

MARY ANNE FRANKS: Hi there. I am Mary Anne Franks. I am the president, and the legislative and tech policy director of the Cyber Civil Rights Initiative. And I'm absolutely delighted today that I get to sit down and talk with the vice president of the Cyber Civil Rights Initiative about her book, *The Fight For Privacy, Protecting Dignity Identity and Love in the Digital Age*.

So excited to have this conversation with you, Danielle. Danielle Citron, vice president of the Cyber Civil Rights Initiative, but also a professor of law at the University of Virginia Law School, MacArthur Fellow, any number of other accolades that we could go into. But we are here really to focus on this book, because it came out recently. And it's absolutely brilliant. And it's life changing in many ways. And I just wondered if we could talk a little bit about your motivation for writing this book, and how it relates in some ways to the work that we do together at the Cyber Civil Rights Initiative.

DANIELLE CITRON: So working as long as we have on intimate privacy violations, that is the way in which individuals, companies, and governments will expose our bodies, our health, our close relationships, our sexual orientation, sexual activities, and gender. The people at the heart of those stories of violation have so long both felt Invisible, and have been so Invisible in so many ways to companies, to lawmakers, and even to individuals who they interact with who say it's no big deal. To police officers or law enforcement who just don't see them, and the fullness of what they're experiencing.

And so what motivated me at the heart of why I sat down and wrote this book, after writing all this scholarship over a period of time was to make them visible, and to make both the suffering and their identities, and who they are. And the varied ways in which we are at risk, but also a story of hope too. Because we have the Cyber Civil Rights Initiative have been working to change both what companies do, what lawmakers are doing, and we've seen some change. And we've seen important change across the globe.

And so I wanted to make that fight, I wanted to make it visible. So we could all see it. So we could understand the stakes, and so that we could draw-- everyone can join it. Like a call to arms in many sense, is what motivated me to sit down and bring together all the reasons why privacy matters, intimate privacy in particular. Why we should prioritize it as a foundational value, and how we can do it. It's not that we can't, we can. We just aren't doing a sufficient enough job, especially in the United States.

MARY ANNE FRANKS: It's so interesting what you say about the victims and the survivors whose stories that you tell so eloquently in this book. That you talk about them being invisible because in so many ways what they're experiencing is incredible visibility. Because what's happened to so many of the people who you describe is that their intimate images, the most private acts that they were engaged in, the most personal moments in their lives were taken from them and exposed to the world.

And so there's this moment where they're hyper visible, but exactly as you point out in the book, they become Invisible because they're reduced to that. They're reduced to these objects. They're reduced to a kind of entertainment. They're not human beings with feelings and rich lives. And so what you give them in this book is the chance to be seen in all their complexity, and who they were before, and how this affected them, and what they became after.

So it is such a service that you've done to-- in some ways to re-inscribe for them what their lives might mean that's beyond.

DANIELLE Their true meaningful selves. The whole self to be seen as who your social esteem, that is your whole self. Not as
CITRON: an-- not a fragment, not an object, not a body part. And you talked to so many people, like I'm just a vagina on the internet. And they say I may be change from this experience, but I am a fully integrated person, and I want to determine my identity on my own terms. And that privacy is such an important part of the journey for self development.

And the desire for human dignity, which is both self esteem, and of course social esteem, to be seen as a full person, a whole person, fully integrated person rather than just an object. And of course, privacy, intimate privacy is crucial for love.

MARY ANNE Exactly.

FRANKS:

DANIELLE And friendships.

CITRON:

MARY ANNE And the way that you tell the story is so careful and so respectful of the individuals that you're talking to. That
FRANKS: when they tell you these stories it's clearly very intimate. It's clearly very-- in many of these stories humiliating and painful. But you treat their stories with care and respect. And so much of your book is about becoming a fiduciary for people's intimacy. It's about having a respectful attitude towards the kinds of vulnerabilities that people share with you.

And one of the things I love so much about the book is that you enact it for us. Because it's what you're doing with the book is taking these really incredibly intimate painful stories, and not displaying them for some kind of consumption, but to actually try to portray the humanity, and to take care, and to really illustrate the principles that you're giving us. So thank you for that because I think it was such a gift for I hope for the survivors that you're in contact with. But certainly for the reader.

