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University of California
Berkeley, California

John Coons:
Jack Coons: Law, Ethics, and Educational Finance Reform

Interviews conducted by
Martin Meeker
in 2015

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John Coons

John Coons was born in Duluth, Minnesota, in 1929. He received his B.A. in history at the University of Minnesota, Duluth and graduated from Northwestern Law School, where he was Order of the Coif and managing editor of the Law Review. After practicing before the Armed Services Board of Contract Appeals, he returned to Northwestern, where he taught for 12 years. In 1968 he joined the faculty of the Berkeley Law School and stayed there until his retirement in 1994. Coons authored several influential studies on educational finance reform with fellow Berkeley Law professor Stephen Sugarman, including: *Private Wealth and Public Education* (1970) and *Education by Choice: The Case for Family Control* (1978). In this interview, Coons discusses his upbringing and education, and the formative influence of his Catholic family and faith. He recalls his years on the faculty of the Northwestern Law School and his introduction to the system by which schools are financed and his subsequent ideas for reforming that system. He also tells of his role in several important legal cases pertaining to school financing, including *Serrano v. Priest* (1971) and *San Antonio School District v. Rodriguez* (1973), and his interest in creating a system for providing parents with vouchers to send their children to a school of their choice.

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[End of Interview]

Two Songs

Gaude, Aureolus Urs (Go, Bears)
The Voucher Song by John Coons

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Interview 1: June 11, 2015

01-00:00:15

Meeker: Today is the 11th of June 2015. This is Martin Meeker interviewing John Coons for University History Project. And the way in which we start these interviews always is to ask you your date and place of birth.

01-00:00:41

Coons: I was born in Duluth, Minnesota on August 23, 1929.

01-00:00:51

Meeker: And can you tell me a little bit about the family that you were born into?

01-00:00:57

Coons: Yes. It is a little complicated. It isn't just dad and mom and all that. My mother's name Marguerite Lavelle Eddins and my father's William H. Coons. My mother was born on a farm in Kentucky and dad on a farm in Missouri. Neither one of them ever got through first year of high school. On the other hand they were interested in what people were thinking about and they read books and so forth. Mom had come from a family that is hard to trace. Probably French. Probably French Huguenot, I don't know, but at some point they become Romans, probably because she married a guy named O'Connor from Canada whom I don't really know at all—his grave actually was in Duluth. He came there and died before I was able to understand things. But O'Connor apparently came from Canada. He was an Irish immigrant in Canada and he taught mathematics, high school or something, I don't know. My suspicion is that he came down during the Civil War and managed to get a little booty out of the Civil War. Maybe this farm, I don't know. And please do not take this as anything that I know about but I just had a kind of feeling. My mother had four sisters, all younger. Their mother died when the mother was thirty-five. So that was very upsetting to the whole operation. Where exactly they went is unclear. There was some clustering in Chicago and my grandfather apparently went to some place in North Dakota to become a station manager. The ladies are located in our historic fiction here in Chicago or in North Dakota. In either case they, at some point being young and vigorous and unsatisfied with digging potatoes or whatever they were doing in Chicago, found some interesting young men. They all got married and they all went off some place. These connections resulted in thirteen different divorces. In any event, there were thirteen divorces in this cluster of women. By the way, their little brother didn't make it out because he got drowned at the Presbyterian picnic. So it was just these five women. Very interesting characters. If you're interested I'll tell you a little about them.

But anyway, they spread around the country and they and their husbands decided to depart and they found some new ones. My mother found somebody in Seattle. What she was doing there I'm not sure. My dad had got there because when his father died when my dad was six, he died in a farming

accident, and so my grandmother took the kids and started gradually going west, Kansas City and so on and so on, to Seattle. And somehow, I'm not quite sure, my parents got together there. And they got married at some point. In the meantime, the first husband, my mother's first husband and she had put the kids in an orphanage briefly. I think it was a year or something like that. Not briefly. But anyway, he took the boy, she took the girl. So I grew up with my half-sister. Funny story I'll tell you. Maybe I told you in the thing that I gave you for the kids. He got a job. I don't know what else he had done previously. But he got a job with something called Perfection Stove Company. They made kerosene stoves. I've still got one in the basement in case you're interested. Could warm your basement. And he got assigned first to Minneapolis, then to Duluth, Minnesota. Cool place. And he would drive around the north country to North Dakota, Michigan, northern Michigan, and so on selling these things. And it was a hard job, particularly in the winter. It was not hard just for him but for his wife and her youngest, namely me, shoveling the driveway.

01-00:06:40

Meeker:

So how many siblings did you have?

01-00:06:41

Coons:

I had these two half-siblings. And then my mother and father had two boys when they were living in Minneapolis. That would have been around 1920, I think, something like that. And then I came along as a great surprise in 1929. And so I had a brother who had a son as old as I. My brother was twenty-five years older and his son was my age. Is my age. He's still alive.

01-00:07:19

Meeker:

So your mother had five children?

01-00:07:21

Coons:

Yes.

01-00:07:22

Meeker:

Two of them were your half-siblings?

01-00:07:23

Coons:

By the first husband. So there were these great gaps between the family. There were three families really and I was sort of an only child. My brothers were still around and great objects of envy and admiration and so forth.

01-00:07:43

Meeker:

I imagine that your family didn't look a lot like the families of your friends and compatriots. Was the difference in this ever explained to you or did you experience it just as the natural order of things?

01-00:07:57

Coons:

Well, it is extraordinary. My mother did not want to have anybody know that she was not a good Catholic. I was never let in on the big dirty secret. My father was not a Catholic. He may have been at the end. Anyway, I knew I had

a brother out in California. We would get Christmas cards and so on. Shows you how clever, how really insightful I am that I never understood that his name being different had some social significance. So one night when I was about twenty years old, I guess, I had the family car and we were out hooting it up. I came home at 1:00 or 2:00 in the morning and the lights are all on. I thought, "Oh, come on. I'm twenty years old. Give me a break," you know. And I walk in and my mother is signaling like this to tell me there's something really big occurring. And she says, "Guess who's here?" And I looked at this chap and I said, "Gosh, your face is familiar." Of course, that was completely phony. It was my brother, indeed, that I had never met. And he was selling plastic out in Nebraska or something. He decided to come back and see his mother. Turned out to be a nice guy, very nice. Gradually over the years I got to know their family very well. In fact, I have a cousin from one of the other ladies in the family, was his mother, who was a big-time brain surgeon over in Marin. He lives in Sausalito, has a fancy house. He's a great guy, very funny. And we'd get together and tell lies about the family. He's a good guy. I'm talking too much about all this, I'm sure.

01-00:09:58

Meeker:

No, no. It's good to hear because I think it's maybe for the time not a super typical arrangement. I guess when you did figure this all out what did you think about it?

01-00:10:18

Coons:

It passed very quickly. These were good people. My mother was intense about being perfect and her children were perfect. I was perfect. I knew everything. I was smarter than anybody else. And my brother, who was also a very good student. He wasn't valedictorian, somebody else beat him out, but that was a source of great anxiety for my mom. But anyway, it passed. It was easy. I wasn't horrified. These were all good people. Whatever my values are or were, and I hope they are what they were then, if I am giving you a fair count, we were pretty easygoing people. Except anybody wanted to say that they were smarter than I was.

01-00:11:25

Meeker:

Well, tell me about your schooling. You went to Catholic school throughout high school, right?

01-00:11:31

Coons:

Yeah. Well, I went one-year to public school. That was when I was a junior, yeah. But other than that I went to a Dominican elementary school first through eighth grade. Didn't go to kindergarten. And we had these nuns from Illinois. I've forgotten what town. They had a home in Illinois and they came up to straighten us cuckoos out. And they did. They weren't movie-type nuns or television-type nuns. I never saw anybody get hit. Not that we didn't deserve it. And they drank beer. I knew that because later I delivered groceries to their home. And, well, they just seemed like decent people that you could trust. Now, they weren't all superheroes but some were, some weren't. Well,

we had this beautiful school that had been planned before the Depression as a temporary locus for the church and the school. And they taught in this very nice school which overlooked Lake Superior. And I'm sure I told you the story of the day the kids, some boys, some smart-aleck boys, not including me for a change. I didn't get into this, were in conversation with her about some stimulating subject. And she said, "Oh, go jump in the lake," and walked off to do something else. So, of course, they went off and jumped in Lake Superior. It was, I suppose, November or something like that. And the ice was forming but there was still room to jump in. And they came back. It's a good mile and a half down to the lake or something like that. And they were, of course, just completely frozen. She, turning her faux pas to advantage, took them around from class to class demonstrating them as examples of Christian obedience. [laughter] And then she sent them home.

01-00:13:59

Meeker:

It's interesting to laugh about now but was that a real lesson? Was that the kind of obedience that was expected of kids in those schools?

01-00:14:11

Coons:

No.

01-00:14:12

Meeker:

No?

01-00:14:12

Coons:

No. Nuns had different styles, of course. Sister Rosemary was more intense. But anyway, they were different kinds of ladies. But all-in-all if you played the game—a little humor never hurt anything with them. And so I grew up with an utterly different, what shall I say, kind of head thing about nuns. Now it changes a little bit. I went to the public school for ninth grade, which is right down the street. By the way, the electricity teacher used to call us "holy rollers," which we appreciated. It was fine. We were from Holy Rosary School. That's the connection. Anyway, the bishop had gotten into a big battle with the Christian Brothers who ran the high school. So out they went after many a season. And he had to find somebody to run this place. So what does he do? He gets a bunch of nuns. These are not Dominicans. These are Benedictines. They've never taught high school before. They had taught ninth grade, I guess, and stuff like that. But they came in for this new experience. Also it was made coed, instantly coed. So all the boys who had been there already and all the new boys had girls to sit by. What an experience. Now, we'd had girls in the elementary school but we were coming to high school to be men and here were these women. Well, of course, as boys go it wasn't bad to have girls around. You did what you did. But the poor nuns were undone, I think, that first year. It was chaos. But the principal, one Father Hogan, gradually got the place in order and in my third and fourth years it was a fine high school. They had everything. We didn't have much money. The building was kind of a fire trap, I think. But they tore it down.

01-00:16:57

Meeker:

Were the nuns just unprepared to deal with kids and courtship?

01-00:17:01

Coons:

Boys. Yeah, yeah. Well, I'm not sure. Some of this I have to make up because it's seventy-five years ago, something like that. But anyway, I think they were unprepared, yeah. Duluth had this funny separation. This school called Cathedral was downtown and both ends of town were socially somewhat different because of the manufacturing centers in the west end. By the way, it's a very skinny town. It's right along the lake. Goes on and on. So in the middle you have the downtown, you have the workers out there, and you have us middle class out the other way. And it was a mixture of not only boys and girls for the first time but it had always been, and it would be for them, a mixture for the nuns doing it, a mixture of class people. Not race. There was only one black family in town, as I recall. Maybe an Indian or two. So it is a bit of a challenge. But then there was another school for girls only which was very fancy called Saint Scholastica. Their tuition, I'm sure, was considerably higher. We used to get invited up there to participate in plays because they needed boys. And eventually they collapsed, too, and took in the boys. And they're doing very fine. They're flourishing.

Then my mixed high school, Cathedral, was abolished and a bunch of people from around the city who wanted to have a kind of mixed, not fancy but competent and so forth, private high school, formed a school called the Marshall School, which encourages more than just material thinking. It isn't a First Amendment shutdown all talk of religion kind of school. What's the word for different groups of religious people involved doing different things and you get some choice within the curriculum?

01-00:19:55

Meeker:

Ecumenical or—

01-00:19:57

Coons:

Yeah, that's what I meant. I'm not good on Greek.

01-00:20:02

Meeker:

It's interesting thinking about religion. And you mentioned at least three different Catholic orders. I mentioned that I went to a Catholic high school. I think it was a [Brothers of the] Holy Cross but it was never that big of a deal and we didn't have any idea what that really meant, at least I didn't. Were the differences between the orders clear to you and did you understand that or identify with any particular of the orders?

01-00:20:31

Coons:

Well, it was pretty easy to distinguish between the brothers and the ladies, that's for sure. The brothers were a bunch of tough guys. In fact, I got to know some of them later when I used to teach at Northwestern. It's hard to believe now but we would recruit law students back in the fifties and I would go up to Saint Mary's College in Minnesota during duck season, by the way, and stop

and see the brothers there and talk to some of them who had taught my own brothers earlier. But the answer is I didn't really grasp that there was any difference until I lived it. I have the sense that the Dominicans were much more relaxed and having fun. But on the other hand, their situation was much more stable than the woman who had to come in, meet boys and girls together for the first time and so on. So I can't really blame them and I'm not sure I can answer your question properly. But I think in my experience there is a difference. Yes.

01-00:21:52
Meeker:

Did you identify with any particular order, whether when you were a young man or when you got older? Did anyone have a particular cultural sensibility or set of specific beliefs that you were more attracted to?

01-00:22:08
Coons:

I think every young Catholic boy in that time, at least where I hung out, probably was most fascinated with the idea of being a Jesuit. They had the best PR. They got the worst PR as time went on but that's all right. They're coming back, I guess. I don't know. And the pope's helping them out.

01-00:22:37
Meeker:

When you say the best PR, what does that mean?

01-00:22:40
Coons:

They always seemed more important than the Dominicans, the Dominican fathers, or Salesians or the Patricians or the whatever. To me. Perhaps my best friend had a brother who was a Jesuit and that may have had something to do with it. They were the most learned and so forth. When I was in the Army I went to Georgetown and I got to know a couple of teachers there pretty well. And, of course, we were all kind of disappointed in what happened in the sixties and seventies. They seemed to be losing their grip on their mission as I understood their mission.

01-00:23:44
Meeker:

What do you mean by that? What was it that happened in the sixties and seventies?

01-00:23:59
Coons:

Well, between becoming terrifically political and in many cases kind of politically centric—really that's the same thing. Self-centered I suppose I should say more. More in the way of saying, "Oh, be yourself." And I just never thought of Jesuits as being themselves. They've got to be somebody else. And so it's a hard question. And then even being yourself, who is yourself is perhaps sometimes a person subject to authority. And one should take the notion of being oneself as ambiguous in that respect. But I think I'm back home with them. They seem like, basically and for the most part, terrific people. They're making great sacrifices. And they seem to produce a lot of good literature and all of that. I don't read it all obviously.

01-00:25:11

Meeker:

So it sounds like in the sixties and seventies they got maybe caught up in the sort of human potential movement and that kind of thing.

01-00:25:21

Coons:

All that stuff. Right.

01-00:25:21

Meeker:

Well, in some ways that was the vanguard of intellectuals at that point in time. So it makes sense that that would happen.

01-00:25:31

Coons:

Very easy to understand. That's right. And there was nothing wrong with doing it. Oh, Lord, I'm going to forget. Father Bernard Lonergan. Does that name mean anything to you?

01-00:25:41

Meeker:

It does ring a bell but I can't tell you why.

01-00:25:44

Coons:

Yeah, he was from a Canadian order. I think he would be in the way of kind of an epitome. He wasn't a Jesuit but he was a very learned guy and a good guy who did get stuck with the booze but eventually broke it and came back and did great things, too. But I think he was always troubled by the—he wanted to dig in and have fun but I think he saw there was a limit to what fun he could have.

01-00:26:18

Meeker:

Wasn't Marshall McLuhan a proud Jesuit, too? I remember correctly?

01-00:26:24

Coons:

Was McLuhan a priest?

01-00:26:26

Meeker:

I don't think he was a priest but I know that he might have been to seminary or something like that.

01-00:26:31

Coons:

Yeah. I think he was involved with Lonergan and the Holy Cross fathers.

01-00:26:40

Meeker:

Well, anyway, your high school, Cathedral High School: were there a lot of other Catholic schools around? What schools did you compete with in sports typically?

01-00:27:02

Coons:

We competed with the public schools. There were one, two, three, maybe four. We played against Superior State and superior whatever the other one was. Junior high. There were two superior high schools, I think. Hold on. Superior Central and Superior East. I'm in college now. I'm certainly away. Then we played Duluth Denfeld and Duluth Central. So we had at least—two,

three, four. And then I think there were some kind of borderline schools like Cloquet and Two Harbors and some places, little towns up the street. And it was interesting. I don't want to overdo it because it isn't worth it. But to understand again, there are workers out here and there are bosses out here to a certain extent. So if you had a high school in the east end of town they were mostly bosses' kids. If you had a high school out in the west end it was mostly workers' kids, who were better football players, by the way. We had the advantage, perhaps, of having both in that we were right in the middle of downtown and the kids came from both ends and they came there by choice and it was perfectly socially mixed. And oddly enough we had friends from the west end. They were a little different, some of them. Some weren't. I'm overdoing it. My parents had started out sort of in the west end and so they had very good pals out there and we'd go see them all the time. It isn't as if there was an apartheid or anything like that. But they brought slightly different attitudes, slightly less scholastic aspirations to high school, and they were better football players and so forth. They were good guys and girls.

01-00:29:46

Meeker:

Was your mother a homemaker?

01-00:29:47

Coons:

Yes. But she was a homemaker. Here I was born 1929 and she had to settle down and take care of me now again after all—I suppose she had a lot more bridge parties and the rest of it. But now she was stuck with me for the next twelve years or whatever. And then I guess the economic thing happened that I should have mentioned. My dad lost his job about 1939, just as the war was coming on in Europe and so forth.

01-00:30:27

Meeker:

So he had that same job throughout the Depression and then he lost it just as it was winding down?

01-00:30:30

Coons:

Yeah. Right. Yeah, I don't know what the story was. But I can tell you one thing. He was hard of hearing. And for a salesman of kerosene stoves I don't know whether that's a good feature. Anyway, they decided, well, we've got to do something so they put another mortgage on the house and started a little store about a mile and a half from our house. And we started trying to teach mother how to drive the car so she could get over there and help out. She never did learn. Had that accident but never did learn. So she either walked or took buses all around town to go up to this store in the afternoon to relieve my father, who arrived at 7:00 in the morning. Came home for a little bit in the afternoon, then went back and came home at 10:00. So it was a tough row. But the war proved to be a stimulant to the economy so they got themselves out of debt, sold off the house when my dad got sick. That was ten years later, 1950. I was graduating from college. So they figured let's go live near my brother Bill. So they went off to Arlington, Virginia. Until then, mom had worked herself to the bone going to and from the store. It was hard for her to

do that. But she was a tough lady. Once in a while dad and I would go fishing or hunting or something, or Bob would come home from the service. By the way, may I tell the Bob story?

01-00:32:30

Meeker:

Sure. Bob is?

01-00:32:32

Coons:

Bob is closest to me. He's deceased. He was nine years older. He was in aeronautical engineering school, a place called—I can't remember now. Something like Pillsbury. No. In Chicago. It'll come to me. But anyway, when December 7th came along, he got on the train that night, came home the next morning, tried to join the Navy. He was going to go off and blast Japanese. And I was very jealous because I was too young to participate but I at least had the satisfaction of going with him to the recruiting office, where it was discovered that he could not see the eye chart. So he was turned down. He was very depressed but when I got home he was happy to hear that I had memorized the eye chart. So he went back next week and joined the Marines [laughter] and went off to shoot in the South Pacific. He made it anyway. He came back, all the rest of it. But that's a kind of a good story at how people felt. And I felt the same way. We wanted to be in there.

01-00:33:58

Meeker:

Do you remember the news about the attack on Pearl Harbor and the beginning of World War II?

01-00:34:04

Coons:

Yes, I do. My dad, and it was afternoon, and he'd come home. Maybe he'd come and get mom once in a while and go back. Ten minutes off and so on. Shut the store. And we were listening to the radio and on came this weird utterly startling announcement. And we looked at each other and said, "Well, gee, what the hell does that mean?" We had no idea really. And he had to go back, he felt, to the store, so he did. I guess I went with him for the rest of the day. A bunch of us, we contacted or we were contacted by some neighbors. We said, "We got to think about this. Let's get together and talk about this." So we did. We spent that evening listening to the radio at some neighbor's house and wondering what was going to happen to us all. So it's in my memory, like nothing else.

The war was very interesting to us, even before we got in it, because for one thing, one very practical thing. My mother had gone out and gotten an oil cloth map to put on the kitchen table so I knew where Warsaw was and Rome and all these places. And even North Africa, I think. And so we'd listen to Edward R. Murrow, wish we were there fighting those no-good people. It was a great geography lesson. I startle my high school and even my college geographers by knowing where some strange places are. Not of any possible use.

01-00:36:21

Meeker:

Sure. Guam or Guadalcanal or something like that, right? Yeah.

01-00:36:24

Coons:

That's right. When the pictures began to leak out and so on, and these horrible things going on that went on on Sunday morning, there was a certain amount of fear, part of which explains—I don't know what I would have done if I had been Roosevelt but how he treated the Japanese, including my next door neighbors, good friends.

01-00:37:06

Meeker:

Here in Berkeley?

01-00:37:07

Coons:

Yeah, right there. The Ishimarus who spent part of their childhood in camps. But I just don't know what I would have done because we didn't know anything about this. Intelligence wasn't good enough and so forth. But anyhow, as I recall, all of that came to an end with Midway. Guadalcanal was in doubt but Midway was a clear victory. I think we all felt sort of calm and confident and we were going to get them and let's go.

01-00:37:50

Meeker:

So you followed this pretty closely, I imagine, as a youngster.

01-00:37:53

Coons:

I did. I did. Had I been a year older I probably would have joined the Army or something but instead I went to college. The war was over. Nobody to shoot. And I should have gone to Korea but I had a fancy scholarship to law school because of the generosity of a lot of adults around me. I still feel I should have gone but I didn't and I prospered by it. Some of my friends got killed or shot-up or whatever but what I did was to finish law school and get drafted. While I was waiting for my commission to come through, happily they lost my urine specimen—this is my story. I think it was that but I'm not sure—in the medical. Whatever it was, we had to do it over again. So I got drafted in the fall of '53. The war was now over. Again, the shooting was over. And I went off to Fort Jackson, marched around for a month. One day I got a call to go up to the headquarters and I went over there in my fatigues and they put two silver bars on my shoulder. I was now a first lieutenant. Came back, outranked everybody in the company except the commander and had to eat lunch with these guys at the dorm hall. I think the officers would gladly have shot me in cold blood if they hadn't been watched by about fifty recruits who were sort of cheering me on and having a good laugh over in the corner.

01-00:40:00

Meeker:

What precipitated this?

01-00:40:01

Coons:

You mean why were they angry?

01-00:40:03

Meeker: No, why were you given the promotion?

01-00:40:09

Coons: Well, it was the practice then to take guys out of law school and send them off to the University of Virginia, which was the location of the Judge Advocate General school. The Army Judge Advocate General school was there. And I was going to be in the Army and that's where I would go. I'd get my commission, and then I'd go there and study for six months, you know, military justice. But since I didn't get my commission because of the medical foul up, whatever it was, I would have gotten into the program when it was half over at University of Virginia. So I didn't get to study any JAG law and so I was useless. I got my commission for no reason. It was absurd, perfectly absurd. But they commissioned me and they wondered what to do with me because they couldn't send me in the middle of this thing. So they said, "Where will he do the least harm?" And so they thought about it. "Well, probably money, dealing with money." So I went off to the Pentagon to try government contracts cases, which was a wonderful experience.

01-00:41:42

Meeker: Well, we'll get there because we're kind of jumping ahead a little bit. A couple of things that I wanted to follow-up on about your upbringing. You had mentioned going to Catholic school. You had mentioned your experience with the brothers and the nuns. And you said that your father was not Catholic or not observant but your mother was.

01-00:42:10

Coons: How did that work out?

01-00:42:09

Meeker: Yeah, how did that work out? Was she insistent that you go to Mass every Sunday? What was that experience like and what did you learn from being raised in that environment? Is it possible to talk about any particular values?

01-00:42:27

Coons: Sure. Sure, I think so. Well, my dad had never been a Catholic. His family was Protestant. That was the word, Protestant. Nobody knew what it meant and he didn't know from a hole in the ground.

01-00:42:40

Meeker: It meant not Catholic.

01-00:42:42

Coons: Meant not Catholic. Not Catholic. But he was very tolerant about the thing. I can't say whether he was a believer or not but I think basically he was. I think his mother probably was. I never knew any of these people so I can't tell you for sure. He certainly didn't make any objection to our going to this Catholic school, two dollars a month tuition. And he would go with us once or twice a year just to be there. And there was never much of an issue about it. He was totally tolerant of whatever it was we were doing. He liked us and said, "Well,

we're doing okay. Let's not horse around and raise a fuss." Now, when, happily or otherwise, mom's first husband died, then she hustled him off to the parish house where they performed a new marriage.

01-00:44:06

Meeker: Really?

01-00:44:07

Coons: Because she took that seriously. She didn't want anybody to know, of course. He didn't give a rat's patooty but she did.

01-00:44:19

Meeker: So there's a real difference between marriage in the eyes of the state and marriage in the eyes of the church?

01-00:44:24

Coons: Yeah, that's right. Well, all this time she'd been pretending. She'd been going to communion, doing all the things that good Catholic girls do. Well, she wasn't. So there. But he was just very quiet. He would get mad once in a while. But mostly he just kind of worked along. He liked his kids. He was very good about taking me anyplace that he was going. In fact, mother and he and I, I remember going up to the Iron Range while he was selling stoves and listening to Wendell Willkie make his acceptance speech for the Republican nomination of 1940. Nineteen forty. Yeah, that was about the time my dad got fired.

[brief clarification conversation deleted]

01-00:46:11

Meeker: In some ways I'm trying to ask you to compare what your upbringing in Catholic high school and Catholic Mass would have been like compared to your friends. But that's sort of an impossible thing to do because obviously you don't know what kind of values they were getting in their different environments.

01-00:46:36

Coons: Well, you have windows and so on. Yeah.

01-00:46:38

Meeker: Well, looking through those windows, peering through those, can you get a sense of how your Catholic education and perhaps regular going to Mass, what kind of values that instilled in you.

01-00:46:57

Coons: In me?

01-00:46:57

Meeker: Yeah.

01-00:46:58

Coons:

I think it gave you an arresting insight into what it's like to have a larger perspective. You came in, you said a prayer in the morning and you went to Mass once in a while and confessions and all that stuff. In the end it was a transcendental kind of direction for the whole experience. And while we were as materialistic slobs as anybody else, and those nuns with their beer and all that stuff—it's easier to remember that you got that dimension if you've been raised as a kid getting it punched in your head. They didn't punch it in but we did have catechism. And you learned a lot of stuff. Basically you learned that you have choices to make. You are free. But, by the way, you owe your situation to something more than just President Roosevelt. He's fine, that's fine, but remember who you are and what your responsibilities are.

01-00:48:37

Meeker:

Did you go to confession?

01-00:48:38

Coons:

Yes.

01-00:48:39

Meeker:

What did you think of that experience?

01-00:48:42

Coons:

I was a bad boy like every other boy or maybe worse. I thought it was good for me. Maybe it's like Frasier, I don't know. Do you ever watch Frasier?

01-00:49:02

Meeker:

Well, I have but why don't you tell me what that means.

01-00:49:03

Coons:

Oh, I mean he's a psychoanalyst. It is more than that because he doesn't pretend to power to do anything.

01-00:49:12

Meeker:

To resolve or—

01-00:49:14

Coons:

Yeah. [laughter] And I don't go much now. I go once in a while. I should go more often. Because it's odd. It is necessary and it isn't necessary. You're supposed to go and you're part of an organization that this is part of your responsibility. So I should go. Or if I'm on my way to make it and I'm sorry for being a bad boy and intend to try to do better, that in itself is forgiving. You don't need the other except that it's on a different level. It's a responsibility to keep the supports of civilization in place. If we simply say to people, "Oh, be sorry. That's enough," well, okay. I agree with that. But our nature seems to require some kinds of posts and boxes and stuff to make us stand up straight more and make us worry about it. So I think I got that. It's repetition. You remember *Repetitio est mater studiorum*. If you say it often enough maybe you'll remember it.

01-00:50:49

Meeker: I was post-Vatican II.

01-00:50:51

Coons: Yeah. That's right. Oh, dear. That's too bad because the Latin really was fun. It still is. I still enjoy the Latin. And we had some pretty bad boys. They did bad things and I did some bad things. But they were always two-dimensional. They could say, "I can get out of this. I've got to stop this." Or I come back and do it again and I've got to stop it again. It's part of hope, I guess, is what I'd say. And I read a lot about stuff like this for school. I don't mean for the schools. It seems to me that the complete elision of transcendental thought from public school is a deprivation of human character. You take away a whole dimension of the most important part of your thoughts. You don't have to be thinking about it all the time. But it's an assumption that we aren't allowed to make. And I guess I wish we were in some way. I wish people could get what they want. I don't want Obama deciding which brand — or what's his name in Turkey?

01-00:52:35

Meeker: *Erdoğan.*

01-00:52:37

Coons: *Erdoğan.* Yeah. Thank God he didn't get his way.

01-00:52:42

Meeker: Is it possible to have this kind of education, transcendental education as part of school in a secular fashion do you think?

01-00:52:50

Coons: I think so. There are probably a hundred ways to do it. I don't know. And we find out if we have a market. Milton Friedman was that right anyway. If you have an open enough system, there has to be, they have to be able to squeeze the truth out of these educators about what they're doing and what their goals are and how their kids are doing on intellectual but also on emotional or spiritual stuff. And it's not easy. I don't have an easy answer. I think there are probably a lot of ways. What's her name, the European lady? What in the world? The school mistress? They have the German gang who are secular and then they have Maria—no, okay. There's a—

01-00:54:03

Meeker: We can add it later on. So don't get too tripped up on it.

01-00:54:06

Coons: Anyway, I don't remember names at all anymore really. But the respect for other values, it seems to me, can be very easily managed. But you can't manage it in pure public schools without running into the First Amendment and I think that's right. I don't think public schools should say, "Yeah, those evangelicals, they got the answer." We decided that back at around 1900, that that's what we'd do. And then Justice Black and others kicked it out and now

we don't have anything. All we see now is be yourself. "Oh, God, I don't want to be myself. I want to be better than that."

01-00:54:55

Meeker:

There are a lot of people who don't want to be themselves. Were there any significant sort of people who provided guidance to you other than, say, your parents as you grew up?

01-00:55:11

Coons:

Oh, yeah. Oh, I'll say. I think the most important was, yeah, I'm sure, was a man named Patrick Lyons. He dropped out of the seminary, became a lawyer, showed up in Duluth. I think he was from Ishpeming or something like that. He went to the University of Minnesota or something like that. And he wound up in Duluth practicing law. And he showed up at our school and asked the pastor, whatever, maybe that we would like to have a Boy Scout troop. And they said, "Sure." So he taught himself all about Boy Scouts and we rented the gym at the public school next door and every Tuesday night we'd run around and sing songs and play basketball. We got to know each other. All of us, all the boys got to know Pat Lyons very well. He discovered, among other things, that we had some good singers. He didn't know any music but he taught himself music and formed a boys' choir. It was terribly successful. And we would go around singing all over the place. Once a year he'd take us to the only nightclub in Duluth called the Flame and we would sing for the patrons. We would sing Tommy Dorsey and Cole Porter. I don't know. All sorts of stuff. And, in fact, a couple of the guys, maybe more, got scholarships for their voices for singing around the country and I got a job singing with a band in college, which was a lot of fun. But I couldn't maintain it on my schedule.

01-00:57:20

Meeker:

It wasn't like a dance band?

01-00:57:22

Coons:

Yeah, it was a dance. Jimmy Branca and his whatevers.

01-00:57:25

Meeker:

He was the band leader?

01-00:57:28

Coons:

He was the band leader.

01-00:57:28

Meeker:

And you didn't get much billing because you were just the vocalist.

01-00:57:31

Coons:

I was the vocalist, yeah, and it didn't last very long because I had to make a choice between singing with them and going on football trips. It was in the fall of '49 or something. Forty-eight, forty-nine. I don't know. And I'd rather play football. So I didn't. But I've had fun. Anyway, Pat Lyons gave us singing lessons. We went down every Saturday morning to some guy named John something and Pat would pay the two bucks and we'd learn a little bit,

half an hour of singing. And I got to know Pat very well, partly through that and partly because he asked me to meet with him and an Indian boy named Johnny Day who had shot his father and he was just languishing in jail. So he was maybe my age or something. I did and got to know him and Pat was representing the Nett Lake tribe. And he got Johnny off. He didn't get any money. In the fall you'd come into his office and you'd find great bags of wild rice from the tribe. He became the tribe's lawyer. But that's how he got paid.

01-00:59:13

Meeker: Was this your first experience to law?

01-00:59:16

Coons: Yeah.

01-00:59:17

Meeker: Yeah?

01-00:59:17

Coons: Really. And he was so generous and kind. I'm sure he had his faults but I didn't know them. And so Pat wanted to help me. He didn't have a transcendental law outlook. He advised me maybe I could work as an insurance salesman down in Minneapolis and go to night law school, I guess as he did or something like that. Well, that was fine except I was in college and the guy said, "Well, why don't you try to get a scholarship." And I said, "Well, I don't know. How do you do that?" So these two guys helped me a lot. One of them, Ellis Livingston, he was a Missouri farm boy, by the way, and a Marine in Okinawa and other places. He was a professor of history and he wanted to help. Literally I counted them and I remember this correctly. His wife typed fifty-two letters for me to various law schools seeing what would be the good place to go. And then there was a judge in Duluth. Pat saw what was going on and he said, "Yeah, that's a good idea." This fellow was from Northwestern who gave me a pitch. I can't remember his name now. Anyway, so I got the best offer from Northwestern. It was not too far from Duluth, five hundred miles. And I don't know. Maybe if I'd gone to Harvard life would have been different. But Northwestern was plenty good for me.

01-01:01:18

Meeker: Well, before we get to law school, and I think that I want to get there in a few minutes, but I'd like to talk a little bit about your undergraduate education. When did you say your parents moved to Virginia?

01-01:01:26

Coons: Nineteen fifty.

01-01:01:43

Meeker: So you were living at home throughout your undergraduate time, right?

01-01:01:48

Coons: Yeah. I'd walk down the five or six blocks to the college.

01-01:01:53

Meeker:

You mentioned one of your mates in school went to Notre Dame. Were there any Catholic colleges you were looking at? Why was Duluth Teachers College, I think it was called at the time, or Minnesota Teachers College, attractive to you?

01-01:02:13

Coons:

It was cheap. We didn't have any money. That isn't fair. We had a nice house with a big mortgage. And we were going to do better because 1947 we were doing okay. I don't know why I didn't aspire to go to some other place. But my brothers had gone to local colleges before they went to the University of Minnesota and to this place in Illinois. Started out there. Somehow I just didn't catch on. Well, I don't know that but I might have gotten some help from some fancy place. But I was helping out some at the store and life was good. I thought I'd give it a try and I did and I suppose I told you this story. But I went over to register one day and there was a big sign "Duluth State Teachers College." I came back for my first classes, it was "University of Minnesota, Duluth branch." I thought there was a chance I could play football there. That probably played some role. And I did. And it was fun.

01-01:04:01

Meeker:

Did you know what you wanted to study when you enrolled?

01-01:04:02

Coons:

No. I liked history. I thought history and math would be safe. I'd be a little on one side and on the other. And I guess I was. I would never present myself as a mathematician, God knows, but I did get a minor. And I just enjoyed reading about goofs that other people had made in the last 10,000 years, how we did or didn't get out of it. And [laughter] they gave me a little job in the history department, so I got to know these characters. They liked me and they helped me.

01-01:04:58

Meeker:

What was your job in the history department?

01-01:05:00

Coons:

Well, I'd read student papers and exams or I'd look up stuff, I guess, get books. Nothing very fancy but you'd get to spend time with the professors. I told you about the one, Ellis Livingston. The other one was Jim MacLear, M-A-C-L-E-A-R, who was from Chicago, University of Chicago. He was really a scholar. And, in fact, he put out some books in his time. Was very ascetic. Skinny, kind of otherworldly sort of man. He gave me a lot of help, too. It's hard to explain. People, it's their personalities and so on. He was very good to me in terms of encouraging me to keep on trucking. He and Ellis Livingston were enough to take up one's time in college with your professors. Meanwhile you have football and you've got all this stuff. And I went through in three years so I had to take a lot of stuff. A lot of it had nothing to do with anything but the history was good.

01-01:06:45

Meeker: What was your rush?

01-01:06:48

Coons: Money, I guess. I'm not sure now that I think of it. I don't know. I honestly don't know now that I think of it why I was in such a hurry. Because I was having fun. But I felt somehow I should get the meter running or something. So I did.

01-01:07:22

Meeker: At what point did law school seem like an attractive option for you?

01-01:07:24

Coons: Oh, soon after I got into college. I began to enjoy history. I took history of the English constitution and of our constitution and so on. I saw lawyers having fun thinking about stuff. You see so many of the politicians are lawyers. And some good guys are lawyers. It was always just a crapshoot with me. I didn't have anything in particular. I had thought a bit about going into the seminary but girls distracted me and there you are. As it turned out, it seemed a profession that I was reasonably good at. Maybe it was just sort of instinctive. I like to read and the lawyers were reading the kind of stuff that I like to read.

01-01:08:40

Meeker: Well, I imagine education in a history department at that point in time is quite a bit different than a history department today.

01-01:08:47

Coons: Oh, I think so.

01-01:08:47

Meeker: This is before social history, right?

01-01:08:49

Coons: Oh, yeah. Lots of—

01-01:08:52

Meeker: —politics and law.

01-01:08:54

Coons: Oh, yes. Yes, yes, indeed. Yeah. Well, today, it's whatever you get when you walk in. That's right. I don't know whether I'd enjoy college today.

01-01:09:09

Meeker: It is very idiosyncratic to who the professor is, I would guess.

01-01:09:11

Coons: You know what I've been reading? Is Peter Berger. Do you know Peter Berger, that name? He was a sociologist. He went to different places. He may have wound up at Harvard. I'm not sure. Wow. Meaning the sociological introduction of all the different theories and so on and how to measure this pain and that thought and so forth. I had known him just a little bit. I think

he's long gone now. What is his book called? Oh, well. Oh. *The Imperative of Heresy in Modern Life*. The shift in theological and philosophical ideals in relationships makes it very difficult for anybody to be a kind—well, the evangelicals manage it maybe but for the rest of us it's very hard. You have to find a new way to kind of express your stuff.

01-01:10:25

Meeker:

Meaning that you can't be heretical because everyone is?

01-01:10:28

Coons:

Well, we're all heretical in a certain sense. It's an exaggerated metaphor. But anyway, that we all have to show our capacity to listen to other unfriendly ideas and then engage. And that's good. As far as I'm concerned, that's fine. And I don't think he is going to tell me I have to give up anything I believe but rather that you have to be prepared to at least discuss and treat as—well, he uses the great German theologian. Until this last half-century he was Mr. Big. He's gone now. Well, anyway, he uses him as perhaps an example of getting too far off unless you do this, unless you believe this and say it you can't call yourself a real mind or something. This is very vague.

01-01:11:51

Meeker:

Let's talk about, in the time we've got left today, your time at Northwestern. And you did give a little description of how it was that you ended up there and that you in fact did apply to dozens of law schools. Was this the one you got into or the one that you got the best deal from?

01-01:12:18

Coons:

It's the one I got the best deal from. Yeah. I got a really good score, I don't remember exactly what it was. And so that helped a lot. They took it too seriously. Today who knows. But anyway, so I got some nice offers. I went to Northwestern in the end, in Chicago, because it was well-recommended. It had a great library. It was in a big city. It was near people that I at least could pop-in on once in a while. My aunt, my mother's sister. She'd married a rich guy so she had a fancy house with a pool table and things like that down in the south side. And my brother Bob lived there with his family. I never saw people much. You get pretty busy. And they offered me a job in the cafeteria or something, wherever I wanted, if I wanted to work part-time. All-in-all it was a sweet costless deal. And so away I went.

01-01:13:56

Meeker:

How did you experience the transition to living in a big city?

01-01:14:01

Coons:

It was really easy. It was very easy. Strangely, I didn't have any trouble at all because I'd never lived in a dormitory, never been away from home. I had visited there. Now, I should say I went to visit my aunt when I was twelve years old. I went on the train. They sent me off and the next morning Alfred the butler picked me up in the Cadillac. That was a pretty strange experience, I have to admit. Maybe that was so shocking that anything I saw in Chicago

after that was unimportant. But anyhow, life at the law school, it was intense in the scholastic part because I was there. I knew I was on the spot. In the very first day, by chance, I got the wrong assignment and the professor gave me the ho-hum or the whatever and the next day called on me. I was prepared. He rattled my cage for an hour. But anyway, he was a good man. So I found the intellectual life very consuming and enjoyable but I did find that my hands would break out, which tells you something, you're nervous. And so it wasn't just a sweetheart relationship. I worked in the cafeteria. Then I worked serving patients in the medical school. I have a great story about that if you want it. But anyway, I was mostly reading books and studying. I didn't have any extra money. I might go up to my brother's but he was way down on the south side so it was a big trek. And to my aunt's once in a while. But mostly I just hung around. We drank a little beer and read books.

