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Stephen D. Sugarman
Stephen Sugarman on Jack Coons and Educational Finance Reform

Interviews conducted by
Martin Meeker
in 2016

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[End of Interview]

Interview 1: January 26, 2016

01-00:00:01

Meeker: Today is the 26th of January 2016. This is Martin Meeker interviewing Stephen Sugarman, a professor at Berkeley Law as a supplementary interview for the Jack Coons interview. And this is our first session and we are in his offices in Boalt Hall. Do they still call it Boalt Hall?

01-00:00:27

Sugarman: Yes. The law school is Berkeley Law but the building is Boalt Hall. Well, this is the North Addition to the Berkeley Law School.

01-00:00:34

Meeker: Okay, very good. As I mentioned, mostly what we're going to talk about today is your work with Jack Coons. But before we get there I'd like you to let me know when and where you were born and tell me a little bit about the circumstances into which you were born so that people reading this interview will have an idea of who Steve Sugarman is.

01-00:00:56

Sugarman: Well, I was born in the suburbs of Cleveland, Ohio. My parents were both born in Cleveland and met in college. My father says that my mother helped him pass a class on Milton or something like that. Anyway, my father was a businessman, my mother was a social worker. But she largely stopped working to raise me. She went back to work only after I went off to university. I went to a high school in a sort of middle class or lower middle class suburb where half the 500 graduates didn't go to college. I think only ten of us, of the 500, went out of state and several of those were football players. I ended up going to Northwestern University to college because my mother found out about a scholarship program I could apply for and I luckily won that. It paid for my way and I went to Northwestern, which was a very good experience for me. I have lots of friends from there still and a group of us who were in the scholarship program, now in our older age, get together every year with our families and have reunions. So it's a longstanding connection.

01-00:02:14

Meeker: What made undergrad at Northwestern a particularly good experience?

01-00:02:16

Sugarman: Well, I think it was partly these folks. Also, I was exposed to much more serious thinking and a much wider range of people than I had really known growing up. So that was good. And this program I was in, this Austin Scholarship Program, was a very interesting group of guys who have been lifetime friends of mine. And so it made for a close-knit group of people. This program expected us all to become line executives in Fortune 500 companies. None of us did that. A lot of us ended up becoming lawyers instead.

But it was a chance for me to live on my own for the first time. You know what it's like in college. That was a great experience for me. While I was

there I took a lot of classes in political science and I met a fellow named Victor Rosenblum, who was a political science professor, a well-known guy. He set an interesting example for me and others in that he had some of his students over to his home on a regular basis. And he was a really charming guy. He had many, many children. We got to know his family. And he was a professor also at the law school as well as at the undergrad. Northwestern has its law school in downtown Chicago and the undergrad is in the suburbs at Evanston. So I was there in the suburbs having my education. And Rosenblum taught in both places. Got to my senior year in college and I did a senior thesis about school desegregation and segregation in the south. I did archival research in local newspapers that were chronicling the desegregation of schools in certain places and I got interested in education policy and discrimination. I graduated from college in 1964. Those are the times of the Civil Rights Movement. People in the north, like me, had no realization about how segregated our country was, even in our own area, but certainly not in the south. I hadn't really been to the south. So it was very eye-opening. We had Fred Shuttlesworth, the reverend, colleague of Dr. King whose church was bombed in Birmingham, came to give a talk and I was very influenced by that. I thought, "This is interesting. Maybe I could be somehow involved in this."

Anyway, I applied to law school to Harvard and Yale and I was admitted. I went to Yale to visit and I was entertained by one of the young professors and I was overwhelmingly dazzled. His name was Guido Calabresi. Later he became the dean, very famous guy, now a federal judge. And I was about to send my letter of acceptance in to Yale when Rosenblum said, "Look, I've got somebody for you to talk to, Jack Coons." He came up to Evanston, as I like to tell the story, with hundred dollar bills in his cuffs. Isn't quite true. But nonetheless, Jack arrived in Evanston. "Look, before you decide to go to Yale, come downtown to Northwestern and see what it's like here. We want to talk to you about an opportunity we have to come to Northwestern." So I went to Northwestern to talk to some faculty and sit down in a class as I'd done at Yale. It was, I think, a very interesting maybe good empirical lesson. I sat in on a class that was taught by a guy named John Kaplan who was a young guy on the Northwestern faculty. And he was just about as good as Calabresi. He was so amusing and so stimulating. I said, "Oh, hmm. Northwestern's a pretty good law school, too." It didn't have Yale's ranking, not quite, but it really was one of the top schools. That's sort of interesting to me. Now, the odd part of the story is that I said, "Gee, if I could have Kaplan, that's pretty great." Well, the next year I did go to Northwestern in the end. Kaplan went to Berkeley to visit and after a year at Berkeley he went to Stanford where he spent the rest of his career. So he was a big influence in my life but I never had a chance to study from him. Unfortunately he died young of a brain tumor but he used to come to Berkeley and hold forth at Chinese and Japanese lunch places, which I joined in when I could.

Anyway, Jack told me that the Russell Sage Foundation had created a scholarship program for people to come to Northwestern who would be

interested in law and social sciences. And as part of their education they would have special opportunities to have a mentor from the faculty, Rosenblum or Jack or a guy named Red Schwartz, who was not a lawyer but a law and social science guy and who later went on to be the dean at Buffalo Law School. Jack said he was interested in education. I was interested in education. And also this was a program which was designed to train future law professors. At that time I wasn't at all thinking that I wanted to be a law professor. What I wanted to be was a lawyer. My father had hoped to be a lawyer but it was in the Depression and he had to go to work. His younger brother did become a lawyer and was a very prominent lawyer, both in government and later in a big national law firm. And so my family hoped I would aspire to something like that. So it wasn't the program that appealed to me, frankly. It was the fact that I would be able to go to Northwestern for free. They'd pay my tuition, all my room, board, books, and everything, just like they had as an undergrad. So I was able to see how I could end up with seven years of education without costing my parents any money. And they were of modest means and I think that meant a lot to me not to have to burden them with any expenses. And Northwestern seemed quite good and I already had friends there. So anyway, I chose to go there.

01-00:08:42

Meeker:

Did it seem like Northwestern had more of a program in public interest law?

01-00:08:45

Sugarman:

No, not in those days. In fact, when I was in my second year I got interested in the idea of legal services. Now, remember, this is now 1964-67 when I was in law school. The legal services program was just beginning to come into play. The War on Poverty was just coming along. Johnson was president then. I started a legal services program for Northwestern students to work with lawyers from big Chicago law firms. We used to go down into housing projects and hold evening sessions where poor people with legal problems would come. I wrote a paper about the role of law students and lawyers working on legal problems of the poor. So this was an interest of mine. But Northwestern didn't particularly have any poverty law classes. We didn't have a clinic. Like now all the law schools have clinics. We didn't have any clinical program. This was my attempt to try to get students involved, including me, in real clients, of course, working under supervision of real lawyers, to help poor people with their problems. That was a sort of an exciting time.

Anyway, I got to know Jack. He was a professor of mine in my first year and he had a great way with poetry. He also has a great voice, was a great singer. And he made a comment about how you can get an especially good grade if you answer your exam in poetry. So I bit at that and for each of the questions that he asked, at least for the first paragraph or so, I responded in verse. Luckily I seemed to do reasonably well on the rest of the exam—my poetry wasn't very good but it was good enough that it rhymed and Jack, I think, was

very impressed that I took up the bait. I don't think anyone had ever done that before. And I got a very good grade and he took an interest in me.

01-00:10:40

Meeker:

Him asking students to respond in poetry was kind of part of his humor and personality, right?

01-00:10:44

Sugarman:

Yeah, exactly. He was really great, wonderfully entertaining as an instructor. So this was kind of off the wall. Jack was kind of off the wall in the way he approached stuff. He wasn't so much interested in doctrine as interested in analytical things. And it was really exciting for me. I found him to be very thought-provoking, let's say, put it that way.

At some point along the way he said to me that he's got a project that he's working on and would I like to be involved with him. Now, one of the visions of this Russell Sage program at Northwestern was that people could engage in serious scholarly work even while law students. And Northwestern had a program which allowed you to get a whole semester's worth of credit for doing something that would be somewhere between a master's thesis and a PhD. Some substantial scholarly undertaking. And so for my last year I decided that I would do that and work with Jack on this project. I was the article's editor of the law review. That took up a lot of my time. You try to breeze through your classes as much as you could because I had that work and I had this work with Jack. Another colleague of mine, a fellow student of mine, Bill Clune, who was another law review member, he was the managing editor. He had to deal with all the administration of actually turning out the book. That was a lot, time consuming. But he was another Russell Sage fellow. He, too, decided that he would work with Jack. So the two of us got together.

As I remember the story, Jack told us that he had been asked by the Civil Rights Commission to study school finance inequalities in the Chicago schools. Why did the white schools on the north side get so much more resources than the black schools on the south side? How did that happen? How did that play out that way?

01-00:12:56

Meeker:

In a city with an overall school district, one school district.

