Roman Mars: The whole idea for this series came from a tweet. It was by Elizabeth Joh. She's a professor at the UC Davis School of Law, and I know her personally because our kids go to the same elementary school. Elizabeth's tweet read, and I'm paraphrasing a little bit so it sounds better when I read it out loud, "Teaching constitutional law in 2017 means glancing at Twitter every five minutes before class." First I laughed. Then I retweeted it. And then I wondered, "What does that mean exactly?" I mean, I kind of have an idea of what constitutional law is.

Elizabeth Joh: It's a class that's sometimes called a structural aspect of the constitution.

Roman Mars: That is the aforementioned law professor, Elizabeth Joh.

Elizabeth Joh: So, I talk about things like the separation of powers, what are the different powers of the president versus Congress... I also talk about federalism, so how much power Congress has as opposed to state legislatures.

Roman Mars: It's nuts and bolts. It's usually a requirement if you're going to be a lawyer.

Elizabeth Joh: It's a class that I love teaching a lot. I admit that not every student loves it, and I can see why. For example, the very first case I assign on the first day of class every year is a case that was written in 1803.

Roman Mars: It's called Marbury versus Madison. It's a big deal, and we'll talk about it at some point. But all you need to know right now is that the first sentence of that case is 60 words long.

Elizabeth Joh: And the verb comes in the middle. So, it's pretty dry. But this year has been a little bit different.

Roman Mars: And why is it different? Oh, you know why. This is What Trump Can Teach Us About Con Law--an ongoing series of indefinite length, where we take the extreme actions of the chief executive of the United States and channel that chaos into learning our Constitution like we never have before. I'm your fellow student and host, Roman Mars. Coming up, we're going to law school, but in a fun way, and it's meant for everybody. But first, we got to pay some bills. It's still going to be cheaper than law school. So, the bread and butter of law professors are hypotheticals.

Elizabeth Joh: Professors love hypotheticals--crazy things that happen that they think about in their minds. What if? What could happen? And so, it's the sort of thing that is not realistic always, but it's a way to get law students to think about what are the limits of the law.

Roman Mars: For example, here's a crazy hypothetical.

Elizabeth Joh: Could a former president sue a sitting president for libel, for making false statements about him?

Roman Mars: I'm sure you're like, "Well, that's impossible." But it is possible! In this new reality, that's not a crazy hypothetical. President Trump tweeted that President Obama had illegally tapped his phones during the election process.

Elizabeth Joh: He said it was at the level of Watergate, and he called him a "bad" or "sick guy." He doesn't appear to have any proof, but that's what he tweeted.

Roman Mars: And this new window into the mind of Trump has changed the way Professor Joh prepares for class.

Elizabeth Joh: Before this year, when I prepared to teach each day's class for constitutional law, typically I would read what I had assigned, look through my notes from the previous year, and go teach class.

Roman Mars: Her procedure is a little bit different this year.

Elizabeth Joh: This year I had a little ongoing note to myself: "Do not go to class until I have checked whether the President has tweeted. If the president has tweeted, screenshot the tweets, and discuss with class." So, Roman, when you brought up the idea of having some basic explanations about con law, I thought, "What a terrific idea. There are so many constitutional law issues that this presidency has brought up."

Roman Mars: Whether you're testing mathematical models or automobile crashes, I think you can learn a lot about something by testing the extremes.

Elizabeth Joh: I like this idea that maybe we have a president who is kind of stress testing the Constitution--really giving us a sense of what are the limits of each of the different provisions that he seems to be challenging in the Constitution. And that's really important because it turns out it's forcing us to think about things and wonder, "Well, do we have answers to some of these questions?"

Roman Mars: For example...

Elizabeth Joh: When can Trump treat the presidency like the Apprentice and declare, "You're fired"? When can the administration declare that it's going to cut off funds to sanctuary cities. When the President talks about "so-called courts," should we be worried about that?

Roman Mars: Yes, you should be worried. That's a solid yes. But we'll do an episode about it nonetheless.

