Fox Rothschild Podcast

The Presumption of Innocence

Episode 65: The Power of Interpretation: Constitutional Meaning in the Modern World

Featuring Matt Adams of Fox Rothschild and Erwin Chemerinsky

Matt: Welcome back to "The Presumption of Innocence," a podcast brought to you by the White-Collar Criminal Defense and Regulatory Compliance Practice at Fox Rothschild. We have a very exciting guest today.

He's widely regarded as a preeminent constitutional scholar, and in many circles, he is the preeminent constitutional scholar of our time. He's the author of something like 19 books, including leading case books and treatises about constitutional law, criminal procedure and federal jurisdiction. Included among them is the treatise *Constitutional Law: Principles and Policies* that-- along with most other law students throughout our country-- I used while I was a 1L law student taking Con Law those many years ago. I believe it's up to its seventh edition at this point. I am sad to state that I have the, uh, I think original edition still in my office. But, time does pass, and the body of constitutional law of our country has surely evolved, especially in recent years. He's also the author of more than 200 *Law Review* articles. He's a contributing writer for the opinion section of the Los Angeles Times; writes regular columns for *The Sacramento Bee*, the *ABA Journal* and The Daily Journal and frequent op-eds in newspapers across the country. He argues appellate cases, including to the United States Supreme Court, and he is the Dean of the University of California Berkeley Law School. He is Erwin Chemerinsky and he is our guest here today on "The Presumption of Innocence."

Dean Chemerinsky, welcome to the program.

Erwin: Thank you so much for the kind introduction and thank you for having me on.

Matt: I want to start as any good episode of "Law and Order" does, with something ripped from the headlines. In an age where our Constitution is seemingly being tested by all accounts, there's perhaps a number of places where we could begin. But I think it's fitting that we start with the basics from the very beginnings of our Constitution. And that means we're going to be talking about separation of powers.

In a recent op-ed analyzing the Trump administration's effort to eliminate so-called "birthright citizenship" in the United States, you examined an effort that's underway to limit the power of federal courts to issue nationwide injunctions. What would that mean to our system of laws in this country?

Erwin: To put this in perspective, federal courts have always had the authority to issue nationwide injunctions. In the oral argument in the birthright citizen case on Thursday, May 15, Justice Sotomayor pointed to an example from the 1920s of a nationwide injunction.

The case that was argued on May 15 involved President Trump's executive order to try to eliminate birthright citizenship. It's always been understood that anyone born in the United States is a citizen regardless of immigration status of their parents. But President Trump issued an executive order on January 20 saying that only those born to citizens and those with green cards are United States citizens. Four different federal district courts issued nationwide injunctions.

So to answer your question, what if there can't be a nationwide injunction? Then a challenge would have to be brought separately in each of the 94 federal districts. Then as Justice Gorsuch pointed out at oral argument, you have a real risk of a patchwork of inconsistent laws with regard to citizenship, where someone born in one federal district would be a citizen, and someone born in identical circumstances in another federal district wouldn't be a citizen. It doesn't make sense to require it be litigated in every district. It's not desirable to risk that inconsistency.

Matt: Do matters such as this pit the executive and judicial, and perhaps in some respects, the legislative branches, which are supposed to be three separate and equal branches of government-- against one another in ways that the founders contemplated? Or is this a brave new world, new territory that, you know, back in the 1700s, they just couldn't fathom?

Erwin: In Federalist Paper No. 70A, Alexander Hamilton explained why it's so important that courts have the power of judicial review. He said that the Constitution is meant to limit government. Those limits are meaningless unless they can be enforced, and we need the judicial power to enforce them. That's what *Marbury v. Madison* held in 1803. So the idea that courts should be able to stop executive violation of the Constitution is not new. Yes, of course you're right that it pits the courts as against the executive, but there's no other way to enforce the Constitution except through the judicial power.

Matt: You've also been quoted recently in an ABA publication about a proposal to limit federal courts' abilities to hold government officials-- and other litigants for that matter-- in contempt for disobeying orders of a court, calling it quote, "stunning" and quote, "a terrible idea." In your opinion, would such a legislative proposal pass constitutional muster before today's U.S. Supreme Court as it's presently constituted?

Erwin: No, I think it would be declared unconstitutional. Let me just explain a bit. It's a relatively obscure and certainly very small provision in a large spending bill. And I would say that federal courts cannot use the contempt power to enforce their orders unless the plaintiff seeking the contempt order posted a monetary bond. And the terms of the law are clear-- which in terms of the bill of enacting the law are clear-- that this would apply to all judicial orders that have ever been entered into.

