

Intro Recording:

As Chief Justice, I please the court. It's an old joke, but when a man argues against two beautiful ladies like this, they're going to have the last word.

Intro Recording:

She spoke not elegantly, but with unmistakable authority. She said, "I ask no favor for my sex. All I ask of our brethren is that they take their feet off our necks."

Melissa Murray:

Welcome back to Strict Scrutiny, your podcast about the Supreme Court and the legal culture that surrounds it. I'm Melissa Murray.

Leah Litman:

I'm Leah Litman.

Kate Shaw:

And I'm Kate Shaw.

Melissa Murray:

And this is a very special episode of Strict Scrutiny. Netflix, the media juggernaut that has facilitated the release of our favorite duchess from the clutches of imperialism. Salute to you.

Leah Litman:

Woo hoo!

Melissa Murray:

Woo. When they weren't freeing princesses, Netflix was also hard at work releasing new, original content, including, on February 17th, a six episode docuseries about one of our con law favorites, the 14th Amendment.

Leah Litman:

So, the docuseries which is titled Amend: The Fight For America, is a deep dive into the history of the 14th Amendment, reconstruction, and redemption. As well as a really trenchant look at how the 14th Amendment has scaffolded various civil rights movements including the civil rights movements, the women's rights movement, and the gay right movement. It is a star-studded event with executive producers Will Smith and Larry Wilmore, shepherding notables like Yara Shahidi and Laverne Cox through the vagaries of constitutional law. Basically, it's the constitutional law class you wished you took.

Kate Shaw:

So, today we are joined by Robe Imbriano who is one of the executive producers and creators of the series, as well as my terrific colleague, Michelle Adams, professor of law at Cardozo Law school, who is one of the experts featured in the series. We should note that a number of Strict Scrutiny favorites and

past guests including Sherrilyn Ifill, Dale Ho, Emily Bazelon, and our own Melissa Murray are also featured in various episodes. So, welcome to the podcast Robe and Michelle.

Robe Imbriano:

Hey, thank you for having me.

Michelle Adams:

Thank you.

Melissa Murray:

This is an amazing production, Robe. So, congratulations to you all for dreaming it up, executing it, and for getting it into everyone's Netflix stream just in time to ride out the end of this pandemic. As Kamala nerds, we totally love this. But I'm wondering, what were the pitch meetings like? Because I can't imagine that Hollywood was immediately sold on a six episode arc about the 14th Amendment.

Robe Imbriano:

Well, it's just obvious they wanted, right? I mean, who wouldn't want that?

Melissa Murray:

Who wouldn't? Who wouldn't?

Robe Imbriano:

This actually started because I was doing a number of classroom films about the constitution a few years ago and was about to start on a film about Philadelphia and the creation of the constitution, blah, blah, blah, blah, blah. And I had two conversations, one with David Blight, which stopped me in my tracks, as he often does. And the other with Akhil Amar where they introduced me to this idea, because I had not gone to law school, about the 14th Amendment. And I was gobsmacked at how do I not know this. How do all of us not walk around with this knowledge of this amendment like we do the 1st Amendment or the 2nd Amendment or anything else. So, I've wanted to do this for some time. I was with the documentary group in New York and I went into my boss's office, my co-creator, Tom Yellin, and I said, "Hey, so I want to do this six hour thing on the 14th Amendment." And he's the only fool in the world who would say, "That sounds really interesting. Let's try this."

Robe Imbriano:

We met Will Smith on another project, I went to meet with Will while he was filming in New York city, we were in some subway some place while he was on location, and we had about 30 seconds with him. And we said, "Hey, we want to do this thing on the 14th Amendment." He's like, "I'm in. Sounds good."

Melissa Murray:

Every time I call him, I never get that response.

Robe Imbriano:

Once he got on board, we had a series of meetings with The Ford Foundation. We did a little trailer, sort of a proof of concept to test out the monologue idea. And then we pitched it to Netflix. And same deal.

You go in and you say, "Hey, I want to do a six episode series on the 14th Amendment." You go in and you say, "Hey, I want to do a six episode series with Will Smith." Okay, no we're talking. We'll listen to that. And once we had Will on board, then we could take liberties with this in terms of the way we put it together. We could include performance. And it just opened up all kinds of doors in terms of our storytelling capabilities.

Melissa Murray:

And I imagine it helped that Ava DuVernay had just finished the 13th which was a documentary about the 13th Amendment as well?

