

Interview with Morris Sheppard Arnold

Little Rock, Arkansas, August 4, 2014

POLLY PRICE: We are here for an oral history interview with Judge Morris Sheppard Arnold. This is part of the American Society for Legal History Oral History project, and I am Polly Price. I want to begin with an overview of your career, just as a starting point perhaps as a federal judge on the Eighth Circuit, recently retired, and maybe work our way backwards.

MORRIS S. ARNOLD: You are really putting me to the test here. I could probably work forward better but go ahead, you ask your questions.

POLLY PRICE: How about your education?

MORRIS S. ARNOLD: Okay, well, I went to Exeter and got a Classical Diploma, Latin and Greek, which is probably partly responsible for my antiquarian bent. Then I went to Yale for a year, dropped out of school, and when I went back to school, I went to the University of Arkansas and got a degree in Electrical Engineering. Not exactly a great background for either history or law.

POLLY PRICE: No, but that is certainly an interesting background.

MORRIS S. ARNOLD: Yeah.

POLLY PRICE: What brought on the interest?

MORRIS S. ARNOLD: I had always had an interest in television. I worked at a TV station during the time when I was out of college.

POLLY PRICE: Was that in Arkansas?

MORRIS S. ARNOLD: Louisiana, Shreveport. Then I went to the University of Arkansas Law School and earned what was then called an LL.B. They changed to J.D. a few years later and offered me one, but I didn't want to swap three letters for two. Besides, LL.B had kind of an antiquarian cachet to it and I knew that it would come in handy someday. I wanted to be a law professor from very early in my legal education. I can't really account for that, but I had developed the ambition to be a law professor and also a dean of a law school and also a federal judge, I think in my first year.

POLLY PRICE: I think you are three for three?

MORRIS S. ARNOLD: No, I'm three for about twelve. Because I had a lot of other ambitions that I won't tell you about that I did not achieve, among them of course being King of the World. So I didn't quite make that but I tell young people that you should have a lot of ambitions because that way they are bound to achieve some of them. So then I went to Harvard Law School because I figured I needed an Ivy League background to improve my chances of getting a job in law teaching.

POLLY PRICE: Did you have some years of practice in between?

MORRIS S. ARNOLD: No, I practiced for about three months with my family law firm in Texarkana. They had been practicing there since the 1880s. And then I went to Harvard and got an LL.M and did a lot of legal history work and became, this was in 1968-1969, a teaching fellow in Harvard, pursuing my S.J.D. In 1970, I got a Knox Fellowship from Harvard and went to University of London and spent a lot of time in the public record office finishing up my degree. It actually says History on it if you look at it. SJDs at Harvard are driven in five different fields, so I do actually have a history degree, although it's not a PhD.

POLLY PRICE: And was that your interest in going to Harvard, history?

MORRIS S. ARNOLD: Yes, I wanted to be a legal historian. I had been poking around the stacks in Fayetteville and found a lot of old books I liked, including Bracton and Glanvil and some year books, some nice 16th century editions, actually, at the law school. So after I finished my Knox Fellowship, I started teaching at Indiana. I taught there six years, went to Penn as a visiting professor, got appointed to the faculty with tenure there, and eventually became Associate Dean of the Law School and Vice-President of the University. In 1978, I was a visiting fellow commoner at Cambridge University. That's the tie I've got on here, Trinity College, and that was a great year. I finished my introduction to my Selden Society volume. I was there almost the whole year, and I had no teaching duties, although I was a nominal member of the faculty so it gave me a lot of time to do my work. I wrote that whole introduction there. I went back to Penn for a couple years, came back to Arkansas. I was thinking back going into politics and taught at UALR for three years. I became the General Counsel of the Republican Party and then State Chairman of the Republican Party, and a member of the Republican National Committee. In 1984, I went back to Penn, and in '85 I was a visiting professor at Stanford. And in the meantime in the summers I taught at Michigan and Texas. And I was asked to teach as a visitor various times at Chicago, NYU, and UVA. So I've sort of been around.

POLLY PRICE: What were your primary teaching areas?

MORRIS S. ARNOLD: I taught property and legal history. Those two things used to go together, and in many ways in fact a lot of people got turned off to legal history because, as Lawrence Freedman pointed out in his interview, they were not all that engaged or riveted by the statute of uses and that sort of thing. I wasn't either, although I taught future interest and estates

in land and the rule against perpetuities, easements and covenants. In other words I taught a descriptive, analytical property law course back in the day when it was still mostly about private law rather than public law. I didn't do a lot of takings or zoning or that kind of thing. And then I taught English legal history with materials that I developed.

POLLY PRICE: How did you frame your course?

MORRIS S. ARNOLD: It was mostly medieval but it was theoretical and it sought to be a history of institutions, and also it had what I hoped was kind of a jurisprudential content. It was sort of legal process. It wasn't a doctrinal course. It had to do with what I like to think of as the social origins of legal rules, social and political origins of legal rules. So it wasn't an antiquarian course, at least I hope it wasn't. The aim was to make it broader than just the doctrine of consideration that appeared in Slade's case in 15- whatever. A lot of what I wrote about was an effort to get inside the minds and the social assumptions of people who were on juries and the judges who ran the system, and what kinds of legal rules, what kind of moral propositions sort of ran the system. What was this fund of assumptions on which the legal actors drew to decide cases? It's kind of tough, but that was what I was trying to look for.

POLLY PRICE: What were your sources?

MORRIS S. ARNOLD: Well, the yearbooks, obviously, the plea roles. I spent years and years in the public record office in London and published a lot of documents. I did a yearbook for the Ames Foundation of Harvard, which is the Year Book of 2 Richard I. And I did two volumes for the Selden Society on the history of torts. You know there are no treatise sources between Bracton and Littleton. There was nothing really. And the relevance of Bracton has

always been difficult to pin down because there is so much Roman law in there. Anyway that's what I thought my course was about.

POLLY PRICE: I want to come back to publications a bit later, but I also want to explore further your interest in legal history. So when you were at Harvard who did you work with and how did you come to focus on the 14th Century?

MORRIS S. ARNOLD: I worked with Sam Thorne who is the famous translator of Bracton, among other things. I worked with Jack Dawson who was a wonderful comparatist, a very learned guy who knew lots of civil and common law. When I was there my buddies taught me a lot. Morton Horwitz and Bill Nelson were there, and Maury Holland and Katherine McCullough. They were all fellow students, graduate students, teaching fellows. Morty was a teaching fellow at that time. He had a very exalted title. It was Ezra Ripley Thayer Teaching Fellow, not just a mere garden variety, plain old vanilla teaching fellow.

