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ORIGINAL ARTICLE

"There Isn't a Formula": A Conversation with Stanley N. Katz

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Stanley N. Katz served as the Class of 1921 Bicentennial Professor of the History of American Law and Liberty at Princeton University from 1978 to 1986. He left to become President of the American Council of Learned Societies, the national humanities organization in the United States. When he stepped down from that position in 1997, he returned to teaching and high-level institutional service at Princeton, including as the Acting Director of the Program in Law and Public Affairs from 2004 to 05 and 2016 to 17. Katz's contributions to legal history include, in addition to a vast array of articles and the books cited in the footnotes below, his work as Editor in Chief of the Oxford International Encyclopedia of Legal History and of the Oliver Wendell Holmes Devise History of the United States Supreme Court. He has served as President of the Organization of American Historians and American Society for Legal History, as Vice President of the Research Division of the American Historical Association, and as a member of the Board of Trustees of the Newberry Library, the Center for Jewish History, and many other institutions. He is a Fellow of the American Society for Legal History, the American Academy of Arts and Sciences, and the Society of American Historians. President Barack Obama awarded him the National Humanities Medal in 2011.

Felicia Kornbluh is Professor of History and Director of Jewish Studies at the University of Vermont, and the Martin Duberman Visiting Scholar at the New York Public Library (2025-26). She is the author, most recently, of A Woman's Life is a Human Life: My Mother, Our Neighbor, and the Journey from Reproductive Rights to Reproductive Justice *(Grove Press, 2023), which won the Independent Publisher Book Award (first prize) in women's issues. Kornbluh is an active public intellectual as well as a scholar, and writes regularly for* Ms.com, The American Prospect, and The New York Review of Books *as well as scholarly journals. Her primary research project is a study of the pre-history of the same-sex marriage movement and the intersections between disability and lesbian feminism, entitled*

Note: This transcript has been edited for clarity and, to a limited degree, felicity of phrasing.

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"Sharon and Karen: Disability, Sexuality and Law on the Road to LGBTQ+ Rights." *She is also at work on a study of Eleanor Roosevelt's life and work from 1945 to the end of her life.*

Felicia: What I didn't ask you before because I was just so focused on my book and around reproductive rights was, I just didn't ask you very much about you and your background and how you came to be a legal historian. So would you mind talking about that?

Stan: No, not at all. Well, I studied as an undergraduate in a field that was called history and literature, and I was interested at that point in the 17th century and in England.

Q: Did you go to Harvard?

A: Yes. [And] the problem that I was interested in was the emergence of modernity. And it seemed to me at that time that it was in England and it was in the 17th century and it had to do with the confluence of the first scientific revolution and changes in political theory and economics and a whole bunch of things.

And I had a wonderful time. I had a great undergraduate education. And I decided at that point that I had a career and that career was as a teacher. I originally thought, by the way, that I could and should be a high school teacher. But after I thought about it for a while, I was concerned that I probably wasn't tough enough to be a high school teacher.

Q: [Laughs] Yes, I know that feeling.

A: And I think that was right. And I decided it would probably be a whole lot easier to be a college teacher. And so I applied to graduate schools to do English history. But I really knew that my motive for teaching was that I wanted to educate citizens. And if I was going to do that in the United States, it dawned on me that I really ought to be doing American history, U.S. History rather than English history.

So being a devious person, I decided what I would do is go into early American history, which, of course, is really English history. So it was a way of having both things at once.

I did that. So I did a Ph.D. in early American history, and my dissertation, my early interest, was in political history, and that's what I wrote about for a while.

Q: [Who] were your teachers [in] college and graduate school?

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A: Well my mentors as an undergraduate were mostly not in history, were mostly in literature and philosophy and other fields like that. And the tutors I had actually were graduate students and now people who have gone on to be known in the field.

So in a way, I didn't have a mentor, I would say, as an undergraduate. But I did [later], because I was Bernard Bailyn's first graduate student.

Q: Wow.

A: I was his first history graduate student.

Q: … And it wasn't weird in your period to be Jewish at Harvard?

A: No. I had really wanted to go to Princeton until I started asking around about it and decided that a Jew would not be happy at Princeton. But it was the place I had wanted because it seemed to me in a kind of Anglo-Gothic place that, you know if you're fleeing Chicago, you might be the right kind of place to go. But I realized after a while that it would be bad choice. And I decided and I looked at Yale and I thought pretty much the same thing about Yale actually.