Robe Imbriano:

I love Ava. I am a huge Ava fan. And I have to say, we started this project in 2015. So-

Melissa Murray:

Oh, wow. I didn't realize that.

Robe Imbriano:

This was a year before 13th came out. When it came out, it blindsided us. We had no idea that she was doing it. And we saw a release party. We actually went to the premiere. And it was amazing, and I was really happy for her. But I was also a little kind of bummed out because we thought we had owned this territory. And suddenly there was this great film on another reconstruction amendment out there. But it ended up being a balloon to us, not an obstacle.

Melissa Murray:

There's plenty of room in the reconstruction amendments for everyone. I'm ready for the 15th. So, I'm going to talk to Will about that next.

Robe Imbriano:

Lead with the 15th. Yeah.

Melissa Murray:

Exactly.

Leah Litman:

Maybe we could time the documentary on the 15th with passing HR1 or the John Lewis reconstruction of the voting rights act. So, there's an idea.

Robe Imbriano:

How about that?

Kate Shaw:

So, we wanted to then ask about the rest of the team, at least the onscreen time that we all saw. So, obviously, Larry Wilmore was both the producer and figures very prominently in the series. And then you just have this tremendous cast of really notably diverse actors. So, Hollywood Foreign Press

Association, take note. Sort of how did you build the team and was this a conscious decision on your part sort of how to cast the series?

Robe Imbriano:

We actually went through two different rounds of casting because it started with our amazing experts, two of them are here with us right now. It was really important that we find a diverse group of people to talk about this on a scale that actually brought a lot of people into the room and a lot of different people into the room to show its importance to all of those people. And so that casting was one thing. We needed people who were really great at telling stories. In fact, I don't know, Melissa and Michelle, and if you know this, we never referred to y'all as experts. We referred to you as storytellers. And that was really important to the development of the process and the project, and that was my co-creator, again, Tom Yellin, that was his idea. And it was really important because we were story first. It wasn't about trying to teach the law as so much as it was trying to tell these stories where the lessons of the law were embedded.

Robe Imbriano:

And once we went down that road, figuring out how to include the voices of the people who were involved in these stories was the next real challenge. And I'm a huge fan of Anna Deavere Smith. Ossie Davis and Ruby Dee had done a project back in the '60s where they did this very strange, quirky thing on stage where they do these readings and poetry and all these different things. And I thought that that's actually not a bad model for us. If we have Will have host and I can get someone like Mahershala Ali to play Frederick Douglass, then we're putting together something that would be really compelling. We were really fortunate because the director Kenny Leon was available. And we caught him in between things. And so we brought Kenny on and Kenny and I FaceTimed Mahershala because Mahershala had been in a play of Kenny's before he became Mahershala.

Robe Imbriano:

And he immediately bought into the mission of the piece. And then we were off. Once you have Will Smith and Mahershala Ali, the sky truly is the limit. You're already above the clouds. And so then there was just calling people. We worked with a casting agent, we worked with a number of different people. We did a five week run, basically, in Los Angeles where we shot all of the monologues at the same time. Sometimes three and four different actors a day. And everyone, everyone brought their best selves to it. It was really quite amazing. Most people had never heard about the 14th Amendment, they had the same reaction I did when David Blight told me. "Sure, 14th Amendment. Okay, yeah. I got that." But no one really had known what they were walking into. And doing the research for the characters, reading the monologues, understanding some of that led to some really profound moments both on set and just off set when we were talking afterwards. It was a really beautiful thing.

Leah Litman:

It's so interesting to hear you describe this as not law but storytelling. Because one way of thinking about this is really law outside of the courtroom or lawyering outside of the courtroom. One of the people that is featured in the docuseries, Bryan Stevenson, of course, is involved in projects where they are trying to construct memorials to lynching in the south. And that is happening outside of and near courthouses to try to make people familiar with the stories and the histories that inform our law today. And one of the things I thought about while watching the docuseries and then also thought about when you said that is this is also kind of like a Hamilton take on reconstruction, right? Some of the ideas

associated with Alexander Hamilton gained additional prominence and got additional traction after the musical brought them to life and made more people familiar with them. And this project, again, bringing these additional stories to a broader audience, I kind of think of as an important form of lawyering, too.