DANIELLE Oh, and every story is like, what do they say? I felt like I was a steward. I was the guardian of their experience.
CITRON: And that's even true when we're talking about corporate violations of intimate privacy, or governmental like with Rana Ayyub, the journalist. Like making sure that I'm going to tell your story, I'm going to make sure I honor it in all of its fullness. And so I made sure every-- as I wrote the book to show the middle version, like this is what the story looks like. And here's the final and that everyone's OK. Because I felt like a protector educator.

That is what I understood from all the people who I did feature in the book, both pseudonymously and in their own names, was the notion that they felt like telling this-- having me help tell the story gave them back their esteem self, and the ability to say, this is my story. And I'm going to be able to move on in some respect changed in many ways, but on their own terms.

So that was the hope of-- in telling those stories is that we could appreciate and see them for who they are and not as victim, as a body part, but as in the fullness of their self. But it's important as we know. Because, Dr. Franks, so-- as president of the Cyber Civil Rights Initiative, you work with state for state, lawmaker for lawmaker. And I know you bring those victims stories to all of your work, because to get people to care, you need to tell those stories.

So that experience of us, and your experience has so informed how I think about the fight for intimate privacy so that we are telling those stories and advocating, and creating both a normative reason why we should care, and then the prescription of how to do it that we all think of ourselves as fiduciaries, as stewards of each other's intimate privacy because democracy is on the line, because lives are on the line. Because our own identities are on the line.

So in bringing that fight I feel like I learned so much from you. And making sure that the dignity of those stories were told in ways that honored those individuals. And then in that fight for our lawmakers to pay attention, and for law enforcement to pay attention that we needed to share those stories as an important way for them to understand, and get invested in what we were doing at the cyber civil rights initiative.

**MARY ANNE
FRANKS:**

Right. And it really in some ways is-- it's an extension of what it was that we were doing, or a reflection because you're doing all this at the same time. This is obviously not the first time you've written about these kinds of issues. Your previous book, *Hate Crimes In Cyberspace*, which I know that there are social media companies that use it as a guide in some ways for them to think through carefully about the harms that platforms can facilitate.

And of course, the piece of yours from back in, I think it's 2009. So you write a piece called *Cyber Civil Rights*. And our name, obviously, the name of the organization is the Cyber Civil Rights Initiative. So your work from the very beginning was animating a lot of the plan, the agenda that the nonprofit had. But of course, it began as Dr. Holly Jacobs's story.

So when Holly contacted me, and then I contacted you about what had happened to her in this just horrific set of circumstances where her intimate photos are being used against her this way, and back in 2012, 2013, among the many emotions she's feeling. And of course, we know what those effects are. The humiliation. The psychological distress. The impact on her education. The impact on her employment. She was also thinking the fact that the law says that what happened to me isn't a crime is not acceptable, and no one should have to go through what I'm going through.

So not only was she willing to share her story with me, with you, but her entire reason for wanting to do that was to create something, what eventually became CCRI, was so that no one had to experience what she experienced. That she didn't just want to survive. She wanted to triumph, and she wanted to make it easier for other survivors. And so that really-- her story, and the fact that we were both privileged enough to hear the story. And for each of us along with the other board members to make our contribution to the project that she had, and the vision that she had was really fueling what we were doing, because it begins with that story.

But I want to return to something you hinted at, and that you say-- you talk about in the book so well. And that's-- oftentimes when people hear about privacy, and about some of the specific recommendations that you make, because it's easy, I think, for people to say, oh, sure we should respect privacy. That's a good principle. But you say, no, no, no. I mean, there should be laws. I mean that there should be penalties for certain things. We need to change not just norms, but actual regulations about this.

And people will sometimes say, we've heard this a lot. About how-- well, those regulations, those laws are going to oppress free speech. They're going to censor people. The cure is going to be worse than the disease. And you respond to that so well, I think, in the book. Could you just share a little bit about what you think the relationship is between privacy and freedom of expression, and what it means to protect privacy and also protect freedom of expression.

**DANIELLE
CITRON:**

So privacy is not in a zero sum game with a battle to the death of one victor, privacy and free speech. In fact, the privacy of our innermost thoughts, our bodies, our health, our relationships, our communications is essential for free expression. That we know from empirical studies, now that we've been working on this for more than 12 years.