01-01:16:29

Meeker:

What'd you think about being exposed to so many different kinds of people? Duluth is a pretty homogenous place and there's a great amount of racial diversity in Chicago, there's tattoo parlors, there's sailors on leave. There's women on the street, all this kind of stuff that I imagine was probably pretty rare in Duluth.

01-01:16:54

Coons:

Well, I'll come back to Duluth. It was fine. I didn't seem to feel out of place.

01-01:17:05

Meeker:

Sometimes kids coming from the hinterlands will experience that either in a—

01-01:17:11

Coons:

Liberating or the opposite.

01-01:17:14

Meeker:

Yeah, opposite, exactly.

01-01:17:16

Coons:

I didn't get liberated. [laughter]

01-01:17:21

Meeker:

But you also weren't frightened by it.

01-01:17:21

Coons:

I had girlfriends and bought them cheap drinks and stuff like that. The law school campus is downtown and Evanston is way up north. Occasionally there were invitations or something to go up to sororities and you met girls. And there were people. I worked in the cafeteria so there were girls in the cafeteria. There were girls in law school but not very many. There was Dawn Netsch, a year ahead of me. They were all good students. Dawn Netsch, this woman that I knew best, she just died last year. She ran for governor of Illinois for the Democratic Party. She lost. This is some time ago [1994]. In my time there, which was three as a student and twelve as a faculty member, we had three women—what am I saying—first in their class. When I came back to work

there—you'll get that later, I guess. But I went to women's schools to recruit. Northwestern had also some black guys. In the 1940s the Supreme Court had decided this business about separate but equal. Well, they didn't want to build fancy law schools for black students from Mississippi so we would arrange to get whoever was qualified and interested to apply and look them over. So we had quite a number, I'd say as many as ten, which was remarkable. I don't think they even took them in Harvard at the time. I don't know. I shouldn't say that. That couldn't be true. But anyway, some of them, for the rest of the nineteenth century, showed up on my television every so often as judges or so forth. Guys who had made it. This guy in the senate, is he, or in the house, I can't remember. I can't even think of his name now. But I see him all the time and he looks to me like somebody I knew back there in the good old days. So there was a certain universality to the law school up to a point. And in a dormitory in which there were a lot of nurses—the dormitory was a nine-story building right down across the campus down there. And there were just all kinds of people there and we all bumped into each other, at least in the lounges and the cafeterias and so forth, and I worked in the cafeteria. I don't know. I never seemed to feel like I was in a maelstrom.

01-01:21:23

Meeker:

Yeah. Did you continue to go to Mass on Sunday mornings?

01-01:21:28

Coons:

Oh, yeah.

01-01:21:29

Meeker:

What church did you go to?

01-01:21:29

Coons:

I went to the cathedral, which is on the same street as the law school. You just go west. Law school's right on the water. And you just go west about a mile to the cathedral. Yeah.

01-01:21:53

Meeker:

And how did the experience attending the big cathedral compare to your hometown church in Duluth?

01-01:22:03

Coons:

Well, of course, I didn't know so many people. When I got back on the faculty I had certain connections, by chance, partly, with the chancellery office and places like that. And then I remember most remarkable day was the day Vic Rosenblum said, "Hey, why aren't you in church? Your president just got shot." And I remember going off to listen to the announcement that he was dead. But that's something for another time. Chicago, of course, is an intensely Catholic town. At least it was then. I don't know what you'd call it now. I've been gone so long. A lot of my fellow students were Catholics. Irish and Jews, a lot of them went to law school because that's what they were allowed to do. And so you got Irish law firms and Jewish law firms and mixed

law firms and so on. And you can see it in the names in the Congress. I don't know what Denny Hastert is but, anyway, he's probably Irish. [laughter]

01-01:23:44

Meeker: That is interesting. Even in San Francisco a lot of the older law firms are a mix of Irish and Jewish names.

01-01:23:53

Coons: Yeah. That's right. That's right. Now, in the law school we had no Catholics on the faculty. And when I came back I got ribbed about that a lot from Bill Wiertz, the later secretary of labor. William W. Wiertz. We became good friends but he was always nagging me about believing. While I was a student half of its students would have been gone if it were a big issue or something like that. So it just wasn't important in the school.

01-01:24:50

Meeker: So in the context of your academic program in law school, did you start to develop an interest or a specialty? What kind of law was particularly intriguing to you?

01-01:25:04

Coons: I liked the less technical stuff.

01-01:25:10

Meeker: What does that mean?

01-01:25:11

Coons: Well, contracts. Stuff that had been less legislated, perhaps. This just came to me now. I'm not sure this is true but my first thought is that I seem to like—I wasn't keen on detailed statutes about taxation, although it is true—maybe this confirms it—my tenure piece was on antitrust.

01-01:25:51

Meeker: That's the broadcasting work, right?

01-01:25:54

Coons: No, no. I don't have anything in there. I wouldn't look in there. I just ran that conference. Maybe I wrote an introduction.

01-01:26:09

Meeker: We're talking about the book *Freedom and Responsibility in Broadcasting* [1961].

01-01:26:14

Coons: Don't worry about that book. Newt Minow, who was a graduate of the law school, arranged to have this big meeting at his old law school and all these people came, these big shots from the business and from academia and so forth came. And I just ran it. I called him up and said, "Can you make it?"

01-01:26:44

Meeker: So that book was basically a proceedings of the conference?

01-01:26:46

Coons:

Yeah. I wouldn't look at it much. But anyway, there's nothing wrong with the book and the opinions of the people involved are interesting. It was a good conference and so on. Actually, I wrote something on the FCC for my first piece of student writing in the law review. The Communications Commission. Then another piece on the juvenile court and the handling of juvenile offenders. Illinois had the first juvenile court act. I don't know. Somebody assigned to me maybe or something like that.

01-01:27:57

Meeker:

Well, so it sounds to me like you were kind of feeling your way around different elements and different parts of the law.

01-01:28:02

Coons:

Absolutely.

01-01:28:03

Meeker:

Did you ever intend to become like a practicing attorney and maybe join a law firm? Did that seem like a goal in hindsight?

01-01:28:15

Coons:

I hadn't the foggiest idea what I was going to do with it. Here's the thing about law school. And I guess I saw that. I'm not sure I saw it but it's consistent with what I just said. And maybe it's changing. But in the first year, at least, of law school most of the intensity is, "Well, now, Mr. Meeker, you say X. Now, does it then follow that you must say Y because of this?" "Oh, well, well." It's like the movie. What's the movie again?

01-01:29:01

Meeker:

The Paper Chase [1973].

01-01:29:02

Coons:

Paper Chase. Yeah. I thought the guy, this horrible old guy, was a pretty good teacher up to a point. He was malicious and all that. He was not my ideal. But he was engaged in what I thought was a useful reassembly of your parts that college delivers us.

01-01:29:29

Meeker:

Breaking down and then reassembling, right?

01-01:29:30

Coons:

Yeah, yeah. In the end you come out whole and you come out more critical. If there ever was critical thinking, you know this expression that they like to use today. Whatever that means, I'm not sure they know what it means, and nor do I. But anyhow, law school, in the old days at least, the old Socratic method, was really interesting to a lot of us. A lot of us hated it but I loved it. Used to listen to some smart guy invent ways of reshaping your thinking and saying, "Do you really believe that? If you say that, then what follows? X?" "Oh, gosh, no." "But then why not?" and so forth. That was really fun. And I'm not a great—what am I trying to say—technical person but it made me I think

better at being critical of things than I ever would have been if I'd gone to a history department or something like that. What exactly was the question?

01-01:30:53

Meeker:

You answered it. In essence I was asking what kind of specialization you developed. What I heard you say to me, and tell me if I'm wrong, was that, well, specialization was kind of beside the point. What they were teaching us was—

01-01:31:12

Coons:

How to think. And, of course, when you get to income tax and so on and corporations, which I did not enjoy, you had to learn a lot of stuff. So I never had aspirations to do that. But it seems to be changing today. I can't tell. I can't go into everybody's classroom and nor do I want to. The *New York Times* is pushing law schools to be more practical or more I don't know what. But I would go the other way.

01-01:32:00

Meeker:

It's interesting. I think a lot of people today look at law school as similar to business school. It's a professional school. In that you are to go there and come out with skills of the profession. And it sounds to me like you're describing an education process when you were there in the early 1950s very differently.

01-01:32:25

Coons:

I think that's right. Exactly right. Again, I'm getting back to the other side of the line. I would begin my contracts course when I was teaching it with a passage. The passage is from the Bible in which the guy hires the workers for the day and he keeps hiring workers and then he pays them all the same. And I let people think about that and worry about that. Was that a good idea? Was that right? How would you handle this? If you went to a judge, if you were the first guy of the day and you went to a judge and presented to the judge, how should you even approach thinking about this? It's a hard question, isn't it. As a perfect law school exam—you need a little more framework than that. I didn't but at the end of the course you could take that same example and people would begin to say, "Well, what was implied in this? Whatever was expressed, just the one denarius, isn't that it?" Or some would say, "Well, things changed as time went on because he can see all these other people hired." Although they didn't know at that time what they were going to get. So I don't know. Anyway, that's what I think was the best part of the law experience.

01-01:34:09

Meeker:

By bringing out that example at the beginning of the course, you're also talking about sort of a moral dimension of law.

01-01:34:19

Coons:

Sure.

01-01:34:21

Meeker:

The interpretive dimension of law that's not just statutory.

01-01:34:25

Coons:

Everything. Yeah, yeah. This was common law contracts. Mostly. Certainly the example would invite common law. They wouldn't know any statutes or anything like that. Yeah. But it's very simple. That's probably the human being. Contracts is very close to what we're doing right now. I have one with you. Now, what are you paying me? [laughter] But I'm getting much more out of it.

01-01:35:02

Meeker:

My undivided attention. [laughter]

01-01:35:04

Coons:

Yeah. That's what I value. Okay. Okay.

01-01:35:11

Meeker:

Interesting. As you're reaching the end of your law school time did you have a sense of what was next for you?

01-01:35:24

Coons:

Well, I thought I was going in the Army. I had this commission promised. Well, I had to take the exam, bar exam. So I went to Washington, lived in Arlington with my parents, and took the Washington bar. Then I came back to Illinois and stayed back in the dormitory and took the Illinois bar. And the next day four of us headed for the Canadian boundary and the canoe country. Took some poor guy from Belgium who I can remember as we paddled across this windy lake, "Merde, merde." [laughter] He wasn't too happy he'd come along on it. But anyway, we had a good time.

01-01:36:30

Meeker:

You must have spent a lot of time in the wilderness up there, huh?

01-01:36:33

Coons:

Oh, yeah. I got to know the canoe country through one of my classmates and his brother. Guy said, "Why don't you come with us? We're going up." So I did. It was a break or something in the late summer. And I discovered I really liked—mosquitoes and all, what the hell. Have you ever been north of Canada up in that lake country?

01-01:37:01

Meeker:

No, never been up in that area.

01-01:37:02

Coons:

Oh, it's so beautiful. Oh, man. It's better if you go in late August or September when there are no bugs or before the bugs, when it might be cold and too much water and so on. But it's really nice. It's just fabulous. It's a little more civilized and bureaucratized now I think. You have to stop at all the rec stops and sign the right papers. The Canadians have an island out there

where, when you cross into the border in your canoe, you have to stop at the customs and do stuff. But it's worth it. It's just fabulous. If you ever get a chance I'd go. The only other place I ever went, or another area I ever went, is up in British Columbia. I can't remember the name of it but it's a very famous drive north from Vancouver. And you go into this remarkable set of rivers which almost circle a mountain. You can guess that's not possible. But in any event, the distance between the connections is very small and it's just a gorgeous place.

01-01:38:31
Meeker:

When did you meet your wife?

01-01:38:34
Coons:

I met her in the fall of '55 when I came back from the Army.

01-01:38:45
Meeker:

Well, why don't you tell me the story about meeting her and then maybe we can wrap-up for today.

01-01:38:46
Coons:

Okay. One of my classmates was a fellow named Dick Flynn. Dick went off to help write the school integration case. First he was clerk to what's his name, oh, my gosh, the previous guy. Who was from Northwestern, the chief justice who was from Northwestern but I can't remember his name [Chief Justice Fred Vinson, 1946-1953]. Warren took his place. But anyway, then he took Warren. Warren took him. Two of our guys. One was Earl Pollock, who was the editor of our law review when I was there, and then Dick Flynn. Well, Dick Flynn came back to work at a big firm in Chicago and his wife turns out to have been a good friend of this young lady who she knew very well and to whom this young lady said, "Oh, have you seen my new engagement ring?" or whatever. She'd just gotten engaged to some nice man. And to which my friend's wife responded, "Oh, I'm so sorry. I wanted you to meet Dick's friend Jack Coons, who's just come back to teach at the university." [laughter] Well, I don't know what happened in between. But anyway, so we met though—it was a blind date. It's not a very exciting courtship but it was exciting for me. And she was a teacher who had graduated from Northwestern and she was teaching up in Highland Park, land of what's his name, the mayor in Chicago.

01-01:40:47
Meeker:

Oh, Rahm Emanuel?

01-01:40:49
Coons:

Rahm Emanuel. I think he and what's his name, the other guy who works for Obama, the two of them.

01-01:40:56
Meeker:

Oh, yeah, Axelrod.

01-01:40:58

Coons:

Axelrod, David Axelrod. I think they're both from Highland Park. Maybe she taught them, I don't know.

01-01:41:03

Meeker:

Was that more of a Jewish neighborhood at the time?

01-01:41:06

Coons:

Yeah. Highland Park is very Jewish. So, well, one thing led to another. She wasn't the first girl I ever knew, but she's the best. And so she taught for a few more years and then we started having kids. We had five. We've been very lucky and life goes on. I don't know. I never made a lot of money but I always made enough just to have a nice house like this here.

01-01:41:40

Meeker:

Sure. In Berkeley.

01-01:41:42

Coons:

We paid \$57,000 for this house. Can you imagine?

01-01:41:48

Meeker:

I can't even imagine.

Interview 2: June 16, 2015

02-00:00:15

Meeker:

Today is the 16th of June 2015. This is Martin Meeker interviewing John E. Coons for the University of California Oral History Project. And this is session number two. Last time we wrapped up when you were talking about finishing up your undergraduate education and you had started talking a little bit about your time in law school at Northwestern. So why don't we pick up there today. And maybe you can just start by giving me an overview of what Northwestern University Law School was like.

02-00:00:57

Coons:

Sure. It's a fine place, first of all. It was then and is now. It's located not on the Evanston campus where they play football and so forth but rather downtown Chicago. It's down on Lake Shore Drive. I don't know how they got this fancy real estate. But there's a campus there with the law school and the medical school and at that time a business school. They've closed that. My son went to the business school on the Evanston campus. Anyway, they had dental, business, medical, and law. The law school was a relatively ornate building which had the beauty of an English estate or something like that. It was and is a really nice building. It's not very efficient but it's a building that makes you think the law is important. And Northwestern has a long history of good education at the law school. There was a man named Wigmore, of all things, John Henry Wigmore, who was the dean for a long, long time and a great scholar on the law of evidence and so forth. He made it great. There are several wonderful Midwestern law schools. Michigan, University of Chicago, and Northwestern, I think ought to be included. Well, they've just done a good job and it was fun to be there. It was fun to be in Chicago, which is a very lively place. I loved the architecture. Of course, today it's even much more. Much more powerful a sense of control over life, which is, of course, false. But that's all right. And being right on Lake Shore made you feel important. All the cars going by on the outer drive. And once in a while you jumped in the lake and went swimming. Not between September and April, okay, but once in a while. That area of Chicago is very wealthy, the outer drive. Well, it was pleasant to be there. Everything was lovely. My rich aunt lived in the neighborhood. So if I were desperate I could always go over and see Aunt Betty. My brother lived way down in a town on the outskirts of the south end, so that wasn't so easy to get to.

02-00:03:56

Meeker:

What, like Calumet City?

02-00:03:57

Coons:

Where did he live? It was just outside of Chicago on the south end. I can't remember now. Now wrong about my aunt. I should tell you a little bit about her. She married a rich guy. He was the head of the Chicago Automobile Association, I guess it was. No, they weren't there yet. They were still down

on the south side in their mansion which I had been sent to visit once. I told you about meeting the chauffeur and all that stuff. So I got to go there once in a while. Anyway, it was a pleasant situation. I stayed at the dormitory which was 200 yards away off the green. Nice green lawn by the other drive. And now once you got inside the dormitory you weren't so impressed. I was on the ninth floor and the rooms were very small. I lived with my friend Don Ames from Duluth. He and I both took off for Northwestern and I think prospered and we had a good time together. We were very, very different kinds of people and that was good for us.

02-00:05:16

Meeker:

I know that you did some work, different jobs when you were attending the university. And you had mentioned off-camera that you did some work at a hospital?

02-00:05:29

Coons:

Yes, I did. I worked first at the dormitory in the cafeteria for a year-and-a-half, something like that. Perhaps that's worth just briefly mentioning. From the fifth grade, I think it was, I had managed to have gold teeth. A friend of mine smashed me in the mouth with a putter during a summer hockey game in the backyard or whatever. His father was a dentist. He hated me. He had to fix them. And so I had these three big gold caps in front. I don't know what it did to my love life but I had always felt a little bit obvious. Happily, when I got to my job at the cafeteria I had to lift a milk can up into the milk dispenser and as I lifted it up the door came back over my head. Of course I didn't notice it. So my head hit the door and the can hit my mouth and so I got some more new teeth free from the university cafeteria. And they're still there.

02-00:06:46

Meeker:

They weren't as conspicuous as the gold teeth? Okay. [laughter]

02-00:06:49

Coons:

There they are. They're still there. [laughter] So it was a very lucky break. Literally.

02-00:06:55

Meeker:

I imagine in that part of the country, though, there were more than a few young boys who had hockey incidents and missing teeth.

02-00:07:01

Coons:

Oh, indeed. But the other job was down the street at the medical facilities. Once I worked in the medical school, I can't remember exactly what I was doing there. Probably delivering lunch to somebody. But I think it was at Passavant Hospital. In any event, that was the university hospital right down the street. And I delivered trays to patients and one day I noticed a sign on the wall saying, "Henceforth midwives shall not accept offers from mothers to name the baby." Okay. Boy, that's very interesting. So I asked some of the medical guys what this was all about and they told me. The midwives, that is the guys, then, in those days, so many guys, would go down and deliver

babies in the appropriate places, wherever that was, and the mothers were in the habit of offering them to name the baby for them. And it was surprising. Many of them chose to name the baby Loyal Davis. Loyal Davis. I think probably the telephone books in Chicago still have a lot of those surviving Loyal Davis's from the 1950s. Loyal Davis was Nancy Davis Reagan's father, a very conservative man, apparently, whom the midwives loved to make fun of and name every baby they could after him.

02-00:09:06

Meeker: They weren't paying homage to him?

02-00:09:09

Coons: It was a joke.

02-00:09:13

Meeker: Was he associated with the hospital somehow?

02-00:09:14

Coons: I'm sorry, he was the head of the Northwestern Medical System, hospitals and the rest of it.

02-00:09:23

Meeker: So there were a bunch of Loyal Davis's running around, both young boys and girls or just boys?

02-00:09:32

Coons: You've raised a question that has never occurred to me. It wouldn't be a bad sounding name for a girl, would it?

02-00:09:42

Meeker: Yeah. Like Prudence, right?

02-00:09:44

Coons: Yeah, Prudence. Yeah. Okay. Next time I go to Chicago I'll try to find out.

02-00:09:51

Meeker: Yeah. [laughter] That's funny. You had also mentioned a bit about your appreciation of the teaching style at law school. Can you give me a description of what that was?

02-00:10:06

Coons: Sure. I'll try because it inspired me. I hope I replicated it in some degree. I had never experienced anything quite like this. But my first class in criminal law I was all set. I'd studied hard and all that. Turned out I'd studied the wrong thing. I'd read the wrong cases, not untypical of me. But I did. The teacher who called on me, first, I was the first one called on, decided to make an example of me. So after I failed the test the first day because I didn't know what I was talking about, the next class he called on me again and this time I was ready or I thought I was ready. But Socratic method—read Socrates, of course. That's the origin of the name. It's a way of making people learn to

think, I suppose today they say critically, whatever that means. I don't know what that means. Making you think. "Well, Mr. Meeker, if you say that X has this quality, well, then, doesn't it follow that Y has it, too, because Y has whatever?" And so you say, "Well, maybe," or something or you make some sort of answer. And then the teacher responds, "Oh, well, then you think that X is the case or Y is the case?" "Well, I'm not sure." "Okay, well, let's assume—" and so forth. You never tell them anything. All you do is make them, hopefully, think about what they're saying and whether it follows and how big is the concept and how many alternatives fit within it and who's the villain without saying so and all of that stuff. It was really fun. I just enjoyed it. I've always enjoyed it, to sit around and just say, "Well, gee, whiz. If you say that, you must be saying—is that what you're saying?" "Oh, no, I didn't mean that." It's good to get somebody to surprise them with a—

02-00:12:37

Meeker:

Did you recognize at the time that this was a different method of teaching, perhaps, than you had at your Catholic high school?

02-00:12:42

Coons:

Oh, sure. It wasn't a huge surprise in that sense because everybody reads a little Plato. But it was just fun. This guy was so good at it, this particular professor. He was a tough guy. Frank Allen was his name. He later became the dean of the Michigan Law School and various other things, distinguished. And he was a good guy. But, boy, he didn't fool around. The student would be really puzzled at first because you weren't sure you were learning anything. There wasn't any content to it. I'm exaggerating. You have to read the case and you have to know the facts and so on as the court describes them. But you were often just puzzled as to what was going on. A lot of students didn't like it but most of them did. And most of them became pretty good lawyers, I think.

02-00:13:53

Meeker:

It's different than memorization and recitation, right?

02-00:13:56

Coons:

Yeah, right.

02-00:13:58

Meeker:

You have to put in practice the things that you've memorized in a critical fashion like this. Maybe that's where that idea is coming from.

02-00:14:09

Coons:

That's right. And it has a certain adversary element in it obviously.

02-00:14:16

Meeker:

Which might be good training for an attorney.

02-00:14:17

Coons:

For some aspects of it. Or some kinds of being an attorney. Yeah. Obviously the trial practice. I don't think most attorneys really act that way with clients

whom they want to have love them. But they would act that way perhaps in court because it's going on the record and you're trying to get somebody to say something they don't want to say. So anyway, that was fun. Some used more of it than others. And as law school went on there was less of it because you were supposed to catch on. And so when you got to, oh, I don't know, antitrust and corporations you might get less of that and more direct stuff. It's my impression that today the Socratic method has fallen, on not maybe evil days, but it is no longer regarded by first year law teachers as just absolute, the right juice. We get criticized for not telling people enough secrets and making them wander around in the dark. My favorite, but maybe you wouldn't want every teacher like that.

02-00:15:44
Meeker:

Could you tell me a little bit about your fellow students and what sort of diversity of background they represented?

02-00:15:50
Coons:

Sure. They were mostly Midwesterners. I suppose half of them were from Chicago or maybe more. I'm not sure. Big place. They were a real duke's mixture. The main body of them were Jews and Catholics. It's amazing. The profession drew minorities right from the beginning in this country, in the nineteenth century. There are lots and lots of Irish Catholic lawyers and lots and lots of Jewish lawyers. And it was partly because they could get into law school and do something. They couldn't get into medical school apparently, a lot of medical schools. I don't know when that changed exactly. It was certainly changed by my time, although women couldn't go to Harvard Law School, I believe, and they were not in favor of Jews for students or faculty for a long time. Our school was different. We were very much inviting to oddballs, I would say. Different people who were in fact different. This was the time of what they called "separate but equal." There'd been a series of cases in the United States Supreme Court which said, "Well, okay. You can keep blacks and whites separate but you've got to give both of them equal facilities." Well, the southern states found it hard to financially support black law schools so they would often send them north. They made an arrangement for people to apply and so forth. We had quite a number of young black men who became quite famous in the Civil Rights Movement. Maybe some of them are still in Congress. You know that old black guy? Representative John Lewis I have a hunch he may have gone to Northwestern but I'm not sure. Anyway, one of them became mayor of Chicago, Harold Washington, who was there when I was there. It was a surprise for some white students. There was prejudice among some. But I think we all got a lesson and we really liked these guys. So it was nice.

02-00:18:47
Meeker:

Do you recall their contributions in the classroom? Do you recall them participating on an equal footing?

02-00:18:58

Coons:

I remember the guy in my class who talked a lot. Actually, he was from Chicago. He was not a southern transfer. He was on the law review and he loved to talk and he had a movie style black voice. And the teachers kind of loved to get him going. Oh, I wish I could think of his name now. Anyway, he was an interesting, lively, juiced up sort of guy. I should also say we had women, some. Not in large numbers. I think we had maybe five in my class. One of the interesting thing about the women in the law school were that they were either very good students or not there to be terribly interested in law school. So most of them were very good students. Well, when I was in school as a student we had one who was head of her class and later ran for governor in Illinois. Very good friend of mine, Dawn Netsch. She just died last year. And then she taught and so she had a big career. She married a Netsch. He built the Air Force Academy. He was a just a plain old architect, but a good one. And she was a good friend of mine. We had a trip to Washington, three of us one summer after school ended in a car that sat really two people and all her luggage and it was an experience. This was before the freeways and so forth. She worked in Washington one summer. Got to know her well. We all got to know each other very well. But anyway, we were all good friends. What else can I say about the student body?

02-00:21:23

Meeker:

Well, you ended up leading it.

02-00:21:28

Coons:

Yes. Late in the first year they were making nominations for somebody to run the junior bar association, the JBA. And some idiot put my name up and I didn't say no. I didn't know anything about this. There was no plan. But I got a little office in the law school. Junior bar association. I was the president.

02-00:21:57

Meeker:

But your fellow students must have held you in some esteem in order for that to have—

02-00:22:00

Coons:

Well, I guess so. Unless the other candidates were odious. I lost an election later, I'll have to tell you. But that was different. Anyway, it was important in my life. I didn't realize it. But, of course, I got to know the dean. And Dean Harold Canfield Havighurst. He was a great scholar in contracts and a very sweet man. Very nice man. He was shy and I never would have known him unless I had been somehow connected with the operation.

02-00:22:51

Meeker:

What did the head of the junior bar do? What was part of the job description, if you will?

02-00:22:55

Coons:

Oh, you introduced. You got speakers and you had parties. Not much. There wasn't much to do. We made suggestions to the faculty. Somebody at one

point talked me into something which I always regretted and that was making some statement or in some way or some message to the faculty that they looked so shabby or something like that. They didn't dress properly. Well, I paid the price for that, of course. [laughter] Bill Wertz. You remember W. Willard Wertz? He became the head of the Labor Department during Johnson.

02-00:23:43

Meeker:

Was he part of the Chicago School of Sociology or I'm thinking somebody else?

02-00:23:50

Coons:

No, no, no. He was a law professor at Northwestern.

02-00:23:51

Meeker:

Oh, that's [Louis] Wirth. Sorry.

02-00:23:52

Coons:

That's okay. And I remember at graduation I got a little token of some kind. "Wait a minute," he said. "First he made all the faculty hate him by telling them how to dress." Then, I did something that they liked but I can't remember what it was that they liked. Anyway, he was a good friend of mine. He was the last of that crowd to die, that old, old crowd. And we used to talk on the phone. He was in a place, a home in Washington for a long time. Good man.

02-00:24:42

Meeker:

Was being the head of the junior bar the same thing as being student body president?

02-00:24:44

Coons:

Yeah, that's what it was. And you did it in your second year because your third year you were getting ready to blast off and so on. At the end of the second year, for some reason, we got an award of some kind, something from, I don't know, the American Bar Association or something. Somebody had all these kids, these students come to San Francisco. They go someplace every year and had a meeting. Well, they decided to run me for president of the thing in San Francisco. There were three candidates. I came in third. But we had a nice time. It was a great trip and it was nice to get a plaque.

02-00:25:30

Meeker:

Was that the first time you came out to the Bay Area?

02-00:25:33

Coons:

No, my parents and I had driven out I guess when they sold the house. I came home and late one summer we drove all the way out to see my dad's surviving relatives in Seattle and down to see my sister in Tucson and my half-brother in Los Angeles. And then I hitchhiked back to Chicago for school. I guess it was the third year. I don't know. I guess it was the third. Maybe it was the second year. Some of it doesn't seem to fit exactly to my timeframe. But I did it. And so it was very interesting. Oh, I remember. We didn't get to San Francisco.

We drove all the way straight through on number Interstate 5, is it? Yeah. So it was my first visit to San Francisco.

02-00:26:32

Meeker: What did you think of it?

02-00:26:33

Coons: Well, I was stunned.

02-00:26:36

Meeker: You had already experienced other big cities, right, so—

02-00:26:40

Coons: Yeah. Well, sure. Chicago. But obviously it's a very different place and it was then. And I compared it to my home in Duluth. Duluth is built on hills over the water. But Duluth did not have quite as much pizzazz, I guess you would say. But it was nice. I loved it. And when we came back so many years later, my family and I, to stay here, I remember the thrill of coming over the hill up here and once again looking out at the Pacific. It was thrilling. It's a great place.

02-00:27:26

Meeker: You did some work with the Northwestern Law Review?

02-00:27:35

Coons: Yes.

02-00:27:37

Meeker: Tell me about the nature of the work and your association with that entity.

02-00:27:42

Coons: Yeah. Well, if you get reasonably good grades you get invited to join the law review, if you feel like it. You have to work hard and do research and write something. After my first year I was assigned a topic that I had to write on. It involved the Federal Communications Commission. What was it? I don't remember. I could look it up. I suppose I've got a copy someplace. So I spent the summer of '51, the evenings over at the Library of Congress. They were not air conditioned. It was about '95 or whatever. I remember that very, very well. Not every night I did this but I went there when I wasn't having fun. So then you get published a little bit. I then, in my third year, was the managing editor of the law review. The editor was a guy named Earl Pollock who is still alive and functioning. I saw him at a reunion a couple of years ago. Good man. Can I tell you about him?

02-00:29:11

Meeker: Sure.

02-00:29:12

Coons: Okay. He had a piece of good luck. He was a Jewish kid, I guess he was from Minnesota, too, maybe Iowa. I forgot. And he was very smooth. He really

could talk and he was very smart and did very, very well on everything. And second-in-command was a guy named Dick Flynn. He was not co-editor. I've forgotten what his title was. But at the end of the third year, lo and behold, they get appointments as clerk to the chief justice of the United States, who had been a Northwestern graduate. Fred Vinson. He either died or resigned the following year and Warren came in, Chief Justice Earl Warren, who decided to keep his clerks for another year. So these guys were there during the decision-making and the original opinions on segregation, school segregation.

02-00:30:56

Meeker:

But that came out in '54, correct?

02-00:30:57

Coons:

Yeah. So I'm sure Earl and Dick probably did a little drafting of that opinion. And they went on to be very successful lawyers, Dick in Chicago and Pollock in Chicago until he went to Florida. So anyway, they were good lawyers. Yeah.

02-00:31:22

Meeker:

Did you ever apply to be a clerk?

02-00:31:25

Coons:

No, because I was going in the Army. I don't think I would have been accepted anyway. I was a good student. I was in the top 10 percent, Order of the Coif they call it. But I had fooled around too much. I think they were smarter, tell you the truth. But the law review was demanding and fun and Pollock did a good job and that thing about the FCC was published and then I did a piece with a fellow student. I guess it was a law review seminar and they assigned stuff, possibly triggered my interest in the lives of children. We did quite a long piece on juvenile delinquency and its treatment in the court and juvenile system in Illinois, which was actually the first ever in the United States. It was 1899, I think. Well, it was not really exciting work but it was kind of fun. That was a guy named Gordon Lincoln, my partner. Gordon Lincoln became the founder of an airline down in the southeast. Not Southeast, that's Eddie Rickenbacker. Have a story about him, too. Gosh, I can't remember the name of the airline now. Anyway, he got rich and famous and good for him.

02-00:33:13

Meeker:

Was there much education or at least discussion around civil rights law when you were in law school?

02-00:33:22

Coons:

Oh, yes. Yeah. We were all fired up to do stuff. We were going to save the world. We weren't quite sure how we were going to do it. I think we had a very primitive idea of what the world was like. We'd all mostly had middle class childhoods. As I told you before, I think we had one black family in Duluth. But certainly there were a lot of students like me who were very interested in changing the world a bit. They had fraternities in law school.

And, remember, I was a member of something. It was a new experience because in college they didn't have fraternities where I went. But I remember there was a fight over whether to let—was it blacks or was it Jews? I'm not sure. But anyway, it was a big melee and several people I think were sort shamed. So can I say there was no prejudice left in the place? No. This was 1950. So there was always a certain amount of turmoil about that in our minds. The faculty, they were all Democrats. Wait, there was one Republican, Danny Schuyler. Dan Schuyler and I taught property together for several years. Good man in spite of his party. So I would say they tried to instill an obligation to do something about race. I don't think we thought about women as being in any way in peril. But that was to change also.

02-00:35:45
Meeker:

Do you recall if law students or your faculty had a particular agenda about how to bring about greater racial equality? Were they setting their sights on reforming education? Were they setting their sights on income? Were there particular areas that they thought that as attorneys they could plug in and bring about reform or change?

02-00:36:22
Coons:

Not as much as I would have hoped, I guess. They were very clearly all a little left of center. Not much. I mean not all. One man that I mentioned. They were all prepared to talk about it. I don't recall that they actually did a whole lot. But then I don't know all their private lives from those days. Bill Wiertz was certainly an active liberal Democrat. But it was just boiling up. It was just beginning to come to a boil. And certainly everything changed and everybody was engaged in something. But the soil was all prepared and I think it helped a lot to have this crowd of young men, mostly men, have a sense of some responsibility to do something about injustice.

02-00:37:44
Meeker:

At the same time that there is this percolating attention to civil rights, in particular at your law school, this is the period of the Second Red Scare. McCarthy is at his height during your time. I guess once Eisenhower is in office he starts to go a little too far and the Republicans want to rein him in. Do you recall that whole political issue and the extent to which it was integrated into your law school education?

02-00:38:35
Coons:

Well, I know everybody hated McCarthy. He was the butt of a whole lot—there were students who didn't. There were students who were very much concerned about what McCarthy purported to be concerned about. But remember, McCarthy came to a boil just after 1953. He was in there slugging. I know you want to talk about Army days sometime. And I'll just mention very briefly when I was at the Pentagon it was during the McCarthy hearings. Joe from Massachusetts, that great lawyer who sat there and made a fool out of him—

02-00:39:23

Meeker: Oh, Welch, right?

02-00:39:23

Coons: Welch, Joseph Welch. They had a big office in the Pentagon. It was right across the hall from us. So we would be doing our stuff over there, which had nothing to do with anything of the sort. But there were all these televisions in there, people writing stuff down and guys running back and forth. It was very interesting to see how the Army was in there slugging for Joe Welch and his side. And, of course, they succeeded. I wasn't part of it but it was fun to watch.

02-00:40:03

Meeker: Let's get to your time in the Army, too. Did you feel like you had to watch yourself at that time?

02-00:40:13

Coons: No.

02-00:40:15

Meeker: Did you feel like the atmosphere was treacherous enough that you had to be careful about expressing your own opinions?

02-00:40:31

Coons: It's interesting. I've never quite thought about that and the answer must be yes. I've always been weighed down by certain kinds of notions that you don't talk too much about because you never know what's going on on the other side, or it's just not right or something else. But I think it was a pretty spirited open discussion still. I think it was better probably in some ways. The students on my floor, we had a whole floor of law students and we had a place with the television and all of that. And they'd get into arguments about this and that, about civil rights or so forth. And there were real old bulldogs from the right and I think they felt perfectly content to say what they felt. I wouldn't say perfectly. And I hope not you should have some sensitivity to other people when you're arguing about stuff. In fact, you're more effective if you can be Socratic. A little bit. But sure. I think so. There were certain issues that you just were delicate. In fact, I think if one of the black students were there in the lounge you might hesitate to get into the talk about civil rights because you knew somebody would probably say something that would offend Joe Smith. I may be going beyond what I know now. I'm not sure. But I felt it.

02-00:42:41

Meeker: You graduated law school in '53 and you knew that you were going into the Army. Can you tell me a little bit about the process of you becoming commissioned and what you ended up doing?

02-00:42:57

Coons: Sure. Right. I should have gone to Korea. I started law school in 1950 just after the invasion in South Korea. And one of my friends was killed, another was shot-up and so forth. I could have gone. Did I tell you the story about my

brother in the Marines? Well, I think that was my attitude. It should have been. But it was leaking away, I think, probably at the time. We thought, “Oh, that’s going to be over [soon], everything will be all right.” So I went off to law school instead of volunteering. It was okay. It was legal. What is the word for you don’t go in the Army if you’ve got a postponement? Deferment. I had a deferment and so then at the end of third year it was time for me to pick up a rifle or something. And I had thought about becoming a pilot, a Navy pilot. But the Army answered my thing first and they said, “Sure, okay. Come and be a first lieutenant in the JAG Corps, the Judge Advocate General Corps.” And I said, “Wow, that sounds pretty interesting.” Start out as a first lieutenant. So I said, “Yes.” They gave me a medical. I don’t remember what it was that they lost. I like to say it was my urine specimen. Any event, they lost something so I spent the summer of 1953—well, I took the bar exam in Washington and then in Illinois and then had a canoe trip with my old pals and came back to sit and wait. And I waited and I waited and they finally said, “We’re going to have to repeat whatever the test was.” So maybe in August I went and had another test.

Meanwhile, the University of Virginia Judge Advocate General School, it’s an Army school but it’s at the University of Virginia, started its course for JAG officers. And by the time they found my whatever, I had already been drafted. I was off marching around in Fort Jackson, South Carolina, and it was too late to go to JAG school. And one day Sergeant Tippens said, “Coons, get to the headquarters.” So I went off in my fatigues and Colonel whatever pinned a bunch of stuff on these dirty old fatigues and I outranked everybody in the company except the commander. [laughter] It was absurd. I sat at lunch with the officers. I had to do that. That was the rule. And they hated me. You could see the steam rising practically.

02-00:47:20

Meeker:

Why, because you hadn’t paid your dues?

02-00:47:23

Coons:

Of course. I’d done nothing. I was some kind of privileged slob. And the boys, of course, were over there whooping it up, like laughing and giggling and cheering me on. So they didn’t know what to do with me because they couldn’t send me to JAG school, it was half over. And so they had to find something at which I wouldn’t do any particular damage. They found it at the Pentagon. They gave me a job as a trial attorney for the Board of Contract Appeals. Armed Services Board of Contract Appeals. ASBCA. I arrived on the train. My father picked me up because they had moved to be near my brother. I lived with my mother and father. Mother made breakfast while I put on my uniform. I got on a bus and go off to fight the war. It was absurd. But what are you going to do? I mean, am I going to say no?

02-00:48:34

Meeker:

Did you pass your bars on the first time around?

02-00:48:34

Coons:

Yeah. So I was a lawyer and they put me to work on this job which was absolutely wonderful. These were cases. Some of them involved a lot of money, some of them didn't. It's just like a federal court without a jury. It's a judge. They call him a commissioner. I've forgotten what they called him. Holy smokes. Anyway, one of the people on the commission, on the board, they're board members, I guess that's what we call them, acted as a judge. And we had trials that were not completely informal. They were more or less like a non-jury trial in federal court, which was wonderful experience. You get these big thick files. They were supposed to make underwear for the troops and they didn't make it right or they didn't make it in time or they made too little or it itched. I don't know. They were all kinds of fun. I had one case involving chimpanzees. You can imagine the jokes we got, what were they for. [laughter] So anyway, they were in fact for Walter Reed Hospital. They were doing research with chimpanzees. No longer, of course, kosher now. But anyway, it was a typical case. It didn't come to trial. The facts were all clear. The providers down in wherever they were, the Congo or Liberia or someplace, were late. They didn't provide the gorillas, the chimpanzees. On the other hand, typically the Army kept saying, "Well, get going. Get going," and let them go past the date. And pretty soon there was an issue about whether there was a waiver of the due date. I had lots of those. The office was full of waiver cases and you'd sit there and talk about what did you see and what were the letters and did they reset the date and did you agree and so on. But in the chimps case it didn't come to trial and we lost.

And I had a similar case, almost exactly the same. No, a different issue actually. Duke of something or other, he was a dog, they bought a dog, the Army had bought a dog from somebody who said this is the best dog in town for Army work. And Duke didn't measure up to his billings. And so they returned Duke and refused to pay for the dog. Well, truth is, I don't remember how that case came out but there was no trial. Had a lot of trials, though. I'd say I spent about half my time in trial. Maybe I'm exaggerating. It was really quite wonderful. Here I was, I was twenty-four when I started. Yeah, I guess so. Anyway, off you'd go to New York to the federal courthouse there in Massachusetts and New Hampshire, San Francisco, Chicago, and try these cases. And it was just, "Who, me?" It was really wonderful.

02-00:52:45

Meeker:

Did you enjoy the work?