Robe Imbriano:

Yeah, I mean, I think one of the really important aspects of all of this is seizing the narrative and this was a narrative that had not been taught for a very long time. I mean, we went through history books. One of the things we were prepared to do was to show in all of these history books how the 14th Amendment isn't taught or is lumped with 13th, 14th, 15th in one paragraph on one page somewhere in the middle of the book. So, to take the narrative of agency and the most vulnerable among us, fighting for these rights and then winning these rights was something that we felt was really, really important to do. And I mean, it's funny listening to you say, you talk about having room for more reconstruction, there was no one doing it. So we had plenty of room to tell these stories. And it afforded us, actually, the time to get the storytelling right.

Kate Shaw:

So, you mentioned David Blight and stalwarts like Eric Foner, these historians who figure really prominently in the film, and as you started to say, you have this incredible team, sort of, of storytellers, including Sherrilyn Ifill and Kimberle Crenshaw and Martha Jones and Khiara Bridges and our co-host Melissa and our guest Michelle. So, it does feel, in this really important way, in the same way that you are offering the piece of the narrative about this sort of post civil war moment, makes a really important point that the narrative kind of battle over the meaning of the civil war was largely won by the south in terms of cultural production and the writing of history in all kinds of deeply damaging and destructive ways, and that this feels like an important and sort of, as Leah was saying, kind of corrective project, right? So, that there's so much power in storytelling and this is sort of how we write history. And so it just seems so powerful and important on that score.

Kate Shaw:

So, since we have one of the sort of expert storytellers, not our co-host, but Michelle Adams with us, Michelle, I wanted to sort of ask you to come in a little bit. You're featured prominently on a number of episodes. So, first, from your perspective, can you tell us how you got involved in the project, and given the many demands on your time, right? You've got this huge and really exciting book project you're working on. You are a super devoted and fantastic teacher. Like, this is a big time commitment, I presume. Why did you prioritize spending the time to work on this project?

Michelle Adams:

Well, I mean, I think for some of the reasons already talked about. This is a project that... It was sort of a project that was needed to be made. It was waiting for you, Robe, and the rest of the team to make this. And, in a lot of ways, I think that we as a nation have been waiting for you to make this. And when you reached out to me, when your team reached out to me and asked me to be a part of this, it was just there was no question that I was going to participate. And we had a couple of really long conversations, I think one back going into January of 2019, and then a second follow-up conversation maybe in April or May of 2019. And we talked for over four or five hours or something along those lines. And one of the things that really struck me about that first interview was how incredibly well prepared you were.

Michelle Adams:

I mean, just the level of preparation... I was pretty surprised that, I mean, no offense, I was pretty surprised you knew what you were talking about. And you guys had done your homework. And that was the first signal that I had this was going to be something really special because the level of dedication that I saw there and getting an inkling of sort of who was going to be involved in it. And so, for me, it really wasn't... It was an easy call in terms of my time. And I think particularly because of the kind of work that I'm transitioning to doing now which is really public facing and trying to engage larger audiences about thinking about how we got here and what our stories are and why our world looks the way that it looks. It's a perfect complement for that.

Michelle Adams:

But I guess the other thing I wanted to say to you Robe, while I have it and I didn't want to forget, is the piece is thrilling. It's a thrilling six part show and it's got the high notes, it's got the low notes, it's got the animation, the music, the found footage. I mean, the mix of different kinds of media. The use of the storytellers almost like an orchestra, the level of actors, the selection of the kinds of speeches that they were going to give, all woven together. The way that you selected what each hour was going to be about. And I want to ask you a little bit more about that if we have a chance.

Michelle Adams:

So, there was just no question I was going to be involved in this. And I'm so delighted that you asked me to be a part of it.

Robe Imbriano:

I do have to say, what separates this project from any other that I've been a part of is the quality of people that we were able to interview and what everyone brought to it. I think, Michelle, you and Melissa, I think our initial interviews were many hours long. And you would not know that. I was amazed that you could walk out of there because we just talked forever. But it was just so interesting and everything that you... We could run those interviews and everyone would be mesmerized by those interviews. So, we did them initially in 2018, and they are as fresh right now as they were then. And that's a testament to you, that's not a testament to me. I'm the lucky guy who's able to sit there and ask you guys questions and then listen, which is... Thank you, because you really brought something very special to it.

Melissa Murray:

I was surprised by how much time we did spend with the interviews. I thought it would be maybe an hour and by the end of it, I was like, "I should've packed a lunch. I'm hungry. This is a really long time."

