ask. We're running a short survey during the month of April, and it's all about you. We want to learn more about what you think of the show. If there's anything you'd like to change, and by taking part in our survey, you could win the chance to be on the show. You can find the survey link and more details in our show notes or at futurehindsight.com.

Mila Atmos: [00:01:10] There is so much to say about what's happened to the public square, what's happened to how we speak to each other. We used to talk about a marketplace of ideas where good speech would make up for, or rise above, bad speech, where a kind of default notion of objective truth, usually as defined by white men, could govern the bounds of that marketplace of ideas. But that's not where we are now. The public square is a cacophonous, rancorous, and ungoverned web of social media, cable news, and message apps. And the ramifications for our democracy are huge. Today's guest has turned his gaze from election law to this problem of speech and what he calls cheap speech. Richard Hasen is the Chancellor's Professor of Law and Political science at the University of California, Irvine, and is co-director of the Fair Elections and Free Speech Center. Hasen is a nationally recognized expert in election law and campaign finance regulation, and his new book, *Cheap Speech: How Disinformation Poisons Our Politics and How to Cure It*, is published by Yale University Press. Rick, welcome to Future Hindsight. Thank you for joining us.

Rick Hasen: [00:02:25] It's great to be with you.

Mila Atmos: [00:02:26] So I think to start, let's define the kind of speech you're focusing on here with the title of your book: What is Cheap Speech?

Rick Hasen: [00:02:34] So the term cheap speech is not mine, but one that originated with a professor named Eugene Volokh at UCLA; was writing in 1995 in an article in the Yale Law Journal about what he saw as the coming information revolution. At the time he was writing, the broadcast spectrum was pretty narrow. There was three television networks. There were some local TV stations. There was one or two local newspapers and a few national newspapers. And so if you want to get your ideas out there, it was very difficult, even if you disagreed, for example, with something in *The New York Times*, you could write a letter to the editor, but probably hundreds of people are doing that. And your chances of being able to speak would be quite small. And what Professor Volokh saw was that we were going to be in a different era. He foresaw things like Spotify and podcasts and social media, and it was a very optimistic picture. He recognized that by moving from a little bit of speech to a lot of speech to a flood of speech that we'd be undermining the intermediaries like newspapers that had existed before. But he thought this would be a good thing, and he thought for democracy it would be better because people would have access to more information and more ways to get their ideas out there. And so one meaning of cheap speech is cheap that is inexpensive to produce and disseminate. But there's another meaning of cheap speech, and it's what we now know. Now, it's not 1995, but 2022. And we see how the world has progressed since then and in fact, there's a dark side of this new information environment. Let's talk about the January 6th insurrection of the US Capitol, where there were hundreds of people storming into the Capitol who believe the false claims that the 2020 election was stolen and were ready to take action on it. How did they get these ideas? Well, Donald Trump was able to go directly to millions of people. By a *New York Times* count over 400 times between November 3rd and November 19th. So Election Day and less than three weeks after, he falsely claimed that the 2020 election was stolen. He was able to get these ideas out there without an intermediary. If we had the technology of the 1950s, but the partisanship of today, he wouldn't have been able to repeat his claims 400 times in an unmediated way. And when Professor Volokh talked about the undermining of intermediaries, he may not have realized at the time that when local newspapers die because their economic model has collapsed, because people can now get their classified advertising, other advertising online, that it's still going to be expensive to produce quality information, but really cheap to produce misinformation and disinformation. And so in this new environment, cheap speech means a second thing. It's lower valued speech, and there are certain ways that lower valued speech can rise to the top. And so I mean it in this double sense of the word,

there's some good certainly some good that comes from this new information environment. But there are also new threats to our democracy.

Mila Atmos: [00:05:30] Right. So well, I mentioned earlier the old marketplace of ideas. And you're talking now about the cheap speech in this way, that basically it's a lower quality speech. Right. So in your book, you actually use an economic theory for the so called lemon market theory to explain how more speech doesn't always mean better speech. It's a little bit of a spiral. Can you talk to us about that?

