

**G. EDWARD
WHITE:**

I suspect that some of you may have been apprehensive about this talk. If you had learned that I was planning to talk about the process of writing these three last books that are the law in American history trilogy, you know, anticipating writers talking about their work, you know, sometimes they just say I can't talk about it. And perhaps that would be a good way to present this talk.

Or alternatively, they say things like, it all started in a small room where-- so I thought that instead of talking about the details of how I came to write these books, I would talk a little bit about how the market for writing books-- if you're a legal academic-- having those books published and reviewed has changed dramatically since I first started.

My first book was published in 1968. It was a very prototypical first book of that time. I wrote it. It was my doctoral dissertation. It was published by a University Press-- Yale University Press affiliate. I mean, the dissertation was at Yale, and it was not uncommon for the host press to publish certain dissertations. I, of course, it was submitted as a manuscript. It was reviewed by reviewers.

I remember that at one point, I was told by the press that I needed to revise it because there'd been some objections by the reviewers. I did revise it. It ended up, then, being published and was reviewed in the sort of standard of specialty journals of the field.

I then moved from that kind of model of doing books to a to one where I signed advanced contracts and sometimes I attempted to get advances. And there was a time in the-- I guess this is starting in the late '70s and early 1980s-- when the academic publishers were becoming increasingly aggressive in seeking to attract manuscripts, and they were prepared to pay fairly decent advances. I never got an agent or attempted to peddle the book, but I actually got some advances for a time.

That though that cycle is sort of up and down cycle. It began to recede as the world of publishing just purely got turned upside down by the digital revolution. It's now the case that it's much more difficult for academic works to get large advances. It's not more difficult for academics to get published. The university presses-- all of whom are subsidized by their respective institutions-- basically identify their visibility by their lists. So they like to get people on their lists. They like to get a lot of books. And the acquisitions editors really are now doing

mainly acquiring manuscripts.

For my first book-- my dissertation-- I had a very significant substantive editing in-house. It is now the case-- at least it has been with me for many, many years-- that once the book is acquired and you sign an advance contract, then they simply-- the press simply waits for you to turn it in. They may send it around to some people to vet it, but they basically put it into production. And that just means that they outsource it to a copy editor, and you don't get-- you really don't get any substantive editing, or very little. And you get technical editing.

So one of the difficulties that that results in, is that you really want to try to send a manuscript to a press as clean a copy as you can, and it means you have to sort of do a lot of work-- pre-production work. The other thing that is significantly different is that academic presses just don't make any money on their books. Once in a while, they made a great deal of money. David Riesman published *The Lonely Crowd* with Yale University Press, and that book was something of a bestseller in the 1950s, and Yale University Press and David Riesman made a lot of money. But that's a very, very unusual case. And now, the returns are comparatively insignificant.

So this raises the question, why, or whether, people in the legal academy should write books as opposed to, saying, doing journal articles. There are some real costs to writing books. First of all, writing a book takes a much longer gestation period, typically, if you want to do an ambitious book. I don't mean, by the way, I don't mean a book as some people have attempted, which is simply a combination of previously-published articles. One can do a book of that sort, but the presses don't mainly like it. They think that they're just duplicating stuff that's already in print.

And so what I'm talking about is a from-the-ground-up kind of book, which is somewhat theoretically ambitious and has a fair amount of breadth and depth. I think that's-- I happen to like that kind of writing. I think that's challenging writing in a way that writing law journals is not. It's not that writing law journal articles is not challenging, it's just a different form of challenge. And I particularly like being able to sustain themes over broad ranges of time and space. And I think that's one thing I seek to do in my books. And for me, that's something of a qualitatively different experience than doing a journal article, but it takes a while.

I began this series of books in about 2009, and I published the third of the volumes this year. So that's a 10-year interval in which I've been preoccupied with the topic of law in American

history starting in the colonial period and going through the 20th century. When my first volume came out, a reviewer-- and I note that the reviewer was an online reviewer-- and that's the common reviewer these days. And there are also no filters on online reviewers. If one wants to see one's books, the main place to gather reviews of one's books, look on Amazon.com. And the reviews are sent in by whatever, from whomever. And they say anything they feel like. They rate you five stars or they rate you one star. Sometimes they talk about the condition of the book.

So I mean, I think it's a serious question whether one wants to spend 10 years of one's working life producing books that in the end may disappear from sight in terms of review. And that's and that's been a major change in the review culture. It used to be the case that there were book sections of most newspapers-- independent book review sections. The New York Times still has one. I don't think there's another paper in the country that does. The other papers fold them into general sections. They sometimes review books on-- sometimes the dailies review books. But they rarely review academic books.

