



Top Stories



Chad accuses French charity workers of kidnapping

ACLU President Strossen on religion, drugs, guns and impeaching George Bush



Nadine Strossen, President of the ACLU, discusses partial-birth abortion, Second Amendment gun

rights, drug liberalization, religion in the public sphere, how the ACLU is mis-characterized and whether George Bush should be impeached.

Wikipedia Current Events

Tropical Storm Noel weakens after causing between 11 and 25 deaths in the Dominican Republic.

•Patricia Etteh resigns as speaker of Nigeria's House of Representatives amid accusations of corruption.

•The United States Supreme Court halts an execution in Mississippi pending its decision as to whether lethal injections are a form of cruel and unusual punishment.

•The President of the United States George W. Bush nominates James Peake as the next United States Secretary of Veterans Affairs.

•The United States Congress votes to extend a ban on Internet taxes for another seven years.

•Six people are killed and 11 injured in a suicide bomb attack near Pakistan Army headquarters in Rawalpindi.

array wing and downlink the images to the ground.

Shuttle Discovery is presently docked to the ISS.

Minnesota Governor opposes state funds to Iran-tied company

A few days after Indian company Essar Steel Holdings Limited acquired Minnesota Steel LLC, the governor of Minnesota announced that he "will strongly oppose any effort to provide state financial assistance to companies or entities that engage in prohibited business practices with Iran."

Governor Tim Pawlenty recently returned from a trip to India. He learned that Indian company Essar Global Limited is pursuing a project to build a refinery in southern Iran.

There is no official word yet from Essar Group, but Iran's Petroenergy Information Network says Essar Group is expected to take a 60% stake in the project and that Essar's Ravi Ruia was negotiating for the project in Iran last week.

The northern Minnesota project will be the first facility which includes all steps in steel production from iron mining to a \$1.65 billion steel mill. The Iranian refinery will have a capacity of 300,000 barrels per day and cost \$8-10 billion.

Featured story

Wikimedia fundraiser highlights webcomic community's frustration with Wikipedia guidelines

Wikinews reporter Brian McNeil approached Howard Tayler, creator of the Schlock Mercenary webcomic, to see about advertising the Wikimedia fundraiser on his website. Tayler's response was not as McNeil expected.

International Space Station's solar panel damaged

Astronauts and ground controllers are looking at apparent damage to the International Space Station P6 4B solar array spotted by the crew during deployment. NASA halted the deployment of the solar array wing to evaluate the damage. Deployment is about 75 percent complete with 25 of 31 bays deployed.

The crew has been asked to photograph the area on the solar

Wikipedia making bread in China? Not so, but close

If you live behind the "Great Firewall of China", you don't have direct access to Wikipedia, a popular internet encyclopedia. But you can eat Wikipedia.

Or Wekipedia, actually.

Blogs have now started reporting that supermarkets now sell "Wekikipedia" bread, created by a "Beijing Wekipedia Foods Co., Ltd." Just one letter different than the famed website, it appears to be a new company and product.

Even its Chinese name 维百客 (pinyin: wei bǎi kē) is similar to the encyclopedia's 维基百科 (wei ji bǎi kē); the characters 维 and 百 are in both names. The words "bǎi kē" means "encyclopedia", a term with no obvious connection to baked foodstuffs like bread.

A bearded man is featured on the packaging; Blognation jokes that it is supposed to be Jimmy Wales, the site's founder.

The Wikimedia Foundation's communications manager Sandra Ordonez was amused at the branding choice, commenting "I think this is very funny. If they [internet users in mainland China] can't access Wikipedia virtually, at least they can eat it for breakfast".

While the Wikimedia Foundation is not in the bread industry, it is currently looking for "dough" of another sort. The American-based charitable organization is holding a fundraiser, to help pay for expenses like running their servers.

Germany to host 2011 FIFA Women's World Cup

Germany beat out Canada to be selected as host the 2011 edition

of the FIFA Women's World Cup.

Germany's bid was based on 11 reasons why they should host the FIFA Women's World Cup along with a video Birgit Prinz and Fatmire Bajramaj. Canada's bid was based on its successful staging of the 2007 FIFA U-20 World Cup.

Germany has won the last 2 FIFA Women's World Cup and never gave up a goal in the 2007 FIFA Women's World Cup.

Shoplifting mother leaves son at scene of crime

A woman who had attempted to shoplift merchandise at a T.J. Maxx department store with another adult accomplice in Greenburgh, New York. However, the woman forgot one important item in her heist: her 8-month old son.

While trying to shoplift, Suzette Gruber, aged 39, ran out of the store when she thought she would be caught, panicked, and left her son sitting in his stroller inside the store. Her accomplice also ran, and has yet to be identified.

"The mother panicked ... and just took off. It's sad," said Greenburgh police officer, Lt. Desmond Martin who also said that she left her cellular phone and purse behind.

Police say they will keep the child in protective custody while they investigate the incident. A man has claimed to be the father, presenting a birth certificate to police in an attempt to regain custody of the baby. He claims Gruber called him and told him to pick the boy up. Police are still working to confirm the man's claims. Reports say that he does not know where Gruber is.

Hidden inside the stroller's compartments were vases, teapots and utensils that were worth about US\$185.

Gruber has been charged with theft before. In March of 2007, Gruber stole clothing from a mall and was charged with larceny and endangering the welfare of a child. According to reports, her then 2-week old son and 14-year old daughter were with her when she was arrested in March.

Gruber turned herself in to Greenburgh Police on Tuesday morning. She will be charged with abandonment of a child, a felony, and misdemeanor charges of petty larceny and endangering the welfare of a child, according to Police Chief John Kapica.