POLLY PRICE: And you were...

MORRIS S. ARNOLD: I was a vanilla teaching fellow. I tell people that I wasn't really on the totem pole at all. I was nominally a member of the faculty, but if I was on the totem pole, it was not just the bottom part, it was a subterranean part, the part in the ground ...

POLLY PRICE: That's the part that keeps it upright.

MORRIS S. ARNOLD: Yeah, that's right, we support the whole thing. And Nelson, I think his title was something like a Charles Warren fellow. You know they have all these hangers on. I was one of those. My office was in the basement right below Steve Breyer. He came on as an

assistant professor I think the same year that I was a teaching fellow. So Dawson and Thorne were my mentors.

POLLY PRICE: How was legal history viewed within the faculty?

MORRIS S. ARNOLD: And then by the way I worked with Milsom in England, Professor Milsom, and John Baker was around. He taught me a lot. I'm sorry what was, oh legal history. Well, you know, it was the 60s, and there was a lot of turmoil and ferment. And this old English stuff was being jettisoned in favor of a different kind of, more political and social, economic view of legal history, instrumental view of law. And so I remember there was a course called Development of Legal Institutions that was taught. It was a required course in the late 60s, taught by Dawson and others. It was supposed to be about English Legal History, but there was such an uproar about the curriculum that there were three or four other sections of something called Development of Legal Institutions that were offered, and none of them bore any resemblance to the English Legal History, what I would call the real legal history. Charles Nesson for instance had a course that mainly talked about how we stole the land from the Cherokees. Which is true, we did. But you could see there was all of this stuff was so fraught with social relevance. That was a big movement then, to make legal history broader in scope and more focused on things that were more topical interests, shall we say.

POLLY PRICE: And I believe Professor Harold Berman was there?

MORRIS S. ARNOLD: Yeah, Harold Berman was there. He did mostly law and religion, but he did a lot of legal history, and later went on to Emory. I didn't work with Hal much. He was very supportive. There was a guy there, a wonderful person who wrote several books on the original intent of the 14th amendment. I'll think of his name in a minute. He was a wonderful

person and I worked with him some, too. Gerald Cohen, who is really sort of responsible for getting me my teaching fellowship I think. He kind of shepherded a lot of the legal historians.

POLLY PRICE: How many would there be in a given class of a SJD students, I assume it would vary from year to year, but for history in particular?

MORRIS S. ARNOLD: I was the only one. There were only three SJDs given that year. And I didn't even know the other two SJDs. They had taken their course work and gone off. Most of the SJD students were from foreign countries. So was I, I was from Arkansas.

POLLY PRICE: Well, from there did you begin your affiliation with the American Society for Legal History?

MORRIS S. ARNOLD: I started in 1968 as a member, because I was taking Sam Thorne's basic course in English legal history. I don't know, it was just part of the market, as it were, you know how the market worked. The buzzword these days is networking, right, but you know you look for people with common interests, and this was an obvious place to look so I signed up almost 50 years ago.

POLLY PRICE: Do you have particular recollections of what the society was like in those years?

MORRIS S. ARNOLD: It was small. I think there were more lawyers, just a few hundred members. I think the meetings, there couldn't have been more than a hundred people. I may be wrong about it, but I think that's right. And I think there may have been just one session, rather than simultaneous sessions. There was not all that much legal history being done. I might be wrong, it may have been two, but everybody tended to be interested in everything in those days.

Specialties had not really developed. There was obviously a difference between the English legal history and the American legal history, but still there was a lot of overlap. And indeed a lot of people thought of American Legal History as just another branch of English Legal History, a derivative, without its own independent organic roots. A lot of people thought of it as just an extension.

POLLY PRICE: A continuation...

MORRIS S. ARNOLD: Yea, continuity was sort of the main theme, but that notion got disabused in the early years of my membership in the society.

POLLY PRICE: And as you recall from those early years of annual meetings, did the panels tend to be diverse in the sense of origins, would you have, for example, any panels on Roman law, English Legal History, separate from topics in more recent US history?

MORRIS S. ARNOLD: I don't think they were separate, or you mean the panels? Sure, yeah, there would be panels although, yeah it was mostly panels. But there would be some sort of coherence. You know, you wouldn't have a guy doing 14th Century of England with a person doing you know 19th Century Ohio. But, yeah, there was a certain amount of specialization in that sense but it was quite loose.

POLLY PRICE: What about the membership, were you alone as a graduate student or were there other graduate students?

MORRIS S. ARNOLD: No, there were quite a number of graduate students. It was one of the ways you got to know the older people and they got to know you. When you went on the job market, they knew you. It was a networking thing. I didn't think of it in those terms in those

days, because I wasn't then, and I'm still now, much of a sociologist. I was just pursuing my interests, you know.

POLLY PRICE: But your sense is that it was an important means of placement for students.

MORRIS S. ARNOLD: A big catalyst, looking back on it. On looking back on it I can see how many people there were who essentially took care of me along the way. You know, young people kind of tend to think they are making it on their own, and they are on some sense. It's hard for me to think that many very learned people took me seriously at all, but they did. Or at least purported to, or pretended to. That's been my very good fortune.

POLLY PRICE: Outside of the Harvard faculty that you have already mentioned that you worked with at that time, who else were you introduced to or became known to during those early years of your career?

MORRIS S. ARNOLD: Joe McKnight from SMU. He did a lot of Texas legal history and southwestern legal history. He was interested in the civil law influence on Louisiana, Texas and those other states of the southwest crescent. Spanish and French, and it seems he was interesting for that reason. Stan Katz, wonderful guy. Tom Greene was another person at Harvard with me. He was actually doing his work in England, but he was one of the Thorne's students, a PhD candidate at that time. Another wonderful guy. Lawrence Freidman was at the meetings. He was doing stuff that nobody had ever done before. Bob Gordon was with me at Exeter and Harvard Law School. Barbara Black, very influential person. And Janet Loengard. And later, Craig Joyce and Michael Landon, people who took leadership roles in the society as officers. Joe Smith from Columbia and Erwin Surrency were mainstays.

POLLY PRICE: Including yourself as President for four years...

MORRIS S. ARNOLD: Yeah.