02-00:52:45

Coons:

I loved it.

02-00:52:46

Meeker:

What was your record in the end?

02-00:52:50

Coons:

I have no idea. Isn't that awful. Seriously, I don't. I think I did all right. I just don't know. I can't remember how any case came out except the chimpanzee and the dog.

02-00:53:12

Meeker:

Right. Do you remember there being a lot of pressure from your superiors there to represent the interests of the Army well?

02-00:53:20

Coons:

There was reasonable pressure, yeah. My boss was a guy named Colonel Mario Mateo. He was just a sweetheart. He was a wonderful guy. He was a good lawyer. He did make us work harder. But he was just a pleasant human being. He got the hang of you and knew whether he could trust you to do your job or not. And he did oversee. But you were given a huge lot of independence. I tend to think I did okay but I can't remember the score.

02-00:54:09

Meeker:

Well, it's interesting that after this experience you didn't go into trial work as a professional.

02-00:54:18

Coons:

I never knew what I wanted to do. I never could figure. I went to law school because everybody can go to law school and it's no harm to your career if you got a law degree. I found it was fun. I loved to do what I did. But one day the phone rang and the old dean said, "Hey, can you get out of the Army?" And I said, "No, I signed up for—" He said, "Well, I hear some folks are getting out early and I wondered if you wanted to come back and be the assistant dean and professor." I said, "What?" Here was the story behind it: There was a real guy who turned the job down. He had been a previous law review editor, clerk at the Supreme Court, brilliant guy. What the heck was his name? Dan Walker. He became governor of Illinois. I knew him. He had nine children. Every other governor in Illinois goes to jail and this guy went to jail. But first he turned down my job offer. So I got to take the job. And I don't know exactly why I decided to do it. There was an aura of elegance about being a professor at a university. Wow. Me? So I did it and I liked it. And you can do a lot of other things besides. I didn't just drop out of the world into teaching.

02-00:56:29

Meeker:

Well, you did mention you got another job offer, too, about that time.

02-00:56:34

Coons:

Well, John Stevens, wonderful man, he taught us antitrust and he had offered me a job in his law firm. I thought that's spiffy, I'll do it. And it would have been wonderful working with John Stevens [later, Associate Justice of the US Supreme Court, 1975-2010]. But the Army came along and took me away.

02-00:57:02

Meeker:

Oh, okay. This was before the Army.

- 02-00:57:03
Coons: Yeah, before the Army. I don't know when John became a judge. Somewhere along there. Anyway, I was so flattered. I couldn't imagine anything more elevating. And to my surprise, they let me out. There were a bunch of guys who got out at that time. What happened, I understand, is that it was the end of the Korean War and they had too much, too many personnel, so it was no big deal for them. They were glad to get us off the payroll.
- 02-00:57:46
Meeker: So you moved back to Chicago.
- 02-00:57:48
Coons: Yeah.
- 02-00:57:49
Meeker: Tell me a little bit about starting as a faculty member.
- 02-00:57:46
Coons: Well, I was very shy I think at first. I was somewhat intimidated. But that wore off quickly. They were all a friendly bunch of slobs that I really liked.
- 02-00:58:10
Meeker: That's not a ringing endorsement. [laughter]
- 02-00:58:14
Coons: No. Yeah, okay. For me it's an endorsement. They were first class people in my view and they treated me very, very nicely.
- 02-00:58:29
Meeker: How big was the faculty at that time roughly?
- 02-00:58:32
Coons: Oh, I don't think more than fifteen, something like that.
- 02-00:58:36
Meeker: Oh, okay. And what kind of law were you brought in to teach?
- 02-00:58:40
Coons: The very first semester I taught a seminar in government contracts because that's what I was writing. I was writing something about it. And after that, to my great surprise, the dean who was a great contracts expert said, "Why don't you come and we'll split the sections." So I taught contracts and then for some reason they switched me one year to property and I taught property law, one section, and Dan Schuyler, the great old property expert, taught the other. And that was fun. Dan Schuyler was a great character. One year we put the main question on the exam in poetry. [laughter] Some of the students were kind of ticked off, I think. But there was one student who answered in poetry and he lives right down the road here. His name is Steve Sugarman.
- 02-00:59:51
Meeker: Oh, really? That must have endeared him to you pretty quickly, huh?

02-00:59:57
Coons: Oh, boy. Can I tell you about Steve?

02-01:00:01
Meeker: Sure.

02-01:00:04
Coons: Okay. And Bill Clune, whom I spoke to this morning. Bill is a professor at Wisconsin.

02-01:00:14
Meeker: What year did you start at Northwestern as a professor?

02-01:00:14
Coons: In 1955. The fall of 1955. And I was doing half-time administration.

02-01:00:27
Meeker: What was the teaching load for you when you first started?

02-01:00:31
Coons: It was very light. The first semester was just a seminar. Second semester I had a half-time load. I taught contracts and I guess that was it.

02-01:00:41
Meeker: It would be, in essence, a two/two load but one of the classes would be an administrative thing, right? So you would teach one class each semester and then the rest would be administrative?

02-01:00:54
Coons: That's right. And that lasted about five years, something like that.

02-01:00:59
Meeker: Well, before we get to your grad students, tell me about the administrative work. That seems to be pretty unique for an entry level faculty coming in to be a top level administrator.

02-01:01:11
Coons: Well, you see, I knew the dean from being junior bar president. And we had had some times together. I think he liked me for a joke I made. The president of the bar association, American Bar Association, I had to introduce him at a meeting. And I said, "He spends a whole lot of his time trying to change the law that we're trying so hard to learn." Somehow the heavy hitters, loved that. So we were kind of friends. When Dan Walker decided he didn't want the job Harold thought of me. What I did, I ran admissions. In those days admissions were relatively easy. There weren't so many people going to law school. It wasn't such a popular thing. The law schools, the major law schools, actually had people who would go out on scouting tours to find students. I did this. Went to the Ivy League places and during duck season I would go up to Duluth. In fact, I found a wonderful student there. He's a federal judge. And so it was something that we felt we had to do to have variety and numbers and so forth. I don't feel I was ever very successful at that but things changed, the

atmosphere changed eventually. By the way, I went to girls schools, colleges, too.

02-01:03:12

Meeker: Do you recall how you tried to sell Northwestern or how you differentiated it from other law schools?

02-01:03:17

Coons: Well, partly it was smaller. It had this great kind of jewel like history. The location in a big city right where everything was happening. And the scholarly history was good. A lot of good writing had come out of Northwestern. But I'm not sure. I think I told them it was fun, it was great, that I had been a student there, and what a good time I had while I was a student. And also we had some things that were brewing that I'll tell you about. We were connecting with the social sciences in a bigger way on the Evanston campus and eventually we had a program called Law and Social Science I taught with anthropologists, with psychiatrists, with sociologists, with political scientists. They would come down and we had joint seminars with their students and ours. I wish I could remember the name of the Argentinian psychoanalyst. He had ten students that came over from psychoanalysis and I had ten from the law school. We talked about sick minds and the law and all sorts of stuff about law and psychiatry. It was really a lot of fun.

02-01:05:21

Meeker: That must have been a vanguard in many ways of law school education at that time.

02-01:05:24

Coons: Yeah, it was. It was really fun. It didn't really get going until about 1960. I didn't have it as a jewel to offer to the students. But certainly it was brewing. The African studies program at Northwestern, the undergraduate, is outstanding. It was the first African studies program ever. Shall I tell you the story?

02-01:06:01

Meeker: Sure, go ahead.

02-01:06:02

Coons: Okay. One day I'm sitting in a faculty meeting snoring. At the end of the meeting the dean says, "Well, now, next summer the ABA is meeting here and we've got to think of some way to show off our wares." And I was reading a newspaper and I said, "You know, they're having all this excitement in Nigeria," or Liberia or wherever it was. I said, "They're getting a new constitution. We've got these African people. Why don't we talk about African law?" "Well, thank you. That's very interesting." Well, nothing, of course, happened. But in that meeting was a guy, a young twenty-one year old, twenty-two year old from Oxford. We always had an English teaching assistant who would come in and teach writing. There would be three or four and he would be one of them. And this guy, whose name now, as most names

do, eludes me. But anyway, he went to visit his friend who was doing the same thing at Yale. And while he was there a guy from the London School of Economics drops in to say hello and he was an African expert. Anthony Allot was his name. Allot was a very proper Englishman who really knew Africa and he'd been working there with tribal law. He was very sophisticated about tribal courts and the English colonial system had given the courts a certain jurisdiction and recognized their stuff with families and property and so forth. So my friend said, "Oh, this is very interesting. Well, my friend Coons is very interested in this." So one day I picked up the phone, "Allot here." And pretty soon I realized that this is kind of an interesting guy. And so we had lunch. I called the African studies program and down comes James Bohannon. I don't know if Jim is still alive. But anyway, eventually we taught together and so on. He was very excited about this. He felt glad to see Allot and we've got plans. We'll throw a big African Law Conference in Chicago right there at Northwestern. Well, that's going to take some money. Okay. So I talked to the dean about it and some others. I've forgotten who all was involved. I suppose the African studies guy. It was a famous name that I can't recall. Anyway, so we were going to raise money from the Ford Foundation. We made a very fancy application and lo and behold, who is the big shot in the Ford Foundation now, at that time, but the president of the University of Chicago. So he's a little hesitant about helping Northwestern. He doesn't say this. What he does is send us his right-hand woman, Soia Mentschikoff. Soia Mentschikoff was a very formidable lady who taught in the law school, I guess, yes. And we began to have lunches to talk about this. Everything was wonderful except at the end there was always something that wasn't working out. We got the University of Michigan in, too, so we wouldn't be such prostitutes. But in any event Soia always found something at the end that she'd have to think about and then next time she'd think about something else and think about this and think about—one day I picked up the *Chicago Tribune* and the University of Chicago announced its African Law Studies program. So that's the end.

02-01:10:43
Meeker:

Funded by the Ford Foundation?

02-01:10:44
Coons:

Yes. And so we didn't get any money from the Ford Foundation. They were running a big program of their own. Anyway, it was very, very sad. But in the meantime, I had gotten a semester off to go to Africa to round up possible speakers. And here I was with nothing to do really and what should I do? Well, I decided to go and do something else. So I went to study, much like Allot did, with an interpreter in some jungle. Little place where the boys are sitting around deciding a case and listen to them and he would interpret to me what was going on. It was absolutely splendid. It was wonderful. I just loved it.

02-01:11:44
Meeker:

What country did you go to?

02-01:11:46

Coons:

Mostly Uganda. Went to the back roads, all around the perimeter. There were the Baganda and the Luo and these and this and that and the others. And I have never been back. But it was just a fabulous experience. I did go to Kenya and Tanzania and then when I came back I taught with this guy, Bohannon. I had a lot of stuff to talk about. It's hard to be Socratic about African law with American students but it was a great experience. Here's just a little story: There was a guy in Kampala. Was he in Kampala? Actually, he was down in Entebbe on the lake. He had the law school, the Uganda law school. He was a British parachutist, I think, during the war. Fine man. Strong military bearing and so on. He and his wife lived there and he ran the law school. The tribes would come in, send their representatives, and he would teach them the common law of England mostly. And he wasn't really much interested in their law. But these guys were from all these different tribes. My first experience was a cocktail party on the top of the law school, which is just a squarish sort of building with a roof. And we were talking with somebody, let's say the Luo. I was talking with some Luos. And then there were some from the other side of Uganda whose name slips me. Anyway, they're just talking. And one guy says, "Well, do you have gorillas out where you are?" Someone says, "Gorillas? What's a gorilla?" "Well, it's an animal, important animal. We've got lots of them." "What do they look like?" "They look like us." Can you imagine? They didn't know each other at all really from one side to the other but they were all getting together. It was absolutely fascinating. Sweet people. They were all nice to me. I got to see the whole country. But anyway, that's sort of a diversion.

Let me say, just briefly, there was a law student from Northwestern, a guy named Pat Murphy. He was an Irish guy who went off to Somali land, one of my students, at the same time, about that time, to help with the Peace Corps, I guess. Just called me recently. We're back on the phone talking old days. He's a judge now, quite old obviously, in Chicago. Just popped into my mind. In fact, there are several people that I have been close to who were in that kind of work at the time. Well, anyway, it helped me. Let me put it that way. I have never been an expert on anything like that but it enlarges your perspective.

02-01:15:44

Meeker:

Yeah. It's interesting in the context of thinking about law in a sociological/anthropological context, as well.

02-01:15:55

Coons:

Oh, yeah.

02-01:15:55

Meeker:

So when you came back and you taught that course based on some of your experience, can you tell me a little bit about that course? I imagine that the students maybe were intellectually interested in African law but there was probably another reason they were enrolled in a class like that, right?

02-01:16:18

Coons: Probably, yeah.

02-01:16:19

Meeker: Because the chances of them actually practicing that kind of law, like a practical approach, was probably very slim.

02-01:16:25

Coons: Right. Well, they were interested. They were curious. And there was a decent literature about methodology. I didn't have any methodology except what I told you. But the guys up in the African program did. And they were able to explain what they thought was the right way to go about studying law in a society like that. We wondered, of course, where it would lead. And jurisdictional questions and stuff. You could talk endlessly about if you go to a trial up by Lake Victoria someplace, you say, "Gosh, this would really be fascinating to put into words." And we had a series of good speakers who would show up, guys who'd really spent a lot of time, mostly anthropologists. Jim Bohannon had himself written a book about customary law and so he was the most appropriate to speak.

02-01:17:57

Meeker: Did you ever write anything on African law?

02-01:17:59

Coons: Very briefly. The best thing I ever wrote, I think, was in 1962 or three. I decided that there was an issue about the whole court system. And it was after Africa. I don't know if that had anything to inspire it or poison it. But anyway, it's odd when you think about it that we have court cases that are so close. The facts are pretty evenly divided. But somebody wins, 100 percent. And there just was no literature on this. So I wrote an article on compromise. It had a boring title: "Approaches to Court Imposed Compromise: The Uses of Doubt and Reason." How is that for a boring title?

02-01:19:11

Meeker: It doesn't sound boring at all, actually. I think it sounds really fascinating.

02-01:19:16

Coons: It got me a lot of job offers, I'll say that. And it was fun. There was a sequel I wrote for an annual anthology that comes out and they had a book on compromise. It was really fun to think about is it possible, would it be possible in our society, would it be wise, to represent the truth that, well, probably he's right. But we don't know. And so we have to decide what would happen if we started doing that. Well, of course, litigation would probably increase about a thousand percent because everybody would say, "Well, I got a crack at it." Lawyers would love to do that, I think. So it probably wouldn't work for us in most situations. So it probably wouldn't work for us in most situations. But it still is troubling to have to think about and operate on principles which in the end, in a given case, are not true. We don't know that Jones is beyond a reasonable doubt. Balance of proof. We just

do our best. We have to do it but it's good to think once in a while that maybe we're not really telling the truth, we're just telling the best thing we can tell.

02-01:21:12

Meeker:

Well, this is interesting because I think this kind of leads into a lot of other things that we can talk about today. So, in particular, it sounds to me like this is evidence of kind of an emerging sense by yourself and I imagine amongst other people, colleagues and people of your generation, of a skepticism of the certainty of law. And maybe bringing a relativistic sense to law which then maybe has the power to transform law.

02-01:22:10

Coons:

Maybe, yeah. But it is a hard problem. The Africans do it a little bit. They don't have rules, at least the tribes that I knew. But you try to do that in an industrialized society, it's pretty hard, I think.

02-01:22:32

Meeker:

Well, that's you speaking now. But I'm curious about what you thought of it as a young man because I imagine, I don't know, correct me if I'm wrong, but I imagine kind of saying compromise might not be a bad idea or let's not be so certain in our judgements and therefore compromise is maybe a good idea might have seemed like crazy talk to some of your mentors. Whereas this is the law and it's either right or wrong and we are attorneys and we are to help make that judgment of whether it's right or wrong. It sounds to me like you were advocating a very different position.

02-01:23:18

Coons:

It has no political zest to it. It's boring to legislators, I think. But anyway, it would be wonderful if some legislature took the time to think about maybe we could do, at least in non-jury trials, that's where the judge has to say, "Well, I think this is a sixty/forty case."

02-01:24:07

Meeker:

So why don't we talk a bit more about you getting involved in I guess your larger community and bringing your knowledge and experience as an attorney and a professor at law school onto issues of local and national importance that became interesting to you. I know that you served on the board of the Chicago ACLU I believe beginning about 1960 for a long time.

02-01:24:42

Coons:

Yes, five or six years. I had written a book review about censorship, a review about censorship. The ACLU people called me and said, "Hey, would be interested?" So I did. I joined.

02-01:25:03

Meeker:

Well, there were a lot of major censorship cases coming through the Supreme Court at that point in time.

02-01:25:07

Coons:

Yeah, I think so. That's right. And they seemed like nice people. And I liked what they stood for at that time and so I said, "Sure, I'm honored."

02-01:25:22

Meeker:

What was your first engagement with an NGO-type situation?

02-01:25:32

Coons:

That's it.

02-01:25:33

Meeker:

I imagine you were involved in your church to a certain degree.

02-01:25:38

Coons:

Sure.

02-01:25:39

Meeker:

But what was your first engagement with community-oriented nonprofits?

02-01:25:45

Coons:

I wasn't very engaged. Well, let's see. I was the chairman of the Deerfield Citizens for Kennedy, okay. Does that count?

02-01:25:56

Meeker:

Sure.

02-01:25:55

Coons:

In 1960. There probably were five Democrats in Deerfield. Deerfield was a suburb that my wife and I chose. They were building houses at a time that we needed a house. We were having kids, going to have some more. And it was a nice place way out in a new development. It got publicity because the builder had decided he was going to sell some homes to black people. Oh, that was exciting. So we were enthusiastic about that. That was fine. But some weren't and the city council managed to steal the land from him. His place where he was going to build this mixed stuff, they condemned for a park. I'm not sure they called it Lincoln Park. But in any event, that was a story. And so I suppose I got into some trouble with them. I complained and thought it was horrible and said so in meetings and so on. But that was really my first sortie, I guess. I must have been doing something before that. But I was having kids. And you get pretty busy when you have a commute of thirty miles. You've got a lot of stuff on your hands. So I wasn't being too generous to the world at the time. But I did run the tiny little campaign for Kennedy in the town. On the way home to vote on that November day there was a blizzard and my car broke down. Then I had to take a cab all the way from Chicago to Deerfield. That was exciting. Guy dropped me off in front of the voting spot at six o'clock. They closed the door. I didn't get in.

02-01:28:23

Meeker:

You never got to vote, huh?

02-01:28:25

Coons: I didn't get to vote for the guy I worked for.

02-01:28:28

Meeker: Well, from what I understand, Daley maybe voted on your behalf.

02-01:28:32

Coons: I think he did. Possibly more than once. [laughter] Oh, I was a poll watcher once or twice. I'm not sure. It was down the river someplace or really a place where, by gosh, there sure were a lot of strange people coming in there. Sometimes it felt like they were the same people coming back in the afternoon. I wasn't too popular with the managers of the polling place. But survived. That must have been '56 or something like that. I'm not sure.

02-01:29:13

Meeker: Was there an organization you were involved with or was it—

02-01:29:18

Coons: I don't think so. I don't remember now how I did that. But anyway, it was interesting.

02-01:29:29

Meeker: Well, tell me about the ACLU. So they come calling about 1960 after you publish this book review?

02-01:29:35

Coons: Yeah. About then, yeah.

02-01:29:38

Meeker: And what were they asking of you?

02-01:29:40

Coons: Well, they wanted me to join the board. They had an opening. I didn't know anybody on—was Harry Kalven on? I don't know, from Chicago? Maybe. Maybe there was a Chicago guy on the board. It was kind of interesting. There were people who were very stiff about the ACLU, naturally, and properly so, it turned out. But to me it was apple pie. I didn't know anything that they did that was—I might have disagreed with something they did but it wasn't an egregious policy thing. So for some reason they made me chairman of the Freedom of Speech Committee or commission. That was it. It was a commission for the whole state. I did a little bit. Not much. We represented Nazis. That didn't always make us popular.

02-01:30:55

Meeker: Oh, the Skokie, Illinois thing?

02-01:30:58

Coons: This was earlier. Yeah. Skokie came in the eighties, I think. I'm not sure. They were involved. I'm sure the ACLU was involved.

02-01:31:09

Meeker:

A lot of free speech legislation at this point in time was revolving around obscenity law. That's what the *Roth* [1957] decision was about and *Ginsburg* [1968] later on, I think in the early sixties. What did you think of that as a young Catholic father from Duluth? What did you think of the increasing availability of information and literature of a more sexual nature?

02-01:31:39

Coons:

I didn't like what the people were printing but I thought it was important that they have good hearing on the subject. I got myself into some trouble not with the church, as I recall, but with other churches, maybe, in Evanston. We lived in Evanston at the time that that really took place. And up to a point. Honestly, we had censors. At some point judges had to decide. And I felt that was appropriate. Anyway, it was not fun because people would be unhappy with you. I learned later that the president of the university was not pleased with my publicity. But that was okay with me. I didn't like him either. So I did in fact make some talks and supported free speech as far as, at that time, they were willing to go, which was not particularly spectacular in 1961 or whatever it was. Obviously I accept censorship of some sort but, generally speaking, liberality in expression is okay with me. By the way, the ACLU, one of the founders was a priest. I can't remember his name now. Applying the principle is very hard but it's not idealistically impossible for Catholics to be open-minded on speech.

02-01:33:53

Meeker:

I also think that the laws around obscenity didn't really blow open until the late sixties, early seventies around pornography, for instance. Whereas in the late fifties they're talking about sort of nudity or like erotic literature or something like that. And there's a big difference between those.

02-01:34:20

Coons:

That's right.

02-01:34:23

Meeker:

So did it feel like you were like of the mainstream at the ACLU or—

02-01:34:28

Coons:

Not quite.

02-01:34:28

Meeker:

Not quite?

02-01:34:30

Coons:

Not quite. But I did get invited by Hugh Hefner to come—I spent a long evening at Hugh Hefner's, what do you—

02-01:34:41

Meeker:

Chicago mansion or the Playboy mansion.

02-01:34:42

Coons:

The Playboy mansion, yeah. And got a good look at a whole lot of stuff. But anyway, went there. I had a radio show and so he came on the radio show for three half-hour programs and we did them at his mansion. I've never known a sillier or more superficial operation in my life than Hugh Hefner's. He was a smart guy. He is a smart guy. But somehow he just seemed kind of silly.

02-01:35:20

Meeker:

What do you mean by that?

02-01:35:26

Coons:

I couldn't think of anything really useful in what he did. And these poor girls. I think that, far from being a liberal, he was exploiting these kids. I just never could imagine his profession as something that America would cheer. But, of course, we did. I wonder what I said that night. I don't know. We talked about it. Of course, I had to. He was my guest. You have to be with him to some extent. And I must say, to get an inside view of the Playboy mansion was no small thing and I enjoyed looking at the girls. How could I not, you know? But anyway, that was quite an experience.

02-01:36:26

Meeker:

Now, did you start to have maybe this cognitive dissonance between your work on behalf of the ACLU, of representing them, and then kind of maybe seeing some of that in practice at a place like the Playboy mansion?

02-01:36:42

Coons:

Oh, sure. Oh, sure. Absolutely.

02-01:36:45

Meeker:

How do you deal with that?

02-01:36:48

Coons:

You make decisions. Eventually I dropped out of the ACLU on the abortion [issue]. There was no issue for me on that. That's not, well, a little bit over this line, or a little bit—to me it's, yes, a human being. And so I couldn't go on with that.

02-01:37:17

Meeker:

Did you try to make a stand at the ACLU?

02-01:37:19

Coons:

It came just as I was moving to California. So I probably should have done something more specific but I didn't. I was out here. I was still doing shows on the radio. I had my machine here to record. But I wasn't in the ACLU thing at all physically. But probably should have. Life was—with five kids and whatever. And a visit to California, it was not in the cards.

02-01:38:03

Meeker:

Well, let's talk about that radio program. It was called "Problems of the City" and it aired in Chicago 1962 to '67.

02-01:38:13

Coons: Something like that, yeah.

02-01:38:14

Meeker: How did you get involved in this, first of all?

02-01:38:20

Coons: Well, there was a man on the board of directors of the ACLU named Maurice Rosenfield. And Maury Rosenfield owned his two radio stations. One was AM, one was FM. And he was looking for somebody to do this and he decided I would be—I did have a title, professor, and that's, I guess, useful. I don't know.

02-01:38:55

Meeker: Once upon a time it was. [laughter]

02-01:38:57

Coons: [laughter] That's right. And he thought I had a good voice for radio. So he said, "Why don't you do this?" I got twenty-five bucks a show and it was fun. I liked to do it.

02-01:39:17

Meeker: How often was it?

02-01:39:18

Coons: Once a week. Half-an-hour a week. I'm sure it was at some hour when nobody was listening. But this fulfilled their, what do you call it, duty to the public. Though at that time the FCC gave you a lot of credit if you did something like that. So there you are.

02-01:39:43

Meeker: Did you come up with the title? The name of the show?

02-01:39:49

Coons: I don't know. I really don't know. I'm not even sure it's a great title. If it were a great title I would claim it. It's an okay title.

02-01:39:58

Meeker: What were the problems of the city?

02-01:40:02

Coons: Well, of course, the racial segregation was number one. And poverty, also, of course, connected. The schools were hideous. They still are. And lots of crime. Some misbehavior by courts and stuff like that. Maury Rosenfield was a good guy. He actually wanted to do stuff and he did. And he a couple of other folks got interested in a case. Am I okay? Am I on your subject now? A man named Lloyd Miller had been a cabdriver and he was arrested for the murder of some little kid in Peoria or someplace. And he was ready to get zapped. It came right down to the wire. And our guys thought it was unfair that he wasn't guilty. Not just that it wasn't a fair trial but he wasn't guilty. The cops had done some awful things. I can't remember now. I wrote an

article about it for the Catholic magazine *New City*. “Lloyd Miller and the Habeas Corpus” is my little story. Anyway, at the last minute Judge Decker, bless his heart, just before midnight on the night, he said, “We’ve got to grant habeas corpus here and get a look at this.” Well, the guy was innocent. They found some hidden evidence and all the rest of it. So he got off. So we had Lloyd Miller on the program and that was a lot of fun.

02-01:42:03

Meeker:

The guy who was arrested?

02-01:42:04

Coons:

Yeah. And this was after he was cleared and so forth. But it was kind of interesting. He was an ordinary guy. He did a good job, I thought. We had a good time talking about it. Then, of course, we had Milton. And I think I had some of my colleagues on, people who did various kinds of work in the law. Professors from both Chicago and Northwestern and maybe DePaul and so on were talking about it. I don’t remember.

02-01:42:41

Meeker:

Well, it’s interesting. The whole title “Problems of the City” sounds like it comes straight out of the Chicago School of Sociology. It sounds like Park and Wirth.

02-01:42:50

Coons:

Well, maybe. That’s interesting and I think that means probably that Maury had the title already. I don’t know. But let’s say that. I had, yeah, a lot of sociologists. Harold Havighurst, who was our dean at the law school, had a brother named Walter Havighurst at the University of Chicago. Had him on and he was the expert on families and schools and all that kind of stuff.

02-01:43:25

Meeker:

Do you remember there being kind of an approach that these were more identifying the problems of the city or talking about potential solutions for them?

02-01:43:36

Coons:

Oh, both. Yeah. Both. I should be more explicit here. I haven’t thought about this in a while. It wasn’t all just professors. There were politicians whom you’d get on. It seems to me I probably went outside the city in my head or in the subject matter. Those were stirring days around the country. I think maybe what’s his name, the big windbag from South Side, the black guy who talks so much everywhere constantly? Jesse Jackson?

02-01:44:48

Meeker:

So you had civil rights activists on?

02-01:44:54

Coons:

Yeah. And actors and lawyers and judges. We’d just chat.

02-01:45:00

Meeker: Was it pretty easy for you to get guests?

02-01:45:02

Coons: Yeah, yeah. People liked to talk about themselves. I was never a killer type interviewer. I was too nice to my customers, I think. Well, I hope it was of some utility.

02-01:45:25

Meeker: Did you feel like you needed to do a lot of preparation for the interviews?

02-01:45:30

Coons: Some. In some cases. If it were a scientific thing, something like that, technical thing. Or economics, which I've never understood. But I could talk with Milton about schools.

02-01:45:49

Meeker: When you're referring to Milton, that's Milton Friedman?

02-01:45:52

Coons: Milton Friedman.

02-01:45:52

Meeker: Why don't you tell me about your getting to know him because I think it was through this radio program, right?

02-01:45:58

Coons: Yes. I think that's right. He also was at the University of Chicago and he was a friend of Rosenfield. I think Rosenfield had been his student or something. I'm not sure. Anyway, so we got him on the program. We talked a lot about schools. He knew everything. He was a very smart man. And he taught me a lot of economics, I guess. He was a very directive person. He didn't want you to get control of the subject matter and he had a habit of—you would say this. I would say, "Now, think about this. Hold on now. Think about—" And then he would interrupt just at the point where you were about to do something useful. And then he'd say, "Well, you understand." But he was not all that way. But he was a very strong personality. Drove me a little crazy because that's the way he was. But you can't deny he was a very smart man. His tenacity and dogged pursuit of his goals was part of his success. He didn't give up on anything. Later, we were to have serious conflict when we were here in San Francisco over vouchers and how to do it and so on. But I hope he died my friend. I don't know. And so we had people like that.

02-01:48:03

Meeker: Well, at the time were you guys adversaries? Was it kind of a debate?

02-01:48:08

Coons: Yes. I guess so. I had written these reports about the Evanston schools. And I had suggested various possible approaches to ending segregation or diminishing it as it was possible. Among them vouchers or something like

that. I didn't even know about vouchers, I don't think. Yes, I did. But anyway, I suggested too many controls. He was for carte blanche. Let her rip. And I wasn't. And so we argued about that a good deal. On the other hand, he had me back to be on his television program with good old what's his name from the AFT. What's his name?

02-01:49:23

Meeker:

Head of the union?

02-01:49:25

Coons:

Help. Yeah. The guy who really put the AFT together. I'll think of it. It'll come to me. But anyway, so I think we talked about economic policy in general and how cities are governed and so on. Of course, I was not his match, certainly not at that time. Maybe later I could carry my weight. I was learning. People seemed to like to listen to that. They were hoping I'd hit more balls out of the park but I didn't, I don't think. At least rarely. I think I had some of my African studies friends on there. Had nothing to do with Problems of Chicago. But that is my recollection. Writers.

02-01:50:28

Meeker:

With Friedman, did he have any particular interest in schooling or was it more just the application of his free market philosophy to that demand?

02-01:50:39

Coons:

It was the latter, I think, to tell you the truth. I don't think he really knew a whole lot about schools, which I, by accident, turned out to know. Here is a producer, a teacher, world of education. They produce education. Somebody buys it. And he said, "Well, it should work just like any other market." And therefore end of speech. Once you've established the principle then you apply it to this market. He did not resolve the following problem. Who is the consumer? Is it the state consuming the education or is it the parent or is it the child? Who gets to decide about these things? Who is the customer? His model is terrific but it doesn't really fit nicely to the school situation where you say, well, that should be decided by Governor Schmalz, but knowledge should be decided by Mrs. Jones for her child. No, it should be decided by the child. He's twelve years old. For heaven's sake, let him decide. It's not an easy problem to resolve but he resolved it. And he resolved it in a way which is problematic for his own theory, I think. Who is the customer and so on? Because you're not deciding for yourself as the child. He gets the service but he doesn't decide which service he's going to get. But he didn't like to think about that. And when we agreed on giving it to the parents he was, as generally was his wont, he was against regulation. I was for a certain amount of regulation. If you're going to be a school taking vouchers, that maybe you should be ready to take 10 percent or 20 percent or run a lottery. But he wanted the producers to be absolutely free and just it's a market. Go buy. That didn't seem right to me. And maybe I'm exaggerating a little bit because, after all, he wasn't against compulsory education. The state could tell you to learn English and mathematics and so on. But that's sort of where he dug in. He

was afraid, maybe properly, that schools were going to be run by the state. So he really never changed on that. I discovered, somebody told me recently, we'll get to this, I guess, but in 1978 when he decided we were not good guys, we had an initiative we were trying to promote, he actually supported another guy who was trying to get on the ballot. I've forgotten this, if I ever knew it. There was competition even among the balloteers. Not surprising, I guess.

02-01:55:03

Meeker:

Why don't we end there for today and then next time we meet we will start and we'll talk about that 1962 study and talk about your work, beginning to work with Stephen Sugarman and Clune and then we'll get you to Berkeley and we'll move on from there.

02-01:55:29

Coons:

Good. Terrific. Thank you.

Interview 3: August 25, 2015

03-00:00:09

Meeker:

Today is the August 25, 2015. This is Martin Meeker, interviewing Jack Coons for the university history series, and this is interview session number three. Great, so let's get started, and why don't you tell me about the Catholic Interracial Council of Chicago, what it was and what your involvement in it was.

03-00:00:37

Coons:

Well, it preexisted me, that's for sure, and not literally, in the sense of being before 1929, but I got aware of it because of one of my colleagues, Claude Sowle, who had made some sort of remark or public appearance, in which someone asked him a question about something that troubled some of the Catholics, I being one, but I wasn't troubled by what he said. I knew him well and I knew what he meant, but they had somehow gotten a cartoon of him in their diocesan newspaper, to which I seriously objected and wrote to the chancellor and said this is goofy, much less wrong. And so he connected me, he called and connected me with Father John Egan, quite a well-known chap. At that time, he and—gosh, I've forgotten. Maybe it will come back to me, the other chap who was so important in all this. But they had worked together to form something called the Catholic Interracial Council. Now as you know, Chicago is a mixed bag on racial relationships, and Catholics are not immune to racial internecine struggles and so forth, and moving unhappily to the suburbs.

Anyway, but a lot of Catholics are involved in trying to carry out what they regard as their mission as Romans, as believers. So the interracial council was of that mind, I went to talk to these people and sure enough, they seemed happy with me and I was happy with them. I was in fact, then and now, a registered Democrat, and most of these people, I suppose were politically minded and probably mostly Democrats. They had a magazine called *Newcity*, and they did a good job, I think, in trying to relate religious issues and racial issues and just fairness questions; how people get treated in Chicago and in various big cities in general, I recall. I told you I had a radio program, I think we talked about that.

03-00:03:35

Meeker:

“Problems of the City.”

03-00:03:36

Coons:

“Problems of the City,” thank you, I'm honored. The guy who owned the radio station, Maurice Rosenfield, was interested in all sorts of ACLU [American Civil Liberties Union] type things. I was on the ACLU board, oddly enough, and he wanted me to take over the radio thing, that was fine, but I also got—through the radio, I got to know people, and through the Catholic Interracial Council, who were involved deeply in political stuff and legal stuff and racial relations. Well, there was a cab driver from some town

downstate, who was about to be executed for a murder that we felt he hadn't committed, much less had gotten a fair trial about. This fellow needed some kind of publicity. He needed the case to be aired, so that people would think about it, at least give the judges the notion that there was some doubt about this. I wrote a piece in the Catholic magazine, *Newcity*, and it probably had nothing to do with this gentleman's release, but in fact, the judge decided that he was a lucky guy. He got the case somehow and he said, at the eleventh hour, this is not right, so they let him off. So that there was a combination between what I was doing otherwise, in the way of civil liberties sorts of things, and my writing, and the Catholic Interracial Council.

Now, it turned out that they got pretty well organized as they went along, to respond to political things around the country, and one day they called and they said, "We've got to get on a plane and go to Selma, and take some ideas," because Reverend [James] Reeb had just been murdered. This was, I think the third major weekend.

[pause in recording, changing location of interview]

03-00:06:22
Meeker:

So, we left off and you were telling the story of being contacted through the Catholic Interracial Council of Chicago, about going down to Selma, Alabama, because of some goings on down there. Maybe you can just pick up, who was it that contacted you and what reason it was for.

03-00:06:49
Coons:

By the way, this is after I knew King [Martin Luther King, Jr.].

03-00:06:53
Meeker:

Oh it is, okay.

03-00:06:54
Coons:

Yeah. Sixty-two, I realized, whether I had been straight before, I think I can get it straight now. I had written something that interested the NAACP [National Association for the Advancement of Colored People] Legal Defense Fund, but you'll get back to that. Anyway, in '65, of course we were all interested in what was going on, and so I got this call and said after the third week, there was, I think on a Sunday morning early, they didn't get anywhere that weekend, because the weekend before, that was on the bridge and so forth, but they did—I think maybe that was the weekend when they all got blasted or something, some of them got shot or beaten up, and then that night, somebody killed Reeb. So, there was some kind of coming together, of a whole lot of religious people, figures, saying we should really go down and represent belief in this mess down there. And so there were people who came down, a lot from Chicago, I'll say, that was really the whole crowd. A lot of them were in their religious uniforms, habits, and we all—I don't know if we all, there was probably a lot of other people from Chicago, got on different planes, but we got on a plane, a bunch of us, and flew to Atlanta, that was it. I

think it was Atlanta, or maybe it was Birmingham, I'm not sure which one it was.

In any case, we got off to catch our next plane and we waited and we waited, and pretty soon I looked out and I saw, there was a plane out there loading with passengers, and it looked like it was the plane headed for where we were going, which was Alabama. Just exactly where the airport was, I couldn't tell you. Maybe Selma, maybe not. I said, "What's going on?" They said, "Oh, we're loading this plane," and I said, "Well, we're supposed to be on that plane." Oh, they said, "It's overloaded, I'm sorry." [laughs] So we watched. They wouldn't let us out and we couldn't get on the plane, it was not overloaded. Years later, I got a letter, after Eddie Rickenbacker resigned as the president of Eastern Airlines. They sent me a check, by the way, years later, for my hotel and other stuff. Anyway, so we had to wait until the next day.

I decided at some point, that I was going to drive, so I rented a car. I rented a flaming red, new, whatever it was, something, and drove through Alabama, to Selma. I finally figured out where this place was, where we were supposed to be, we were supposed to assemble, and that was the next day. There we were, on this street, whatever it's called, I've forgotten what it's called, but it was certainly the street with all the churches on it. There was one church after another, I'd say three or four, right on this block, and we were to assemble in, is it the little brown church? I don't know if that was the right one, where all of these people, who are now dying, at such an age as congressmen and governors, or I don't know what they are, but they're all famous now or long since. They were kids then, they were just young men and women.

So we met in the basement, a whole bunch of us, the people from Chicago and everybody else. There were a lot of people there and the question was, what do we do, what are we supposed to do today? They looked out, down the street, and of course there was this line of policemen, it looked very large and very well armed and so forth, and behind them were a whole lot of big, strong-looking people ready to wring our necks, the crowd. So we talked about this and that and we decided we'd march, but at the last minute, somebody, I don't know if it's for good or ill, but it's probably for ill, because I'm not much of a lawyer for that sort of thing, but they said, "You're a lawyer, you'd better stay out, in case we need help." So I followed the crowd. I stood up on the steps of the next church down and watched what was going on down the street for a while, and then eventually I said the heck with it, I'm getting into this. I recall standing there with Mike Royko, does that name mean anything to you?

03-01:12:32
Meeker:

Famous Chicago journalist.

03-00:12:33

Coons:

Yeah, yeah, Mike Royko was in the gang, and we had our laughs and our apprehensions, and I think we just went and joined the nuns and the gang down there at the line, to be entertained by some of the remarks of the gentlemen behind the police, two of which stick in my mind. One of which is, "You, you ain't even cute," to this fat lady, who was in a Dominican outfit, I think. [laughs] That was the worst thing he could say to her, except for his neighbor, who said to another one, to a priest, I believe, "You god-damned nigger-loving son of a bitch! And you call yourself a Christian!" That one always amused me, I love that story.

But anyway, we never did manage to get through the line, so we stood all day and chattered with the police and thugs, and at nighttime, which was then Saturday night, I guess, we went to some nice home, had a nice dinner, a couple of drinks, went to bed and the next day, showed up for a while, and then I had to go back and teach, so I drove back to Montgomery and went home.

03-00:14:05

Meeker:

Did you try to engage the opposition and bring your vision of Christianity to them?

03-00:14:14

Coons:

Yes. I mean, I'm not sure that I did, because I wasn't to be a spokesman or anything like that, but certainly the nuns and the priests tried to, and I think the other sects who were represented, tried their best to be good to these other characters, instead of returning their ill will. It didn't seem to have much effect, but I had to admire them for trying. So, it was pretty much a fizzle in the end, because King was up in Chicago, trying to raise money I think, for that weekend, and so we didn't see him, so we didn't have that kind of spark that he provided. It was good, everybody was in the right mood, and maybe it was better. Next week, they made it. I don't know how that happened. I wasn't there the following week so I don't know.

03-00:15:24

Meeker:

Well, King was there the following week, I guess. That might have had something to do with it.

03-00:15:28

Coons:

I'm sure it had something to do with it.

03-00:15:33

Meeker:

It's a long way to go, recognizing that there's going to be a confrontation. Were you primarily motivated by the sort of righteousness of the cause or what was your motivation?