Courts generally don't require a monetary bond of those who are suing the United States for a constitutional violation. Take the example of Kilmar Abrego Garcia, the man who was deported to a

maximum security prison in El Salvador, and he came to court for an order to effectuate his return. He wasn't required to post a bond. But that judicial order and all judicial orders would no longer be enforced by contempt if a bond hadn't been posted. Think of all the judicial orders that are in effect with regard to school desegregation, with regard to voting rights, with regard to prison conditions or with regard to antitrust suits. None of them would be enforceable now because a bond wasn't required at the time that the order was entered. This would tremendously decrease the judicial power.

If I can tie it with your prior question about nationwide injunctions, this is an effort to decrease the judicial check on the president at the same time that the president is claiming unprecedented, expansive executive authority.

Matt: Recently, the Secretary of the Department of Homeland Security, while testifying before Congress, refused to answer a question about what efforts her department were undertaking to comply with a court order concerning what has been alleged is the improper deportation of the very man that you were just discussing, lawfully in the United States, to an El Salvadorian maximum security prison.

What does this say, from your perspective being a constitutional scholar, about the fragility of our constitutional structure here in 2025?

Erwin: As to the specific example, the testimony by the Secretary of Department of Homeland Security, Kristi Noem, she was asked, what's habeas corpus? And answered that habeas corpus is what allows the president to deport people.

Of course, habeas corpus is just the opposite.

Matt: It's certainly not.

Erwin: It's what allows people to go to court to argue that they're being held unconstitutionally by the government. But to use the word "stunning" again, isn't it stunning that the Secretary of the Department of Homeland Security had no understanding at all of the concept of habeas corpus?

In terms of your specific question, what this says: One of the things that I've come to realize for the last several months is how much our system of government depends on the good faith of those who are governing us. It requires that the president and the head of Homeland Security comply with the constitutional laws of the United States.

Matt: And, if we're going to think about that outside the box as lawyers and people who want to uphold the Constitution, how do we fix it? I mean, are we really just teetering on the courts to save democracy? Or how, how does this work? How is it that we come through an unprecedented time, where we are getting answers about complying with court orders or having high-level officials in the executive branch not knowing what habeas corpus is? Or worse yet threatening to suspend habeas corpus in an unprecedented way. What is the checking force built into our current constitutional system to prevent what would be a catastrophe?

Erwin: The first is the courts enforcing the Constitution and upholding the rule of law. I said it at a commencement on May 16 that there's never been a more important time to be a lawyer than now. That if the guardrails of democracy are going to hold, it's going to be because of lawyers bringing the lawsuits in courts upholding the Constitution.

Second, we will need Congress to act. Congress is going to need to play its role in enforcing the Constitution, in making sure that the president complies with separation of powers.

And third, I think it's going to come down to the people, that I think that democracy won't be lost if the people stand up for it. And so I think it's so important that people be informed and have their voices heard,

Matt: Are the masses, are the populist the populist movements that vote in elections, do they understand some of these constitutional principles in the manner that you do, or is a lot of this glossed over by the American people? What's your take on that?

I'm, I, I get it. You've dedicated your life to studying the Constitution. I am trained by your book and law professors who taught these concepts. We recently had another law professor on this very program who made a compelling argument that criminal justice in our country and the constitutional protections-- the guardrails that you called them, Dean -- on criminal justice in this country really could be, the weakening of those guardrails could really be traced back to six specific cases by our United States Supreme Court among the hundreds that they've decided over the decades.

My question to you is: Do the masses understand just how delicate this dynamic is that we are facing in our country when we are talking about the very fabric, the very core of our democracy, our constitutional republic, potentially succumbing because we have a situation where we have one co-equal branch of government that may try to take a position that they don't have to respond to the dictates of another co-equal branch of government. Amidst a generation that's now being raised on sound bites, talking points and, and social media, do people really get it? Do people really get at its core what these principles mean and how delicate they are?

Erwin: It's so hard to generalize, but I think we do a poor job of civics education in this country. So I think that the general public doesn't have much understanding of basic constitutional principles. I think that's part of our responsibility as lawyers. We need to go into eighth grade classes and high schools. We need to go to Rotary Clubs and Lions and speak, and senior citizen centers. And we need to communicate to people the basic principles of American democracy.

