

- Good day. You're listening to Ability Radio, you and your health. Or no, it's you and your life.
- Oh, yes.
- I'm your co-host Amelia Headley LaMont, joined this morning by Archie Jennings. Good morning.
- Good morning, Amelia. How are you this morning?
- Fine, thank you. One of the things that we wanted to cover in this broadcast, we had tried initially to talk about Disability Rights Center, which we have never done. And so I figured we'll just spend a few minutes talking a little bit about the work that we do. How would you characterize that, Archie?
- Well, I always considered Disability Rights Center as a public interest law firm, and that it has a unique nature that it's geared to a person's with disabilities. It's always been my, from my graduation from college to work for a public interest law firm and develop skills to what I'm doing today.
- And it took, at least for me, and I can, I daresay for you too, it's been very rewarding most of the time.
- Yes, yes, I can say that.
- Yeah. I mean, and that's one of the reasons why I think we can, I could also speak for you, perhaps in this regard is that, that's why we went to law school and why we hope to affect change, you know.
- Correct. That's true. I came out of undergrad with economic degree. I, you could teach economics, work for a corporation, or go to a Wall Street at the time, and I found about economic development. I also considered going to graduate school at economic development. And unfortunately, I was able to do both when I came to the area of law because when I came out and worked for legal services, they had an economic development law center, which taught me and gave me a lot of skill set for it and some of the work I have since done since that day. So it, merging the two has been very fruitful.
- That's right. You've been involved in quite a bit of enterprises here in the Virgin Islands. Thomas Building one, right?
- Right. I've always been a major support of collective economics.
- Oh, boy. Okay. Well, that's certainly, that's certainly an issue in the disability community nationwide and here as well. And I suspect, or I've seen some information coming from the community that jobs, employment, economic development is...
- A major issue.
- Right.
- Persons with disabilities are far, far behind in obtaining jobs, moving forward in businesses. And it's been a conundrum for the whole disability community how to build up the job market for persons with disabilities, and get employers more involved in the aspect of hiring persons with disabilities, giving them that first initial break because it's just not happening, it's just not happening. We work with Northeast ADA Center out of Cornell, who are, basically have a development of business technical assistance center, to try to put the two businesses and persons with disabilities together in a, in a relationship where the employers see persons with disabilities as being a plus for their business. They're loyal, they want to come to work, and they strive to be part of the economic mainstream.
- And so in addition to say, employment issues, which is what our Disability Rights Center does, there are other matters as well that we have to undertake, right?

- Well, yeah, especially with the overcoming barriers, structural barriers and other transportation, other issues facing a person with the disability just to be at the workplace.

- Right, right. And another huge issue for us, at least, this is something that, because one of the things that our office does is every year we have to, or actually this is something we do all the time, collect information from people. What should be priorities that our office focus on.

- Well, that's a major issue because we're a small office.

- Right.

- So therefore, priorities comes into play.

- Absolutely.

- We have basically a base, a constituent of 9000 people, which has been through the census, identified as persons with disabilities in this community. And it's a myriad of issues from family issues to housing issues, government benefit issues, so, education issues, you know, across the board.

- Right.

- That, especially health. Yeah, health is a big area right now. And we try to get a feedback from the community, and again, we want to remind you when we are out there at the [inaudible] there and other locations, please give us your input as to where you want us to see, put our efforts.

- That's right.

- That helps us gear, what we we can do in the community.

- That's right. So it's very important us to martial our very, as you say, limited resources. We want to be able to be effective, and that's always an issue for us because we only are a staff of about six or seven people.

- The core staff, yeah.

- That's right, the core staff. So, you know, let us know what you think. We do have a, an option for you if we don't see what the agricultural fair, which is during the President's Day weekend, the year 2017. We do have a website, disability, drcdi.org where you can input your comments, tell us what you think.

- Yeah, and go to the website for resources and other matters that are going on in the community. Events are also placed up on there, especially for parents with children with disabilities. A lot of resources are at that website, that you can personally go to, spend some time, beyond our training events. Our training events try to give direction to parents, direction to persons with, on disability issues, but the website has other resources and materials, you can take the time to read through them and absorb and come back with questions.

- That's right. We certainly encourage community input. That's very important. That's what keeps us relevant really, and that's something I'm very vague on, just making sure that we are meeting an important need. One of the things that we would like to share with you is, Archie and I have the honor, frankly, of interviewing a gentleman from the University of California, the School of Law at Irvine. And the gentleman by the name of Erwin Chemeninsky. And he spoke to us about the Supreme Court and how it affects us.

- Yeah, how it's relevant to the Virgin Island and it's, reminds me of my days back in law school. I was lucky enough to have a professor like him, the Eli Charmel, who wrote a book called Representation of the Indigent. Unfortunately, he passed away and I think that book is out of publication. But it opened up

your eyes to the aspect that there's a lot of aspects in law relevant to persons with disabilities, relevant to persons with economic issues, where the law can be very effective.

- That's encouraging. Do you have a copy of that book, Archie?

- No, unfortunately. It got lost and I moved.

- It got lost? Okay.

- But again, I tried to find it and it's out of publication since its passage, but again, Professor Chemeninsky is very, very crucial. I hope this show really gives a lot of background information, how the Supreme Court affects your daily life, how the Supreme Court affects the politics in the Virgin Islands, and what the status of the Virgin Islands before the Supreme Court because he gives a great history of the Supreme Court input on how all our, politically the Virgin Islands is situated within the, under the flag of the United States.

