

INTERVIEW WITH LAWRENCE FRIEDMAN

BOB GORDON: It's July 17, 2012. I'm Bob Gordon and I am sitting here with Lawrence M. Friedman, who is the Marion Rice Kirkwood Professor of Law at Stanford University, and has been for many years. We're doing this, the oral history, for the American Society of Legal History Oral History Project. The main purpose of this history is to explore Lawrence Friedman's connection with the American Society for Legal History, but I want to start out by asking him some general questions about his personal background and about his very abundant scholarship. Let me just start by asking you, Lawrence, about your upbringing, your childhood, your education, and so forth. You grew up in Chicago.

LAWRENCE FRIEDMAN: Yes. That is correct. I definitely grew up in Chicago. I grew up on the west side of Chicago and went to a high school called John Marshall High School. That seems prophetic. I didn't think so at the time. And then I went for one semester to Roosevelt College, and then to University of Chicago and the University of Chicago Law School.

BOB GORDON: Now, how old were you when you started law school?

LAWRENCE FRIEDMAN: Very young.

BOB GORDON: Very young?

LAWRENCE FRIEDMAN: Well the University of Chicago had this weird system in which you could enter after two years of high school, which I didn't do. But when you entered you took a battery of exams, and if you passed any of them you didn't have to take the course. I think there were something like sixteen courses, four a year, and they were quite wonderful courses. I never got to take most of them, because I placed out of almost all of them and ended up getting a Bachelors Degree after one year. Which I think is a big mistake on their part and

also on my part, but that's the way it was. And then I entered law school when I was quite young. I think I was 21 when I graduated law school.

BOB GORDON: And what was the University of Chicago Law School like in those days? Not much like it is now, I expect.

LAWRENCE FRIEDMAN: Well, I have very limited knowledge of what it's like now. I thought it was pretty awful at the time. Now it is one of the great law school; maybe it was then too. I found the professors, though, for the most part were boring, formalistic, and also cruel. They had a real "Paper Chase" mentality. . There were some exceptions, and one of them was Max Rheinstein who was a very decent person, very kindly, excellent teacher, good scholar. I stayed on to get a Masters Degree in legal history, as a matter of fact, and they didn't have any legal historians. But Max Rheinstein was my advisor, and he was a very good one—very gentle, very helpful. But a lot of the old-line professors, I think, were ideologically committed to being vicious. Maybe in their personal lives they weren't. Anyway, I found law school pretty appalling. I had a good friend who said that you get to like it after you get over your natural revulsion against the subject matter.

I have a very vivid memory of the course in property law which was taught by an extremely boring man, Sheldon Tefft; he he talked a lot about history, about the Statute of Uses and so on, but it seemed so meaningless to me. He never talked about any modern aspects of property at all. And as I said, there was no formal course in legal history.

BOB GORDON: So, was it Rheinstein who really kind of inspired your interest in the legal history as a field? Did you have it going in?

LAWRENCE FRIEDMAN: I don't think law school inspired this interest.. You know, it's hard to know what makes somebody interested in something. I just found history

fascinating. . . And I began with British legal history because basically that's all that anybody seemed to think there was, at the time. Well, I wrote a Master's thesis on an Elizabethan judge, Sir James Dyer. I remember almost nothing about him. He edited some reports, Dyers' Reports. And that was fun, working on Dyer.. There was a lot of material in the University of Chicago Library about the period, and about Dyer. I found it all quite interesting.

Well, after that I was in the Army for two years, and then I got a job as a lawyer and practiced law with a firm which no longer exists. It was mostly trusts and estates work, and it was all right, but it took me a while before I realized that my boss was insane. He wasn't mean-insane, he was kind of obsessive-compulsive. When I say he was insane, I mean it literally. He was finally hospitalized, and then it became a lot easier to work on trusts and estates at the firm.

BOB GORDON: And you kept up your interest in trusts and estates. It's a field that you teach and you write in it.

LAWRENCE FRIENDMAN: Yes, I love trusts and estates. I think it's a very underrated subject.

Since I did this work for two and a-half years, it was a field in which I felt I actually understood something about the way the world works.