Rick Hasen: [00:05:58] Sure. So what I was referring to in the *Cheap Speech* book is a famous article written by a Nobel Prize economist named George Akerlof. And the article is called "The Market for Lemons," and he's basically talking about how the used car market wasn't functioning very well. The idea is, is this. If I want to go buy a used car, I don't know if that car that I'm going to buy is a good used car or a bad used car because it's expensive to kind of really do a forensic on a car and know if it's good or bad. And so if the car is good, maybe I'd want to spend \$5,000 for it. But if it's bad, I wouldn't want to spend \$2,000 on it. And so the offer I'm going to make is going to be lower than \$5,000 because I'm going to have to take into account the risk that the car is a lemon. So maybe I offer \$3,000 for that car. If that happens, then people who are selling good, reliable, used cars, they're going to be less likely to sell because they know their car is really worth \$5,000. And so you end up with a lot of sales and market failure because of this asymmetric information. The seller knows more than the buyer and you can end up in a spiral where the market doesn't function. And he says, you know, there are really two ways to solve this problem. One is to have government regulation and the other is to have entrepreneurs that can step up and try to find a way to fix the market.

Rick Hasen: [00:07:10] And I think CarMax is a good example where they step in and they take on some of the risks. They're experts. They can figure out if you should buy the car or not. And that works pretty well. Except one of the downsides that Akerlof saw is that CarMax then takes a hefty profit from both parties, and so it ends up costing everyone a little bit more. And so I try to analogize that to the current information market that we have. It's very expensive to produce quality journalism. That journalism has all kinds of good benefits for voters. They're better able to make decisions about who to vote for and consistent with their interests and values. But with this changing economic

market, it's very easy to produce bad journalism or fake journalism. We have now the rise of a lot of websites that look like they're local news but are really political propaganda that could be put out there by one of the political parties or even some foreign governments. I talk about some examples of that in the book, and so people will discount the possibility that anything they see is true or false. Just like in the used car market, people discount the possibility that it's going to be a lemon. People might be getting information lemons. And so it's a market failure as well because if people can't believe everything they see in here, then they don't know how they're going to find good information. And so one of the key problems that I address in the book is how do we give voters tools to be able to separate what's true and what's false? And that's an especially important thing to do because we're on the cusp of a new revolution in terms of the use of audio and video manipulated through artificial intelligence, so-called deepfakes.

Rick Hasen: [00:08:43] So next presidential election, we might see a video of a presidential candidate purporting to have a heart attack or in some sexually compromised position or uttering some racial epithets, something that didn't happen. We might just not know what to believe. And so how can we give voters the tools that they need to be able to have accurate information for their decisions on voting and elections? There are some good things about our new cheap speech revolution. People have much more access to information if they want to find it. You said at the top it was a small cadre of mostly white men who were delivering the news before, and now we have much more diverse voices. So that's all for the good. I don't think that we would have had the racial justice movement in the way we did if people couldn't have posted directly online cell phone videos of police brutality. So there's all kinds of good things, and I'm not calling for censorship except for a very narrow class of cases such as those involving people lying about when, where, or how people vote. Most of my solutions are about giving voters more information and better tools to make decisions.

Mila Atmos: [00:09:48] Let's talk about the ideas that you put forth in the book. I'm hoping you can walk us through the ways you think we can tackle cheap speech. And so the first one that I thought was really interesting was the disclosure rules. Can you start there?

Rick Hasen: [00:10:01] Sure. So we know that voters use information about who's speaking to them as a shortcut for how reliable the information is. So if you know that some candidate is backed by the NRA or by Planned Parenthood, that would give you some very valuable information about how you'd want to vote. Similarly, if somebody pretends to be someone else, like Russian government agents that pretended to be African-American voting activists in 2016, using social media to try and convince African-American voters to stay home and not vote for Hillary Clinton, you probably would want to know that that African-American voter picture is a stock photo and it actually is a Russian government worker in Saint Petersburg, Russia. You know, you want to know that information. And so we need to improve our disclosure laws today. Our disclosure laws are not really up to the task. So if you want to run an ad that says Donald Trump is a true leader and you want to put it on TV within the two months before the election, you have to disclose your identity. That's the rule today. If that information came to you from cable television or came to you if you had direct TVs, you have a satellite television, if that same ad came to you on Hulu or on YouTube TV, which comes not through a cable box, but through the Internet, or if it was an ad that was directly placed on Facebook. The same disclosure requirements don't apply and people can pretend to be someone else. So one of the things we need to do, a very sensible thing, in my view, is simply update our rules so that voters can know who it is that is speaking to them and use that information in part to judge the credibility of the message.