01-00:13:00

Sugarman:

Yeah, the Chicago school district. Why was that? And Jack sort of got into this a little bit and he said, "Wait a minute. The schools in the northern suburbs have way more money than the Chicago north side schools. What about that? That seems like a much greater inequality than within the district. What about elsewhere?" Well, he didn't know anything about how that happened but he wanted to know. So he set us, Bill and I, to try to learn about that, how that happened. So I think it's probably fair to say that Bill

concentrated primarily on the early history of education, public education and its financing, how it got started, and so on. And I focused primarily on the ways in which schools were actually funded then. This was in the sixties, and how it was that we got to this. And I did a number of empirical studies that tried to explore a number of states. I remember Utah, Nevada, Ohio, as well Illinois, to try to actually study this. And it seemed very clear that the way this funding system was structured, you had a big advantage if you had a wealthy tax base on a per pupil basis. If you had either a lot of valuable property, commercial or residential, or not very many kids, you'd have a lot of wealth per pupil. And if you had too many kids and not very much wealth, you had very low, and the state helped out. That's what the state formulas were. But basically not all that much. And there was going to be this difference. And sure enough, we could see it in certain examples. And then we did a systematic study and I readily could demonstrate that the wealth of the community dictated because no matter how hard the poorer districts, I call them poorer districts, tried, they typically had tax rates that were much higher than in the wealthy districts. Let's for the same moment talk about the same house. A hundred thousand dollar house in both communities would be taxed more in the poor district because they needed it to even open the doors. But in the end there wasn't enough money to compare to the money in the other districts. Now it turns out, of course, the value of the house was influenced by the property tax rate and how good the schools were, in other ways, so two houses, identical houses might actually have different values. But the point was, nonetheless, bottom-line was that the wealthier districts had lower tax rates and more spending and the poor districts had higher tax rates and less. And Jack and I then talked about this and this seemed to be an example of what we would call wealth discrimination, discrimination on the basis of wealth.

He was not a constitutional law scholar. I had taken constitutional law from a guy from Berkeley who visited, because when John Kaplan, who enticed me to go there, came to Berkeley, this guy, Bob Cole, came to Northwestern as a trade. Kaplan, I say, went on to Stanford. Cole went back to Berkeley, later became a colleague of mine here. He taught me con law. We learned nothing at all about race discrimination. I didn't know much about this stuff but Jack and I immersed ourselves in this. There had been a couple of other cases that the Supreme Court had decided involving discrimination on the basis of wealth and that seemed to us what was going on here. And we talked it over on that basis.

01-00:16:55

Meeker:

What were those cases?

01-00:16:56

Sugarman:

So there was a case involving, for example, if you were poor and you couldn't afford to get a record to appeal your case, a criminal case, to a higher court your case was hopeless. You needed a record. They made you pay for the

records. The Supreme Court [said], “No, no, you can’t charge poor people that.” If you were poor and you wanted to get a divorce but couldn’t afford the filing fees you couldn’t get a divorce. In both those cases the Supreme Court said, “No, no, you cannot preclude people because of poverty from getting access to fundamentally important things like the right to vote, the right to have a criminal case appealed, see.” So we saw that this court had some interest in the intersection between really important things like voting and criminal appeals, fairness, and the effect of poverty, the wealth effects on that.

01-00:17:55

Meeker: Were those Warren Court decisions?

01-00:17:56

Sugarman: Yeah. I think that’s right. Yes. Also, they had, of course, decided in *Brown vs. Board* that education is fundamentally important. But, of course, that was linked with race. And our project was not at all about race. For us, we didn’t try to map race differences. There wasn’t data available. The data that was available was on school district wealth, that’s all. It didn’t count the kids. And we didn’t see this. African American kids or Latino kids, there were many fewer then, would rise and fall depending upon the wealth of their communities, just like white kids would. So we had this idea school finance wasn’t a race case, it was a wealth case and we should try to do something about that. I wouldn’t say we had disagreements about it but we had a long time coming to the legal theory that we would later advance I was very skeptical that we could win without the combination of the two ideas.

01-00:19:05

Meeker: You mean wealth and race?

01-00:19:06

Sugarman: No, wealth and education. And the Supreme Court also decided that certain kinds of voting arrangements were impermissible and so they said one man, one vote. It was a kind of an equality notion with respect to voting. You couldn’t only have people who owned property who could vote. You couldn’t give some people more votes than other people, whatever. It was kind of an idea of equality. And Jack had some thought maybe we could get somewhere with that. Anyway, we hit upon this idea. Now, what I think Jack was immediately concerned about is that one of the implications of what I brought forward suggested we had to have state funding of public education, which as Clune found out, is what they have in a lot of other countries, national funding of education. The state of Hawaii had only one school district, so they had a statewide funding of education. But in all the other forty-nine states we had local funding of education. Jack was immediately concerned that we not have a theory which would require a uniform state funding of education because he was concerned that there was a lot of political and ideological value in decentralization.

01-00:20:55

Meeker:

So he was already at that point at that time?

01-00:20:57

Sugarman:

I didn't quite appreciate this as well as he did, but he was confident the judges would be nervous about something that would somehow seem to obliterate the local control of schools. Because, remember, school districts are separate governmental entities in most places. There are a few places where the city runs the schools but in most places the schools are independent from the mayor and the city council, the supervisors. Right. They're a separate school district. There's a long tradition of independent local school districts running their schools. That was started in the 1800s every school is a one-room schoolhouse, you had one teacher, so it looked like everybody would get the same no matter where you were. But pretty soon it became clear that some places had money and some didn't and the ones that had money began to have much richer offerings.

We had to think about it. So he asked me what are we going to do? How are we going to deal with this? So I came up with this idea that I called district power equalizing, which is a way to adjust the existing school finance formulas that fully accommodated the differences in wealth in the districts—so that each district could have as good a school in terms of spending if they made the equal tax effort and their shortfall on their wealth would be taken care of by state financial aid. Jack, I think, used the word subvention. Maybe that was in the literature. I don't know. Subvention. The subventions from the state would equalize the wealth differences but maintain the fiscal control at the local level. So communities that cared more about schools could have better schools and communities that cared more about parks or fire departments could do those. He realized there were a lot of other issues we had to contend with and he sent Bill and me off to try to think about those. Like, "Well, wait a minute, some districts might have to have more police. Could they then not make a bigger effort for education? What about districts that had other advantages? How are we going to adjust for that?" We tried to think about that some. We didn't get very far.

01-00:23:15

Meeker:

Not to mention the political issues around state revenues to fund—

01-00:23:21

Sugarman:

So this was a time, remember, when liberals thought the courts are going to solve our problems. At least the courts are going to deal with these entrenched discriminations in society based on race and based upon wealth. Somehow the courts are going to force the government to wipe out certain kinds of wealth advantages. Anyway, so this was also, remember, at the time of the explosion of welfare rolls and an idea of a national guaranteed income was in the air and much more so the war on poverty. We're going to attack and somehow deal with these inequalities in our country in ways that are often talked about now

but were certainly talked about and some people tried to do something about then.

Also the federal government came into play for the first time in 1965 in a serious way. When I was in law school the federal Elementary and Secondary Education Act was passed. The federal government never spent any serious money on schools. They still don't really. And one of the reasons they didn't was because they didn't want to give any money to religious schools. People in the north didn't want money to go to segregated schools. In the aftermath of *Brown* and the Civil Rights Act of 1964 it was felt, okay, we can give federal money to help low-income kids get a little extra so they can get some of the extra money they need spent on them. And we can have it in the south because a lot of kids like that in the south and a lot of them are African Americans. But the point is now we don't feel like we're having to send the money to segregated schools in the way we would have to have done before. And, politically to get it through, we had to agree to give the money to private schools, Catholic schools mostly—in those days 80 percent of all the private school kids were Catholic school users. Not at all true today. And so the low-income kids they served. But it was an interesting political deal involving the Democrats. And the southern Democrats were still Democrats then, at least in name. And so anyways, it worked out. And so federal money was sent. And there was some hope.

01-00:25:47

Meeker:

So those funds, funding Catholic schools, were largely going to inner-city immigrant populations at that point?

01-00:25:51

Sugarman:

In many communities the private schools never got a nickel despite they're supposed to be funded. But there wasn't very much money in it in any event. But there was some money. And ultimately, of course, the feds were the biggest pocketbook. And so when you say where's the money going to come from, one of the aspirations a lot of people had, one of our later on funders and mentors, Tom James from the Spencer Foundation, had the idea that the fed should pay a third, the state should pay a third, the locals should pay a third. And with that you could do a lot of redistribution. So there was a hope that if we win, that maybe the feds will up their contribution. This never happened. The federal contribution rate remained very, very small.

So there was also a report then by James Coleman, a famous sociologist from the University of Chicago, the Coleman Report, which cast serious doubt on whether money made any difference in student outcomes. Now, subsequent research has found quite a different view of this. There's a guy here in the policy school who shows very forcefully that the school finance cases that we won generated more spending, and had a big powerful impact on students test scores. There's another guy in the policy school who says our cases have had a big important impact on lifetime earnings of people with higher spending of

them. It's wonderful if it's really true. There's a guy at Stanford who has a completely opposite view: money doesn't matter at all. It's very controversial. Jack hit upon the idea that we'll dodge this question by saying, "Look, the rich districts, they believe in spending makes a difference because they're eager to spend more. And if they want to spend more, then the poor district should have an opportunity to do the same, too." And whether it matters or not, it matters to them. So if it matters to poor people or poor districts, they, too, should be able to have an equal chance. If it's wasting money they should have an equal chance to waste. Anyway, this turned out to be a problem for us in the Supreme Court. But anyway, we sort of tried to dodge it. There's nothing really to be said. That's what the empirical evidence then supposedly showed. So we made this kind of structural argument.

Bill was somewhat involved but what happened is that I think the legal theory was mostly something that Jack thought about and he and I worked out. And what happened is that Bill decided that he wanted to be an academic and he would go on to graduate school and he would decide to go to get a PhD. I decided I wanted to be a lawyer and I joined a law firm and I went to Los Angeles to live and to take the bar. But Jack arranged for a fellowship for me—

01-00:28:44
Meeker:

And you graduated from Northwestern in '67, right?