That there is now empirical work that shows without a doubt that when you are denied your intimate privacy, you are way more reluctant to stay online. You shut down all of your communications. You withdraw from relationships. That is your speech is without question silenced by brute force of your being hyper visible in some sense. Your identity taken from you in ways that are dignity destroying, identity denying, equality disrupting.

We don't recognize and see that securing intimate privacy is securing free-- and including sexual expression. That we're on the side of free speech. I always feel like I want to explain to folks that when they say we're in intact, or would accuse the book of being an antagonist of free speech. I say, no. It's actually a prescription to protect free speech. But to protect free speech for all on equal terms. So that you can tell your own story of your body, your images.

Like we should all be able to tell our own stories. We shouldn't be coerced into expression that is never chosen by us in any way. So I resist the narrative that we're in a fight to the death. That privacy and free speech are on a collision course. No, in fact intimate privacy is essential as a precondition to free expression, and that we need to preserve it, to be Democratic citizens.

And law has to play. You know that law is a big part of this book because we can't-- self-regulation hasn't worked so far. We have a market failure in many senses, both human and actual corporate failure, and a government failure. And we need law because it's our teacher. It plays this crucial expressive role.

**MARY ANNE
FRANKS:**

Yeah. And I want to talk a little bit more about that, because that is something that's been a theme of your work for a really long time. That it's-- what I think sometimes people focus on is, oh, you're talking about putting people in jail. And it's certainly true that as part of what the CCRI's legal reform project, and some of the reforms that you mention in the book they do involve the criminal law. But people want to focus on people being put in jail.

And what I think is so evocative about a lot of your work is that you're talking about law as a teacher. And what that means is it's not about the moment at which someone chooses to violate the law, and gets punished. What you're actually, I think, and you can tell me if this is right. What I hear you saying is that law teaches us so that we don't do this to other people.

There are two tragedies here. We don't want to celebrate incarceration. We don't want to celebrate having to bring the criminal justice system into play. But the view here is if we have the law, have this expressive potential, it teaches us what's important, and what's harmful. And that not only prevents people from maybe engaging in these types of acts. Well, certainly, we hope that it means that they will not engage in these acts. But it will also make them understand what the experience is like for a victim or survivor going through this.

So yeah, could you say a little more about-- why is that-- what have you seen in some of the stories that you tell? Because some of the stories you tell are the ones that I think are more familiar to people about the really vengeful ex-boyfriend. The one who's really trying to destroy someone's life. And a lot of people will conclude that person should probably be punished. But there's all these stories that you also mentioned, which are not really about some personal desire to hurt or harass the victim. It's much more impersonal. So could you talk a little bit about that and what role the law you see playing there for situations like that.

**DANIELLE
CITRON:**

Yeah. I know. Both from the anecdotal stories that I tell, but also empirical work is that when we get a chance to interview or to survey people who have invaded other people's intimate privacy. If they're not doing it for revenge, they're often doing it to show off. They are doing it because it makes them look good for their peers. They're doing it because they think it's fun. They're doing it because they think it'll get them some social capital in ways that-- it's like trading cards. Like, oh, I just passed out the coolest trading card. What do you think?

And they're not doing it because they want to hurt someone. So an intent to destroy their lives isn't what's behind it. It is society hasn't yet quite caught up, and law has not caught up to teach them that this is really harmful. That it's wrong. And we know from studies that perpetrators say if they knew that law would come in and say it's wrong that they might face some penalty or punishment that they would never do it.

That in fact showing them that it's harmful, and explaining how much people suffer, they then say, gosh, well I wouldn't have done it. Had I known it was so tragic for that person, had I known it wasn't a joke, had I known it wasn't going to give me cache but rather like risk penalties criminal, and civil, I wouldn't have done it. So law has to. Whenever we have these social failures, like market failures, law comes in to help teach us, and to deter problems, and to shape behavior. So I want law to be our teacher.

**MARY ANNE
FRANKS:**

Yeah. And you write to say that here we actually have some empirical evidence that isn't available I think. And a lot of other-- it is-- it's a valid point to say, do we really know if criminal law is deter. And as you're pointing out to the 2017 study that CCRI did. Where we asked perpetrators, what would have kept you from engaging in this behavior? And there was a little bit of well, finding how harmful it was. But most of it, or if I knew I could get sued was another option. Some of them worried a little bit about that.