POLLY PRICE: How did you first become involved in more of the administrative leadership side?

MORRIS S. ARNOLD: For some reason they decided, I guess on looking back it must have been a nominating committee decided, I think in 1978, that I should be Vice-President. I had no idea why. So I did that for two years and...

POLLY PRICE: What was the role of the Vice-President?

MORRIS S. ARNOLD: The role of the Vice-President was to take over if the President died. I don't think the Vice-President had any role. But simultaneously, I think, I was the editor of the series studies in legal history at the University of North Carolina, so I did that for four years.

POLLY PRICE: Was that already established when you began editing?

MORRIS S. ARNOLD: Yes, I believe so. I think Stan Katz had been editor. Stan was probably the first editor, so it hadn't been going very long, couldn't have been going for more than a few years.

POLLY PRICE: What would be the approximate number of books you would be editing?

MORRIS S. ARNOLD: Well, that I was responsible for actually getting through the press, I think only four or five. It may have been more. I think there were more. Gee I don't know, somewhere between four and eight. But there were a lot of them that I had read, of course, so that was pretty arduous. You know Tom Greene has done this for decades. I don't know how he

does it. He is indefatigable. But that was hard work, you know, and the hardest part was to turn people down. And there was a lot of politics involved. But that was a lot of work.

POLLY PRICE: Did you have particular goals or did you identify needs that needed to be filled?

MORRIS S. ARNOLD: You know, I didn't. I was just looking for quality. I know that sounds naïve. I didn't care, I mean obviously there are some subjects that are so obscure you are not going to be interested in them, but I was looking for innovative, broader books, the kinds of things that had never been done before, like social history from legal records, that kind of thing. I was not partial to the English stuff really, I don't think I was. I was looking for interesting, you know, it was like a faculty -- what you are really looking for is interesting people doing innovative things. Planning is usually futile, you know. Oxford wasn't planned, it grew organically, and I kind of think that was the attitude I took toward the series. Then I guess in 1980, I became President, so I think you don't take office until the next year. I think that's the way it worked so...

POLLY PRICE: So you have a year to regret it?

MORRIS S. ARNOLD: Yeah, but it wasn't even a year, you know it was like a few months. But in those days I think it was more or less automatic that the Vice-President became president, unless he or she didn't want it. Or unless he or she had flopped at the job of doing nothing, which even for me was the hard thing to accomplish.

POLLY PRICE: What were the other offices that were filled?

MORRIS S. ARNOLD: Well there was Vice-President, but there was a secretary and treasurer and they were very important. They did a lot of work. The secretary was especially important in those days. I believe it was Craig Joyce. He was a ball of fire. He increased the membership from something like 694 when I became President to something over 1,400. I mean, he did not do it single handedly but he almost did. He was just an astounding membership chairman and secretary. I believe he was secretary, certainly he was membership chairman. But he was one of the real movers and shakers in the society, and I'm sure he still is decades later. Of course the treasurer's job is important. You know the people who do those jobs have an ongoing responsibility, dunning people for money and making sure that membership lists are current, and getting the journal mailing list correct, and figuring out how to market the society. So those positions are extremely important to the ongoing work of the group.

POLLY PRICE: You mentioned Craig Joyce was certainly membership chair and also secretary. Who were some of the other officers that you served with?

MORRIS S. ARNOLD: Barbara Black was Vice-President, and she was great. She did a lot of work when we established the journal in 1981, I guess it was. Maybe it didn't get off the ground until 1982, but Tom Greene, very important. He was the Chairman of the Publications Committee, so he had a lot of responsibility with respect to the newsletter and the journal and the series, because he kind of had to superintend the whole outfit.

POLLY PRICE: Do you know if there was a publications committee that preceded?

MORRIS S. ARNOLD: I'm sure there was, but I don't know who it was. Probably Stan Katz, I would guess, but I don't recall.

POLLY PRICE: So as the President you worked with among others Barbara Black, Tom Greene...

MORRIS S. ARNOLD: Yeah, and Stan Katz. I don't recall that either Morty or Bill Nelson took, I mean I think they were busy with their scholarship and very intelligently stayed away from a lot of society responsibilities. I could be wrong, but they were certainly important figures in the society. But I don't recall them called them getting their hands dirty in administrative work.

POLLY PRICE: And at that point in your career you were already a tenured professor?

MORRIS S. ARNOLD: Yeah, at Penn. I actually had a joint appointment in Law and History. I had what's called a secondary appointment in history. So I was a non-voting member of the department.

POLLY PRICE: And would teach courses in the history department?

MORRIS S. ARNOLD: My courses were open to people in history, but I don't think they were – they may have been cross-listed. In those days there was a lot of, still is I'm sure, an attempt to cross federalization. The idea was that the two disciplines didn't talk to each other and we had something to learn from each other. And I think that's probably true.

POLLY PRICE: Which is one of the founding principles for the society, law and history. At the time would you say the number of history professors and law professors, well certainly the membership as a whole increased, what did the balance look like?

MORRIS S. ARNOLD: Well in the beginning it was mostly law professors and lawyers, because they were the only people teaching legal history. Legal history didn't really become

history until the 60s and early 70s, although there was a certain amount of constitutional history that was taught in colleges and universities and history departments, but private law, private legal history no, not really.

POLLY PRICE: And so the membership at least initially was primarily lawyers and law professors?

MORRIS S. ARNOLD: Yeah, I think so. Of course in the late 60s and early 70s they began to expand, and I think probably a lot of the expansion was incorporation of people from disciplines other than law. Of course now as you know it's very common for law professors who teach legal history to have not just law degrees but PhDs in history as well. It's tough to get one of these jobs. I'm glad I don't ever have to get another job, especially one of these.

POLLY PRICE: One of the areas that I'm particularly interested in exploring with you is the development of the Law and History Review.

MORRIS S. ARNOLD: Yeah.

POLLY PRICE: Which is now the premier feature, I think, of the American Society for Legal History along with the book series and prizes. So you were there at the beginning.