01-00:28:47
Sugarman:

In '67, yes. So Jack arranged for me to come to Berkeley for the fall semester after the bar exam. My law firm was happy to have this happen. A lot of guys—there were not any women then—would go off and clerk for judges and they were used to some people joining the firm, then disappearing for a while, and coming back. And that was fine with them. So I disappeared for a while and I came to Berkeley to work with Jack. The goal of that semester was to turn the stuff that he had sketched out, my paper for him and Bill's paper for him, into something more substantial. And that's what we worked on. He was teaching, of course. He was a new teacher here, worrying about teaching, getting a permanent job offer here, which he did, and then stayed here. But I, with nothing else to do, I was working on this. And we got underway to try to turn this into some sort of synthesized piece of scholarship based upon that work. And that's all I worked on for that fall semester '67. I had another professor who got me a fellowship to go to Europe starting in January. And I did that. This was on antitrust law, nothing to do with what Jack and I were doing. But we made quite a bit of headway, I would say, by January 1 of '68. And I managed to make the \$5,000, of which there was 3,500 left after my airplane ticket, which was a very fancy ticket, allowed me to go sort of anywhere, to last a year. Money was worth a lot more then. And I didn't come back until the beginning of 1969. Went directly to my law firm.

But Jack had been able to polish what we started and we published part of it as an article in the *California Law Review*. Laid out a little bit of the factual information and the legal theory. And then I worked, while in practice, with him, we both being in California, to expand that and make that much bigger project into the book, which we finally published in 1970. Now, we had been visited, I feel like it was here in Berkeley, by lawyers who were interested in this problem and they'd heard about us because Jack had given some talks and so on. And they wanted to sue immediately. And they had different legal theories from ours. Theirs was only based on education and their theory was children should have a constitutional right to spending based upon their needs, which we thought was a great political position. We thought it was not a winning legal position. And legal aid lawyers in two places tried that legal theory out and they were thrown out and we were very concerned that this would squash our idea because people wouldn't be so subtle in thinking about it. There was a professor at UCLA who had a different theory, that if you lived in different parts of the state, the law had to be the same, so the education system had to be the same. Geographic discrimination. We didn't think that was a winner either. There was a guy at the University of Chicago who was not a lawyer but did his PhD on school finance and hit on this idea, one dollar, one scholar, like one man, one vote. We didn't think that was a good idea as a policy matter and nor did we think it was a winning legal matter. We had our theory, it was wealth discrimination. And the Supreme Court decided a case involving—

01-00:32:49

Meeker:

Why were those other cases ineligible for this reasoning around wealth discrimination?

01-00:32:55

Sugarman:

They didn't use our theory. They used their theory. Well, the court said there's no constitutional right to an education in the federal constitution, which I think is right. The Equal Protection Clause might protect discrimination with respect to education but education per se wasn't—our constitution has virtually no affirmative rights. They're all kinds of protections against government, not demands you can make on government. The idea that somehow they had an obligation, it's something that the treaties on the rights of children might call for but the United States doesn't sign those things and our courts probably wouldn't enforce them anyway. So they were politically, I think, sensible but I think they were judicially too ambitious. The other ones didn't have any, I think, really logical basis to them. So we tried to discourage these other people until we could find people who were interested in pursuing our wealth discrimination theory. Well, see, we failed. These other two sets of lawyers sued. But their case was thrown out and sort of disappeared.

So on to the Supreme Court, they had decided a case involving welfare rights. A woman had moved from wherever into Connecticut. Connecticut said, "Look, if you haven't lived here a year you can't get welfare. One-year

residency period.” And the Supreme Court said that’s not permissible. It violates the right to travel. But it struck us is that it can’t be just about the right to travel. Has to be about the fact they were on welfare, that they were poor people. So discrimination against poor people. Because we knew that other things, like you come to California and you try to go to Cal and you say, “I have a right to pay in-state tuition.” “Oh, no, no. You have to wait a year.” And the court said, “Yeah, of course you have to wait a year.” So what is this? Welfare was different because welfare really affected these people. So that was another wealth issue. So we began to be more encouraged that maybe we’re going to get somewhere with this wealth discrimination theory. We published our book and Frank Michelman in Harvard Law School published an article, the sort of leading article of the *Harvard Law Review* each year and talked about our stuff and said, “This is sort of appealing, may be possible.”

So in 1970 I’m asked to go to New York for six months to work. When I came up here to work with Jack in the fall of ’67 we made it a point of meeting a guy named Charles Benson, who’s an economist who’s on the faculty of the ed school here. He was the national expert on school finance financing. Very prominent guy. Wonderful guy. And we knew a lot by then but he was really the expert. And we talked to him about district power equalizing, what would that be about and how that might work and so on. He was really very helpful and very supportive of what we were doing and he was in favor of the kinds of things we were pushing, although he wasn’t a lawyer. But he thought this would be good for the poorer districts to have a different approach. Thought this was great. So Benson was a Fulbright Fellow and he was working in Pakistan. And Governor Rockefeller in New York created a commission to study public education in New York – the cost, quality, and financing of education in New York. Appointed a guy to be the chair of this commission named Manly Fleischmann, later became known as the Fleischmann Commission, he was a lawyer, friend of the governor’s, to be in charge. The commission, these were all prominent people. They sat on this commission occasionally. They got together. But how was this commission going to do its work? Benson is going to be the director of the commission but Benson’s in Pakistan and he can’t come back for six months. So he flies to Los Angeles or maybe it was Berkeley, I can’t remember, to meet with me to ask me to stand in for him for the first six months. And the governor’s cool with this and Fleischmann is fine with this. And I go to New York. My law firm is, again, perfectly happy for me to take time away. My mentor in my law firm was Warren Christopher. That’s why I went to that firm. He’s the one who recruited me. And he himself had a career of illustrious public service combined with law practice. I thought, “This is kind of cool.” I can be at a law firm, I can be a lawyer, I’m a tax lawyer, I’m an international business transactions lawyer. That’s what I’m doing with my main time. But I can do these public interest things, public service things, or study things that I care about part of my time.” And he was fine. “Yes, go, go.”

So I went to New York to work on this commission. So under Benson's advice I was able to negotiate for the budget and hire the staff and commission the research and get the commission meetings going. And I met a guy there named Jim Kelly from the Ford Foundation who was very interested in this kind of school finance reform stuff and what we were doing. So that was for the first six months of 1970.

And somewhere along the way a guy named Sid Wolinsky, who turned out to be a really terrific public interest lawyer, got involved in a case that the Western Center on Law and Poverty, which was one of the legal services operations, was bringing to try to challenge school financing in California. And Sid, being a good litigator, he sort of, in the complaint, threw in all these theories. Our theory and these other theories, they were all there, a hodge-podge of different ideas. Let's throw and see if we can get anywhere with this. We know we've got an unfair system. Let's see if we can somehow get judges to grab on to something to make it better. And his case was thrown out. He wasn't getting anywhere with the case. But Jack asked him whether or not he would support us if we would put together the petition for the California Supreme Court to take the case. And when they did we filed an amicus brief with the court, following the petition argument we made, which was our argument. And Sid very generously allowed Jack and me both to appear in court alongside him and each of us, the three of us, to argue on behalf of the plaintiffs in this *Serrano* case. And that was in 1971. So I'd come back from New York.

I said before that Jack was interested in local control. He had this idea, he used this phrase which he drew from Catholic teaching, about what he called subsidiarity. Subsidiarity. And he had this idea that districts are subsidiary to the state. But the family is subsidiary to the district. So what about that? So he asked me whether we could figure out a way to do school funding that was other than just district power equalizing. So I don't remember which of us coined it but we came up with this phrase, family power equalizing, which was a way of just taking the formula that we had created that could be an option for public funding down to the family level. So if you were willing to put up 5 percent of your income you could get so much spent on your kid. Willing to put up 10 percent of your income you get more for your kid. But rich or poor, make the same effort, you would get the same ability to spend. Families would be empowered or equalized in their ability to get schooling spending on their kid based upon their effort. And then like where would they spend the money? Well, they would get a scholarship and the scholarship for the amount based upon their effort and then they could use this. Where would they use it? Well, they could use it in public schools. Then we said, "Well, maybe they could use it at private schools." We sort of envisioned there would be public schools with different spending levels they could choose from and private schools.

01-00:41:37

Meeker: So this idea was included in the book?

01-00:41:38

Sugarman: Yes, it was in the book.

01-00:41:40

Meeker: Alongside district power equalizing.

01-00:41:42

Sugarman: Yeah. So it was one of the things that we felt good about—in those days we weren't particularly wedded to this as our preferred solution. But what we liked about it was that we offered the judges many choices. If you strike down the current system the state has a range of options. They can have full state funding. They can have district power equalizing. They can have family power equalizing. Maybe somebody else will come up with another idea. It's not as though you have to have like, "This means automatically you, the judges, are running the show and you're going to have universal simple state funding." We also tried to argue that even if you had state funding you didn't necessarily have one dollar, one scholar. The state could spend money based on need if they wanted to. That would be a good idea. That would be up to them. The politics of school finance in those days was the poor districts would go to the capital every year and say, "Please enrich the state formula and give us more money." And the rich districts, representatives, would say, "Okay, maybe a little." And that was what the fight was always about. If you broke that log jam the fight might be about, well, which kids need the money the most. Like Jerry Brown, now we have money that goes to where the kids are neediest. Poor kids, English language learners, foster care kids. That's where more money goes. So it's kind of on that basis, not on whether you are a poor district. Because that's been taken care of by other means.

So we tried to show the courts that there would be a range of options. And family power equalizing was one of those options. Well, during this time that I was involved in the Fleischmann Commission, after the six-month period when I stopped being the executive director and Benson came back and took over, he agreed that Jack and I should produce a document for the Fleischmann Commission that particularly talks about this family power. What is that anyway? And that got us into the idea of the possibility of what we called scholarships, what later became called vouchers. So we sort of backed into this. I didn't know anything about private schools. In my community I'm sure there were Catholic schools but I didn't know anybody who went to them. There were Catholics in the public schools. And I certainly didn't know anybody who went to the fancy private schools in the Cleveland suburbs. Occasionally we had a track meet against one of the schools, private schools, but I didn't know anything about that world. Jack did. His kids went to a mixture of Catholic schools and public schools, on and off, different kids and so on. But I didn't know anything about that.