Matt: We talked briefly about this concept of the DHS secretary conflating what the administration is trying to achieve with migrants and the idea of habeas corpus. It's been suggested by a high-ranking administration official that the administration was considering the suspension of habeas corpus. And to justify that they went to the text of the Constitution, which in some limited respects does in fact provide the executive branch the ability to suspend habeas corpus. What is the counter argument to that statement?

Erwin: Article one, section nine says that the writ of habeas corpus cannot be suspended except if there's a rebellion or invasion. First, it's always been understood that since it's in article one, section nine-- which is about Congress's powers-- that Congress is the only one that can suspend the writ of habeas corpus. In fact, the Supreme Court in *Ex Parte Milligan* indicated that Abraham Lincoln acted unconstitutionally in suspending the writ of habeas corpus.

Second, there has to be a rebellion or invasion. Invasion has always been understood to mean military invasion. There's no rebellion or invasion. Habeas corpus was thought of in England as quote, "the great writ." 'Cause it is the ability of someone to go to court to say they're being held in violation of the constitutional laws of the United States. It would be unconscionable and unconstitutional to suspend the writ of habeas corpus.

Matt: When we look to precedent-- you mentioned Lincoln-- is that, is that the last time in history when the writ of habeas corpus was suspended, during the Civil War?

Erwin: There's been a few instances in all of history where the writ of habeas corpus is suspended. The most prominent was Abraham Lincoln in the Civil War.

Matt: And here we are in 2025. Is it conceivable that this Supreme Court would permit such a thing?

Erwin: I don't think so. Because if that could happen, then the government could imprison anyone-- you or me, or any citizen or any critic --could take us to El Salvador and put us in master security prison and no court would be able to provide relief.

This is something that Justice Sotomayor and a conservative judge on the Fourth Circuit, J. Harvie Wilkinson, pointed out when the Trump administration claimed it could put Abrego Garcia in El Salvador, no court would have review, that there would be no limit then on the ability of the government to even put citizens in maximum security prisons in this country or elsewhere, and no court could give relief.

I can't imagine the Supreme Court would allow the executive to do that.

Matt: You and I are talking constitutional principles. These are lofty, aspirational, centuries-old principles. And I alluded to it earlier: It's often difficult in our society today to have intelligent conversations about things like this because we have such a polarization.

We have such a, everyone is a journalist. Everyone with an opinion can make a social media post and become, you know, an op-ed author without the training or experience to actually make a reasoned intellectual argument. Is that driving some of this? Is there, is there a societal, sociological factor that's weighing in on how something so seemingly outrageous could actually have a populous consensus around it?

Erwin: No democracy lasts forever. We can point to countries that once were democracies that are no longer. And it would just be arrogance and hubris to believe that the United States is somehow immune to the pressures that have caused other democracies to become authoritarian. Countries like Hungary or Turkey.

And so I don't think it's sociological to the United States. I think that there's always an impulse on the part of some towards authoritarianism.

Matt: Well, let's move our discussion a bit, more focused into the direction of criminal justice for a moment, against the backdrop of this constitutionally wrought time in which I think both of us agree we're living. And in 2021 you published a book entitled, *Presumed Guilty: How the Supreme Court Empowered the Police and Subverted Civil Rights*. It's truly a phenomenal, historical retrospective that really brings readers from the middle of the 20th century into the present time.

And, the title alone, however, is an indictment of the court. You trace, the origins of what you call in the preface of the book as a "consistent choice" throughout American history to favor the interests of law enforcement over the rights of individuals and ignore the enormous racism that has infected policing since the nation's first days. You set out that observation with the historical perspective that the Supreme Court virtually ignored policing prior to 1953. Why was that?

Erwin: Thank you for the kind words about the book.

I think some of it is that the Bill of Rights didn't apply to the state and local governments until really the 1960s. Most policing is done at the state and local level.

Nonlawyers are often unaware that when the Bill of Rights was adopted, it was thought to apply only to the federal government. And it wasn't, for example, until 1961 that the Supreme Court said that the Fourth Amendment exclusionary rule applies to state and local police. It wasn't until 1963 that the Supreme Court said that anyone tried in a state court with a possible prison sentence has a right to counsel.

Isn't it amazing that until 1963-- and we're talking from 1787 until then-- a person could be convicted in state court, sentenced to life in prison without needing to have an attorney provided. Well, the federal government was very limited in law enforcement until the early 20th century and still was more limited than state and local governments. And so if the Bill of Rights didn't apply to state and local governments and there wasn't a lot of federal law enforcement. There wouldn't be much occasion for the Supreme Court to deal with the provisions of Bill of Rights, to deal with rights of criminal suspects and criminal defendants. I think some of it is more substantive, that I think we had through most of history a court that was far more sympathetic to the police than wanting to protect rights of criminal suspects and criminal defendants.