03-00:15:52

Coons:

I think so, I think so. I was ticked off. I had come from a town with no blacks at all, one black family, Bobby Douglas, a good football player. But anyway,

that's the only black I knew, and when I got to Chicago, when I went to Northwestern Law School, I began to encounter this strange behavior. I mean, not that I hadn't heard about it, it was obvious and always somewhere in the news. So I sort of grew sensitive in Chicago, and I was able to grow sensitive in a law school that generally speaking, was very liberal. The teachers were pulling for the blacks.

I should say about Northwestern, I'd forgotten this. Maybe I told you, but I don't think so. We had quite a number of black students. Did I tell you this?

03-00:16:54

Meeker:

Because...? Sure, because it was the special program.

03-00:16:55

Coons:

I won't double up on this. That's right. They were going through separate but equal, no law schools, but they'd give you the money to go to some northern school.

03-00:17:07

Meeker:

Right.

03-00:17:08

Coons:

Okay. So we had quite a number of those guys, whose names, as I say, appeared later. But I must say, the relationships that I saw, and kind of good guys that were flaming haters of people of color, made me kind of think what the hell is going on here? I just, you know, I was innocent, reasonably innocent. We had been bad to the Indians, so I should have realized that there was no difficulty in being bad to other people too, but it just hadn't quite sunk in. As I read more and studied more and saw what was hopeful, and I thought in the jurisprudence that we were learning, well it seemed to me, I'd had a pretty good deal, and I thought this is what lawyers ought to do. My students were proud of me when I got back. They were very happy that I had done that, most of them. Some of them would probably have wrung my neck, but anyway.

03-00:18:27

Meeker:

So the Catholic Interracial Council, was this basically kind of like an organization of Catholics who reached out more broadly, or did it also try to figure out how to better integrate black Catholics into the broader Catholic Church?

03-00:18:49

Coons:

I think both.

03-00:18:50

Meeker:

Both.

03-00:18:51

Coons:

I think both. I'm not sure. I mean, I lived out in a nice suburb. I drove in a long distance, to teach in the early morning, and I was very, very busy. We

were on the way to having five children and so, I can't say that I just put myself at the disposal of this thing. I also had a job, I had to teach. So, I was semi-active, and it gave me insights into good people. For example, I met a lady who is now the president of the University of Virginia, who has been through some tough times in the last year or two, a wonderful woman, married to a wonderful guy. She was one of the Catholics who were deeply involved. Her husband, Doug Laycock is not a Catholic, never has been, but he was very much involved in the work, so it was overlapping in that respect. We did, I should say, in 1966, I'm not sure, go to the South Side a couple of times at night, to participate in demonstrations. Somehow, the National Guard had machine-gunned some of the projects down there and it was a hell of a mess. Everybody was angry and you didn't know what you were going to get into. I will say, we took a lot of chances going down, and going to black restaurants. I got picked up by a black gang. I wish I could remember their name. They took me around in their cars. We went to visit places that they showed me, their get-togethers and pals and so forth, and I will always cherish the memory of that. The fact that I was there, that I got that insight, which I never would have gotten otherwise, I mean I'm a white, you know, middle class, suburbanite, comfortable and so forth. But I did feel, those nights on the road, on the street, in some danger, we did some good. I don't know, maybe there's somebody who grew up and remembered that.

03-00:21:45

Meeker:

What was the source of the threat? What was the source of the danger?

03-00:21:50

Coons:

There were gang wars and I was with one gang, and I don't know, the danger was partly in my head, I'm sure. I'm here, look around, all these people are...

03-00:22:03

Meeker:

So it was fear of internecine gang warfare, less than sort of police violence or something.

03-00:22:16

Coons:

Well, you never know, because the police indeed, could be very angry at people like us for interfering with their stuff. But also, I gathered, and I kind of sensed, that there were some black folks who weren't happy with us showing up at all and they didn't trust our motivations. They didn't know me or anybody else. So you had different kinds of, what shall I say? Distractions in your mind, that probably weren't real, but you imagine them, and so it added to the excitement.

03-00:23:05

Meeker:

Let's talk about you meeting Martin Luther King Jr., which happened a few years prior to this. What were the circumstances for you getting to meet him?

03-00:23:17

Coons:

Okay. I wrote a piece on antitrust law. I had been a student of John Paul Stevens, I want to say, Justice Stevens, who retired last year, a wonderful

man. He had liked my work and I had liked his teaching, and I was interested in antitrust at the time. So, it occurred to me that antitrust, the boycotts that were being planned and executed everywhere around the country, I think. There were people who decided to boycott certain businesses that didn't deal fairly with black people. So, I asked the question of whether the antitrust laws would apply to civil rights boycotts. The title was something like this, "Non-Commercial Purpose as a Sherman Act Defense." How's that for boring the hell out of you? But anyway, that's what it was, and I did my best to apply the law as I saw it to make my judgment, and I said there is some risk and maybe you should go about it this way or that way or you know, whatever.

The Legal Defense Fund of the NAACP was run by a Jewish guy, Jack Greenberg, who was a terrific lawyer—I knew him just, I don't know from where. He called me and said, "I see your article on this, it's very interesting." He says, "You know, King is planning a boycott in Chicago, a big-time boycott, and we are a little apprehensive about what the courts might do there." So, one evening or one afternoon, I went down and spent the afternoon talking to King and his gang, and then we had dinner together, and it was a most interesting and for me, a lot of insights I'm very grateful for. I couldn't tell you whether I had the slightest influence. I think they ignored my advice, but I'm not sure.

The next night, I took my two elder sons down to hear King speak at a church down on the South Side. He didn't show up, sadly, but we got to hear a bunch of other interesting preachers, so the boys had something to remember and I had something to remember, and it was very nice.

03-00:26:40

Meeker:

I think King's public persona, of course, is extremely widely known. What was he like to work with sort of in a small group?

03-00:26:53

Coons:

There was some of the largeness in his relationship to people, other people. Largeness, that's a very ambiguous expression, but you know what I mean.

03-00:27:08

Meeker:

Gravitas.

03-00:27:09

Coons:

My friends, gravitas. He had a way of speaking which was profound in its tone and generally in its content, I think, and so I'll have to say, it isn't like, "Hello, Joe, how's the family and what are you up to and what can do for you," it wasn't like that, but he was very friendly and a very fine man I'm sure. So, that's all I know is that time with him, and it was very important to me. Psychologically, I felt I'd really maybe tried to help somebody that needed help and somebody who might be able to do something. I hope it helped him.

Jack Greenberg, does that name mean anything to you? I think I got it right, maybe not, but he's still around, I know, I asked Steve Sugarman, whom you will encounter. Steve was visiting in New York and I think he affirms that. You know, that isn't a great story, but it was a great story to me, I was really glad to meet the man.

He listened to me, wow, what a deal! He had his guys all asking questions and so forth. Now if you asked me, "What was it all about technically, fifty years ago?" I couldn't tell you, but little more than just be careful with boycotts, because you can run into trouble, as they did. Later on, they were boycotting stores in the South, they got slammed by local courts for doing some very specific things they shouldn't have done. I can't give you all the details of what they did, but they lost some big cases and it cost them a lot of money. Now, they did not get the Sherman Act, the federal law, but the Supreme Court did allow those judgments to stand, at least in some cases, the state judgments.

03-00:29:35

Meeker:

These kinds of interactions, with King and with you know, compatriots down in Selma, how profound were those interactions on sort of the trajectory of your own work?

03-00:29:53

Coons:

It certainly enhanced my spirit for the job. I felt confirmed in my newly formed Chicago kind of style thinking, at Northwestern, and so ever since, I've been kind of interested in that part of life. I've written about it a lot, particularly in the school field, and I have occasionally been involved in things like that, mostly as a lawyer, writing amicus briefs or something of that sort. And the work that Steve Sugarman and I have done over the years has been very much animated, I think, by our feeling about its application to families who just haven't got any authority over their children, because they don't have any money. They have to send them to some kind of school, that's required, and so they have to send them to the local public school, which is a junk pile, intellectually and socially. Forgive me for all the good schools in the country that just got defamed, but it's very much driven our interests. We've made a lot of black friends and been in a lot of places that were interesting.

03-00:31:37

Meeker:

You know, at this point in time, '62, '63, '64, the moderate wing of the Civil Rights Movement is still basically the dominant one, but a much more radical wing is starting to coalesce and have its voice heard. What did you think of those more radical voices when you started to hear them? The Malcolm X types, the SNCC types, Student Nonviolent Coordinating Committee. What did you think of that?

03-00:32:12

Coons:

I was put off. I had, I suppose, the same kind of sensitivity that King had, I hope it was like that, and I think it was, for better or worse I should say, not I hope. For better or worse, because those guys had a lot of guts and they did a lot of good things, the bad guys did a lot of good things.

I arrived here [Berkeley] in '67, when the real activists were beginning to hit the street. Indeed I had—who was the guy who went to jail, from Oakland?

03-00:32:58

Meeker:

Huey Newton? Eldridge Cleaver?

03-00:33:00

Coons:

Not Huey Newton. I can't remember now. He and his wife were both very strong black activists. She is still alive and functioning in Oakland. Anyway, they'd been here back in the sixties and I talked to them. He'd gotten out of jail, I think, or maybe before and after. I had lunch with him when I first arrived in Berkeley. Just when he was in jail, I can't remember. Anyway, he had a transformation of some kind, intellectual or emotional or something.

03-00:33:54

Meeker:

While in jail.

03-00:33:55

Coons:

While in jail. Pretty soon, he was talking about markets and getting people to behave like good citizens and so forth, and then he was at the Hoover Institute, the first thing I knew. He passed away early on, I can't remember when, but his wife continued, I think she has continued to work in the other style, but he took off in rather old fashioned. Nothing wrong with it, nothing wrong with either one, but they went their different ways.

03-00:34:42

Meeker:

He went back into the more Booker T. Washington style, right?

03-00:34:47

Coons:

That's exactly right, yeah. I wish I could remember his name. We'll figure it out.

[pause in recording]

03-00:35:00

Meeker:

Let's talk a little bit about the 1962 study, "Civil Rights U.S.A. Public Schools," it's the report to the U.S. Commission on Civil Rights, about Chicago Public Schools. The study was completed in 1962 and was sort of your first major foray into looking at inequalities in education.

03-00:35:31

Coons:

Right.

03-00:35:32

Meeker:

Can you tell me a little bit about how this project came to you and what you found?

03-00:35:39

Coons:

Yes. It's a little bit odd, because actually, I was not the first person picked for this job. I have been very lucky in having previous offerees turn down jobs, like I told you about going to Northwestern, I think I told you. Anyway, my colleague, Willard Pedrick, P-e-d-r-i-c-k, was called one day by somebody from, maybe it was just the U.S. Commission on Civil Rights but I'm not sure. Anyhow, to do a study of Chicago Public Schools, segregation, integration in the schools. Well, he was too busy, he says, "Why don't you call my friend Coons, he's got a bunch of kids, he needs the money." Which was true and I was glad to be called. The trouble was that I couldn't attend the first organizing meeting, which was going to be in Madison, Wisconsin, because of my African expedition, which I told you about.

So I was off in Africa. Poor Marilyn, my wife, had to go to this meeting and represented me very well and got everything straightened out, and so when I came back in May of 1962, I started looking at Chicago Public Schools. I knew nothing about public schools. I'd gone to Catholic schools, one year in a public school, and it was all a mystery to me. So, I innocently went down, made a date with the then superintendent. Anyway, so here it is, May or something, of '62, and I went down there to meet this gentleman, who sat there and kind of looked me over, *Mm, yes, mm-hmm, yes, yes,* and he says, "I've done a little background and I notice you're from Duluth..." and you went to such and such and you studied this and that, and that's very interesting. He let me know he was on my case. Can you remember his name?

03-00:38:22

Meeker:

The superintendent of Chicago Public Schools?

03-00:38:23

Coons:

Yeah.

03-00:38:24

Meeker:

I cannot. Was it in the study?

03-00:38:26

Coons:

Oh, sure, yeah. Anyway, he was a tyrant and a bully, and he tried to scare the hell out of me. Well, he succeeded a little bit, I'll have to admit, but he also animated my something, to get after him. The cooperation of the Chicago Public School District, with my study, was not really outstanding, but we got enough, and I went to a lot of schools and I got the feeling and I got numbers, with respect to kids in school, black, white, that were reasonably believable and told a certain kind of story. It was in this moment, by the way, of time, that I suddenly discovered that the schools had very different budgets per child, not only within the school district, but between school districts. I began to understand how school districts worked, how schools were funded, and it

was for me, a very strange story, because it made no sense. I was straight out of law school, had become a law teacher, and I think things ought to be sort of, you know sensible, but it turns out that there was no pattern at all, except school districts that had valuable property had a lot of money, because they could tax it. So, if you happened to have oil wells or if you have rich people, you can have money for your schools. Per child, it ranged from oh, at that time, probably \$500 to \$3,000. Today it would be from \$25,000 to \$5,000, or something like that, huge differences. But that's later, that comes later, really. I had to set that aside while I did the de-seg stuff.

I wrote what I thought was a fair story of the schools, the administration, the attitude, of the way they discuss it and the way they feel about it in the city, and that was not popular with the superintendent, but such it was. They were all published, all of the studies. There was Boston and Berkeley, I think, San Francisco. These were northern cities, because nobody had studied northern cities. They'd studied the southern cities, and so we were going to see what was happening in de-seg up north. So we did a bunch of these, anyway, around the north, and well, we had some publicity and people were made aware of what was going on.

Then, there was kind of a rest period, and in 1965, we reassembled, most of the same people, not all, to do it again and more so, because now we all knew how to really do it, and we did larger studies. I did Chicago again, and I did two districts in Evanston; the high school and the elementary district. A rather different situation but still interesting, because it does have a black population, a significant black population. But anyway, so I wrote three studies for that gang, and it was followed by a certain amount of animation in the city. There was a lot of interest in this stuff, particularly I will say, Mayor Daley, he was mad at what we said about his city. I mean, I can't tell you, I wasn't there, what he said on the phone to the president or somebody, but he managed to get them all suppressed. None of them were published, by the, I guess it was the federal—I can't remember what they called it, a bureau of education? No. I can't tell you, but it was before the Department of Education, I think. Anyway, whatever it was, it did not get its stories out.

Later, one of the PhD students from Northwestern that I worked with a bit, who is now living down the street and has long been a professor at the law school, published these studies in a book, and that was nice, ten years later, but anyway, very good. So, before long, however, people were sufficiently ticked off that superintendent X got kicked out finally, and he was replaced with a guy who was interested in integration and who cooked up and contracted for a study of how we would go about it in Chicago if we were going to do it. There were three of us that took on that study; a fellow from Detroit, a fellow from the city of Washington, and myself. I wish I could remember their names now. I've read it again recently and it's pretty good. It tells, you know, about how to try to avoid this, and if you simply push the boundaries to include more white people in the school, they're likely to move,

so then what do you do? Well, maybe you hop across, bus them in, or we even thought of having schools, high school islands in Lake Michigan. We've got plenty of other things sticking out of there or, you know, with transport to the shore, with a peninsula. We gave it everything we could think of and some of it was probably silly, but we also had vouchers. It was really the beginning of my writing about vouchers.

03-00:46:07

Meeker:

What was that report that you're talking about?

03-00:46:12

Coons:

Well, it would have been 1967, and it was a report to the board of the public schools of Chicago, and if you and I could get together a little afterwards, maybe I can find it in my mess upstairs, maybe not. Well, we'll see, but I saw it recently.

03-00:46:37

Meeker:

Okay, because I don't think I've seen that one. Let's go back a little bit, to the beginning of the '62 study, that obviously kicks off your lifetime of research on this topic. What was the goal in it? Was the idea that there's a sense that schools remain segregated, but there was not clear evidence of that and your study was to get a better sense of what the landscape was?

03-00:47:09

Coons:

Yeah, I think so. There had been a lot of writing, obviously, by '62, about southern schools. Lots of judicial decisions, lots of publicity and so forth, and various conflicting ideas about what, if anything, you can do. Nobody had really done much about northern cities, which were sitting kind of quietly, hoping nobody would notice them, but were equally segregated in many places. So somebody, I don't know, in the government, said we'd better figure out what's going on up north. I think they contacted a man at Madison, Wisconsin, to find people and organize them. They were all law professors and we were supposed to figure this out. I'm not sure that was a good choice but we did it. Mike Heyman, who was of course here at Berkeley, our chancellor, I think he took on Berkeley schools. Preble Stolz, does that name mean anything to you? He was from Chicago, but he was teaching at Berkeley, and he took on San Francisco maybe, I'm not sure. Well, I can't remember all the other people, but as I say, they assembled at Madison, with my wife, and she brought back the news that this is what they wanted me to do, so that was fine. It may have done some good, at least in terms of letting people know what the situation was and how bad it was. There was Detroit and Chicago and Boston, I guess New York. It certainly spurred me to start looking at money, as well as faces.

03-00:49:42

Meeker:

One of the findings of it was that there existed, I think what you described as, de facto segregation, which probably could have been anticipated. That might be seen in contrast to sort of official or de jure segregation. What do you think

about that conclusion now? Do you feel like it was just de facto segregation, or do you feel like it was much more deliberate than that?

03-00:40:15

Coons:

Well, I would call it deliberate at an almost unconscious level. The old style deeds in which you had a clause, you couldn't transfer the title to anybody but a white person. Of course, the Supreme Court struck that down, but it was still part of the pattern which set the living things that you saw in some of the inner cities, and even some suburbs, so that there was real cooperation of the living system, in not selling to whites in some areas, and selling only to whites in others. Chicago was, of course, an example, a flaming example of that and still is. So you had this very distinctive pattern, you could just draw lines and until somebody decided to make an effort to break it and get the whites to move out, well it just stayed that way. There were very seldom, white intrusions on black neighborhoods, which of course resulted in a city which is now largely black inhabited, and white administered.

I'm not sure I've answered your question. There was nothing of course official, there couldn't be, but the war of course, did a lot, the big war, did a lot to send blacks north, and had, in fairly innocent ways, produced black neighborhoods that hadn't existed before, for people who got good jobs during the war and stuff like that. But then it was certainly, white persons were looking across the street and seeing who was there, and they were telling their lawyers and brokers and so forth, to find a way to stop this spread. There's just no doubt about it, it happened. I had an aunt, who lived in Woodlawn, which is down near the University of Chicago. She was rich and I got to visit her once when I was twelve years old, and a chauffeur and the whole business, a black chauffeur by the way, and I understood. I began to understand that down the street a little ways it was different, and you didn't go down there, it just wasn't part of the pattern of life. That street today of course, that house was bought by the boxer, what's his name, the old guy? He's now *non compos mentis* or dead, I've forgotten.

03-00:53:43

Meeker:

Muhammad Ali?

03-00:53:44

Coons:

Muhammad Ali, he bought the house eventually.

03-00:53:48

Meeker:

Your aunt's house?

03-00:53:49

Coons:

Mm-hmm. She gave it to an order of Catholic nuns and they sold it to Muhammad Ali, and right down the street is the big Muslim guy.

03-00:54:04

Meeker:

Oh yeah, the Nation of Islam [Louis Farrakhan].

03-00:54:05

Coons:

The Nation of Islam, they have their big house down there and they come down the street, and I've seen them in their parade of black cars. Anyway, you know, it's an interesting civilization. They're not doing any harm as far as I can see.

03-00:54:25

Meeker:

Another thing that you said in the report, the questions of race and racial discrimination may and should be kept separate analytically, from the other questions of equal protection, I think meaning a reference to sort of financial and other support provided to students. That's an interesting approach in your work, I found, is that it seems to me there was certainly moral disgust against racial discrimination, but you didn't go there first. You were more interested in the material differences, the material factors, and seeing that as the place to go, instead of racial discrimination and amelioration of it. Do you see what I'm getting at?

03-00:55:35

Coons:

I don't think that's quite right. I would put it the other way. I certainly was shocked at the money disparities from school to school within Chicago, that's for sure. You started out, I didn't know anything, I was just blank, and I thought well, that's interesting, they have all this money and these don't. That did interest me a lot, but my job was race, and so I think I focused on that mainly, in the first study, but it was such a surprise, the money, that I wrongly concluded that that's the way it was everywhere. So when I started working with Steve, on a book on money and the distribution of money and so forth, in '64, or '65, whatever it was, and Bill Clune, at the University of Wisconsin now. We, at first, for a long time, assumed that the differences in money were connected with race, as they were inside Chicago, but guess what? Chicago is rich, I mean Chicago has a lot of money compared to, you know, they're above average in expenditure, well above average, which never occurred to me.

03-00:57:25

Meeker:

Even predominantly black neighborhoods?

03-00:57:29

Coons:

Well, of course, then it depends on the distribution within the district. I was of course struck by the difference in the black schools, I mean the people who were teaching were young and underpaid, compared to the other people, who got out and went to the suburbs or something. When we published our book in 1970, *Private Wealth in Public Education*, just we were lucky that we discovered, here in California, we were then in California, and we started looking around at black and money, and white and money, and there wasn't any pattern. Los Angeles, which had the biggest minority populations, was above average, or just about average and then it became above, and we were very lucky that we didn't make the statement that this strange arrangement of financial resources was directly connected to race. It wasn't. Inside of places

like Chicago, it could very well be, because of movement of populations because of the age of the teachers and so forth, and because they couldn't get teachers. Sometimes they had few teachers, so the amount went up, it seemed to go up, and some other times, they had a lot and the amount went down. It was just chaos really, but it wasn't chaos with respect to the value of the property within the boundaries of the school district, hence, their capacity to tax. Now, they didn't have to tax so hard, maybe low spending, but if they wanted to, they could have fancy schools, where other people could tax the hell out of themselves and not have very good schools at all. So there were two different questions.

Now, just how I separated those during the time, I'm not sure, but by 1967 certainly, in my head, I was more focused on the strangeness of the system for raising money statewide, and districts, states and districts and so on. But still, we were still writing about race too, and I hope we didn't stop. I mean, there's some relationship in here. Many of those families needed it the most, and if they don't get a good deal, they're the most injured.

03-01:00:44

Meeker:

Well, I think that your discovery of the centrality of money happens as early as '62. I mean, in that study you said the one objective criteria which might be employed to articulate a standard of equality is money. It would possible in theory to require a school system to spend an equal sum of dollars on each child basically, to remedy this system of inequality.

03-01:01:09

Coons:

Yeah, that's right.

03-01:01:10

Meeker:

That's in 1962. I'm wondering, you know, you were given a charge to look at race, but you do kind of sneak in this other idea that yes, the most visible manifestation is race, but there's something material, kind of in a Marxist sense.

03-01:01:32

Coons:

There's something going on here that we need to know about.

03-01:01:34

Meeker:

Beneath the surface. I'm wondering, we know how Daley responded, right? But how did the civil rights community respond? Was there any frustration that you might have been taking the emphasis off of race, and putting it on to something that's more about the distributions of funds.

03-01:01:58

Coons:

I don't recall that. Now, I mean I certainly, in 1962, my mention of money and so forth is sort of inferential and so on. In '67 it's bigger, but nobody saw that report, you see. What they saw was the other guys. I wish I could tell you their names now, the Detroit man and the Washington guy. We were talking about race and talking about all these different ways to integrate, because that

was our assignment. Not to talk about money. And so we thought up all these goofy ways to attack the problem but meanwhile, back at the ranch, at Northwestern, Steve and Bill and I were figuring out the money thing.

03-01:03:17

Meeker:

Well, let's spend a few minutes talking about that, because we haven't really talked about you first meeting them and interacting with Bill Clune and Steve Sugarman. I know you first interacted with them as undergraduates, right?

03-01:03:33

Coons:

That's right, yeah.

03-01:03:35

Meeker:

So, can you tell me a little bit about meeting them and what your first impressions of them were?

03-01:03:41

Coons:

Sure. This is hard to believe, but in those days, around 1960, certainly in the fifties, after the rush of the veterans was through, the law schools were looking for students, as they probably will be again. But anyway, I was the assistant dean of the law school and one of my assignments was to go out and recruit law students. So I would go to New England and Minnesota and various places and look for good students and maybe give them scholarships and so forth. Two of my local assignments were, I guess it was Bill was at Loyola and Steve was at Northwestern undergrad. So, I went up there and talked to the pre-law gang and there was Steve Sugarman, and we started chatting, and pretty soon I realized he was making much more sense than I was, and I thought gee, this looks like a winner if we can ever get him to come. By George, he came! I told him a bit more about the program into which he came.

The same thing happened at Loyola with Bill Clune, and so the two of them were given scholarships by the Russell Sage Foundation program in law and social science. I did a lot of teaching of law and social science. My accidental trip to Africa introduced me to these African experts, and I got into sociology and anthropology and all this stuff, and eventually, psychoanalysis and the law, with a doctor, who taught with me. Russell Sage Foundation was very big in those days, in law in the world, and so they were eager and happy to fund this nice program. It's still going on I think, I'm not sure. So, both Bill and Steve got very good scholarships, to come and work with this program. We had a gang of professors, there were three or four of us. Vic Rosenblum from political science and [Richard D.] "Red" Schwartz from sociology and Paul Bohannon from anthropology, and so forth. I can't remember the name of the doctor who got into this game at the end. We would also meet at night sometimes and have pleasant evenings together, talking about this and that, and so Steve and Bill were my students.

Wait a minute, Bill I think did not have me the first year, he had somebody else for contracts or whatever, or property, I guess I was teaching. I had Steve for property. By the way, insight into Steve: The guy who taught the other section of property, and I, made up our exam together. One of them, we decided to put in a poem, as the last question, to see what would happen, and we put it all in, I don't know, foolish poetry. Who answers in poetry but Steve Sugarman? Of course, he got my highest grade, but not for that.

03-01:07:57

Meeker:

Was it good poetry? [both laugh]

03-01:08:00

Coons:

No, but it was fun. So we got to know each other well, the three of us, because I liked them and they seemed to enjoy the whole operation. I had this thing, I am not interested in numbers and just not good at it. That's odd, because I was a math minor in college. But anyway, I keep terrible records and so on. So, Steve and Bill took on two major jobs. Bill was going to take on the history of school finance, how it grew and grew, and Steve was going to take on—

03-01:09:00

Meeker:

History of school finance?

03-01:09:01

Coons:

Yeah. How it all got going, how the district systems came to exist and so on. Steve was going to do the analysis of a number of states, of slightly different structures. So he had to learn about the ways that people raised money in different kinds of states. Hawaii is the only state that doesn't have school districts, it's all just one big district, and so that was one kind of thing, and then there were others that were very, very different from each other. My intention was, at the end, to write the legal response to this picture, whatever it turned out to be, and that's the way it really worked, but that took us several years.

They started school in '64, they finished in '67, and Bill was in practice for a while. Steve came out here and lived in Berkeley for six months or whatever, and Bill came out from time to time, and we sort of finished the thing up over those three years. We wrote a big article in the *Northwestern Law Review*, on the subject, sort of anticipating the book, and then the book came out finally, in '70. Bill, by that time was at Wisconsin, and Steve was really the sparkplug for something called the New York Commission on School Finance. We had gone to New York, somebody invited us, I don't know, and we'd gone to explain how we thought varieties of fair systems were nonexistent systems, but they might work. Steve was there for a year or two and then came out to work down in Los Angeles, as a lawyer, with a big firm. He worked with a to-be secretary of state.

03-001:12:05

Meeker:

Warren Christopher?

- 03-01:12:07
Coons: Warren Christopher. Was Warren Christopher Democrat or Republican?
- 03-01:12:11
Meeker: Democrat, he was under Clinton. He was an L.A. guy, that's the only connection I know of.
- 03-01:12:30
Coons: Yeah, that's right, no you're right, you're right.
- 03-01:12:31
Meeker: Because he headed up the commission after the 1992 riots, I remember that.
- 03-01:12:37
Coons: That's right, okay. And then Steve came on the faculty here about 1973 or something like that. It's 1970 or '71, and there is a lawsuit going on that we had actually had some hand in designing.
- 03-01:13:19
Meeker: So you're going to talk about the Serrano case?
- 03-01:13:21
Coons: Should I?
- 03-01:13:22
Meeker: Let's hold off on that. I want to get there but there's some more I want to talk about, the book. Because the book is obviously transformative in this long period of time. There's basically a five-year gestation period, whereby you know, you and Sugarman and Clune start working on it about '65, '66.
- 03-01:13:47
Coons: That's right.
- 03-01:13:48
Meeker: Then it's not published until 1970. I think that obviously, there were publications leading up to it. There was a 1969 report called "Educational Opportunity: A Workable Constitutional Test for State Financial Structures."
- 03-01:14:04
Coons: That's right, that's a hundred-page article in the—well, where was it, Northwestern, I guess.
- 03-01:14:13
Meeker: *Northwestern Law Review*. That was the one that really set out the idea, and I imagine it was that that influenced the people in Los Angeles, not necessarily the book.
- 03-01:14:24
Coons: I think that's right.

03-01:14:26

Meeker:

So, you know, the book is chalk-full of interesting research, interesting ideas. I actually, in some ways, the findings, I think, you know along these lines that I talked about with the '62 report, my sense is, the way that I read it, is that they do run counter to the idea that racial segregation and thus, the amelioration of racial segregation and integration, or desegregation, should be the focus of school improvement. That it was again, sort of, you came up with a more material solution, that that is the ultimate goal, but you don't provide for integration by hitting it head on, for instance, through busing.

03-01:15:20

Coons:

Right, I think that's fair.

03-01:15:25

Meeker:

How did you come to actually question this paradigm, because that was the reigning sort of racial focus paradigm. And I might say that there is kind of a more meta thing that I'm coming at with this, that you know, let's back up to 2015, and race has never been talked about more than it is today, but as a scholar, I find a lot of the discussion on race to be really dissatisfactory, because I'm not sure everything is about race. I think there are other things going on, but race is the easiest thing for people to see. It's about people's identities, it gets people really riled up. And so for scholars to go out today and talk about policing, for instance, and say that it's not a racial problem, there's something else going on, I think that that person would come under a lot of criticism.

03-01:16:26

Coons:

Sure.

03-01:16:27

Meeker:

And so then let's go back to the mid-1960s, where I think we were in a similar situation around race, that race was all the people were really talking about, and there was less conversation about different financing mechanisms or taxation or something like that. Those are harder things to talk about. But this is what you come out and say. How did you get there?

03-01:16:56

Coons:

Well, in a way we were driven there by the awakening to the fact that black districts were not necessarily poor and white districts were not necessarily rich, and Los Angeles, as I say, was above average. I had a student, I can't think of his name right now, he's in the book somewhere in a footnote, who did some research on it, and he said well, it doesn't look like there's really any connection and I said holy cats, I'd better make sure we didn't say anything to the contrary, and we didn't and we hadn't. We didn't make that mistake but we could have very easily made the assumption, if you look at Detroit and you look at Chicago and you look at Washington, or anyplace you want to look in those days, you could find, if you looked school to school, it was more for the whites, less for the blacks, in general. We were a little worried about it, and so we had somebody do the research, and it turned out we were wrong, that in

fact, there wasn't any pattern, any district pattern, like that. So, we had to cope with that. We did not want to come on saying that this was the case.

Unfortunately, by the way, going a little bit and then coming back, the case called Rodriguez [1973], which of course upset our little applecart. The lawyer couldn't restrain himself from using that idea and of course, the Supreme Court got a hold of it. Somebody was kind enough to tell the Supreme Court, that's not the case, and so they couldn't look at it really as a racial case at all. It was simply money and the question is pure equal protection, not racial equal protection, and so forth.

So, back to where we were. I think, for my part anyway, and I think Steve probably agrees, there was a much more subtle problem, and it exists in every country and certainly ours, a bigger question about education, does it rob individuals and parents, ordinary people, of a chunk of their human being, of their existence as responsible human beings, and I'm afraid it does. I mean, the more I have thought about this, and I know I've said too much about it already, but the idea that just because you're not well off, that you are not fit to decide where your child goes to school or fit to send them to a private religious school and so forth, but the state knows. That's somebody that never met your kid, some bureaucrat, knows what's good for him, that's a very dehumanizing principle, but that is our principle for poor people. So I'm more worried about poor people than about black people, a lot of them are black people, but I'm worried about the families.

03-01:20:59

Meeker:

So, the development of this idea about choice and dignity and kind of parental rights in many ways, moved out of a narrow racial frame. That was inspired, in large part, by the discovery that what was maybe true in Chicago wasn't universally true, certainly not in Los Angeles.

03-01:21:27

Coons:

Well, now wait. Chicago also had more money, so it was true in both Los Angeles and Chicago. It is complicated and peculiar. In Chicago and L.A., blacks were getting cheated within the district, from school to school, probably—I mean I don't know, I'm not an expert on intra-district money.

03-01:21:56

Meeker:

Distribution, yeah.

03-01:21:59

Coons:

To know that from school to school is impossible. You can make a judgment but it's very, very hard. But to look at the system, and you can see that the system—here's a black district and it has lots of money. It may have oil or something like that, people down there in Southern California, in the desert. I don't know who they are, but for all I know they're very poor, but they've got lots of money for their schools. That's fine, but it's not fair for the other folks to have such a system. Anyhow, that took us away from the racial focus for

purposes of litigation. We could not, in the trial, in Los Angeles in 1972, or whatever it was, we couldn't claim that blacks were getting fewer dollars. We had to just claim the whole system was cockeyed. Now, some of the witnesses may have said stuff like that, and the judge may have believed it for all I know, but in any event, our witnesses didn't say that.

03-01:23:17

Meeker:

So, how was it that the system was cockeyed? What was your diagnosis of the problem?

[pause in recording]

03-01:23:34

Coons:

What really is wrong with these systems?

03-01:23:35

Meeker:

Yeah. What was your diagnosis?

03-01:23:37

Coons:

Well, we discovered that if you were a kid living in one district in Illinois, where they have the nuclear power—if it's a nuclear power station, you get a few hundred people in the district, two-hundred families, they're spending \$25,000 at a very low tax rate, whereas if you live in a farm district or a very poor neighborhood, in an urban area, you may have a high tax rate, because you love schools, everybody loves schools, but we can't get any money because we haven't got any property to tax. You have a high rate but you don't get much. So, you have enormous differences. States have begun to diminish the differences, but mostly they still exist, except where there's been some kind of litigation or whatever. That just struck us as, you know, it was not something we would have approved, simply as a matter of fairness.

The odd thing is, we didn't mind people having different tastes for money for education, and maybe this is wrong for us, I don't know, but we would let people vote locally, for different burdens on themselves, to pay for schools. Berkeley has a high tax rate for schools, fine, we live here, that's okay. We do it democratically and we pay it gladly and we have good schools. But if you're not red hot for schools and locally, then you don't tax yourself so hard and you don't have so much to spend. Now, this inferentially suggests that it's easy for people to move from one district to another, because if you're really stuck in a poor district, or a district that hates education and you love education, well that's bad for you and you don't really have much choice if you're poor. But if you're able to move across a boundary and get a house in Orinda or Oakland, or someplace where they get more money for schools, you do it.

So it's possible to defend a system with different expenditures if people are relatively mobile, ordinary people, poor people. I don't think that's a great idea. I think the money just ought to go to the family and let them decide for

themselves, among a range of schools that are properly overseen by people who are professional educators, up to a point. So I would prefer everybody to choose for themselves.

03-01:27:54
Meeker:

So you're talking about the two concepts that are presented in *Private Wealth and Public Education*. One is district power equalizing, another one is family power equalizing?

03-01:28:05
Coons:

Right.

03-01:28:07
Meeker:

I'll admit that I didn't fully understand the district power equalizing and how it might work, and the idea, from what I understand, was to make all school districts effectively equal in wealth per pupil, but somehow the same tax effort would yield the same results.

03-01:28:30
Coons:

Yeah, but they could have different tax effort.

03-01:28:32
Meeker:

Well, or even you could have a same tax effort, but you know, a 5 percent school tax in Orinda is going to generate a lot more than the same effort in East Oakland, for instance.

03-01:28:51
Coons:

Yeah, but that's what you've got to remove. You've got to have the same capacity for Orinda at 5 percent. Orinda, at 5 percent, raises X dollars. Oakland at 5 percent raises X dollars. Per student.

03-01:29:08
Meeker:

How is that done?

03-01:29:09
Coons:

You have a formula. It's a little complicated, no question. The legislators sit around, they decide what will be the rates for each level of effort, of tax effort, of self-imposed pain. If you take this much pain, you get these many dollars per child, if you take that much pain you get more.

03-01:29:40
Meeker:

So the funding mechanism was, you know, at 5 percent. The local community would contribute X percentage toward the \$10,000 per pupil, and then the Federal Government would kick in the rest?

03-01:29:53
Coons:

The state.

03-01:29:54
Meeker:

Or the state would kick in the rest, okay.

- 03-01:29:57
Coons: And then there would be federal programs for special needs and so on. We haven't talked about special needs and they do cause—I mean, this is a complicated mess, and I have not mastered everything.
- 03-01:30:11
Meeker: So, would the state, in essence, provide funds that would bring the poorer school districts up to the minimum level based on equal effort?
- 03-01:30:23
Coons: That's right, yeah.
- 03-01:30:27
Meeker: Would that just come from broad taxation generally?
- 03-01:30:29
Coons: Yes, from general taxation, for the state, yeah. Income tax, sales, whatever.
- 03-01:30:41
Meeker: District power equalizing is a different solution than family power equalizing.
- 03-01:30:44
Coons: Oh, boy.
- 03-01:38:45
Meeker: But they're in the same book. Can you explain the process? Was there like an internal debate amongst you and Sugarman and Clune, about which was the preferred approach, or which was maybe the most likely to succeed?
- 03-01:31:00
Coons: Sure. I mean, we thought about it a lot. And by the way, Bill has never quite agreed with me here. Steve and I seem to agree, by and large over the years, not ever, not always, but Bill has disagreed. He is much more content with, shall I say government rules which carefully protect people, he thinks, because the administrators are good administrators and so forth. I don't want to put words in his mouth, but he has more confidence in the existing system, but he would like fairness in money, but he would be quite happy I think, with a central system which the state just gives everybody the same amount for their district, per child.
- 03-01:32:04
Meeker: So his first option will be the district power equalizing option.
- 03-01:32:09
Coons: Well no, no, I don't know. I'm putting words in his mouth now, but I think he would prefer a state system in which school districts raise no money at all.
- 03-01:32:17
Meeker: Ah, the Hawaii model.

03-01:32:19
Coons:

Yeah, the Hawaii model, that's exactly right. I'm not sure Bill would say that but anyway, I'll say it for him for the moment. There are three kinds of models that are possible really, fair models. One is the complete state taking over preemption of the whole system, except for hiring teachers at the local level. You know, you give the districts all the same amount of money per child, or if you have higher costs, we give you a little extra. If you have so many children in special needs or something, you get extra money, that's fine. Then, district power equalizing, which will certainly produce different expenditures, but allow people then, to choose different districts, presumably. I'm not suggesting this is the greatest idea, but it's an idea, for example, that might even be appealing to—I can't think of the fellow's name now, he's been writing for years, against us. He is a communitarian. He wants people to decide things together in large numbers, not families, but large school districts and so forth, and that's fine, I can understand that, that's the way it's worked for so long to some extent. Neighbors get together, a hundred thousand neighbors, and say okay, here's what we're going to do, and that's plausible, as long as they have in effect, the same tax base, as far as I'm concerned. It's plausible, because people can move.

I would prefer, because I guess I'm sort of hooked on the notion of the family responsibility on everybody gets the same amount, to go where the dad and mom want them to go, because they know them best, they know their peculiarities. There are some rules that protect you at the floor, in the way of curriculum, in the way of teachers' qualifications and so forth, that's fine. But if you want religion, you get it, if you want atheism, you can get it. Whatever you want for your child, and if you want one of the classical European systems, Montessori. Or if you just want to go to your local public school that's fine, which most people would probably choose. I prefer that. What are the Catholics saying about it? They have a word for this. Why can't I think of it? It's a word for the preference for the smaller unit. Oh, lord, I use it all the time. Anyway, it's a preference, a kind of public policy preference, whenever you have to choose, you don't choose the highest level of government to decide what I'm going to have for lunch. You let me decide that and you let the family decide this and you let the local fire department decide that, and so on, up to the governor, for things that are general.

03-01:36:40
Meeker:

And I'm sure, as people read this, they'll think what I'm about to say is terribly patronizing, but I'm going to say it anyway, because I think it's important, particularly thinking about the late 1960s. In an intellectual context of the day, you know, you have the Moynihan Report (1965), you have this recognition that there has been some contesting of, in more recent years, but at the time, there was a recognition that part of the problem with poverty had to do with the dissolution of the black family, too many women-led families, not enough support from black men in the community, a lot of out of wedlock

births. I mean this has only actually expanded, not just among African Americans, but by a society broadly.

03-01:37:38

Coons: Sure, I agree.

03-01:37:41

Meeker: So to suggest that the family would be interested in, let alone capable of, really engaging in these decisions, seems to me a little unique or slightly against the zeitgeist of the era. I mean, I can understand the impulse, where it comes from. Did you feel like you were arguing against a broader trend in society?