MORRIS S. ARNOLD: Yeah, I was in on it, I was present at the creation. In fact one of my main aims as President was to get the journal straightened out. The American Journal of Legal History had been publishing for quite some time under the auspices of Temple University in cooperation with us. This was the society's official journal but it was situated at Temple, and there was a lot of dissatisfaction with it. Its appearance was not very professional. My recollection is that it was stapled together, even, and there was not much editorial assistance. It

was just a kind of jury-rigged outfit that a number of us saw could use some improvement. I was among those, and in fact it was very much at the top of my agenda when I became President to try to improve it. There had been a lot of efforts on the part of people involved in the publications committee to communicate with Temple--the dean of Temple and others there who had something to do with the operation of the journal. Our concerns about it were being mainly ignored. So when I became President one of the first things I did was try to get Dean Liacouras on the phone. He became the President of Temple later on, I think. And he wouldn't call me back. So I wrote him a letter saying, essentially, I'm sorry to have to resort to these old-fashioned modes of communication. I hate writing letters, but we need to talk. It may have been the first letter or maybe it took two, but I remember distinctly writing a letter saying essentially, we quit. All this of course in consultation with board members and especially Tom Greene, although the board had authorized me essentially to do what I thought was the right thing, as I recall. And so I said we would like to take the journal over and have the copyright, and we assume you have no problem with this since you apparently don't have a lot of interest. He wrote back and he said, oh no, we will keep it. I thought I was going to be left holding the bag but he kept the bag. So I said okay, we will start our own journal. And when I say I said this, what I'm saying is that all of this was done in consultation with the board and Tom Greene and others, obviously it was a common enterprise. But I really did kind of push it over the edge, on purpose. It just did not show the society in a good light. It just didn't, I'm sorry.

POLLY PRICE: And how was it affiliated with the society, would the publications committee for example select the articles?

MORRIS S. ARNOLD: Yeah, but I don't really recall, I can't tell you the details. I'm not sure I knew them, but we weren't getting proper administrative editorial assistance. They were

responsible for getting it mailed out and getting the footnotes in order. And by the way one of the most significant cultural changes about the journal was when it changed its citation form from the blue book to the Chicago style. I mean that's a kind of symbol of the direction in which the whole legal history project was moving. We moved out of the law schools into the university in a more general sense. Anyway, so we somehow managed. I think Russ Osgood and Lloyd Bonfield, who was at Cornell at that time, helped us get an affiliation with Cornell and that proved very satisfactory. Production values improved considerably. We got a lot more help and support. It was a lot more professional looking, it was a lot of more professional in its operation. I think the first issue was in '81 or '82.

POLLY PRICE: And a publications committee would approve articles that were submitted to the society?

MORRIS S. ARNOLD: There was an editorial board. That was the way that worked. There was an editorial board at both journals. And they were not the publications committee, it was an editorial board that decided what got published and what didn't. I think that was the main difficulty at Temple, that we didn't have enough of our people on the board, I'm not sure. But it wasn't the publications committee, it was the editorial board and I guess it still is. It's huge now. By the way could you get the journal sent to me? I can't get the journal.

POLLY PRICE: I have to work on that.

MORRIS S. ARNOLD: I am a life member here, you know, gave them a big donation. They had a capital drive not too long ago, but I just can't get the journal.

POLLY PRICE: It's the least we can do. I will make sure.

MORRIS S. ARNOLD: So...

POLLY PRICE: How did the name come about, was there any involvement with that, just needed to be something different from American Journal of Legal History?

MORRIS S. ARNOLD: I think they wanted to emphasize the history part. In those days, or even before then, "law and everything" became popular, because people thought of law as too narrow a discipline. So it was, you know, sperm whales and the law, and things like that. And women and the law, law and society. They wanted to make law school more of a graduate school, I guess, and less nutsy and boltsy. And there was a feeling that legal history was kind of antiquarian and creaky, and this was a way of expressing a broader notion of what we were about. That's my guess, I don't remember.

POLLY PRICE: Do you recall any involvement with the financial aspects of the new venture? Whether was subvention from ...?

MORRIS S. ARNOLD: Oh yeah, we did have to come with a subvention, but maybe that was the series. I worked on the series quite a while, too. Yeah, I remember we had some difficulties with the UNC Press at one point about having to come up with a subvention because the presses were not doing well then, and still aren't I guess.

POLLY PRICE: So Law and History review is established during your presidency...

MORRIS S. ARNOLD: Yeah, and Barbara Black did a lot of work in getting that going. Tom Greene, he was chairman. I just kind of superintended it. Although as I said, I definitely had that as an aim. And there was some friction there. Not everybody wanted to do this, so I had to kind of pull it a long a little bit. About five years ago I went to accept an award, it was longer ago

than that, but it was 25 years after this had happened. I went to accept an award for my brother, an outfit called the Scribes Annual Meeting. And my good friend Jonathan Lurie was there, who was a member of the society. He came up, he was munching on a sandwich and I said “hello, how have you been Jonathan, I haven’t seen you in 25 years.” He said “great, but you know when we established that journal 25 years ago I don’t think that was done exactly right.” Listen it is 25 years later, get over it, right?

POLLY PRICE: But he didn’t elaborate on what he would have done?

MORRIS S. ARNOLD: No, I think he thought that I might have been a little preemptory, but you know you have got to move things along.

POLLY PRICE: I think that was the lifetime achievement award from Scribes for your brother.

MORRIS S. ARNOLD: Yeah, so I’m sure there are people in the society that are still a little miffed about it. It was done with a minimum of rancor, as far as I’m concerned. There was not a lot of dissention about it. Besides, after I pulled the plug there was not much else they could do.

POLLY PRICE: What about other projects?

MORRIS S. ARNOLD: Tom Greene would call me on the phone and say “that last letter was a little blunt wasn’t it?” I would say “yeah, but it’s time.”

POLLY PRICE: What other projects or recollections do you have from your term as President, or terms I guess, if it was four years total?

MORRIS S. ARNOLD: Yeah, well one thing I remember. I was working on my first Arkansas book, *Unequal Laws unto a Savage Race*, and I just happened to mention it to the guy who was running the series. And he said why don't you send it to us? I said you won't be interested in something from Arkansas. And he said, I can't imagine - I'm sure it would be great. So I sent it to him, and readers said don't publish it. So I thought, well I've been sort of double crossed here. I had never thought about submitting it to the series, and thought I had kind of a wink-wink assurance that everything was good. So here I was, I had been, I was a president of the society and I had been editor of the series myself, and I couldn't get my book published. I thought well, maybe this isn't for me so I never went back to another meeting. I was just, I was mortified. It wasn't that, you know I became a judge during the last few months of my presidency anyway, and I really didn't have much time. But you know over the course of the years they made me an honorary fellow, which was nice, and recently there was a reception for me sponsored by the society at the courthouse in St Louis. As I said before I have been supportive of the society financially, so it is still a very good memory, and among the things that I have done in my life. But that was not a good moment [laughter]. So that's the other thing that stuck in my mind.