Nine French nationals face kidnapping charges in Chad

Nine French nationals, that were arrested after they were caught trying to airlift over a hundred children from the country, will face charges of kidnapping, officials in Chad say. Seven Spanish nationals, who were the crew of the plane, will face charges of being complicit. Two Chadians were also charged.

The French, six of whom are members of a charity by the name of "Zoe's Ark," say that they were trying to rescue the children from the humanitarian crisis that is resulting from the Darfur conflict. The other three are journalists, there to cover the "rescue."

The prosecutor in Abéché, Ahmat Daoud, said: "For the nine French people it is a matter of kidnapping of minors . . . as well as extortion." They face 20 years in prison if convicted.

"Zoe's Ark" describes the children

as orphans and says that they would have a better life in Europe. "The team is made up of firemen, doctors and journalists," said spokesperson, Christophe Letien, at a news conference. "It's unimaginable that doubts are being cast on these people of good faith, who volunteered to save children from Darfur." However, French news agency CAPA published an interview in which a "Zoe's Ark" member said they could not be completely sure the children were orphans in need of help.

According to Annette Rehrl, spokesperson for the United Nations High Commissioner for Refugees, few of the children appear to actually be orphans. "They keep saying that they want to return to their parents. Most of them are between three and six years old. It's very difficult to ask three-year-olds their names and where they come from. Also, some children have already changed their names and stories," Rehrl said.

French officials say that they warned the group against this operation for months. "Zoe's Ark" offices in France were searched to see if the group broke French adoption law by promising families that they could adopt and not just host the children.

The President of Chad, Idriss Déby, says that it is a case of "kidnap, pure and simple." He further suggested that "Zoe's Ark" may have sought to supply the children to pedophile rings or use them as donors for organ transplant.

The European Union is about to deploy a peacekeeping force, which includes French soldiers, along the border between Chad

and Sudan. Déby has assured his French counterpart, Nicolas Sarkozy he will not attempt to block the EU troops.

Bush announces 2007 Medal of Freedom winners

United States President George W. Bush announced on October 29, 2007 the list of winners of the Presidential Medal of Freedom, the highest civilian honor which may be granted by the United States.

President Harry Truman initiated the award in 1945 to honor civilian service during World War II and President John Kennedy re-established it in 1963 to honor an "especially meritorious contribution" to the security or national interests of the United States, world peace, or for their accomplishments in the areas of culture or "other significant public or private endeavors."

The Medal of Freedom may be awarded by the president to any person who has made an especially meritorious contribution to the security or national interests of the United States, or to world peace, cultural or other significant endeavors.

The medals will be awarded on November 5, 2007.

The winners are:

- Gary Becker, 1992 Nobel economics prize winner
- Oscar Elias Biscet, an anti-abortion and pro-democracy activist and political prisoner in Cuba
- Francis Collins, Human Genome Project leader
- Benjamin Hooks, US civil rights leader
- Retired Rep. Henry Hyde of Illinois and former chairman of the House Foreign Affairs committee

- Harper Lee, author of the book *To Kill a Mockingbird*
- Brian Lamb, founder of the C-SPAN cable public affairs network
- Ellen Johnson-Sirleaf, president of Liberia and the first woman elected to head an African country

Rugby player Bryan Habana tackled by fan

Bryan Habana, a rugby player for the South Africa national rugby union team and the Blue Bulls, was tackled by a fan who tried to grab the Webb Ellis Cup from Habana while he was accepting the award at Newlands Stadium in Cape Town.

"[The fan] came like a bullet, flying through a crowd of people that were behind Bryan. Bryan luckily saw him and kept the trophy tight," said Rayaan Adriaanse, a spokesman for South African Rugby who said that he was the only "individual intent on spoiling the enjoyment of a lot of people."

The fan can be seen coming out of the left of the screen and jumping up in an attempt to grab the trophy, which Habana was raising above his head. The trophy did fall, but was not damaged despite its lip hitting the ground.

The unnamed man was immediately apprehended by stadium officials and was given a warning. He was not arrested. He was reported as an "overexcited fan."

ACLU President Strossen on religion, drugs, guns and impeaching George Bush

There are few organizations in the United States that elicit a stronger emotional response than the American Civil Liberties Union,

whose stated goal is "to defend and preserve the individual rights and liberties guaranteed to every person in this country by the Constitution and laws of the United States". Those people include gays, Nazis, women seeking abortion, gun owners, SPAM mailers and drug users. People who are often not popular with various segments of the public. The ACLU's philosophy is not that it agrees or disagrees with any of these people and the choices that they make, but that they have personal liberties that must not be trampled upon.

In David Shankbone's interview with the President of the ACLU, Nadine Strossen, he wanted to cover some basic ground on the ACLU's beliefs. Perhaps the area where they are most misunderstood or have their beliefs most misrepresented is their feelings about religion in the public sphere. The ACLU categorically does not want to see religion disappear from schools or in the public forum; but they do not want to see government advocacy of any particular religion. Thus, former Alabama Chief Justice Roy Moore's placement of a ten ton monument to the Ten Commandments outside the courthouse is strenuously opposed; but "Lone Ranger of the Manger" Rita Warren's placement of nativity scenes in public parks is vigorously defended. In the interview, Strossen talks about how certain politicians and televangelists purposefully misstate the law and the ACLU's work in order to raise funds for their campaigns.

David Shankbone's discussion with Strossen touches upon many of the ACLU's hot button issues: religion, Second Amendment rights, drug liberalization, "partial-

birth abortion" and whether or not George W. Bush should be impeached. It may surprise the reader that many ideas people have about the most visible of America's civil libertarian organizations are not factually correct and that the ACLU often works closely with many of the organizations people think despise its existence.

Strossen's background

David Shankbone: Why did you want to be an attorney?