Robe Imbriano:

Oh, did we only tell you it was going to be 20 minutes? Is that what we said?

Melissa Murray:

So, the series begins with slavery and abolition and then the civil war as a background. And the reconstruction amendments are really positioned as a kind of new founding moment. Is that a fair characterization, Robe? Like it's a fresh start for the country, a new constitutional moment that's supposed to correct the deficiencies of what preceded it?

Robe Imbriano:

That is true. And I think what initially attracted me to the 14th Amendment was this notion that a remedy had been placed in the constitution. That there was actually something that existed that was already a fix. What came later was just realizing all of the resistance all along the way. That came with the research. And so I think this had started out as something that was going to be a much more sort of optimistic, perhaps naïve, exercise. And then came the realization, oh, wait, this is a lot deeper and also explains why we're not living in a utopia right now.

Melissa Murray:

So, the documentary has, I think, book ending it, this question of what it means to be a citizen, and it begins with the Dred Scott decision and the pre civil war era where the court specifically makes clear that African Americans and those who are descended of African American slaves are ineligible for citizenship. And then the 14th Amendment is intended to be a corrective. You note that, along the way, there are actually two paths that can be taken, and one where the entire constitution, as originally written, is completely scrapped and we start fresh. And the other is we amend it. And you note that Frederick Douglass is something of an institutionalist even as he is an abolitionist. He wants to keep the older constitution and believes that the bones are there. But there's actually a fracture in the abolitionist movement with some people thinking this is too tainted to be redeemed. And that becomes a theme throughout.

Melissa Murray:

So, you book ended with this question of citizenship and Dred Scott at the front end, and you conclude with this question of the current debate over what it means to be a citizen with undocumented persons and the fight over immigration and whatnot. But all along is this sort of oscillating trajectory where you're delving into should we have amended it and fixed it? Or was it so irredeemably tainted that it's irrevocably just damaged and we can't get past this? Where did you wind up?

Robe Imbriano:

I think very much like the project itself, it's a work in progress. I go back and forth on a regular basis. And I come from... My parents were active in the civil rights movement. I come from a place of hope that you can always effect some sort of change. The more I learn about American history, and I'm always learning about it, the less I feel like that is an easy thing to do, particularly around the law. And I would say that I think you have to set your sights on what you can accomplish, but you and I have talked about other more radical possibilities of scrapping the whole thing even now. Is it a question as we enter this new era of reconstruction? Should we be thinking about something bigger? Should we be looking at something that's a little bit more robust in terms of our protections of citizenship rights?

Leah Litman:

So, you depict Reconstruction as kind of the high water mark for black political participation that is quickly diminished by the force of redemption. And you also position the Supreme Court as one of the principal actors in dimming the 14th Amendment's possibilities for effecting real and lasting change in the post Civil War period. Why did you focus on redemption and also focus on the court's role in redemption?

Robe Imbriano:

I think the court's role was the biggest surprise to all of us. I think most of us think about the court and we think about the war in court. We think about, I think it was Ted Shaw who did the math and basically summed it up that there were like 12 good years in the Supreme Court, and the rest is sort of doing away with, or diminishing rights of inclusion. And I think that that was a huge surprise to me and to everyone else who worked on the project. I hadn't known much about the reconstruction court. I hadn't known much about the cases from Slaughter-House to Plessy. I hadn't known much about the move towards corporate rights and away from black civil rights. And learning all of that became something that is just... I don't see how you tell the story without that. And I also don't think that it's a good place to be where you're placing false hope in an institution that really doesn't live up to it.

Robe Imbriano:

And initially, I think we were talking about ending with the love episode and sort of a happy, uplifting note, and an example of what the court can still do. But that increasingly felt like a false note to land on. So, I was actually really happy where it ended up.

Leah Litman:

I was extremely grateful you covered redemption, because every year in constitutional law, students will come in having heard of reconstruction. So few of them will have heard about redemption at all. And I think Adam Serwer at The Atlantic has kind of popularized this or made more people in the broader public aware of it. He called the current court I think the second redemption court in some of its decisions on voting rights. But I was... Although that is not, as you were saying, the happiest part of the series like the love episode, I think it's such an important part of it.

Melissa Murray:

I was wondering what Michelle thought watching this. It's such a familiar story for law professors, but it almost seemed weirdly cinematic and, again, thrilling, to watch it play out, even though you know how it's going to end. I was really invested in reconstruction and then I felt completely let down with the court and I've read all of these cases. Was it like that for you, too, Michelle? Seeing it afresh?