[Recording Stops]

MORRIS S. ARNOLD: We ran out of the tape there unexpectedly.

POLLY PRICE: We were talking about the close of your term as President, and your Arkansas book as well?

MORRIS S. ARNOLD: Oh yeah, well in fairness it's not a great book, okay?

POLLY PRICE: I like it.

MORRIS S. ARNOLD: No, it's not, it's not. I understood the reader's difficulty with it, you know. The first three chapters are pretty good. The two chapters on the American period are not, and they could have been usefully conflated. But the readers' report wasn't . . . It was quite clear that there was not going to be any effort to try to work with the book. So that's fine. That was their judgment. But I kind of thought of I had been sandbagged, you know.

POLLY PRICE: Invited and then dis-invited...

MORRIS S. ARNOLD: Oh yeah, well I remember saying to the editor, oh I can't imagine, I'm sure it will be great and then....not really. (Laughter)

POLLY PRICE: So you finished up your term as President, and by the way in the society were those set terms?

MORRIS S. ARNOLD: A two-year term.

POLLY PRICE: Two-year terms.

MORRIS S. ARNOLD: And usually the President gets two as I said, usually unless ...

POLLY PRICE: Unless you are impeached?

MORRIS S. ARNOLD: Yeah, unless you are impeached, or people get mad at changes to the journal or something. Board meetings were long, I remember that. They were long and tedious. The agendas were long.

POLLY PRICE: What were the agendas?

MORRIS S. ARNOLD: Oh, just all about membership and publications and finances, you know. There are lots of reports from committees and officers' reports, discussions, and it's a large

group. I mean there were would have been a dozen, fifteen people on it may be. Every one of whom had a lot to say. All of them were good.

POLLY PRICE: And they would meet in connection with the annual meetings?

MORRIS S. ARNOLD: Yes, uh huh.

POLLY PRICE: Yeah, I that tradition continues.

MORRIS S. ARNOLD: My recollection is meetings were three hours long. I wasn't too good at meetings then, I still am not. I was pretty good at moving things along, but I'm not too good at meeting. Maybe that's just one quality.

POLLY PRICE: So you shared with me, and with the society, your closing remarks as you were exiting the presidency and you had completed your terms.

MORRIS S. ARNOLD: Oh, right, the address to the society, the state of the society in 1985. I just happened to find that two days ago. I wasn't looking for it, it was serendipitously right before you came.

POLLY PRICE: Well, I think in terms of the society's history it's a fabulous document to have.

MORRIS S. ARNOLD: Yeah, it's an usual synopsis. In reading it over, I have to say I thought it was pretty good.

POLLY PRICE: In that among other things you emphasize that the Law and History Review was in good shape.

MORRIS S. ARNOLD: Yeah. Already it had only been publishing two or three years. I said I'd spent a nice afternoon reading through all the other journals. There were then, at that time, four,

at least four specialized journals in legal history in England and in Europe and in the United States. And I made a point of sitting down with all of them and read through them all from the previous years, quite obviously ours was the best in terms of quantity and quality. So I couldn't have been more delighted. As I said, I know I didn't do it, but I'd like some credit at least for being a reasonably good midwife.

POLLY PRICE: And I think you mentioned also that it was beginning to at least achieve a good variety of subject matter, diversity.

MORRIS S. ARNOLD: Yeah, yeah. I noticed, I said, maybe the first issue was not as diverse as it could have been and there was some concern about that. But it had developed. It may be that at first it wasn't as attractive a venue for certain kinds of legal history as it became. Now I'm quite sure it's the premiere journal. I'm sure it's hard to get an article published in that journal with all the legal historians there.

POLLY PRICE: I aspire to that one day within the journal.

MORRIS S. ARNOLD: And you know the law reviews were not all that hospitable to legal history and there are a huge numbers of legal historians. So I would imagine there is probably a long waiting line for it, just a guess. I'd sent out a letter or I drafted a letter to send out to the membership about the inaugural issue. It was about how the journal was going to be soon established as the premier journal of its kind in the world. Charlie Donahue was Vice-President. He was another very important person to the society in the early days. And he called me on the phone about the draft and said "Sounds like the hard sell from Arkansas to me." I didn't take too kindly to that. So I reported that in my address and said that I wasn't used to being accused of hucksterism, and that as soon as I hung up from Charlie I had gone back to my closet at home to

see if any plaid suits had been insinuated into my wardrobe. But I took the offending member out, I lopped it off because Charlie didn't like it. But as I said in my talk I'm sorry I did, it turned out to be true and why shouldn't we be proud of that?

POLLY PRICE: Were you succeeded by Charlie?

MORRIS S. ARNOLD: No, Charlie didn't, he became President but he didn't want to be President, as I recall. I believe that's right. I think he became President a long time later, maybe 20 years later.

POLLY PRICE: I think you would have had a lot of scholarly interests in common.

MORRIS S. ARNOLD: Yeah, but Charlie is a vastly more learned fellow than I am. He is a comparatist. He is a Roman lawyer in addition to being a really good English legal historian. My civil law is rusty. But not rusty -- that presumes that you knew something. It's just not very sophisticated.

POLLY PRICE: As an aside I had both Roman law and English legal history with Charlie Donohue when I was in law school.

MORRIS S. ARNOLD: Oh, you are lucky...

POLLY PRICE: I was...

MORRIS S. ARNOLD: Yeah. He is an extraordinary person and he writes, he wrote some good stuff on landlord and tenant even. A really learned fellow.

POLLY PRICE: So the address your valedictory, the state of the society, this coincided with your accession to the bench?

MORRIS S. ARNOLD: Almost. Yeah, I got appointed in, let's see, I got appointed in December of '85. So I may have given this talk, it was '85 wasn't it? Does it have a date on it?

POLLY PRICE: You mailed it in January of 86...

MORRIS S. ARNOLD: Yeah, which is just right after I was appointed...

POLLY PRICE: Yeah, this is 1985.

MORRIS S. ARNOLD: It doesn't say the date. It is October, I'm sure. I had been nominated but not confirmed, so I was hopeful.

POLLY PRICE: So you had to be on your best behavior?