Nadine Strossen: To be a civil libertarian to affect individual rights in a positive way.

DS: Why?

NS: As far back as I can remember I have always had an innate belief in what I now would call individual rights, equal justice, due process, and it came out in my family experiences and in my experiences in school as a young child.

DS: What family experiences?

NS: I shouldn't say so much direct experiences—well, to some extent—but the stories I was brought up on as a kid. My father was a holocaust survivor and my mother's father was a protester during World War I when he came to this country as an immigrant, and he was literally spat upon for not going to fight in the war. His official sentence for being a conscientious objector was to be forced to stand against the courthouse in Hudson County, New Jersey so that passers-by could spit on him.

DS: What were you taught about him?

NS: I knew him as a kid and he told me these stories, and my mother told me, and it was very upsetting to me, but very inspiring to think about trying to rectify injustices. When I say my own

family, my own personal experiences are so trivial compared to those, but having teachers not allow different viewpoints come out in class and seeing kids tormenting other kids that were different. When I got a little bit older there was an experience with a teacher who was exposing students to different viewpoints about the Vietnam War, and there was a call for him to be fired and he was editorialized against; I led a campaign to defend his free speech rights, and our free speech rights. Once I had the idea that I could go to law school to get professional skills to advocate for values that I had always believed in, it just seemed the right thing to do. There are many other paths, I realize, but it certainly has been a good path to try to work with the values I care deeply about that I have had throughout my whole life.

DS: When you went to Harvard, were you an activist on campus?

NS: Not so much. I should say, I was an activist, but it wasn't like I was a leader of something. Probably because I was involved in so many organizations and I was glad that I was exploring so many different forms of activism. In college I was involved in the anti-war movement, and I was very involved in the women's movement. Reproductive freedom was a really big deal then; it was before Roe vs. Wade. I remember there was a very high profile prosecution of a doctor for performing an abortion in Massachusetts, where I was in college. Then in law school I was very active in a lot of organizations. I wasn't sure of which direction I actually wanted to go, including prison legal assistance project, the voluntary defenders, the legal aid bureau... and I was also earning my way

through law school so I had to do a lot of work.

DS: What would you say the atmosphere was like on campus back then, with all the issues that were being contended with, how would you describe it?

NS: I don't think it was that different than the atmosphere on law school campuses now, David, which is to say that even at the height—and statistics I have read have verified this—even at the height of the student activist movement, it was still a fairly small percentage of students who were really engaged, especially in law school. In college there were more involved in the anti-war movement, but in law school most people were just trying to get good grades and good jobs. I don't say that at all disparagingly. There was a core of people who gravitated toward these extracurricular activities and back in those days you got no course credit at all. Now most law schools give course credit, so you would have to do all of that on "top" of your full time course load. And if you can believe it, the Harvard Law Review, which I was also on, you got no course credit for that. What I'm saying is that I wasn't really linked to the law school, per se; my experience was—and I cut a lot of classes, quite frankly—my experience was going to the legal aid bureau, going to the voluntary defenders office, meeting with my clients, doing that kind of work. Law school classes and exams was just something I had to get through to get my degree. But I didn't feel myself so connected to Harvard Law School as an entity.

Religion in schools

DS: You had mentioned that one of the things that affected you with your family was seeing points of view not being allowed to be

expressed. Many religious conservatives would say that the ACLU opposes having their points of view in the schools. How would you respond?

NS: That is absolutely untrue, but I know that myth and distortion of what we have advocated and what the Supreme Court has held, there are so many myths and misrepresentations about that, and the truth is that every individual, whether student or teacher, should be completely free in a nondiscriminatory process, to express whatever ideas or beliefs he or she has as long as it is consistent with the overall educational mission. So just as it would be inappropriate for a student to stand up in the middle of math class and say, "Join the ACLU!" it would be inappropriate for a student to stand up in the middle of math class and say, "Join the Hare Krishna or the Christian Coalition!" But in forums where it is appropriate for individuals to discuss ideas openly, such as extracurricular periods, lunch periods, maybe there are times before or after the school day, then every viewpoint should be welcome equally, whether it be pro-religion, anti-religion, any religion, any politics, you name it.

DS: So there isn't any opposition to having religious groups meeting inside of public schools?

NS: No.

DS: Would you defend someone's right to have a religious meeting in a public school?

NS: Yes. But I have to add a qualification and stress that the ACLU's position here has been reflected not only under Supreme Court decisions under the First Amendment religious freedom, freedom of speech and nonestablishment of religion, but also through a federal statute that

was passed in the 1980's called the Equal Access Act. It basically sets out the general principle I have stated, but the important qualification is that you always have to look at all the facts of the circumstances. If, for example, in a particular school there is theoretically an open forum and all student groups are free to meet, but in fact the only student groups that are meeting are religious or of a particular religion, you know enough law to know that the conclusion could be that a reasonable observer could look at as school endorsement of religion and not a school endorsement of an open forum. You always have to look to see that the teachers, government and public school officials aren't channeling the students. But if it is truly open and not an endorsement, then let a thousand flowers bloom. Religious, non-religious and anti-religious.

Religious symbols

DS: The ACLU has been involved in removing religious symbology from the public forum. Can you state your views on that?