- Yeah, he covers health, he covers criminal law. He covers...

- Employment law. We talked about arbitrations and things of that nature, access to justice.

- Right, right. So I encourage you to give it a listen. We will be playing his entire interview after we take a short break. But you are listening to Ability Radio. Take care and enjoy what you have coming in the next little while. Good day, the Virgin Islands. You are listening to the Ability Radio, You and Your Life. I am your host, Amelia Headley LaMont joined by my co-host Atty. Archie Jennings. Good morning.

- Good morning, Virgin Islands.

- We are privileged today to have a very special guest join us. His name is Erwin Chemeninsky. He's the dean of the University School of Law at Irvine, California. His expertise is civil practice and constitutional law. He is an author of a book, couple of books, one is called, and what I've been reading is the Case Against the Supreme Court, and it was also brought to our attention that he just released a book called Closing The Courthouse Door. Professor, good morning.

- Good morning. It's wonderful to talk with you.

- And thank you so much for joining us.

- Yes, I agree. Thank you very much for joining.

- Wow. Thank you for having me on your program.

- Well, let's talk about your book, The Case Against the Supreme Court. It's very compelling. And there were a couple of questions that you raised. First of all, why should we even care about Supreme Court decisions?

- Supreme Court decisions affect all of us. Often the most important, the most intimate aspects of our lives. I intentionally chose to begin the book with the story of a woman named Carrie Buck, who was involuntarily surgically sterilized and the Supreme Court upheld that as constitutional because with that Supreme Court decision, 60,000 people in the United States were subjected to involuntary sterilization.

- And that was the case in the early 1900's, right?

- 1927.

- Okay. And so it goes from there, right? I mean, why should we care?

- Well, as I say, we should care because what the Supreme Court does affects all of us so much. It affects with women have the right to abortion, whether people have the right to contraceptives, what schools we go to, what prescription drugs we take, what adverse effects they might be on us. My thesis in the book is that the Supreme Court often has failed, often at the most important times in American history. I intentionally chose to begin the book, chapter one, by focusing on a race in the Supreme Court, and argue that over, all in the course of American history, the Supreme Court has had a dismal record with regard to racial justice.

- Now the first case that you talked about, the Buck case, this involved an individual, who, the court deemed to be a woman with an intellectual disability.

- Right.

- And the argument was because she was a person, allegedly with a disability, what you said was highly questionable. They took, you know, the state, or I don't recall who the players were, took an extreme step, right?

- In the early 20th century, states all over the country adapted the so-called Eugenics Laws, that allowed for involuntary surgical sterilization. Sometimes for those who are perceived as an intellectually disabled, sometimes for those who had committed crimes. Carrie Buck's mother had placed her in a foster home, Carrie went through junior high school, always at age level. After that, she remained with her foster parents doing chores. When she was 18 years old, she was raped by her foster father's nephew. She became pregnant as a result of the rape. Her foster parents were humiliated by her pregnancy, they had her institutionalized, it was called a home, and I'm quoting for "Epileptics and the Feebleminded". She gave birth to a daughter, and then the state began proceedings under the Eugenics Law to have her surgically sterilized. The only testimony against was from a social worker, who said that she had examined the baby, and, quote, "Something didn't look right," but the baby was then six months old. And someone who'd administered an IQ test to her, and this is the very first form on IQ test, and so her IQ was low, many years later, Harvard Professor Stephen Jay Gould found her and gave her a modern version of the IQ test and her IQ tested normal. The Supreme Court though, in opinion by the renowned Justice Oliver Wendell Holmes, upheld the same, quote, and it's a direct quote, "Three generations of imbeciles is enough."

- I think we are still fighting that same fight today. I'm not sure if you're aware of pillow babies, where parents of autistic children are trying to have a method of certain medical procedures to maintain the child at a certain weight and height, and basically I am sure that's gonna fold up to the Supreme Court one day because, essentially, assuming the child will never be able to operate on their own, and they're taking away his freedom of movement and freedom of intellectual creativity.

- It's tremendously disturbing. I have heard of these and parents who try to keep their children through drugs and chemicals from reaching puberty, and the idea that anyone can keep a person from naturally developing, from being able to pro-create is really troubling, and Buck versus Bell was a case that didn't need to be decided that way, and it was tragically wrong, and it's unfortunately represented of the many Supreme Court cases that we look back at, that were tragically wrong, and did great harm to people.

- The other case, of course, that comes to mind is the Korematsu Case, and that involved the [ inaudible ] the over, hold of Japanese-Americans placed in, and Roosevelt said, President Roosevelt's words in concentration camps. What surprised me, in your book, was what the breadth of, not only were people removed from their homes, they were, their bank accounts were taken from them. I mean, the level of detail was quite striking to me.