Mila Atmos: [00:11:42] Well, the other thing that I noted in your book was talking about the algorithms. And you said that actually one of the disclosure rules should include the disclosure of the platforms about whether they're tweaking the algorithms to micro target people. Can you talk about that?

Rick Hasen: [00:11:59] So we had an incident in the 2020 election period where if you went on Instagram and you search for Joe Biden, among the things you would get back in the research return would be positive articles about Donald Trump. But if you went on and searched Instagram in the same period and searched for Donald Trump, you would not get positive articles about Joe Biden. Now Meta, then known as Facebook, the company that owns Facebook, WhatsApp and Instagram, said this was a glitch, it was an error. It wasn't supposed to do that. But there's nothing in the law that would stop deliberate manipulation or take an example from search rather than social media where

Google has an even more dominant position. Imagine if Google decided tomorrow, "we like Joe Biden, we don't like Donald Trump. We're going to do this deliberately and favor Joe Biden in terms of search results." Nothing in the law would stop them from doing that. And I don't think as private companies, we can have a law consistent with the First Amendment that would say to Google, you've got to be evenhanded in your search results. But I think voters would want to know if Google is biased. And so I propose some disclosure rules wouldn't necessarily be public disclosure because Google's got some trade secrets about its algorithm and doesn't want to share it with other companies, but disclosed to government experts who could then determine if there is some tweaking. Right. So if you are trying to bias your results to favor one candidate over another, that information should have to be disclosed so voters know what they're getting.

Mila Atmos: [00:13:38] One of the things that you mentioned at the close of that argument is that if they lie to federal investigators about this, then they could be liable to be subject to antitrust laws. And you've just mentioned that Meta owns Facebook, WhatsApp, and Instagram. So how would antitrust laws step in here and help mitigate the problem?

Rick Hasen: [00:14:02] Right. So one of the concerns about social media companies and search companies is that they're too powerful. What Mark Zuckerberg thinks might matter more than all the money that's being spent on political advertising. And so how do you deal with that? As I said, I think that it would be very problematic under the First Amendment to have a law that says that Facebook has to be evenhanded in how it decides how to treat content because let's just pick the president that you dislike the most. And imagine that she or he has the ability to appoint the speech czar who gets to decide when speech is biased. And that seems very dangerous to me. And so I don't favor laws that would require social media platforms or search platforms to be evenhanded any more than I would want a law that says that Fox News or MSNBC must be evenhanded. I just think that's too dangerous a power. So how do you deal with that instead? One option is disclosure, as we just talked about, but another one is if these platforms are completely non-responsive and they control too much of the market so that they can't really be pressured by consumers to do the right thing and not be biased, then maybe we need to break them up. Maybe we need to say that Facebook doesn't get to control Instagram and WhatsApp and Facebook. Google is another example,

right? Google not only is search, they sell advertising, they sell all other kinds of services. Some of these things are bundled together. Some of these things, they use data for different purposes. We might need to break up these very powerful companies. That is not a speech regulation that seems to me to be perfectly consistent with the First Amendment and having more competition would actually enhance speech because you'd have more competing possibilities of getting your information.

Mila Atmos: [00:15:45] Right. Right. So well, you are incredibly First Amendment minded throughout the book and to be very, very careful not to actually regulate speech, but to regulate everything around it, basically, for example, the platforms and how they're going about their business. And finally, one of the recommendations you made when it comes to regulations is privacy protections. And we have, of course, seen the example in Europe with GDPR. What exactly would privacy protections look like and maybe, how does it differ from the way that they're doing it in Europe?

Rick Hasen: [00:16:14] Well, I'm no expert on European privacy controls, but I do talk a little bit in the book about what's called micro-targeting of political ads, something you mentioned a few minutes earlier. So let me just get into that issue in a little bit of detail. Suppose that you're a candidate for senator in a state and you've got a list of particular voters that you want to target. So you have a message that you want to go to Latina middle class. And so you have your list from your campaign, this list of women who you want to get a particular targeted message. That's not new. Campaigns do that all the time. It used to be through mail, snail mail. It still happens somewhat, but it also increasingly are ads that are on social media. Well, you could go to a company like Meta and say, I want to run these ads on Facebook for these people. Here's their email addresses, and they can match them up with that. But I also want you to use the data you've collected from people, because when you sign up for Facebook, you agree to let them track what you do and where you go. And they form a very detailed profile of your interests and your views and all of that. I want you to use this feature called the Lookalike Feature and find people who look like those on my list and target those people, too. And I think sometimes this kind of micro-targeting of political ads that piggybacks on the extensive data that is collected by the platforms that this can allow for manipulation of opinion.