Then, after this, I had an opportunity to go into teaching, to teach at St. Louis University Law School. I had a friend in law school, Henry Manne, who made quite a name for himself in right-leaning circles, and Henry was teaching at St. Louis. He had an opportunity to go to the University of Wisconsin as a visiting professor, but he had to find a replacement. And the replacement he suggested was me, and they hired me. I moved to St. Louis and was there for four years, and they were quite nice to me. It was really a very good experience. Of course, I couldn't teach anything I wanted to. That's the way it was in those days. You had to teach what

they told you to teach. I taught commercial law, which I had zero interest in, but the faculty was very supportive; I actually got tenured quickly. So that was okay, but Henry, meanwhile, was at Wisconsin; he didn't stay there. He came back to St. Louis, but through him I got to know Willard Hurst, and I went in the summer to the University of Wisconsin to work on a legal history project. And I had switched from England to the U.S. by this time, for a very simple reason that I think people growing up today, would find pretty strange. It was this: I thought, I can't stay in English legal history, because after a while, you really should go to England and do research in England, and how will I ever get there? Now I actually had been in England, when I was in the Army in Europe, for a few days, but the notion that I would be able to travel readily to England to do my research there, that seemed out of the question. So I might as well do the U.S. I switched to the U.S., and Willard Hurst encouraged me to undertake a project on Wisconsin law, which ultimately became *Contract Law in America*, my first book. And after a while, I was hired by the University of Wisconsin and I stayed there for six or seven years, and I really liked the place. And, of course, Willard Hurst's influence was very strong, very benign. He helped me move on.. I can testify he was extraordinarily helpful, selfless, and constructive.

...

BOB GORDON: And what was it about his approach to legal history that was ...

LAWRENCE FRIEDMAN: Well, I was ready to be converted to his approach because when I was at the University of Chicago, whenever they talked about history, it was just some kind of mindless, ancient, formal, doctrinal stuff, and I thought "this can't be right." And Hurst's work was very subtle and rich; but his fundamental insight was that the history of law is just a branch of general economic and social history. It's not some kind of autonomous thing floating in space, and I found this immediately convincing and congenial, and so it was t easy to

get myself into that mindset. And I think everybody now has that mindset, whether they know it or not. I think the old kind of history is basically dead. If not, it should be.

BOB GORDON: It's still going strong in Europe.

LAWRENCE FRIEDMAN: Yes, it's still strong in Europe.

BOB GORDON: One thing I was wondering about—you're really a kind of legal sociologist and a comparative sociologist, as well as a legal historian. When did you start becoming that?

LAWRENCE FRIEDMAN: Well, I think that Hurstian legal history is historical social science, so I don't see any real distinction between the two fields. And, you know, social science operates ideally with a control group, and legal history is a kind of control group for the study of modern law in a way. But I think...I sometimes tell a people, that I really was more convinced about law and social science than I was about legal history. I like both of them, but I just found that I have absolutely no talent for interviewing. I once tried to study some modern phenomena by interviewing people, and I found it so awful, like being a vacuum cleaner salesman. I couldn't stand it. Though later you and I did a little interviewing.

BOB GORDON: We did.

LAWRENCE FRIEDMAN: In Silicon Valley. ...But basically, with regard to interviewing and the like, I thought, I just can't do this. When you deal with archives and records, you don't have to talk to people.

BOB GORDON: [Laughter] They can't talk back.

LAWRENCE FRIEDMAN: They never answer. They're all dead. You know, I don't like to say that, but it's true. Anyway, I always found history interesting. I think history IS interesting. It's just like travelling to a foreign country. Yyou know, today what I like to read for

relaxation, among other things, is history, actually popular history. You know, a book about the life of Catherine the Great, or why the Roman Empire collapsed. Nothing to do with the work I'm doing. But I just find it interesting; it's fun to read. I enjoy it more than reading a novel, that is if the history is well-written, which a lot of it is.

BOB GORDON: Though you are, yourself are a novelist, as well as a historian. You've written how many detective novels now?

LAWRENCE FRIEDMAN: Fourteen.

BOB GORDON: Gee.

LAWRENCE FRIEDMAN: I hope that people will buy the ones that are in print now. I actually read some mysteries myself, mostly on airplane trips..