Michelle Adams:

It was more than what I expected it was going to be, but I also think, in a lot of ways, it's sort of what's in our head, and it's compartmentalized in our head and we sort of walk around with this information all the time, we walk around understanding what Slaughter-House was about and what the civil rights cases were about, and what Plessy was about, and then you struggle to bring those cases to life in the classroom and you do the best that you can. But it was like, suddenly, someone had sort of taken all that information and our lived experience and then sort of projected it out in the sort of broad, three dimensional way in which we think about the law and the ways that we live our lives as well. And, for me, that was the part that was just so thrilling. And then also, to me, it spoke to legacy. This piece is going to have a very, very, very long shelf life because it's going to be seen, it's going to be digested, it's going to be heard, and it's... For me, it's exactly what I've been trying to do in my classes, but just sort of taken to the next level.

Melissa Murray:

So, that's such an astute point. We see these cases in books, it's Lochner, substantive due process, Mueller, women's rights, Cruikshank. But they actually are happening all at the same time, and there's this whole commerce clause line of cases that's happening at the same time. But we don't talk about

them as part of an era as opposed to their doctrinal silos. But when you see them laid out, you get this viewpoint of the court as deeply interventionist, even activist, in this project of stopping social change.

Michelle Adams:

Part of that is the artificial nature of the law school curriculum, right? So, because law school curriculum is set up the way that it is, when you're teaching con law 1 and con law 2, you're cracking those things open or you're having reproductive freedom as a separate course. So, you're taking the cases out of their historical context and you're not looking at... I mean, occasionally, you'll look at the Warren court, you'll talk about that if you bring that outside of the class. But in terms of the way in which the classes are set up, the textbooks are set up, they're not designed to sort of give the student a 360 view and to step into this as living history. And I think that's what's so wonderful about Amend.

Robe Imbriano:

It was one of the very first things that I realized in talking to historians. Historians don't know much about the law, and lawyers, excuse me, present company excluded, don't know a lot about history. And so putting the chocolate and the peanut butter together was really important because you don't get a sense of the whole thing and how they fit together. And I think that we had the opportunity to do that in a way that allowed all of you to come together and tell the story as one.

Michelle Adams:

That's what I meant by the orchestra. That's really, to me, when I think about the storytellers, you've got to have the historians, you've got to have the law professors. You've got to have sort of a mix of everybody. But you've got your oboes, you've got your violins, right? You've got everybody in there and they're making this beautiful music. And I think, for the viewer, they're no able to receive that. The other piece, for me, that's so important, is the level of diversity. I think one of the things that you've done is you've sort of introduced a new generation to a new generation of scholars who are really diverse. And I very much appreciate that because I think about... And I don't want to cast any [inaudible 00:27:46] this, but when you go back and take a look at sort of Ken Burns' work and look at the civil war piece, right? Which is really, which is incredibly wonderful in many, many ways, but it's not... It lacks that level of diversity. And I think that's incredibly important for this moment.

Robe Imbriano:

It was really important for us to have a wide-ranging group of people telling the same story. It was vital that we include different people of different races, both as storytellers and as performers. And I think Hamilton certainly helped us in that degree by opening the door. But the story it told was the wrong story. The story that we all own is this story, and it gave us a chance to actually claim it, so.

Melissa Murray:

It was also inter generationally diverse because my daughter had zero interest in this, minus zero when she learned I was a part of it. But then she found out that Yara Shahidi was in it and she's like, "I might watch one or two episodes."

Michelle Adams:

Yeah, my daughter's about the same age and she tried to act all cool like she wasn't that interested in it, but then it held her attention. And that was what... That's when I knew we had something. That's when I knew you had something.

Robe Imbriano:

Wow, that's so great to hear. That's a win. That's a win.

Michelle Adams:

I'll also tell you one more thing which is my law students have been watching it, and several of them commented to me that they cried at different portions of the show. And this is why I say that it's [inaudible 00:29:12], because you're reaching people on an intellectual level, you're reaching them on an emotional level, and you're engaging them in a way that I think is really important.

Robe Imbriano:

Wow. Yeah, no. Again, it's the power of a narrative.