Rick Hasen: [00:17:46] That is, you might say one thing to a group of middle class Latina women. You might say another thing to a group of white blue collar men living in certain rural areas and kind of talk out of both sides of your mouth. So how can we deal with this? Well, one possibility is we can say that campaigns can target whatever messages they want, but platforms can't use the fine grained data they've collected about voters to find other voters who meet these categories. Now, there's a very complex First Amendment argument as to whether or not a law like this would or would not be constitutional, especially before a Supreme Court that has expressed a lot of faith in the marketplace of ideas and believes that the truth will rise to the top. And you don't really need regulation to help protect voters. But I do think that it would be to our advantage as a country if this kind of micro-targeting was not allowed and I would still allow campaigns to do it. It's the difference between someone using a photograph of you and someone using a mind reading machine. We just don't realize how much information about ourselves we inadvertently give away when we use these social media platforms and allow ourselves to be tracked. And so it's a way of kind of giving autonomy back to the voters so that they're not going to be subject to manipulation based upon these fine grained data that are collected by the companies.

Mila Atmos: [00:19:06] Right. Or as Shoshana Zuboff would say, they're stealing it from us, that data. But...

Rick Hasen: [00:19:12] She, she has that line where she says and I quoted in the book, she said, "We used to think we were searching Google, but it turns out that Google is searching us."

Mila Atmos: [00:19:18] Yes. Yes, that's right. So since we're talking about platforms, I think this conversation really wouldn't be complete without talking about Section 230. For the benefit of the listeners, what is Section 230 and what are the arguments for and against regulating through that?

Rick Hasen: [00:19:36] So Section 230 is part of the Communications Decency Act of 1996, and there's a number of provisions. The one that is the most talked about is one that says that social media platforms can't be sued for libel or for other kinds of liability if all they've done is allowed content to be posted online. So if I make a defamatory statement about you, I call you a thief; I say terrible things about you and it damages

your reputation; and I say that on Facebook, you can sue me as the speaker for having made that. And if I had written that in an op-ed in *The New York Times*, you could sue *The New York Times* for printing that, because *New York Times* is the publisher and they could be liable for a libelous statement. But if it appears on a Facebook post or a Twitter post, you can't sue the platforms because they are given immunity. And this was seen as kind of like a subsidy to the social media companies so that they can develop and allow lots of speech to go out there without fear of liability. And there's another part of Section 230 that says that platforms can't be sued for excluding content, right? So one part says they can't be sued for including and the second part is that can't be sued for excluding content. Now, the debate over whether Section 230 should be changed is one that goes far beyond the topic of my book, which is about how to give voters the tools they need to participate in democracy and accept election results as legitimate and all of that.

Rick Hasen: [00:21:01] And I think there are all kinds of difficult issues related to privacy, related to issues about the sharing of non-consensual sexual imagery, the so-called revenge porn issue. The question about whether these platforms can create a situation where teenagers have mental health problems. There are all kinds of issues that arise that I don't address in the book, but I do think that when it comes to Section 230, immunity for the platforms, whether the immunity exists or not in the future, the reality is that these platforms are acting as publishers. That is when they make a decision to include certain content, exclude certain content, promote or demote certain content. Those are editorial decisions. And I think that what that means is that we should think of the platforms as much more like newspapers than like just like a public utility that's providing a way for different people to communicate with each other. If you didn't have content moderation on these platforms, they'd be filled with hate speech and violent images and pornography and all kinds of things that people don't want to see. And we want them to curate content. Ironically, Donald Trump called for the repeal of Section 230 when he was president and even vetoed a defense bill because it didn't include a provision that would have repealed Section 230. But doing so would have actually meant that Facebook and Twitter would have been more likely to exclude his speech because they could have been on the hook for any libel that they would have committed.

Mila Atmos: [00:22:29] We are going to take a brief break here to thank our sponsor, Shopify. But when we come back, Rick Hasen will tell us what citizen changemakers like Future Hindsight listeners can actually do to tackle cheap speech.