- The second chapter of the book focused on throughout American history, whenever there's been a crisis, especially if foreign based crisis, the response has been repression. In hindsight, we realize, we weren't made any safer. You point to World War II, a hundred and ten thousand Japanese-Americans, citizens and non-citizens and 70, 000 of them were citizens, were uprooted from their life-long homes. They're placed in what President Franklin Roosevelt called Concentration Camps. Some were literally

housed in horse stalls, as you point out, their bank accounts were seized. If they were farmers, their land was taken away. Now, one Japanese-American was ever indicted or convicted of espionage or crime against national security. Race alone determined who was free and who was incarcerated behind barb wire, and yet in 1944 in *Korematsu versus United States*, the Supreme Court upheld the constitutionality of the evacuation of Japanese-Americans, Justice Hugo Black, we tend to think he was a [inaudible] said that, "War is about hardship, these are just the hardships Japanese-Americans are gonna have to endure."

- Well, then, but they didn't do that for the Germans or the Italians?

- They did to a much more limited extent. There was some evacuation internment of Germans and a bit more of Italian-Americans from the East Coast, but nothing like the systematic internment of Japanese-Americans, the confiscation of their property, and the total deprivation of Civil Rights, just because of their ethnicity.

- Well, let's go back to the question of culture or race, as you mentioned and then, you, there is also mention of the *Dred Scott*, or the dreaded "Dred Scott Decision." What's your interpretation or, what, you know, have we made any progress? I think it may take you to our education issue, but let's start with *Dred Scott* please.

- From 1787, when the constitution was written, until 1865, and that's a period of 78 years, not one Supreme Court case ever limited the institution of slavery. Every Supreme Court case protected the rights of slave owners, and ruled against efforts to protect the slaves. The most infamous of these was *Dred Scott versus Sandford* in 1857, that declared unconstitutional the Missouri Compromise, it held that slaves were chattels, pieces of property, not citizens at all in the eyes of the law. In 1896, in *Plessy versus Ferguson*, the Supreme Court upheld laws that required racial segregation. The court announced the infamous doctrine of separate but equal, and from then until 1954, and it's 58 years, the Supreme Court repeatedly upheld laws that require segregation. You ask, has there been progress? Obviously there's been progress. This is a different world than it was in the 1950s, let alone in the 1890s or the 1850s, and yet still, 1 out of 4 African-American children in this country lives below the poverty level, far or less is spent on a black child's elementary and secondary schooling than a white child's elementary and secondary schooling.

- Which brings us to *Brown versus Board of Education*, which, um, uh, as most of us know that, you know, it struck, declared that separate is not equal, correct, and that's my layman's, or laywoman's perspective, and you were critical of the court with respect to that. And I wanna give you that, tell us why. Yeah.

- We all should applaud *Brown*. *Brown* represents the best of what the Supreme Court can do. The reality is that Southern State Legislatures and Southern State Courts weren't gonna declare unconstitutional laws require segregation. Congress wasn't gonna declare unconstitutional laws that require segregation. It was the Supreme Court unanimously saying, "Laws requiring segregation and education are unconstitutional, you should rightly say the court held separate can never be equal." But the court then did very little to enforce *Brown*. In 1955, a year later, the Supreme Court just said, "Well, we'll send all these cases back to the lower courts to create desegregation," I'm quoting, again, "With all deliberate speed." I have no idea what that means. It seems like a contradiction to me. It wasn't until 17 years after *Brown*, in 1971, that the Supreme Court first prescribed what should be done to achieve desegregation. Things like [inaudible] zones, transferred teachers, choose where to build new schools, bus students, and then the Supreme Court filed [inaudible] decisions that really have created separate unequal schools. From 1968 to 1988, every year by every measure, American public schools became less racially segregated. Since 1988, every year by every measure, American public schools have been more racially segregated, the segregation is occurring in an accelerating rate. So the court gave us the promise of *Brown*, but it's a promise that it hasn't been realized.

- What do you tribute the rate of exhilaration? I mean, you said it was, you know, decreasing and now it's increasing, what happened?

- Well, the Supreme Court deserves a great deal with the blame for that. In *Milliken versus Bradley* in 1974, the court said, "There can't be transfer of students across district lines." So you have cities that are most entirely African-American and Latino [ inaudible ] all-white suburbs, and you can't move the students from one to the other. In 1991, on a case called *Oklahoma City versus Dowell*, the Supreme Court said, once a segregated school system has been ordered desegregated, the courts have to get out of it, even if it means it'll be the re-segregation of schools. So effective desegregation orders in so many places, Oklahoma City, Charlotte, North Carolina, Tampa, Florida were ended. And then in 2007 the court said, "School districts can't voluntarily have policies to assign students to achieve desegregation." You put all of these cases together, you see why segregation is increasing every year.

- Now we come to the question of criminal defense, which is certainly a subject of interest. I know, in my encounters with students in the public schools here, I'm struck by the concern about police power. What can the police do, what can the police not do? And you indicated that the Warren Court has some credit, where do we stand on that?

- Let me focus on the Warren Court decision that I think, is like *Brown*, one with great promise. It's the case in 1963, *Gideon versus Wainwright*. Many people probably saw the movie *Gideon's Trumpet* with Henry Fonda, based on a very famous book by Anthony Lewis called *Gideon's Trumpet*. In *Gideon versus Wainwright* held that every person who's facing a possible prison sentence has a right to an attorney to trial. Isn't it amazing? That was until 1963 that the Supreme Court that, and yet *Gideon's* promise is unfulfilled because it had no enforcement mechanism. There was no way of forcing state local governments tried, especially competent counsel. The Supreme Court has made it so hard to show ineffective assistance of counsel. I have handled appeals for people who I truly believe are innocent and were convicted because of incompetent counsel. I've handled appeals for people who are convicted and sentenced to death, and I believe it was result of having grossly inadequate counsel, and so yes, *Gideon* gives a right to an attorney, but study after study shows that we don't have a mechanism for ensuring competent counsel.