03-01:38:19

Coons: Sure.

03-01:38:20

Meeker: And did you feel like people would be really capable of doing what you thought would be preferable?

03-01:38:32

Coons: That depends. No. It's just life as we know it, some people are going to respond one way and some another. There will be different decisions that we make. Certainly, if you've been living in the ghetto for a long time, in a white ghetto or whatever it is that you're—and you have been treated as if you have no particular responsibility in life, and you're not very well educated and your parents are not very well educated, the chances that your mom and dad are going to be good parents is pretty small. But I think that is sadly, it's a dilemma, because I think it is very largely a product of the way that we've treated poor people. If you say to somebody, "Hey don't worry, we'll take care of your kid. He's got to go to school and show up Monday morning and sayonara. Oh, well, so he goes there. He goes here and he gets that teacher and that's it, and he learns this, and I can't do anything about that." Well, that's a big story for dad and mom to take, to find out that they have no control over what is seven hours a day for kids, 280 days a year, whatever it is, I don't know, 180. This intellectual side of the child's life is simply taken away, and your ideas are worth nothing and that's the way our system is going to treat you. Well, that's an invitation, it seems to me, to be a bum with your children and yourself. I mean, I can produce the kid, but I can't have anything to do with his intellectual development or the ideas that he gets or the religion or the so forth. Maybe I'm overdoing it, and I don't have statistics to tell you anything about this. A system which empowered families, parents, would certainly produce a lot of bad decisions. Moms and dads would make bad decisions, but they might change their decisions, after they find out that the child is unhappy, not learning and so forth. They might think about gee, I have to decide something now. I have to make up my mind about where is my kid going to school next year. He doesn't like the school and the school doesn't like us and whatever. So people have to start making decisions for themselves

and while that's only one part of life, education, school, is only one part of life and only three-fifths of the year or something like that. It's damned important, and it's a way of telling parents your heads matter, what you decide for Susie matters. I just think that's important. Maybe there are other areas in which that can be done, I don't know, but certainly, with respect to choosing the compulsory part of the child's life, choosing the style and the content seems to me, a hopeful thing for the future, in spite of all the mistakes that will be made, and that the family will be enhanced generally and that we can get through the rough period. It's a rough enough period anyway. I don't think we're going to do a lot of damage but we'll do some. Yeah, there will be some bad things happen, but I guess I'm willing to risk that for the sake of my imagination's picture of the family.

03-01:43:22

Meeker:

Where were you getting these ideas from? Are these sort of ideas around the dignity of the family and the importance of allowing them to make mistakes. Is this coming from psychology or sociology, or is this coming from sort of personal experience and being part of a big family, and maybe a little bit of both?

03-01:43:47

Coons:

I'm not sure. I'm Catholic of course, and there is a lot of stress on the family and the importance of the family. I went to Catholic schools. So it's not surprising. On the other hand, my mother was divorced and I had a half-brother and sister and all that, and so there was a certain confusion about who we were and all that. I don't want to pretend I've simply been out in the tough part of the world, because I haven't. I've never been hungry or anything like that. My impression of poor families is that they do not—that the assignment of the child to the school may just be totally—it may be meaningless to the parent. It's just one of the things that happens in life. You don't get to this—you have this child and the child goes off and comes back and that's it. I would distinguish here, and this is partly against my notions, but my impression of the Mexican American family, for example, most of the Hispanic American families that I've known, and I've known quite a few, in both church and in connection with—well, people we've hired any number of people from South America or Mexico, to help us in the garden or to help us in the house and so on. We've gotten to know them.

Here, I'll tell you a story. We had a cleaning lady, we still have a cleaning lady, the same cleaning lady, this is years ago, who used to come with her daughter. Her daughter was a peculiarly unattractive person, age thirty, and one day she died. So, we went to the service that Friday evening. Here's a nobody, I mean somebody who doesn't even speak English, you know, and she still doesn't, and the doggone church is just jammed. This is a big church and I think what the heck are all these people doing here? Well, they're all hanging out together. They've got kids all over the place and I thought, wow, that's really amazing, it's nice, and they were friendly to us and so forth. We

came back the next morning for the Mass, the funeral Mass, the place was full again, it was a Saturday morning. Well, of course maybe they weren't working, all right, but anyway, it was totally surprising to us. That's just one example. But, now here's the "but" part with respect to Hispanics: They are doing a little better than blacks, but not a heck of a lot. They're coming along, they seem to be raising their standards a bit more than the blacks have, their performance, not their standards, I don't know what they are.

Anyway, but I would be surprised if they didn't, in the long run, do better over time, because they have families. The families really hang together and I think it helps them in a thousand ways. I mean they seem to be happier, I can't explain it, but they just seem to be more content with working. They work and they work and they work—I know I'm being a little bit risky here.

03-01:48:31

Meeker:

Yeah, well let's talk a little bit about the family power equalizing, because in my reading of it, it kind of in effect turns every family sort of into a separate school district. Does that make sense?

03-01:48:41

Coons:

Yeah, that's right.

03-01:48:44

Meeker:

Who's spending on its children's education reflect not the family's wealth, but rather the parents' willingness to make a financial effort on behalf of their children? It meant that parents decided where their children were educated. How did this idea get developed? I mean, did it happen in the course of conversations—

03-01:49:10

Coons:

I think so.

03-01:49:11

Meeker:

—between you and Sugarman and Clune? How did family get entered into this equation?

03-01:49:27

Coons:

I think we all could sense that one of the serious problems is the one that I've just described. We all had families, the three of us had families and things worked and so forth. It was good to have a mom and dad pitching for you, that had the power to do it and the responsibility, and sort of—what shall I say—ideologically, there are three ways to do it. There's the state, everybody gets the same. There's the district, the accident or non-accident, of the size of the district and where it is and so forth, and the resources and so on, make that—if it's going to be fair, we think it's necessary to have the district power equalizing. It's fair for the child and the family. And then you think about what other organization is there, have we done it, have we finished everything? Well, if we're going to have vouchers, maybe we ought to think of treating people as if they were people with choices to make, and one of the

choices could be the amount of money. Now maybe in our examples, we had too many choices, I don't know, and you can always criticize us for having too—the smallest choices would be too small or whatever. But I think it's one of the options to think about, that would be reasonably fair. Nothing is fair completely, but this comes about as close as you can make it I guess. Maybe you make two choices, one a little above the average that you want to spend and one below, I don't know.

03-01:51:33

Meeker:

Tell me about vouchers. You know, school choice and the school vouchers does in fact come about in *Private Wealth, Public Education*. Is there a precedent for this idea or is this something that emerged in the context of research for this book?

03-01:52:00

Coons:

Well, there is in fact, historical, not complete, nothing is ever complete, but Thomas Paine's famous book—

03-01:52:21

Meeker:

Common Sense?

03-01:52:22

Coons:

Common Sense. I think it's in that famous book. He thought it would be a good idea to give the poor some money for educating their children. I think it was the freedom idea, that parents would get freedom. The bishops, the Catholic bishops of England were dissatisfied with the English school system, not surprisingly, but anyway, a good a system but they were dissatisfied, and in the nineteenth century, they argued for support for the family and to some extent they've gotten it over time. I once talked to Margaret Thatcher about this. I don't think she liked me, but anyway, I'll go back to that.

But anyway, the idea was certainly present in the 1840s, in New York and New England, where there were, as I understand it, there were systems for a while, for families to go to private schools. I'm not sure how broad it was. I know Catholic schools benefited from it and I think other schools. Then Horace Mann and company and the rest of them, they foresaw a system which would educate Americans in freedom and propriety and wondrous gifts for the spirit and the flesh, and pretty soon there became a national effort to make everything uniform, and the Catholic deluge, with the influx of the immigrants and so forth, made them unpopular, and everybody was afraid that their schools were going to teach them to be revolutionaries or something. So, anyhow, the budding systems of vouchers, as it were, were cut off. I can't give you the exact dates and times and so on, but they disappeared, and things began to work in a uniform way, and they worked pretty good, most of them. People lived in little towns, mostly farms and so on, and the local schools were, I guess quite satisfactory for many, many families, for a long time.

The twentieth century came along and of course, the University of Chicago guy helped—what's his name? He created the Chicago School; they didn't call it at this time. His sort of school theology has dominated. Not just he, but a whole range of people who think that school ought to fill us with certain ideas of what life is about and so on, and then, gradually shifting into the Supreme Court deciding that you can't teach anything, you can't pray or do anything in schools, that was part of it. And then I guess gradually, the idea that well, you can't teach much of anything, I mean it's be yourself, do your own thing, find yourself and so on, which at some stage of life has an application. But to tell children that you have to sort of make up your own story about what life is about, I think has its dark side, and I think we're beginning to feel that today. You mentioned it earlier, a kind of deliverance from the old forms. Deliverance is fine if you've got something to be delivered to. In my judgment, you need some kind of stabilizing idea in the child's head, that you can resort to as authority. I mean, everybody needs a little authority in their life I think. That is to say the hope that there is something more than just me, because if there's only me, I'm in real trouble. If nobody owes me anything and I don't owe them anything, and it's Donald Trump here we come.

03-01:58:24
Meeker:

Well, I hate to end today on that note of Donald Trump, but I think let's wrap up today and next time, we'll start out with the Serrano case, and then walk through Serrano and Rodriguez, and Serrano two, and that can be our goal for our next meeting.

03-01:58:37
Coons:

Sure.

Interview 4: September 1, 2015

04-00:00:01

Meeker: Today is the 1st of September 2015. This is Martin Meeker interviewing Jack Coons, and this is session number four, and we are at his house in Berkeley again today, sitting outside on a beautiful early fall, late summer day.

04-00:00:30

Coons: Praying for rain but, you know, enjoying the day.

04-00:00:32

Meeker: Not right now. Not until we get this session over with. Last time we wrapped up talking about your book, *Private Wealth and Public Education*, which was your statement, along with Stephen Sugarman and Bill Clune, on ways in which to address the disparity between private wealth and its impact on public education. You came up with a couple of ideas in that book. One of them was district power equalizing, which was the idea to make school districts effectively equal in wealth per pupil, so spending per pupil.

04-00:01:29

Coons: Well, no, not quite. Not quite.

04-00:01:30

Meeker: Okay, all right, correct me then.

04-00:01:32

Coons: To make them effectively equal in the capacity to raise money per pupil. They would decide. I mean you could force them to spend the same amount per pupil, but that would sort of be self-defeating. If you wanted to have authority, autonomy, in the districts, you would just make them in effect, which can be done, make them in effect equally rich per student, and then let them decide, within a certain range. You have to have a certain minimum obviously, to sustain education, within a certain range, how much they wanted to spend.

04-00:02:16

Meeker: And the other idea in there was family power equalizing. And why don't you define that rather than me fail to do it?

04-00:02:22

Coons: Well, family power equalizing is exactly the same, except instead of school districts with a half-million people in them, each of the school districts is in effect a family. It's a mother and father and kid, or kids, and they decide which of the allowed amounts are to be spent. That is to say, you have to spend a certain minimum, and you can only get up to a certain maximum. There has to be a formula which favors people who don't have much money. They have to make an effort of their own, they have to spend a certain amount to get so much to spend for private education or indeed it could be for charter schools or whatever. The state could do it all different kinds of ways. But each family would be, in theory, not in fact, there's no way to make this work

perfectly, but each family would be theoretically equal in its capacity to go to school X or school Y, just as any other ordinary family in the middle class. By our way of thinking, it would mean that private schools would be included and families could choose among any school that satisfies the minimum requirements of the state for education. It could even be home schooling. It could be neighborhood schooling. That is, you could have Mrs. Jones and Mrs. Smoltz, and Mr. Ginsberg all teaching the kids in different homes in a neighborhood if that's what the families wanted. Whether it would be a money making enterprise and how much would be available from the state for that, obviously would have to be thought about. And relationship and dependence upon the wealth of the people involved. Perhaps they won't need any money, but you should not just count out any way of organizing a school that is sane and that people want.

04-00:04:57

Meeker:

The idea of how the upper end of the economic spectrum would fund schools and per pupil rates is obvious. It comes from their property ownership and property taxes, right?

04-00:05:15

Coons:

You mean how they get their public schools so well-funded. Yeah.

04-00:05:21

Meeker:

Funded, right. It's less clear to me how the poor population would make an equal effort but get the same amount. How do you account for, say, lower home ownership rates? How are they making an effort if there's lower home ownership? Does it just get passed on through from the owner of the property to the renter?

04-00:05:54

Coons:

I suppose a lot of ways that you could do it. None of them is simply transparent. They all are awkward to some extent, and they would not, in fact, make everything equal in the world. Nothing is going to happen like that. If you choose a private school, that school is required to, in its pool of admissions, among the kids whom they don't admit who are poor, you set aside 10 or 15 percent of those slots, of your slots, total number of slots, for a lottery or something like that, among the pool of kids who come from families without wealth. So the school actually then can choose most of its students and it can also discipline those that it lets in who were not chosen, but who come in by reason of their good luck in getting into the 15 percent and getting chosen by chance or whatever. So that's really one way of thinking about it.

Now, how much do the poor people pay in order to get into a school. The states would decide it, the state legislators would set the formula. Presumably there would be a certain amount, the largest amount for the poorest, per pupil. Because a family with four kids, I assume would have the same arrangement for each kid from the state. At some point, you're tempted to say families above the 50 percent or 75 percent level, they don't get anything. Well, I'm

not sure that's politically wise, but it is true that you want to be realistic about giving people some sort of attempt at fiscal equality in their relationship, in their choices that they can make. It gets very complicated when you actually design it, because for example, there's a time problem. Starting with the first grade. Do you start with the first grade or do you start with a whole school at once? It's very awkward to operate such a complicated system when you start with everybody at once. So maybe you start class by class, kindergarten, first grade and so forth, or you start with two or three.

There is also a problem about what to do with the money that you now have to pay to people who are already in private schools. They are paying for themselves, so there will be extra costs to the state if you let them in, if you give them this benefit. So what you do there is one of several things. One is you can have them simply ineligible for a certain period of time, or you can require a phase-in in which they are encouraged to go to public schools for the start of the school circle of sixteen years or twelve. What is it? Thirteen years, I guess. So that they come in in a way which doesn't break the bank. Well, you can't stay in St. George. Maybe you want to stay in St. George. You're already there and you're paying \$5,000 in tuition. Well, you don't get a check for \$5,000. You have to either wait several years, so that you phase it in, or you have to go over and sit in the public school for a year and make yourself eligible to transfer. Something like that. There are various ways to do this and I am sure that I am not really being coherent here, but we've written it all in our various books and articles and so forth, and if you wanted to really sit down and go through all the details we could do it, but I don't think it would be much fun for history.

04-00:11:17

Meeker:

Let's talk about the legal cases, the attempt to implement these ideas through both the judicial and legislative system. Your book, *Private Wealth and Public Education*, was published in 1970. But I know that you had already been working on some key legal cases for a few years by that point in time.

04-00:11:48

Coons:

Yeah. There was some recognition of this obvious, very seemingly unfair—we thought it was obvious—the huge difference in spending from district to district, based on the wealth of the district. That seemed to us kind of crazy. And there were other people who saw that too. A fellow at the University of Chicago, Arthur Wise, called me. We were working on something, and we had lunch together, and got to know each other. He had a certain outlook. He was much more of a true egalitarian, I guess, than I was. His proposals were, at least at the beginning, equal dollar, one buck, one kid, that sort of thing. Even spending for everybody. He revised that, wisely, because of course, an eighth grader may take more money than a first grader, and somebody with some crippling problem that they have, either mental or physical, will require a lot more money than an ordinary kid. He was willing to go along with that, to make categories, and then everybody in that category got the same amount.

Now, that's fine. That's not a crazy idea. In a way it's too bad, because people do not get to experiment with different amounts of money obtained by working harder, by making a bigger sacrifice. And of course, it also doesn't address the question of the family and the family's authority and responsibility to make choices. He was not in favor of vouchers, and I don't know that he ever addressed district power equalizing.

I think Arthur is still alive, though I'm not sure, but he would be interesting to consult. I have his book upstairs if you would like to look at it. We've known him for many, many, many years. Anyway, he was not involved in litigation directly, as I recall. There were litigators in Michigan. They were going after the Michigan system, because it was sort of a typical system, and they went into either state or federal court—I'm not sure I could tell you—with a theory not too different from Wise's, I think, and they got kicked out. They were not making any progress with the judges. There was also another case, the name of which eludes me. We talk about it in *Private Wealth*. We were of a different mind. We actually were largely driven by two things. One was, it was a kind of notion of justice and of responding to the nature of families. Families and the local small units. We didn't trust so much the Hawaii system of the state decides everything. The last time we talked, I was struggling for a word, and the word is subsidiarity.

The term subsidiarity comes out of a papal encyclical in 1939. And it is essentially the idea that in government of any kind you try to empower a unit which is the nearest to the actual effect of the policy. You don't have families running airlines with their children and so forth, but you might have families running education. And indeed we think subsidiarity, that notion should apply to families because they are the smallest manageable unit to decide the nature, the general nature, of a child's education. That doesn't exclude the state obviously. I mean they set limits and minimums and so forth, and that's good, and every child should be carefully monitored by the state, to make sure the family is doing what they say.

But anyway, the term subsidiarity has been adopted in many, many of the European constitutions. The European Union, I think, in its constitution, has a mention of it. It's not always defined, it's not easily defined, but it's kind of a spirit of letting the smallest competent unit go first and have power over decisions, rather than getting the governor to run your family.

In the summer of 1967, I left Evanston, Illinois to go for a year to this place, California, Berkeley, to be a visiting professor. Well, I was doing my stuff, plus sitting around thinking about this problem. So was Steve Sugarman for the first semester. He came to work on the final form of the book. Bill Clune came out too, a couple times, but Steve lived here for a semester. Somehow along the way, somebody said "Oh, that's interesting. Do you know what they're doing in Los Angeles?" I said no, and it turned out that a fine gentleman from UCLA, was working on the complaint for a plaintiff named

John Serrano. So I called Harold Horowitz, we talked about it and I told him we had a slightly different take on it. He was interested and we talked and talked and talked, and in the end, just in the nick of time, our notion, infused with the subsidiarity and so forth, and district power equalizing and all that stuff, did get in to be the last of eleven claims, eleven causes of action, so-called. It was then to be considered by the court. The first court, the trial court as I recall, turned everything down, they just said no, this is foolish. I'm not a California lawyer, so I'm not very familiar with the procedure here, but I think it went straight to the California Supreme Court for some reason.

04-00:21:02

Meeker: Because it had constitutional issues.

04-00:21:05

Coons: Maybe, yeah, something like that. I can find out if it's important. Anyway, the California Supreme Court looked at this thing and they set argument and briefs, and we wrote briefs. We wrote what are called friend of the court briefs for our ideas, and a man named Sid Wolinsky, from the poverty law office down in LA, was sort of handling the litigation. And in the end, the court allowed both Sugarman and myself to argue the case along with Wolinsky. So we emphasized the subsidiarity aspects, if you will, of the thing, and the court was smiling. You just had a warm feeling that they were kind of listening to what we were saying. I will say that the state did not provide itself with very good counsel. They were wonderful guys I'm sure, but my sense was that they could have done better. Amplify that later on in the one we lose.

But anyway, I might add, Justice McComb, the old famous naysayer on the court, got up and walked out. That was a pretty good sign. Anyway, he left and that left the other six, and we talked on and on. So, then we went home and raised a toast and hoped for the best.

The argument was in '70 in August, I think. In '71, in August, we were driving back from backpacking up in the Sierra, my kids and I, the boys and maybe everybody, and the radio said, "Blah, blah, blah, guess what? The supreme court has declared the financing system for the public schools of California unconstitutional." "Hooray!" So, anyway, that was wonderful and we got all set to be heroes, and that was fine.

04-00:24:22

Meeker: Let's stop there, because I want to find out what the next steps are. Can you tell me a little bit more about the role that you actually played in the litigation? Because clearly the suit was brought based on equal protection.

04-00:24:39

Coons: Yes.

04-00:24:40

Meeker: And so there must have been a part of it that forced the litigants to prove that equal protection was not being met, right?

04-00:24:52

Coons: Right.

04-00:24:53

Meeker: And then there was the whole other side of it, which is what is the solution, or what are the potential solutions. Did you deal with the Fourteenth Amendment stuff as well as the solution side of things?

04-00:25:07

Coons: Yes. We argued both state and federal law and the court agreed with us on both the state and federal law.

04-00:25:19

Meeker: Can you describe the different state and federal issues, because that becomes important later on, around *Rodriguez*.

04-00:25:25

Coons: Yeah. The idea in federal law had been growing. In the theory of equal protection, which is a very airy business, that there were special interests, special activities that got special protection. So if you were able to show that your case fell into this very special area, like race discrimination was the classic kind of situation, then you didn't have to show quite as vivid a set of facts showing that it was violated. Race was obviously the most. They had been creeping up on education, we thought, and so we argued that schooling, compulsory education, was special, one of these special activities that required the court to give the problem special treatment, special inspection, to look to see beyond the surface of the thing. It's sort of ambiguous. I mean it gets technical. There are a lot of words that happily—

04-00:27:18

Meeker: Well, is this the close scrutiny kind of—

04-00:27:21

Coons: Close scrutiny, yeah, that's one of the expressions; the court will give it close scrutiny. That usually means you're in ripe territory. Anyway, so the Supreme Court of California did both. It gave it what it seemed to think was the federal attitude toward equal protection, and it declared education a fundamental interest, which triggers the close scrutiny notion, and it did the same under its own constitution, under the state constitution, separately.

04-00:28:02

Meeker: I wonder why they did that.

04-00:28:04

Coons: Why they used the federal Constitution?

04-00:28:05

Meeker: If the federal Constitution sufficed to support the outcome that they were interested in, why resort to the California Constitution as well?

04-00:28:21

Coons:

Well, maybe they foresaw that the United States Supreme Court would not be able to bring itself to do this, that it would be too big a problem, that you might handle this in one state, maybe. I mean, it takes some doing to comply with such a court order. But the supreme court might quail at the idea of trying to govern fifty states giving different responses to a national declaration that you had to give equal protection in that sense, in the sense that we were talking about. I don't know.

04-00:29:03

Meeker:

Do you recall if it was a strategy amongst your legal team, to do just that?

04-00:29:11

Coons:

We looked at the California Constitution, we looked at the judges or the justices here, and their histories and their apparent preferences and so forth, and we thought we had a good chance under both. And that, just possibly, they might prefer to have something sort of domestic that they could depend on instead of going national or in addition, so that if they failed at the Supreme Court, they could fall back on the California court. Although it's never exactly clear in these cases, or seldom, that even if the Supreme Court turned away from it, that it would not affect the local decision making, because it was not that kind of a problem. The Supreme Court wouldn't be deciding something like race. There is elastic in it, and states can have a different view from the national Constitution. So we saw that it was a possibility, yeah, and so we thought it would be wise to use both oars.

04-00:30:35

Meeker:

Interesting. What about the other side of the equation? Not the equal protection argument but the expertise you brought to the case with regards to potential ameliorative approaches.

04-00:30:58

Coons:

Well, I think the Los Angeles lawyers, Harold Horowitz and Sid Wolinsky— It's always good, maybe not always but usually good, in litigation if you can find an answer to the problem which will not make the judges look like they're deciding how the world should be run. We offered to the judges an opportunity to say, "We don't decide this case, but we can decide that you've got to do something about this terrible discrimination in financial opportunity to go to school." Indeed, in the second round, we'll talk about that later, but the attorneys for the state argued, their chief counsel argued at one point and said, "Coons over there, he's sitting over there, he's for vouchers." Because we'd written some stuff about vouchers and praised them and said they'd be good if they're properly written. And it was a wonderful opportunity, because when I got up to argue, I said, "I want to thank Joe Smith for telling you about the possibilities about your system in California, and of course, that is up to the legislature. We're not asking you to do anything like that. That would be inappropriate judicial stretch." So it gave me a chance to stress the modesty of our complaint. Because we're saying, "All you have to do is strike this down

and then let the legislature decide. But you can't have this kind of system, it's a blank no with it's up to you." Now to the legislature, which seemed to me it should be. If people don't like what their representatives are doing, they can do something else, they can elect somebody else, and the political process, the democratic process decides it. Judges liked that, and so I was very glad to have both Harold and the judges see this. We liked vouchers, but we're not going to decide it, some guy in Sacramento is going to decide it, some hundred people.

04-00:34:26
Meeker:

So the decision comes down in 1971, you're driving home from Tahoe. In essence, it says that you're correct in arguing that the school finance mechanism in California violated the Fourteenth Amendment, as well as the California Constitution. What's next?

04-00:35:00
Coons:

This happens frequently in litigation. You describe something in your complaint, you say look at this bad stuff the state is doing here, terrible stuff, and you don't have to prove it at that point. You go up sort of on the record of the claims and if you want to know all the details, there's something called—what is it called? I can't remember for the moment, but the other side says, "Nah, even if they're right on the facts, it's no good. The claim is no good." So if there was no trial, it went up on the papers.

04-00:35:55
Meeker:

The merits.

04-00:36:00
Coons:

The state said even if all this is true, it's not a case. So when the court said if it's true, it's a case. Then they sent it back for a trial to see if it's true. So there was a trial in Los Angeles, in superior court. We had an interesting judge. I think he was pretty clearly, from the beginning, sympathetic, and we were lucky to get such a judge. And the trial went on for quite a while because it's a complicated business trying to describe what happens to money and children and so forth, in the system.

By the way, one of the sort of normal things in any case like this is to show, or suggest plausibly, that people are actually injured, that when little kids get \$500 instead of \$5,000 spent on them, that they're worse off, they're injured by the difference. There was then, and there is now, a lot of literature which puts that in doubt. It's very hard to show one way or the other. I believe that there's some effect, there must be some effect. You give them more supplies and better paid teachers and more experience and all the rest of it, it helps, but it is very hard to prove. We never were able to prove it and we just said it doesn't matter, that the state assumes that it does. It's just part of the system, that you spend money for something, you get something out of it. And indeed, you can reduce it to the question of whether they get better stuff, I mean better buildings and teachers and so on, and so the experience is somewhat better.

Nobody has ever been able to do that, prove it, but nevertheless, he decided, the judge decided, that indeed it was having an impact on children, and I believe it does, this difference, and so he held for us in the end, and then it went up again to the supreme court, the state supreme court, for a second look.

04-00:39:01

Meeker: And that was *Serrano II*.

04-00:39:02

Coons: That was *Serrano II*. Meanwhile, the Texas story was developing.

04-00:39:11

Meeker: So the fact that it goes back down to the Los Angeles Superior Court, so that's exactly where the ameliorative measures were being worked out, is that the idea? Or what was the point of it going back to the superior court? This is something I don't really quite understand.

04-00:39:28

Coons: The court had looked at this pile of claims, they were just bare claims. We wrote down, "Shame on you, you're doing bad stuff and you're hurting people." The other side said, "Eh, even if it's all that stuff, it's not hurting anybody and you haven't proved anything." So now we had to prove that. We had to prove that it had some effect. So it was quite a long trial and we were able to picture, in some detail, how the system worked, and give everybody the willies because it was so bad, and that was great. It was a microphone for us.

04-00:40:18

Meeker: So you were engaging with the media at this point, too, I'm guessing.

04-00:40:22

Coons: Well, they were there certainly and yeah, yeah, sure.

We were all talking about that at the time, because they were going to get to the US Supreme Court before we ever would because they had gone into a three-judge federal court, and when a three-judge federal court, at least under the law as it was then, struck down as unconstitutional some state law, there was an automatic appeal, straight to the Supreme Court. So, what was happening down there? Our friend, Mark Yudof, later to be president of your university and mine here at Berkeley. Mark Yudof had been a young man in the sixties, whom I knew at Harvard, because I'd been there working on the Chicago and Evanston studies, and he was at the Education Reform Institute, or whatever they had, the Harvard Institute, I've forgotten what it's called. He was a very bright man, a young guy, and he got a job at the University of Texas, teaching there. He was enthusiastic about our idea and we thought well, see what we can do with Mark.

Mark contacted Mexican American Legal Defense Fund and the superintendent of the San Antonio Public Schools. It's a big school district

and very poor. So I went down and talked to the San Antonio school people and they were enthusiastic about the idea, and Mark wanted to help. What else? We went to MALDEF. MALDEF is the Mexican American Legal Defense and Education Fund. They said, "You guys have got to get into this. This is big-time and you're going to make some change." And for reasons I will never, never understand, they refused to get involved. I just cannot penetrate the emotions and the whatever. I guess they were very close to the school system, the people who run it. I don't know. Or the union, the teachers union and all that.

04-00:43:42

Meeker:

They just didn't want to upset the applecart or—?

04-00:43:45

Coons:

They had a smooth thing going, I guess, and they just didn't want to horse around with it. So what happened, very unfortunate, was that a gentleman offered to do it for nothing, a lawyer. He had had no experience with anything of this kind. He worked very hard at it but he was just not—we could have had some national figure come and argue the case. I mention in our book on the subject that we could have had heroes of names come and be the lawyers. This was a big case. But they didn't, the plaintiffs didn't, and Steve Sugarman and I worried about whether it was appropriate for lawyers to interfere with a case and go to a plaintiff and say to the plaintiff, "You've got to get rid of your lawyer because we're better." Or you know that's the sense of it, and we decided maybe we wouldn't do that. I wish we had. [laughter] Anyway, this guy, he did work with Yudof during the trial, and Yudof helped him a lot, and they did win at the trial level, and the case went right up to the Supreme Court.

04-00:45:41

Meeker:

Why did the Texas case go through their Federal Appeals Court, when in California, it didn't go into the federal system, it stayed in the state court system?

04-00:45:52

Coons:

Yeah, that's right. It was a decision, I suppose, made by the lawyer that I'm talking about. Had we been the lawyers to do this, I think we would have to have faced that question very seriously. Is it too soon, has the thing developed enough? You know, because if it just comes out of the blue, some new crazy thing, your chances are somewhat diminished, I think. The Supreme Court doesn't do stuff like that. Well, let's hang and wait a while and so on.

04-00:46:36

Meeker:

An incremental approach.

04-00:46:37

Coons:

Yeah, incremental, that's right, cautious. Prudence, I think is it. I don't know. So this fellow piled in and went straight to the jugular, and that's fine. But when he got to the Supreme Court, we were very apprehensive of what was

going to happen. We tried very hard to fill him full of ingenuity and insight and so forth, and he sure tried hard. I had to sit in the court that day, the Supreme Court, and listen to his argument in the case, and it was terribly painful, I mean he was just outclassed. The other side had Charles—oh, boy, what's his name? He's deceased. But anyway, he was terrific. He was a great lawyer and he defended the Texas system and thought of a thousand good reasons why this was a terrible idea.

04-00:47:57

Meeker:

Is this the first time you had been to the Supreme Court and witnessed the arguments?

04-00:48:02

Coons:

No. I lived in Washington for a couple years when I was in the Army, so I popped in once in a while and heard stuff. So I had some small basis for comparison, but you didn't need a whole lot in this case and it was too bad. That guy is earnest and generous and all that. But it wasn't to be. It caused, I think, I've heard secretly, indiscreetly, from one of the clerks once, that we had Mr. Justice from Ohio, Potter Stewart.

[side conversation deleted]

He quietly let me know, told me anyway, that he would have gone for us, had there been no argument. His concurrence makes you wonder if that isn't just exactly what happened. It's funny, things in this world do not always work out the way that you think they ought, and this was one of them.

[side conversation deleted]

I think he felt terrible, not going along with the dissent. But anyway, so it was five-to-four and that was it.

04-00:50:39

Meeker:

And so their opinion was what, in your words?

04-00:50:43

Coons:

Their opinion was that education was not a fundamental right of the sort that they'd been talking about, that triggers close scrutiny and so forth. The system might stink but it's not unconstitutional, not a violation of equal protection. I think they viewed it, and they had some justification for thinking that if they got into this, it would be a long slog for the court, because with fifty states doing different stuff, it might be difficult to manage all their business. It's a heavy duty.

I worried about the lawyer, but there was another chap, a good friend of mine, now deceased. I won't even tell you about him, his name, unless it's important. We'll figure it out. He was a professor who wrote an amicus brief, telling the court that there was no discernable injury to the poor, that they

didn't really suffer. There were rich districts with poor people in them and so on. And to a certain extent he was correct, but it was not something that we hoped would happen. We weren't even, as you know, as I told you, we weren't even pushing that point. We just thought it was insane, the system was nuts, and it ought to be fixed. And then there was a Yale article some time that took issue with us. It was good news to the defendants. So there were some surprises from people that we would have thought would have been on our side. And well, we lost.

04-00:53:05
Meeker:

Well, I'm curious. In hindsight now, what do you think of that? If it is very difficult to prove different levels of funding profoundly impacts educational outcomes and therefore future achievement, and it is just a screwy system, what do you think of that five-to-four decision? Is this something that just riled you at the time and irks you now, but you see the rationality in the decision, or is it something that you still think that they made the wrong decision on?

04-00:53:51
Coons:

Well I think they made the wrong decision but it's not crazy. Judicial prudence sometimes tells them gosh, let's not get into this mud puddle, it's just too much for us. I think it wouldn't have been quite as bad as they might have expected. They were not clear that we were asking so little in a certain sense. They thought really, we were asking for more money, and we weren't, and asking for more uniformity among the states, and we weren't. We were actually asking for diversity. But I don't think that our lawyer ever understood that really. And at one point, I think he may have said straight out that it hurts the poor, and of course we couldn't prove that. And Charles, what's his name, made short work of that.

04-00:55:01
Meeker:

When you had mentioned this moment of indiscretion by a clerk working with Potter Stewart, what was the crux? What would have maybe pushed Stewart in your direction, as opposed to have him rule with the majority?

04-00:55:18
Coons:

If he could have heard, in very plain language, the description of the modesty of the claim, that said, no, we're not asking you to spend more money or anything like that, and we want to leave it up to the states. The state legislators can have complete centralization, they can have all the school districts they want, they can go into vouchers if they want. A claim of modesty would have been extremely helpful and it was just not there.

04-00:56:00
Meeker:

How is that done in court or in the documents? How does, you know, a litigant say, we're really making a modest claim here? When it goes to the Supreme Court, there's not much modesty involved in that typically.

04-00:56:19

Coons:

Yeah. Well, no, that's not quite right, I think. Now for example, our amicus brief in that case, Steve and I, it was ten points saying we're not doing much here. That was the whole brief that we sent in. I've got it upstairs, I'll show you. It's short.

04-00:56:38

Meeker:

Okay.

04-00:56:39

Coons:

It was a claim of modesty, that this is necessary, it's scandalously irrational and it's hurtful to everybody, if not to test scores particularly, it's just hurtful to children because of the magnitude of its effects around the whole system. If you don't have money, you don't have as good a school. In any event, we weren't asking people to spend more money. We were asking them to be fair to kids and we thought that if the families made the decision, that was fair enough. To put the power in the parents is fair enough. We even made it that, through power equalizing, the districts making the decision, particularly small districts but any district, it's a lot fairer than what we had, as long as they put up the same effort to get the tax. And indeed, if the state makes the decision, that's okay with us too. So I wish we had been able to make the argument, but such was not the case. This fellow, *See Government Grow*, Gareth Davies, talks about all that. He does a pretty good job at it.

04-00:58:27

Meeker:

Well what then happens when the ruling comes down in 1973? Did you feel the wind sort of fall out of your sails?

04-00:58:40

Coons:

Yeah, a lot. We had started something called the Childhood and Government Project here at Berkeley. We had all this money from the Ford Foundation and from, oh, good grief, several important foundations. Russell Sage and oh, there's another one. But anyway, we had all this dough and now we weren't quite sure, when the decision came down, what we were going to do with it. But we did get involved in some cases. I argued a case, let's see, in Washington, the state of Washington, lost it, and I complained against their school system. We helped out with advice in a lot of cases around the country, under state constitutions, and we wrote some things. I had a sabbatical and got a chance to go to Europe and spend a little time sitting in a corner, thinking, in Freidberg, Germany. If you ever get a chance, have you been there, Freidberg? It's a place to go. Anyway, we lived outside, in a farm district, a farm area, but that's irrelevant. I worked on the book later to be called—what is our book on vouchers.

04-01:00:36

Meeker:

Education by Choice?

04-01:00:37

Coons:

Education by Choice [1978], yeah, which is by the way, being translated into Chinese, and so is *Private Wealth*, oddly enough. I don't know why they would want to do that.

04-01:00:54

Meeker:

So, the *Education by Choice* book, which we'll probably get to next time, that really had its genesis in your regrouping after the *Rodriguez* decision.

04-01:01:07

Coons:

Yes. We said okay, the hell with it. We'd spent so much time and you have to spend so much time, learning systems, individual systems. We couldn't do it. We had classes to teach and we can't fly around all the time doing that stuff. So we started really bearing down on vouchers, which we wanted to do anyway. So by 1978, or whenever it was, we were ready to do the stuff that you know about.

04-01:01:47

Meeker:

Well, before we get there, I want to actually talk a little bit about Berkeley. So before we wrap up today I want to talk about Berkeley, and I also want to talk about *Serrano II*. So you come to Berkeley in '67, first basically as a visiting professor, and then I guess after a year, you become a faculty member of the law school.

04-01:02:26

Coons:

Right, yes.

04-01:02:29

Meeker:

Boalt Hall School of Law. What was the process about coming out here? When you arrived, was it clear that this was a place you wanted to be? Why did you leave Northwestern? What was involved in that transition?

04-01:02:46

Coons:

I'm not sure I know. It's a sort of subtle thing. We had a nice house in Evanston and five kids, and it was a slog getting out here and so forth. Mostly, my wife bore the brunt of it, but anyway, we came here in early fall for start of school, and somehow, I just got sort of snagged on both the law school, which I'll tell you about in more detail, but just in general, I love hills. I grew up on hills on the north shore, Lake Superior, and I had missed them in Chicago. Chicago is a great place. Northwestern is a great place, but somehow, I needed to go up and downhill. It's as simple as that for me. And the great views and the whole thing, it seemed almost like my childhood, only with better weather, and that played a part of it, I'm sure.

Now, the second was, and this is no comparison to the Northwestern faculty, who are also my buddies, and we had lots of fun together and so forth, but here at the time, it was a small school. It was about twenty, twenty-five professors, and they were just having fun, they were really having a good time. They knew each other well and the dean, Ed Halbach and his wife,

insisted on entertaining us all the time, which turned out to be a lot of fun. They were great hosts and we would go there on a Saturday night, the whole gang, and just misbehave all over the place.

04-01:04:41

Meeker: And this is here at Berkeley.

04-01:04:42

Coons: Yeah. At least six to eight months before I decided what to do. Well, it took them a while to make me an offer. They had to check me out and see what I was up to.

04-01:04:54

Meeker: Was this year out here kind of a test run for them, do you think?

04-01:05:02

Coons: Oh sure. Yeah. I had known several people. I cheated, I think, just by luck. I grew up in the same town, in the same neighborhood, and I knew him as a child. I knew David Louisell. Does that name mean anything to you?

04-01:05:23

Meeker: No.

04-01:05:24

Coons: No, okay. So he was a distinguished member of the law faculty and I had met him at various national functions of the Association of American Law Schools, and stuff like that. He helped, I'm sure, to lie about my qualities, and Bob Cole had visited Northwestern for a semester and we got to know each other there. Who else? Well, there's one other person I'm forgetting here, more than one I think. But anyway, there were a whole lot of Minnesota connections here. And so we'd talk about the old days or lie about football and so on, and also, every Friday afternoon, the committee of the whole man met. And the Committee of the Whole Man met down by the faculty lounge. There was a supply somehow magically there and the gentlemen and the one lady sometimes would come and join us, and we'd all have a good time.

04-01:06:48

Meeker: A supply of?

04-01:06:50

Coons: Of Irish whisky and some other types too.

04-01:06:53

Meeker: Libations.

04-01:06:54

Coons: Libations, yeah. So it was so chummy and so nice. We argued. I mean we didn't always agree on stuff or appointments or anything. But it was awfully nice, until I have to admit, until the women's movement saw to it that you couldn't call something the Committee of the Whole Man anymore. We had

women, I should assure you, from the beginning. This was not a male conspiracy. But it was mostly men. There were two women on the faculty when I came. Now, I don't know whether it's on the negative side that I've got to put it, but of course it's the time of the cataclysms, the social upset and the marches and the poor guy getting shot down there on Telegraph [Avenue]. I marched in a few marches and so on. But that didn't seem to dampen the atmosphere for us. Our classes got interrupted sometimes, stuff like that. Marilyn puts it this way. She says, "I kept telling him do what you think is right, do what your heart tells you. If you want to stay that's fine." When I finally announced that we were staying she said, "What!?" She wasn't quite as convinced as I, but she's glad now.

04-01:08:40
Meeker:

Well here it is, 1967 in Berkeley, and you're bringing a family of five kids out into the epicenter of the counterculture and social change.