Mila Atmos: [00:22:45] Oh, that sound makes me smile. It's the sound of another sale on Shopify. The all-in-one commerce platform to start, run, and grow your business. Shopify unlocks the opportunity of your business to more people every day. Every 28 seconds, an entrepreneur like you makes their first sale on Shopify. Supercharge your knowledge, your sales, and your success. For a free 14-day trial, go to shopify.com/hopeful, all lowercase. Making your idea real opens endless possibilities. Shopify is a platform designed for anyone to sell anywhere, giving you the resources once reserved for big business, customized for you though, with a great looking online store that brings your idea to life and tools to manage and drive sales. I love how Shopify makes it easy for anyone to successfully run your own business. Shopify powers millions of entrepreneurs from first sale to full scale. Get started by building and customizing your online store with no coding or design experience to access powerful tools to help you find customers, drive sales, and manage your day-to-day. With 24/7 support, you're never alone and more than a store, Shopify grows with you. This is possibility powered by Shopify. Go to shopify.com/hopeful all lowercase for a free 14-day-trial and get full access to Shopify's entire suite of features. Start selling on Shopify today. Go to Shopify.com/hopeful right now.

Mila Atmos: [00:24:26] I also want to shout out a new podcast that shares a hopeful view of the world -- kind of like us. What if, instead of being on the brink of disaster, we are on the cusp of a better world? On every episode of What Could Go Right, Progress Network founder Zachary Karabell and executive director Emma Varvaloucas convene experts to discuss the central issues of our era and make the case for a brighter future. They emerge from their conversations with a counterintuitive but informed take: progress is on its way. Some of their guests have included Jason Crawford, founder of The Roots of Progress.; Tyler Cowan, Mercatus Center director and economics chair at George Mason University; Gregg Easterbrook, longtime Atlantic contributor and author of The Progress Paradox; Roy Bahat, head of Bloomberg Beta; And Arthur Brooks, Harvard professor and bestselling author. What Could Go Right is available wherever you listen to podcasts. Now let's get back to our conversation about cheap speech with Rick Hasen.

Mila Atmos: [00:25:28] We're talking about regulation here. And you're stating, of course, that regulation is a good solution. But we have a Congress, which you acknowledged also in your book, that doesn't pass laws and a Supreme Court that doesn't seem particularly into the idea of either regulating speech or allowing agencies to do so. So how do we square that circle?

Rick Hasen: [00:25:49] So, as I say in the last part of my book, the idea that most of the legal solutions that I propose will be enacted and upheld by Congress is unlikely. I want to set forth these rules. Some of these rules could be enacted by Congress, could be upheld, some could potentially be adopted by states, and that could help. In places like California, where I am, they've been adopting privacy and other Internet based regulation. So all of that is quite positive. But, you know, the solutions to our problems can't just be legal solutions. And in the last part of the book, I talk about political solutions. So let's take a very prominent example, which is the de-platforming of Donald Trump. You may remember that in the run-up to the 2020 election, Donald Trump was on social media all the time, saying the election was going to be rigged, saying it was going to be stolen. Really making unsubstantiated claims that were unnecessarily undermining people's confidence in the election process, which is a very dangerous thing to do in a democracy. And the way that Facebook and Twitter tried to deal with this was at first by labeling his tweets as containing disputed information, or in Facebook's case, they just said, "learn more about elections, visit usa.gov," which didn't even say that the speech was false and I think actually could have backfired. There's some social science evidence indicating that this labeling actually worked counterproductively and made these tweets and posts more prominent. But after January 6th, after Trump had called for people to come to Washington, D.C., for a so-called wild time. After he was seen as encouraging the violent activity that could have disrupted the peaceful transition of power in the United States.

Rick Hasen: [00:27:27] After all of that happened, Facebook and Twitter finally decided to remove him from the platforms: de-platform him. Now, I think that a law that would require him to be restored to the platforms, laws that have been passed in Florida and Texas, I think those are unconstitutional, just like you can't tell *The New York Times* or Fox News what content to include or exclude. I think you also shouldn't be able to tell Facebook or Twitter what content to include or exclude. They make editorial decisions.