But Harvard looked to me like a much more cosmopolitan and open kind of place. It was I thought catholic with a small "c" and I was right. About a third of my class was Jewish. So it was a good situation from that point of view.

And I don't think I've, there were plenty of problems, you know but really the first morning I was there and went out to breakfast, I noticed that there were three crosses that had been burned in front of the dormitory next to me because two of the 13 African Americans in my class had been in that dormitory.

Now that was the only time in four years anything like that happened. But it was a shock, it was appalling. But by and large, Harvard was a wonderful place from that point of view. I made lots of friends, a very diverse group of friends. And I loved it.

And graduate school was a great experience because I chose to work with Bud Bailyn. It was his first year of teaching in the history department, and he simply was a magnet for bright young graduate students. And as it happened, the sort of cohort of graduate students over the several years that I was there was I think clearly the strongest and most interesting group in the country.

And so I was a graduate student with Pauline Maier and Gordon Wood and James Henretta. It was really an outstanding group of people, [also] Jack Rakove. I mean nothing but good people. And we really were a close group, and so it was a fun experience, I loved it.

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Q: I was about to ask you whether you felt like you were sort of in on the ground floor of an emerging social history. But it sounds like from all the people that you just mentioned, it seems like they're all people who have a critical engagement with, I don't know if intellectual history is the right word, well the history of political ideas in America.

A: Well that's of course where Bud [Bernard Bailyn] was headed. But I didn't know that when I signed up to work with him. I thought he was, I mean he had been working on the Massachusetts merchants, that was social history for sure. But he was also interested, and that's what attracted me, in Anglo-American history.

I didn't even know until much later that he was working on then what became *The Ideological Origins of the American Revolution*.[1]

All of us made changes over a period of time. And I would say one of the great things about it was that Bud was happy with whatever you were doing so he wasn't the kind of instructor who was trying to attract or educate students who were going to do what he was doing. Although some did, and increasingly of course he attracted people who were interested in intellectual history.

And I had been interested in intellectual history as an undergraduate. That's what I did. That's the English stuff that I was doing.

But I had developed, I thought I needed the discipline of something other than intellectual history in graduate school, and I deliberately chose political history because I thought I needed something to protect me from my theoretical instincts.

I was worried about not having enough discipline. So I deliberately did political history because I thought I needed to learn a real discipline.

And I liked what I was doing, I had a good dissertation topic, and all of that was good. Although I wrote a 700-page dissertation, it was not a book. And I knew I needed to do a lot more to it. But it saved me at that point because [Bailyn] had just started to edit a series for the Harvard University Press. And it was the John Harvard Library. And so it gave him the capacity to commission books. And he asked me to do an edition of *The Brief Narrative of the Case and Trial of John Peter Zenger*.[2]

I decided that that was a great project. And then as a graduate student I got more interested in [legal history] because I was a teaching fellow for Mark DeWolfe Howe, who taught a course called "The Role of Law in Anglo American History."

[1] Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Harvard University Press/Belknap, 1967).

[2] James Alexander, *A Brief Narrative of the Case and Trial of John Peter Zenger*, edited by Stanley Nider Katz (Cambridge, MA: Harvard University Press, 1963).

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Q: So he taught it in the history department as opposed to the law school?

A: In my day there was a separate general education program, and every freshman and sophomore had to take courses in the gen ed program.

That's what it was and I just loved Mark DeWolfe Howe. And when you talk about mentors, if I had a mentor as an undergraduate, it was Mark Howe, but it was through the teaching. And it was just a terrific experience for me.

So but then Bud asked me to do this book, and it took me a couple of years to finish that; it was great fun to do. But it taught me historical editing and it got me interested in, more interested in, law.

Then I went back and revised the dissertation and the book that I published, *Newcastle's New York.*[3] It was very, very different. It used about, oh two-thirds of that book is based on the dissertation, one-third is completely new. So it was an important intellectual experience for me and it was well worth doing.

Q: A follow-up on the Mark DeWolfe Howe issue: But you weren't, at that point you weren't thinking you wanted to go into legal education or that you wanted to have legal training?

A: No.