NS: I completely support all the cases we've taken in this area, a lot of which have to do with allowing religious symbology in public places. The law is a little complicated so that it is very easy for politicians and demagogues to distort it. The key principle that unites the whole First Amendment including non-establishment and free exercise of religion and free speech, is that the government has to remain neutral. The government can not squelch certain ideas because it disagrees with the ideas, and with respect to religion government can neither favor religion nor disfavor religion. It may not promote or encourage religion on the one hand, it may not stifle or discriminate against religion on the other hand. So,

when you are talking about a public place, it all depends on what kind of public place it is. If it is a public school that is having a public forum where the individual students and voluntary students groups can meet, then the school is simply providing a neutral forum. It is not endorsing religion if it allows religious groups to meet. Likewise, if you are talking about a public park. Religious groups have the right to meet in public parks to pray, to give sermons in public parks; in fact, if you look at every case that the Supreme Court has decided on these issues, the ACLU has always been in support of the rights of religious groups and a lot of the early free speech cases happened to be on behalf of religious groups who were seeking to use the streets, the sidewalks, the parks, other public forums to convey their messages.

DS: Can you give an example of a religious symbology case where the ACLU supported religious freedom?

NS: We've had a number of cases around the country where city governments had government-run cemeteries. They would not allow families to put their religious symbols on top of their graves, and the ACLU has consistently come to the support of the religious freedom right to do that. In fact, one of my favorite cases in this general vein is just because of what the lady calls herself. In Virginia we have a client who calls herself "The Lone Ranger of the Manger". She goes around at Christmastime to every park where people are allowed to put up whatever symbols they want, and she wants to have her own nativity scene to put up. A number of city governments have told her she can't do that because they say it violates the separation of church

and state; they misunderstand.

How the ACLU is misrepresented by politicians and televangelists

DS: Do people misconstrue or misunderstand your work and what you have argued for or against?

NS: Not only our work, but they misconstrue what the Supreme Court has said. It's hard for people to tell, because those who want to say the ACLU is hostile to religion distort what we have done, distort what the Supreme Court has done, and then they are surprised that government officials believe them and say, "Oh no, no religious display is allowed at all, or no student is allowed to make a religious statement," which is not the case. It's so ironic. I've debated Pat Robertson and Jerry Falwell before he died, and they would constantly say, "Little children are not allowed to pray in school; you're not allowed to talk about religious subjects in school." Teachers are listening to them, and so somebody says, "I want to have a student prayer group" and teachers say, "Oh no, you can't, the Supreme Court has said you can't—"

DS: —and the ACLU said—

NS: That's right! Right! But it's actually Jerry Falwell who told them that the ACLU is doing that, and it couldn't be further from the truth! In fairness, I have to say, if what you are talking about is a government-sponsored or promoted display, those were the cases where we do oppose it and with the support of the Supreme Court. To take a well-known recent example, the state judiciary building of Alabama, and the Chief Justice brings in this ten ton 10 Commandments—

DS: —Roy Moore?

NS: —Yes, Roy Moore, and says

that it's because God is the ultimate law-giver. He's not saying it's because this is the foundation of American law. He's endorsing a religious message, and that's a different thing. In his own chambers, we would totally defend his right to do it. If there's a public park where people are allowed to put their own displays, we would totally defend his right to do it. I don't think it's that complicated, you just have to look at the context: who, where, why, what message are they promoting? It really comes down to crystallizing the whole topic into a key question that Sandra Day O'Connor—hardly a flaming radical—formulated that has been adopted by the majority to ask whether the government is honoring its obligation to be neutral toward religion neither favoring nor disfavoring. You look at the contested action and you ask, "Would a reasonable observer see this as government support for religion?"

DS: When does a symbol become historical and when is it intrinsically religious? For instance, a community that was once a mission and they have had a large cross on a mountaintop that to them is more historical marker.

NS: That's the question. With a lot of legal questions—and since you are a lawyer, or almost a lawyer, right?

DS: Well, two years.

NS: Two-thirds of a lawyer [Laughs]

DS: Almost a slave.

NS: Oh boy, that was 3/5ths, right? [Laughs]

DS: Yes, 3/5ths! [Laughs]

NS: It is what a lawyer calls a mixed question of fact and law, but there is an ultimate legal criterion that is really a factual

question. That's what her question is, and what the Court now asks: "Would a reasonable observer who is familiar with the overall context, history and circumstances, see that as promoting a religious message or not?" And I don't know the answer to that; it all depends on the particular facts and circumstances. The way you describe it, it sounds as if a reasonable observer would not see it as a promotion of religion.

DS: That's always the problem in law: who is that reasonable observer? Someone from the community, someone who has just moved into the community?

NS: Exactly! You get that in a lot of areas of law, David. I think another one that my students in my free speech class were talking about yesterday is obscenity. That's defined according to contemporary community standards. Is it patently offensive? Does it appeal to the prurient interest in sex? Does it have serious value? Reasonable people can disagree about that, and that's what our jury system and our legal system are for, and there are some cases where reasonable people will disagree, no doubt about it. But I think the principle is right, if it were up to me I can't think of a better way to try to maintain fidelity to all of the values—necessarily there's a tension when the government is trying to walk this neutral line. It goes on this side and it is supporting religion, which is improper; it goes to that side and it is oppressing religion, which is improper.

DS: Going back to when you have debated religious conservatives and they make the charge that what the ACLU is working toward is no religion in schools, and you can't have a prayer group, do you

think there is a conscious motivation to misrepresent what you have done and want, or is it a misunderstanding?