BOB GORDON: Now it would take many weeks to review your entire scholarly career, because it's been really so extraordinarily productive and variegated. But I mean you've made primary contributions in so many different fields of history—contract law, the history of torts, accident law, history of trusts and estates, the history of criminal procedure, crime and punishment, the history of morals regulation, the history of family law, just to mention a few areas. And you've both done very detailed archival work in these fields, but have also written some general, more theoretical and conceptual and speculative works about major trends in law and society—*The Republic of Choice*, *The Horizontal Society*, *Total Justice*. There's not conceivably time to talk about that. And you also have written the most used and cited general history of American law, which for a long time was the only general history of American law, appropriately entitled *A History of American Law*. It was actually a remarkable thing to write a general history of American law. Before, there was not very much secondary work on the subject at all.

LAWRENCE FRIEDMAN: That's what made it easy. Nowadays you simply can't keep up with all of the literature, right?

BOB GORDON: Everything that's written is simply ab-scanned... In that way there's a big change between the first edition of *A History of American Law* and the current edition that became so much of the work that's been done since the first edition.... [Bob, no idea what you meant in the first part of this paragraph, which seems garbled in transcription]

LAWRENCE FRIEDMAN: I don't know how I would be able to cope with the literature today. [This is a guess as to what I meant]Originally, , I was told that you can't write a general history of American law, just because there are fifty states and so much stuff. And I thought, "Well, that can't be right. There are books on the history of the United States."

BOB GORDON: [laughter] Right.

LAWRENCE FRIEDMAN: And big books on the history of the world. So you can write a history of anything. Of course, you can't put everything in, but I just couldn't see why it was impossible...I think it was a case of fools rush in where angels fear to tread. I was young, and I thought, "Well, why can't I write a general history of American law? Using a Hurstian framework, that would be fine," and so I did it.

BOB GORDON: And it worked out. I don't know if you ever looked at your citation counts, but you are far and away the most cited of legal historians. It's not surprising—you've written the most.

LAWRENCE FRIEDMAN: Well, as for cites in proportion to the number of pages, I might come out very poorly. Who knows?

BOB GORDON: Let me ask you. You're obviously continuing and coming out with a new book at least every year, so you're obviously producing in the field. But looking back over

this rather extraordinary output of scholarship, which are the works that you, yourself, take the most pride in, the most pleasure in?

LAWRENCE FRIEDMAN: Well, in 1975 I published a book called *The Legal System: A Social Science Perspective*. It's one of my favorites, but I think for the most part, in the U.S. it's completely ignored. It's been translated, and I think some foreigners pay attention to it. Maybe I like it because it's such an orphan.

Then, I don't know -- I usually like best the most recent thing I've done. I'm kind of very fond of a little essay I wrote with a student on coroners' inquests in Marin County. It's not a major piece, but I kind of like it. And then I like *Guarding Life's Dark Secrets*.

BOB GORDON: I like that too. That's one of my favorites. That's the one about law and sin. [laughter]

LAWRENCE FRIEDMAN: You know, I don't know about other people, but half the time when I look at something I've written in the past, I think, "Oh God! How could I have written this stuff?" And then half of the time when I look at the same thing I think "Oh that's pretty good." So, I don't know how to assess my work..

Contract Law in America, my first book, has recently been reprinted, so I had to read it over. I thought: this is badly written. I wish I could re-write the thing. I hope I've improved. That was published in 1965.

BOB GORDON: That's probably the most academic-sounding of all your books. I sense that you've found a freer and more colloquial style.

LAWRENCE FRIEDMAN: Style. You know, I'm very easily bored, and most legal writing is extremely boring, and I have trouble getting through it. And I don't want to inflict this

on other people. So I think as I've gone along, my writing has gotten simpler, more lucid, I hope. My constant fight with law reviews ...

BOB GORDON: I can imagine. [laughter]

LAWRENCE FRIEDMAN: They want to take little sentences and make them into huge sentences. They like to add words like "albeit" or "whereas". Oh well!

BOB GORDON: Well, in addition to being a legal historian, you have a real presence in the international and comparative sociology of law. You travel a lot in Europe, and you're a well-known figure in those areas. Sociology of law is a big field in other countries in a way that it never got to be in the U.S.