- And it goes beyond paying level, certainly?

- Some of it is paying them. It's fascinating to look at the studies that are done, that showed that if somebody has a court appointed counsel, who's paid virtually nothing, the chances of conviction, the chance of a long prison sentence, even death, are so much greater than if a person can afford his or her own attorney. Money really matters in the criminal justice system.

- And some of this has even had result in some of the children with disabilities being executed and [ inaudible ] not an, or an issue before the Supreme Court right now?

- The United States Supreme Court has held that people cannot be convicted of crime. [ inaudible ] death or crimes they committed as juveniles, the Supreme Court holding in 2005, and the Supreme Court has said those who were intellectually disabled, cannot be put to death. But the Supreme Court is still struggling with how do you determine, whether somebody is intellectually disabled.

- Correct. Correct. One of the issues we talk about, how does it affect people in the Virgin Islands? One of the main questions I, you address at one of the lectures I attended, was the status of the Virgin Islands in regard to what the Supreme Court is ruled and how we are neither fish nor fowl under the flag of the United States.

- As a result of coming to the Virgin Islands each year, I had the wonderful opportunity to learn some about its history. And to really focus on what's outrageous. People in the Virgin Islands are citizen of the United States, but they don't get to vote in presidential elections. They don't have a representative, who gets to vote in Congress. Wasn't one of the basic principles to the revolutionary work, no taxation without representation? When it comes to the Virgin Islands, in Puerto Rico, in Guam, in the Northern Mariana Islands, the United States is really a colonial power. And these two goes back to Supreme Court decisions. Now, in the early 20th Century, called the *Insular Cases* that approved this.

- And were, status-wise, called a Unincorporated Territory. Exactly what does that mean?

- It means the Virgin Islands. Puerto Rico has a different status. They're redeemed a commonwealth. But in practical effect, as I say these places that the United States required in the late 19th, early 20th Century, are just colonies of the United States. The United States is a colonial power. And there's no indication that that's gonna change. I think some of that is that people aren't aware of it. I think some of it is because the problem of the District of Columbia. The District of Columbia gets representation of the Electoral College, so it developed for president. But they don't have a representative in Congress or in the United States Senate. And I don't think that's gonna change. And some of it is just going on this way for very long time.

- How would you distinguish, you've mentioned the Insular Cases and there was, I believe, Supreme Court case brought by a person from American Samoa? And it's my recollection, I didn't have much detail on it. Is that the residents of American Samoa are not citizens or considered nationals?

- That's correct. As I say, when it comes to the Virgin Islands, Puerto Rico, Guam, and the Northern Mariana Islands, they all are in some ways territory of the United States. But the residents are United States citizens. The [ inaudible ] to American Samoa, it's different. It's a territory of the United States, but they don't get citizenship. And that of course becomes even more troubling in terms of their ability to move to the United States. But they still pay taxes.

- Right, right. And I, if I'm, recollection serves me correct, the, they're, they are not, they don't have the same minimum wage, law is extended to the residents of American Samoa as, you know, even here.

- It's just a different status. It's long overdue. It's a century overdue to rethink it. I think some of the problem is nobody has a solution for it. There's no move towards a statehood, maybe except for Puerto Rico, which there's been votes on that. That they're always equivocal and there's no likelihood of independents. So, we're in a situation that's existed for over a century. But it's a very troubling one. We would be critical of other countries that still maintain colonies [ inaudible ] 21st Century. People forget the United States does so when the Virgin Islands is such a colony.

- That's correct.

- Well, do you think if the Virgin Islands made a move towards statehood, would that raise the awareness and maybe address the problem of not being fish nor fowl under the US flag?

- I think if the Virgin Islands did this, it would get attention. I'm skeptical that it would be successful. Because the only way to really give the Virgin Islands or Puerto Rico or Guam or Northern Mariana Islands their rights is to give them senators and representatives in Congress. That would then take a constitutional amendment. And I don't think you can get two-thirds of both house at Congress and three quarters of the States to do that. Impart because of the District of Columbia. You can't give the Virgin Islands a representative and senator without giving it to the District of Columbia, and because of the racial composition to District of Columbia. And therefore, the political party affiliation of the District of Columbia. There's no way Republicans are gonna give DC to senators.

- One of the things that, you know, the Disability Rights Center has done, that we have talked about just briefly early was had a series of broadcast having to do with health. And a real health crisis that we have here is diabetes. And in previous presentation, you had talked about a case which I read, I'm very proud to say, the Bartlett Decision, which, well, I'll differ to you on that. But it's not often that I get lifted out of my seat out of some powerful pros, and, you know, the, controlling and dissenting, Justice Sotomayor's dissenting opinion just sent me, but if you can just explain that.

- There were Supreme Court decisions that is hard to believe, that I find I tell the audience about them, they're skeptical. The case is Mutual Pharmaceuticals versus Bartlett, it's 2013. [ inaudible ] a women in New Hampshire, who was given a prescription for the pain reliever Sulindac. Her prescription is filled with the generic formula drug. She took the drug as prescribed. She suffered a rare known horrific side effect.