MORRIS S. ARNOLD: Oh exactly. I had to act nice. I did, uncharacteristically.

POLLY PRICE: You were appointed to the western district of Arkansas, United States District Court?

MORRIS S. ARNOLD: Right. Where I served for seven years. I had three divisions I had to take care of on a regular basis. I rode an old fashioned circuit. And three other divisions I had to visit on an irregular basis, occasionally, and it's six or eight hours across the district by car. So it was quite a difficult job, the hardest job I have ever had. I did that for seven years and then got, I won't say elevated, translated to the court of appeals.

POLLY PRICE: Your first appointment was under President Reagan?

MORRIS S. ARNOLD: Yes.

POLLY PRICE: And then the second appointment, to the Eighth Circuit, by the first President Bush...

MORRIS S. ARNOLD: George Herbert Walker Bush.

POLLY PRICE: And the differences between district court judge and appellate court judge are ...?

MORRIS S. ARNOLD: Night and day, I'd say.

POLLY PRICE: Cats and dogs...

MORRIS S. ARNOLD: Night and day. I mean being on a court of appeals, it's kind of a treadmill, but it is infinitely easier in the sense that you don't have all this day-to-day administrative stuff and dealing with lawyers, clerks and witnesses, and court security officers and magistrate judges and probation officers and bankruptcy judges, and traveling. You never know where you are going to be, never know exactly what you are going to do when you are on the bench having, you know, to judge. Chief Justice Roberts compared judges to umpires. Well I have a different baseball analogy. It's really like standing in front of an automatic pitching machine. He is thinking of the appellate judge more than a real judge. For a real judge it's not the umpiring. You are being thrown curve balls, sliders and change-ups. And you are expected to at least take a cut. And if you take, you know, the wrong cut, some smart aleck in St. Louis a year later might say, Oh, well that's not quite right. So it's tough. Being on the court of appeals is a lot more leisurely. It's not leisurely but it is less chaotic, and you know where you are going to be and what you are going to be doing.

POLLY PRICE: Even if your geographic spread got a lot larger?

MORRIS S. ARNOLD: Yeah, but you just had to travel to one place a month. And it was usually the same place.

POLLY PRICE: St. Louis or St. Paul?

MORRIS S. ARNOLD: St. Louis, mostly St. Louis. Twice a year maybe in St. Paul.

POLLY PRICE: So when you joined the Eighth Circuit, your brother Judge Richard Arnold was already on that court, and I think the two of you being on the same court made some history of its own?

MORRIS S. ARNOLD: It was the first time in history and also probably the last because Congress has now made it impossible. We called it the Arnold bill, and it passed, although really we weren't the catalyst for it. It was Willie and his mother Betty Fletcher out in the Ninth Circuit that got everybody stirred up. So it's no longer possible for people within a certain degree of consanguinity or affinity to serve on the same court at the same time.

POLLY PRICE: Did your brother share interest in legal history?

MORRIS S. ARNOLD: Not really. No he wasn't all that interested. In fact he told me one time in a rare fit of candor that he didn't really think it should be taught. He thought law school ought to be more of a professional school. He thought all this new-fangled stuff including legal history, which I thought of as kind of old fangled, was not at the top of his list.

POLLY PRICE: So you served how many years as an active judge then on the Eighth Circuit?

MORRIS S. ARNOLD: I served, let's see, 20 years. Well, as an active and as senior, over 20 years, 22 years, something like that. I served all together 28, 29 years on the district court and the court of appeal. So over 20 years on the court of appeal but seven of those as a senior judge.

I'm now something, I have a very exalted status. You know that federal judges have all these different rabbit holes they can jump down, jump into, that are retirement or are like retirement. Now I'm what's called an inactive senior judge, which means I don't do anything. I finally found something I excel it: doing nothing.

POLLY PRICE: I understand you were also appointed by Chief Justice Roberts to the foreign intelligence surveillance court of review.

MORRIS S. ARNOLD: Court of review, correct. FISCR. I hate acronyms but I was...

POLLY PRICE: As the presiding judge...?

MORRIS S. ARNOLD: No, I was appointed first just as plain old, garden-variety vanilla member of the court, as there are only three people on the court. And then when the presiding judge went off, it's a term of seven years and you can't re-up under the statute, I was the next senior, the more senior of the two remaining. I got to be the presiding judge, just testament to having survived, essentially. So it's a nice high-sounding title, but the truth is I wasn't too busy.

POLLY PRICE: And did that include, did you need to travel or...?

MORRIS S. ARNOLD: Yeah. For instance, we sat on a case in Providence, Rhode Island one time, published an opinion in 2007. You have to have a special courtroom, and has to be, I forget, there is another acronym, but it has to be a, you know, XYZ facility before you can sit in it. A secret nature

POLLY PRICE: Something that you could contain the Ebola virus in.

MORRIS S. ARNOLD: Yeah, right. Exactly. It's got to be lead lined and bullet proof and sound proof and all that. But I had a secret office in my chambers with a secret fax and a secret

telephone, you know it was a secure phone, secure safe, and all that kind of paraphernalia. So that was what I was supposed to operate out of most of the time. Secure facility. The curtains, you know you can't have open windows because there are, I won't bore you with this, but there are devices available that allow espionage by just electronically beaming some kind of beam through a window which is capable of reconstructing everything in the room and sending a picture of it back, including the computer screen you are reading. Yeah, just pretty bizarre, scary stuff.

POLLY PRICE: But you have concluded that service?

MORRIS S. ARNOLD: I'm off that.

POLLY PRICE: I want to talk about your publications. We touched on them lightly in earlier parts of our talk. They fall into two general areas I believe.

MORRIS S. ARNOLD: Yeah, very disparate.

POLLY PRICE: English legal history and I think particularly the 14th Century and then Colonial Louisiana. But going back first to the English legal history, this seems to be the earlier part of your publishing career.

MORRIS S. ARNOLD: Yes.

POLLY PRICE: And do you have a favorite publication?

MORRIS S. ARNOLD: Oh, yeah, I remember the first one I did was with John Baker, a very famous English legal historian, just a little piece in the Law Quarterly Review, the LQR. I don't know, I didn't publish that much. I have only two or three things of any significance at all. Two things I did were two lectures. One it was very early 1974, talk I gave I think at, yeah, to

American Society for Legal History on jury trials in the medieval period, about separation of law and fact. That one attracted a lot of attention. It continues to be cited and beat up on which is, I guess, a sign of affection.