01-00:44:41

Meeker:

Did you have any philosophical differences there? Were there any kind of debates that you can recall about whether family power equalizing was in fact a desirable way to go because it would perhaps put some strain on public education?

01-00:44:57

Sugarman:

No.

01-00:44:57

Meeker:

No?

01-00:44:58

Sugarman:

I think we agreed that not only was district power equalizing a clever idea, it was better for local communities to decide what they wanted. Not only we thought this was helpful to us with the judges, it'd be better. Communities value education differently. We understood that. We weren't objecting. We weren't saying all kids had to be treated equal. We just didn't like the fact that kids in poor districts didn't have a shot. They didn't have a chance to have their schools like schools elsewhere. Their community, no matter how they tried, they couldn't catch up. So Jack came up with this phrase, we called it Proposition One. Education of the children of the state should not be a function of wealth other than the wealth of the state as a whole. That's what he called Proposition One.

The thing was, all these years I worked with Jack, he was such a better writer than I was. His wordsmithing, his ability to turn a phrase was just fabulous. I've always envied that. I can write fairly clearly and straightforwardly but Jack had a much greater way. We could talk about something and even if an idea was mine, he'd turn out the prose in a fabulous way. It was a great inspiration. I remember when we wrote one of our books and I went to England and met some scholars in the field and they said, "Oh, you guys write like angels." I said, "Not me. I edit it." And I wrote something and he says, "This does not have the pizzazz of your other writing." I said, "Well, I'm doing this on my own so it's not with Jack."

So we had this thing, Proposition One, and I think we both believed in that. At that time we weren't particularly committed to what we called vouchers and so on. We were working on school finance reform and on this kind of idea. And sure enough we won this case. Amazing. We actually won this case.

01-00:47:03

Meeker:

Serrano I.

01-00:47:04

Sugarman:

Serrano. In 1971 it was decided. And immediately there are other cases that were brought like that. Jack had one great experience. He was from Minnesota. One of the cases was brought in Minnesota. A federal district judge contacts Jack, "Write the opinion." Jack writes the opinion, in effect.

The judge tinkers it a little bit, issues his opinion striking down the system there on the same grounds as California. We had a lot of early success. We had success in Texas and other places. Now we were pretty excited that maybe we were really on to something that was going to be successful. And the California legislature begins to respond to this.

In the meantime, though, because of legal technicalities, *Serrano* was based upon a motion to dismiss. It had to actually be proved up. Now, for us, the prove up of the facts was like self-evident. We had done that in my research, we had done that in our briefs, we had demonstrated the facts. But, in fact, the way the law worked, the lawyers had to go into court. And, actually, we weren't part of that. And Sid was no longer involved. Other lawyers from the Western Center came along to actually prove up what the Supreme Court in *Serrano I* already took as given and they proved it up again. And so that was it.

01-00:48:31
Meeker:

And that was *Serrano II* in 1976.

01-00:48:33
Sugarman:

Yeah, *Serrano II*, whatever. But the thing I want to say is the trial was in between, earlier. So it's being tried. We didn't have any doubt we were going to win because of that. And the judge at the trial level kind of got it. In the sense that a lot of the judges over the years in these cases didn't really disconnect wealth inequality from spending inequality. In other words, we demonstrated that wealth inequality caused spending inequality. And what you had to eliminate was wealth inequality. You didn't necessarily have to eliminate spending inequality. A lot of these judges, what they wanted was to eliminate spending inequality. They were sort of full-state funding type people, which we weren't pushing for. Anyway, that's how they thought about it. So it was ambiguous. This trial judge kind of got it and said, no, you couldn't have wealth-based discrimination of more than a trivial amount. Because by that point a sophisticated economist got involved in this and did their very fancy numbers and so on. Okay. You could have a little bit of wealth discrimination but not much. It's got to be trivial, *de minimis*, tiny amount. Okay. So then things looked very good and the Texas case we won. We got involved in writing amicus briefs or counseling lawyers in places around the country on this. The Texas case was going to go up to the United States Supreme Court. This is 1973. And the lawyer representing the plaintiffs there, a good local lawyer, did the case, sort of followed our stuff. Judges followed our stuff. We're all happy. Now the defense for the state of Texas and the other people who are defendants get a very fancy lawyer from the Texas law school faculty, a very experienced Supreme Court litigator, Charles Alan Wright, a very prominent law scholar in a different area, but anyway, to argue the case for them. We were a little nervous. There was talk through a colleague of ours here that we could get Archibald Cox maybe to get the case on our side. You know the famous Archie Cox from Harvard. And Jack, I

think, could make the connection. I don't know if Jack told you about this story. But the Texas lawyer decided to do it himself. It was his one chance at fame and his case technically. In the end it wouldn't have made any difference.

Jack and I decided to write an amicus brief for the Supreme Court a little different from the way we wrote our California brief because the Supreme Court had decided other cases in the interim and they weren't favorable to our cause. There was a housing discrimination case on the basis wealth that lost. There was a welfare discrimination case that lost. So the Warren Court period was over. We were into the Burger Court. It was still promising but it wasn't quite as promising. So Jack had this idea that we should try to make an argument to try to reach Potter Stewart on the idea that education is about the exercise of free speech rights and education is about the exercise of voting right. Because if you're not educated then what does it mean to vote if you're not educated? And if you're not educated, what does it mean to exercise your free speech? You want to exercise your free speech in an intelligible way. So education is the underpinning to the flowering of intelligible voting and the marketplace of ideas in the free speech realm. And those bedrock constitutional matters were furthered by effective education. And if you deprive some people of a chance for education or competitive education you imperil those. That's the kind of argument we made in our brief to the Supreme Court because we didn't think we could get anywhere with enough judges on our basic theory, our other theory. And unfortunately we were right, because we only got four votes, and we didn't get Stewart in the end. He said, "This is illogical and unjust but it's not unconstitutional," or something like that. And we lost five to four.

01-00:53:06

Meeker:

And this was *Rodriguez*?

01-00:53:08

Sugarman:

This was the *Rodriguez* case. A guy who came to my law firm, the editor in chief of the *Texas Law Review* from University of Texas came to my law firm as a summer clerk. I knew him. He then went to work for Justice Powell, as his clerk. Justice Burger saw this case coming. Powell had been a school board member in Virginia. He told Powell to take a look at this case and take responsibility for it because it's coming up the next term. I think it's unusual. But this is known from the Powell papers. And he assigned my friend to work on the case. And he tried really hard to convince Powell to adopt our theory, but in the end Powell had his own views. He was very concerned about local control, that notwithstanding the things we argued, that the *Serrano* type approach would undermine local control. He was very concerned about that. He also was unhappy that maybe wealth didn't mean that much and he also noted, quite fairly, that the wealth discrimination that played such a big part of this was governmental, discrimination at the governmental unit level. It was not at the individual level. Rich and poor people. It wasn't about rich and poor

people. It was about rich and poor districts. And rich districts don't always have rich people and poor districts don't always have poor people, although poor districts tend to have poor people. There are some rich districts that have poor people, like Emeryville has always been a rich district with poor people. There's a lot of corruption there in the old days. In any event, people weren't completely deprived of education like they were deprived of the right to divorce or appeal. They only had worse, or by our terms worse. So Powell, I think, properly saw the analogy. The argument wasn't quite dead-on, although four of the judges said, "Hey, look, wealth makes a difference in depriving kids of a competitive opportunity to have their community educate them in the way other communities do." Nonetheless, he saw these things and, well, pointed them out, and so we lost five to four.

And when we lost the case, the *Rodriguez* case, it turns out that the school finance litigation world by no means came to an end. We didn't actually anticipate that, frankly. Luckily the California Supreme Court in *Serrano I* threw in the fact that it violated the California constitution as well as the federal constitution. And when *Serrano II* came down they reaffirmed that by saying, "Yes, the Supreme Court may have their view, the US Supreme Court, of their constitution, the federal constitution. But our view of the California constitution is that this wealth discrimination does violate our constitution. Education in California is a fundamental right. It's in our constitution and our system is still invalid." So *Serrano* was critically important because it maintained the victory on the same legal theory but applied to our constitution. But that meant then if you were going to attack school funding, which was the same everywhere except in Hawaii, but essentially the same everywhere with different degrees of harshness, consequences depending upon the distribution of wealth and how high minimum guarantee states had, but it was the same problem in every state. We have forty-eight other states. You're going to have to go after each one of them under their state constitutions. And Jack and I, I think, quickly realized that we're not experts on the state constitutions of other states. It's going to have to be a local lawyer and people who know about the constitution and what's there and what's for them to do and if they're going to win or not or whatever. I don't know. So we kind of bowed out of school financing litigation after *Rodriguez*.

By then I was a faculty member here. I started here in 1972. I got my appointment because of Jack, I'm sure. The Jim Kelly I mentioned earlier, I was in Washington testifying before some committee and Kelly says, "Your friend Jack Coons asked me for summer funding for research for \$25,000. He doesn't realize that's way below my minimum. I'm higher up in the Ford Foundation than he must appreciate. I can't give you that little money. Ask me for a lot of money. Ask me for at least \$500,000." Which was in those days, 1972, was probably like five million or something today. So anyway, I put together a proposal with Jack and with Charles Benson, who was still here, and a couple of other people here on the Berkeley faculty for a center and we asked the Ford Foundation and the Carnegie Foundation for a million and a

half dollars, and sure enough they gave us a million and a half dollars. And there was talk that I might take another leave from my law firm and come here and be the executive director of this project. But when I came up to talk to people here at the law school about that they asked me whether I wanted to join the faculty, which I hadn't really thought about. But once my wife and I talked about it, we decided to do that and make the move here, a career change. So Jack was right. The Russell Sage program did train me to be a law professor, even though I didn't think that was my future. And so I came here.