Melissa Murray:

So, I think the best episode is the one about women's rights because it's just all the things I love talking about and I'm in it, I'm like... This is my favorite episode. I thought you did such an amazing job of really hammering in on the real nuances and difficulties and complexities of the women's rights movement. The conflict between white feminism and women of color and trying to integrate that movement. I love that you began this by nodding to Pauli Murray and highlighting Pauli Murray's work in laying a foundation for bridging the gap between race and gender and making that clear. How did you decide to break out these episodes? Like each one has a thematic hook, but they all cohere. So, how did you plan this out and come up with six individual episodes that could all stand alone but collectively are a kind of narrative that makes sense together even as they are singularly distinct?

Robe Imbriano:

So, first, let me say that whenever a filmmaker starts using "I", he or she is lying. It is the most collaborative medium that there is. A filmmaker's "I" is sort of the inverse of the royal we. There's a large team that worked on this. And so the construction of each episode, I will say, I created the series and designs, the episodes, but once that happens... And did all the interviews with you guys, but once that happens, there's a large team that really gets into the footage and gets into what's working and what's not working and so I just want to applaud everybody who had a hand in developing that.

Robe Imbriano:

Pauli Murray was another one of these people who, like Harriet Jacobs and even Douglass himself, you don't know that story. And it's so important to understand that she was at the nexus of the arguments that won these rights and not just won, but she's at the intersection of them. So, it was really important for us to start with something personal and build out from that. The women's episode... The first three episodes are more or less a trilogy of the black struggle for civil rights. Then the women's episode is number four, LGBTQ and the same-sex marriage is number five, and immigration is number six because the idea was let's get out of the storytelling silos that we normally live in and show how this one story affects all these different people and all these different groups.

Robe Imbriano:

The women's episode was a particular challenge because it was an argument. Many of the others were telling the story, but the women's episode was an argument, and the argument was essentially that 14 has never worked for women the way that it was designed. And I remember, Melissa, we got into a somewhat spirited argument, I think, over Scrutiny.

Melissa Murray:

Who, me? A spirited argument? Me?

Robe Imbriano:

You got spirited, I think I got quiet. But you were a thousand percent right.

Melissa Murray:

What was our argument about? Like about the level of scrutiny?

Robe Imbriano:

It was, in fact, over the goal of whether or not to go for strict scrutiny, for women to go for strict scrutiny or not, following the path of race, because, obviously, that became a trap. And so, I mean, you can explain it better than I, and you certainly did that day. But for me, I'm not a lawyer, so it felt like not going for strict scrutiny was somehow giving up, and you set the record straight on that.

Melissa Murray:

I'm remembering vaguely this conversation. But I think one of the things that comes up in the episode is it's really hard because they're in between their own movement and the civil rights movement that's coming to a conclusion in a way that perhaps was unexpected. So, they're agitating for strict scrutiny in 1973 in that Frontiero case, and in the same year, you have the court thinking about whether affirmative action and race conscious measures that benefit minorities should be struck down under strict scrutiny. And they're sort of caught in this nether space where they see the outcome and is it enough time for them to sort of save their own movement from what the eventual backlash is likely to be. And so, again, I think this is something that law students also have difficulty with when it comes up in con law, but is the whole struggle in the women's rights movement over the standard of review. Is the race movement a kind of canary in a coal mine that helps them avert a disaster.

Robe Imbriano:

Yeah. And we struggled with the storytelling, making television out of that, and continuing to keep it interesting for people who aren't lawyers or in con law was a challenge for us. I'm not sure how successful we were in the end, but in the end, I think we decided to not go quite as deep into strict scrutiny.

Melissa Murray:

Strong. Strong choice. Strong choice.

Robe Imbriano:

Okay.

Kate Shaw:

And we thought it was incredibly, narratively successful for what it is worth. And I actually wanted to ask a question about the next episode, or to highlight something and then ask a question. And so that's episode about LGBTQ rights. And pretty early in the episode, you have this long interview with the lawyer who challenged this discriminatory ordinance in Cincinnati, Ohio. So, you have a bunch of interviews with Jim Obergefell who, of course, was the named plaintiff in the court's huge, recent marriage equality case. And I think people are probably familiar with Obergefell, but the history of Cincinnati and the discriminatory laws in place in the city that he was from I think was actually probably... It was new information to me and I think probably new to a lot of people. So, I think it's both somewhat familiar terrain, but even to con law professors, there was a lot that was new and fresh there.