POLLY PRICE: Sign of attention?

MORRIS S. ARNOLD: Yeah, people have been trying to dismantle that one for years. I don't think they succeeded totally but it's interesting. And then later I gave the Crosskey lecture, this would have been 15 years later, at the University of Chicago. I tried to develop an ideology of medieval tort law, and that one actually earned a book-length response from none other than my good friend and former teacher, old teacher as they say in England, Toby Milsom, who gave some lectures at Columbia. And it was published, I think the title something like a *Natural History of the Common Law*. But it was a response, and actually I was never mentioned, he was very gentlemanly. In my lecture, which was a great deal shorter, I had really been talking about a lot of Toby's ideas but I never mentioned him by name either because I thought it would be impolite. I didn't want him to think, I mean I have so much respect for him, huge, he was my teacher and my mentor and I just, you know, I was very careful not to, I assiduously avoided trying to create any kind of rift. It was not a rift, but a riff on some of the things that he was saying. And so it was really quite an extraordinarily exchange where we never mentioned each other. Of course, he demolished what I had to say and I wrote a blurb on the back of his book. It was published by Cambridge I think, no, it is Columbia I guess, one of those two. I wrote a back blurb praising it profusely and said it was sure to become the standard account. And I think it has. But I think maybe the one that might last for a little longer, you know nothing I did is going to be very long lasting, that was my Selden volumes in 1985 and 1988, particularly the introduction in '85 because it is a solid doctrinal review of the law of torts in the 14th Century,

with case illustrations. Although there is a certain amount of legal process stuff in there too about jury control devices and precedent, that sort of thing, i.e. basically a kind of doctrinal account of what was going on in the King's courts in the way of tort law in the entire 14th Century. I read over a million entries, or looked at them. I would only stop to read the ones that were obviously relevant. It took me years. I started work on that book, thinking about planning it with Toby Milsom, in 1969.

POLLY PRICE: And that's when you were completing your SJD?

MORRIS S. ARNOLD: Yeah. Exactly. Or '70, and the second volume didn't appear until '88. So I worked on it, not obviously continuously, but over a period of almost 20 years.

POLLY PRICE: That took some extensive traveling?

MORRIS S. ARNOLD: Yeah, I spent part of every year between '69 and '85 in England. Every year, sometimes a whole year, mostly summers, but part of every year, and a lot of it was devoted to turning out those two volumes. So that was just being a harmless drudge, that's sheer drudgery. So maybe that will be a contribution, drudgery.

POLLY PRICE: And you developed a friendship with John Baker in this process?

MORRIS S. ARNOLD: He is a very good friend. In fact I'm the godfather for one of his daughters. He used to stay with me when I was a graduate student in England. He used to stay with me on Monday nights. He was teaching at University College, London, but he needed to get back, he was a Squire Law librarian in Cambridge. And I forget why but there were some scheduling difficulties between London and Cambridge. I guess he would come down the night before maybe and stay with me. But so we spent a lot of time together.

POLLY PRICE: And how did you first come to each other's attention, through scholarly correspondence?

MORRIS S. ARNOLD: You know, I think probably Bill Butler introduced us. Bill Butler was another guy that hung around the basement of Langdell in the late 60s. He was a research associate or something, very productive guy. He had already published a book, I think maybe Harvard had already published it by the time I knew him. He is the world's leading expert on Russian Law now. I guess he published 30 books. But Bill and I ended up together in London at the same time. We shared a container for our books to be shipped to England and we lived next door to each other. And Bill was at UCL, University College London, where Baker taught. So I'm sure that Bill had something to do with me and John getting together.

POLLY PRICE: So we will have a copy of your resume with your permission, of course...

MORRIS S. ARNOLD: Yeah.

POLLY PRICE...attached with the oral history, and we can't possibly go through all of the publications. But very impressive, the continuation after leaving academia in terms of your publications. And I think they tended to focus, more recently, at least within the last decade or so, on Colonial Louisiana history.

MORRIS S. ARNOLD: 30 years.

POLLY PRICE: 30 years.

MORRIS S. ARNOLD: Well, I published my first Colonial Louisiana thing in '81, and I continued to publish, well I published my last Arkansas book in 2000. Anyway, I'm still working, as you saw something on my desk that I am working on. I must have published

something then after that. Anyway, they don't really have any connection except my interest in documents. I mean the English Legal History is totally disconnected from the Colonial Louisiana stuff. And the Colonial Louisiana stuff has drifted away from legal history into more social history and history of inter-racial relationships between French and Indians. So it's much more social than my old stuff but the only tether is that I'm still a documents guy. I think capital T, Truth and capital B, Beauty are to be found in documents. These guys who just kind of, you know, skip over learning the languages and don't spend the time, the hard work, get their hands dirty in the archives, I have got no use for them.

POLLY PRICE: And where did you find these?

MORRIS S. ARNOLD: That was the thing. See, when I came back to Arkansas, I already had this fetish about reading documents, because I had spent all this time in London. So, I started casting around for something to read. I eventually figured out I had to go to Seville and Paris so I did. I have been to at least six or seven archives in France, and mainly one archive in Spain, in Seville, and I found thousands and thousands of pages of letters written to, from, and about Arkansas Post, that little settlement here during the 18th century. Still extant letters, reports, and that sort of thing that nobody had probably ever read in the last century, if then, maybe some indexer. So I thought, well this is an incredible treasure trove because here is a whole state, the colonial history of which had never been written. So I got three books out of that and probably a dozen articles.

POLLY PRICE: So you occupy the field?

MORRIS S. ARNOLD: Well, you know there are other people, believe or not. I frequently say that I'm the leading historian of Colonial Arkansas because I'm the only such historian, but there

are a few other people that have done some really good things. Recently there is a woman named Kathleen DuVal who has written a bigger book than I could ever write including the Arkansas region which is really, really good. She is real historian. She is great.

POLLY PRICE: Well of all the awards and honors that we won't have time to go through here, I think one of the ones most relevant to the work we were just talking about is the French Government Awarded you something that I cannot pronounce.

MORRIS S. ARNOLD: Yeah, the Chevalier of the Ordre des Palmes Academiques.

POLLY PRICE: That's what I meant to say.

MORRIS S. ARNOLD: Yeah, Knight of the Order of the Academic Palms. Gave me a medal too.