Two-thirds of the skin in her body burned, blistering [ inaudible ] spent months in a medically induce coma, she's now permanently blind and disfigured. She sued the company that made the generic drug, saying there was a designed defect in the drug. The Supreme Court ruled five to four, that makers of generic drugs cannot be sued for design defects. They also can't be sued for failure to warn. They can't be sued in Federal Court. They can't be sued in State Court. If she had taken the brand name version of the drug, then she could sue. But of course most the insurance policy [ inaudible ] will provide coverage only for the generic drug, what's available. Over 80% of all prescriptions the United States are filled with generic drugs, is the generic equivalent to the brand name drug over 90% of the time, the prescription is filled with the generic drug. All of us who take generic drugs, all of our loved one, they get injured, even horribly so, have no recovery. You ask me why does the Supreme Court matter to case like this, that choose how much it matters.

- I'm speechless.

- Of course, along with the health issues is also the employment issues in the Virgin Islands. And I think we talked about a little bit or we're mentioning about how much these matters are taken off court into arbitration. And the move of it by the employers across the nation to have matters, consumer matters, I've been looking out, worked with AARP. I'd looked at beneficiary matters, where they have 401(k's), you go to arbitration. What is it about taking away citizen's rights and send it to arbitration rather than have any go through the court of law?

- That you're kind enough to mention my new book, Closing the Courthouse Door, how your constitutional rights [ inaudible ] first of all, and I talk a great deal in it about the enforcement of arbitration clauses. You rightly point out that arbitration clauses are endemic. They're all over the place. There, in employment contracts without even realizing it, one of those famous Supreme Court case like this. Case called Circuit City versus Adams in 2001, involved the person who filled out a form to apply in an electronic store. And at the back, a tiny print was, if you ever had any dispute with Circuit City, you'd have to go to arbitration. And the Supreme Court said that he couldn't bring the discrimination claim in the court. There in consumer contracts, if you ever look at your iPad or software in order to use it, you have to click that you agree to the terms and there's an arbitration clause twice just at the end of last week. People told me of doctors who would not see them without their signing arbitration agreements. The doctors saying that the insurance company require that they do this. The seventh amendment says that we have the right to jury trial in civil cases. But when there's arbitration, there's no jury. When there's a trial, this public is often a reported opinion. When there's arbitration, it's secret. I was just told last week about a company that was engaged in very dangerous practices. But it repeatedly goes to arbitration, and has the matters kept secret. And it has to pay the judgment. Still, there's no publicity for what occurs. Unfortunately, the Supreme Court in a series of five to four decisions, just in the last few years has upheld this mandatory arbitration clauses. I thought this would be an area that would change if Justice Scalia is replaced by Merrick Garland or a Democrat, but it's obviously not gonna happen now.

- I was thinking even under environmental areas, there's a, been a situation in California, Rancho Porto, where these gases emanated out of the ground over a whole neighborhood. And I just recently heard where they were telling the residents, they have no recourse because of the matters were set up, I assume they had agreed to arbitration, rather than going to court, when they bought that plan.

- As you mention, I'm from Southern California, Porto Ranch is just north of Los Angeles. And they had a major natural gas leak that meant that many people became ill. It also meant that many people had evacuate from homes. And it's, at this point, unclear with those who suffered without any recourse at all.

- Well, speaking of lack of recourse. Again, in your book you mentioned, or made distinctions between absolute immunity versus partial immunity. What does a person do? What does a citizen do?

- You had mentioned earlier when we're talking about the criminal justice system, the problem was police subpoenas in the United States. The Supreme Court deserves some of the blame because they made it so hard to sue police officers and prosecutors that violate the constitution. I mentioned a moment ago that sometimes people are just shocked when I tell them things. I think people are shocked when they hear a

police officer who commits perjury on the witness stand, even at least the conviction as a person cannot be sued from money damages. It's called absolute immunity. A prosecutor, who knowingly used his [ inaudible ] testimony. Including to convict an innocent person cannot be sued for money damages. Prosecutors had absolute immunity under those circumstances. So, there are individuals who are wrongly convicted and spent years, decades in prison without recourse. There's a man in California, Tommy Lee Goldstein, who spent 23 years in prison for murder he didn't commit. He sued the prosecutor's misconduct. And the Supreme Court said the prosecutors were immune. There's a man in New Orleans, of John Thompson, who spent 18 and a half years on death row for murder he didn't commit. And the Supreme Court said he could not sue.

- What's a citizen to do?

- In these instances, there's not much. I mean, but this is law that can be changed. The doctrines that I mentioned now about absolute immunity could be changed by federal statute, or state and local governments can create liability, even with federal law doesn't do that. I also think it's gonna become so important to focus on who replaces Justice Scalia and who fills future vacancies, because these doctrines are judicially created. I think almost every case we've talked at least the results were for 5-4 decisions. Mutual Pharmaceutical versus Bartlett, the case is about how you can't sue police officers. Well, that's all about who's on the Supreme Court. So people need to be vigilant in examining Supreme Court nowadays. And if there once will continue this to really press the senate to block them, including by using a filibuster if necessary.