As I said earlier, they decide to exclude pornography or hate speech from their platforms, not because there's a government law that says they have to do that, but because they want to curate the experience for their viewers and readers and listeners. And so there is a school of thought, somewhat surprisingly, coming from Justice Clarence Thomas, one of the most conservative justices on the court, one of the justices who believes you can't have limits on spending money in elections or even require disclosure of who's spending money on elections. Justice Thomas has somewhat incredibly claimed that states can pass these kinds of laws that require evenhandedness. And as we discussed earlier, I think that's very dangerous. And I think that that is infringing on the rights of private parties that are creating content with a message as to what that message is. And the argument for it that Justice Thomas has advanced is that the platforms are more like telephone companies that just connect one person to another rather than like newspapers that actually have an editorial position. And I think that's just false in terms of how platforms operate.

Rick Hasen: [00:29:03] They do curate content all the time, much like newspapers do, but that doesn't mean that the question of platforming or de-platforming is wholly out of people's control. I don't think there should be a law. I think such a law would violate the First Amendment. But we can pressure the platforms, we can try to use consumer pressure and also pressure from employees within these companies. And we've seen this happen. When Facebook does something really objectionable, the employees object to it. And so I think that that kind of public pressure about what the right standard should be is a perfectly appropriate and is consistent with the First Amendment and is about more speech. Boycotting is a form of free speech that I'm not going to use Facebook. Some people will say if you restore Donald Trump to the platform and when Facebook excluded Donald Trump, they did so indefinitely. But then their oversight board, there's kind of self-created court that rules over them, said you've got to impose a time limit and say what it's going to require from Trump to restore him to the platform. And so now Facebook has said that on January 7, 2023, Donald Trump can come back on the platform unless they decide to continue to exclude him because he continues to be a threat. So Facebook has to make this decision and it's up to the members of the public to try to push platforms to do the right thing. And I think given that Trump is continuing to undermine people's confidence in the election process based on wholly discredited theories of voter fraud, he should continue to be excluded from the platforms.

Mila Atmos: [00:30:29] Right. Right. Well, public pressure works, which is what you note in the book and as you've just said, you advocate for. But on the other hand, there are people who really like this. For example, the people who watch Newsmax. They actually enjoy it. And there is a demand for fake news. So how does that complicate things for us?

Rick Hasen: [00:30:49] Right. So there's going to be segments of the population that is just not going to be interested in this message. They think anything that doesn't toe the party line of Donald Trump is fake news, right? So Donald Trump also would use the term fake news any time there was negative news about it. So how do you handle this part of the population? And I think one answer is that even if there's 20% of the population that can't be reached, we need to look at the center of the population. And so it's one thing to say that we can't reach everyone. That's true. But that doesn't mean we can't reach more people. And I think giving tools to people to be able to tell truth from fiction would be helpful. And let me give a specific example to make this more concrete. Today, there's no licensing requirement for journalists, and that's a good thing. We wouldn't want the government to be able to say, "you count as a journalist and you don't count as a journalist," right. So we don't generally require a license before you can practice journalism the way we do for practicing medicine or practicing law.

Rick Hasen: [00:31:53] But journalistic societies could come together and they could say, look, what we want to do is come up with a kind of a code of conduct for what counts as valid journalism. You abide by certain norms. For example, you say you've got to get to sources before you make a claim. You have to give a person you're writing about a chance to respond. You come up with this code of conduct and then you say, certain journalistic outfits follow this code of conduct and they get the seal of approval. And then you can use that seal of approval on social media platforms. So let's say there's a post coming from the Los Angeles Times and the Los Angeles Times abides by this set of criteria. There could be a little icon next to the Los Angeles Times that tells readers this is probably reliable information because they're following norms. If we have this journalistic seal of approval, more voters will be able to figure out what's true and what's not true, and that will help them to make better decisions consistent with their interests and their values.

Mila Atmos: [00:32:52] In a way, almost elevating speech, right? Like as opposed to cheapening it, you're making it have higher value. So that's a great idea. I love it.

Rick Hasen: [00:33:00] Then there are other things that can be done as well, such as the platforms voluntarily putting disclosure requirements on those who engage in political activity so that voters have the ability to separate truth from falsehood. But on top of all of those kinds of things, which are much more concrete, discreet things that can be done. I think we also need to think more broadly about digital literacy, about respect for the scientific process and the rule of law. Because I think for too long we've taken for granted that our democracy will just continue the way it has been and we'll muddle through and be able to run free and fair elections. But there's no guarantee about any of that. Unfortunately, we've seen other democratic countries engage in some democratic backsliding, think of places like Hungary. And so you think internationally about democracy. Look at reports, for example, from Freedom House. Authoritarianism is on the rise and there's no reason to think that the United States is immune from that phenomenon, despite our long history of having a Democratic politics here. And so we really have to think about how to strengthen intermediaries, how to strengthen respect for the rule of law. And people really need to understand that we can't take our form of government for granted. And it takes work to assure that we continue to have a system that is transparent enough that we can be confident that we're going to be continuing to run free and fair elections.