Elizabeth Joh: What about impeachment? Is that going to happen? I think it's actually practically pretty unlikely, but everybody's talking and wondering about this portion of the Constitution, so it's important to understand what it's about.

Roman Mars: Maybe even more interesting is that we're dusting off parts of the Constitution that people hardly even considered in 200 years.

Elizabeth Joh: So, for example, President Trump just went overseas. He got a gold medal while he was in Saudi Arabia. Can he keep that shiny gold medal? Is that the kind of thing that's barred by the Emoluments Clause of the Constitution?

Roman Mars: Or what about owning the Trump Hotel or property in other countries? Plus, there's this hardly considered part of the Constitution that liberals are salivating over...

Elizabeth Joh: Could a president be declared unfit to serve and then removed from office? That's the 25th Amendment.

Roman Mars: These questions don't generally make it into the basic constitutional law textbooks.

Elizabeth Joh: Because really no one has cared about them before. They're not relevant. That's the basic answer. It's kind of relevant now.

Roman Mars: So, this is a real opportunity.

Elizabeth Joh: I think, when it comes to the Constitution, this should be a moment to care a lot about the Constitution. And it's not an onerous task. It's short. It's less than 5,000 words. We're both Californians here, so I'll give you an example of the California Constitution. The California Constitution is a hundred pages long. It's one of the longest in the world. So, by contrast, the federal constitution you can read in one sitting. It's pretty easy. It's also a remarkably stable document. The federal constitution's only been changed or amended 27 times--and really only 17 times since the first 10, the Bill of Rights, were ratified very shortly after the original Constitution, California Constitution--we love changing stuff. We get tired of it. We've actually changed our state constitution over 500 times.

Roman Mars: California is such a cliche.

Elizabeth Joh: So, what's my conclusion here? It turns out that in 2017, I've decided that Trump can teach you a lot about con law.

Roman Mars: So, we're going to learn the Constitution together because of Trump because I need something to hold onto. And the Constitution is the life raft our forefathers gave us. And dammit, I'm going to learn how it works. A preview of what's coming up this season on Trump Con Law after this... This season on What Trump Can Teach Us About Con Law...

Elizabeth Joh: Think of a few things that have made the headlines. "So-called courts." The President refers to the judiciary as "so-called." He really raises a question about judicial legitimacy.

Roman Mars: That's going to take us back in time to Youngstown, Ohio, President Truman, and the Korean War.

Elizabeth Joh: President Trump has threatened sanctuary cities. Why is that even an issue for the federal government to talk about?

Roman Mars: That's because of the Spending Clause.

Elizabeth Joh: Trump wants to build a border wall, and we're still not sure who's going to pay for it. But one thing that's absolutely clear is that if you're going to build a physical wall all along the southern United States, you have to take people's private property.

Roman Mars: And that involves the Takings Clause.

Elizabeth Joh: We are probably going to get a lot stricter with the border in all kinds of places--not just with the physical border of the United States, but also at international airports. And many more people are raising concerns that their cell phones and laptops are getting looked at by border patrol. What happens when you are asked to provide the contents of your cell phone or laptop? Why can that happen? Can that happen?

Roman Mars: And that has to do with the Fourth Amendment's so-called "Border Doctrine." So, every week I'm inviting you and Elizabeth Joh over to my house to teach us these topics and so, so many more on What Trump Can Teach Us About Con Law. It's going to be fun, and you're going to get smarter and be a better citizen. Bring the kids. They're going to like it, too. Subscribe now in Apple Podcasts, RadioPublic, or wherever you get your podcasts. The first full episode is already there. It's waiting for you. Go to trumpconlaw.com for a link. This show is produced by Elizabeth Joh and me, Roman Mars. All the music in Trump Con Law is provided by Doomtree Records, the Midwest Hip-Hop Collective. The two big takeaway lessons from this show are learn the Constitution and buy Doomtree Records because both will make your life 100% better. The tracks this week were from Sims and Lazerbeak. We are a proud member of Radiotopia from PRX. Find out more at radiotopia.fm.