

Inside a Great Legal Mind: 12

The State Bar of Nevada is pleased to announce that, once again, Professor Erwin Chemerinsky will be reviewing some of this year's most important and influential U.S. Supreme Court cases at the state bar's 2015 Annual Meeting in Seattle.

Nevada Lawyer recently interviewed Chemerinsky and asked him a few questions about the justice system, the U.S. Supreme Court and the modern legal world.



1. NVL: Reviewers of your new book “The Case Against the Supreme Court,” have said you’ve fallen out of love with the Supreme Court. Is that an accurate assessment?

Chemerinsky: It is an interesting choice of phrase. In many ways, I love the Supreme Court and what it stands for, but I have increasingly realized that, so often through American history, the court has failed — often at the most important tasks and at the most important times. That is the thesis of my book.

2. NVL: Should there be age limits for Supreme Court justices? What about term limits?

Chemerinsky: Yes, I favor 18-year, non-renewable term limits for Supreme Court justices. Life expectancies have, thankfully, increased greatly since 1787. Clarence Thomas was 43 when confirmed to the Supreme Court in 1991. John Roberts and Elena Kagan were 50. If they remain on the court until they are 90 (the age at which Justice Stevens stepped down), that is more than four decades for each. That is too much power exercised by a single person for too long a period of time.

3. NVL: The U.S. Supreme Court bans video recordings of its oral arguments. Justice Antonin Scalia has argued to keep the ban in place. His position is that the American public would end up seeing short “sound bites” from much lengthier arguments, which would not represent what the court does. Do you agree with his thinking on this matter?

out of context, but that is not a reason to ban newspaper reporters from the court. The court’s decisions affect all of us, often in the most intimate and important aspects of our lives. People should be able to see their government at work. I actually believe it will only enhance the court’s esteem.

Questions for Professor Chemerinsky

Chemerinsky: I strongly disagree with the court and Justice Scalia; every Supreme Court proceeding should be televised live. Newspaper articles can take questions

4. NVL: Have you seen the segment from John Oliver’s show “Last Week Tonight” during which they reenact a court proceeding by playing a recording of a Supreme

Court oral argument with dogs portraying the justices and a chicken as a stenographer?

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Chemerinsky: I have seen it and [I] love it. It is such a great satire of the lack of cameras in the Supreme Court.

5. NVL: Do television shows about lawyers annoy you or entertain you? Why?

Chemerinsky: I confess I don't watch them. Other than sports (I am a big baseball and basketball fan), I rarely watch TV.

6. NVL: As the father of four children, are there court decisions you believe will impact their lives? Which current cases do you think will be most discussed in the future?

Chemerinsky: So many cases have an effect on their lives. For example, the court's decisions ensure access to contraceptives and abortions, provide privacy for consensual sexual activities, and deal with the right to refuse medical care and even assisted death (which could, someday, affect their parents and them). The court's rulings on college and graduate school admissions could affect where they go to school....

As for what cases from now will be the most discussed in the future? The marriage equality cases and perhaps the Affordable Care Act cases.

7. NVL: According to the American Bar Association, in 2014, law school enrollment was down 30 percent from 2010. Is this a good thing or a bad thing?

Chemerinsky: Neither good nor bad, just a reflection of a decrease in applications right now.... In 2010, law school applications were at a record high, since then they have gone down. They will go up again. There is tremendous unmet demand for legal services in this country. We need to find a better way of having lawyers to meet it.

8. NVL: Recently Bloomberg reported that the LSATs may become a thing of the past, saying some schools view the test as a deterrent to potential applicants; is it time to retire the LSAT?

Chemerinsky: There must be a standardized test for law schools to use. The LSAT is flawed, and alternatives have been developed but [have] not caught on. Unless one does, the LSAT will remain in use. Law schools need some measure to compare students coming up from different colleges.

9. NVL: How has the practice of law changed in the past 10 years? Has it changed drastically?

Chemerinsky: Appellate practice — which is the type of practice that I know best — has not changed much. But I think other types of practice have changed more. Clients are much more aggressive in defining what they will pay for. Alternative billing arrangements to the billable hour are much more common. Law firms expect more of young lawyers in bringing in business.

10. NVL: What do you suppose our forefathers would think of the current Supreme Court's interpretation of the Constitution or of our judicial system as a whole?

Chemerinsky: The framers of the Constitution could not have possibly imagined the world that we live in. They could not have imagined the progress with regard to equality for racial minorities, women, and gays and lesbians. I think the framers would be pleased that their Constitution has survived, that it has provided democratic rule since 1787, that it has provided for such advances in liberty and equality, but they'd also be disappointed that we haven't done more.

11. NVL: As an April Fool's Joke last year, a columnist penned an article about you leaving UC Irvine to start a law school of your own, aptly named UC Erwin. Was this joke far off the mark or no?

Chemerinsky: Yes, in every way it was far off the mark. Creating UC Irvine Law School has been an enormous team effort. Chancellors Michael Drake and Howard Gillman, [and] Provosts Mike Gottfredson, Sue Bryant, Howard Gillman and Mike Clark have been crucial in providing the resources to be a top school. The community has provided invaluable support. Our administrative team and our faculty and students have been crucial in all we have accomplished. And I cannot ever imagine being dean of any other law school.

12 NVL: Your presentations at the bar's Annual Meeting are always entertaining and enlightening. Will we see you again this summer?

Chemerinsky: Thank you. I am speaking on Saturday, July 11. **NL**

Join your colleagues from the state bar at the 2015 Annual Meeting, Thursday, July 9 – Saturday, July 11, in Seattle, Washington.

For more information, visit www.nvbar.org/annualmeeting.