NS: It depends upon about whom you are speaking. For some people it is a definite distortion, because I know that they know better. But in some cases it is literally a good faith misunderstanding in part because of the deliberate distortions that they are hearing, including from top government officials. Ronald Reagan said in speeches that the Supreme Court has told little children that they may not pray. Many people more recently, including [former] Congressman Istook, who regularly introduced an amendment to the Constitution to, as he says, "Restore prayer and religious freedom." Every couple of years he gives a speech—I read the most recent version—in which he says the Supreme Court has "removed religion from the public square!" Surely you've heard that. It's ironic when you compare our country to Western European countries; they think religion—and it is literally true—that religion is thriving in the public square here in a way that is off the charts compared to other developed industrialized nations. I think that's wonderful! I think religion has been a very positive force in America. As with everything, there is a good and a bad; but certainly on the issues I care about, religion has been a driving force behind civil rights, the abolition of slavery, the death penalty. No matter what the religious group is, including the so-called religious right—which in some contexts will attack the ACLU, and in others work very closely with the ACLU. Post 9/11 we worked very closely with Phyllis Schlafly's Eagle Forum and the American Family Association, and others, who are very traditional conservatives and very suspicious

of federal government power concentrated in the executive branch. Very protective of individual privacy. They are completely with the ACLU in opposing Real ID and opposing a lot of the post-9/11 dragnet measures. And let's not forget that the free exercise of religion, they know the ACLU is in their corner and on the professional level we work together, lobbying. Years ago, when the Supreme Court gutted the free exercise clause of the First Amendment, I testified in Congress in support of something called the Religious Freedom Restoration Act that every single religious denomination under the sun was on our side. The ACLU was the spearhead of that legislation. So there's a difference between what group's professional staff members are doing when it comes to Supreme Court arguments and Congressional testimony versus what their fund raising letters say, or what their radio programs say.

I remember years ago when Michael Kinsley was the co-host of Crossfire and I was debating Jerry Falwell, and he interrupted and said, "Come on, guys, you know you need each other; your direct mail campaigns need each other." [Laughs]

The abortion debate

DS: Don't you think the way both sides go about engaging each other harms America? Take the partial-birth abortion Supreme Court case. Did you read Justice Stevens' New York Times interview with Jeff Rosen?

NS: Yes, I read that.

DS: He said it was a silly decision that wasn't particularly important —

NS: I don't remember that—he said that?!

DS: Yes. He said it was, in the end, not a particularly important case.

NS: Oh, I totally disagree with that, unfortunately, it's a very important decision. I'm wondering whether he had a strategic reason for making that point; maybe he is trying to get people to implement it in a not-serious way?

DS: He was talking about in terms of the effect, that it didn't have much of an affect because there were other legal alternatives to that particular method of abortion.

NS: That's not what the medical profession says, so even if you are talking about a tiny percentage of women, it's still that there are some women—and every single medical organization said this—the American Medical Association, the College of Obstetricians and Gynecologists, the American Nurses Association, that for some cases this is the necessary method in order to either preserve the woman's life or preserve her future fertility. So the only option they have under this decision is for the doctor to leave the operating room and run to court to get an injunction because the Supreme Court said—the Court acknowledged that in the opinion and said but those women can bring in an "As Applied" challenge, that they aren't going to strike down the entire statute on its face. But realistically, is that going to happen? And what doctor is going to take the risk of criminal prosecution? I beg, with the greatest respect for him, I really beg to differ.

DS: The question I have is that on its face it was deciding one particular issue in the abortion debate, but a lot of pro-choice organizations paint this as, "We are now getting ready to ban abortion; this is the first step on

what might be a short road—" NS: A slippery slope argument.

DS: Yes, a slippery slope. Isn't it almost the same thing when the evangelicals say, "They are coming for your prayer, your kids aren't going to be able to pray or allow God in schools."

NS: I understand what you are saying, David, but I think—

DS: Is it healthy for us to be ringing these alarm bells every time one nuance in the argument gets addressed?

NS: There's a difference between predicting something is going to happen that might be an inaccurate prediction and making factual misstatements about what has already happened and what the law is. There's a real difference. So I think the analogy would only be apt if somebody said, "The Supreme Court already has overturned Roe vs. Wade and brought back back-alley abortions." That would be the counterpart to saying, "The Supreme Court has removed religion from the public schools and the public sphere." I have not heard any pro-choice—

DS: But let's say the Christians give you that, and they say, "This is just the first step and what they ultimately want is not to have the word God said anywhere in the public square."

NS: But that's also counter-factual because if they looked at the ACLU's policy statements and they looked at our briefs, and they looked at our legislative testimony, they would see that we are constantly defending the rights of people to say God in the public square. Every day we have cases where we are defending street preachers and people trying to baptize in the rivers...

DS: Whereas in the abortion argument it is a stated goal to bring about the end of Roe v. Wade.

NS: Yes. Yes. But it's interesting—I think as a responsible advocate you do have to read between the lines, not only what the Supreme Court says it is doing, but what it actually does, and here you not only have to rely upon those who agree with the result, but those who disagree with the result. In the so-called Partial-Birth Abortion Ban Case, no less an anti-abortion proponent than Justice Scalia joined by Justice Thomas, in his separate opinion, chided the majority for not coming out and explicitly saying that they had overturned not Roe vs. Wade, but the prior partial-birth abortion ban case. Remember there had been one six years before from Nebraska, and that's why every lower court to consider this said that based upon that precedent this law is indistinguishable, and that's why we are striking down this federal law. The result here got a majority, but there were two separate opinions, one that was written by Kennedy and joined by the new justices; and Scalia and Thomas supported the result. But they had a separate opinion that said, "You are not being honest, you have effectively overturned that earlier case, why don't you come out and say so?" And the campaign finance reform case, same thing. They said they were not overturning their earlier decision that upheld McCain-Feingold, and Scalia had a very quotable line where he was making the point he made with many earlier decisions, that he supported the result, but he was saying that they are not being honest about how far-reaching the result is. This one was quoted a lot in the press; he said, "It is faux judicial restraint, which is really

judicial obfuscation." So as a responsible analyst and advocate, you have to look behind the lines. Many are what we now know as landmark decisions, but they didn't tell us they were landmark decisions, right? The old Commerce Clause cases. But when the Supreme Court overturned the narrow view of the Commerce Clause in 1937, it didn't say it was making new law. It paid lip service to the same old tests. But lo-and-behold, it came out differently.