LAWRENCE FRIEDMAN: Well, yes and no. It's actually in decline in a lot of areas recently. But I have been active on the Research Committee on the Sociology of Law. . I was actually president of this rather dubious organization, for one term

BOB GORDON: Well, I think you're the only person who has been president of both the American Society of Legal History and the Law and Society Association.

LAWRENCE FRIEDMAN: And the Research Committee.

BOB GORDON: And the Research Committee.

LAWRENCE FRIEDMAN: Well there are some three races that it's rare for a horse to win—the Triple Crown. So, I've got the Triple Crown.

But you know, none of these presidencies is, except for the honor, a very strenuous, demanding job.

BOB GORDON: No, but it's a recognition in your field. Well, this brings us to the nominal object of our interview, which is "Lawrence Friedman and the American Society for

Legal History.” Do you actually remember your first American Society for Legal History meeting?

LAWRENCE FRIEDMAN: I don’t. I find all these questions very embarrassing, and I was wondering, “Is this a sign of senile dementia,” except that I remember that the first signs of senile dementia is short-term memory loss, not long-term memory loss. I cannot for the life of me remember when I first started going to the American Society for Legal History meetings. There was a meeting in Newark—when was that?

BOB GORDON: That was fairly far along, actually. I think that was probably nine or ten years into the...

LAWRENCE FRIEDMAN: I remember that one fairly well, because Newark was such an awful place. I was president in 1990 to 1992 I’ve been frantically looking, trying to find files that might tell me something about what happened during that period. But I couldn’t find the files, and I just remember very little about it, except that there was one incident. You’ve been president...

BOB GORDON: Yes, yes.

LAWRENCE FRIEDMAN: You don’t do very much, right?

BOB GORDON: I remember when I took the job one of the predecessors in the role looked at me dolefully when I asked what it was like doing the job, and he said, “I found it a succession of small, tedious chores.” That was a big help.

LAWRENCE FRIEDMAN: Well, so the only thing I remember clearly is that there was this great to-do about a foreign honorary member. Someone had nominated—I can’t for the life of me remember his name—some very distinguished German scholar. And that seemed to be okay, but then it was pointed out, I think by Barbara Black or some other person, that this

gentleman had been a member of the Nazi Party, and there was this sort of mild kerfuffle over that. And I had to decide whether to go ahead or not. And I thought about it. So I asked Tom Green to conduct an investigation and to make a report on whether this man was a real Nazi or not. And Tom Green came up with what was I think probably a truthful but unhelpful report that said, “Well, he was kind of a Nazi, but then so were a lot of other people—they were never active, and that was a long time ago.” And so, that wasn’t much help. I mean I’m not blaming Tom, he did a perfectly good job, but it didn’t solve the problem.

I thought about it and decided, “Well, okay. This is sort of a meaningless little honor given to somebody, and we’re not going to conduct the Nuremberg Trial; but we’re also just not going to honor this guy, let’s just forget about it.” I don’t think he even knew that he was nominated. And so that was my decision. We’re not going to have this former Nazi, no matter what kind of a wonderful fellow he’d become. And then I got some very nasty notes, and a couple of people resigned in a huff, but I thought, “Oh, who cares!” And I thought, “I think it was the right thing to do.” Maybe other people didn’t.

Well, that’s really my most vivid memory of the Society

BOB GORDON: As an institution. You’ve gone to most of the meetings, probably. Haven’t you?

LAWRENCE FRIEDMAN: I’ve gone to a lot of them. It’s changed and grown over the years. I think that, I don’t have any figures, but when I started teaching, I don’t think anybody other than Wisconsin had a course in legal history. Nobody much taught legal history.

BOB GORDON: I had a required course titled, “Development of Legal Institutions,” that was mostly a kind of a history of the common law course that Jack Dawson taught.

LAWRENCE FRIEDMAN: Yes, Dawson taught it. A real expert in English legal history. I was surprised that there wasn't anything but English legal history in the U.S. I mean there was no Canadian legal history, either, for example. Legal history meant England. And I suppose it was the same for Australia and New Zealand.

BOB GORDON: Canada was another slower university cycle. It was Dick Risk who got the field going there.

LAWRENCE FRIEDMAN: And now it's flourishing. But fifty years ago there was virtually no American legal history. 1950 was the date of Hurst's first book.

BOB GORDON: *The Growth of American Law*.