Mila Atmos: [00:34:28] So I'm kind of thinking of, that if you wanted to look for an encapsulation of cheap speech, some prime examples of the kind of content that we have been talking about here. Supreme Court Justice Clarence Thomas' wife Ginni's texts to White House Chief of Staff Mark Meadows contained a bumper crop of random YouTube links, truly untethered from reality or fact, but demanding urgent action. And I know you had to rewrite the book to some degree after January 6th, so what would you add to the manuscript if you had known all this stuff about Ginni Thomas?

Rick Hasen: [00:35:05] I think Ginni Thomas is a good example of how widespread these kinds of wacky conspiracy theories are. At one point, she wrote about how Biden's crime family would be held in barges off Gitmo. I mean, really off the wall stuff. And, you know, here is someone who is highly educated, who is the spouse of a Supreme Court justice, someone who you would not expect to be taken in by these

kinds of conspiracy theories. So even putting aside the questions that a lot of people have been asking about whether Justice Thomas should be recused because of the actions of his wife on January 6th related cases and putting aside the kinds of questions about ethics, I think it just shows you that misinformation, disinformation about elections has spread so far as to reach even those people that we think would be immune from it. And there's some interesting social science research that I cite in the beginning of *Cheap Speech* about how it's not necessarily how educated you are or not in terms of being taken in by misinformation. It's much more about how partisan you are. And so if you believe really strongly in conservative or liberal values, you know you're at a polar end among people in terms of their positions. You are more likely to use motivated reasoning and start believing things that are not really believable because they conform with your ideas. And so it just shows you that, especially if you find yourself to be kind of a strong partisan, you should try to open up your mind to other information because some of the things that you think are true might well not be true.

Mila Atmos: [00:36:41] Right. Well, now that we're in this midterm election year and all of this disinformation is rampant, if Democrats get the shellacking that some have predicted, will there be a dangerous erosion of trust in elections on both sides of the aisle?

Rick Hasen: [00:36:56] I think it's certainly possible that we will see a further erosion, in part because some of the people who have embraced the false claim that the 2020 election was stolen will be running elections in 2024. And even if they run their elections completely fairly, I think you're going to see a lot of distrust on the left because why should someone believe an election official who embraces the false claims that the 2020 election was stolen? And I think we're going to see continued efforts on the part of both domestic and foreign actors to try to further undermine confidence in the democratic process. Think about Donald Trump and how he attacked all the kinds of intermediaries that help us to determine what's true. Right. The press. We've talked a lot about the press. The press is the enemy of the people, the FBI, the judiciary, the opposition party, his own party. Right. The big problem with cheap speech that I've been talking about is the erosion of confidence in reliable intermediaries. And the more that that happens, the more we're going to be in danger of lacking a common understanding about how the world works. And that's what's really dangerous.

Rick Hasen: [00:38:11] We can disagree about opinions. You and I can have different views about abortion or taxes or immigration, whatever the topic is. But we should start from an agreed set of facts, and there are some facts that are uncertain, but there are certain facts that are certain enough. Right. We know that COVID vaccines have been proven to be pretty safe. We know that horse dewormer is not something that you use to try to go and solve your COVID problem. Similarly, we know that the 2020 election was run in a mostly free and fair way. If we don't agree on these facts, then we're going to reach wildly different conclusions about what public policy should be. Although I don't want to return to the days of three TV stations, there is something about the idea that we could all tune into Walter Cronkite and accept what he says as true. Recently, CBS News announced that it was hiring Mick Mulvaney to be one of its commentators. Mick Mulvaney, someone who is seen to have lied repeatedly about what President Trump was doing. That is a far cry from Walter Cronkite.

Mila Atmos: [00:39:18] Yes, very far cry. That was very disconcerting news, to say the least, about Mick Mulvaney being hired by CBS News. So as an everyday person, what are two things I could be doing to help in this arena to, I don't know if you could say reduce the incidence of cheap speech, but in any case, to improve the information sphere.