04-01:08:51
Coons:

That's right. When we bought this house, we got it very cheaply from a man who was very worried about the integration of the schools, of the public schools in Berkeley. That's what drove him. Six months ago his children, now in their fifties, four of them came by, and they were standing out in front of this house looking in, and I thought, "Well, is it the dog, what are they looking at?" So I came out and said hello, and we got to talking. It was his kids, and so I invited them in, and they came in and looked the house over, old times and all this.

04-01:09:29
Meeker:

They were raised here partly.

04-01:09:30
Coons:

They were raised in this house. I gently suggested what I've just suggested to you, that the father had a racial problem and they said, "Oh yeah, that's our dad, he's gone," but anyway they said, "You've got it right. They moved us out to get away from it." I don't know whether they somehow did better in Seattle, but that's where they went, or somewhere up there. They were nice people. I'm not trying to put them down. They were worried about what's going to happen. And I will say, they had some right to do it too, because the schools here did not live up to their promise of racial integration. You weren't here then, but it was a rather crude implementation of a very high ideal.

04-01:10:25
Meeker:

Did you get involved in anything really locally here?

04-01:10:28
Coons:

Yeah, a little bit. Some. Certainly Marilyn did. She worked for the Berkeley Democratic Club, did a lot of printing and graphics for them. So we got all sorts of signs from the old days in the garage, of Joe Smith for whatever, and we helped some of them. I mean, you go around and make a little speech or something. I remember Arthur Shartsis. Does that name mean anything to

you? He was one of the students and a few years later he was running for BART board, and we both worked very hard and made up sayings for him, political blurbs like, “BART farther than McArthur with Arthur,” or “BART Art Shartsis.” His name lent itself to the particular political spot and he won.

04-01:11:44

Meeker:

Well, did you get involved in the school issues, financing or equalization issues locally?

04-01:11:51

Coons:

Well, I didn't. I'm trying to think if I did. Well, I used to talk to the superintendent. There was a very fine superintendent that we had, he's a black man who lived right down the street. He was just two doors down the street, three doors, and we spent a lot of time talking about this and that and the other thing, and so I had my secret influence, if I had any. Then, it is true, Jim—oh lord, I can't remember his name now, down the street, now long gone, but we helped him get on the board. I did try to organize a voucher gang here, yes that's true, in the neighborhood. We had a pretty good sell, ready to blow up the system, but actually, I have to admit that most of my efforts were made at the more abstract level of the state.

04-01:13:29

Meeker:

At the sort of policy level or something like that.

04-01:13:30

Coons:

Yeah. Well, you know, the stuff that we're going to talk about I guess, the various initiative tries.

[break in audio]

04-01:13:50

Meeker:

You were just saying you had some contacts in the school of education here at Berkeley, in which you engaged with faculty about these issues.

04-01:14:03

Coons:

Right. When we came here, there was a man named Charles Benson who was the best-known educational economist in the country. We got to know Charles, who was a lovely man, and he encouraged us all the way and indeed, in the end, became, with Steve and myself, sort of the leadership of the Childhood and Government Project, for whatever it's worth. Through Charles, I got invited to different things at the ed school, and I got to know some people who were interesting people. There was a philosopher whose name now eludes me, philosophy education. Paula Skene, who was then a graduate student and she lived right over there, still lives over there. And her husband to be, Jim Guthrie, who also became a professor and is still at Vanderbilt and was a big shot, going around in the various state courts giving testimony about this problem in lawsuits, on different theories. Not much about Serrano II but anyway, he's still doing it.

04-01:15:47

Meeker:

When you started at the law school, what kind of courses were you teaching?
What was your area?

04-01:15:54

Coons:

I don't remember. It was either property or contracts, one or the other. Contracts. I can't make sure there's any connection between my interest in contracts and my interest in this stuff, in vouchers for example. But contracts is comfortable with ideas of the market, people agreeing instead of being forced to do something. I had taught a lot of contracts at Northwestern and I always felt comfortable with it. It was not much regulated, except by the common law, and if you really wanted to agree to something, two people wanted to have an exchange of some kind that was going to work, well, I knew how to do it. I knew what I wanted to teach and it was fun.

First year teaching at law school in those days was largely Socratic, in the sense that you didn't teach much. It isn't like saying, "Now the following twenty points will have to be"—you don't lecture really. At least I, and most of the colleagues at that time, would have somebody state a case and then you'd talk about it. "If you change this/that, what would be the consequence? If you believe that, I thought you said this too. Can you believe both of those things at the same time?" You know what I'm talking about? It was based on the assumption, which I think was correct, and maybe still is, that college students do not get very much of this kind of analytical experience in college, so they need at least a year of that kind of discourse. And it's fun for me. That's the main thing. It was fun for me. I liked to do it.

So I taught contracts, and then I taught property for a while, because somebody died or I don't know, I took over that for a while, part of it. Old-fashioned, really back to the Middle Ages, wills and trusts and all that stuff as it came down through the common law, and of course, as it's affected by statute today. To tell you the truth, I wouldn't know a thing about property today. I wrote the contract for this house when we bought it, on one sheet of paper. Today, you have to go through a nightmarish flood of paper involving everything from insurance to property taxes. Anyway, you know what I'm talking about. So I'm glad to be out of that, and maybe that's why I continued to like contracts, because it wasn't quite so regulated. It was you and I talking about stuff. Then, as at Northwestern, I tried to teach, to get into teaching law and, law and sociology, in one case law and religion. A priest from the Dominican House was here, whom I know very well and a student of mine, and I taught a collection of law student and GTU students in a seminar. I don't know if it was any good, but I had some fun anyway.

04-01:20:02

Meeker:

In these courses, was there much overlap between your intellectual research and political work with your teaching?

04-01:20:10

Coons:

Oh, sure. A lot of stuff about schools and about children. Mostly connected with schools in some way. It still is.

04-01:20:25

Meeker:

Often historians kind of teach a book in progress, like each week of a semester is a chapter or two, or something like that. Presenting the historiography in a larger context, and then there are lectures focused around a particular part of the larger story that they're going to tell in a book. Did you ever teach any courses that were kind of teaching your interest and your research?

04-01:20:58

Coons:

Well I certainly taught seminars in which we did a lot of probing around and writing papers and so forth. I don't recall ever teaching like that. There's nothing wrong with it, I mean it wasn't my style. My style was more "on the one hand" and "on the other hand," and what do you think and so forth. It's easier maybe and maybe I'm cheating. But for lawyers particularly, the law changes. It isn't like some other things. And it's also ambiguous and you have to learn how to see both sides, or all three sides or whatever. And I never felt comfortable lecturing on a legal subject. I once had a television program back in Chicago I did once, a series on contracts actually. It was about what are contracts. I don't know whether it was a success or a failure, but I was nervous all the time, because I was actually lecturing to people, and I didn't get the relief and feedback of asking them questions. I found I didn't like that very well. Maybe I just like to exploit people but I don't know. [laughter]

04-01:22:34

Meeker:

How do you feel like your students were responding to the content of your courses?

04-01:22:38

Coons:

Oh sure, yeah. I think they did. They always treated me nicely. I don't mean to make out that we don't learn anything, that they don't learn any particulars. They have to. They have to read a lot of stuff. My contribution was not to give them little tidbits of the statute of limitations in California is X number of years for contracts and so on. That doesn't do anybody any good. You forget it anyway. I certainly don't remember stuff like that. It's getting criticized today. The *New York Times* even criticized law schools for not having people come out knowing enough technical stuff and being too much airy mediators and intellectual bums. I don't know. It is true that the atmosphere has changed quite a bit. People do often now lecture in law school. But it was not the way I was taught and I enjoyed when I was student, or the way that I taught myself, for better or worse.

I told you the story of my first day in law school, I think, in criminal law, when I wasn't prepared, and then the second day, when I was prepared. I can't explain it, but it was to my taste. Some people hated it and they wanted to

know the answer, give me the answer. Well, I can only say I sort of enjoyed, you know, what was the movie with the horrible Harvard law professor?

04-01:24:42

Meeker: Oh, *Paper Chase*?

04-01:24:42

Coons: *Paper Chase*, yeah. I felt some sympathy. He was, of course, a jerk, but I felt some sympathy with his teaching.

04-01:24:53

Meeker: Well, it's interesting that you're, on the one hand, engaged in a very Socratic method of teaching, where you're not giving the truth or providing answers to your students, but hopefully inspiring them, a method for them to come up with that. But on the other hand, you're engaged in litigation that has a desired outcome.

04-01:25:17

Coons: Yeah. Well then you've got to make some pale and poignant statements about this and that. That's true. I don't mean to say that you don't make any statements. That would be ridiculous. And you have to point out some things that are just wrong or conceptions which are just goofy. But first you give them a chance to talk about it a little bit.

04-01:25:43

Meeker: Did students ever take you to task for your work on vouchers, for instance, or school choice?

04-01:25:48

Coons: Yeah, once in a while, and it was fun. I really liked it when somebody would be mad at me about that, or not mad but whatever, because I figured you're getting somewhere. You're actually engaging somebody in a discussion and you can't ask for more than that in life I think. A lot of people don't like us for that reason. This is odd. The union people, teachers union, after *Serrano*, we were heroes. They thought it would raise the total amount of spending and it probably would have. And until they discovered that we were a couple of voucherniks, why we were their heroes. But then they stopped inviting us. And indeed the Urban League invited me and then they disinvited me to give a speech. Can you imagine? They called up and said, "Something has come up. This probably isn't going to work." Somebody had read something.
[laughter]

04-01:27:23

Meeker: Did you assign any of your writings to your students?

04-01:27:27

Coons: Yeah, I think probably when I taught law and education, or something like that. Sure, yeah. But I tried to be fair, to give them the other side. Yeah, I did, I did. I did.

04-01:27:47

Meeker:

Let's wrap up today by talking more about the *Serrano II* case. Leading up to it was all this stuff that was happening in the Los Angeles Superior Court. Can you tell me about what then happened when it goes back to the California State Supreme Court.

04-01:28:18

Coons:

Well, now they had a transcript, a huge pile of stuff to look at. Their clerks tried to digest it and give to the California Supreme Court justices the gist of what we were claiming and what the state was complaining about. How much of that stuff gets read, how much of the record is actually read by the court, you never know. I mean sometimes it's just a wilderness of stuff. And of course, we had to write briefs again to the California court, and this time without the support of the U.S. Supreme Court. We couldn't obviously rely on that. So the personnel had changed a little bit, of the court. There were new two members. They were Reagan appointments. The first case we'd won six-to-one, and both of the Reagan appointments, I believe this is correct. I know the chief justice was now a new man and he was a reasonable guy and he wrote a reasonable dissent. Happily it was a dissent, because the justice who wrote the original *Serrano* opinion wrote the second one, and it came out four-to-three. But, there was no hysteria in the dissenters. They didn't think the world was coming to an end. Oddly enough, they're Republicans. You would think, hypothetically, that they would be interested in a system which was more subsidiaristic than the existing one, but they may have been afraid that the state would simply say, "Okay, it's not constitutional? Okay, we'll start a new system, we'll just do it all from Sacramento," and that would be a legitimate thing. I'm sure they must have thought about things like that. They were very cordial. The man was gone, I think, that I mentioned before, the one that walked out of the hearing. You've read the opinions, have you? Yeah. Don't you think they're reasonably clear? You tell me what you think.

04-01:31:42

Meeker:

Well, I'm not an attorney.

04-01:31:44

Coons:

No, no. Okay, no, no, no. I'll just tell you what I think. I'm sorry. Justice Sullivan wrote rather clear opinions. Now, here's something that happened. The media never got the hang of it. They thought it meant equality of spending and forever they thought it, I mean that's the way it's been portrayed, and indeed that's the way most of the other courts have gone, like New York and New Jersey and others, that have given relief to the plaintiffs in these cases for various classes of students. The expected norm is reasonable equality.

04-01:32:46

Meeker:

Well, it was equality of effort. Was that what it was?

04-01:32:49

Coons:

Yeah, well sure, you're right about that, but I mean you could have different amounts spent. From the child's point of view, it might be better to have one, or it might be better to have the other. It depends on where you are. What was I going to say? Oh, damn. Oh, this idea that somehow it was going to make everything the same. This idea that the central government was going to run everything, was thought to be, by many to be, one of the underpinnings of Proposition 13, which came in 1978. I can't say they're wrong, I mean I don't know who thought what, but in fact, our proposition, at least so far as the school money is concerned, have made it more fair for everybody, if the legislature wanted it to be. So it was much more complicated than that. But there was a man on the Cornell Law faculty, who has made a living writing the same stuff over and over again, that please God, save the school district from this horrible idea or these horrible ideas.

04-01:34:29

Meeker:

What was his argument? Do you recall?

04-01:34:32

Coons:

Well, he is, in his own way, a subsidiarity guy. But he stops at the school district. He wouldn't put it exactly this way, I don't know how he would put it, but this is my reading of him. He loves communities conceived of as sort of like suburbs or like my hometown of Duluth, you know, everybody knew everybody, and so we were all doing the right thing. Well, okay that's fine. But he has been unfair, terribly unfair, to me, I think, and the other lawyers who were involved, because that isn't what we wanted anyway. We didn't give a hoot whether it was—I mean, I personally give a hoot—but school districts or whether it was centralized government or whether it was the family. I would prefer the family, but in any event, he would prefer the notion of a district, smaller districts maybe, community. One can certainly argue for that, that's fine. Families maybe are just incompetent for this job. If you were doing subsidiarity you would say yes, frankly, families just don't know what they're doing. But then you have to draw the line between the rich and poor, because the rich families then make their communities out there and the poor families have to live in the community by themselves, and that doesn't seem to me, a proper division of the world. Am I answering? Am I responding?

04-01:36:29

Meeker:

Yeah, I think so. I think so. Reading the *Serrano II* decision is pretty interesting, because it shows law and policy in flux. It says that there was this decision, *Serrano I*. At some point in time, I think it was in the process of that decision, there was legislation passed in California that went some distance to narrow the gap in funding. It increased the baseline, and then it also did things like, you know, created a system by which there were more grants that would help lower funded school districts catch up. There was even a ceiling placed on funding, so that richer districts couldn't keep pushing it up, which I thought was kind of interesting.

04-01:37:35

Coons:

Sorry, I don't remember the details, but they certainly were thinking about it and they did something. They were working on it. They were interested in it and working on it until 1978 came along and Prop 13, which reassembled the whole set of blocks that they had to work with, because it put the limit on the property tax and so forth. So that they had to reassemble the whole business and the state had to commit more money of course, to fill in the blanks for the low-income districts, low property wealth districts. They still haven't been able to get around Prop 13 in a way that I think the legislators might like to do. They're stuck. So while I was very much in favor of Serrano, it never got to do much. There is, oddly enough, a certain amount of centralization that actually was imposed by people who were against centralization, the Prop 13 thing, because the legislature could have been much more vigorous in empowering small units to make their own decisions. But Prop 13 has kind of taken the starch out of that kind of idea.

04-01:39:27

Meeker:

Well, it's interesting. If you look at the *Serrano II* decision, it seems clear that some incremental changes were made legislatively.

04-01:39:40

Coons:

Some. Yes.

04-01:39:42

Meeker:

And I'm wondering if your sense from those changes that were made, were those changes made because of the pressure that this litigation applied to the broader system. So maybe the big equalizing goal is not achieved, but progress was made, it seems to me, because of the looming presence of litigation.

04-01:40:17

Coons:

I think that's right. I think I agree with you. I have to admit, after *Rodriguez* and then after Prop 13, I sort of said, "Uh-oh, there's not much to be gained by spending the rest of my life pushing people to fix public schools; let's see if we can give people a choice instead." I don't know how Steve feels about this, but that certainly affected my interests. And so we wrote this book, *Education by Choice*, which came out in '78, and that's what I had been working on ever since '74. So I didn't really pay enough attention to what was going on in Sacramento, to tell you the truth. But I know that people were trying to make some sense out of it all.

04-01:41:25

Meeker:

So, *Rodriguez* combined with Prop 13 kind of told you that it was time for you to think of a different solution?

04-01:41:36

Coons:

Yes.

04-01:41:37

Meeker:

Did you regret that? At the time, would you still have been going in another direction?

04-01:41:44

Coons:

I think I'd go in both directions. I don't know the existing system as well as I knew the old system. I'm just interested more in choice. It would be fun to take a crack at the existing system. My impression is it's not very sensible and not very fair. Even if you stuck with school districts instead of families, something better should be done. We'll get to this, I suppose, with respect to vouchers or choice. But I would very much like to draft a new proposition and put it out as an initiative. People say, "Oh, well look, all these initiatives have lost." I voted against all those initiatives, they were terrible initiatives.

04-01:42:46

Meeker:

The voucher initiatives.

04-01:42:47

Coons:

The vouchers, they were just terrible. We'll talk more about that. If we had any money, organization and so forth, which from time to time we've had, but we don't have, I would be quite happy with an initiative that gave approval to various sorts of improvements in the existing system, but I certainly would include vouchers. Well, I'm not dead yet. Maybe I should be. But anyway, so I'm interested in what other solutions can be thought of, other than vouchers. As you know, and I have said over and over again I guess, but I think that the family is ultimately underused and by disempowering it you're destroying a very basic element in democracy.

04-01:44:02

Meeker:

Let's end there for today. Next time, we'll pick up with *Education By Choice* and the vouchers.

04-01:44:10

Coons:

And the Catholic Church.

04-01:44:12

Meeker:

And the Catholic Church and unions and all that kind of stuff. We'll talk about that. Cesar Chavez.

04-01:44:20

Coons:

The whole nine yards.

04-01:44:21

Meeker:

Friedman. Yes.

04-01:44:25

Coons:

The script changes really there. It's quite dramatically different. The atmosphere is different, so it will be fun.

04-01:44:34

Meeker:

Was it like an epiphany?

04-01:44:07

Coons:

Yeah. It wasn't all a good epiphany. I mean, my bout with the bishops was not fun. But yeah, it was kind of an epiphany.

04-01:44:50

Meeker:

All right, well we'll cover that, we'll get on to that next time.

04-01:44:53

Coons:

Great.

Interview 5: October 27, 2015

05-00:00:00

Meeker:

Today is October 27, 2015. This is Martin Meeker interviewing Jack Coons, and this is interview session number five. So, last time we spoke, which was, I think, about two months ago or a month and a half ago at this point, we spoke about the *Serrano I* case, we spoke about the *Rodriguez* case that came out of Texas, and we also spoke, to a certain extent, around the *Serrano II* case in California. In our previous conversations, you've mentioned that historians tend to link *Serrano II* with the passage of Prop 13. And I understand that you have a slightly different interpretation of the way in which that link has been characterized.

05-00:01:08

Coons:

Correct.

05-00:01:09

Meeker:

So maybe we can start out today by perhaps you giving a brief description of what Prop 13 is, and then your understanding of the way in which Prop 13 has been linked to *Serrano* in the historical record and by historians.

05-00:01:30

Coons:

Sure. Could I try to distinguish exactly what *Serrano* was about from our point of view?

05-00:01:39

Meeker:

Sure.

05-00:01:40

Coons:

I mean it's not easy, and I don't blame anybody for getting confused if they didn't spend a lot of time thinking about the details. When we started messing around with school finance, back in the mid-sixties, and looking at all the disparities and so forth, at seemingly senseless sorts of things, at first we thought, as many did and maybe still do, that the answer to it all was to make everything even, simply the same amount everywhere, and enough whatever. Eventually, we decided for two reasons that that wasn't good. It didn't seem to us good to empower the state governments or really force them, indeed, to centralize and to raise the money centrally so everything would be even. That just didn't seem like a great thing to do. We valued local control and, of course, we valued family control, as it turned out, but we'll talk about that, I guess.

So, instead of asking the court to do something like that, to make sure everybody gets the same, what we said was whatever system you have, make it possible for the local people who will be voting on their taxes, on their property taxes presumably, to decide for themselves how much they want to spend, above a certain minimum, I suppose. So that if some X-town is terribly interested in education, they can carry a heavier tax burden, but the same

formula. So that if you, say, get a 3 percent tax on your real property, wherever you are in California and no matter how much money that would raise, maybe less, maybe more, depending upon the wealth of the district, the state would either add to it, to make it to the level of a 3 percent system, whatever it would be, or to capture the extra and distribute it among all of the three percenters. So if you were willing to tax yourself more, you could spend more according to a formula which allowed everybody to do the same, if they were willing, to carry the same burden. Does that make any sense?

05-00:04:34
Meeker:

So let me just put it in my own words. So basically, 3 percent would result in the same per pupil funding throughout the state.

05-00:04:43
Coons:

Yeah, that's right.

05-00:04:44
Meeker:

So 3 percent in East Palo Alto would generate the same amount of funding that 3 percent in Atherton would.

05-00:04:50
Coons:

Exactly. That's right. We called that district power equalizing, DPE. It was pretty technical. But what it did was to allow local control without being disempowered because you don't have any important real estate, or empowered because you're rich and maybe you have oil or maybe you have a lot of rich people. Equal effort produced equal spending.

Now, we described this to the court as simply whatever it is that this system decides to use, whatever the government in Sacramento decides to do about this, they're entitled so long as it's rational and fair to everybody, including centralization, if that's what they decide on. We spoke against it, but we said that would allow it.

05-00:06:05
Meeker:

So like a Hawaii model?

05-00:06:07
Coons:

Yes, exactly. That is to say everybody's taxed the same, or there is no property tax perhaps, you use income tax or something else, and everybody spends the same and has the same rules. It's centralized government of schools, and then district power equalizing, in which the districts could decide how much they wanted to sacrifice, instead of police or whatever, fire, whatever. And then, of course, family power equalizing. You could use the family, in a sense, as a school district, making up their decisions and being empowered by the state to decide what kind of school they wanted, within the limits of the code as to what has to be taught and what can't be taught and all that stuff.

Now, when *Serrano II* was decided, after the United States Supreme Court said it was not a necessary thing, it was not the Federal Constitution's order that everybody has to do this or has to adopt power equalizing. Five-to-four, we lost. But anyway, the California Supreme Court looked at it from the point of view of the state constitution, and they decided, after hearing argument and all this, they decided that it was—by that time, the court had changed quite a bit, from *Serrano I*, which was argued in '71, and this was in, I've forgotten, five years later.

Serrano II allowed power equalizing. We had some other fancy names for it I've forgotten. But in any case, it would allow the legislature to do anything rational with the money as long as it was fair. So you could have vouchers, you could have district power equalizing or you could centralize, and that's what *Serrano II* held. Now, it is technical and the papers didn't get it. On the radio or on the television, they just didn't get it. They thought that it was an equalizing principle, though it was only equalizing power, not actual spending, that was up to the people.

05-00:08:49

Meeker:

Can you describe that distinction there? How is it that it is equal power versus equal spending?

05-00:8:58

Coons:

Spending, yeah. If you have equal power, you can use it more or less. So if you lived in Berkeley and you liked education for children and you wanted to invest more in schools than maybe next door, I don't know, you could do so but you would have to carry a certain kind of tax burden. And Berkeley, being relatively well off, you would probably raise more. I'm just guessing, but you could probably raise more than the legislature would let you spend. To say if you tax at 5 percent, you get to spend \$10,000. So it was really empowering the local people, either the family or the district, to say we really value education and we're willing to tax ourselves by this certain formula, more than others, and you can capture whatever our extra amount is raised that we can't spend. It is technical and it's hard. We argued simply that the constitution allowed that, and that that should be the way the court went because it didn't tell anybody what to do.

It's important in arguing to a court, I think, to be able to say to them, most courts anyway, you do not have to commit yourself to a certain kind of world. You don't have to say to the legislature you have to spend \$20,000 per child, as some courts have done since, stuff like that. What you say is you at least make it equal for those who are willing to bear themselves an equal burden of taxation. If you don't like school as much as the other districts do, well then, you get a low tax rate and you get to spend less. But it's up to you, up to the local district. That's hard to explain and I hope that I'm explaining it.

But anyway, they didn't get it. People thought that we had equalized, that the court had decided that you had to have equal spending or something like that. Indeed, there's a guy who has made his whole career telling people that sort of thing. I can't think of his name now, happily.

So with that misunderstanding, people were, I think, understandably ticked off about what the court did. Everybody said "Oh, we'll have to spend more on property tax now to raise enough money for children to have a good education. Whatever the legislature is going to tell us, we have to do it." And they say, "We're really getting shafted by the property tax here, there, wherever," and we were, to a certain extent. I'll come back and forgive myself for that remark. But anyway—

05-00:12:44
Meeker:

Well, property taxes were sky rocketing, I mean they weren't just going up.

05-00:12:47
Coons:

They were terrific. They were terrific. So they got it back to 2 percent, or something like that, for those like me, who bought their house before 1978. The guy next door or the guy on that side, whoever, right now they may pay three times what I pay. It's really amazing and it's not fair. But that's another question. And I'm very lucky to be in this nice house paying less than I should maybe for property taxes, but there you are.

So when the news, whatever it was, got out, I'm not sure that people in New Jersey or places like that really read *Serrano* carefully or gave a damn, because they wanted to spend more for education. You can understand that. Who's going to get excited about education except people who want to spend more? And they did their best to get the state supreme courts, in spite of *Rodriguez*, which said it's not a federal question, it's a state question. And so the people in the various states who were organized and upset about things, managed to get some courts to say not what the California court said, that is equal power to spend, but rather you have to spend more for this and that and the other thing. Now, maybe they were making some sense and maybe the courts made some sense, but they just used their power to decide what the state of New Jersey or New York or whatever was going to spend. I'm simplifying, but basically they were telling the legislature, "You have to spend more money and make it even." Well, that was not our message, but it was taken as our message by most of the people who wanted reform in New Jersey or Washington or wherever it was.

05-00:15:04
Meeker:

So it wasn't just the vast California public who ended up voting yes on Prop 13, who misinterpreted what you were up to with *Serrano*, but it was also litigators and education policy people across the country who either misinterpreted it by accident or willfully.

- 05-00:15:28
Coons: Yeah. In some cases I think it was willfully, because we would talk to them or send them letters or call them up and say, "That's not exactly what was going on here and it may not be what you really want to do." But of course they did because these were enthusiasts, often union supported. You can understand it. Why not? You got a chance to make some hay, you make it.
- 05-00:16:00
Meeker: Yeah. So in other words, basically the teachers union saw this as a way to increase salaries for their members.
- 05-00:16:07
Coons: Oh sure, more money. And it worked in a number of states. A lot of them it didn't and a lot of them it did.
- 05-00:16:15
Meeker: When you say it worked and it didn't work, are you talking about—
- 05-00:16:19
Coons: I mean the lawyers won.
- 05-00:16:20
Meeker: Oh, okay.
- 05-00:16:22
Coons: The lawyers for change, yeah. But that's never been quite clarified, except you know this fellow, Gareth Davies, *Watch Government Grow*. He understood it and made a good story on it. So anyway, there you are. Is that fairly clear?
- 05-00:16:49
Meeker: It is, that's good. But we'll maybe sort of cap that off by saying now, another nearly forty years out from that, what's the long-term legacy of *Serrano*?
- 05-00:17:36
Coons: Not much. Once you passed Prop 13, the legislature can't create a system which allows people to be creative in their own districts if they want to, to carry a heavier burden and spend more money. I mean they can but it's very hard.
- 05-00:18:01
Meeker: A two-thirds majority.
- 05-00:18:02
Coons: Yes. Yeah, yeah. So anyway, *Serrano* really hasn't had a whole lot of effect, I think, except maybe to help produce Prop 13, which did have a lot of effect, unintended by us certainly.

05-00:18:22

Meeker:

What about its continued impact in places like New Jersey and New York, where you talked about where they took it as not power equalizing but financial equalizing. Fiscal equalizing.

05-00:18:35

Coons:

Well, it's too bad. We have always worried about those cases. I just hate to see courts get in the position of running the government. Of course, I'm exaggerating a little bit, because the court is not running New Jersey. But it certainly has run an important element of the public schools.

05-00:19:01

Meeker:

And your understanding is that it continues to take that approach today.

05-00:19:03

Coons:

Yeah, oh yeah. The litigation is still ongoing. It started in the mid-seventies and it's still going. So, over and over, different complaints and back to the court, see if they're doing the right thing, and the judges have to sit there and decide whether the legislature is doing the right thing. Judges aren't supposed to do that, in my mind. But you can see how it gets. And New York is pretty much the same, I think, in its sense of the Court of Appeals of New York has really pitched in to run the schools. It's an opportunity for a certain outlook to express itself in the courts.

05-00:20:02

Meeker:

Are you aware of any research that weighs in on the impact of that model on the quality of education?

05-00:20:16

Coons:

I'm not sure it could be done. There's a lot of research, or at least there was. I don't read this stuff anymore. But there was certainly a lot of research about whether spending more produced better results. We tried to do that in the trial of *Serrano*, but we couldn't find any believable stuff, so we just let it go and said it was just unfair and got away with it. I don't know of any studies that really convincingly say that more money produces better results. Obviously, you've got to have some money and you've got to have teachers and you can't have sixty kids in a class and all that, or actually you can but you don't want to and you shouldn't. Obviously, money buys more stuff and if more stuff makes it a better school, makes it a happier school, well, people are entitled to make that judgment, and that's fine if they want to spend more money. It depends on what you mean by making a better school. Does it raise test scores? Nobody knows for sure.

05-00:21:48

Meeker:

I wonder if this realization or recognition that increased funding does not necessarily improve educational outcomes, is that one of the reasons that you kind of moved away from the district power equalizing model and more toward the family choice model and a voucher system?

05-00:22:15

Coons:

No, no. Local control or district control is very American and very historic and so forth. But districts now are not 1900 kind of districts, they're big cities. We used to have, what, 2,000 maybe districts in California, and now we're down to, what, a thousand or something like that. Some of them are just immense, like Los Angeles, this one or whatever, the next one. There's nothing familiar about them. They're run by big bureaucracies, sometimes run well, sometimes not. I can't quite get the drama that is put into this by this fellow whose name I happily forget. I'm not against local control, but local control in the present way of financing education, well, it means middleclass and upper-class mostly white people in suburban districts, having their local control, poorer people in the big cities, having no real control, except for the professionals that run their schools. It doesn't seem to me a very good way to run the railroad.

I don't have any objection to local control, I mean the farmers and the suburbanites, it's nice if they have community, togetherness, and so on. That's good. There's a lot of positive stuff in getting together and making your political decisions together. On the other hand, if you look at the schools more closely, at least some people have I think, the districts tend to be run by a certain class of people who are interested and, well, the rest of us take whatever we get. We just don't have time to do it or whatever. The Catholics call it, they have a word for it, subsidiarity. It's been a word coined in the late twenties and it is very important in Europe, in the European constitutions. Subsidiarity, it's something like the following: If you have a problem and somebody's got to run something, what you try to do is reduce the size of the gang running the thing down to as small a unit as you can and as close to the problem as you can. That has meant the family in Europe mostly. More and more, it has become focused on the family as the decision maker in Germany and France. Well, France, yes. I mean, not perfect by any means, by our notions, but certainly much more focused on the family, which is, in terms of subsidiarity, the smallest unit which you could realistically have, and closest to the child, cares about, personally cares about the child and so forth. So, subsidiarity is a principle that we would borrow and say I like that word or I don't like it, I'll use some other word, family control, vouchers, you name it. But it's a way of saying let's look for the people who really care about this question or should care, and empower them to make the decision about where their child goes to school.

05-00:26:47

Meeker:

This is an interesting point. One thing that it brings up for me is really the historical transformation of the family at this point in time. At the same time you're developing this idea of subsidiarity and family control, that it's really this idea of a family caring most about its children and they should be the ones put in control of it, of the decision. We're also seeing at this point in time a historic, massive increase in divorce, mixed families, single parent families, sort of the dissolution of the conventional nuclear family structure, not just

amongst poor African Americans, but now moving into the white middle class, et cetera. Were you aware of this transformation happening? Did the sort of transformation of family structure play any role in your thinking about this?

05-00:28:01

Coons:

Yes, very much. And you're right. When you look at the recent history of the family, it's not very encouraging. Moynihan, of course, was writing about this. He wrote his particular thing in 1967, I think. I think it's called *The Negro Family*. It's right upstairs. It's one of my bibles. It's true that the family is disintegrating. Not just minority families. Well, I would say the Hispanic family is not disintegrating, as far as I can tell, I mean not at the same rate as the black. Actually, the suburban family is prospering. I mean according to the people who write about it, people like Charles Murray and others. The problem is the inner-city kind of people who are poor, et cetera. Now, I'll come back to this. The individual parent with a child, that isn't always bad. I mean if there's a mother and a child alone, it's pretty likely that the mother still loves the child. I haven't seen any discrediting of the general sense of the maternal love for her own children, or even a man in the same situation. They seem to be doing reasonably well, or as well as anybody else. And you're right, we're not doing very well.

It's a kind of a yin-yang or dilemma or something, because our notion is that one of the things that have driven the family apart is irresponsibility in the system. The system does not ask parents to be responsible if they're poor. They say here's where your kids go, here's what they study, you don't get this, you get that, and so on, and the parents, what are they inclined to say? Why would I go to parent-teacher meetings? Why would I even give a hoot about this school when I can't do anything anyway? That's where he's going, that's where she's going, and there's nothing more to be said. There's nothing to talk about at dinner particularly. I mean, if you had a choice, maybe you would talk more about it and the child would express him or herself to the parent, as most children do in my experience. And you'd worry about it and you'd say, "Gee, maybe I should do something," if you could do something. But you can't. I think it is one of the very strong contributing factors in the decline of the family, is to remove this responsibility from the parent. It's very subtle. There's no way to prove what I just asserted. It's just experience and it's kind of common sense, that if you tell people no, you don't have any authority over your child here, we'll take care of it, that people begin to think, "Well gee, you know, I don't really have any authority." The child begins to see that the parent has no authority. The child understands that somebody else is deciding for them, and you don't really get the idea that life has some discipline to it or something that you ought to be doing or something that's worth doing in the way of taking care of your children or being a child of a parent who gives a damn.

05-00:32:23

Meeker:

Was there research that was leading you to this decision, whether it was specifically generating those kinds of conclusions or kind of more broadly helping you think in this direction?

05-00:32:35

Coons:

Oh, yes. Moynihan certainly. I was still in Chicago, just leaving, about the time we left Chicago, and I remember a meeting, it was a cocktail party of some kind, but that's what we were talking about. Everybody was talking about this paper that had just come out. It seemed to us that we had to start thinking more about this. I had some connections with the sociology department, and actually I still do. One of my old pals and I still talk on the phone. So that was really my first introduction to what seemed to me the danger to the family. Now, I had previously suggested vouchers, so it isn't as if it was brand new, but this really struck me as important. That's one thing. The other was of course, Milton Friedman and his work, and I knew him. We fought about certain things. I wanted more regulation of the school. Still do. Nevada just did their thing recently. They've got vouchers but no control at all on admission to the schools. So if you don't want poor kids, you don't have to take them. It just strikes me as odd if you're really interested in the possibilities of choice.

So anyway, Moynihan, Friedman, I think they were really very useful sources. Now, I had gone to private schools as a child. I had written about how Chicago might use choice in our final paper on trying to get Chicago out of its slump. It's a long story but I wrote with a couple of other guys what are the options available for Chicago to try to do something about this horrible situation with partly race. We were studying race and one of the options that we thought was important was to give people a chance to make their own decisions about their children. So it was in the air. Certainly my own experience with private education in my own life must have been important because I really liked what I had as a child. They were good to me. It would be something that I would hope was a choice for other kids and families.

05-00:35:48

Meeker:

These ideas around family control and around kind of suspicion of taking that control, the government taking that control out of the hands of parents and families. Did that ever creep into other areas of your thinking? Medicare and Medicaid comes about in the mid-sixties, there's very close moves towards a national healthcare system of some sort, even under Nixon, in the early seventies, basically derailed, ironically, by Kennedy. Did this expand to your general thinking about the role of government in the lives of its citizens?

05-00:36:43

Coons:

Oh yes, I think so. And some of those, it seems to me, would be choice implementing. You've got to eat. That's what they did. They give you choice to go buy food, the food that you wanted. You can't buy some fancy stuff. I don't know what's available to the hungry. But God knows that at least you

could go and choose food for your own children and not go hungry. I can't imagine not having such a system, but we didn't, of course, until we got going.

05-00:37:32

Meeker:

Is that food stamps that you're talking about?

05-00:37:34

Coons:

Food stamps, yeah, I'm sorry, yeah, excuse me. Well, food stamps and minimum support, financial support, and various kinds of deductions or credits.

05-00:37:48

Meeker:

AFDC [Aid for Families with Dependent Children].

05-00:37:51

Coons:

Yeah, all that. I don't know if it's all done correctly, because I'm no expert on that stuff. But it seems to me the idea at least is positive and the family gets to do some stuff. School, I mean, obviously I was working on it, so it had my attention. Those were all parallel kinds of things. And of course Moynihan himself, who was worried about the family, was interested in vouchers. I first knew him through *Serrano*. We argued at the University of Illinois, we both wrote papers. He was against *Serrano* and I was, of course, for *Serrano*. I got a ride home with him from Champaign-Urbana. In the middle of a blizzard, we drove all the way from Champaign-Urbana to Chicago. He had a car and he offered us a ride. He was a very generous, good-hearted guy. And so we drove all the way to Chicago. We did stop a few times along the way to get refueled, but we made it. So we got to sort of an understanding about this. I can't remember the details, but he was very interested in doing something with federal vouchers for the poor, for education, and he was talking about it. I wish I had something to hand you. I don't.

Steve Sugarman was more on this than I was, and we wrote something. He wrote it, I put my name on it too, about what the feds could do. That was 1977 or something like that.

I don't want to make this sound bad, but he was intimidated by the unions. He was running for reelection, and whenever that election was, you could get the date probably from that, but he decided it was not something that was going to happen anyway and he'd better kind of soft pedal it. That was the end of that.

So there were a lot of influences, of course. I was involved in stuff in Chicago, race stuff, and seeing the little I saw, in marches and meetings and all the rest of it, it just seemed to me that it was ridiculous not to let people run their own families. I think just being with black people in those days helped to tell me that this wasn't the right thing. I wrote in the sixties at three different times on this subject for the school district.

05-00:41:40

Meeker:

Let's talk a little bit more about Prop 13. You had mentioned to me there was a gathering of people who were concerned about how, I imagine, cities and other entities should respond to the passage of Prop 13, which was passed in June of 1978. Can you tell me about who this group was and what their shared concerns were?

05-00:42:06

Coons:

I don't know who started it. It may have been Harvey Milk, who was one of the leaders anyway, in the group. There were maybe twenty, twenty-five people, something like that, and we thought we were hotshots, we would do something to save the world after Prop 13. So we met on Saturdays, beginning right after, as I recall, for about maybe two months, something like that, trying to figure out what might be a political response to Prop 13 that would be helpful. We failed. I mean eventually it just fell apart. People were busy and blah-blah-blah.

Steve and I, Steve Sugarman and I, had been part of the gang. We thought our stuff was actually at least responsive to the problem created by Prop 13 and in the light of *Serrano*, which was now a dead issue because of Prop 13. So we thought, well, how could we do anything? Well, we do have the initiative process and you can change the constitution. And so we said "Well, let's try that, see what happens. But we weren't in a hurry or anything until one day Carol Hoeffe invited me. This is a lady at church. I used to see her, wave at her, she's a nice lady. One day she said, "Can you and Marylyn come over for dinner?" Indeed we did. Our book was out now, called *Education By Choice*. And who was at the dinner but her cousin, the congressman from down on the peninsula. A jolly good guy, we had fun with him that evening.

05-00:44:38

Meeker:

Who was the congressman?

05-00:44:30

Coons:

Leo Ryan. He was a Democrat. He wanted to help poor families and so we talked a little. Later on, what do I do? I get a call from him and so we have dinner at the top of some building over in San Francisco, I've forgotten, maybe it was a bank or something. It was a nice dinner.

05-00:44:57

Meeker:

Probably the Carnelian Room at the Bank of America Building or something, right?

05-00:45:00

Coons:

Something like that, yeah, it was very nice. He had his assistant, Joe Holsinger, he was his political guy in Sacramento or wherever, I don't know. Leo was a congressman. And his assistant, other assistant.

05-00:45:26

Meeker:

Jackie Speier?

05-00:45:27

Coons:

Jackie Speier, now famous and politically powerful. Anyway, he was all pepped up about doing something, and so he said, “If you will write the initiative, I will play the politics and Joe will help raise the money.” I’ve forgotten just how we were dividing it, but our particular slot was to write the initiative. So we immediately sat down to start doing stuff. Of course we had written model initiatives before and now the system was a little different and we had to start over again, and be sure we had it beautiful so people would really like it.

05-00:46:21

Meeker:

Was the initiative specifically to overturn Prop 13 or was it specifically about education in the context of—

05-00:45:30

Coons:

It was specifically about schools and how to do schools.

05-00:46:33

Meeker:

Okay. In the world of Prop 13.