Kate Shaw:

And there was this one moment that I really loved where you played a clip from the oral argument in the Sixth Circuit and you're interviewing the lawyer who lost that case, and you have this voiced exchange. So, you've cast it with an actor and it's just an appellate argument. And so, you have obviously a lot of letters and Supreme Court decisions and then this was just an appeals court argument, but it really came to life to sort of stage and dramatize it that way. So, one, I loved that. But two, there was the moment when the lawyer sort of says, talks about in this very human way how hard it is to lose a big civil rights case like that. And he starts to break down just a little bit and... I guess, I think it's the love episode, Martha Jones, a little bit when she's talking about loving in her own family, has this incredibly moving moment in which she... Her voice breaks, and she pauses for a couple of seconds.

Kate Shaw:

And so, I mean, I guess I'm just... I know that you weren't directing these scenes, but sort of how did you prepare the storytellers going into these scenes, and was there a lot of that? This is a lot of painful material, I think, in a lot of the episodes. And so, I guess, were there a lot of moments like that and how did you respond to them?

Robe Imbriano:

One of the things that we wanted to do, because everyone who we invited in as a storyteller had thought a lot about the amendment and a lot about how the amendment works and how it works in American society. But we wanted actually to ask everyone how it affected them personally. And so, we had everyone talk about how it affected them personally. And I warned Martha that I was going to ask this question. Martha, again, I think was a five hour interview. And over lunch, I warned her that I was going to ask this question. And she had another answer that I thought would've been pretty good. I can't remember it right now, but then she thought of that one. And I said, "Well, you're probably going to get emotional in that. So, that's up to you. I'm not going to shy away from emotion, that's what we do, we love to make people cry in TV." But she said, "Okay, well, I'll give it a shot." And we left it in. She said, "You warned me this was going to happen."

Robe Imbriano:

And that's what that was because it is very personal and very emotional. And the courage that it takes to come in, you're talking about something that you've studied, that you've taught, but then when it gets that close to you, to come in and actually talk about it in that way and in such personal terms, is really quite remarkable. So, I will be forever grateful to her for getting that personal. Al Gerhardstein was Jim's

lawyer in Cincinnati, and he... I can't remember if it's in the piece, but he said, "If you want to be a civil rights lawyer, go work in the Midwest."

Kate Shaw:

Yeah, he did. Yeah, you kept that. That's a great line.

Robe Imbriano:

And he was our very first interview. And again, we did like a five week run in New York of interviews where we interviewed somewhere north of 45 people. And Al was the very first and he cried in that moment. I did not expect that to happen at all. And there were a couple moments later where he cried. We all cried during that story. But again, it just often... And you all know this better than I, we talk about the law in sterile, abstract, or distant terms, and I think what this really brought home is just how personal it can be, I mean, for the people who are involved, but also for the people who are working on it and who give so much of themselves to trying to make the law work for other people.

Melissa Murray:

So, we've already talked about the immigration episode a little bit, but I did want to come back to it because, in some ways, this episode is hopeful. It talks about the Supreme Court's recognition of birthright citizenship and the rejection of efforts to deny citizenship to people who were born to persons who weren't citizens. But then it also covers some of the backlash to or efforts to get around that decision that the Supreme Court upheld, whether it's the Chinese exclusion laws, or efforts to police the contours of citizenship while enabling discrimination on the basis of race and sex in the area of immigration. So, I was wondering if you could talk a little bit more about why you chose to end with that episode. I mean, to me, this is obviously an area where we still continue to see the lingering consequences of some of those decisions, the Chinese exclusion cases, as well as cases giving the federal government broad power to engage in discrimination in this area. But aside from maybe not wanting to give us a sense of false optimism, why was this kind of the close of the series?

Robe Imbriano:

It wasn't originally. Originally, I think we had love as the close of the series and we did not have an immigration. We had an episode about incorporation and it was through the McDonald case. We were talking about 2nd Amendment rights. We decided that actually we needed to include immigration. We kicked it around, we had a couple of different ideas, I think Michelle, I had talked to you at one point about an episode that we were considering calling Consequence which is how we had undone many of the 14th Amendment's high water marks. And immigration was the episode that we landed on because it had been such a big issue during this past administration. And you can talk about where the 14th Amendment applies and where it doesn't, but we had always intended to talk about Chinese Americans and the cases from the 19th century that really opened a lot of doors and shut some others. We always intended to talk about the various issues that the Latino community had with the 14th Amendment and equal rights and equal protection.