Q: It didn't seem necessary?

A: No. Didn't seem necessary. I was a historian, and historians could do legal history. That was quite clear to me. No. I mean I had applied to law school but only because my father was so eager for me to be a lawyer and my father didn't really understand what being an academic would be.

Q: What was your father's profession?

A: He was a businessman in Chicago. And so I did apply to law school but I never had any intention of going. In fact there's a funny story connected to that because I made only one application. I applied to Yale Law School. And you were required to write an essay: Why do you want to be a lawyer? And I wrote an essay and I'm about to recite it for you.

Q: Okay [laughs].

A: It said I want to be rich. Lawyers make more money than most. Yale lawyers make more money than others. Therefore I would like to go to Yale Law School.

[3] Katz, *Newcastle's New York: Anglo-American Politics, 1732–1753* (Cambridge, MA: Harvard University Press, 1968).

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Q: Obviously flattering their intellectual conception of [what they were doing at Yale] law school.

A: I thought it would turn them off. But of course they accepted me because they didn't care. They cared about my grades and my LSAT (Law School Admission Test) scores, and I have no idea what they were. But in any case, so no I had never been interested and indeed I rejected that idea.

But then the Zenger book experience made me realize how interesting [law] was historically. And then Bud asked me to review four or five books for that journal that our history department ran for a number of years called *Perspectives in American History,* which ran very long essays. And he asked me to do an article-length book review of a bunch of books, mainly on 17th-century law.

And so I worked very hard on that. And that was published in the second I think issue of *Perspectives* about law in American history.[4] And by that time I was hooked on legal history so that's the answer to your question.

Q: And then when did you wind up in Madison? Did you have another job before that?

A: So I finished my Ph.D. And then in those days, Harvard had a system and so did the elite schools where you were three years as an instructor before you became an assistant professor.

And so at Harvard at least they hired a large number, like 12 or 15 [instructors] in a department like history. And mostly it was a sort of in and out appointment and mostly you didn't do lecturing at Harvard, you taught like a teaching fellow. You were a super teaching fellow.

I don't think I taught any regular courses. And it was fun. I did, actually did a seminar for entering graduate students in American History. So I was Mary Beth Norton's first teacher at Harvard.

And then I, somewhat to my surprise, I got promoted to assistant professor. And I think there were only three of us from that group who were promoted.

Then of course, your life expectancy in those days as a Harvard assistant professor was, it was exactly five years. But for me it wasn't a problem because during that period of time, Bud got tenure. And so I knew that there wasn't a place for me in the history department and I couldn't have been happier for Bud.

[4] Katz, "The Origins of American Constitutional Thought," *Perspectives in American History*, vol. III (1969): 474–90.

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Then in my first year as an assistant professor, I got a call from Madison. They asked whether I might be interested in an assistant professorship. And I said I would love it. So I went. I was interviewed and I was offered the job.

And for me it was perfect because I thought I should leave Harvard at that point; I had been there too long.

I came from the Midwest, I was embarrassed that I had been in private institutions all that time. It was a chance to go to what I thought was, at the time the best public institution in the Midwest. You know Michigan was the only competition. Those were the two, in my view.

They hired me as an early American historian, but they agreed to allow me to teach a course on early American legal history. So that's where I got started.

Q: And [Willard] Hurst was already there, right? Is he the one who called you?

A: No.

Q: Hurst was in the law school, right?

A: He was in the law school. And I didn't have anything to do with the law school. But of course as soon as I got there I went over to introduce myself to Hurst because I, you know I loved his work and thought he was an outstanding person in the field. What he said to me was actually, you know you really have to change fields. And I said what do you mean? He said well really, colonial American law has nothing to do with American law, so you need to become an American legal historian.

Q: You must write about the 19th century in the Midwest [laughs].

A: So it was a funny experience. But then the important thing happened next year I guess, 1966, I went there in '65 and so I was there one year and then I took a year sabbatical. And I went back to Harvard where I was proposing to do my first legal history project, which was going to be a book on the role of the law of equity in colonial American history.

[In Madison, Stan Kutler] became my closest history department friend and we were the legal historians in the history department. But then we made friends with Lawrence Friedman, who was in the law school. And Willard, you know, so it was probably the best group in the country.

[A]nd then we had all of the social scientists at the law school who were doing law and it was a wonderfully interesting place to be.