05-00:46:34

Coons:

Right. We could plausibly say, in politics, in succeeding politics, if it ever happened, we could argue that it was perfectly consistent with Prop 13, because it empowered people, not just government and so on. It might be important to Republicans and Democrats alike. Anyhow, so that was fine and we had really just about finished our work. I guess we had really. We had written the thing. And Leo said, “Well, as soon as the election is over, I’ll be back. I have to make one short trip down to South America.” And of course he didn’t come back, and that was the end of Leo and the end of our democratic supporter with political power. So we had already, I think, gotten the initiative into official status, where we had so many days to get the signatures. And we tried. It cost me a lot of money. In the end, we made every possible mistake, I think, imaginable.

05-00:48:09

Meeker:

Meaning?

05-00:48:11

Coons:

Well, first of all, we went to Milton Friedman and said, “Hey look what we’ve got going here.” Well, Milton blinked or something, you know he looked at it. I can’t tell you exactly what Milton said now. This is fifty years ago. He and I knew each other from way back, as already recorded. We’d had some strong interest from people with money. There was a guy from Michigan, I can’t remember his name now, and some other people with loot, who were ready to support this thing. Well, they all sort of drifted away and we wondered what was wrong. Milton had, in fact, dissuaded them. He thought this was not a good idea. In fact, he gave his blessing to another guy, whose name I can’t remember. Ron may know. He’s got the name of this guy. Hickey, I think something like that. Joe Hickey? I don’t know. Actually, it turned out there

were two other initiatives, both of them strongly libertarian initiatives. They thought our thing was an invitation to communism or something. Anyway, we just couldn't get enough bucks to get out on the street with enough people to get the initiative on the ballot. So that was that.

05-00:50:02

Meeker:

Can you give me a summary of the text of the initiative? What was it that you were proposing?

05-00:50:09

Coons:

Well, it was essentially empowering families to make decisions about education. Depending upon what they were willing themselves, they had some part in it. I wish I could give you the details. In fact, I should know this. Shame on me. Anyway, it was empowering people with money to go to the schools of their choice. We gave more to the poor than to the rich. I'll have to find out for you. I think everybody got something, I think. We thought it was politically useful to give something to the well off. They had to, I think, be in public schools for some time before they were eligible. They couldn't just suddenly say, "I'm in a private school, send me a check, a voucher."

In any event, it was a little too regulated for Milton because the schools had to do a certain amount of admitting that they probably wouldn't have done otherwise. We have used various kinds of regulations and imagination to promote schools participating, to really give poor kids a chance to go to private schools. There are various ways to do that. Lotteries are one example.

Anyhow, we thought probably it would be better if, in the end, this is where we wound up, I suppose. That if a school was required to admit 15 percent, say, of lower income families, however you define it, according to the federal rule or whatever, if so many apply. It has a curious kind of incentive involved, because you say to yourself, "Well gee, I mean if you don't want really to have that problem, maybe you hide out and try not to be available to the poor because they don't know you exist." That's possible and that's bad. On the other hand, if some come, a few come, you would have to take them, up to 15 percent, without any choice at all. So you're in kind of an interesting bind. We hoped that a lot of the schools would go out searching for 30 percent, 40 percent low-income applications, so that they could choose the 15 percent of the total that they really liked.

There were other systems. Let half of the admissions be by lottery. Anyway, so there are a lot of different systems. Some were more school oriented for their power over group admissions than others. And so you tried to figure out what will politics bear in this case. You don't want to make the schools into something totally different from what they want to be.

And remember, we're talking about 15 percent of the population, and they're going to go all over the place. So it's not going to be a terrible burden for the

schools, except for the really unready child, of course, that's going to be— now, we addressed that problem by allowing the school, if the kid turns out to be simply a troublemaker, a serious troublemaker, you have to have more than just a little attendance problem or something like that, or simply unable to learn anything, if they can't pass tests, then you may exclude them, but you have to give them a year or whatever, to find out.

05-00:55:46

Meeker:

I want to get you to comment on something about all of this stuff, and I don't know if this is going to come across as a question or what.

05-00:55:54

Coons:

A threat.

05-00:55:56

Meeker:

Hopefully not that either. I've done some amount of interviewing around the history of healthcare and healthcare delivery systems and healthcare reform, and it seems to me there's the system that we have, both pre-Affordable Care Act and post-Affordable Care Act. On one hand, It's this mélange of totally different delivery systems, financing, all of this kind of stuff that just amounts to massive complexity and a whole wide variety of different pieces of legislation, some of which fit together, some of which doesn't. On the other hand, one could come up with a reasonably easy solution. It could be a very clear free market solution whereby you pay as you go, kind of like what happened before Blue Cross and Blue Shield were invented, you know? That means that doctors aren't going to charge too much because they're in competition. That means that people aren't going to seek healthcare that they don't really need. I mean all that kind of stuff, right?

05-00:57:12

Coons:

Right.

05-00:57:13

Meeker:

On another end, there's also another really elegant solution, and that's a single payer solution, which is everyone pays into the system and you get what you need. There might be some rationing because of the amount that gets paid into the system. And then maybe some combination of it, with like a capitation model, whereby everyone pays into a system and each person kind of has sort of like a doctor gets paid for each person they care for, regardless of what they're doing. But we don't have anything like that. We have something which is way more complex and kind of a disaster frankly.

I'm wondering, around education, it seems like a lot of models that you guys were coming up with were extraordinarily complex and thus difficult to implement and perhaps even more difficult to communicate to the public about what you had in mind. Did you have conversations about this?

05-00:58:15

Coons:

Yes. Yeah, and you're right.

05-00:58:18

Meeker:

I guess the question is what were the conversations you had and to what extent were you trying to simplify at the same time you were trying to get something done?

05-00:58:34

Coons:

Yeah. Well, we certainly talked about it. After our first effort at designing a model, in 1971 we published a book. It even had a long title, an off-putting title. When we got into the politics of it later on, in the mid-seventies and so on, we had to simplify and we had to reduce it and say this was fun to do but it's not going to work. So the '78 model was more simplified, a little more streamlined, and then the '81 model was a little more still, and the '90 model or whatever it was. We've tried to make it simpler. It's hard because, well, maybe we're not very good at it. Well, there are a whole lot of main things. Nevada, for example, has done this. In a certain way, it's simplified because it doesn't even address the question of will they let you in, will they take you with a voucher, or are you simply unattractive to them because you're black, white, whatever you are, or stupid, or something like that.

We feel morally responsible to say something to the schools, that you have some responsibility, and we've tried ten different ways to do it. We don't want to scare off the rich people by making it just a raffle, but we want to do something for the people who really need it. You and I have choice. We have choice, if it's public or private, it doesn't matter, we can move to where ever we like. So how do you do it without messing up the private schools? Now, there are various models of schools that have been very much open to poor kids. I mean the Catholic schools were the very model of come and join us. Of course now they don't have any nuns any more so they've got to pay people. If it ever works again, it will have to be some other model, it will have to be a voucher model or something like that.

But you're right, it is a problem, the complexity of the thing is a problem, but if you look at models from other states that have been fooling around with vouchers, without controlling the schools, they too are pretty complicated.

05-01:02:09

Meeker:

Well, it's interesting what you just said about each iteration, you tried to distill it down and thus make it less complex. Can you walk me through that process?

05-01:02:20

Coons:

Well, yeah, I mean in the 1971 model, I think we had four different levels of expenditure that you could choose from. According to your income, you would pay so much and you would get so much in a voucher. The smallest of the vouchers was whatever, in those days was a meaningful but minimum number of dollars we thought for going to school. Well, then there's a second level, third level, fourth level, for really hotdog, education minded people. Well that's just too doggone complicated and we realized it's going to have to

be a more beautiful model. I can't remember all the details in the '78 model, that's almost fifty years, but anyway, it was a formula in which you could get the same expenditure in the school for an appropriate, our choice, our decision, level of suffering, by giving tax money.

Now, as you go along, you realize you have more problems and it is technical. Are the schools allowed to get money from their rich benefactors or charge more to them for going to school and so forth? Are they free to raise money otherwise, and if they do, on whom do they spend it, and so on. Well, as you look at today, as you look at schools of choice, public school charter schools. They are allowed, and I'm not saying it's bad or good, but they are allowed to raise a lot of money from people like Bill Gates and so forth. That's part of how some of them survived. Maybe they're on their own now, maybe they're not. I'm not saying this is bad, to make a school with a lot of money from rich people, as long as they take poor people, which these do. Charters, of course, are pretty good at doing that. They're not perfect but they're pretty good. Anyway, so we had to deal with that.

Then, you had to worry about the startup cost of such a system. If you say to people, "Okay, you can get a voucher now, go to your private school," well that's a huge cost, because you've got all these people in private schools and suddenly they're getting money. You've simply increased the number of schools that the public supports. Not simply, but you do and that's not going to work. So you have to figure out how long you have to go to a public school before you get to go to a private school, or something like that. You have to let kindergarteners in because they're just starting. I think you do, or maybe you make them go to public kindergarten first and then move over. In other words, you have to figure out a way that it doesn't break the bank, and actually, of course you can save money in the end. Frankly, I think you could, because so many of the schools are really spending heavily, beyond what we see, and I don't blame them, but \$20,000 is not very surprising these days. When we were first worrying about this it was \$3,000 or something like that.

05-01:07:04

Meeker:

Per pupil.

05-01:07:08

Coons:

Per pupil, yeah. What does that mean? How about debt service and everything else? It's very hard to explain. Unfortunately, it takes experts to really deal with some of this stuff. People just don't realize, they say oh, we only spend \$8,000. Well, what have you left out? Anyway, so you have to express some sort of limitations or ways to introduce the system without being too expensive at the beginning. Then you can save money, of course, if you say that the schools will receive a voucher worth 90 percent of what the public schools are spending, or 80 percent or whatever. But then you have to figure out are you really going to have them spend less. Is that important that they spend less? So you have to make decisions along the way, and I'm not sure

what exactly the right ones are all the time, but you've got to make it possible for the kids to get in, the poor kids, and the workers, I mean obviously, maybe with graduated vouchers. You want the rich to want to go, so you give them a little bit at the top, 10 percent or whatever. There's so many different ways to do it.

05-01:08:43

Meeker:

Right. Well, I think what we've been talking about really is the ideas that come out of your research that resulted in education by choice, and then how those ideas continued to evolve over the years. *Education by Choice* was published in '78, you co-wrote it again with Steve Sugarman. Can we talk about that book just as a product?

05-01:09:13

Coons:

Sure, right.

05-01:09:17

Meeker:

It came out in '78, *Serrano II* was decided in '76. When did you start working on *Education By Choice*? Where did the ideas start to gel, that were communicated so clearly in that book?

05-01:09:33

Coons:

Well, it was before 1976. I can tell you that, because I had a sabbatical, and we were planning to have a meeting in England. There were some people in England that we knew and they were interested. My sabbatical took me to Germany, with my wife and children, to the University of Freiberg. I was to work on a sort of the first version of this book. We already had some stuff, I think, written. All of this is to the question when did we start? And I think it was '75. So that when I left the idea was full-blown, except it had to be written. So I worked on that draft, first draft, from February 1st to August 1st, something like that, in Europe, first in Freiberg and then in England, where we had our meeting, at Cambridge.

When we got home, it was now, what, late '76, Steve and I finished it up over the next year, I guess, and the University of California was prepared to publish it, so they went ahead and did it. By the way, it's being translated into Chinese. I guess I maybe told you that.

05-01:11:12

Meeker:

Yeah, that's amazing forty years later.

05-01:11:21

Coons:

By the Chinese, not here but in China.

05-01:11:22

Meeker:

Right. How did you and Sugarman manage to kind of stay on the same path for so long? I can see that it's possible for people's ideas to coalesce around a single subject. But then to evolve in a similar way is, I think, a much more

difficult and unlikely path, especially when *Education By Choice* is a very different book than the research that preceded it.

05-01:11:58

Coons: Oh, yes.

05-01:12:00

Meeker: Because I think it does go off in sort of a different direction, focusing on vouchers and family choice. Can you tell me how that evolved?

05-01:12:10

Coons: Sure. Well first of all he's very smart. He really is. He's got a great head. Secondly, he's very patient. Third, he's a very pleasant man. I met him—should I tell you about it?

05-01:12:31

Meeker: Yeah, go ahead.

05-01:12:32

Coons: I met him when he was a student at Northwestern. He was a senior trying to decide where to go to law school. I was up giving a talk on going to law school and we talked afterwards and the first thing I said is, "Hey, this guy has really got the stuff." I never thought about a book or anything but, anyway, he's a smart kid. So he came to the law school at Northwestern as a scholarship student. He got a nice deal, and he was part of something that was then formed called the Russell Sage Foundation, blah-blah-blah. It was a connection between social science, included political science, sociology, anthropology. I was teaching seminars with people from the Evanston campus. They're different. The law school is downtown.

Anyway, a lot of talk about mixing things and lawyers should know more about sociology and vice-versa and so on, and it was true, and it was fine. In those days, lawyers were getting money from big foundations. They don't anymore, I don't think. But, anyway, we were flourishing in this interdisciplinary world, and Steve fit right into that. He was one of the Russell Sage scholars. And we had all these meetings, and so we got to know each other, and then in my seminars. He was, indeed, in my property class that first year by accident, but anyway, he was in there. I'm wasting your time. But anyway, at the examination at the end of the semester, my colleague and I, who taught the other section, we put in a poem at the end of the—it was the third or the last question, whatever it was, was in verse. And he was the only one who answered in verse. [laughter] I wish I still had it. But that's the kind of person he is. He's a quiet, serious sort of man. He'll pause and say, "Hmm, well now, I think, I think—" And then he comes out with it and it's right, it's almost always right. He and I have different philosophical transcendental notions about what the world is, very different. I'll let him speak for himself. But he's not a religious person. I hope I am. We have fun beating up on each other and trying to figure out what other people are thinking about. I can't

explain it, except he's a good, good friend, and he's been very kind to me as an old geezer. We did then and we do now enjoy working together. I guess he thinks I have some gifts to offer and he sure has his. He's saved me over the last, well, what it is now? It's fifty years, I guess.

05-01:16:17

Meeker:

Can you maybe talk specifically about when you started working on the *Education by Choice* book? What were the conversations like then? Did you ever get a sense that he was totally onboard, or did he take some convincing that this was the right direction to move into?

05-01:16:43

Coons:

He always takes convincing. He's not likely to rush into anything. That isn't quite what I meant to say. It isn't as if he gives in. That's not it. From the beginning he was in the game. We were trying to win a case. We thought that the system stunk. It was fun and responsible, to do what we were doing, but we needed a way to win and the way to win, we thought, and I guess we were partly right anyway, was this idea of power equalizing or equality of authority. Equality of effort or something like that. So we did that in part because the supreme court, we thought would be interested in not deciding how to run schools, and that was true of the California Supreme Court. Now, in the course of that, providing a theory of family choice was very important. You had the three; centralized, decentralized, family. And he found that very interesting. I can't remember who came up with the kind of concept in the beginning, but he was interested in that as a legal proposition and he just liked it. I think he came from a happy family. We do kind of agree on that, very basically, I think, from the beginning. I can't say more.

05-01:18:59

Meeker:

Well, I think I'll talk to him. I think that my plan is to maybe do one more session with you after this and then do one session with him and have him talk about the way in which you worked together.

05-01:19:12

Coons:

Yeah, that would be great.

05-01:19:13

Meeker:

So I'll ask him about that, but I just wanted your perspective on that. So, you know about this era. There are a few more things that you had mentioned that are worth talking about. One is your engagement with Cesar Chavez. I know that you reached out to him to try to get support from him, the United Farm Workers. Was this the 1978 proposition that you were working on?

05-01:19:46

Coons:

Yeah, yeah.

05-01:19:48

Meeker:

Can you tell me why it is that you decided to reach out to him and what was the result of that encounter?

05-01:19:57

Coons:

I'm not certain now, but his nephew, I think, was a law student at Berkeley, I think, or some kind of relative, whom I got to talking one day with or something like that. So he said, "Well, he'd ask Chavez if he would be interested in talking about this." I don't know whether I actually called Chavez myself or he did it or whatever, but it was arranged that I would show up at that town. What is it? I can't remember now, the name of the town, but it's a little town down in the desert down there.

So I drove on down. It seems I should have been at work, but maybe I took the day off. So we had this meeting. Maybe we had lunch, I'm not sure. It was a long meeting. I mean we talked and talked and talked about this and that and the other thing. I told him everything I could tell him about what we were doing and why we were doing it. See, one of the things we designed, and I think may have been expressed in the '78 thing, was how mobile schools, schools for the farm workers who would work, with a certain kind of bus, and the kids could travel with the parents and stay with the family and all that stuff. He liked that a lot and it has always seemed to me it would be a great thing. Instead of having to go from one school to another, there are different teachers and so forth. Anyway, he was very positive, and so in the end of course, I laid our line down. I said, "Can you support us?" and he said, "No, I can't." He said, "I'm very sorry, because I get \$200,000 a year from AFT." Damn it, I can't remember. Why am I blocking on his name? He was a good friend of mine, even if we didn't agree. Oh well, it will come to me. The head of the AFT.

05-01:22:44

Meeker:

The American Federation of Teachers, right?

05-01:22:45

Coons:

Yeah that's right, New York. He was a New York guy. He said, "I just can't afford to drive them away." So it was very sad.

05-01:23:04

Meeker:

Did you and Sugarman attempt to reach out to teachers unions or other labor organizations—

05-01:23:12

Coons:

Oh boy, yes we did.

05-01:29:15

Meeker:

—to ameliorate their concerns? I know you wrote about it a bit in the book, but was there like any direct outreach?

05-01:23:24

Coons:

Yeah. I tried to get AFT and I, you know, talked about it. Actually, we debated it three times; once at Syracuse, once the gang down in the South, you know out in the desert there, all those colleges.

05-01:23:54

Meeker: The Claremont colleges?

05-01:23:57

Coons:

And then some other place. Anyhow, yes, we tried. In fact, they were interested for a while, because they could start their own schools and do their own thing, and maybe create a new world of interesting schools. But that didn't last too long. I talked also with NEA, the National Education Association. I tried them too, and they were open for a while and I gave a couple of talks at their meetings and so forth, and I had some hope that they would go for it but in the end they just said we can't afford that.

05-01:24:47

Meeker:

Did you get a sense if it was the leadership who just looked at it and didn't like it, or if there was more concern about how the rank and file would respond to something like this?

05-01:25:00

Coons:

I think it was the leadership. I think the rank and file might have found it interesting. I mean not all of them obviously. There would have been disputes and separations, and some would go charter school, some would go whatever. The leadership of the unions has been a huge disappointment over the years. It just seems they could be so, so good to kids, but they just can't seem to do it, and so what can I say?

05-01:25:38

Meeker:

Did that have any influence, in general, on your opinion of organized labor in the United States?

05-01:25:44

Coons:

No, not at all. About organized labor in government, I mean government unions.

05-01:25:53

Meeker:

So public employee unions.

05-01:25:54

Coons:

In fact, I just published a couple of weeks ago in our blog, whatever our blog is, I can't remember the address. Hello folks, I wish I could give you the address, because I've been writing for it for several years now. UAW, the autoworkers, if they screw up their employer, they're out of a job. I think that's very important, that unions be recognized as part of the system, and they are in competition with other people to get as much as they can from their work and so forth. But if you kill the bird that lays the golden egg then you're out of a job. So they've got to be careful and they've got to negotiate and they just can't tell people what to do. Boy, in government, whether it's the prison workers or the teachers and so on, it's not a very classy kind of operation as far as I can see.

- 05-01:27:04
Meeker: You can't put the government out of business.
- 05-01:27:06
Coons: You can't. They can go on strike whenever they want. What are they going to do? And what do parents do when the school is suddenly closed and you've got three or four kids running around and you've got to go to work. It's just a nightmare and it shouldn't be that way. I can't imagine whoever doing that.
- 05-01:27:30
Meeker: So this kind of started in 1978. Were you hoping it would get on the ballot in 1980 or were you thinking later?
- 05-01:27:40
Coons: Yeah, '80. I think that was it. I can't give you the exact schedule now, but we started at a certain date, we filed, and then you get, what is it ninety days, or a hundred and twenty, or something.
- 05-01:28:05
Meeker: Well, let's end by talking about, sorry, another not so bright chapter, but your engagement with the Catholic bishops. Given your own background with Catholic education, and I'm sure you had some manner of connections.
- 05-01:28:21
Coons: I'm a Catholic, yeah.
- 05-01:28:22
Meeker: You're a Catholic, you had some manner of connections with at least parish priests.
- 05-01:28:26
Coons: Oh, yes.
- 05-01:28:30
Meeker: And knowing the Catholic school system could very well have benefited from the kind of legislation that you were hoping to have passed.
- 05-01:28:36
Coons: Oh boy, I'll say.
- 05-01:28:39
Meeker: But it didn't turn out like that. So can you tell me about your efforts to reach out to these people?
- 05-01:28:44
Coons: Sure, sure, yeah. Well, first of all, I had friends. I did know a couple of bishops and they were very interested. "This was a great idea, nice going, good for you." Anyway, I got a call from a guy, a monsignor down in Los Angeles who represented the cardinal and he said, "We'd like to talk to you about this." This was in 1981 or '82. This is the next round. So I went down and saw this monsignor, who was a very aggressive guy. Anyway, he

obviously had a lot of influence in the operation of the Los Angeles Diocese. Then, after we spent some time together, he took me to see the cardinal and we sat and talked for quite a while, a couple hours, I guess, I'm not sure. He was an elderly man, as I say now, he was a little older than I was then, and I think a very good man. He was a good old guy. He was interested in helping these kids and these schools and so forth, and to my incredible surprise said, "If this is interesting to you, I'm going to ask the bishops to come up with \$2 million for this campaign." Wow!

05-01:30:45
Meeker:

That's enough to get it on the ballot.

05-01:30:48
Coons:

Well I don't know, probably. This is 1980. That's a lot of bucks back in '81 or so. So, we started rounding up everybody possible so it wouldn't look like a Catholic plot, which it wasn't in any case, with Sugarman around certainly. But anyway, we engaged childcare operations, we engaged, of course, kindergartens and private schools. We tried to get some union help from non-government unions. I've forgotten whether we had any help. We were doing okay. And, of course, other religious schools. That was interesting because some of the more enthusiastic Christian sects, good people, but they're afraid. They're so afraid of government, that some of them just thought, "We don't want to get involved in this, we just don't want to." But some did. The Lutherans were interested. Of course they're old-timers like Catholics and they have their institutions and so forth. And they were interested.

So we had a fair spread of people who wanted to pitch in, and we were all set to go and we were kind of rounding things up, getting huge lists of friends to go out and gather stuff, signatures. And some bishop called me, maybe it was the local bishop, who was a friend of mine, a good man, to come down to a meeting of all the bishops. They have a place down in the peninsula, I've forgotten. They were having their annual affair. So I went down and four of them took me aside and we had a little meeting in a private room, in which their main message was, "Our people are not ready." It was clear that whether the people were ready or not, these guys weren't ready, and so that was the end of that. So we had to go back to all the other people and tell them it's not going to happen. It was really quite vexing, to say the least.

05-01:33:32
Meeker:

Did you ever get a sense of what was behind that?

05-01:33:35
Coons:

No. I think it may have been the guy, then from Sacramento who became the cardinal in Los Angeles.

05-01:33:47
Meeker:

[Roger] Mahony?

05-01:33:48

Coons:

Mahony, a very aggressive guy, wow, and I don't think he wanted to spend two million bucks on—I don't know, I'm guessing. The other people involved were rather mild people. I don't think they enjoyed doing what they did to me, but somehow the bishops had been encouraged to get out of this. They didn't want to do it.

05-01:34:19

Meeker:

That round of legislation, was it substantially different than what you were attempting to do in the late 1970s?

05-01:34:27

Coons:

I don't think it was too different. Basically the same, maybe a little smoother.

05-01:34:31

Meeker:

I mean it sounds like maybe that round of legislation was inspired simply by the bishops approaching you to begin with.

05-01:34:43

Coons:

It could be, yeah. I've kind of forgotten now. Certainly the next one was, where Joe, what's his name?

05-01:34:52

Meeker:

Joe Alibrandi.

05-01:34:52

Coons:

Joe Alibrandi came up to tell us, yeah and we had of course, the same experience. Not quite, it was slightly different.

Interview 6: December 17, 2015

06-00:00:02

Meeker:

Today is Thursday, the 17th of December 2015. This is Martin Meeker, interviewing Jack Coons. This is interview session number six. We're at his home here in Berkeley. And before we continue along the timeline where we had left off the last session, there's a few things that we should follow-up on that would be judicious to record. One of them is a particular unknown historical role that you've played in college athletics. Please describe for me what transpired.

06-00:00:42

Coons:

Well it has a little history because it was preceded, necessarily, by my youth, as a near resident of the streetcar line. There were wires above the street for the streetcars to run on. Well, they were goalposts, and I spent a good deal of my youth kicking footballs over wires on Wallace Avenue, which prepared me for my real place in history, which took place some cold evening in Duluth. There were probably at least 200 fans up there in the bleachers when I made my dropkick, which was successful. It was engineered by my teammates, who knew that I was dying to make a dropkick, which I let them know, and surprised the coach. One of the guys who was supposed to kick said, "Okay, you go ahead." Can you imagine a football team like that today? I mean I could just say, "Hey, let's have some fun here." I can say I scored in college. I made one point. And as far as I know, that is the last dropkick in college. There was some pro guy who did it for fun too but, well, they don't have the spirit that we had in our football team.

06-00:02:25

Meeker:

So did you win the game?

06-00:02:27

Coons:

Beats the hell out of me.

06-00:02:31

Meeker:

In front of a rousing crowd of 200 people.

06-00:02:34

Coons:

Oh, I suppose, yeah. Maybe 180.

06-00:02:38

Meeker:

And I imagine it was probably negative 30 degrees outside or something.

06-00:02:41

Coons:

Something like that. There was no snow. That would have made it more difficult. And so I had all of the advantages of the weather and so forth. Sadly, nobody understands my place in history and I'm hoping that you folks will take it as one of your responsibilities to spread the word of my early glory.

- 06-00:03:07
Meeker: It seems like Duluth needs to retire your jersey or something because of this.
- 06-00:03:10
Coons: Yes, something like that, yeah.
- 06-00:03:12
Meeker: A fitting tribute.
- 06-00:03:13
Coons: And I think I even sent them fifty bucks once when they come and ask me for money, which they still do.
- 06-00:03:22
Meeker: All right, well I'm glad that we got that recorded. Now let's move to something a little less serious.
- 06-00:03:24
Coons: Yeah, that's important, exactly.
- 06-00:03:28
Meeker: And that was post-*Serrano*, 1971, the *Serrano* decisions.
- 06-00:03:44
Coons: The second round was '73 or '76.
- 06-00:03:48
Meeker: Foundations like Ford and Rockefeller come to you here at Berkeley, you and Steve Sugarman, interested in facilitating you continuing this kind of work, because it had proved to be so impactful. It resulted in the establishment of the childhood and government project. Can you tell me what the idea for this project was and how it transpired?
- 06-00:04:15
Coons: They had, as it turned out vainly, hoped that *Serrano* would be turned into a national proposition, that it would be the interpretation of the federal Constitution that would suddenly turn school finance into a more orderly and fair, we thought anyway, and they did, process for all the kids, no matter where they lived. There was an enormous difference from school district to school district, and of course from state to state and everything else. But this was only about state, within states. This would help the states make a fairer and sane kind of system, rather than just turn it over to the luck of the draw of the richness of the local area, the local district.
- So Ford was really excited and they asked us if we wanted the money and well, we said, sure, let's do something. So we had for seven or eight years a stream of money from these foundations to do something like this. Unfortunately, as you know, the Supreme Court of the United States, by a vote of five-to-four, decided that it was not a national constitutional problem. And so in the middle of our life, as it was, of the project, our *raison d'être*

suddenly disappeared, and so we had to do a lot of other things, which we did. We tried, with respect to vouchers and with respect to child welfare, and all sorts of things. I should say it was a very difficult experience for me, in a way, because somehow we had hired mostly people who were scornful of the way we approached things, the older people, myself included. And for seven or eight years, we had a battle of the ages between the sort of senior people and the youngsters, and we really never got a darn thing done. It's kind of a sad story and maybe I'm sorry I've even gotten it on the machine, because I'd like to forget it.

It was a kind of thing that was happening in the university in general. I mean it was a little bit of a picture of the extreme sensitivity of the younger people to any reservations on our part about changing the world that we might have. Sometimes we were careful, too careful perhaps. It's hard for me to explain. If we went through each of the personalities that were involved, it would perhaps be good. But not here, not on this. I don't think it would be helpful.

06-00:07:53

Meeker:

Were there any particular issues that you recall being the source of a great deal of conflict, where one generation lined up clearly on one side and your generation lined up perhaps on another?

06-00:08:11

Coons:

I think on the idea of vouchers, which raises the role of government in respect to the family. That the younger people were much more inclined to trust government and to regard the poor, lower income families, workers and the poor, as lucky to be taken by the government and told where their children go to school and learn whatever it is that public schools would teach them. I think the older folks, we were skeptical of a system which did what the public schools do to low income families, that is coerce them into coming to school X, and to learn curriculum X, whatever it contains. That, to us, was troublesome. To my gang, let's put it that way. The sort of view that we took, we wanted to put much more trust in the family, the lower income family. Certainly, the system puts all the trust that you can imagine in the rich family. Anywhere you want, you can go to school. The people that I'm talking about seemed to know more about what's good for government to do than we did. And it was also partly personalities and so on. But it was not a pleasant experience. But it's gone.

06-00:10:12

Meeker:

At this point in time particularly, the late seventies and certainly into the 1980s, the role of government in society becomes a litmus test issue, whereby those on the right, in this era of deregulation and Reaganism, you know the idea is, "You've got to starve the beast, government needs to get out of our lives, it's overreached, it's expanded too big." And they had some legitimate reasons for saying that and some illegitimate reasons for saying that too. And I don't know what comes first, but then automatically the left says government is a force for good: "We need to expand it, we need to allow it to enter into

areas of perhaps private life where it can exact its goodness.” Affirmative action is a good example, for instance, school busing, these kinds of things, where government is going to be there to solve the problems that exist. It seems like neither side recognizes the problems with their own beliefs. You rarely hear the left wing talking about waste, fraud and abuse in government, or talking about the potential harm of overreach. All of those kinds of things that are in fact verifiable. I mean they exist in government. Similarly, something is also happening on the right: you never hear anti-tax right people talking about schools, roads, public transportation, all that kind of stuff which is necessary for a society and commerce to happen, for instance. But it’s almost like the position you’re talking about. I’m sorry this is such a long question.

06-00:12:32

Coons:

No, no, you’re doing great.

06-00:12:33

Meeker:

Like the position you guys were representing is sort of in-between.

06-00:12:38

Coons:

I hope so, because we haven’t ever worried about how much money. Obviously, any citizen should worry about that, but that hasn’t been our gig. We have been depressed by the strange ways of distributing power that the school system represents, and the course of nature of assignment of families to particular schools if you’re not rich. These same people who were our colleagues, and they were our friends but we didn’t always get along, these same people live in fancy houses and they send their kids to private schools or to Berkeley High, which is fine. Some of my kids went there. Anyway, there is a kind of blindness to the disempowerment of lower income people by government, by the schools particularly, and the mistrust of the family. Obviously most people, if you disempower them, they say, “Okay, you take care of me,” and they lose their initiative, they lose their responsibility, the kids see them as limp and useless people who can’t keep them out of this school that they hate or whatever. That doesn’t seem to me to be; (a) fair to the people who can’t afford to come and live in fancy Berkeley houses; and (b) it destroys the elementary institution which is our family. I don’t know how much it accounts for what happens in the ghetto. But if you take people and treat them like that, as if you had to decide for them, if you keep them eating, most of them find it easy to join gangs or be irresponsible and not want to marry and just do whatever you want, and that’s no way to run the railroad. If we were all rich and we’d all come from nice families, we wouldn’t have to worry about it maybe. But if we did, we wouldn’t stand for being told what to do anyway. So that’s, in a nutshell, what we’d been worried about I think.

06-00:15:38

Meeker:

What was it like to experience a conflict of ideas with this younger generation? How did it make you feel? How did it impact the work that you then did?

06-00:15:57

Coons:

Obviously, it wasn't disempowering. I mean I didn't quit and walk away. And I liked these people. One of them is down the street here, still my friend, worked for us, and we get together occasionally. No, two of them. Well, there's several of them around. They're well-off and they live in nice houses and so forth.

It was very similar to the feeling I had toward the Milton Friedman folk on the other side, who know exactly what they stand for and find it very hard to compromise and allow government to do some things, particular things, to help poor people to get freedom to choose, and require the providers of education to act in concert with the spirit of empowering families and taking some share of their kids from lower income families. I'm overstating it, but the right has found it very difficult to accept any sort of regulation which would have the providers, the schools, would have them agree to open up some of their space to low-income kids or to any kind of game in which they don't control everything with respect to admissions.

Most of the new systems in Indiana and Wisconsin and other places, they're a start in the right direction. Most of them do not have any requirement of the providers, the schools, to do anything except take whom they want and not take the others. Well, I don't see how you're ever going to solve the separation problem, which is a real problem. It galls me anyway, to think that parents would be provided money to go to the schools, but the schools wouldn't take them because they were X, Y, or Z.

06-00:18:54

Meeker:

So last time we finished up, I think that we ended talking about the abandoned initiative in California, where there just wasn't enough support and funding to bring it to the ballot.

06-00:19:08

Coons:

Right, right.

06-00:19:11

Meeker:

Why don't we pick up there.

06-00:19:14

Coons:

Fine.

06-00:19:16

Meeker:

Once that avenue kind of ends, what do you start to work on next? What is your next agenda?

06-00:19:27

Coons:

Well, we didn't give up, because, again, we were urged to consider doing it by somebody, that is by the Catholic Church, okay let's face it. It was a cardinal in Los Angeles. I heard from his office. He didn't call, but it was somebody else, that he was interested in talking about this. So I flew down and was

eventually introduced to the cardinal, and he apparently had read some of our stuff or he seemed to be quite well-informed, and we talked for a while. Maybe an hour, I'm not sure. At the end of our conversation, in any case, and this is no secret, he didn't ask for it to be a secret that's for sure, he said "We'll give you—" whatever it was. What was it? Two million? I think it was \$2 million, "We'll find a way to get you two million dollars to run a campaign." I'd have to look back in my notes to know whether it was one or two, but anyway it was a big chunk. And I took a deep breath and said, "Yes, good, let's do that." So we designed another one, similar to the old one but perhaps a little more sophisticated, and we started dealing with other churches. I've told you that story I think. Actually, there were other labor people that I approached. And Steve was doing some of it too, and I can't remember exactly who did what.

We had got contact with pre-K institutions, people who took care of four-year-olds and so forth on a professional basis. There was an organization, and I'm sure there still is, of these schools, and they were very interested because they themselves could see that they might start schools with five-year-olds. After taking care of them and move them on, they could really begin to give them the lessons that were important. Anyway, so they got interested too. The thing was gradually forming. Nothing had happened yet. We hadn't filed or anything like that. But in October, I believe, of that year, after making all these contacts, with a lot of hope from various people, I was asked to come down to the seminary down on the peninsula. I've forgotten the location or the name. But anyway, so I did. I went down and the bishops were all meeting there. I was received and directed to a certain room where there were three or four bishops, three of whom I remember who were there who were very nervous obviously, and I think would have been happier to be somewhere else. But they said how much they admired what we were doing and what wonderful people we were and, "By the way, we've decided that our people are not ready," and so the roof caved in. We had nothing to support the relationships with the other people and inspire them to give money, so again we had no money. That was 1971, October of '71, I believe. And that just took the wind out of us for a while. But we came back, of course, in the late eighties when Mr. Alibrandi called and said this time the well-to-do, sort of right-oriented, if you forgive that expression, groups seemed less worried about a bit of regulation and that if we would write it, he would promote it.

Anyway, we had then several meetings. I went down to Los Angeles a number of times, each time with a little tweak on the draft or something and we'd talk about it for half a day. And we thought we had it all set. Everything was hunky-dory, ready to go, and we had the last of our meetings, as far as I knew, but it turned out that there was to be one more. I couldn't make it. I had to teach a class or something. As it turned out, in that meeting they simply ripped the guts out of all the regulations that would have protected the family from exclusion simply by being poor or unattractive. So instead they went forward eventually with their own version, which was very similar to the other efforts

around the country by libertarians, none of which ever succeeded. There were about thirteen, I think, around the country. Michigan, District of Columbia, Oregon, I believe. I'm not sure now. I know Michigan very well.

06-00:26:34

Meeker:

These were voucher school choice kind of things, right?

06-00:26:37

Coons:

Yeah, they could have been designed by Milton Friedman. They were all libertarian kinds of scriptures. None of them got more than about 33 percent of the vote. Here's something that's odd. The message that people have taken from that experience is, oh, initiatives won't work. It's not that initiatives won't work, as far as I can see. It's that all of those initiatives were mis-drafted, and they represented a feeling and an approach to the problem that most people do not share. I know there's somebody working on an initiative right now. I don't know who they are exactly. Just people tell me this is happening. I am very interested, of course, to see what form it takes. If it's just another Milton Friedman enterprise, I'm afraid it's going to be doomed again. But it could be made very attractive, I think.

06-00:27:59

Meeker:

How would it be more attractive to the population?

06-00:28:02

Coons:

Well, there are various ways to do it. You'll notice in the charter school operations, for example in New York and so forth, the decision about who gets to go to school X, private school X, charter school, sorry, is taken care of by, what do you call it, a lottery? It's a bingo sort of thing. We think that is not necessary. It's one way to do it but it seems to me that might be relatively unpopular in a vote. We don't know because it's never been tried. Let's say that charter and private can do this.

There are a lot of different ways to do it. Suppose you say to the school, "Okay you can take half on your own. You choose whatever you like, and then play bingo for the other 50 percent." Or you can make it less, you can make it 10 percent, and say that you must take 10 percent low income kids if so many apply. Now, what happens? The school then has the incentive to go out and recruit low income, because if it doesn't it may wind up with five or six percent and required to take all of them, some of whom are completely unsuitable for the school. So there is an encouragement. You don't have to make it a big deal. So if the school gets 10 percent low income, or however you assigned it, if there were enough schools, if the market were full of suppliers anyway, that's another question. I'm no economist but I have my ideas about that. If there are enough suppliers, you've solved the problem because even 10 percent, if you had enough schools, would be fine to take care of most of the problems. Some of them are going to choose government schools, and the government schools are going to get better or they will not survive.

06-00:31:16

Meeker:

Well, that contingency, or that possibility I think, would still be difficult for the public at large to stomach. I mean, I think that's what a lot of people fear, is that when you put competition into the system it could possibly overwhelm the ability of a lumbering public school system to compete. And I think that some people would rather have kind of a lumbering public school system that still had a public option, if you will, rather than much more effective but entirely private system.

06-00:32:06

Coons:

Oh, yeah. Well, absolutely. I mean this is not a play to remove public schools. They would be a choice. All the experts, economists at least, tell us they'll get better by necessity or they won't survive. My guess is that they would survive very well over time because they have to. Teachers will make it better, people will perform better. Of course I don't know. I shouldn't be quite so springy about that. But in any event it's a crapshoot. There's no question as to who is going to be there to serve the children, which ones. Based on family choice, it survives in the suburbs, why can't it survive in the city? There's no reason that I can see. Do you get the *New York Times*?

06-00:33:20

Meeker:

I read it online, yeah.

06-00:33:24

Coons:

Last week there was a surprising full-page ad by the Catholic schools in New York describing who goes to these schools and so forth. They are serving low income people, black people, yellow people, everything, and they're all going to college. I don't know how they do it. It's amazing. But in any event, they have 14,000 kids in the city schools and they're apparently doing a very good job, as Sotomayor reports from her childhood. I can't report that, because we didn't have any minorities in our town.

06-00:34:21

Meeker:

You had referred to the role played by Joe Alibrandi. Who was he and what was the role that he played?

06-00:34:27

Coons:

He was the head of the Whitaker Corporation, whatever they do. I've forgotten what Whitaker does. It's a big company. He was a very pleasant man. I shouldn't make him a villain in this. But we did a lot of work in it, and it was just everything we had been promised was eliminated and they tried something else, and we had to oppose it. We wrote in the *Los Angeles Times* don't vote for this damn thing.

06-00:35:03

Meeker:

And was that the last time that you were directly involved in a reform initiative?

06-00:35:08

Coons:

Yeah. Like the Kansas City story I'm going to tell you. We were still involved in school finance and school opportunity for families. But we have not, until now at least, tried an initiative again. That's what I should say. Now, there was an initiative in 1999, something like that, I've forgotten. Some guy with a lot of money down on the peninsula decided he was going to do it himself or something like that. He rounded up people like Friedman and so forth. They called me and they asked me, "You got to support this," and we couldn't. It just, it was the same old stuff. All of them, as I've said, I guess I'm repeating myself, but they just failed utterly. There is a third of the population that is ready to go for broke on a libertarian kind of thing. But that's it. Anyhow, so that's where we are at the moment.

06-00:36:33

Meeker:

You had mentioned that you had some dealings with John Walton of Walmart family fame.