So I'm a colleague of Jack's here on the faculty, a young faculty, and I'm working a lot at this center, which was called the Childhood and Government Project, with people working not just on education but on a lot of children's issues. Bob Mnookin, who joined us, and was the executive director and a faculty member, he worked on foster care, he worked on divorce. Other people worked on other issues regarding kids. So Jack and I worked on education and that allowed me to have a lot of my teaching time bought up my first few years here to work on research. I taught, basically a half-teaching load and a half-research load. And Jack and I then turned our focus to the family choice idea. We had written about it in the book, family power equalizing, we had written about it a little bit. But it was really then that we made it our focus. The first thing we did is we created a statute which we thought could be adopted which would be a family choice statute. That was based out of the work we did for the Fleischmann Commission.

01-01:00:04

Meeker:

You have to explain these things obviously sequentially. But a lot of this is happening simultaneously.

01-01:00:11

Sugarman:

Simultaneous. Exactly. We're starting to write about school choice when we're still involved in *Rodriguez*. But when the *Rodriguez* case lost, now I'm working on other stuff. I'm working on bilingual education. There's a case called *Lau v. Nichols*. I was involved in that case with the lawyer. I wrote an article about it. Mark Yudof, who's our president, who was on the faculty here now, he and I worked together. He came for one summer to the Childhood and Government. We worked on the student due process case before the Supreme Court, Goss against Lopez. I'm involved in a lot of education litigation stuff. But Jack and I, we turned our focus to school choice. Jack's much more committed to that than I am but I now see, "Yeah, this is something I think, yes, I'm for and it ought to be something, families ought to be able to choose." Because for me, and for Jack, too, it's always about low-income families. For me especially it's about low-income families to be empowered to make their lives better for their kids and school choice we saw as a way to do that. Because there was a lot of people in those days who were very unhappy about how many inner city families, low-income families, had their kids trapped in very poor schools and couldn't do anything about it. They couldn't move because they couldn't afford to go elsewhere. If they were in public housing,

they for sure couldn't go anywhere and they had no effectiveness. There was a lot of interest in local control movements, other kinds of movements. But we saw this as a way for families to have a chance. And we weren't the only ones. There were a few other people on what I call the left who also saw school choice as a way in which poor families could be empowered to do more. So we sort of joined in on that camp and started in different forums trying to push kind of a remedy to the problems that our public school system faced. You could have a family choice system that not only disconnected the wealth feature, it would disconnect the lack of choice feature that poor families faced. So that was in the early seventies. And I think our book on family choice came out in '78. So it was a lot of years in coming but we had a lot of law review articles and other stuff in the in-between period, including another little book that was published by the Institute for Governmental Studies press here on that.

01-01:03:08

Meeker:

Family Choice in Education?

01-01:03:10

Sugarman:

Was it called that? I think that's what it was called.

01-01:03:13

Meeker:

Yeah. *A Model State System for Vouchers.*

01-01:03:17

Sugarman:

Exactly right. Milton Friedman had floated his idea about privatizing public education. His vision was we would close all the public schools. They'd all be privatized. They would all charge tuition but people would get money to help pay the tuition. He only envisioned people would get half of what public school currently were spending. This would be saving public money. He thought these schools would be more efficient. He thought also people should pay, particularly middle class people should pay because they're getting private benefits as well as the public benefits from education. And he used the phrase voucher. And because Friedman was a prominent guy his phrase stuck. We had used the word scholarship and that didn't stick. We weren't at all interested in privatizing public schools. Our view was a lot of people love public schools. Particularly in the suburbs. They really wanted public schools. And other places some people liked their local schools. They should be able to stay there and go there. That's fine. But the ones who wanted out should have some other options. One of the options we wanted them to get was the option to go to the suburban public schools. And for a long time one of the things we pushed was that choice should not be restricted just to private schools of choice. There should also be more public choice. There should be choice like magnet schools and alternative schools within districts, which there have become a lot more of. Now we have charter schools. There is much more choice. But there also should be a chance to go across district lines. There's very little of that. But anyway, so we were pushing choice on all fronts, of which private school choice was one of the options.

Now, needless to say, this put us in very strange complicated political alliances with different people. The people interested in helping religious schools stay financially solvent and helping people get into religious schools who couldn't afford to go there and all that sort of stuff, that was one crowd. Right. They were for vouchers because they were interested in faith based schools remaining afloat, which were having harder times. Because when I started looking at this in the sixties, as I said, Catholic schools were 80 percent of the sector and they were very cheap and they had nuns and a few brothers, elementary and secondary school brothers and some nuns in the secondary and often had sex-segregated high schools. Today 3 percent of the Catholic school teachers are order members, nuns or brothers or priests. They're all lay teachers. It costs more money. All over the country there was a vast move of Catholics to the suburbs, white flight or whatever there was out of the cities everywhere. Pittsburgh, Cleveland, Detroit, Chicago, everywhere people moved to the suburbs. Baltimore, St. Louis. Suddenly, there were huge Catholic school complexes with not enough families there to use them anymore because Catholic families moved. Where they moved there may not be Catholic schools. They may have to build them. It's a lot of money to build a new school. So a lot of the bishops decided to do what they could to maintain the local schools. They began serving a lot of non-Catholic kids, a lot of African-American Protestants, sort of social justice work. They weren't really out to convert them, they were out to help them get well educated. But it's tough to keep those schools afloat. How are they going to do that? So they were interested in vouchers. There were a lot of Protestant fundamentalists who were interested in starting their own schools. This is the era in which we got rid of school prayer and religion in public schools is out, out, out. A lot of people were unhappy with that. But a lot of these fundamentalists were low-income people. They couldn't really afford to start a good school, and the ones they do start they're not very good, they have no money. Really they don't have much money to spend there on their kids. They sort of do it on the cheap if they can. But they care enough about their faith they want to do that. So anyway, so there was that sort of world.

There were the Friedman people who were basically interested in saving government money and privatizing everything. They didn't really care much about religion or not. They didn't really care much about anything. They just thought capitalism – privatize it – would automatically be better. And that was an era, in the mid-sixties and on, when we got the food stamp program, we got the Medicaid program. Both of those programs were programs in which poor people were given vouchers to get basic needs. Before that the government handed out food, like surplus food. It was usually crummy. Now people go to the store and buy. Not everything but most things they could buy. In the past you had to go to a county hospital. Now you can take your MediCal or Medicaid card and go other doctors. There were problems with these. Food stamps weren't generous enough. Not everybody took Medicaid or MediCal but at least it gave choice. So the education voucher was sort of in the same vein. But we had all these other people who were excited about going to

public schools and they certainly didn't want to close their schools in the suburbs and some city schools.

And, of course, the unions became a big issue on this. They had tried to unionize some Catholic school systems, not very successfully. And so it made a big difference to them as to whether the teachers would be union members or not. Vouchers were viewed as a huge threat.

01-01:09:03

Meeker:

So you're getting a lot of opposition to this approach on the left.

01-01:09:05

Sugarman:

So we had opposition like that. But you had people who were interested in poor people trapped in the public schools. This wasn't the Friedman people. These were people like us who cared about poor people trapped in the schools. Many of them, like us, wanted to give them a lot more choices – including, for us and at least some of that group, private school choices. You think about today, and President Obama is sort of not in that group. He's sort of in that group. Why? He is really in favor of giving these low-income people choice, but for him it's charter schools and maybe magnet schools or alternative schools, but not private schools, even though that's where he sends his own kids. Anyway, so some of those people who were for more choice were with us but not the private side of it. Other people only cared about the private side of it – the existing private side, maintaining the existing religious schools or maybe expanding them. Others, of course, wanted to undo the public schools. We had a very complicated set of different people with rather different interests who were involved in this thinking about expanding school choice who came at it from very different directions. Somewhere along the line the federal government decided to have an experiment with school choice, and Alum Rock, California, down near San Jose, was the district picked for this. And they were supposed to include private school choice. They managed to create some magnet schools and alternative schools and I got involved on behalf of some people who wanted to start a private school that would be one of the choices. And the school district just stonewalled it. It never happened. And the feds never sort of put their foot down and made them fund the project. So it became an experiment not really in vouchers or private choice but only in public school choice and a limited amount of that. So there was interest, this idea bubbling along — and so Jack and I worked on this. We worked on this now for decades. The big success, in my view, is the charter schools.

01-01:11:27

Meeker:

Okay. Well, tell me about that. Can you describe what it was about the charter schools that—

01-01:11:33

Sugarman:

Early on, early in the early seventies, we wrote about choice, including public choice. But we envisioned that teachers would create new public schools or

take over existing public schools. And they'd be autonomous. They'd be out from the district control and there would be these independent public schools, we'd call them. There'd be existing private schools. There'd be new schools. And people could have choice among these. Well, you can see the voucher aspect of it, which is typically associated with the private schools, was politically very polarizing. Not only were the unions dead set against it, a lot of people had First Amendment church and state separation reasons to be against it. There also were people who were sort of, I'm sure, anti-religious schools or anti-Catholics. They felt that politically the religious were too conservative or something. Certainly in more recent times it's very much been that. The religion people are viewed as on the right. Anyway, so there were concerns. But that didn't mean they were against choice. They just didn't want that kind of choice. So we were for the range, as I said, choice among existing public schools, new kinds of public schools, private school choice funded, at least for low-income people, and if for everybody then under certain conditions. We were against Friedman's proposal actually. When Friedman's proposal was put on the California ballot we wrote op-eds against it because it would only, in our view, empower upper middle class families and not poor families. Because the voucher was way too small. For poor families it would be useless to them. For middle class families, that was just enough to add to what they could afford to get a choice. But then more of them would opt to be away from poor families and the poor families would be left without really their voucher being useful to them.

01-01:13:40

Meeker:

And Jack was also talking about a lack of, I don't know, enforcement or something that compelled all schools to take students from different backgrounds.