Judicial activism

DS: When you hear the phrase "judicial activism" what comes to your mind?

NS: I think of a judge who is actively enforcing the Constitution and living up to his or her responsibility and oath of office to protect and defend the Constitution, even in unpopular cases.

DS: So you believe in the living Constitution?

NS: I don't know I can say what is a living Constitution. The Constitution itself contains provisions that on their face call for interpretation that has to take into account evolving developments in society. Why did they talk about cruel and unusual punishments when they could have simply said—

DS: "These are cruel and unusual punishments"

NS: --Exactly. So that there was a conscious choice on the part of the framers to leave it to future generations to pour specific content into the open-ended values they were endorsing. So to me that's being faithful to the text and intent of the framers not to have hide-bound Eighteenth Century interpretation.

DS: Do you think there is a right

to privacy in the Constitution?

NS: I think that the Constitution is a document that bestows limited powers upon any government that was intended to have limited powers. Unless the government is given power to invade certain individual rights, then that power does not exist. So to me the question is not does the Constitution grant people a right to privacy, it's does the Constitution grant the government the power to invade an individual's inherent and pre-existing right to privacy. Let us not forget that the founding document of the country, the Declaration of Independence, as we all know, says we are all born with certain inalienable rights that to secure these rights, governments are instituted among men. So the purpose of government was not to grant us rights, which we already had by virtue of being human, the purpose of government was to protect those rights. If you look at the preamble of the Constitutions, which is implementing those ideals that are set out in the Declaration, it talks about one of the prime purposes being to secure the blessings of liberty to ourselves and our posterity. It doesn't say grant liberty.

Capital punishment and criminal justice

DS: What argument for capital punishment do you think is most compelling for it?

NS: If I had to be a devil's advocate... Boy. I-I-you're really tongue-tying me, which is novel. I would say just on a Constitutional level there is a pretty strong argument, textually, which is that the Due Process Clause of both the Fifth and Fourteenth Amendment, says that no state or the federal government shall deny any person of life, liberty or property, without Due Process of law, which

suggests that the government may deprive somebody of life, as long as it lies with Due Process of law. So I think that is a pretty strong textually argument that it was contemplated by the framers. But, if you are going to make a moral argument or policy argument, I would really come up short on that because every study that has been done shows that it is fraught with all kinds of discrimination, racial discrimination as we know; discrimination based upon wealthy or poverty; geographical discrimination, depending upon what the polices are of the prosecutors in a certain jurisdiction. There's no evidence that it deters anybody who commits homicide. So I can't see any policy justification. I don't believe that it makes us safer, I don't think it deters crime. I think it is inherently inconsistent with human dignity or possible rehabilitation, which is I guess the word that they use.

DS: The criminal justice system is a rehabilitative system?

NS: That's not what I think it is now.

DS: Is that what it should be?

NS: I think the purpose of the criminal justice system should be—yeah, that would be great, if it could be done. But its primary purpose is to promote safety, to reduce crime.

DS: How does it do that?

NS: Believe me, I'm not an apologist for the criminal justice system. I think it's in a terrible state, in part because quite a few years ago the official policy, at least at the federal level, and the states certainly seem to be in the avant-garde on this, was to not be focused on rehabilitation but to be focused on retribution. The federal sentencing guidelines, I believe,

explicitly endorse a retributive purpose for the criminal justice system. I disagree with that.

Decriminalization of drugs and suicide

DS: Are you an active member of NORML?

NS: I don't know. I certainly support their goals and I have spoken at their conventions.

DS: Do you believe in the decriminalization of marijuana?

NS: Absolutely, and everything. For adults.

DS: Can you give me your case for that?

NS: Sure, it's official ACLU policy, which I wholeheartedly endorse. I think it was well summarized by one of our board members years ago when the crack cocaine epidemic was starting, and somebody said we should re-examine our policy which opposed the criminalization of substances for adults. Maybe we should re-examine it in light of this new dangerous drug. And we did re-examine and unanimously re-affirmed. In the course of that debate, one Board member said, "We believe that every consenting adult should have the right to imbibe, ingest, inhale or insert whatever he or she wants into his or her own body. It's a matter of individual freedom of choice." Does that mean they should do it? Not necessarily, not any more than somebody should smoke or drink or eat McDonald's hamburgers.

DS: Should suicide be legal?

NS: Absolutely. The idea of government making determinations about how you end your life, forcing you, which could be considered cruel and unusual punishment in certain circumstances, and Justice Stevens in a very interesting

opinion in a right-to-die raised the analogy. But you said before you turned on the tape that you typically ask people how they would want to die, which is very interesting. I mean, of the zillions of questions I have been asked, nobody has ever asked me that! It's very rare I am asked a question that I have never been asked before.

DS: So how would you like to die?

NS: Well, the first thing that occurred to me was: I want to have the choice. That was the very first thing that occurred to me, because I know how through personal experiences, through vicarious experiences, through reading the complaints in our law suits where we have challenged the absolute restrictions on compassion and dying, people are essentially tortured. And I don't want that to happen. And I don't want my loved ones tortured by watching that happen.

DS: You wouldn't want a Terri Schiavo situation?

NS: That was an ACLU case; we represented her husband there. It has to be consenting, but there are measures we can take, and precautions we can take, so there it should be regulated. I say the same thing about drugs. You wouldn't want to have regulation the way we do for food and alcohol, but absolute prohibition is completely inhumane and counter to the most fundamental autonomy of who you are.

DS: So you have the choice, what is your choice?

NS: My choice would be to take a sleeping pill, I guess, or maybe morphine would have the same effect, to peacefully pass from this Earth when I have made a decision that I can no longer live in this state of comfort and dignity that

makes life meaningful to me.