- Well, one example, I believe that we, were able, as a, as a community, where people of conscience was able to get around within the Lilly Ledbetter case, was not the situation where a woman, later learned which is understandable because people don't brag about what their salary or income is. Later learned that she was comparably skilled and was making a lot less money purely because she was a woman, and if I'm not mistaken, Supreme Court said, "It's okay." But as the results of a congressional action, right, that was overturned?

- You're exactly right. Lilly Ledbetter worked for Goodyear for over 18 years, and she discovered near the end of her employment that she was paid significantly less than male workers for the same job responsibilities, the same performance evaluation. She went to [ inaudible ] and the Supreme Court 5-4, just the [ inaudible ] she could sue only for the prior six months. She couldn't sue for all of the years of discrimination, even though not only didn't workers talk about it, the workers there weren't supposed to share their salary information. The congress though passed the Lilly Ledbetter Pay Equity Act, one of the fist bill signed to law by President Barack Obama that amends Federal Employment Law to say somebody like that should be able to recover for the entire period of discriminatory wages.

- Now, you talked about again being barred from monetary relief. I believe you also mentioned in your book something about, "Well, okay, if you don't want money, how about just stopping the action injunctive relief?" And I got the sense that you can't even get that.

- It depends on the circumstances, but again, to mention a case where when I talk about it, even my students don't believe it. The case called City of Los Angeles versus Lyons in 1982. Adolph Lyons was a 24-year-old African-American man, he was stopped about 2:00 in the morning by a police officer for driving with a burnt out taillight. The officer slammed Lyons' hands above his head, Lyons complained that the keys he was holding were cutting to the skin of his palm. The officer then put a chokehold on Lyons, and rendered unconscious. He woke, he urinated, and defecated, he was spitting blood and dirt, he was given a traffic ticket for burnt out taillight and allowed to go. Did some research and discovered that that point, 16 people in Los Angeles had died from police using the chokehold, most all like him, African-American men. He sued the City of Los Angeles for an injunction to stop police officers from using the chokehold, unless it was necessary to the officer's life for safety. But the Supreme Court ruled 5-4, that Lyons could not sue because he could not choose, that he personally was likely choked by the police again in the future. That court said, a person who wants an injunction has to show that he or she will personally suffer the injury.

- Again, I guess this brings us to all lives matter and black lives matter.

- Yes.

- That situation, is there something where the state or local legislation could put certain things in place to protect themselves from those activities?

- Absolutely, and this is something that's quite important, as we see it transition in presidential administrations. There's a federal statute that allows United States Department of Justice, to sue local police forces, if there's a pattern and practice of civil rights violations. The Justice Department has sued a number of authority. Usually, there's a settlement called the consent decree that requires reform of the department. This occurred quite famously in Los Angeles after the Rampart Scandal, where it's shown that officers were planting evidence on this people and lie in court to gain convictions. And the Los Angeles Police Department is by no means perfect. It brought about tremendous improvements and reforms. This has gone out in a number of other cities. I think one of the questions about the Trump administration is will they continue to bring these suits against local police forces, when there are pattern and practice of civil rights violations.

- Could you go into a little more detail about the Rampart Scandal? I read that this morning and was a little astounded by who was then the police chief, who made some pretty inflammatory remarks.

- All right.

- Do you, if you recall.

- Sure. I do recall, I ended up doing a very long report on the LAPD as a result of the Rampart Scandal. In 2000, a police officer by the name of Rafael Perez was caught substituting a flour for cocaine in the police evidence room. He offered to make a deal to get a reduced sentence, in which he would tell of the corruption that had occurred. And it turns out that Perez and his partner, Nino Durden had regularly planted evidence on innocent people, now, lied in the court to gain convictions. In fact, many in the Rampart, which is just a neighborhood in Los Angeles, anti-gang in between this, to give one example, there's a man by the name of Javier Ovando. He had a verbal altercation with Perez and Durden. They shot him, left him permanently paralyzed, planted a gun onto him, and said that it was Ovando who had threatened the officers. Well, it turns out that Ovando gets convicted, sentenced to 24 years in prison. And then it's revealed that Perez and Durden planted the gun and they were responsible. This is one of many instances. The police chief at the time, who you referred to, his name is Bernard Parks, he had risen from being a street officer to being chief, later was city councilman, and he was very defensive of the department. He said to me, to my face, that he is close I am to you now, "Until you stand up to bullets, you can't criticize the department." And the new mayor replaced him as chief, a consent decree was entered with the Justice Department, and the worse significant reforms to the LAPD that there is so much to do.

- I think our police department, as a matter of fact in the Virgin Islands, is under a consent decree at the present time. And we have a couple of consent decrees ourselves, trying to get injunctive relief. But for the average citizen who faces civil rights issues, what do you suggest they can do as citizens organizing to get their protections enforced?

- You begin with the individual person, whose civil rights have been violated. Their access to a lawyer is really important, the lawyer who can give them a candid assessment of, is through the ability to sue and is the recovery that's possible. So that make worth doing, this is why access to lawyers is so very important. Well, generally, I think, in terms of trying to reform the system, I think people need to be part of organizations. There's no limit to one person can do to change the law, but there's wonderful organizations in so many areas throughout there fighting for reform. And could be places like the, we have [inaudible] Union, the NAACP Legal Defense and Education Fund, the Mexican-American Legal Defense Fund, Planned Parenthood, and we go through the long list. But I think people who want to bring

about reform can become part of those organizations and I think they're gonna be ever more important in the next few years we have.