LAWRENCE FRIEDMAN: *The Growth of American Law*, and that was sixty-two years ago. And today, I think every major school and a lot of non-major schools have courses in legal history. There's a Harvard program, there's a program in Princeton, there's a program in Virginia. Legal historians are coming out of various schools. Today it's the norm to have both degrees, law and history. Some of the pioneers, like Harry Scheiber have a PhD, but no law degree. Today, it's normal to have both, I think. And Morty Horwitz was probably one of the first to have two degrees.

BOB GORDON: Yes, that's right. But his PhD was in government.

LAWRENCE FRIEDMAN: So that's a big change. And I think that what's happened to legal history is that legal education is in transition. Well, everything is always in transition, but doctrinal work is no longer highly valued. And in places like Harvard, Yale, and Chicago, if you go back in history you will find there were people like Corbin, Williston, and Austin Scott. Their work was writing massive treatises; I don't think they're doing that in law school now. People are looking for something else—law and economics is one of the something else. Then

there's law and psychology, etc., etc, but there's also history. And since history is kind of interesting and sexy, a lot of people have gotten involved in it. And, of course, I think that's wonderful.

And another thing, I think at many schools, including Stanford, there are a lot of people who do history who do not consider themselves legal historians. They don't teach in the field, but their work is historical; and that's also a change from the past. The Society, too, has grown a lot, though it's still small. I also think it's not quite so exclusively Anglo-American.

BOB GORDON: Right. I think there's been a big expansion in recent years towards comparative stuff. I think Chris Tomlins has had a lot to do with that. You know, maybe because he's from England originally and spent some years in the Antipodes. But it's nice to see this comparative trend.

Now, do you enjoy going to meetings when you do?

LAWRENCE FRIEDMAN: Yes, I do. I enjoy them. My favorite meeting is the Law and Society meeting, but I like the American Society for Legal History also. I don't always go, but I like to go, and I like to go partly because it's a little bit like, well, recently—we don't want to get into politics here, I'll just offer an analogy. We went with my grandson to an event at which President Obama appeared, and he was raising money, and so on; and one of the things I really liked about it was, I felt, "Oh, everybody here is a good person." And I had that feeling at the American Society for Legal History; you don't have to apologize for your interest. You know, if someone comes up to you and you say "What are you doing?" and they say, "I'm looking in the Arkansas archives of the early 19th Century because I'm interested in frontier crime." Now, there are many venues in which people would think, "Oh my God, what is this nut?" But here, they'll say, "Oh, tell me more about it." It's a group of like-minded people, so I

find that's very heartwarming in a way. You don't have to apologize for what you are doing; what you're doing isn't weird. Everybody else is doing something like that. And also you learn what people are doing. I think the most valuable thing about these meetings is meeting people, particularly younger people, and you say "What are you working on?" and you hear what people are interested in. There is, I have to admit, a certain trendiness that is a little bit off-putting. It's like everybody is working on a small range of problems.

The History of American Law has gone into three editions. So that's given me an opportunity to do a kind of informal study of the literature. When I did the 1st Edition, there was some very interesting and useful stuff about railroads. In the 2nd Edition there's nothing new about railroads. In the 3rd Edition the railroads were back. Subjects go in and go out. No one is interested in something; and then suddenly they are terribly interested. If you went to a history meeting and were asked what you're doing, and you said, "Well, I'm doing an analysis of early 19th Century southern cookbooks because I'm interested in the field of gender relations in household affairs," they'd say, "Oh yes, that's very interesting."

But fifty years ago, they would have said, "Are you out of your mind? Households?" Fifty years ago there were people writing dissertations on Bulgarian-American relations between 1910-1935. I mean that's all gone now.

BOB GORDON: That's true. [laughter] There are a couple of the Society's projects that you've had a fairly close connection with. One is that you have a book in the Book Series.

LAWRENCE FRIEDMAN: Yes.

BOB GORDON: That was your book about crime in Alameda County.

LAWRENCE FRIEDMAN: Right. *The Roots of Justice*. That's another one of my favorites; I did it with Robert Percival. He's a wonderful, wonderful guy. I couldn't have done it without him.

BOB GORDON: And what was your attitude, by the way, about that book?