Matt: What changed to awaken the court to those constitutional protections, short from them becoming applicable to the states. In the Warren court, what was it about the composition of that court or the manner in which cases were brought to it where the court really began to enforce constitutional protections and remedies as you outlined in the book?

Erwin: The Warren court was the only time in American history we had a liberal majority among the justices. In fact, it was really just from 1962, when Felix Frankfurter was replaced by Arthur Goldberg, until 1969, when Earl Warren and Abe Fortas left the court, that there was a solid liberal majority.

It shouldn't surprise us then it was from 1962 to 1969 that most of the Bill of Rights was found to apply to state and local governments. It's then that the court imposed significant limits on the police, like the requirement to give Miranda warnings when somebody is questioned in police custody. And I think the answer to your question is that the Warren court was unique in American history and it's what really made all the difference in this regard.

Matt: Well tracking chronologically then, what happened next? 'Cause in the book you call it retrenchment, and it picks up after the Warren court with the Berger court, where you posit that constitutional rights were dramatically limited. And, what exactly was the reason for that shift?

Erwin: Richard Nixon ran for president in 1968 in large part against the Warren court. He did so in part with regard to the Warren court decisions concerning school desegregation, but most of all, he did so with regard to the Warren court and criminal justice. He ran on a platform of law and order, that he's going to appoint strict constructionists to the Supreme Court who wouldn't release dangerous criminals.

Richard Nixon was able to appoint four justices between 1969 and 1971. He appointed four individuals who, at the time they went on the court, were very conservative. And they began immediately at chipping away at or overruling Warren court decisions that protect the rights of criminal defendants and criminal suspects.

Matt: Give us a couple of examples of what that entailed. Uh, you know, I, I know them from my own practice, but for our audience, talk to us about the types of decisions that we saw during this period of what you call retrenchment in the book.

Erwin: I think one important example that I talk about in the book concerns eyewitness identification. There is voluminous literature showing that eyewitness identification, especially cross-racial eyewitness identification, is very flawed. That when somebody sees a suspect in a criminal situation, sees the person briefly, high stress, their identification is often going to be mistaken. And people are particularly prone to make mistakes when they're identifying those of other races.

In 1968, the Supreme Court for the first time began to put limits on what police could do in eyewitness identification. They said if it's after somebody has been arrested, when there's a lineup, they have a right to have a lawyer present at the lineup. That's to make sure that the police don't manipulate the lineup to have the person doing the identification likely to just point to the suspect.

Well, the Berger court immediately cut back and then said, if the lineup is before the indictment, no need to have counsel. So police now just do the lineups before the indictment rather than after, and they don't have to have counsel. If it's a photo identification, there doesn't have to be counsel present. But even worse, the Berger court said, if a court concludes that the identification is reliable, then it's admissible in court even if the police engage in undue suggestiveness. So imagine that the police show somebody, a victim of a crime, a series of pictures, and the police tap their finger on the person who they think is going to be a suspect. That shouldn't be identification allowed in court. But the Supreme Court says so long as the trial court concludes that it's unbalanced, reasonable, reliable, allow it in.

So what the Supreme Court has done is make it so easy for the police to engage in suggestive eyewitness identifications. When Innocence Projects have people exonerated, overwhelmingly the basis for the conviction was a false eyewitness identification. And the Supreme Court after the Warren court has done nothing about it.

Matt: To this day, we still have those gaping holes in our constitutional jurisprudence, then.

Erwin: Exactly. The Warren court was the first time trying to deal with suggestive eyewitness identification. Since the Warren court, the Supreme Court has abandoned it. In fact, there's only been one decision since 1986 that's dealt with eyewitness identification, and it was about 13 years ago and it ruled in favor of the police. But that's one example. I could talk about how the Berger court and then the Rehnquist and the Roberts courts have made it much easier for police to engage in illegal searches and seizures, how they've made it much easier for police to engage in abusive questioning or were generally, how they really restrict limits on police abuses.