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So I stayed there and then I took a second sabbatical in 1969–70. And this is the important [one] because then I went to the Harvard Law School. And I was just sort of a resident scholar there that year, but I had a faculty office and that was also because they had freed up money: Mark Howe had died and they had the money for his chair and they decided to use that to further the purpose of his chair (he was the Charles Warren Professor of American Legal History), to further legal history.

So they brought in three people. I came for a year. Bill Nelson was in graduate school and it was his first year working on his dissertation so he had a Warren fellowship to work on his dissertation. And they brought in Morty Horwitz as an assistant professor in the law school. He was a Warren fellow. So Bill and Morty and I spent the year 1969–70 together.

Professionally for me that was the most important year I've ever had.

Q: Yeah that's good company to keep.

A: Oh my God. It was really in some sense the first year all three of us were working on American legal history. So we had an unbelievable opportunity. So you know we spent a lot of time together and I bonded with Morty.

It didn't look like you could get there through the 17th century.

We decided that really American legal history was a field. And in the spring of that year, we held the first conference ever on American legal history.

We simply invited everybody we had ever heard of, who we had ever read, to come to Cambridge. Unbelievably we got Willard to come. Willard never went to a conference but we convinced him that we were only there because of him and everybody wanted to meet him and hear from him and so he agreed to come. And it was I think the only conference he ever went to.

It really was sort of two different groups. There was a group of what I would call the old timers and the traditionalists. [T]hey had a, just more traditional legal history, early American legal history, which was a field and Mark Howe was in that field and George Haskins was in that field. And they had a journal, *The American Journal of Legal History*.

And these were very good scholars and very good people, but we had been influenced by Hurst and that wasn't what we had in mind. We wanted to know how did American law become what it was and it didn't look like you could get there through the 17th century.

There were a number of people more like us [including Lawrence Friedman] … So we were sort of the new wave. And we realized that we had to organize if we were going to make this happen. So we arranged in effect to take over the American Society for Legal History, which published that journal.

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So we began changing that journal. We began changing the annual meeting. And I began a new publication series. It was called *Studies in Legal History* at the Harvard University Press. That was the origin of the current book series for the American Society for Legal History.

Q: So you were the first editor?

A: Yes.

Q: It's so interesting because of course you and Bill Nelson and Morty Horowitz are very different scholars, people. One thing: When I look back, I see a kind of tension between constitutional history, even a kind of critical American constitutional history and a Hurstian social history [of law, which was, among other things] very local, right?

A: When we started, there was a real bias against constitutional history in the legal history community. After all, Bill and Morty were lawyers. And I think they really thought of themselves as lawyers and law teachers. And of course that continued to be their career.

And I thought from the start that my mission was to show that historians could do it. And I was the first of these people to get tenure at a law school. And one of the reasons for doing that was just to prove that you could do it.

Q: What were you trying to say about the nature of American law or the role of law in American society?

A: I don't think we were trying to say anything more than it was like any other problem and we had to bring the tools of modern history to bear on law and to understand why it played the role that it did. It's really a form of social or sociopolitical history. I don't think I was trying to show anything more than that. And my argument has always been there's nothing to speak of about it. It's like the history of science or the history of anything else. You bring to bear all of the tools possible to understand it.

I think [that] has always been my attitude. There isn't a formula. A good historian is a multitasker and has to be trained in a lot of different methods and has to be willing to learn and apply the methods which are necessary. In my case, the method I needed was law.

That's why I went back [to Harvard Law School] in 1970. See what I did in 1970 is I took the first year of law school. But I did it not because I wanted to be a lawyer, [but to] do really good legal history.

Q: I like the connection with the history of science. I often think about that and also the history of art, which I was really interested in, in college, because there's a formal element and you have to understand the formal element but you can't be trapped by it.

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A: Exactly. You have to understand why there is that formality and what role it has and it's very important. I was just very lucky I would say because I was on an elite track and I was treated very well and I had every opportunity I could have wished for.

Q: Yeah well and you worked really hard, too [laughs]. So there's that.

A: I worked my butt off. But I enjoyed it. It was an odd trajectory but in retrospect it's got a logic. I did respond to stimuli and Mark Howe was the most important stimulus.