01-01:13:52

Sugarman:

Oh, exactly. So the Friedman plan, of course, since he's a conservative, understandable from his viewpoint, no regulation. As I said, we, in our statute and later in our *Education By Choice* book, said that we only believed in universal subsidized choice if it has a thumb on the scale, to make sure that low income families got a fair shot. That meant you had to either accept kids by lottery or you had to ensure your school had at least twenty or twenty-five percent low-income kids if that many apply. You want money, go recruit them or something. Anyway, you had to have fair treatment of them. Also, you couldn't just throw them out. You have to have some fair treatment of them if they are there. You couldn't charge them extra tuition, at least that they couldn't afford, because then they'd be priced out of the school, and so on. You had to provide transportation to low-income families. You'd give them mini-vouchers for counseling advice as to which school they could select because they couldn't afford to buy advice like rich people can. And so a lot of things that we insisted would be part of a regulatory scheme. If all families are going to get choice we need to have certain features that would help out

the poor. And the Friedman people weren't for any of that. So that put us at odds with them.

The Catholic leadership was sort of on board with us. Jack had a lot of connections there. But they didn't like the regulation either because they were used to no regulation or hardly any regulation, at least in California. It varied from state to state actually how much the private schools are regulated. They were not keen on it. But on the other hand, for them, a fabulous infusion of money might be worth the regulation. And I always found it very interesting that a lot of the local priests were really keen on what we were doing. Why? Because they saw so much of the churches' money going into subsidizing the education of kids in schools. They didn't care much about that. And particularly, because a lot of these kids weren't Catholic kids. They had hoped that this money could be available to really promote the faith, things they cared about. And if we could fund their schools then there'd be more money within the church for other purposes. So it's kind of interesting. It's sort of eye-opening to me. Who are my supporters? Yeah, these priests, they don't really care about schools that much but they want the money, the bishop's money, to be used for Catholic things and not for educating black Protestants. Anyway, so there was some support. Some faith-based schools were dead set against us because they assumed that any kind of government regulation would be intolerable. So even there it was kind of a complicated world.

But there were two guys from Minnesota, Ted Kolderie and Joe Nathan, who seized upon the public choice side and created this phrase, they called the charter school. There was someone else actually who came up with the name but they really promoted the idea of having it be a public school choice. They called it a public school choice. It's interesting, that phrase of it, public school choice. Anyway, these schools would be privately created but publicly funded and publicly much more regulated. We were all for that. That's our plan on the public side. Charter schools can't charge extra tuition. That's our proposal. They have to admit kids by lottery. That's our proposal. They're regulated. They have to disclose their funding, they have to disclose their test scores, blah, blah, blah, other things. But otherwise they're free from the regulation that public schools have. That's our idea, our half of it, on the public side. That's been pretty successful. That's almost three million kids now. Still it's only 6 percent of all children in America, but still, in some cities twenty-five percent of the kids go to charter schools. You know, charter schools, they've had their pluses and minuses but it's been a transformation in a lot of places, of creating some choice. And a large share, not all by any means, but a large share of the charter schools are schools aimed at low-income families and a lot of low-income families have opted for them for their kids and apparently like them better because they've stuck with them. So that's been the biggest success on the choice side, education by choice. And public schools have also responded by making the regular public schools often much more choice based. In Berkeley all schools are open by choice. San Francisco the same. Oakland has some. Oakland has a lot of charter schools. A lot of schools have

these magnet schools and alternative specialized schools. Like this is a bilingual school and this is an arts school and blah, blah, blah. They run and families opt into those if they want them for their children and so on. So choice as an idea in the government funded sector has made a big in-road and I'm pleased. I hope Jack is pleased. But the private funding, the public funding of private choice is still trivial.

01-01:19:10

Meeker:

Where are we with the original issue that you confronted, which was wealth inequality when it comes to education?

01-01:19:16

Sugarman:

Okay. So lawsuits have been brought probably in more than forty, maybe by now all forty-nine of the states challenging the school property tax-based financing. Everybody out there gets it and understands it. All the wealthy districts all around the country still want to protect their advantages. And in a number of the states, maybe half or so of the states, there have been successful legal victories. Some follow our theory, wealth discrimination. Some don't. Just as many don't as do. They're based upon the state constitution that contains a right to education. We never imagined that judges would be so bold. Because what does right to education mean? The judges say, "Yes, there's a right to education in our constitution and you're not providing it. Why? Because you've got unequal spending. Well, what are you going to do about it?" Then the judge says, "You give me a plan and I'll approve it or not." So they've been very aggressive in striking plans down and then shifting it to the legislature to come up with something better. In some of those states the legislature's thumbed its nose, done nothing. The courts have kind of backed away. Ohio's an example, Mississippi's an example. Other states the courts have been really aggressive. New Jersey's the best example. The court keeps beating down on the legislature, making them be more and more redistributive. Other states, they have very aggressive decisions, like New York, but nothing much really happens. The legislature doesn't thumb their nose exactly. Well, maybe. I don't know. So anyway, it's kind of a mixed bag. But basically the standard response to these lawsuits, regardless of what the legal theory is under the state constitution, has been to raise the bottom up. Increase the spending in the low property wealth districts. That's been the primary thing that's happened. And it's happened in a lot of states even without litigation because, A, they don't want litigation or, B, they realize that it's not fair for these kids to suffer from there because their district is poor, by having a much lower amount spent on their schools. So this leveling up has been the strategy everywhere. And the question is how far up. In very few states have we really eliminated wealth discrimination but we've dramatically reduced it. I think that'd be the fair—and pretty much around the country, not everywhere, but generally speaking, that's what's happened. So has the school finance movement been successful? In many ways it's been a success. But it hasn't achieved the kind of real equality of ability to compete with the wealthiest districts that we had hoped for in very many places. In New Jersey

they're really there. The low-income districts actually have more money than the average districts. And they have a vast amount. They have more than twice as much as we spend on school kids here in California. So I'd say that it's kind of a mixed picture but on the whole it's been in the right direction of helping the poor districts in a substantial way. Massachusetts has made substantial gains. Texas has made substantial gains. In a number of places there have been substantial reductions of these wealth based inequalities. So it's somewhat successful. We owe a lot to the idiosyncrasies of who the judges are. In a number of the states the judges didn't want to touch this. I can understand that. Like how do we know what's a good education? In Kentucky they had a very dramatic opinion about, "Oh, our kids are entitled to blah, blah, blah." All the great aspirational things. Well, how are we going to get there? Well, you tell me how to get there. And they came back with something very progressive and the court said great and Kentucky for a while was viewed as a really model. But then they've sort of fallen somewhat behind in the tougher economic times. Usually when the business community gets behind this, along with the education reform people, you can get somewhere. In Kentucky they saw that they were losing their smart kids to other states and a lot of kids who were staying weren't very well educated and they said, "This is not going to work for us. We need to turn out more educated kids here in our community. We have one of the worst records in the country. We can do better." So there was a general agreement and it happened.

01-01:23:50

Meeker:

Can you tell me a little bit about the outcome of *Serrano II* in 1976 and the degree to which that has a legacy that can be felt today?

01-01:24:00

Sugarman:

Well, it's complicated. We have in California a system now that is not entirely but very substantially state based funding. For most places there's a 1 percent property tax. You can say that it goes to the state and they give it back or you get to keep it, it doesn't really matter. Then you get the difference between that and your revenue entitlement. In most every district there's a gap so you get the difference. And now under the new Brown system the amount you get back is not just dependent upon, as I say, how many kids you have. But some kids count for more than one. If you're poor you count for one-and-a-half, I forgot, or 1.7. If you're and English learner, two, or something. If you're a foster kid, two point whatever. So kids who are needier get counted like they're more than one kid. So more money comes back. But the local district gets to spend it as it wants. Local control is maintained. But the amount of money they have is much more reflective of the need they have. There are only a few districts that still have a wealth advantage in California. Relatively small. So we've largely complied with *Serrano*. There was a *Serrano III* case in which the court said, "Hey, yeah, they've done enough." So in that sense we've largely complied. What's the kicker is that we have Prop 13. And Prop 13 has made it very difficult for us to boost spending on education in the way other states have.

01-01:25:45

Meeker:

So you've achieved some manner of equality across districts—

01-01:25:48

Sugarman:

We've had definitely an evening out. We've had a lot of leveling up. But up to not the level that you think a rich state like California would have. We have Prop 4 and Prop 13. Do people want to talk about Prop 13? Jarvis-Gann, the Gann Initiative was Prop 4. Makes it very difficult to pass tax increases either at the local level or at the state level here. Very hard to do that. You need two-thirds vote for lots of things. So California's sort of riding on the prosperity of the state but not on an ability to tax ourselves more in the way a Democratic majority would have been willing to tax. We would have been willing to tax ourselves a lot more. We've also had a huge population increase of kids at a time when many of the other parts of the country, they had declines because we had this huge infusion of new Californians and younger families. And a lot of states were having people leaving and smaller families, whatever. So there was a period in which spending per pupil went up in a lot of other places where it wouldn't go up here because we had so many more pupils. Now some of that effect has been gone but still now we're stuck at a level where our spending is more than maybe Utah and Illinois but it's certainly less, way less, than New York, Connecticut, and New Jersey. And by some counts we're still down in the bottom quarter or so. For a while we were even further down there, although in the last couple of governors, Schwarzenegger and Brown, I don't know about Davis, it was sort of a short period. But under Schwarzenegger and Brown we've had a lot of boost of spending on education. But we're still not up to the spending level you would imagine that a state as wealthy as California. But we have very little wealth discrimination anymore. So in that sense *Serrano* has been successful.

01-01:27:47

Meeker:

So what we're looking at is not precisely district power equalizing but a similar—

01-01:27:54

Sugarman:

No, because we have very little ability for districts to break out because of the difficulty passing taxes. That's the problem. It's very difficult to do that. There was a very brief window of time under Deukmejian in which the legislature was about to agree upon or maybe had agreed upon a district power equalizing plan in response to *Serrano II* that I think would have passed and would have done it right but then Prop 13 came and they had to redo everything totally differently.