LAWRENCE FRIEDMAN: That series was from North Carolina press; it was a very good series, and I enjoyed working with that group. And it continues to be a really fine series. But now there's other outlets; North Carolina is just just one of them. The field is really blossoming. It's wonderful to see it.

BOB GORDON: And the other venture which you've had a lot to do with is the Hurst Institute -- the Hearst Summer Institute. And I think that you were the leader of the first summer session...

LAWRENCE FRIEDMAN: Right. I also helped raise the money.

BOB GORDON: You raised the money.

LAWRENCE FRIEDMAN: I helped raise the initial money. Then Frances Hurst gave money and put it on a firmer footing. Yes. But there was a committee. Yes, I directed the first one, and you directed the second one.

BOB GORDON: Well, you and I then did it together, and then I did the third, I guess.

LAWRENCE FRIEDMAN: And I think it's a big success. I'm very pleased with that. I think it's done very well. We're sort of emeritus, now. You and I.

BOB GORDON: Yes, yes.

LAWRENCE FRIEDMAN: We've retired, as far as the Institute is concerned.

[Laughter]

LAWRENCE FRIEDMAN: People presented very good projects. And now it's gone prime-time.

BOB GORDON: Yup. Each time it has a lot of applicants.

LAWRENCE FRIEDMAN: And then if you look at you know, the original people, you see some of them are doing very well. Ed Balleisen, for example. ...

BOB GORDON: Yup. He was the in very first one.

LAWRENCE FRIEDMAN: And Adam Winkler who has published a book about gun control.

BOB GORDON: Yup.

LAWRENCE FRIEDMAN: And lots of people.

BOB GORDON: Yup. There were lots of people. A lot of books have come out of the Institute and its fellows.

LAWRENCE FRIEDMAN: I think people enjoy it, and they get a lot out of it. The format. It's a very good one. First-rate. They spend a week, discussing reading, talking about their field, and then they present their own work and critique each other. I hope it can keep going forever. I don't know what the financial picture is.

BOB GORDON: Well, the Society has now managed to raise a fair amount of money on its own, and I think after the grant of Hurst money runs out there will be enough to fund at least several more.

LAWRENCE FRIEDMAN: And you have to give a lot of credit to the University of Wisconsin. I mean they provide support for it, which otherwise the Society would have to pay for.

BOB GORDON: Yup.

LAWRENCE FRIEDMAN: And it's also a very congenial place to have it.

BOB GORDON: Yeah. It's really been a wonderful thing, and when you meet alumni of the Institute, they all are very enthusiastic.

LAWRENCE FRIEDMAN: Yeah.

BOB GORDON: Now let me ask you something about the main field and the significant works in the field, and so forth. Let me ask about some of your own favorites. Who are the legal historians currently writing whose work you really like?

LAWRENCE FRIEDMAN: I really, really like the work of Stuart Banner. I think he's terrific. *How the Indians Lost Their Land* is a wonderful little book. Also *Who Owns the Sky* and then recently a book about the history of property law. That I particularly relished. This is a book I haven't written. I really wanted to, and I thought, "No, I can't do that. It's too boring." And now Stuart has done it. Not the one I would have written, but it's a very good book. I think he's terrific.

Then there's John Witt who is very very good. I'm sure if you gave me a list, I'd name many others. I am very impressed, actually, with the general quality of the younger people.

BOB GORDON: Yes, you've sat on book prize committees and so forth. You've said the number of really good candidates is so impressive.

LAWRENCE FRIEDMAN: The book by Dan Sharfstein [*The Invisible Line*], I thought, is really terrific. You know, if you mention books by younger people, there's Anders Walker's book on the Southern moderate governors [*The Ghost of Jim Crow: How Southern Moderates Used Brown v. Board of Education to Stall Civil Rights (2009).*]. So there's no shortage of very good works. There's also Robert Gordon, whose work is fabulous.

BOB GORDON: [Laughter]

LAWRENCE FRIEDMAN: He's too modest to say so.

I also think Harry Scheiber has done outstanding work.

BOB GORDON: Very consistent over the years.