Matt: Yeah and that, really takes us into the modern era, the Rehnquist and the Robert courts. What is the state of affairs today as a result of the completed Rehnquist court and what is now, the, I guess given Chief Justice Roberts' age, I would say we're in the infancy of the Roberts court. So bring us to that modern era. I was talking with another constitutional scholar on this program recently. And we were talking about the *Terry* decision and the dramatic way that this concept of reasonable suspicion was invented in whole cloth. There's nowhere in the Constitution that it rests. And thereby the idea of stop and frisk was invented and all of a sudden disproportionately impacting communities of color throughout the United States. We had an entire communities become exceedingly distrustful of police and, and in some respects, we're still experiencing the symptoms of that to this very day because of what that allowance for just a mere reasonable suspicion-- completely extra constitutional language -- permitted. What is the legacy of the Rehnquist court as we sit here in 2025 on these types of issues as the Roberts court really suggests it'll be around for quite some time.

Erwin: Let me first say a word about *Terry v. Ohio*, and then talk about the Rehnquist and the Roberts courts and then the future.

Terry v. Ohio was a decision of the Warren court in 1968. It was decided at a time when the Supreme Court was the most liberal that it ever was in American history, and there was only one dissenting justice, William Douglas. Liberals like Earl Warren, William Brennan and Thurgood Marshall were in the majority. It was foreseeable that allowing stop and frisk based on reasonable suspicion would lead to increased racialized policing. The NAACP Legal Defense Fund filed a brief in the Supreme Court in *Terry* saying that *Terry v Ohio*, practically speaking, makes it possible for the police to stop virtually anyone at any time and frisk them virtually anytime. And as you rightly point out, we have all of the statistics showing that this is used in a very racialized manner.

Now we get to what follows in the Berger, the Rehnquist, the Roberts courts. And I think it's important-- I tried to do this in the book --to separate two things. One is how the Supreme Court has constricted the scope of the rights. They constricted the scope of the Fourth Amendment right by saying that the police don't need probable cause to search, only reasonable suspicion. But the other part of this is they've restricted the remedies that exist when there's a violation of the right. So

they lessened the ability to use the exclusionary rule, this violation of the Fourth Amendment. They made it very difficult to sue police officers when they violate people's rights. They've made it much more difficult to sue cities when city policies are responsible for rights. So you have simultaneously a lessening of rights and at the same time a lessening of remedies when there's violation of rights.

You're correct that I think John Roberts is now 70 years old and he's been Chief Justice already for 20 years. Clarence Thomas is, I think 77, Samuel Alito is 75. Justices Gorsuch, Kavanaugh and Barrett are all still in their fifties. We could have this group of justices together another 10 years or more, and it's certainly not a group of justices that's inclined to expand the rights of criminal suspects or criminal defendants.

Matt: And that really brings us to this idea of theories of constitutional interpretation. When I view some of today's headlines, like the suspension of habeas corpus and the concept of trying to curtail federal district courts to issue nationwide injunctions and, and things of that variety, I tend to be of the belief that a conservative originalist like Justice Scalia is turning over in his grave.

And I know you're no fan of originalism, so what's your view?

Erwin: My sense has always been that the originalist justices follow originalism when it gets to the results they want and ignore originalism when it doesn't get to the results they want. Take *Trump v. the United States,* which, on July 1 last year, held that the president has absolute immunity from criminal prosecution for any official acts done in office. There is no way to reconcile that decision with originalism. The framers of the Constitution were so deeply distrustful of executive power.

Matt: They didn't want the king. They didn't want the king.

Erwin: Exactly. Or the affirmative action decision from two years ago, in *Students for Fair Admissions v. President and Fellows of Harvard College*. The same Congress that ratified the 14th Amendment adopted many race-conscious programs that today we call affirmative action. If one were to follow the original meaning of the program of the Constitution, affirmative action would be constitutional. But the conservative justices abandoned originalism or wouldn't get the results they wanted.

Or take *Citizens United v. Federal Election Commission*, and so that corporations have the right to spend unlimited amounts of money in election campaigns. It was the five conservative justices in the majority. There's no way to say that the framers of the Constitution meant to protect the right of corporations to spend money in unlimited amounts out of their treasuries to get people elected or defeated. So my answer to your question is the originalist-- and this includes Justice Scalia-- follow originalism when it gets to where they want and ignore it when it doesn't.

Matt: The final chapter of *Presumed Guilty* is dedicated to what you call "the path of meaningful police reform." Just today, I woke up to a headline on my iPhone that said that the current administration was announcing that it was going to discontinue Department of Justice oversight of the Minneapolis Police Department, which it has been doing following the murder of George Floyd in 2020. And that department was ordered to undertake a series of reforms. On its face that seems antithetical to the concept of meaningful reform.