So we never really had a chance to try it out. They had district power equalizing in Texas. They really did have it. There was a lot of unhappiness with it because it made the wealthy districts turn some of their property tax revenue over to the neighbors. They hated that. It was called the Robin Hood plan. It was called recapture. Whatever it was called, they didn't like it. If it was a state property tax and they gave back money no one would complain,

but it was a local tax because there were provisions of their constitution which required it to be local. The optics of things matter to people, even though economically it may be the same. It was our money, you're taking our money. And eventually this was overturned in Texas and there was a lot of resentment against this redistribution which is, of course, what district power equalizing is supposed to be about-- redistribution to the poor districts, at least to the extent they make an effort. But nonetheless Texas had a substantial improvement, I would say, from what they had when we started. So most of the states have gone for a leveling up to try to eliminate inequalities by helping the poor districts, just give them a lot more money, and maybe allowing them to reduce their taxes so people aren't as burdened by the tax rate there. So some of the money from the state goes to the higher spending on kids and some of it goes to lower taxes.

01-01:30:09

Meeker:

When you're talking about taxes, we're mostly talking about property taxes, right?

01-01:30:12

Sugarman:

Property. Well, we're talking about it from the local level. Still property taxes. At the state level it's income tax and sales tax. We have a million little taxes but those are the three main taxes.

01-01:30:30

Meeker:

But those on the poorer end of the spectrum aren't really paying income tax, right?

01-01:30:34

Sugarman:

There are some places in the country where there are local income taxes. We don't have that here in California. Well, here income tax goes to the state, sales tax mostly goes to the state. Some are special local add-ons like for BART or whatever. But property tax still is locally assessed and locally collected. But because of Prop 13 you don't get as much as you want so the state comes in with aid and it goes in in a way that equalizes. But it doesn't create district power equalizing. It creates a kind of a full state funding model. And that's increasingly true around the country. I don't remember the states at the moment but there are states that have district power equalizing features on top of a fairly high minimum, which I think is great. That's what I'd be in favor of if we're going to have an approach like that, a high minimum, and then some ability for some communities to go above that with an equalized tax base. But only a few places. I think Wisconsin has that. I don't remember exactly.

01-01:31:51

Meeker:

One of the things that Jack and I were talking about vis-à-vis family power equalizing in the 1970s was his motivation around the dignity of the family and parents being given the power to have say over what their kids are doing. And we talked about how this was actually happening at the time in the 1970s

where you begin to see what might be called the dissolution of the traditional family structure and the degree to which parents would actually take an active role in this kind of decision-making around their kids anyway. Did you guys have a conversation about this?

01-01:32:33

Sugarman:

Yes, we had a lot of faith in these families, in poor, low-income families. We had a lot of faith in them. We both believed that part of their status is a function of their feeling powerless before governments. Wherever they go the government treats them shabbily. The welfare office treats them badly, the post office, the DMV, and the school system all treat them badly. And if they could have more control over their lives they could show their kids that they can make a difference in their lives more immediately and effectively and that would be good for them and they would rise to it. There are parents who are guilty of child neglect or, worse, child abuse. That's a different matter. Now, some, of course, would not be very diligent or very effective but we had this vision. We had hoped that the churches in low-income communities would be an organizing place around which people would learn — they'd go and they'd learn about good schools from friends of theirs at church or whatever. I don't know. Now, I think churchgoing is probably down among a lot of low-income non-Catholic families or even among Catholics, as well. But anyway we thought this would be good for them, that they would value it and thrive from it. Whether it's naïve or not is another matter. We know empirically Berkeley throws all of its schools open to the poor — everybody in Berkeley has to choose a school. We know the low-income families in West Berkeley are the last to choose. They have to be cajoled. They are the slowest to get around to it. But finally they do make a choice. And so if they could be even more enabled that'd be good. So we favor this idea of money for counseling and so on to help people feel like they can choose—also when they go to the school and they complain about how their kid's treated they can seriously threaten to take the kid out because they actually have the power to do that. There's someplace else they could go and maybe they'll be listened to more if they don't like how their child's currently being treated.

Now we know, of course, that at a lot of schools low-income families don't show up very much for meetings. But if they felt they could make a difference, maybe they'd be listened to more, maybe they would show up. So we had a lot of faith in that. I think we shared that from the outset. It's maybe naïve. We believed that it was important symbolically and practically. It would matter to families and it would make kids see that their parents, even though they don't have much money, we can at least in some important way affect your life and stand up for you. And a lot of parents, despite various dysfunctions in their families, cared a lot about the future education of their children. When you read about families they talk about this. They want it better for their kid than it was for me and so on. And so we trusted that, that people could be helped—so the whole thing of our book is that if you think that education should be pursued for the best interests of the child, who is the

person that's most likely to make the best choice for an individual child. And Jack has got some very effective prose on this, about why we should trust the parents more than some other person. Jack felt the school teachers are more ideological and have their own agendas. That was more of a focus of his than me. On that we had some disagreement. To me that wasn't very important. He felt it was very important, that public schools have their sort of agenda, their values agenda, their own faith, so to speak, even though it's not a religion it's a sort of religion of the public school. But I don't know. To me that part of the argument was less me, that was more Jack. But the part of the argument that families should get to get rid of what they don't want or pick something they do want, that I think we saw eye-to-eye. So he's written a lot more about this, the sort of indoctrination of the system and the bureaucratic indoctrination and so on. Anyway, I think that the subsidiarity idea, that's his phrase, of down to the low level is something we both strongly shared. As I say, what's ironic is that this has been mostly achieved outside of the existing private schools. And the Catholic schools now serve half as many kids as they did when I first got started in 1965. I think they had four-and-a-half million or five million kids in the Catholic school. Now it's like two-and-a-half million kids. It's about half the private school sector now, our Catholic school kids.

01-01:37:46

Meeker:

Do you see any prospect for charter schools to expand and to accommodate private schools?

01-01:37:54

Sugarman:

Yeah. Well, maybe.

01-01:37:59

Meeker:

That's not very committal.

01-01:38:00

Sugarman:

Well, here's what's happening. Charter schools are growing. What will be interesting to know is whether or not they can grow at the current rate. If they grow at the current rate then in ten years they'll be 15 percent of the kids nationally in charter schools. They'll be really a big chunk. But that requires that new facilities be found. Because a lot of the charter schools moved into either vacant public school space or vacant Catholic school or other private school space. There were built facilities available. They're pretty much all filled up now. So unless you can vacate some other public schools, which is possible in some places, it's difficult finding slots. So that could be a burden, a barrier. On the other hand a lot of charter schools are getting into networking, are networked, and they're bigger and they can create duplicate franchise type operations much more easily, like franchised fast food restaurants or franchised gas stations, whatever. So the possibility of supply side expansion is in tension, I think. Yes, it is easy to imagine from a managerial viewpoint but I'm not sure from the physical location perspective. So it's a potentiality.

And these charter schools started by private people? Well, today they can't be religious schools under state law. So two things about that. One, we're beginning to see a number of what I call faith affiliated charter schools. You go in the school, there are no crosses, there are no Hebrew prayers or Muslim ceremony. They're not religious schools in that sense. They don't teach out of the Torah, the Koran, or out of the Bible. But they try to teach values that are consistent with the people who sponsor them, who can be a faith group.

01-01:39:52

Meeker:

So similar to housing, right, where you have like Mercy Housing or something along those lines. Yeah.

01-01:39:55

Sugarman:

Well, sort of, yeah. A number of these schools are started by faith groups and are affiliated with churches or mosques or synagogues and they tend to attract families of that faith. So imagine in California you have some schools, charter schools started by some Armenian families. The kids are mostly Armenian Americans. They're all Orthodox. They're the same religion. They have time either at the end of the day or the beginning of the day or sometimes during the day to go across the street to the church to have religious instruction. If you go to Utah, to the public schools in Utah, overwhelmingly what you'll find is in the middle of the day kids leave the school and they go across the street or across the sidewalk to the seminary where they get Mormon instruction. And then they come back. And that's legal, to have so-called released time. In the east they leave to go sometimes to the Catholic schools. Or whatever. So these schools kind of have released time. They're charter schools with a released time program. There's some, here and there, a few places around the country, bilingual schools, like Arabic-English. That's probably a good thing for your kid to actually learn to speak Arabic. But in fact almost all the families are Muslim families. A lot of them feel safer for their daughters and maybe safer for their sons, too. And a lot of them are educationally ambitious. A lot of these families come from all over. They come from Indonesia or from Pakistan or from Iran or from Iraq or Turkey, whatever, Egypt, and they're Americans now. But they want their kid interested in speaking Arabic. They mostly don't speak Arabic now. Some speak it in the home, many don't. An Arabic-English charter school is not a Muslim school. They're not teaching religion in the school but they're kind of faith affiliated. Often there'll be a mosque nearby. So you can see we're getting a little bit of this. They have to be very careful, those schools, to make sure they're not religious schools under the current law. It's possible, however, that the current discrimination against religious schools becoming charter schools is unconstitutional. I'm writing about that right now, at this very moment, and I made an argument as to why that might be.

01-01:42:34

Meeker:

What is that argument?