LAWRENCE FRIEDMAN: McCurdy. Chick McCurdy, too. Well, you know, there's a lot of people. I'm sure I've left out a lot of people's names I should have mentioned. If you said, "Who are the people who are doing the lousy work, but getting it consistently published?" I would have trouble naming names. Maybe it's the stuff I read. I think the work is good. The new people are careful. Their book may not be the greatest thing ever written, but they choose interesting topics, and they do a consistently good job. Maybe it's because they have to do a PhD thesis...

BOB GORDON: I remember when I was in law school and was making a little bibliography of works on American history, I found that all the books and articles worth reading could fit on one page of single-spaced type. And now, of course, it would take a large volume of bibliography.

Let me ask you if you think there are things that the Legal History Society or law schools or history departments can do to maintain the flourishing status of this field, to foster further good work in it? I mean, I wonder if there's an institutional role of the Society in this stuff. I mean, it does some subvention in publishing books, and they have a books series. It gives people a lot of encouragement.

LAWRENCE FRIEDMAN: I don't know whether there's a role for the Society. But I think that something that really has to be done is to pay more attention to the state of archived records, court records, administrative records. They become more and more voluminous. Obviously the solution ultimately would be to digitize them. That takes money, but it also takes

effort and organization. I think that's something that the Society could pay some attention to and probably should.

BOB GORDON: Well, you, yourself, are active here. I recall you rescued some Alameda Court records from almost certain destruction by relocating them to Stanford Law School.

LAWRENCE FRIEDMAN: That's so, I brought some of them here for people to work on. but, alas, a lot of legal records are now being destroyed.

BOB GORDON: Yeah, Uh-huh. Right.

LAWRENCE FRIEDMAN: And nothing much can be done about it. A Massachusetts county would never destroy Colonial records, but they could very well destroy records from the time of the First World War. In fact, I think they do. And, you know, there's a future when these will be valuable records. What people have trouble understanding is that ordinary records, like uncontested divorces, vagrancy, bankruptcy, auto accident cases, are very important in the aggregate, and that preserving mere samples, or, as is often the case, we only preserve the thick files, like murder cases. Okay, that's fine, but that leaves an awful lot out. I think that documentary preservation, archiving, digitizing— these are things that really deserve a lot more attention. Certain kinds of archives, let's say the archives of the U.S. Supreme Court, are safe. But the archives of some obscure county of Iowa—nothing. I've done a lot of work, , on court records, and they're just invaluable, and almost nobody pays attention to them. I mentioned this little thing on coroner's inquests. It was analyzing a year of coroner's inquests in Marin County. I did this with a student who was a PhD candidate in history from Berkeley, and I had him do a literature search to find out what other studies had been done. The answer was NONE! There are people who have looked at particular courts and cases, like one very good book on abortions.

She looked at inquests of women who died during illegal abortions. But nobody had looked at ALL coroner's inquests, in a given year or other period. It's just astounding that nobody had done it.

The piece I did called "A Tale of Two Courts" is a longitudinal study of two trial courts in California from 1870 to 1970. Now this was only the second longitudinal court study ever done. There have been a few since then. I had a friend at Wisconsin, a guy with had a Nobel Prize in medicine. He said "What are you doing?" And I told him about this and that I was only the second person to do this kind of work. He was just astonished. Because, you know, the idea of "Let's look at courts records" was elementary; but, as you know, hundreds of law professors were writing "A New Theory of the Court," or "The Balancing Test of the 14th Amendment," or something like that, and the chances of saying anything new were close to zero. Here were all these virgin records that they could look at. But they don't want to.

[Laughter]

BOB GORDON: Right, oh. LAWRENCE FRIEDMAN: I've said almost nothing about the Society. That's embarrassing.

BOB GORDON: Well, you did talk about some of its ventures, and also about some of the institutional things that it ought to be doing more of, which is also useful.

LAWRENCE FRIEDMAN: What happens to all of this?

BOB GORDON: This all now gets transcribed, and you get a chance to edit it, so that you can say what you ought to have said, as well as what you did say. But anyway, this will become private, and you can edit, amend, and supplement your remarks, just like the Congressional Record.

LAWRENCE FRIEDMAN: OK.

BOB GORDON: I'll turn this off now.

This is the end of the oral history interview (ended at 54:11), but the tape was still running. The balance of the recording (some 15 minutes) contains general conversation about various topics and nothing about the Legal History Society.