Robe Imbriano:

So, it made sense to do that. And the structure for that episode of immigrant, alien, criminal was a provocative way of getting at, again, the role of the court in not opening up rights but closing them off.

Melissa Murray:

So, one thing that struck me in watching this, and it's interesting that it's released in February of 2021. There's a new administration. When you were making this, the prospect of a Biden administration was not really even a possibility. I mean, we sat down in 2018 and we were in the thick of the Trump administration. And Michelle, I think you and I talked about this at one point, but there did seem, at least in the storytelling that we were doing with you all, a kind of urgency to sort of relate the history to this moment. Michelle, watching this now, does it seem like the same sense of purpose and urgency is still there? For you, Robe, does it sort of hit a little less intently to have this come out with the Trump administration on sort of the backside or in the rear view mirror?

Michelle Adams:

Well, just on that, I mean, one of the things I noticed when we had these conversations, they were before last summer. And one of the things I think you did throughout several of the episodes was to really bring home the previous summer and bring in the Black Lives Matter protests as well as what happened in connection with George Floyd. And so I thought that was really... It looked as if it had been intentionally done. Of course, I knew that we had been interviewed way before that. And so, there was a way in which I thought that was just incredibly well integrated with respect to that.

Kate Shaw:

I think we're going to wrap in a minute, but Michelle, want to see if there are any other thoughts on the experience or on the docuseries to share.

Michelle Adams:

The thing that really struck me that I kept thinking about and it was a question I think that you asked me, Robe. I don't think it made into the final cut, was sort of the distance between the promise and the reality of this country and the promise of the 14th Amendment and our lived reality of it. And it comes up a couple of times in connection with some of the other folks that are interviewed. And I think that's the place that you are in in the series, and it's a place where you have to try really hard to not go crazy because you have to hold on to both that promise and the possibility of what the country can be, but also understanding the reality at the same time.

Michelle Adams:

And it's holding those two things together that I think is a challenge but I think it also requires engagement in terms of how are we going to try to make this world a better place and further perfect this union. And so that's another piece of this that I think that you captured well, and I think it was captured in a number of the different episodes.

Robe Imbriano:

The gap between promise and reality is wide. And I will say, again, when we began, I really wanted to focus on the promise. But the reality kept fighting its way into the story.

Kate Shaw:

What do you want the takeaway for your viewers to be from this film? To understand the promise and the potential? To see how repeatedly we and our institutions have failed to live up to that promise? So for people who see this film, what, to you, is most important that they take away?

Robe Imbriano:

We wanted to change the conversation about American history and about our institutions. We wanted to change the conversation away from this exceptionalism that we can take for granted, that the long... Our history bends towards justice. It has to be bent. It has to constantly be hammered and bent. And there are people who have done that throughout our history who have not been acknowledged. And that history has been unseen and hidden. And we wanted to do something on the scale. I remember one of my very early meetings saying this. I wanted to do something on the scale that would change the conversation about American history. Period. And I think once we started to get the people, including the people in this conversation, involved in the film, that became a possibility. So, I'm hoping that this does become part of a larger conversation, it does help to make people aware of all of the things that we have not been aware of or been made aware of or have been taught in our schools in our textbooks. There's so much more. This is six hours of 150 years, and we've just scratched the surface. We haven't even begun to scratch the surface.

Melissa Murray:

Well, it's an amazing, amazing production. The production values are fantastic. It is thrillingly told, beautifully executed. If you are a con law student, this will definitely expand your understanding of what you're getting in class and take you to the next level. If you're just someone who wants to binge on something in the middle of a pandemic while you're eating popcorn and other carbohydrates, it is also fantastic for that. So, this is definitely appointment television, no less than the scintillating interview between queen of America, Oprah Winfrey, and the duchess of success, Meghan Markle, last week. So, highly recommend. Two enthusiastic thumbs up.

Leah Litman:

So, maybe we should end on that note. And thank Robe and Michelle for joining us for this.

Michelle Adams:

Thank you.

Robe Imbriano:

Thank you.

Leah Litman:

And also for this delightful docuseries which everyone can watch on Netflix. Thank you to our producer, Melody Rowell. Thank you to Eddie Cooper who makes our music. And you can support the show and become a Glow subscriber at glow.fm/strictscrutiny. Thanks, everyone.