01-01:42:35

Sugarman:

Think about this. Suppose the government says, “You know what? There are a lot of poor women in this country and they need money to help their families. They’re single mothers. But you know what? The ones who are faith members, their churches are going to take care of them. The church is going to help them out. But people who are atheists, they don’t have anybody to help them out. So we’re going to give money only to atheists. If you go to church and you’re poor you don’t get it but if you’re an atheist you do get it. I am confident the court would say you can’t do that. You cannot discriminate against helping you out because you go to church. Or suppose the government says, “You know what? If you give money to Stanford you can get a tax deduction. But if you give money to Santa Clara you cannot.” I don’t think that would be allowed. We don’t do that, of course. Neither one of those do we do. But for charter schools we do that. You want to have a school? Anybody in California can start a charter school except a religious group. It’s the one group who cannot. I’m talking about people willing to meet all the other charter school rules. No tuition, lottery admissions, taking tests, disclosing your finances, disclosing your test scores, blah, blah, blah, all that stuff you have to do. The only people who cannot apply are religious groups. That’s discrimination on the basis of religion. So the question is whether or not that discrimination is legal. Some people think it’s legal because to give them money would violate the Establishment Clause. I think that’s wrong. Now that O’Connor’s been replaced by Alito, the current justices, there are five judges at least, I think, who would say if a state wanted to let religious schools be charter schools, they could do it. Now the question is whether they must. That’s a much harder question. But nonetheless it’s discrimination on the basis of religion.

01-01:44:41

Meeker:

I’m guessing that this will be another point of agreement between you and Jack.

01-01:44:44

Sugarman:

Yes. That is a point of agreement. He is a religious person. I am not a religious person. But we’re both tolerant, I guess, we’d like to think ourselves tolerant of other people. I am very encouraged by the fact that the studies show that if you look at Catholic kids going to Catholic schools and non-Catholic schools, public schools versus Catholic, and then you study them when they’re adults, the ones who went to Catholic schools are more involved in civic activities and more tolerant of non-Catholics. So they don’t learn to be bigots in Catholic schools. They learn to be Catholic but they also learn to be tolerant of others. So people are afraid these days. I think there’s a terrible anti-Muslim attitude around now. You can’t imagine much expansion of school vouchers because people are going to immediately say, “Oh, no, these Muslim extremists are going to get money and train terrorists in their schools.” So I think politically it’s very difficult to imagine at the moment this moving very much. Whereas, in fact, there aren’t very many kids in Muslim schools, like 30,000 in the whole country, and most of them are serving poor

families and the kids are doing well and it's a safe haven for them. But they have got to pay for it themselves now. They can't get public money for it and it's very difficult for those families to afford to provide this for their kids. So a very small share of the Muslim community is in private schools because of the cost point.

01-01:46:48

Meeker:

Well, before we wrap-up, I do have a couple of sort of final questions and obviously we could continue talking about these issues for a long time. But I'd like you to talk a little bit about what it was like being Jack's colleague here at Berkeley and maybe tell me about his role at the law school in that context.

01-01:47:10

Sugarman:

Jack's an unbelievable man and I'm so lucky because not only did I have Jack as my mentor in law school but then I had him as a mentor and colleague here for my whole career. He's been technically retired for a lot of years but we've been working together. Even now we're working together on this charter school issue. So we've had a lot of years together. I've written a lot of pieces with other people. If you add up all of my scholarship the school part of it is not the majority of it. But much of the best stuff I've ever done is stuff that Jack's been in charge of. So it's been really great. I don't know anybody else really who's had this kind of a relationship. That's really been very special. And Jack is such a great supporter that way. Jack, when he came here, he was what we call a lateral. I was a beginner when I started here but he was already tenured and a substantial person when he came here. He came in 1967, as I said, five years before I came here. And at the time in 1967, the law school was a fairly small faculty and there were a lot of young guys. Two women but mostly guys, a lot of young guys with young families. Jack and Marilyn were part of that. A lot of those families had a number of kids, like they did. A number of them were Catholics actually. But anyway, a lot of them had a number of kids. And they did a lot of growing up together with their kids. It was kind of a social group. We had had a dean here previously named Prosser. He was gone by the time Jack came. He was a guy who was a great believer in faculty entertainment and he used to write plays and skits and so on. And then there was an assistant dean here named Jim Hill who took that over. And Jack had played that sort of role apparently at Northwestern. When he came here he sort of took that over to become the organizer. He would organize the faculty entertainment, either for the students, for the campus, or for the faculty just among themselves. And he's done this for all these years now. The annual Christmas show. He's got a sort of niche reputation. It's like my niche reputation is the Steve Sugarman's Boalt Hall Dining Guide. Jack's niche entertainment is the Christmas show or the faculty skit. We're perhaps most remembered for this sense of our lives, not our other roles. When the Haas family owned the A's we used to take the law school in big groups to the A's game. Jack sang the national anthem, for example. Sort of the position as the faculty entertainer, let's say. That's kind of been his public persona. I would say we've always worked together very easily. I've said before, and I'll say it

many times again, his writing style is so great. I'm sort of like the editor. Sometimes I write things and he edits them, that's true and over time I guess maybe it's shifted more toward me. Nonetheless he's got a great way with words and he's much more widely read than I am. So he has got a wider overall philosophical world view of things. I'm much more of the tinkerer, the designer of the details. He's more of the kind of overview guy—so that made for some pretty good teamwork.

Bill Clune's a very good guy and we've maintained some contact with him and he's continued to work on education. He had more aspirations for the courts in a way than we did. But we haven't really worked with Bill since law school in a serious way. Bill contributed in an important way to our first book but not really in producing the book. We did that out here in Berkeley. But his original work and ideas were important so, of course, we were three authors together. But we didn't really engage with him past the student years. Bill used to come out and go hiking with Jack and things like that. I never did that. My wife has gone hiking with him.

01-01:52:52

Meeker:

Up in the Sierras?

01-01:52:54

Sugarman:

Yeah, up in the Sierras. But not me. A lot of my scholarly interests, as I say, have gone off in other directions. But we've maintained a relationship. We've tried to work together and it's been great. He's always been the leading face. Like when we work with outside political groups. We tried to organize an initiative campaign. Jack really took charge of that. A lot of the time when he was on the faculty here was devoted to trying to promote school choice in the real world. So he had all the connections, not me. He had the people who he recruited, the business people. He found the support of church leaders. I was not at all important in any of that. Once we tried to get a signature campaign, once we had Congressman Ryan who was going to support us and unfortunately tragically got killed. We had various other efforts. Here and there Jack's found people over the years who might put up money or whatever to try to push school choice. So I'd say really so much of his time before he retired, in some sense even after, at Berkeley was devoted to trying to turn the idea of school choice into a real thing. We worked with the Christian Brothers for a number of years. LaSalle, who's the starter, he broke from the church because he felt the church had lost track of its mission to educate poor children. And so he started doing that, created the Christian Brothers order in France and then it spread worldwide. They've always been an education brotherhood. And I think they realized that they're getting older. There aren't that many of them around and few new ones. And a lot of their successful schools, that are really successful, serve well-to-do families. And they're thinking we should try to get back to our Lasallian roots and do more about helping poor kids. And one of the things they decided to do was think about maybe we can invest in help promoting the choice, school voucher, idea. So

we worked with them, although nothing has really, in the end, come of it. But that's been pretty interesting for me to get to know some of those people and it's all been through Jack's connections. Jack has been the face of the people in the center or center-left on school choice, which I think has been great. We have made alliances with people like Terry Moe, who is actually married to a relative of mine, a friend of ours at Stanford who's a school choice guy. But he's basically an anti-union guy. There are different people. And Jack has been really a critically important figure in keeping this idea going, that choice isn't only the goal of the Milton Friedman kind of group, even though that's how it's largely portrayed by opponents.

So we created this new organization called the American Center for School Choice. It sort of sputtered along. I'm not sure that it's really viable at this point. Jack put a lot of effort into it. One of the things it did do is generate some cooperation among the different faith based schools. A faith based commission got to work, a lot of people were brought together at conferences and other meetings from the different faith groups who often viewed each other somewhat warily. I don't know what actually might come of it in terms of any political consequences but I think that's been interesting. And people see now that faith based schools are not havens for rich people. Of course there are a few such schools. The parts of the private sector are havens for rich people are the non-religious schools on the whole. The religious schools on the whole have a lot of non-whites and a lot of low-income families. They have well-to-do people, too, but not in the way that the fancy private schools are very much schools for privileged people. So faith-based schools I think now have more a sense of what they're like together and Jack's been very active in that. So he's very inspirational in that way and that's been very special for me to have somebody like that as a mentor. And he's still very good at public meetings, to get people, even at his age, in his eighties now, get people enthusiastic for the cause.

But I was thinking it's sort of ironic in a way. I can't say we're really responsible for charter schools, although it's a version of what we supported from before the name got on it. That's really where the biggest success is and not in the voucher—there are only a little bit of school vouchers here and there. It's always on the tip of the tongue. A lot of places are trying it out. Indiana's got a little more and Ohio's got a little more now. But there only are less than that, half-of-one percent of the kids in the country who are in publicly funded private schools. That's still a small number. But it could be bigger. There are new funding strategies afoot, mostly run by conservatives. If Rubio were to be president, I'm very much opposed to him, but nonetheless he's got a plan for federal funding of private schools, that's a tax credit scheme like they have in Florida right now. Jack and I worked with this guy, Doug Tuthill and he's a former teacher union guy in Florida. He's responsible for 70,000 low-income kids going to private schools in Florida at public expense. It's through a tax credit mechanism. It's not worth describing the details. But there you have a real example of a lot of kids getting to go to a

school the parents prefer to what the other options are, paid for by Doug through scholarships he gives out, or mostly paid for by him, that come from tax credit money. Developments like that that we see are different from the voucher or scholarship mechanism but they have the same result if they empower low-income families. Now, 70,000 is a big number in one way. In another way it's like a drop in the bucket in Florida. Even in Florida it's only a small share of the kids but it's a number and it was 10,000 a few years ago. So it's possible that we'll see some more growth in this.

01-01:59:53

Meeker: Well, with that nod to the future should we wrap-up?

01-01:59:55

Sugarman: Yeah, that's fine with me.

01-01:59:56

Meeker: Great. Thank you very much.

[End of Interview]