- Tell us a little bit about yourself. I mean, what drives you and what brought you to this line of work?

- I grew up on the South Side of Chicago in a working class family. Neither my parents, nor brothers, sister had ever gone to college. My brother is an electrician on the South Side of Chicago. My sister works in the home. But I was very much inspired to go to law school by the civil rights lawyers of the 1960's. I wanted to go be a public interest lawyer. I became a law professor pretty early in my career, I've been a law professor for 37 years now, but still very much seeing myself as the civil rights lawyer.

- How do you stay positive?

- After the election, the students at my law school held a forum, and many were very discouraged by the results of the election. And they asked me to speak and I included by saying that we really only have two choices, we give in, give up, or we fight harder. And I think that really means only of one choice, which means we're gonna have to fight harder and better than we ever have before. I'm not always positive, but I believe that the course of American history has certainly shown tremendous advances with regard to equality and rights. I worry for what the next few years would bring. But I'm still an optimist who believe over the long term, there's gonna be advances of equality and rights, which is gonna be harder to get there than I wish.

- Again, I was sort of come up in the same area that you did and again, inspired by, you know, the civil rights attorneys in those days. As well as I'm trying to put my finger on the pulse, are you seeing young attorneys and laws students coming through, who have that inspiration. Who, or maybe there's something we can do to ignite that fire again?

- Absolutely, I see it. I had to delay coming to the Virgin Islands because on the Saturday of Martin Luther King Day weekend, my students decided that they wanted to have a daylong teach-in about the various issues likely to arise, education, reproductive freedom, employment, the environment, and they asked me to be there for it. We had on a Saturday of a holiday weekend, over a hundred and fifty people come, and we're a small school, because the students have a real passion for change. And so I think part of our responsibility as experienced lawyers, as educators, is helping to guide the students into constructive things that they can do to really make a difference.

- Send them our way. We did not, I don't think talked to, at any length, about voting rights. And I'd be curious as your take about the status of the 1965 Voting Rights Act. Where we are in that regard?

- I think the 1965 Voting Rights Act was one of the most important laws adopted in my lifetime. The Supreme Court has said that the right to vote is preservative of all other liberties, and yet there remains a systematic disenfranchisement of African-American, and Latino voters across the country. The Supreme Court made this much worse in a case in 2013, Shelby County, Alabama versus Holder, with the Supreme Court declared unconstitutional a key enforcement provision of the voting rights act. There's a 5-4 decision, it is the first time since the 19th Century, which a federal civil rights [ inaudible ] is race, is declared unconstitutional.

- Right. And my last one is united citizens, I was so upset when the Supreme Court ruled. Can you explain to the general public how that affects basically, not only voting, but the use of money in the elections?

- You're absolutely right. The case is citizens united versus federal election commission, it was decided in January 2010, the Supreme Court ruled 5-4, that corporations have the right to spend unlimited amounts of money out of their corporate treasuries, to get [ inaudible ] elected or defeated. It doesn't matter that much of the presidential level because there's so much money. But when you talk about the local level, you talk about the importance of campaigns spending in terms of name recognition and influencing voters, the amount of corporate money that's been spent is enormous and it increases the selection and it

decides the outcome of elections. I was hopeful that if Hilary Clinton won and a democrat would replace Justice Scalia, the court would overrule that president, in it self-overruled recent Supreme Court decisions. But now it seems it's gonna be a law for a long time to come.

- Now you're here in the Virgin Islands for the District Court, Annual District Court Conference, could you give us some preview of what are the cases that you're going to talk about, that you're going to present to this group.

- I feel so fortunate to get to come here each year for the Annual District Court Conference, and each year I do a review of the Supreme Court decisions from the prior term and the preview of what's ahead of this year. Let me pick a case that didn't get much media attention, but again to go to your initial question, it can really affect all of us. It's a case called Utah versus Strieff, there was an anonymous tip that there was drug dealing going on in a house in Salt Lake City. A police officer Douglas Fackrell was watching the house. He saw a man quickly go in and come out, the officer stopped the man and asked the man his name [ inaudible ] citizen's name was Edward Strieff. Fackrell detained Strieff into the check for an outstanding arrest warrant, turns out there was an old arrest warrant for minor traffic violation. Fackrell arrest Strieff, he does what's called, a search instant arrest and finds the drugs. The question is can the drugs be admitted into evidence? The state of Utah conceded in the Utah Courts, in the United States Supreme Court that the stop of Strieff was illegal. Police can stop a person only if there's reasonable suspicion. The Utah Supreme Court, now one of the more liberal Supreme Courts in the country, ruled five to nothing that the evidence had to be excluded. The Supreme Court 5-3 reversed, Justice Clarence Thomas wrote the opinion for the court and said, once the police found the outstanding arrest warrant, they could search the evidence as admissible. This gives police an incentive to illegally stop people, knowing that if they find an arrest warrant [ inaudible ] search in the evidence admissible. Just last Thursday, I was talking to the inspector general of Los Angeles police department, who has great concern that exactly this is not going onto Los Angeles.

- My goodness.

- So much for the food of the poisonous tree.