War and threats to humanity

DS: What do you think is the greatest threat to humanity right now?

NS: By that do you mean human existence, or something more subtle?

DS: However you interpret the question.

NS: The greatest threat to humanity... Boy. The reason why I am pausing is I live so much of my life looking at one set of threats, so I'm not usually asked the comparative question. See, you're again getting me out of my box. I'm usually asked what is the greatest danger to civil liberties, and I don't have so much hubris to necessarily say, "The greatest threat to humanity is threats to our freedom." I guess I would have to take it as the most literal threat. For many years I managed to perhaps delude myself that there wasn't a serious threat of nuclear holocaust, and I don't think that anymore. I'm very afraid with reports of Iran having nuclear capabilities, or even individual terrorist groups or terrorist cells having access to weapons of mass destruction. That really scares me.

DS: How has the Iraq War affected your world view?

NS: It's made me very concerned about—even more concerned than I always have been—about the future of the world and the future of this country, because I think it's not only the war itself, but obviously the ripple effects, the insurgency, the recruitment for Al-Qaida and terrorist groups. The disenchantment with what I thought and think our country should stand for, but in the world it no longer does stand for: human

rights, democracy and justice.

DS: Have you seen a precipitous drop?

NS: It's catastrophic. The damage. I'm not speaking as a civil libertarian, I'm speaking as a member on the Council on Foreign Relations, looking at what my colleagues in the international human rights movement are telling me, and they meet with the most brutal dictators who say, "I'm just doing what George Bush is doing."

DS: Ahmadinejad came to Columbia and brought that argument up.

NS: Yeah, right. So we have squandered our moral legitimacy, we have squandered the legitimacy of the whole international human rights regime post World War II, of democracy, and as I always tell my students, once you lose your credibility or people's respect for your integrity, it may not be irreparable, but it takes such a long time to restore that, and ultimately our national security depends on that. So I'm really fearful. I'm ultimately optimistic in the long run, but it's a longer run than it would have been pre-9/11, and not because of the terrorist attacks, but because of our reaction to the terrorist attacks. And the use of that to get us into Iraq, and the erosion of trust—this is something Hagel was talking about—the erosion of trust toward government on the part of the American people, and particularly younger generations. It was really corrosive.

DS: It's surprising that Hagel gave that criticism since it is his part that has instituted the fear of government into our culture. Such as Reagan's famous line that the most terrifying words in the English language are, "I'm from

the government and I'm here to help."

NS: These parties are so heterogeneous, believe me, I would not want to be associated with a single one. Even the ACLU does things I personally disagree with, so I would not want guilt by association. If the party platform reflected [Hagel's] views, it would be a different party than it is now.

DS: When I interviewed Gay Talese, I asked him how the Iraq War affected him and he said it had not. He said, "I wish it did!" He said he doesn't feel anything and that he doesn't think anyone else does, either. He feels you can't have a war affect people unless you have conscription.

NS: I totally agree with that, I completely agree with that. Charlie Rangel, as you probably know, I completely agree with that. The ACLU has always opposed the draft, going back to our founding, as in our view being inconsistent with the Thirteenth Amendment of involuntary servitude, but our fall-back position has always been, having lost on that argument, that if you are going to have a draft then it may not be discriminatory; it should apply to women as well as men. We took that case to the Supreme Court. You can't have exemptions for students and others who are privileged, and partly because that's consistent with Equal Protection guarantees, but that means that the way to enforce fairness: everybody has to be treated equally. To have members of Congress and the Executive Branch send other people's kids off to war, or other people's spouses, they are not making a responsible decision if they do not have to feel the cost. I could not agree with that more strongly. The result might be then we would then have no war. It's the same thing with all the

deprivations of liberty in the war on terror, if I may say so. All those surveys that say, "Are you willing to give up freedom to enhance national security?" The reason people say yes is they are willing to give up somebody ELSE'S freedom. Okay, so take it away from the Muslims...

DS: But they see it as voluntary service. It's a voluntary army.

NS: I wish that it really were. I think nobody who volunteered for it was volunteering for the tours of duty—even forget the danger they are facing—but the extended time, it's off the charts. Chuck Hagel today gave us the exact details, so don't quote me on this because he's an expert and I'm not, but the order of magnitude used to be 7 months, but now it's 15 months, or 18 months, or 21 months, and then it's being doubled and you are not able to have leave in between. So, they volunteered for one type of duty in terms of the amount of time, but they are getting something entirely different from that. Number two is query how realistic the choice is for the people who are going into it if they don't have many other options—or any other options—to get an education, to get a job, to get the skills and the training—

DS: --That's what Talese said. Senator Brownback told me he is against conscription, and it's interesting that the people who are most for the war are the people who are most for a voluntary army.

NS: Maybe they believe that those would be the people who are most highly-motivated. I mean in theory, you would see that advantage.

DS: Rangel's bent is that if people were actually fighting in the wars, or forced to fight, that it would

bring public opinion against the war.

NS: I think in terms of Constitutional Law terms, but remember that famous old case by John Marshall, *McCulloch v. Maryland*, where the state of Maryland was not allowed to tax the Bank of the United States, and he set out a principle that is a pervasive equal protection principle, that those who are going to bear the burden should have an opportunity to participate in the decision-making. This is the flip side of it; you may not impose the burden unless you are sharing in the responsibility. There's an accountability, a reciprocity that State A may not impose a tax on State B is the same thing as saying, people who are not fighting the war may not send off those who are.

Should George Bush be impeached?

DS: Do you think George Bush should be impeached?