Once in a while you get an academic book-- Tony Kronman's book on *The Assault of American Excellence* that sort of crosses over into a larger audience and that that wasn't published by a university press. And sometimes you'll get fairly extensive reviews of that sort of work, but they certainly don't review my books as they used to. My biographies of Warren and Holmes and American judicial tradition and several of my books got reviewed in newspapers.

So it all adds up to the-- when you're deciding to do a book project, if done, I think, in a way that will be satisfying, it's a long-term project with somewhat iffy return. And then there is the added difficulty brought about by the current law school ranking system, which is now factoring in what are called citation counts. That is, how frequently is one's work cited in other places? But the persons who develop these citation counts have defined their market to include-- at least for legal academics-- law journals, not books. Books don't count in citation counts, nor do essays in book collections. What counts is law journal articles.

Now if one assumes that doing a book is a full-time project so that it makes it more difficult for one to do law journal articles while one is doing a book, then in a sense, there's not only the cost of entering onto a long-term project for which the rewards are maybe uncertain, but also, in effect, being absent from the citations market, not only in terms of recognition of one's citations, but in the perception by one's peers in the legal academy that, well, what has X done

lately? What has X written lately? It may be that X is writing a book.

So it's a real-- it's something of a conundrum if one believes that book writing is a very stimulating-- as I do-- is a very stimulating and challenging enterprise, and one wants to continue to do it. Nonetheless, I note that increasingly, law professors are writing books. That if anything, the trend is-- in the legal academy, especially in the elite sectors of the legal academy-- is to writing more books. And I just find that interesting. And I attribute it to the fact that, as I say, books are a different sort of challenge, and books are a way to communicate one's ideas outside the legal academy as well as inside. And so they may come at a point where people just say to themselves, I'd like to put my ideas together in a somewhat larger format, somewhat more-- perhaps-- integrated format based on my previous work, and I'd like more people to potentially have access to it, and I want to do that.

I think it's a little bit like once you do it, you don't ever want to go back. But, as I say, it can come as a cost. So I just want to wind up with a story about talking about the arc of a career in terms of markets for one's work.

When my first volume came out in the law history series, there was an Amazon reviewer who apparently reviews regularly. And he said, I'm very uncertain about the audience for this book. I just don't know. Specialists aren't going to find it novel, perhaps. Generalists may find it a little too technical. So I'm wondering what the publishers and White's expectations were for writing this.

And I noted that review, and I would say in terms of sales of this trilogy, that his concerns have been realized. So I would also not recommend writing this sort of book for profit. But for me, it's been worth it. So anyway, I just want to-- the last story I want to tell has to do with what one does next.

The way Lew put it, I hope this isn't part of any expectation. I should be sort of basking in the sunshine and perhaps anticipating retirement, but I'm not. And I decided to do a new book. And the book I decided to do was a little bit analogous to a situation I found myself in in 1993 when I published the book on biography of Holmes and I had published prior to that one of the Holmes devise histories on the Marshall Court. And those were two very long projects which had taken me another basically 10-year interval. And I wanted a break from that kind of a book. And so I decided to do a book on baseball. And I did. I published a book called *Creating a National Pastime*.

Well, faced with a subsequent interval, at this point, I decided to do an analogy, a book on soccer. So I'm doing a book on the reception of soccer in America, why it failed to take root initially in the late 19th and early 20th century, and then why it has now suddenly emerged. And so I thought about getting an advance contract for that book, and I wrote a book prospectus. And I sent it to the usual suspects-- academic presses like Oxford and Harvard and Princeton. Princeton had done the baseball book.

And their response, I thought, was really quite interesting. Nobody took it. And the stated reasons that they gave were we're publishing fewer books. We don't do much sports history. And so, we're just unwilling to commit. So I was chastened but undeterred, and continued to peddle it. And I've secured a publisher-- University of Missouri Press which has a sports history series. But no advance, and let's say that on the prestige order of publishers, Missouri Press is not at the very top.

So I don't know whether that's a comment on me in the late stages of my career, but it is certainly a risk that one takes, another risk that one takes. Still, for me it's been enormously satisfying to pursue this particular form of scholarship, and I am sympathetic to anybody of my colleagues who wants to try to do it. But I thought I should warn you. Thank you.

[APPLAUSE]