But as you're pointing out, the really strong showing was if I thought I could go to jail I wouldn't have done it. And I think what we can certainly interpret from that is people know that that means something serious. That the law takes this seriously. I'm not going to do this thing that doesn't necessarily bring me a benefit. Something that I might have done as a lark, who knows. If I knew that there were going to be serious penalties.

And so we do have pretty good evidence here to suggest that if the law took a certain strong stance on these issues, then we'd probably just have a lot less perpetration. So that one of the things that you point out in the book is that there are civil suits that people can bring. There are ways that we can try to get some sort of remedy back for victims. But in so many ways what's happened to them if not exactly irreparable, it's not the kind of thing you can make them whole again for. So could you say a little more about what some of the experiences were for the people that you talk about in the book.

DANIELLE

CITRON:

So the-- think of lawsuits, civil lawsuits, and civil penalties is like you're paying recompense and you're putting people back to where they were. With intimate privacy violations, as the victims have said, it is an incurable disease. That is you're changed forever. There are ways in which you can't get that old self. So often you talk to folks. And they say that other person, talking to the same person. That other person, that's a different person. I don't that person anymore.

So there's a way in which civil penalties just can't do it all. You can't just keep paying someone. That incurable disease what they want is to it have not happened. They want to be that old self who never had to go through all this pain and suffering, whose privacy was intact. Whose integrity and identity was theirs on their own terms.

And so what the criminal system does crucially is teach us so that it doesn't happen. I don't want to throw anyone in jail. I want to fix the criminal justice problems, of course. But what civil penalties and common law claims can't really do is capture the concept of don't ever do it. And don't ever do it. And we from studies that perpetrators say I wouldn't have done it had I known there were potential criminal penalties. And they wouldn't have done it. So in that effort to minimize the occurrences of violations of intimate privacy, criminal law plays an important role.

MARY ANNE

FRANKS:

Right. Because in contrast, some of the other harms we think about that tort law can maybe manage. We can't really-- there really isn't any way to compensate a person. And so what we're really focusing on is deterrence, as in this just can't happen to begin with. And that the way that we really get that, or the closest that we come to a social deterrence is through the gravity of the criminal law.

And the other thing that seems so important about that is criminal law also stands in for saying this wasn't just something you did to one person. It's something you've done to a value. And exactly what your book does so masterfully, it says that should be a value that is a social value. It's not just that individual's privacy was violated, you violated a value that is integral to the social fabric. And so criminal law really does convey that.

And the fact that it is overused, and that it is improperly used shouldn't stop us from thinking that there are times where it's justified. And you make a really compelling case for saying that this is one of those.

DANIELLE

CITRON:

And privacy isn't me. It's we. It's us. So it's both societal, it's relational. And we have to fight for it in a way that's a social reckoning. And we've got to use all the tools at our disposal. I'll take them all. I'll take civil. I'll take criminal. And I also think as the Civil Rights framing is both civil and criminal. But it helps us understand it's a right that each and every one of us enjoys. But that it is particularly vulnerable to inequality, and to discrimination, and to invidious attitudes, and stereotypes. That we need to Marshal all of it so that we all can enjoy it, and as a society we can all enjoy it.

MARY ANNE

FRANKS:

And if you could say a little bit more about that. Because one of the animating themes of your work before now, but also particularly in this book is about the concept of civil rights. It's not just a question of this is an individual harm, it's privacy as a-- specifically intimate privacy as a civil right. Could you spell out a little bit more what you mean by that? And why does it need to be conceptualized as a civil right?

**DANIELLE
CITRON:**

Right. Because you can call intimate privacy a moral right. You can call it a human right, which often would just constrain governments. But what I think the Civil right conversation, what it adds, is one that has a long and rich history, and our understanding of civil rights-- the Civil Rights Act of 1866. The concept of civil rights is something that is so foundational to living a life of flourish-- that you can flourish. That one of integrity that you have-- that it sets the floor for engaging with other people, and to falling in love. All of those opportunities that you need intimate privacy as a precondition to all of those things.

And when we say something as a civil right, it is so indispensable to our development, to our flourishing. That we say that everyone who has some power over that right needs to just get in the game. That they need to act as the steward of those opportunities. So when you say something is a civil right, yes, each and every one of us should enjoy it. Yes, we should protect, especially the people most vulnerable to having it be lost, and denied. But it also means that all of us are the stewards.