06-00:36:40

Coons:

Correct.

06-00:36:43

Meeker:

I guess he expressed some interest in supporting some of the work that you were doing. When was this and what was the context?

06-00:36:50

Coons:

I think we met the Waltons, John and his wife, at lunch. We were invited to lunch here in San Francisco, Steve and I, and we had a good chat with them, they're very friendly, nice people, and that was it for a while. I can't tell you this exactly in terms of time. Maybe it was mid-eighties. Particularly in the Alibrandi business. We met several times because he was interested in that initiative. I remember meeting him at the Denver Airport, of all things. I was doing something there and some of the guys from here, somehow we were all put together at the airport with John. John flew in in his big plane, came in in his pilot's outfit. We talked about possibilities and design and so on. He was very open-minded. Then I gave a talk at the University of San Diego, at the law school, I guess it was, or maybe it was ed and law. I sat next to him at the table at lunch, then he gave up and gave his talk. This is very self-serving, but I want to report it, because John said in fact, that I was his intellectual hero. For his purpose, he agreed with everything that we wrote about and talked about. Our final connection, sadly, was when the Christian Brothers began to think about this seriously, they're just of course down the road here, at St. Mary's High School, and they're not at the college, St. Mary's College. And I have known them fairly well because four of my sons went to the high school. All four of my sons. Anyway, '04 or '05, they asked me to do, with an old guy who was Tom Brady, an old guy, he's younger than I, who had been the principal there. Maybe he engineered it. But anyway, he and I wrote a history analysis, sort of comment, on the role of the brothers in France originally, and their schools, and how they did it and so forth. In fact it was critical. Of

course, it was all well-intended. In Paris, the brothers went out and tried to help the poor, tried to give the kids of the poor education. The way they did it was kind of rough, because they would often just kind of take the kids and, “Hey kid, get in here and get an education,” and eventually they would connect with the parents. But that was the brothers doing the initiation.

06-00:40:55

Meeker:

A little bit of being shanghaied into education.

06-00:40:57

Coons:

Yeah, they were shanghaied, that’s right. So we criticized that a bit. That wouldn’t happen today obviously. So the thing grew. We had meetings. We, who were we? I’m not exactly sure but there were a bunch of people who were interested. There were some brothers and there were some lawyers and so on, some parents who had shown some deep interest in this. We would meet at St. Mary’s and talk about it and eventually, we said, well, maybe we ought to do something. So we met. We. I don’t know who we was but there was about a hundred-some actors who met at the brothers place up in Napa. It’s a good place to meet. They have a nice thing going there. It’s a kind of hotel. There aren’t a whole lot of brothers now, so there’s a lot of room for stuff to do.

06-00:42:14

Meeker:

It’s a retreat or something like that.

06-00:42:15

Coons:

Yeah, that’s right. So we had a big meeting there and we were planning it and we didn’t have enough money. I made a call to John at the last minute and I say, “Hey, John, could you come up with some money for this purpose?” He sat down, wrote a check for \$50,000, and it was just nice. He was always open to whatever you wanted to talk about. He wouldn’t always agree, but he was a good man.

So we started this meeting. It was a five-day meeting, actually, at the brothers place. And the news came just as we started that John had been killed in a plane crash. If John had lived, I think things would have been somewhat different.

06-00:43:21

Meeker:

What do you think would have happened? Would there have been another effort at an initiative or legislation that was not so Friedman-like in its orientation?

06-00:43:34

Coons:

Yeah, I think so. I do. There is so little money for things in the middle. It’s really amazing. We’ve got Democrats for school choice in New York. What is school choice? Well, at the most it’s charter schools. Well that’s good, charter schools are fine, but they can’t do everything. They can’t make all of the offers that are available in the private sector, most obviously religion.

Anyhow, so there they are over there and then there's Friedman, and then there's, I hope us, whoever. If there is an "us." I'm not sure there is an "us" anymore because we ran out of money. There are a number of organizations, of course, trying to do stuff, but they can't get enough cash really, it's my experience, steadily. They can't get a kind of wad that permits them to do stuff like the people on the right do. I guess that's the way it is. But if we're ever going to have a system that actually the public will fully support, that meets the needs of the lower income families, it seems to me we're going to have to do something other than what's been done so far.

06-00:45:29

Meeker:

You need a John Walton type figure who has the means to basically establish statewide campaigns.

06-00:45:40

Coons:

That's right.

06-00:45:42

Meeker:

But you're right, the money is not there. It's almost like that's not where philanthropists and politically active people are engaged right now.

06-00:45:53

Coons:

It's a little complicated.

06-00:45:56

Meeker:

Yeah. It's very complicated. That's maybe one of the issues.

06-00:46:00

Coons:

That's one of the problems, yeah.

06-00:46:04

Meeker:

Well, how do you make it less complicated? Is that even possible?

06-00:46:14

Coons:

I'm not sure. The main thing that I guess I would worry about, and I don't know how to uncomplicate it, is admissions and who controls who gets in to what school, that has been chosen by X, family X. As I said before, there are different ways to do it.

There has to be some way to help families who just have never been asked to make a choice. They live in a situation in which they never expect to be asked to make a choice, and they figure somebody else takes care of that, and so the child is assigned by strangers to a school that will now run their life for 180 days during the year. It's hard for me to imagine that private schools would not be open to taking 10 percent, which would solve the problem, if there were schools available in sufficient number. So there would have to be a calculation about how can people make money providing schools in the private sector. It should save money to the state because private schools, 90 percent of private schools, are much cheaper than public schools, and they survive and seem to do a perfectly creditable job. So it isn't a problem of

gross magnitude of dollars necessarily. Obviously, you can spend all you want on such a system.

06-00:49:22

Meeker:

Okay, let's get going. I think that we were talking a bit about ideas for trying to communicate these complex issues around school finance reform and vouchers in a way that would be comprehensible much more broadly and thus perhaps could generate the necessary support to allow the kind of change that you think needs to happen. I don't know if you have any good ideas about that or not.

06-00:50:00

Coons:

I don't. I have an idea, I mean I can tell you what I'm doing briefly. I just go upstairs and sit down and blog. Is that the proper expression?

06-00:50:14

Meeker:

Yes.

06-00:50:15

Coons:

I write a blog. You know, this is all for a reform center, down in Florida, and is run by a fine man, Ron Matus. And I must have written thirty or forty in the last year-and-a-half on different aspects of choice, including political and technical. Sort of political. Oh, I don't know. Anyway, there are all kinds of subjects relating to choice. Let's see if I can give you an example. It's too long for a blog, but I just wrote a piece which I hope I can get typed at the law school, we'll see, after exams and vacations and so forth, on the possibility of invoking the Tenth Amendment's recognition of reserved powers in "the people." Now, I don't have a notion that any lawyer is going to succeed in the Supreme Court with that idea as the spearhead. I don't want to bore you with a whole lot of talk here. but in any event, what I'm doing is trying to open up another idea which would give an historical power to the general idea of letting people run their own lives and send their children where they want. It's a little like this in the end. That when they made the Constitution and they said that there are powers reserved to the people, that there really are powers reserved to the people. And one of them, whatever else there may be, and I don't see any others to tell you the truth, but people in 1789, farmers out in the field, did the people think that when they put the Constitution together and then the state constitutions and so forth, that they were taking away from parents the powers that they already had? No. It's very consistent with the case *Pierce v. Society of Sisters*, of course, but it's much more obvious in a way. That is what the hell does due process mean? Nobody knows what it means. But somehow the Court made it mean something good, I think, in this case. *Pierce* is good. But the reserved powers of the people, and families are, you could say sure, they're part of the people. It's not just a recognition of sovereignty, but rather it's a real thing. There they are. They're out there. They've got some rights, and we're not taking them away. Rights and powers. These would be powers, and that's what the Tenth is talking about. The Ninth talks about rights and it's been criticized. The Court has used the Ninth

Amendment for rights of the people for some things. I mean, some of the judges have used the Ninth. Everybody is afraid of the Ninth, because you can find rights all over the place. Powers are not so easy to find.

Because it means one person is telling another person to do something or not to do something and the other person is responsible to obey. That has a boundary, it seems to me. There will be very few cases other than the powers of families to govern their own lives. So it isn't like the Ninth. It isn't as dangerous as the Ninth from the point of view of a judge who doesn't want to give explosive new rights. Now, as I say, I don't think any lawyer is going to get the Supreme Court to do that, to switch from due process to powers of the people, reserved powers. But it would be very nice to have a literature on the subject which they could read and recognize that what they're doing in *Pierce* and in the due process clause is very much supported by the mystery, as it were, of the powers of the people. That historically it's clear that people did have powers, and they still have them. But the only ones that you can really identify are powers over your own life and your children. I don't know. Anyway, that's something.

06-00:55:50
Meeker:

It's interesting. You're taking this in a legal, constitutional strategy. And it appears perhaps, and correct me if I'm wrong, but abandoning an initiative or legislative approach to bringing school choice to the nation.

06-00:56:03
Coons:

Well, I think both—

06-00:56:06
Meeker:

They're both in play?

06-00:56:07
Coons:

Well I mean they could be. You've got to have resources to do this. I would very much like to see, if we had bucks, the religious group, the faith-based schools, the commission on faith-based schools, I would love to see those people go back to their states and talk to their lawyers and say who is it that would be willing to take a case up to the state supreme court, to say that if you're going to send kids to school, you've got to give them the money to make a choice. You've heard of the Blaine Amendments perhaps.

06-00:57:03
Meeker:

No.

06-00:57:04
Coons:

The Blaine Amendments. It started in 1870. There was a guy named Blaine. He wanted to be president, and he had a lot of power in Congress. He was a member of the Senate, I guess, and so forth. He tried to get an amendment to the Constitution, which would prevent government from supporting religious schools. The language is different. He didn't succeed. I should say that. He came very close to getting this passed but it didn't work. He went out then,

into the states, and many of them passed some kind of amendment to their constitution. This was an anti-Catholic thing, by the way. Blaine was a terrible anti-Catholic bigot and people shared his worries about it. You know they had a lot of crazy Irishmen were coming into town and they didn't have any money and they liked to drink. They imagined that they had all sorts of crimes that they were committing, blah-blah-blah. Anyway, so it was not a very well-spirited movement but it did succeed in getting a whole lot of states to write these things into their constitutions that would keep religious schools out of the picture. Now, those could be attacked, partly because of their history, the reason that they were passed, although that's a pretty long stretch. But under either the federal or maybe the state constitution, various guarantees, it's possible that lawyers might succeed in state X or state Y, if their court, if their supreme court, state supreme court, is the kind of court that is sort of interested in doing something like this. Wisconsin did it.

So it would be wonderful if religious groups in Arizona or New York or Minnesota, they would go to their lawyers and say what does the state supreme court like? What has it done? What is it thinking about, these seven or nine people, with respect to this sort of thing? Are they open to thinking about it? And if they are, if these are people who might entertain the idea, to attack it, both under the Federal Constitution and then the state. Now, where am I? I'm out in the woods on this, but it seems to me that if we could just somehow get together in the middle instead of on both ends of the political spectrum, that people would be open to stuff like that.

06-01:00:37

Meeker:

Can you tell me about what happened in Kansas City and what role the teachers union played in that?

06-01:00:43

Coons:

Yes, Kansas City. We got invited by somebody in Kansas City to come, Steve and I, Steve Sugarman and I, to Kansas City because there were people there who thought maybe they could do something to help the kids to get to private schools, of which there were many prepared to take them. We discovered the situation there was very interesting. They had had a successful attack on the schools for segregation, for illegal segregation, at public schools, of course. So the system was in turmoil trying to figure out how to do it because they didn't have enough white kids. More black kids than white kids and trying to work out a system of deseg, well, it wasn't working. For a number of years they had this deseg order. The suburbs had plenty of room for them but they wouldn't take them. They just said no, we're not taking anybody from outside. But there were a lot of private schools who said, "We'll take them." And so we talked to the Catholics, who were ready to pitch in. I think we may have talked to the Lutherans. I'm not sure. There were a bunch of religious schools. It would have made a very substantial impact upon segregation in the inner city, to take black kids in these private schools. It would save money. They are less costly than the average in the public schools, and so forth and so forth.

So we thought perhaps we could file a motion in the court as interveners in the case and do something useful. Well, we went to the ACLU for help too. That proved to be a mistake. They said, “Oh heavens, no. Some of these schools are religious and therefore, no. That would be terrible. Segregation is not as bad as giving money to churches,” And so that didn’t work. The teacher union, of course—why do I say of course? I’m sorry. The union was unhelpful, they were very much against it. I’m trying to think of why. Well, they didn’t want to lose people to non-unionized schools. And then in the end, the guy who was providing the money for us to travel and all this and so forth went bankrupt, and so we were out of it. But just as a story, a sad story, the behavior of people like those people, who had an option, which would have been desegregating in a big way and in a way that was good except for their prejudice about religion. It was really very depressing. Maybe I didn’t do a good job or something. We couldn’t get the thing going.

06-01:05:04

Meeker:

Let’s talk about your book that you wrote with Patrick Brennan called *By Nature Equal*. Fascinating philosophical treatise. I’ve had the opportunity to read through it but not read it cover to cover.

06-01:05:18

Coons:

Sure, I understand. You’ve probably read more than anybody else.

06-01:05:26

Meeker:

Well, maybe you can just kind of give me a sense of what inspired you to work on this book and write it. It’s somewhat of a departure from the work that you’ve done throughout your career, but I think that there is still some overlap. Maybe you can kind of give me a sense of what inspired you to work on this book and what you hoped to accomplish with it.

06-01:05:57

Coons:

For better or worse, and I can’t explain, for many decades, I’ve had an interest in how people use the expression equality, or what do you mean by it. If somebody started talking about equality, I had to ask them to tell me what they mean. When they started talking about it, they found it very difficult often to express exactly what they meant. They had clear ideas about the particular mechanisms that they wanted to see introduced, to provide whatever it was that they wanted, that they called equality. And I don’t know. I got sort of intrigued by this expression, which we all use so often. And, of course, there are many meanings, but the most obvious, I suppose, is equal protection. That is everybody is the same before the law. But that doesn’t do anything, that doesn’t tell you anything really, because we make distinctions among people all the time in the law. There are categories by the billions. If you’re a person who has no brain at all but is alive and being taken care of in some sort of institution, I don’t know what they mean when they want to give them equal treatment. You can’t give them, you’ve got to give them something different. Equal respect, fine. I don’t know what that means either, but anyway, it has been for me a kind of weird but for me a wonderful intellectual

challenge to figure out what it could mean, what is possible, what would be a world in which people were equal. I started out with my colleague, Phil Johnson, but he got distracted with Darwin. He's the Darwin guy. Do you know Phil Johnson?

06-01:08:53

Meeker:

No, I don't.

06-01:08:53

Coons:

An interesting character. He's been sick and he's very tired and so on. But he was very powerful in the beginning in support of intelligent design. And Phil really was the sparkplug, with his book, *Darwin on Trial*. He got so interested in that he couldn't do what we were going to do. That was fine, so I was working on it myself. And one day in the office, in comes this young man who's a student. It's Patrick Brennan and he had been to church. He was mad about something over at Newman Hall, you know the Catholic center over on Dwight Way. He had heard that I was a Catholic, and so he wanted to talk about this. He was mad and he came in and we talked about this and that. It was kind of fun. He was obviously an interesting character, full of beans, and more conservative than I by a bit. But anyway, an amusing guy. At one point we got stopped or something in the conversation and he said to me, "What are you working on?" I said, "Well, I'm just kind of working on this idea of equality, what it could possibly mean as a real thing." "Wow, that sounds interesting," so we talked about that. He was obviously very smart, he was very energetic, and pretty soon we were working together.

It took ten years practically to write the thing, because I didn't know anything about what I was doing, but I had a vague idea that there was probably no meaning that could be assigned to it that wasn't kind of arbitrary. We tried to dispose of its meaning in various ways, used in various ways. And I think, I would say that we, I'll say we, came to the conclusion that it can only be understood as a transcendental proposition. Well, it goes something like this. It would mean that all human beings had access to God, equal. That it is the same whatever it is, the same activity or action or whatever, by an Eskimo who sends his mother out on the ice because she's too old, or whatever they used to do, maybe they still do it, I don't know. You have to be able to say maybe even ISIS. People who are trying to do the best they can to do good. They may not agree what it is, it may be the opposite from one another, but if that were true, if what the creator wanted was every human being to have equal access to him, he would give them freewill to thumb their nose at him or to try to live according to a good which he, the creator, establishes. But good often is hard to define, and it's supposed to be hard to find, because if you could find it, you would obviously do it. It would be your access to God. If everything were transparent about what is the right thing to do and everybody knew it—look you don't have to believe this, but it's just an idea about what you would have to believe in order to believe in equality. And I think you would have to believe that the assigned, our assigned mission, is to decide

whether or not you're going to go looking for the good or whether you're going to go looking for yourself.

06-01:14:20

Meeker:

It seems to me, in my read of it, an essential part of the way in which you're defining equality here is humility. Although it's universal, it's also very relativistic, that the Eskimo or ISIS or Trump or Bernie Sanders are all trying to find good and on their own terms. And they each have equal access to what that good might be, and you can call that God or something else. But the humility is that we have to understand that we actually can't know, and as soon as we put ourselves in the position of saying we know what is the right path to equality, we're actually kind of calling ourselves God, and therefore dismantling this notion of equality.

06-01:15:33

Coons:

I think that's right. We'll have to talk a little bit more but that sounds right to me.

06-01:15:41

Meeker:

Let me put it in a different way.

06-01:15:42

Coons:

Yeah, go ahead.

06-01:15:44

Meeker:

This is actually what I got off the first page of it, and I think I probably read it two or three times. But I went back and there's this big difference, particularly in a post-1960s world and today, as people are talking about income inequality and all of this kind of stuff. And I remember reading a lot about this in the 1960s, when there's a real movement toward equality. And there's two different strains here: One is equality of one priceless opportunity and then one is equality of outcome. At the time, the emphasis was really on equality of opportunity. And it seems to me, what you're talking about here, is equality of opportunity, is what jives with your definition of it. Equality of outcome is that other idea where we're relinquishing humility and we're prescribing what equality is going to be based on where we're standing; therefore, we're putting ourselves in the position of God, which is not equality at all. Does that make sense?

06-01:17:04

Coons:

Tell me more.

06-01:17:05

Meeker:

Well, I don't know that I have a lot more to say, but I think that bringing it up to today, and I'm trying to think about it in the context of your work and I'm talking too much, but—

06-01:17:19

Coons:

No, you're doing great.

06-01:17:20

Meeker:

—I'm trying to put it in the context of your work around education. And it seems to me at some point along, you decide that it's equality of opportunity that is what we should be fighting for. That's *equality*. That is a society that's based on an ideal of equality. When a society says that everyone should have the same education, everyone should have the same amount of dollars spent on them, because if they don't that's inequality—and if you think about it, today, when we talk about income inequality, does that mean that people who are fighting against income inequality suggest that everyone should make the exact same, and is that the kind of world we want to live in, because is that *equality*? I think that's something different than what Jefferson was talking about in the sense that all men are created equal.

06-01:18:20

Coons:

If you need a meaning for that, it can't be that. It's got to be something bigger or deeper. I mean, if equal, we could have no money at all, then we'd all be, by that definition, we'd be equal. I mean that doesn't make a whole lot of sense. Equal for the guy who's born with no real brain and the guy who is smart as hell, the word is, it seems to me, very deceptive. Patrick and I, I guess, think that the only possible meaning that attaches to everybody, anybody who isn't a complete idiot, it would seem to me, has a morality call. You don't know that you know maybe, but you're looking either to be right, do good, avoid evil, whatever you want to call it, and try to make out for yourself or put yourself first, or deciding questions of morality without reference to what is good, but simply what you want. It's become very simple in the end. The thing is, we don't know what we're doing half the time. I don't know if I'm doing the best I can. If I did know, I would be completely paralyzed, because then if I knew that I was such a good boy and had access to God because I was doing all these right things, and doing the best I can, well, then you know, you lose freewill. How could you resist it? If you could see God in the face, in effect you're no longer free. He wants you free. He wants you to be able to be a bad boy.

06-01:20:45

Meeker:

Well, and it's not only you losing your own freewill, but if you know that what you're doing is perfect, then everyone else must do that too, because that's the perfect state of being. So it becomes very prescriptive.

06-01:21:04

Coons:

That's interesting, I hadn't thought of that, yeah, yeah. That's an interesting call. I didn't quite get that in the book, but I think that's a little different. It's an application.

06-01:21:20

Meeker:

This is, I guess, on page one of the introduction. It's actually page three of the book. You say, "Insofar as we understand what egalitarians seek, it is hardly worth the hoping. People who are hungry do not need equality, they need bread and respect. To offer them sameness of whatever sort is to mistake both

the human condition and the ordinary person's sense of justice." I didn't write in the book, but there are a few more things that are kind of along those lines. "It is not a social aspiration." "Equality is for Jefferson a description, a statement of fact about men. It is not a social aspiration but a natural attribute." So that's the difference between, I think, what I would call equality of opportunity and equality of outcome. What Jefferson is talking about I think is kind of more of an equality of opportunity, that everyone is the same, so everyone should have that same sort of opportunity. What he's not talking about is an attribute, thereby a description of everyone should be equal, "from each according to their means, to each according to their needs." I don't know, am I misreading this here?

06-01:23:00

Coons:

I guess at the end our notion of equality is different from the opportunities. But on the other hand it is equality of opportunity. Remember, we're just trying to get a clear definition. I don't know. I'm not telling you this is what life is about. But to understand equality as a state of being, as a state of the human race, that the Eskimo and the pigmy and the cannibal and the ISIS and so on, what they all have, and me, is they all have the same call to meet, the same standard to meet, and that is to look for the good and do the best you can to realize it. Now that's a very vague statement. But I don't see anything else we could be equal in, we're just not equal in any physical way. We're only equal, if at all, in our capacity to try. You could be just as stupid as a bull or you can be as smart as you are, but doggone it, what you all have equally is the call to do your best, and that is my notion of equality. I don't know that it's going to sweep the world with anything special, but I'll tell you what I imagine. I imagine Pope Francis deciding that that's the way we are, that we are actually equal in that sense, and going and saying so, saying it to the imams and the Protestants.

06-01:25:28

Meeker:

Rabbis.

06-01:25:30

Coons:

Calvinists, who believe in predestination and so forth, and saying here's what we believe. We'd like you to be Catholics. We happen to believe that there are certain things that happened historically, and that God has done all of these things and saved us, and so forth. But as far as access to God, I have to say, as he did with respect to gay persons who want to be saved, they want to be good people, he says who am I to judge? There's more to be said. That isn't going to solve the problems immediately. What Catholics believe is that everybody can be saved and they all have the same access to God if they're doing the best they can with what they're given. And they're given different things, different kinds of barriers and problems and so forth, but they all have the capacity to try.

06-01:26:52

Meeker:

Were you thinking about your ideas on school choice at the same time you were writing this?

06-01:27:00

Coons:

No, I don't think so.

06-01:27:01

Meeker:

Because to me it's the exact same thing.

06-01:27:04

Coons:

I hadn't thought of it before but keep telling me.

06-01:27:07

Meeker:

Well, the idea that we all have access to our own truth reminds me a lot of your suggestion that it's damaging to families if they can't make those calls on their own. It's almost like by the government disallowing that, they're in fact getting in the way of your definition of equality.

06-01:27:45

Coons:

It's kind of an earthly parallel. Yeah, I hadn't thought of that. That's good. I would never say that the mother of a kid who's been sent off to PS-36, I would never say that she had lost her capacity to try to do the best she can. But you're right, she has lost the capacity to do the best she can in an earthly way. That's interesting. There's a parallel, that's right.

06-01:28:19

Meeker:

I'm much more comfortable thinking about earthly things.

06-01:28:22

Coons:

Oh, I understand. And I'm not saying that this is transparently true or anything like that. But I'm only saying that she is, in an earthly way, unequal to do her job. That's right, that's very right. So it is a kind of un-transcendental, a kind of material sense, that you—but I'm not sure where it takes you. What would be equality in an earthly sense?

06-01:29:00

Meeker:

I think it's this idea of equality of opportunity as opposed to extending that to equality of outcome.

06-01:29:09

Coons:

Well, certainly the notion, this broad transcendental notion, is opportunity in that way. That is, it's equality of opportunity. But it's sort of hard to put it into earthly terms because some of us just haven't got the gazuma. Some do and some are lucky, and some get hit by cars. There's no way that you can make people really equal on earth, and it seems to me, it has to become a transcendental proposition in the sense that we mean it. But there's no harm in talking and using it politically if you kind of recognize that we're not going to be equal in that sense. We just aren't going to be. Some of us are going to die young and some of us are going to live to be old geezers, and all that stuff.

I may have some kind of fix in my head and I don't know where it came from. The thing that brought me to California was an article I wrote called "Approaches to Court Imposed Compromise." The judges can't compromise, and I wondered if we could have a system, whether there could be a legal system in which you have the capacity to say, "Well, I can't figure out which of you guys is right. I'm going to split this, you get half and you get half." I've seen it done in Africa in courts. I was in Africa for three months once in '62, and got to watch a lot of courts operating, and that spurred my original thought that it's odd that we don't compromise, even in cases where we don't know what the hell we're doing. You ask a jury if there's a—what is the expression we use—a preponderance of the evidence. Fifty-one percent, okay. We don't know what we're doing, but it's good to settle cases, it's good to get them off—

06-01:31:40
Meeker:

Or all reasonable doubt.

06-01:31:43
Coons:

Yeah, well that's criminal stuff.

06-01:31:42
Meeker:

Well, yeah, criminal, but still.

06-01:31:45
Coons:

Sure, sure.

06-01:31:46
Meeker:

I mean that's asking us to parse. It's asking us to do percentages in our head.

06-01:31:55
Coons:

Law is so different from science and so on in that respect. We have to settle these conflicts. We don't actually know what we're doing most of the time. We have to just kind of make a judgment about things. It would be quite possible and maybe it's not good, I'm not saying it would be good, to give judges the power to say 70 percent for you, 30 percent for you, and so on. I did not recommend that in my article, but it was well taken. All I'm saying is that it may be that I have a strong intellectual bias or, anyway, I've got a thing about equality. And I tried to understand what it could actually mean, if anything.

06-01:32:59
Meeker:

What kind of response did you get to this book?

06-01:33:02
Coons:

Good. Not a lot of response but what I got was good. Gee, a guy at Boston College wrote me a long letter that it made him happy. What happened to the book, this is my idea, the book sold out, but they didn't do another printing and nobody buys it now. But you can pick up a copy on the Internet or whatever it is, I don't know. The title, *By Nature Equal*, gives the impression that it's another book about equality in the popular sense, or one of the

popular senses, and so people would not necessarily be interested in it. It's just another book by another liberal and it's about equality. I don't know. We should have had a different title, I think.

06-01:34:20

Meeker:

Did you get any feedback of people who picked it up and were expecting that kind of more conventional approach to the idea and were disappointed with what they got or disagreed with what you were offering?

06-01:34:42

Coons:

The truth is we did not get a lot of stuff. Even Patrick had doubts about this. He still kind of finds it difficult. He's a Catholic, a strong Catholic, and he worries, "How can you say that everybody has equal access to God? What are the sacraments about?" and so on. And I've tried to make an answer, and so we argue like that. Like, "Why aren't Catholics advantaged?" Well, what's the point, in a way, of being this or that, of having one view or another about whether what institutions offer you makes you better than other people, than the Eskimos or something. The sacraments are really a special point. Well anyway, my answer is somewhat like this: Being a Catholic is a responsibility. I mean it has obviously some certain things that we think are great advantages, the sacraments and so forth, but they are no more empowering than anybody else in respect to being, what shall I say, intrinsically good or something like that. I know it sounds odd, because it could cover Hitler, what I think, and I think it does cover Hitler. It's odd. There's no question about it. He may have had something wrong with his head that drove him to do what he did. We just don't know. And if you did know, it would spoil the whole plan because that's part of the deal to keep you free. If you know what's going to happen, if you have it all clear in front of you, what the universe is about and so forth, and you make your decisions absolutely right every time because you see everything clearly, there's no more freedom. Who wants to throw away the good in that sense, if you see it right straight in the face there? Now look, that's me. It's kind of weird, and a lot of people don't seem to get it and maybe they're right. Maybe there's nothing to get. But we tried out best to give equality on trial, as it were. As my friends Johnson put Darwin on trial, this is putting equality on trial, and finding it wanting, unless you're willing to go all the way to the notion of access to God.

I started to talk about the Pope and the imams and whatever. It seems to me that it could be a very helpful thing if people believed something like this and say you know, "I think the Eskimos and the cannibals and so forth, I believe even though I'm the Pope, I believe this, that they have equal access to God." We don't think they're some way morally inferior or somehow doomed because they're not smart and they do these physically awful things and so on. If he would say that all of us feel the same opportunity to whatever our brainpower is, for eternity, we would begin to respect each other more. Instead of being called infidels, you might say we're just dumb Catholics.
[laughter]

I think an international meeting to discuss what we think about each other in respect to really the finality of religious belief. If the Pope talked right I think he could have considerable good influence. I don't know. I have a friend in Egypt, we were going to try to put together such a meeting just before the stuff hit the fan in Egypt. I haven't heard from him since. I just sent him a Christmas card. He's, of course, a Muslim. He's a lawyer in Cairo. I don't know why it became a fetish with me, or not a fetish, yeah, maybe, to think about this. And Patrick and I had a lot of fun, got to know each other very well. It was most of my time in the decade of the nineties, and I feel sort of glad I did it. I'm not sure it's doctrinally correct. A lot of people would not like it. Even Patrick's a little uneasy about it. But I think it's worth thinking about. I'd like to hear from people who know more about religious ideas, to hear them criticize. I mean, do the enthusiastic Christians in the South, do they think I'm damned because I'm not whatever they believe? Do Catholics think that others are damned because they don't do this or that? At this point in my life anyway, I don't know— maybe I'll change, I can't believe in a god who would dish out different opportunities for you to love him, and that's what we were talking about I suppose.

06-01:42:09

Meeker:

Let's move on to a slightly more lighthearted topic to wrap-up today shall we?

06-01:42:14

Coons:

Well, that's lighthearted isn't it?

06-01:42:16

Meeker:

[laughter] Hardly.

06-01:42:19

Coons:

But it is a little eerie.

06-01:42:27

Meeker:

I want you to tell me about the monks.

06-01:42:29

Coons:

Oh, the monks. Yeah, you're going to come and sing aren't you?

06-01:42:33

Meeker:

I don't sing.

06-01:42:35

Coons:

Oh you don't sing. Damn.

06-01:42:36

Meeker:

It's something that runs in our family. Be thankful. We're those people who are in the pews mouthing the words as opposed to enunciating them because God was not singing through us, that's for sure. Yeah, tell me a little bit about the monks, and then maybe we'll wrap up and see where we are.

06-01:43:05

Coons:

Well, the University of California Berkeley has, for a century or something like that, there's nobody who knows for sure, had a big Christmas party. And at the Christmas party, there's a collection of guys who get together. They practice. They have a paid director. Our current director, Milton Williams, is a terrific man, and he has a voice like an angel, a big angel. And he's fun and he knows what he's doing, and he can take people like me, who don't really know music that well, and make us better than we think we could be. So, anyhow, who are they? They come from all aspects of Berkeley, but most of them are members of the club, not all of them, and they practice half a dozen times in the fall. They learn some pretty subtle stuff, Leonard Bernstein and so on. They also sing a lot of common stuff, Christmas carols. At some point, we wind through the place, first with a hog's head, a boar's head. There's a certain song we sing. And then to sing Christmas carols, and you stop at tables and you get the people to sing with you and so on, and it's very nice. We learn a lot. And at the very end of the evening, they do the hallelujah chorus and the women all come up and we all crowd together on the stage and they just sing. They love to sing.

Now, it is sort of amazing in a way that in a public university with a reputation like Berkeley for politically proper stuff, here are these guys, some of them are Jews, most of them are probably unregistered theologically, but they love to sing Christmas carols, and they know them, the ones that we sing with the people. I've heard it expressed so often, how do we get away with this here? There were complaints about five or six years ago about doing this, and then they went away. It's a very popular place. For three nights, they put on this big program and in the middle of the night, the middle of the evening, around eight o'clock or something like that, a bunch of nuts get up and put on a farce, about a half an hour of songs, reconstructed to suit some purpose, a lot of puns, a lot of goofy stuff, and they do it under the moose. The stage is under the moose and the moose has a mouth with a string. So there's a guy back there at the appropriate times making the moose talk. The moose actually was the narrator this year. I'd stand backwards, talk into a mike, and there's the guy pulling the string.

06-01:47:07

Meeker:

You were the moose voice.

06-01:47:08

Coons:

Yeah, I was the moose voice.

06-01:47:10

Meeker:

Does the moose have a name?

06-01:47:14

Coons:

You know that's a good idea. No, he doesn't. He's just moose and we're the moosekaeteers. And he should have a name. Maybe that might be a theme, that might be a good theme for a song, yeah. That's right. Well, I'll have to

think about that. So we meet here. There's a group of ten that does this, and we meet here, and we've got a guy who plays the piano. It's just a lot of fun. We've had so much fun with this. This is my twenty-seventh year and I still enjoy sitting down and taking a song and hacking it up into something goofy.

06-01:48:03

Meeker:

Can you give me an example of one of your favorite efforts at that?

06-01:48:08

Coons:

Sure. Do you know the song "I'm Getting Sentimental Over You?"

06-01:48:24

Meeker:

Mm-hmm.

06-01:48:28

Coons:

Okay. The narrator describes the water shortage and how in some cases it has caused the pollution of the sediment that's gotten in and strange things are coming out of pipes and so on. [sings] "Water peters out, only crud flows from my spout. It's getting sediment all over me. When I leave the shower, my hair grows cauliflower. I get impediments all over me. Didn't mind the petals or that crunchy stuff, but when that worm crawled from my tea, I knew I'd enough. Darling please agree, to turn your hose on me, because if I hugged you this way, my dear it's sad but true, I'd get my sediment all over you."

06-01:49:44

Meeker:

[applauds, laughter] That's very clever.

06-01:49:49

Coons:

That's what these are. Here's one about Jerry Brown's choo-choo, about his train. He's pushing the train to Los Angeles, the speedy train.

06-01:50:04

Meeker:

Oh yeah, yeah, yeah.

06-01:50:08

Coons:

May I sing one more?

06-01:50:11

Meeker:

Please do.

06-01:50:11

Coons:

Let's see if I can get it in the right key, about Wurster Hall, you know Wurster Hall.

06-01:50:17

Meeker:

Yeah, the beautiful building on campus [sarcastically].

06-01:50:20

Coons:

We have one every year about Wurster Hall. All right. [sings] "Gazing up at her ramparts, lost in architectural awe, as her bulwarks malign, beam a chill to mankind, let us flee to some frilled Shangri-La. Wurster Hall, curse her all,

dreaded edifice band, walls cement, halls dement, loom in menace over Cal, Wurster Wall, cast your pall, bony architectural gall. Midst the boy of Cal joy, shedding bleakness overall. You're material, so funeral, every corner grimly square, needing something more ethereal, to adorn you and to warm you. Architects, cease your wrecks, for Cal's cloister beauty beck. Go for broke, go baroque, make the Cal majal our next—" So, there you go.

06-01:51:55

Meeker:

[laughter] I've always wondered what Wurster would have thought of that building.

06-01:51:59

Coons:

Isn't that an amazing building? I don't know. It just has always struck me as just a terrible mistake. It is efficient, I guess, for some purpose but I just can't imagine doing it.

06-01:52:16

Meeker:

I'm going to ask one more song.

06-01:52:18

Coons:

Oh, sure.

06-01:52:18

Meeker:

And that's the voucher song.

06-01:52:20

Coons:

Oh yes, the voucher song.

06-01:52:22

Meeker:

Do you know that by memory?

06-01:52:26

Coons:

Well, I'll try. What was it? This is going to take a second.

[break in audio]

06-01:52:58

Meeker:

Why don't we wrap up, and the way that we always wrap up, and of course there's an opportunity for me to come back after reviewing the transcript.

06-01:53:10

Coons:

If you think it's important, yeah.

06-01:53:13

Meeker:

Yeah, and if there's things that you feel like are not covered and you'd like us to cover those. Do you have any final thoughts or anything else you wanted to talk about? Sure.

06-01:53:28

Coons:

If you could stand one more, a little subject.

06-01:53:32

Meeker: Absolutely.

06-01:53:34

Coons: I'm having fun with an idea that I know nothing about again. I tend to have this habit of talking about things I know nothing about. The big bang theory. Okay, are you ready for this?

06-01:53:51

Meeker: Let's hear it.

06-01:53:55

Coons: I wonder whether they have thought, these brilliant minds, terrific stuff, they do it mathematically, that I couldn't understand it at all. But the possibility that the central energy of the universe seems to be going out. There are models of things that seem all to be centrifugal, and that's fine, and maybe that's all maybe just the way it is. But I would like to know whether it is impossible to think about a primal force which is much more important that would account for not only our universe and the others too, it could be from outside. That is to say surrounding everything. I never found the right verb for it.

06-01:55:00

Meeker: Like a suction, like a great suction.

06-01:55:03

Coons: Yeah, the big suck theory. But of course, I'm not going to use that word. But that's right, the big suction theory. Suction isn't so bad. Suck is kind of primitive, but anyway.

06-01:55:19

Meeker: Suctionism.

06-01:55:21

Coons: Yeah. I've written a little two-pager on it and some scientists have given me a reasonable response. They said, "Hmm, we never thought of that." It would be interesting to know if our empirical stuff, whatever we have, forbids that possibility. Because, of course, again it has a transcendental aspect to it or it might. It might not, but it's kind of a great invitation to come out as simply, what shall I say, just as a picture of things that is different from the way they think about it. I've sent it to a couple of journals, science journals. They don't even pay any attention to it. [laughter] But the guys that I've talked to, and I think they would have told me if they didn't believe it, that in fact they think it's not crazy. I'm not going to go very far with it, because I don't pretend to have any knowledge about anything.

06-01:56:52

Meeker: It's as if astronomers and physicists have focused solely on the push and forgot about the pull.

06-01:56:59
Coons: That's it. The big pull.

06-01:57:04
Meeker: The big pull.

06-01:57:04
Coons: That's not a bad verb for that. Can I make you co-author?

06-01:57:10
Meeker: As long as I don't have to write anything. [laughter] Or no physics for that matter.

06-01:57:19
Coons: By the way, I'm getting all of my blogs together, did I tell you? And I'll show you what they are, and if you find something interesting. I doubt that you will.

06-01:57:35
Meeker: Great.

06-01:57:36
Coons: And it's too much to read anyway.

06-01:57:37
Meeker: Well, we can put a link to it in the transcript, so that people know how to reach those writings.

06-01:57:41
Coons: That would be very nice. That would be great. So I don't know. It would be fun to get together again, whether we do it this way or another way.

06-01:57:56
Meeker: Absolutely. One thing that I'll probably want to do, is I'll probably bring the transcript over to you in person. I'll go through it, kind of give you a sense of how you should approach the editing process. But let's wrap-up. Should we?

06-01:58:13
Coons: Sure.

06-01:58:13
Meeker: All right. Well, thank you very much.

06-01:58:24
Coons: This is a song that I have changed. I've got in Latin for the golden bear. [speaks/sings in Latin]. Golden Bear. [sings in Latin] That's soon we play ball. [sings Latin] Thus line up fans. [Latin] Raise a clamor. [Latin] Go forward, straightway, Cal. [Latin] Annihilate to set an example. [Latin] Pierce Stanford's line and so on.

[End of interview]

*GAUDE, AUREOLUS URS**Latin*

Gaude, Aurelolus Urs!
 Pila mox ludebimus.
 Vivete, Fuatori, sic.
 Clamorem tollebitis.
 Procedete, Cal, extemplo.
 Extirpate pro exemplo.
 Penetrate lineam Stanfordi.
 Penetrate lineam Stanfordi.

Poculum Roseum est
 Caeruleum aureum.
 Calcitrate clunem, Io!
 Et capete securem.
 Cardinalem tunc humate.
 Stanfordiensum violate.
 Ave, Caeruli Antiquii!
 Ave, Caeruli Antiquii!

Vad, Urs!

English

Rejoice, Golden Bear!
 Soon we play ball.
 Thus, live it up fans.
 Raise a clamor.
 Go forward, straightaway, Cal.
 Annihilate to set an example!
 Pierce Stanford's line!
 Pierce Stanford's line!

The Rose Bowl is
 Blue-Gold.
 Kick butt, Ho!
 And secure the Axe,
 Then bury the Cardinal.
 Violate Stanford.
 Hail, Old Blues!
 Hail, Old Blues!

Go, Bears!

The Voucher Song
By John Coons

If you're rich, your kids can switch
To the school you think is best.
If you're not, they might get caught
In a school that flunks your test.
Use your freedom, you may well see
What a little choice can do.
Take a tip from little Chelsea,
Maybe choice is good for you.