Q: [In our first conversation] you did mention politics on the war [in Vietnam] and so on. And I've always thought that the War on Poverty in particular really shaped the law and society movement and all of the scholarship, historical and other, that was happening in that period. And I'm sure the war in Vietnam, too, but for you, it certainly never seems to have derailed you from doing scholarly work, right?

A: [I]t was very difficult. For me, it was the Vietnam War. And, you know my politics on the left and my students were, what I hadn't known at Harvard was how far left left could be because so far as I knew there weren't real radicals at Harvard.

But it was different at Wisconsin. It disrupted everything.

Q: Were you still in Madison when they blew up the Army Math Research Center and that sort of thing?[5]

A: Yes. It was awful. And the internal politics were terrible. The history department was a traditionally liberal department. And if there's anything liberals of that period didn't understand it was people to the left of that. And everything to the left of them was [in their view] Communism.

And the best example I can give you of that is, I had a younger colleague, just, you know, maybe a year or two younger, very much involved in politics and our older colleagues didn't understand that. And to them, this seemed radical to the point of being Communist. It was unpatriotic.

[5] The incident is more properly known as the bombing of Sterling Hall, which housed the Army Math Research Center on the University of Wisconsin-Madison campus, in 1970. See https://www.library.wisc.edu/archives/exhibits/sterling-hall-bombing-of-1970/ [accessed January 1, 2025] for a collection of oral history and documentary materials on the event, gathered by the University of Wisconsin libraries.

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So when I got tenure—but I got tenure because Chicago had earlier tried to hire me in the history department and offered me tenure. I didn't go, but in response, Wisconsin promoted me.

But my colleague wasn't promoted. He was almost exactly the same year as I was; maybe he came a year later. And so he came up for tenure I think '70, '71. I'll never forget the faculty meeting which Merrill Jensen said we are not going to promote this little bastard. He is irresponsible politically. And let's see if he behaves himself this year and when he comes back next year, we can consider him for tenure. Well the department voted to defer that and about a month later he committed suicide.

So you know it was a really difficult time. And not only that but our students were afraid.

I'll tell you only one other story: I gave a course that same year, '69, '70, '71 called "The American Revolution Considered as a Moral Movement." How many students do you think I had?

Q: I don't know whether to guess two or like 800.

A: 800 is the right number. So it was in the largest lecture hall on campus, it was simply called Agriculture Hall, Ag Hall. And I had, God I can't even tell you how many, 45 TAs, something like that. And so we met at the end of the year to assign grades. I gave them the grade sheets so they entered the grades.

And I couldn't help but notice they were all A's. And I said what is this about? They said well you agreed that we assign the grades. And I said that's right. And they said well we think that's the right thing to do at this point in American history. We're not going to be responsible for anybody being drafted. Because if you flunked out, you got drafted. And if you got drafted, you went to Vietnam.

So I signed the grade sheets and turned them in, and later that afternoon, I got a call from the Dean of Social Sciences and he said, "Stan I've just seen your grades. I think there's a problem." I said, "well what's the problem?" He said, "well they're 800 A's." I said, "that's right." He said, "do you think they're all deserving of As?" I said, "no." He said, "well why have you signed the grade sheets?" And I explained the arrangement I had with the teaching assistants. And I said, "I think it's unfortunate but I think the war is unfortunate. So under the circumstances, I think it's the right thing to do. In any case, I've gotta sign the grade sheets."

He said, "well then you realize I'm gonna have to fire you." And I said, "no I didn't realize that, but you have to do what you have to do." And so we hung up, and then about an hour later, he called me back and he said, "Stan won't you change the grades?" And I said "no." And then what he said was, "fuck you," and he slammed down the phone, and that was the last telephone call I ever had from him.

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I had wonderful undergraduate students, and I loved that part of it. But it was very hard to concentrate. And getting out was the only way to concentrate.

Q: So in some ways it sounds like, and paradoxically perhaps, it was better to be at Chicago, which was just a more conservative place overall.

A: Well it was completely different but of course there I was learning how to be a law teacher. They hired me to teach legal history, and about halfway through the summer, I got a call from the Dean. He said, "Stan I've been thinking about the fall." I said "yeah." And he said, "well there's a problem, and the problem is that we hired you to teach legal history and we'll do that but you have to teach two other courses." And I said "okay, fine." And he said, "what do you think you could teach?" I said, "well I think I could teach constitutional law." And he said, "fine. You're a constitutional lawyer."