POLLY PRICE: For your Colonial work?

MORRIS S. ARNOLD: Yes, a plaque and a medal. The French Government guy, the consul came up here and we had a ceremony and I had to respond. And he just kissed me on the cheek three times, presented a medal, and I had to respond in French. So it took me a while to get that going. I read French well and I can write it given some time, but speaking is difficult.

POLLY PRICE: Although the pronunciation sounded...

MORRIS S. ARNOLD: Well, I wasn't doing very well. My Arkansas is better than my French.

POLLY PRICE: There are other oral histories that we can refer to the society to, and I believe you mentioned the University of Arkansas.

MORRIS S. ARNOLD: Yeah, oh yeah, there are two, there are two things and you asked me about that in writing and I was thinking about it. There is a 30-minute show, a biography of me that the Arkansas Educational Television Network did, AETN, and occasionally still plays. This is embarrassing. It's part of their series called Men and Women of Distinction, okay. So I mean I'm not that, but that's the series I'm in and it's a professionally produced 30-minute documentary, essentially.

POLLY PRICE: And I believe it's available on the AETN website?

MORRIS S. ARNOLD: Probably. If you can't find it I have a very few copies left, if you want me to send you one. And then there is what's called the Pryor Center for Oral History, at Fayetteville. Senator David Pryor and Barbara Pryor gave a lot of money to the University of Arkansas for an Oral History Center. And they have a new building now, or new facilities, and a big mobile unit. They go around the state. They came to my house and did eight hours of video, and they have highlights I believe now posted on their website.

POLLY PRICE: So the Pryor Center at University of Arkansas would be the point of contact for anyone who wished to have the eight-hour version?

MORRIS S. ARNOLD: Well, I don't know if all eight-hours are up or not. I know excerpts are. The whole unedited thing might be available, too, but I'm sure they would make it available. I don't think anyone wants to listen to that much. It may not have been that much but I think it was. I did a legal part, Bob Brown of the Arkansas Supreme Court did the legal part and then the history part was done by a fellow named Joe Key who teaches at Arkansas State and has done good work on French Colonial Quapaw interactions in Arkansas. That's what he did his PhD on. So there is a kind of two-part there, law, lawyer, historian.

POLLY PRICE: I think we may have exhausted your patience.

MORRIS S. ARNOLD: No, not at all.

POLLY PRICE: Are there any other areas you want to discuss?

MORRIS S. ARNOLD: Yeah. I have a speech I'd like to make about the changes in legal history, if you've got a minute. [Laughter]

POLLY PRICE: Please. I'd love to hear it.

MORRIS S. ARNOLD: Well, I noticed that Lawrence Freeman dilated on that subject, where he said that, you know, when he came to legal history it was all about the statute of uses and was boring, and the changes in the subject he talked about. He's quite right about that. But I think it's kind of a caricature to say that English legal history was just about property law. It's hard to say it was just totally cranky and antiquarian. Think of Pollock and Maitland's book, for instance. That work is superb. And in fact I think Pollock and Maitland is probably the best book that the Cambridge University Press ever published, and that's saying some especially since it was, what, over a hundred years ago. It's true, though, that the camera pulled back, and you got to see a lot more of the sausage factory. But not only did the camera pull back, it also panned to the left, partly because our subject started including real historians, a lot of whom had Marxist influences anyway, and partly for other reasons, namely, for instance, as I said, all of this change was generated in the '60s when there was a lot of ferment, social and political ferment. What you got was a lot of stuff that was being written by collectivists and statist and Marxists and people generally on the left. A lot of it was anti-capitalist and rather adolescent, really, in its anti-corporate animus — populist, you know. I mean when was the last time you read a legal history piece, say, that had anything nice to say about capitalism in particular, or private ordering in

general, or contract or property. Most of the stuff being published is full of exploited tenant farmers and oppressed workers, and a lot of it has become captive to what's become the new history, too, which emphasizes the iron triangle of race, class and gender. Not all of it. In fact the last issue I saw of the Law and History Review, which was some time ago, as I have been at some pains to say, was surprisingly free of that. So, you know, I'm used to reading real history now, a lot more than any legal history, and I see that a lot more of what I call real history than I do on the legal history side probably, but still a lot of that became evident and a lot of that kind of a mindset became evident in the '60s and '70s and continued into the '80s in the writings of legal historians. What has been produced now is a lot better. But it's also, in my view, kind of skewed. I'd kind of like to see a little more balance in the political approach, but it is certainly an improvement over what was being done, and way beyond anything I could do. I don't pretend to hold myself out as in any way superior, but it's an observation by somebody who's become kind of a bystander since many years ago I fell from grace and became a government worker.

POLLY PRICE: And maybe...

MORRIS S. ARNOLD: So that's my speech.

POLLY PRICE: But maybe it's also generational in the sense of training others, and so you have a generation that's grown up with training under a certain paradigm or approach.

MORRIS S. ARNOLD: Yeah, and I think that paradigm pretty well owns the humanities, and to the extent legal history is part of the humanities it has really gone in that direction considerably. And I think that paradigm is still in control and is likely to be, but that's for another generation to worry about.

POLLY PRICE: Well, I certainly appreciate you adding your thoughts about legal history in general.

MORRIS S. ARNOLD: Yeah, I wasn't going to let the opportunity go by. It might be two people who will watch this.

POLLY PRICE: Even more will read the audio transcript, I suspect.

MORRIS S. ARNOLD. Yeah.

POLLY PRICE: So anything else you'd like to add...

MORRIS S. ARNOLD: I think I'm done. Thank you, I want to thank you for doing this. This is a lot of trouble. You had to come from Atlanta and...

POLLY PRICE: Thank you.

MORRIS S. ARNOLD: Spend the night and go back, I mean...

POLLY PRICE: The pleasure is mine. This is a wonderful opportunity for us at the society to memorialize some of its early history.

MORRIS S. ARNOLD: Great to see you and thanks for that wonderful book you did on my brother, a copy of which I hope you noticed is on my shelf.

POLLY PRICE: I did, thank you.

MORRIS S. ARNOLD: I didn't put in there for this occasion, either. It's been in there since it was published.

POLLY PRICE: Affirmation is always good. So anyway thank you for...

MORRIS S. ARNOLD: Yeah, you bet Polly.

POLLY PRICE: And thanks to our videographer.

MORRIS S. ARNOLD: Yes, thanks James.

[End of audio]