What is it going to take? What is it going to take to get us to a place where whether or not things happen in a constitutionally sound manner in law enforcement rises and falls on the good faith of the beat cop? Because at the end of the day, they are tasked with such vast discretion. They are tasked with the ability to essentially comprehend what is and is not reasonable suspicion. And as long as they can articulate something, it generally will pass muster. How is it that we are going to get to a better place in our country? If your theories are right, this constitutional erosion that's taken place over the last 75 years has really occurred.

Erwin: I don't know. I was much more hopeful when I wrote *Presumed Guilty* than I am right now. Just a word about how I wrote it, and you'll see how it relates to this: I taught criminal procedure in the fall of 2019. I was struck by, in one way or another, the police were winning all the cases in the Supreme Court. And I decided to write the book. I signed the contract in January 2020 and assumed I'd have a couple years to do it.

After the tragic death of George Floyd in May of 2020, the publisher said, we need the book now, we want the manuscript by October 1. And so I wrote the book largely over the summer of 2020. And that was a time when there were bills being passed in the House of Representatives to reform policing, when state and local governments were doing so, where after the election in November 2020 of Joe Biden, the belief that they'd use federal statutes to reform police departments. So I could write the book with a sense that there's going to be meaningful police reform. But that's faded, and the Trump administration is pushing so hard in the other direction.

What you're referring to here is the authority of the federal government under a federal statute to find that there's a pattern and practice of police violations, and to either sue or get an agreement to reform policing. That occurred in Los Angeles. It occurred in Minneapolis, in Baltimore, Toledo and other places. And the Trump administration, instead of enforcing those orders, is now ending them.

Matt: And that really brings us to the full circle moment, because your next book, *No Democracy Lasts Forever* --as you, alluded to earlier-- *How the Constitution Threatens the United States*. It's a somewhat radical pivot that you propose to a new constitutional structure altogether. And tell us a little bit about that and preview the book for us.

Erwin: The premise of the book is there's a crisis facing American democracy. Federal government has lost the faith of the people. The Pew Research Institute does a study each year. The high watermark was in 1964, 77% survey expressed confidence in the federal government. Last year it was 20%. Congress, the Supreme Court, the lowest approval ratings they've ever had in history. At the same time, our country's deeply polarized. And the question that I start to answer in the book is why.

I argue that choices made in drafting and ratifying the Constitution in 1787 are increasingly haunting us today. The electoral college, two senators per state, partisan gerrymandering of the House, life tenure for justices, how difficult it is to amend the Constitution, the choices made with regard to slavery and race. I argue in the book that many of these flaws can be fixed by federal statute. It doesn't have to be a Constitutional amendment. Some can be fixed only by a Constitutional amendment. Some can only be fixed by a new Constitution. And my point with regard to it is there will be a point at which our society drafts a new Constitution. In fact, the more this Constitution is

interpreted just to mean what it did in 1787, the more absurd it is to be governed by it. And so what I say is what should we be thinking about what should be the process for drafting that new Constitution?

Matt: Will that take empowerment of the legislature?

Erwin: Yes. I think it would've to be Congress and the president creating a Constitutional Convention.

Matt: And what do you think is the likelihood of that happening against the backdrop of where we've been today? We started with what's happening here in 2025, some of the constitutional issues du jour of the moment, all the way up and then tracing through the criminal justice historical perspective that you present in *Presumed Guilty*.

What's the chances of that happening?

Erwin: At this moment in time? It's not going to happen. At this moment in time I don't think it should happen. But there will be a point at which we realize we've got to start thinking about drafting a new Constitution. That the one written in 1787 just isn't working for the 21st century.

I don't know that it'll be in my lifetime, but I do feel to a certainty there will be a point at which it happens. No document like the Constitution lasts forever.

Matt: Well, we have been talking with Dean Erwin Chemerinsky, the Dean of the UC Berkeley Law School, prolific author and constitutional scholar. Certainly some provocative and thought-provoking concepts today. Dean Chemerinsky, we can't thank you enough for joining us on "The Presumption of Innocence." It's been really an honor and a pleasure to have you on the program.

Erwin: I can't thank you enough for having me on. It's truly been my honor and great privilege to have the conversation with you.

Matt: That's all the time we have for this episode of "The Presumption of Innocence." But until next time, I'm your host, Matt Adams. We'll see you then. Take care.