And so my teaching load started off to be mainly legal history and constitutional law. Then my regular load became torts, legal history, and constitutional law.

Q: What was your interest in torts?

A: It was the course I liked best in the first year of law school. And I had taken torts from Guido Calabrese and I just loved it.

I say, by the way, when I'm asked that I've had three mentors—

Mark DeWolfe Howe, Willard Hurst, and Harry Kalven, Jr.[6] And those are the models that I've had at various stages.

[N]obody had a joint degree when I was coming along. When I went to Columbia Law School library to do some research on 18th-century law, some 18th-century history books that I needed were on the desk of Julius Goebel, Jr., who was the senior person in legal history there.[7] And I asked the person at the desk, I said "I'm only going to be here for the day, couldn't somebody go retrieve those books and I'll use them and they can be returned to Professor Goebel, since he's not using them right now?" So somebody went up and came back and said, "Professor Goebel says you can't have the books." And I said, "that seems to me extraordinary." And the person said, "he says since you're not a lawyer, you're not qualified to use these books." That was the attitude.

[6] Kalven was an expert on torts and coauthor, with Hans Zeisel, of the landmark empirical legal study, *The American Jury* (Boston: Little, Brown, 1966). See Tom Goldstein, "Harry Kalven Jr. is Dead at Chicago; Jury Expert Taught at Chicago," *New York Times* October 30, 1974, https://www.nytimes.com/1974/10/30/archives/harry-kalven-jr-is-dead-at-60-jury-expert-taught-at-chicago.html [accessed January 1, 2025]; Edward H. Levi, "Harry Kalven, Jr.," *University of Chicago Law Review* 43/1 (Fall, 1975): 1–3.

[7] Goebel may be best known today for the project he helmed, *The Law Practice of Alexander Hamilton* (New York: Columbia University Press, vol. 1, 1964 and vol. 2, 1969), "a painstaking

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Q: Based on that background [I wonder] whether you're surprised at how the legal history field has developed and emerged. I know Dirk Hartog is kind of happily surprised about how cool legal history now seems to be [in the estimation of many] and how many of his students are teaching at leading law schools in the United States. He always seems to think [the development of the field is kind of amazing].

A: Certainly, at one level I'm thrilled and it's the level that Dirk is describing, that is that there are some jobs, although not nearly as many as I had hoped, but it's become a recognizable field within American history. And you don't have to explain yourself if you are a legal historian. Well, that's wonderful.

And certainly there are many good young people, almost all, by the way, of them have law degrees. And I have very mixed feelings about that because I had some graduate students with a law degree but mostly not. And most of my students were history people like me.

But then it became clear that you needed the joint degree in order to get a law school job. And then, as jobs became hard to get in the history field, everybody went to law school because you could earn a living as a law teacher. You couldn't earn a living as a historian.

The playing field was not level. And so that's worked out well in the sense that there were a lot of very able people doing it.

On the other hand, I would say that the field has become more narrow than I hoped and way less Hurstian. Because Hurst was not a historian after all but he had the right chops, the right instincts.

Q: He was contrarian. He was inside a law school but he would think [about things] that lawyers didn't care about.

A: That's right. But most people aren't. And so I would say there is less of the kinds of expansive and innovative legal history than I had hoped. So that would be my answer. But, you know in general I agree with Dirk.

[A]s a teaching field I thought it was important that students, if they were going to understand how we got [to the current time, that one had to cover the whole of American legal history]. I think the point of history is understanding where we are now. And if you're a legal historian, you certainly ought to understand how we got to the most current kinds of things in American law. And I would say that's been a disappointment.

reconstruction" of the founder's legal work. He also wrote the first volume (both chronologically and the first to appear) of the Holmes Devise *History of the Supreme Court of the United States: Antecedents and Beginnings to 1801* (New York: Macmillan Library Reference, 1971). See Michael Sovern, "Julius Goebel, Jr.: In Fond Recollection," 73 *Columbia Law Review* 1369 (1973).

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I always wanted to train historians because I thought people train [ed in history] would be particularly good citizens. That's always been my motive.

Q: Thank you. That's a lovely note to end on.

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