Rick Hasen: [00:39:40] Sure. So one thing that every person can do is to think twice before sharing that story that seems too good to be true on social media. And, you know, this is not something that is just a problem of the right, although it has been more on the right than on the left. But think about something like the Donald Trump compromising tape. If you remember this whole incident that Trump was supposedly caught, this was in the Steele dossier, was supposedly caught in a hotel room with some prostitutes. There seems to be no basis for this story, and yet it's continued to be shared. And more prevalently, the idea that there actually was a conspiracy between Donald Trump and the Russian government to influence the 2016 election. What the Mueller report concluded was that Trump welcomed the help and that Russians tried to give the help. But it wasn't as though they were coordinating campaign strategy every day. And so if news seems too good to be true from your political side, maybe think twice and ask, "Is this from a reputable source? Has this been proven?" Before you go sharing more misinformation. I give one example in the book of a myth that's spread on the left about the head of the post office, DeJoy, who was a Trump supporter,

deliberately trying to shut down delivery of vote by mail ballots. And there were pictures that were circulated on social media of mailboxes in a big pile.

Rick Hasen: [00:41:01] And the claim was, here's DeJoy undermining the election by removing mailboxes. Well, it turned out those mailboxes were old mailboxes that were taken out of service to be repainted and resurfaced so that they could be used again. But it's a story that seemed kind of too good to be true. And so people shared that. So one thing is don't share misinformation. Be careful about the sources you're using because we are all prone to bias towards our own positions. And then the other thing is about activism. We can help pressure the social media companies. You can write on Facebook that you will leave Facebook if they re-platform Donald Trump. Or if they don't re-platform, whatever your position is, you can make your views known. That is one of the benefits of cheap speech. We have a decentralized election system. You can demand that your local election administrators have transparent rules to make sure that votes are going to be fairly and accurately counted. There's a lot of room for activism today. Now, you know, it's easy to look at the current political system and be dejected, but now's not the time for complacency or for apathy. It's the time for action. And I hope that people will read my book and get to the end of the book and realize it's a time for action before it's too late to save American democracy.

Mila Atmos: [00:42:17] It is for sure a time of action. I agree wholeheartedly. So in closing, looking into the future, what makes you hopeful?

Rick Hasen: [00:42:25] So usually the question is what makes you optimistic? And I can't say I'm optimistic, but I do like your use of the word hopeful. I'm hopeful because I come across Americans every day who write to me or speak to me, who say I'm worried about our country. What can we do? Just kind of like the very question you were just asking me. People love the United States and love the democratic experiment. And I think that with the force and with enough organizing and with a lot of good luck, we can make it through this period. Because I do think that as we go into the future, young people are aware. They've grown up with social media, they're aware of the risks of cheap speech, and hopefully the next generation will be ready to take action to assure that voters can still make decisions that are consistent with their views and that are consistent with the truth and hopefully towards a greater and even better democracy going forward.

Mila Atmos: [00:43:21] Hear, hear. Thank you very much for joining us on Future Hindsight.

Rick Hasen: [00:43:25] Oh, I really enjoyed the conversation. Thank you.

Mila Atmos: [00:43:27] Richard Hasen is the Chancellor's Professor of Law and Political Science at the University of California, Irvine, and is co-director of the Fair Elections and Free Speech Center.

Mila Atmos: [00:43:43] Next time on Future Hindsight. We've talked on this podcast before about systemic racism. Next week's guest wants you to think about strategic racism.

Ian Haney Lopèz: [00:43:52] It's hard to understand why racism is so bad and getting worse today. 50, 60 years after the civil rights movement, until we realize racial hatred and conflict is in the interests of some of the wealthiest, most powerful people in the country, and they are systematically pushing us to hate each other so we won't notice the way in which they're rigging the economy and the government for themselves.

Mila Atmos: [00:44:20] Ian Haney Lopèz takes a long, hard look at the use of racism in electoral politics and seeks to find better ways to respond. Next time on future hindsight. And one more thing: remember, you can find our survey link in the show notes and our newsletter. Thank you for your time and look forward to your thoughts. This episode was produced by Zack Travis and Sara Burningham. Until next time, stay engaged.

The Democracy Group: [00:44:55] This podcast is part of the Democracy Group.