If we have some power over someone else's intimate privacy. Whether it's a company, or a dating app. Whether it is your Alexa. Whether it's another individual, or a government actor, they are the stewards. But they're the guardians of those rights, and have special responsibilities in the way that schools have special responsibilities to ensure that we can enjoy the environments without sexual hostility for instance, or harassment in the way that employers have responsibilities.

So that when you switch the framing, as opposed to consumer protection approach, or it's just boys being boys. You can do whatever you want. Boys being boys, go for it. Or companies call it a consumer protection problem, which means you can do it unless we can show all sorts of aggregate harm unless you don't lie to us basically. Companies can do whatever they want in handling our data so long as they don't lie to us in their privacy policies.

But if you flip it, and you say the default is your right. You are actually responsible for something really important. You're the guardian of something that's so sacred. You can't exploit it for no good reason. Like when you call something a civil right it means that it can't be traded away. It's a priority. It can't be traded away without a really, really good reason. And that really good reason needs to be justified and proven. And so we've all got responsibilities to it. It's the theme of the work.

**MARY ANNE
FRANKS:**

And I love that as a theme because it really does-- it tells everyone what their role is because it isn't just I think as your book highlights, that any one of us could become the target of an invasion of intimate privacy. It's that all of us are going to be entrusted with someone's privacy at some point. And your book does such a wonderful job of saying that there are corporations who have our private information. There are governments that have it. There's also just our neighbors, our lovers, our friends who have this.

And when you're promoting this view of privacy as something sacred, that it's such an important-- it's such an important lesson for us to think about on either sides of this. Whether it's our intimate privacy or someone else's. I know that you and I both--

**DANIELLE
CITRON:**

It us.

MARY ANNE

FRANKS:

It's us. And you and I both are I think captivated in some ways by the Lady Godiva story. I think part of the reason why we find it so interesting is because in the story we know that Lady Godiva isn't riding around naked because she wants to. This is not something that she's choosing as a-- she thinks that it's going to mean that-- or she's hoping that it would mean that her husband who's this horrific ruler is going to be kinder to the citizens. So she's got this motivation that's trying to protect her beloved townspeople.

And because the beloved townspeople understand this, even though the husband forces her to do it. They all choose, they choose, not because they had to. They choose not to look. They all choose to look away because they understand that this is an exposure that she has not really consented to. And with the exception of the person who now has been known as now the peeping Tom. One person decides to look. Everyone else out of respect, and out of loyalty says we're not going to look at this thing that we could look at. And that the person who does should be the outcast.

In the story, depending on which version we hear, he's either struck blind or he struck dead. So there are very serious penalties to being the person who doesn't look away. So what I really do-- among the many things that I think is powerful about what your book has done, it's invited us to think about ourselves as those kinds of people who respect each other. And respect the fact that if someone has either shared consensually with us, or has been coerced into sharing something with us, that our first impulse should not be to exploit it. It shouldn't be to take advantage of that vulnerability. It should be to safeguard it. So I think that that's really such a compelling aspect of what your book has done.

And I guess I would just ask you in closing about what would you like readers to come away with most? I mean, so what's your dream for how people read this book. They put it down. What is it that you hope they're feeling, or experiencing, or doing?

DANIELLE

CITRON:

That they-- I would in an ideal world. You've put this thing down, and you say, OK, I'm going to go to talk to everyone I care about and everybody I meet. And I'm going to explain let me tell you why intimate privacy matters, and how we are responsible for each other, and we are an us. And that we see ourselves as being reciprocally responsible for one another. That we're this together.

That is we're not at odds. That we can do this. And we have to do it one by one. But we have to do it as a society too. So that's the hope. The takeaway.

MARY ANNE

FRANKS:

That's wonderful.

DANIELLE

CITRON:

Thank you for talking to me about it.

MARY ANNE

FRANKS:

And again--

DANIELLE

CITRON:

And for your leadership.

MARY ANNE FRANKS: Oh, but this is *The Fight For Privacy, Protecting Dignity Identity and Love in The Digital Age*, Danielle Citron, professor of law at UVA, but also the vice president of the Cyber Civil Rights Initiative. Thank you so much for talking to us about your book and your wonderful work.

DANIELLE CITRON: Thank you so much.