- That's exactly, and that's why the Utah Supreme Court said the evidence had to be excluded. It was an illegal stop and a violation of 4th Ammendent, the evidence was to use the phrase that you [ inaudible ] one. It was the food of the poisonous tree, it was the product of an illegal stop. And yet the Supreme Court said the evidence [ inaudible ] so this is gonna encourage police officers to illegally stop people, knowing they find a warrant the evidence admissible. Just as [ inaudible ] wrote a very eloquent dissent, she talked about the large number of arrest warrants that exist, in Ferguson, Missouri about 80% of the adult population was covered by an outstanding arrest warrant. She talked about degrading it is to be stopped by the police, she spoke especially about what it means for communities of color.

- Are there any other outstanding cases that you may present that we don't know about?

- Sure. Well, I'll pick as an example a case that's, well, one of probably people don't know about, I talk is a case that's pending right now and I mentioned it's the case that I've been co-counseling from the very beginning. It's two companion cases called Bank of America versus City of Miami and Wells Fargo versus City of Miami. Bank of America and Wells Fargo intentionally directed very high risk undesirable loans to African-American, and Latino borrowers. When the foreseeable happened, they defaulted the banks foreclosed, not even offering refinancing on the same terms that were available to white borrowers. The City of Miami sued both of these banks under the Fair Housing Act, the Fair Housing Act, as I quote, "Any aggrieved person to sue. The City of Miami says it's insured by this, it's hurt because loss of tax revenue from the foreclosures, the [ inaudible ] cost of policing when there's abandoned homes, the frustration [ inaudible ] its goal, with regard to interracial housing. The Federal District Court dismissed the case saying, Miami wasn't really injured, the Federal Court of Appeals reverse saying, Miami had an injury, and the case was argued in the Supreme Court on Tuesday November the 8th, it didn't get much media attention because we were focused on something else then, but the case is waiting Supreme Court

decision. It's gonna be very important case because similar suits have been filed by other cities across the country, including Los Angeles alleging the same racially discriminatory lending practices.

- What I don't understand is what is there to gain by providing this vehicle, only to see it fail, is there some other, what am I missing?

- Well, what the banks are saying, is that only people, specific individuals, who suffered discrimination in the loans are able to sue. What the City of Miami is saying and the United States Department of Justice came, I don't know [ inaudible ] is that the City of Miami is injured, and if Fair Housing Act was meant very broadly to allow people to sue, to stop race discrimination, it's hard for an individual borrower, who's house was foreclosed to know of the pattern to bring a suit. But Miami can look at this and the statistics are shocking, in terms of who this loans went to and who suffered for closure.

- There was also a case, but again there's no decision yet, having to do with reexamination of a parent's right to request reimbursement for services for a child who needs special education assistance. I'm wondering if you have any sense of where that may go, or we may just assume, where do you think we are on this?

- That's the case called Endrew versus Douglas Board of Education, and the question is what's the obligation of a school system to provide educational benefits for children with disabilities, and is it just a very minimal amount, was it enough to insure the child in adequate education, and even though we've had laws on the books for 40 years, that are meant to provide quality in educational opportunity for children with disabilities, we still don't have a clear legal standard. The case was recently argued in the Supreme Court, and it's obvious that the justice was struggling, and we have to remember for the case we're talking about this year there are only eight justices participating, so we always have the possibility of a 4-4 tie.

- And for the, you know, for the unification of our audience, what's the implication of a 4-4 tie?

- A 4-4 tie means that the lower court decision stands it's appealed without a Supreme Court ruling by an evenly divided court. So whatever the lower court held, that's the ruling. So in the case that I mentioned, Bank of America and Wells Fargo versus the City of Miami, if it's a 4-4 tie, City of Miami wins because it's one in the lower court, there's no Supreme Court president, the judges are free to take up the issue again in the future.

- And one last question on Educational issues, what's the implication for public schools if the court decides what is the tantamount meaning for education bar in regard to the provision of educational services.

- The question is exactly what you pose, what is the obligation of a school board in a school district, tried an adequate education for children with disabilities. And I think what the Supreme Court says here is gonna have an enormous effect on the education children with disabilities all over the country, which goes back to your initial question, why should we care, well, if you're a parent with a child with disabilities, then the education that child receives is gonna have entire length what the Supreme Court rules in this case.

- And again, just again, we're back, we're back to Civics 101, the police detention cases that you spoke of, the voting rights cases that you spoke of, the education cases, even though it's decided in Washington DC by a Supreme Court, it does apply to the people who live in the US Virgin Islands.

- It does, because obviously the Virgin Islands is covered by the constitution and by federal statutes. So everything that we've talked about today applies to those who are here.

- Yeah.

- Again, thank you, Professor. I'm always amazed when you do your presentations, I'm more amazed when we have this personal conversations, and I couldn't be more grateful for you taking the time, to speak to us today, speak to the people of Virgin Islands.

- My great pleasure, and I hope we can do it again when I return next year.

- Yes, and hopefully it'll be to our other fair islands.

- I'd love to, that would be my great pleasure.

- Thank you so much, you are listening to Ability Radio, you and your life. If you've missed any portion of this broadcast, this broadcast will be posted on our website, which is on [drcvi.org](http://drcvi.org). Again, Archie, thank you so much.

- Amelia, great interviewing.

- Always a pleasure. And thank you so much to Professor Erwin Chemerinsky. Good day.