NS: I think there is a case for him to be impeached, but I don't think it would be a good idea. The reason I say there is a case because partly under the Constitution it's high crimes and misdemeanors, which are not defined and the latest precedent we have is having a blow job in the Oval Office and lying about it is considered to be a high crime and misdemeanor. Well, Bush, has clearly lied to Congress, the American People, to the media about much more serious infractions and violations of the Constitution. He's had a view that as Commander-in-Chief he can do whatever he wants, that he's above the law, that he doesn't have to abide by the laws that are duly passed by Congress. In one breath he is signing them, and in another breath he is saying he doesn't have to follow them. So, I

think if what Clinton did can be considered a high crime and misdemeanor then what Bush did could be.

Do I think it would be a good idea to impeach him? I think it would be a terrible idea to impeach him. Among other reasons, I think it would have the effect of placing disproportionate responsibility on to him when a lot of the blame for the violations I'm talking about rests in the hands of Congress. Congress did not have to vote for the Patriot Act, as they did almost unanimously in the Senate. Congress did not have to expand his domestic wire-tapping power this summer, even beyond what he was initially doing in his secret program. Congress did not have to roll over and play dead with respect to torture and rendition and Guantanamo and all the other human rights disasters. They really bear a lot of responsibility and we should not be letting them off the hook. By going after Bush, it deflects responsibility from Congress, it deflects responsibility from the courts, which have been issuing a lot of bad decisions, I think. It also deflects responsibility from the Democrats. It makes it too much of a partisan issue. There is bipartisan responsibility here. For that reason I strongly oppose it. I'm not speaking for the ACLU, I know some people in the ACLU would like to see it.

DS: You just don't think it would be productive.

NS: I don't think it would advance civil liberties.

Gun rights

DS: Where do you stand on the Second Amendment and the rights of gun owners? Are the rights accorded to well-armed militias, or is it accorded to unfettered rights of individuals to own guns?

NS: I actually don't think in reality

that the difference is that profound, because when you look at the big debate, and you stated it well, does the government protect the individual right to bear arms, does it only protect a collective right through the state militias? Let's assume for the sake of argument it does protect an individual right, it is no more absolute than freedom of speech or any other right in the Constitution. No right is absolute; the government is always allowed to restrict the right if it can satisfy Constitutional strict scrutiny and show the restriction is narrowly tailored to promote a goal of compelling importance. Ironically, the very first federal appellate court in recent history to hold that there was an individual right to bear arms under the Second Amendment, the Fifth Circuit, then went on to nevertheless uphold the particular restriction that was being challenged! Mainly, that the guy was under a restraining order for domestic abuse and he wasn't allowed to possess a gun. The court said the Second Amendment protects your right, but this regulation doesn't violate your right. So I don't think it makes a big difference. And conversely, to say it's not an individual right doesn't mean that gun owners are without all rights, and the ACLU has often collaborated with gun owners rights organizations to defend their rights to privacy, to defend their rights to due process; in other words, they don't forfeit all of their Constitutional rights just because they are gun owners, even if the Second Amendment doesn't protect. So I think it's more a philosophical debate than it has any practical difference.

Strossen's philosophy

DS: Last question: what trait do you deplore in people?

NS: I—I'm so tolerant, I really

can't think of one! That's horrible!
 DS: That's about the best answer I can think of coming from the President of the ACLU! [Laughs]
 NS: You know, and people will say...maybe that's what made me President of the ACLU, I am so tolerant of everything. It's very hard to get me angry. I always see a silver lining to a cloud, and people will often ask me, "Wasn't it hard for you when the ACLU defended the rights of the Nazis to march in Skokie?" No! For me, it's never about the Nazis, it's about freedom of speech. It's about the principle. So I tend to see things in a rather abstract level. For every bad piece of mail I receive, I get marriage proposals, love letters, letters of praise! So the question was what trait do I find obnoxious?

DS: That you deplore in people.
 NS: I guess I would, in the abstract, I would deplore a lack of tolerance, but even that is hard to say because I sort of admire people who are firm in their convictions. I think it is hard for me to give a categorical answer, because I would just judge each person as an individual. This morning I had a conversation with someone who said to me, and it was a very well-educated and thoughtful person, a doctor, who said, "Do you know any Iranians?" And I said, "Yes." And he said, "What do you think of them as a group? Do you like them?" I was—I mean, my jaw just dropped! So, I guess I refuse to generalize. I look at everybody as an individual, I look at every trait individual, and I can't think of one that I would deplore categorically.

DS: Do you deplore any in yourself?
 NS: No, I must say I like myself. I deplore specific things I have done in the past, but that is consistent

with what I have said in general, that you shouldn't judge somebody by the worst thing they have every done.

Today in History

- 1517 – According to traditional accounts, Martin Luther nailed his 95 Theses onto the door of a church in Wittenberg, Germany, marking the beginning of the Protestant Reformation.
- 1863 – The New Zealand land wars resumed as British forces in New Zealand led by General Duncan Cameron began their Invasion of Waikato along the Waikato River.
- 1922 – Benito Mussolini became Prime Minister of Italy at the age 39, establishing a coalition government composed of fascists, nationalists, and liberals during his first years in office.
- 1941 – Gutzon Borglum and 400 workers completed the colossal busts of U.S. Presidents George Washington, Thomas Jefferson, Theodore Roosevelt, and Abraham Lincoln at Mount Rushmore.
- 1984 – Indira Gandhi, India's first and to date only female prime minister, was assassinated by two of her own bodyguards. Riots soon broke out in New Delhi and several other cities throughout the country.

October 31 is Halloween, Samhain, Reformation Day in Protestantism

Quote of the Day

There is no law beyond Do what thou wilt.
 Love is the law, love under will.
 ~ Aleister Crowley ~

Word of the Day

- supple; adj
1. Pliant, easy to bend.
 2. Lithe and agile when moving and bending.

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